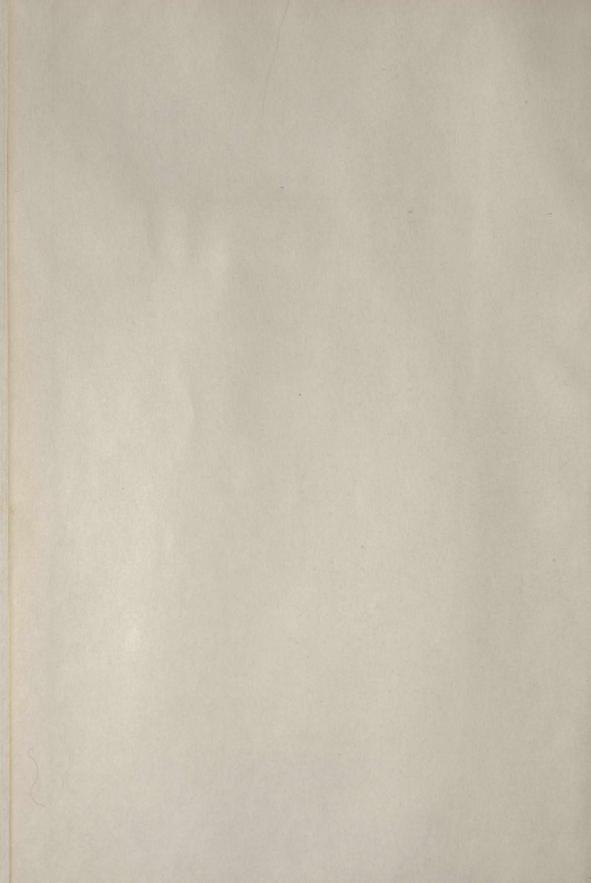
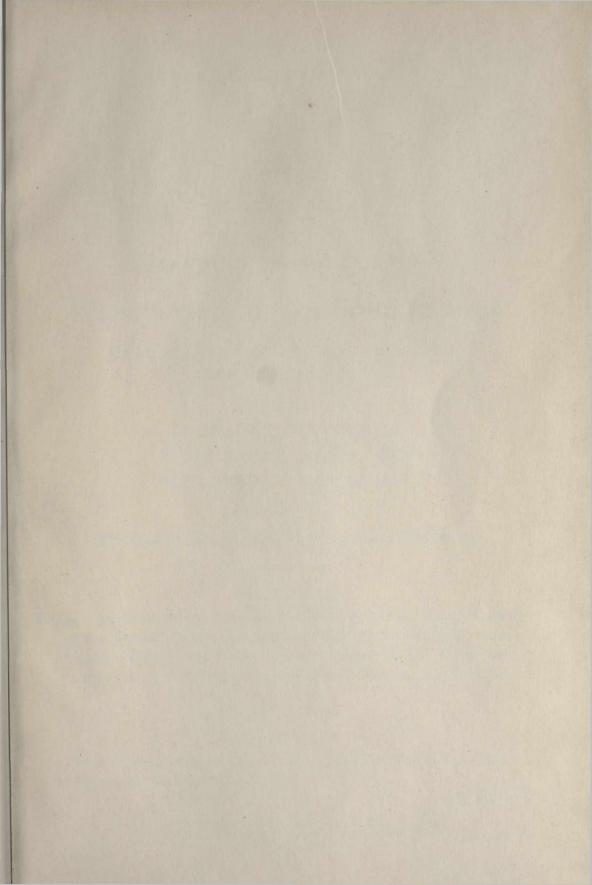


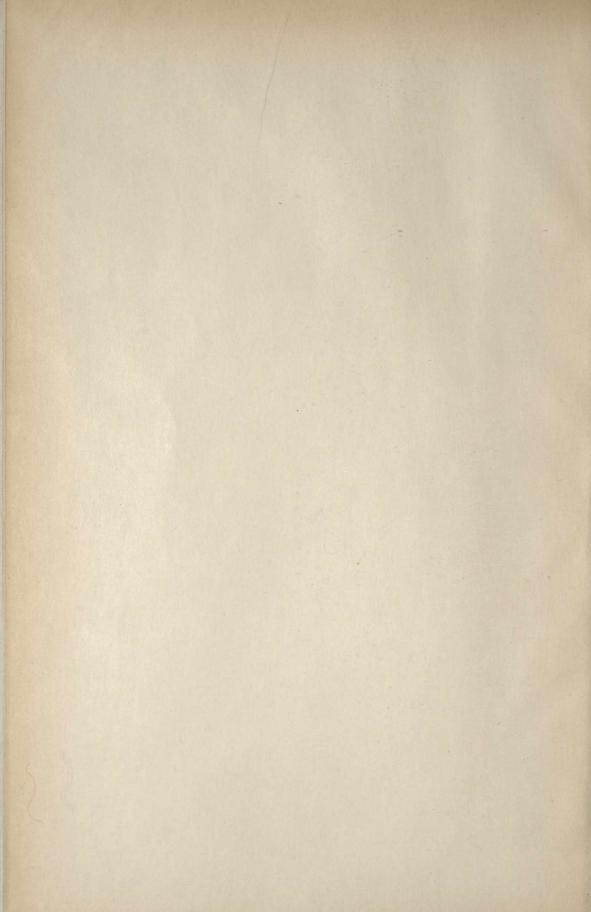
Canada. Parl. Senate. Standing Comm.on J 103 Transport & H7 1956 Communications, 1956. Proceedings. T7A1 DATE CL NAME - NOM mar 24 Acarl and Canada. Parl. Senate. Standing Comm.on Transport and Communications, 1956.

J 103 H7 1956 +7 AI

| Date Loaned | | | |
|-----------------------|--|--|--|
| BRAY 17 196 | | | |
| | | | |
| - ARES R | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| CAT. NO. 1138-LM. CO. | | | |







1956

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON

Transport and Communications

On Bill H-7, intituled: An Act to amend the Canada Shipping Act.

> THURSDAY, MAY 3, 1956 WEDNESDAY, MAY 9, 1956 WEDNESDAY, MAY 16, 1956

The Honourable Adrian K. Hugessen, Chairman

WITNESSES

Mr. J. R. Baldwin, Deputy Minister of Transport; Mr. A. Cumyn, Chairman of the Steamship Inspection Board; Mr. E. A. Driedger, Assistant Deputy Minister and Parliamentary Counsel for the Department of Justice; Mr. C. G. O'Brien, Manager of the Fisheries Council of Canada.

APPENDICES

A. List of member organizations of the Fisheries Council of Canada. B. Report of Committee.

> EDMOND CLOUTIER, C.M.G., O.A., D.S.P. QUEEN'S PRINTER AND CONTROLLER OF STATIONERY CANAD OTTAWA, 1956

74222-1

STANDING COMMITTEE

On

TRANSPORT AND COMMUNICATIONS

The Honourable Adrian K. Hugessen, Chairman.

The Honourable Senators

50 Members (Quorum 9)

Aseltine Baird *Haig Beaubien Bishop Bouffard Bradley Campbell Connolly (Halifax North) Hugessen Connolly (Ottawa West) Isnor Daigle Dessureault Duffus Euler Farris Gershaw Gouin

Hardy Hawkins Hayden Hodges Horner Jodoin Kinley Lambert *Macdonald MacKinnon Marcotte McGuire

Grant

McKeen McLean Molson Nicol Paterson Power Quinn Raymond Reid Roebuck Ross Smith Stambaugh Veniot Vien Wood-48

*Ex officio member

Sunal S

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate

THURSDAY, April 19, 1956.

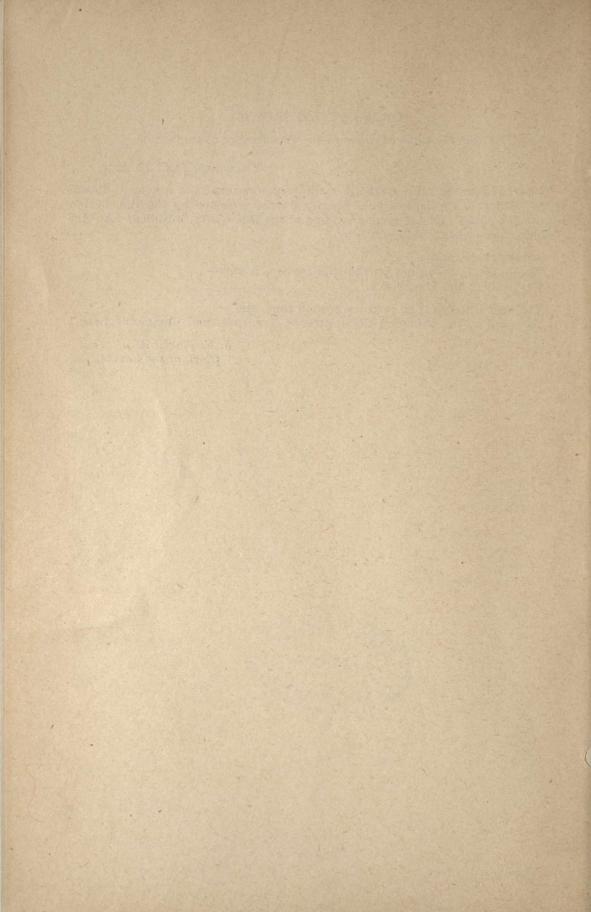
"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Farris, seconded by the Honourable Senator McDonald, for the second reading of the Bill (H-7), intituled: "An Act to amend the Canada Shipping Act".

After debate, and— The question being put on the said motion, it was— Resolved in the affirmative.

The said Bill was then read the second time, and— Referred to the Standing Committee on Transport and Communications."

> J. F. MacNEILL, Clerk of the Senate.





MINUTES OF PROCEEDINGS

THURSDAY, MAY 3, 1956.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.00 A.M.

Present: The Honourable Senators:—Hugessen, Chairman; Aseltine, Beaubien, Bradley, Connolly (Halifax North), Connolly (Ottawa West), Euler, Gouin, Grant, Hardy, Isnor, Kinley, MacKinnon, McKeen, McLean, Molson, Paterson, Roebuck and Smith. 19.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; The Official Reporters of the Senate.

Bill H-7, An Act to amend the Canada Shiping Act, was read and considered clause by clause.

Mr. J. R. Baldwin, Deputy Minister of Transport, Mr. A. Cumyn, Chairman of the Steamship Inspection Board and Mr. C. G. O'Brien, Manager of the Fisheries Council of Canada, were heard in explanation of the Bill.

Following discussion, and on motion of the Honourable Senator Kinley, seconded by the Honourable Senator Smith, it was resolved that clause 6 of the Bill be deleted.

Further consideration of the Bill was postponed until Wednesday, May 9, instant.

At 12.45 p.m. the Committee adjourned to Wednesday, May 9th, 1956, at 11.00 a.m. in room 262.

Attest.

WEDNESDAY, MAY 9, 1956.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.00 a.m.

Present: The Honourable Senators: —Hugessen, Chairman; Aseltine, Baird, Beaubien, Bradley, Campbell, Connolly (Ottawa West), Daigle, Euler, Gershaw, Haig, Hawkins, Isnor, Jodoin, Kinley, McLean, Molson, Power, Reid, Roebuck, Ross, Smith and Wood. 23.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; The Official Reporters of the Senate.

Bill H-7, An Act to amend the Canada Shipping Act, was further read and considered.

A brief from the Department of Justice with respect to Section 495A on Oil Pollution, was read by Mr. E. A. Driedger, Assistant Deputy Minister and Parliamentary Counsel for the Department of Justice. Messrs. J. R. Baldwir, Deputy Minister of Transport and A. Cumyn, Chairman of the Steamship Inspection Board were heard in explanation of Section 495A of the Bill. On motion of Honourable Senator Kinley, seconded by Honourable Senator Smith, it was resolved to report as follows:

> Your Committee recommend that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill, and that Rule 100 be suspended in relation to the said printing.

Further consideration of the Bill was postponed Wednesday, May 16, instant. At 1.15 p.m. the Committee adjourned to Wednesday, May 16, 1956, at 10.30 a.m. in room 262.

Attest.

WEDNESDAY, May 16, 1956.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.30 A.M.

Present: The Honourable Senators: Hugessen, Chairman; Beaubien, Bouffard, Bradley, Dessureault, Farris, Gershaw, Gouin, Hawkins, Hayden, Isnor, Kinley, Macdonald, Power, Reid, Roebuck, Stambaugh, Veniot and Vien—19.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Official Reporters of the Senate.

Bill H-7, An Act to amend the Canada Shipping Act was further read and considered clause by clause.

The Honourable Senator Roebuck moved the following motion:

That Section 495A be referred back for the purpose of redrafting, so that the prohibitions and penalties proposed shall be in statute form rather than by Order in Council.

The question being put on the said motion, the Committee divided as follows:

Yeas—1

Nays-8

The motion was declared passed in the negative.

The Honourable Senator Farris moved the following amendment to Section 495A of the Bill:—

"Page 9: delete lines 1 to 5 both inclusive and substitute therefor the following:—

495A. The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, set out in the Fourteenth Schedule, is approved, and the Governor in Council may make regulations;

 (a) to carry out and give effect to the provisions of the Convention while in force in respect of Canada, such regulations to conform in all respects to the said provisions;

Messrs. J. R. Baldwin, Deputy Minister of Transport, and A. Cumyn, Chairman of the Steamship Inspection Board, were further heard in explanation of the Bill.

After discussion it was resolved to report the said Bill with the following amendments:-

1. Page 3, lines 8 to 13 both inclusive: delete clause 6 and renumber the subsequent clauses.

2. Page 9: delete lines 1 to 5 both inclusive and substitute therefor the following:—

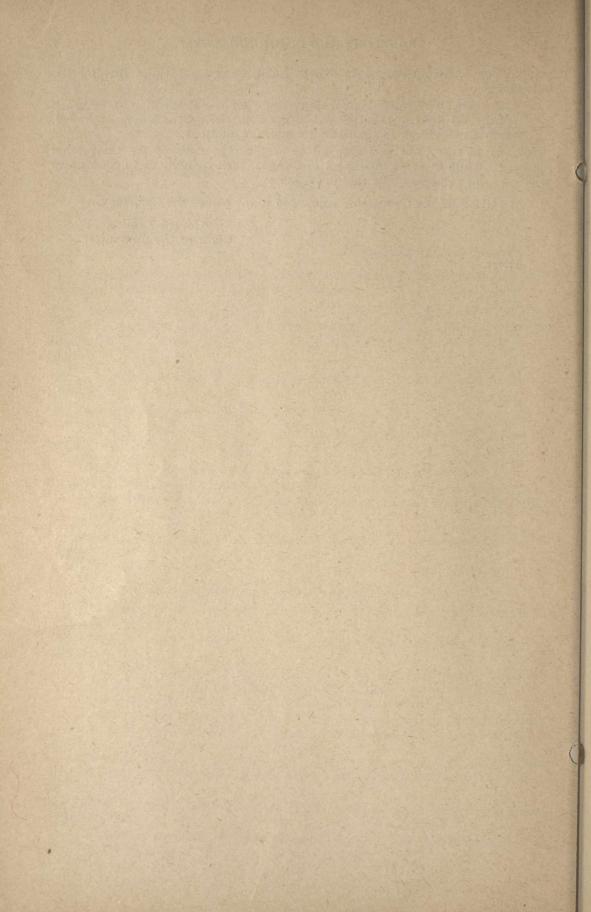
495A. The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, set out in the Fourteenth Schedule, is approved, and the Governor in Council may make regulations;

(a) to carry out and give effect to the provisions of the Convention while in force in respect of Canada, such regulations to conform in all respects to the said provisions;

At 11.15 P.M. the Committee adjourned to the call of the Chairman.

Gerard Lemire, Clerk of the Committee.

Attest.



THE SENATE

STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

OTTAWA, Thursday, May 3, 1956.

EVIDENCE

The Standing Committee on Transport and Communications, to whom was referred Bill H-7, an Act to amend the Canada Shipping Act, met this day at 11 a.m.

Senator Hugessen in the Chair.

-After some discussion as to procedure.

The CHAIRMAN: I take it to be the will of the committee that we should hear first from Mr. Baldwin, the Deputy Minister of the Department of Transport as to why Section 6 is necessary, and we can have comments from those other gentlemen who wish to comment on it. I will now call on Mr. Baldwin.

Mr. JOHN BALDWIN: Deputy Minister of Transport:

Mr. Chairman and gentlemen, the basic purpose of Section 6 is set forth in the explanatory note in brief form. I realize, having read the discussion on second reading, that it is desirable that we offer some amplification on this section.

It has always been the policy and practice of the government and the Department, both under the Canada Shipping Act and in other general policy matters, to recognize the special position of the fishing industry in Canada. I do not think I need go into detailed examples of that; however, in this regard while there has been a requirement in relation to the technical competence of engineering personnel on fishing vessels,—one which will in fact be the subject matter of a later clause in this bill—there has not been a certification requirement with regard to masters and mates. We in the Department have recognized from the outset that in the main it is the case that the masters and mates of fishing vessels, through the hard lessons of experience, have become highly competent, and in most cases are very brave and able seamen.

On the other hand it has been the case that they have been granted a degree of freedom from the regulations that Parliament has considered should be met with regard to masters and mates on vessels. We have also recognized that any attempt to modify that must be worked out in great care with the industry itself to assure that it is not done in a manner which will be detrimental to the fishing industry.

We have, however, felt that it would be desirable to seek the gradual introduction of some form of certification for masters and mates of fishing vessels because we have had a fair number of cases of accidents to fishing vessels which we feel in one regard or another has resulted from either carelessness or lack of adequate knowledge of what might be called the navigational requirements that normally a master or a mate must have. We have had in a Board of Inquiry a comment by the individual conducting that inquiry to the effect that it did not seem to be a fair or reasonable proposition to say that the master of one vessel requires a certificate while a master of another vessel does not require any clearance whatsoever in order to be a master. If the two vessels come into collision as has been the case on the west coast recently, it does not seem quite fair to the certificated master. Our objective had been to introduce a simplified requirement very gradually over a period of years. We had checked on this objective with the Department of Fisheries and with the head office of the Fisheries Council and we understood they had no particular objection to this course. Had we believed that there was any misunderstanding on this point I think we would have carried those consultations further. I understand that there have been representations received from the fishing industry to the effect that they do no like this procedure or proposal; and naturally so, since no individual likes to see new regulations imposed upon him. I do not know but I would be hopeful that if we had gone into the detailed consultations that we would have undertaken, had we realized these representations would be forthcoming, we could have persuaded the representatives of that industry that our proposals would be gradually introduced over a period of years rather than imposed upon them in a hard and arbitrary fashion suddenly and against their interests.

However, I think that it is our basic view that it would be desirable for some form of standard certification to be introduced for masters and mates of fishing vessels on a gradual basis in the interests of marine activities generally. We have had a few instances of problems that have arisen in this connection that we could give information about to the committee to substantiate our views in that regard, if the committee desires.

Do you think that will be adequate for the present, Mr. Chairman.

The CHAIRMAN: Yes, I think so, subject to any questions by committee members.

Senator SMITH: I wonder if it would not be useful if we heard from Mr. C. G. O'Brien. Perhaps he may have something to say.

The CHAIRMAN: I was intending to call him after a period of questioning of Mr. Baldwin.

Senator McKEEN: Would this requirement imply that if they do have these qualifications for masters and mates on these fishing boats that then they would be able to carry on commercial or freighting operations, carrying passengers and towing?

Mr. BALDWIN: Not necessarily so.

Senator McKEEN: But I would like to know.

Mr. BALDWIN: We were thinking of a special classification of masters and mates of fishing vessels and nothing more than that.

Senator McKEEN: But would possession of these certificates permit them to enter into commercial operations?

Mr. BALDWIN: If they wish their vessels to become freighting and towing vessels they would have to conform to the regulations for masters and mates for such vessels.

Senator KINLEY: Mr. Chairman, the law with regard to masters and mates certification is as follows: I am reading from section 114 (1) of the Canada Shipping Act.

Every British ship except (a) pleasure yachts, and (b) ships solely employed in fishing and other ships principally engaged in fishing not exceeding 150 tons gross tonnage, not carrying passengers, and employed on the waters within the area within a home-trade voyage may be made, shall when going from any place in Canada be provided with masters and mates duly certificated according to the following scale:

From that you will see, Mr. Chairman, that the law says that masters of fishing vessels are exempt. That is quite clear. It is provided for in section

TRANSPORT AND COMMUNICATIONS

114 of the Canada Shipping Act. Now this bill proposes to amend section 114 which I have just read. It is to be amended by adding the following subsection:

(3) The Governor in Council may make regulations requiring masters and mates of ships mentioned in paragraph (b) of subsection (1) to hold such certificates of competency as are prescribed by the regulations.

Now it apears to me that they are making a regulation that will annul the statute. The statute says they are exempt. The department is now asking that the Governor in Council be permitted to make regulations which will annul that statute only so far as the masters and mates of fishing vessels are concerned.

We are not against progress in the Maritimes. We are people who know that this thing has gone on for a hundred years and now there is a sudden change. I was called up last night by the president of the Fisheries Council of Canada at 11 o'clock. He told me that he was deeply concerned about this amendment, and he said that he knew nothing at all about it. Their Council met in Ottawa two or three weeks ago and passed many resolutions affecting fisheries. They knew nothing about this amendment and have had no chance to make representations. Senator Smith and myself opposed it on second reading, but we thought it was a bill that could be better dealt with in committee. When I spoke to the president of the Fisheries Council last night I told him I had heard nothing from you people, so this morning I had a whole sheaf of telegrams from the coast and I will read them with your permission. They are as follows:

> Halifax, N.S., 1956 May 3 am 9 54

Hon. J. J. Kinley,

Senate of Canada, Ottawa.

Re proposed amendments to Canada Shipping Act with particular reference to certification of masters and mates of fishing vessel strongly urge action on this be deferred until members of industry have opportunity to study and discuss proposed changes stop feel you are too well acquainted with skill and confidence of your fishermens to require laboration of their qualities and hope you will oppose changes that could create serious problems for the industry stop regards

R. G. Smith Nat Sea Prods Ltd.

Lunenburg, N.S., 1956 MAY 3 AM 9 56

Hon. J. J. Kinley, The Senate, Ottawa.

Re amendment marine act captains and mates. Strongly recommend deletion this clause. Extremely difficult now to man fishing vessels without increasing our burden

Adams and Knickle Ltd.

Lunenburg, N.S., 1956 MAY 3 AM 10 24

Senator J. J. Kinley, The Senate, Ottawa.

Endeavour have clause deleted from marine act regarding captains and mates stop would suggest government discuss solution fully with industry before making it law stop industry having great difficulty now securing masters

Briny Deep Fisheries

Lunenburg, N.S., 1956 MAY 3 AM 9 56

Senator J. J. Kinley, The Senate, Ottawa.

Re amendment marine act captains mates. Suggest endeavouring have this clause deleted. Impression here is government trying put fishing industry out of business

Zwicker and Co. Ltd.

Riverport, N.S., 1956 May 3 AM 10 30

Senator J. J. Kinley, The Senate, Ottawa.

Regarding bill going before Senate today dealing with amendment to merchant marine act stop is our feeling that the section of this bill dealing with certification of masters and mates of fishing vessels over fifteen tons should be laid aside until such time as the nautical branch department transport and industry get together and thoroughly discuss same. Trusting you will exert your best efforts to make this possible.

Ritcey Bros. Fisheries."

Now, Mr. Chairman, in explanation of the bill Mr. Baldwin's department says this: I read from the page facing page 3 of Bill H-7.

It is desirable to have some certification of persons in charge of fishing vessels but on these vessels masters and mates should not be required to have the same standards of competency as those required for regular certificates of competency of masters and mates as otherwise provided in this act. Accordingly, it is proposed, in co-operation with the fishing industry, to introduce by regulation a special and simpler system of certification. This system will be developed gradually in conjunction with an educational program which has already been instituted by the industry which recognizes the need for action along these lines.

Mr. Baldwin's explanation was splendid. I do not agree with his conclusions, though. If he is going to collaborate with the fishing industry why does he want to go on with this amendment before doing so? Why does he not go and speak to them with the law as it is, and discuss with them with things as they are. I think the department is taking an advantage that should not be taken under the circumstances. The whole basis of Mr. Baldwin's presentation is that they are dealing with the fishing industry and they want to establish something which they think is right, and after doing that they want to collaborate with the fishing industry. As I say, why not collaborate with them before making the change, why not leave the law as it is until after they have collaborated. After all the law has been what it is for over a hundred years. Now in regard to the question of accidents to fishing vessels I think that they have the cleanest record of any on the coast.

Hon. SENATORS: Hear, hear.

Senator KINLEY: I know the history of the fishing industry for over one hundred years, and I can say that their record is splendid.

A skipper of a fishing boat is a rather unique man. He comes up, as they say, through the hawse-pipe, he comes in at the bow and works his way to the stern. He cannot be a skipper unless he is competent. The work he is engaged on is a co-operative enterprise, and the reason he is a skipper is because he can carry on the business successfully, he will bring in a good load of fish and in addition to that he can get along with men. I think those

TRANSPORT AND COMMUNICATIONS

are qualifications vastly superior to the possession of a certificate as to whether he knows how to use logarithms. Whenever I am asked to take a share on a vessel I always ask who the skipper is, and also if he has a share in the vessel, and if he has a share in it I know he will do a good job. These men know the bottom of the ocean just as others know the mountains and the hills in the country. Today they have lorains, depth sounders, they have always had a compass, and they also have a ship to shore telephone. These they can use. There is no immediate need for this provision. I am sure you will find that the fishing industry is prepared to do what is right, but do not put into the bill the statement that you can make them do it. I say very strongly that the right of using an order in council to annul a statute is something that I do not think should be done.

I have another telegram, which reads: Suggest endeavour have fishing vessels deleted in amendment Merchant Marine Act dealing with certification masters and mates Stop Fisherman acquire knowledge by experience not in school Stop A special oral examination for fishermen should be sufficient Stop An act once passed will be interpreted as written by inspector Stop Why impose restrictions on men who are irreplaceable and doing such a wonderful job

W. W. Smith Lunenburg Sea Prods.

Mr. Smith represents one of the biggest firms in the Maritimes, I would say. May I suggest to Mr. Baldwin and his Department that there is no hurry

for this legislation; it should be delayed until a convention is held and then they can come back to Parliament. The session has a good while to go yet, so why try to force this measure through now? I know Senator Bradley will agree with me that this provision will affect a thousand skippers in Newfoundland.

Senator BRADLEY: Yes, and 5,000.

Senator KINLEY: When you get down to a ship of 15 tons, you are getting into small boats.

Senator BRADLEY: The men who will be affected by this section know nothing about book learning, but they can smell the rocks; they know the sound of the sea every rock where they go.

Senator GOUIN: Mr. Chairman, I think what has been said is quite true. While I am a landlubber myself, I spent a good deal of time in my youth on the St. Lawrence. It is true that these men, which I might call ancient mariners, have no book learning. What concerns me is that the text of the section now before us might not be interpreted as requiring the Department to proceed gradually. Whatever changes are to be made should be carried out gradually. Otherwise the provision seems to be premature.

Senator SMITH: Mr. Chairman, may I be allowed to say a few words at this time. I shall be brief because Senator Kinley has covered the subject and has explained my view. I can only add that I agree with what he has said, and that I too have had telegrams and letters, among which is a letter from the past president of the Fisheries Council of Canada, who said that he could not understand the reason for this section, and asked me to continue to make representations to have it deleted from the bill.

While I was at home during the Easter recess I had occasion to visit three of the largest fishing industries on my part of the coast, and the management of each one of those industries told me they thought no useful purpose could be served by this provision, and that its passage would be an embarrassment to them. They also explained the view that this provision should not now be written into the act, at least in its present form. They were also a little disturbed about what the regulations might contain. If this bill is passed, I feel that the regulations that would be drafted under it would be the kind which for the most part the fishermen could not meet.

I made some reference to Mr. Cumyn who is in the Department, and I quoted something he said. I know there is in the Department a recognition of the special position of fishermen; but the fact remains, and I feel very strongly, that we should continue to protect that special position.

I had some other questions which I wished to ask the Deputy Minister, but I think it unnecessary for me to ask them at this time. Among them was a question as to how many accidents, and of what nature, did fishermen become involved in and what was the comparison of the accident frequency with regard to other types of shipping, apart from fishing. As Senator Kinley has said, we seldom hear of a fisherman, such as a long-liner or a drag-liner, getting into any kind of trouble, except perhaps something that has to do with his engine. These men are keen seamen and know their job; they will resent our telling them that they must pass an examination at this time. I think perhaps the time will come when they will be proud of the fact that they have something that the young boy who comes on the ship cannot get until he has passed some qualifying examination; but I do not think this is the time to ask the older men to take examinations.

That is about all I have to say, Mr. Chairman. If there is any general view held by the other members of the committee that this section should remain in the bill, I should like to bring out answers to some questions which I have on my mind, but if not, I shall not ask them at this time.

The CHAIRMAN: I was wondering if perhaps it might not be helpful to the committee to hear Mr. O'Brien as to how far the Fisheries Council of Canada has gone in its negotiations, and see just what its position is.

Senator ROEBUCK: Before you call Mr. O'Brien may I make an observation. I too am in the landlubber class although I have done a little sailing in my time. I would make the observation that this section seems to be in line with the modern tendency of departments of government to get into their own hands all possible authority for the control of industry and everything else that they have anything to do with. It seems to me that the objection is not so much to the registration, but of the mystery that lies behind it, as to what this Department in its wisdom, or lack of wisdom, may require in the future as a qualification for getting registration.

The CHAIRMAN: I see the proposed legislation is disturbing in its terms.

Senator ROEBUCK: It is unlimited; it is more disturbing because we are all children and afraid of the dark. I suggest this is not a matter for action by Order in Council. If these masters are to be registered, there should be a clause in the Act to that effect. Then if they are to be registered on certain qualifications there is no reason that should not be stated. If later on the department and the industry wish to tighten it up a little bit, there would be no difficulty in amending the clause. But let us not move in the dark with a great industry like this. If we are to call for registration then let us have a bill to do it or a provision in the bill which clearly and specifically states what is what, so that the industry will know what they are talking about. That is my observation.

The CHAIRMAN: Does the committee wish to hear Mr. O'Brien now? Hon. SENATORS: Yes.

Mr. C. G. O'BRIEN: Mr. Chairman and honourable senators, I have prepared a statement and with your permission I would like to read it and then amplify it with a few remarks. The CHAIRMAN: That is fine. Honourable senators, I might mention here that Mr. O'Brien is the Manager of the Fisheries Council of Canada.

Mr. O'BRIEN: The fishing industry, as represented by the Fisheries Council of Canada, appreciates this opportunity of making a brief statement in respect to the proposal to provide legislation through the Canada Shipping Act to call for certificates of competency for masters and mates of fishing vessels.

(For list of member organizations of the Fisheries Council of Canada see Appendix A of these proceedings.)

The fishing industry opposes such a step at the present time. We do not think that the industry has been adequately prepared for the introduction of such legislation and there is great fear in the fishing areas that such a move would lead to considerable disruption of the fishing effort and efficiency.

It is noted, in the explanation contained in the bill, that it is proposed to develop the system gradually, in co-operation with the fishing industry, and in conjunction with an educational program. It is true, too, that industry does recognize the need for continued effort in training the personnel handling fishing vessels in, particularly, the rules of the road and that efforts are being made by industry to persuade their men to take full advantage of courses offered in this field.

However, we are not satisfied that the educational work has proceeded to the point where this type of legislation can be introduced. That may well come in time, but we submit that the ground work for it has not been laid as yet.

To digress for a moment, for many years this industry had considerable difficulty in reconciling its views with those of the Board of Steamship Inspection. Happily, due to a policy of close consultation with industry, this situation has changed completely in the last ten years. Today, when inspection matters are before us, we sit down as a team—industry and inspection service—and work out the problem. They have some confidence in us—we have a lot of confidence in them. Within the past eighteen months, working together, we have produced steamship inspection regulations for fishing vessels—separate regulations which apply only to our industry.

We know that we can work the same way with the Nautical and Pilotage Service of the Department. We do feel, however, that the basis for a working agreement should be established before and not after the introduction of this type of legislation. Otherwise, industry approaches it with uncertainty and with fear of the consequences. And, you will realize, such legislation, unless administered wisely, could cause considerable hardship.

On the above grounds, we must oppose this proposal, at the present time.

Mr. Chairman, I think a word of explanation is due to Mr. Baldwin and his staff. We as a fishing industry, working through the Fisheries Council, have worked extremely closely with the various officials in the Department of Transport who have responsibility for our vessels. It has been a very happy arrangement. In connection with this particular item I think I am right in saying there was only one conversation with regard to the possibility of introducing this type of thing in this bill. That was a conversation initiated by myself with the Department of Transport official responsible for this. At the time I considered it to be confidential since he informed me that the act not yet been framed by the department and that we were speaking more or less off the record.

It is possible from our conversation he did get the impression that perhaps this was acceptable to the fishing industry, that perhaps we had done enough educational and ground work that our people would accept this sort of thing now. I might have given that impression. If I did I am in the position of having to apologize to the department, for since the bill has been published and the information has gone out to the fishing industry it is obvious from the industry's reaction that this is not the feeling of the fishing industry at the present time. In justice to Mr. Baldwin I want to say that perhaps we are partly responsible for this situation arising, and I wanted to publicly acknowledge this fact.

That, sir, I think is the situation as it stands at the moment. We have not had an opportunity to sit down and discuss what type of regulation might come up. I do feel if Captain Slocombe was to go out to St. John, to Halifax, to the inland waters, Vancouver, and so on, and meet with the trade that the whole attitude of the fishing industry might be a little different towards this type of legislation. At the moment, however, we would like to see it deferred until such thorough consultation can be conducted in the fishing areas where everybody would have an opportunity of hearing what certification the department has in mind.

Senator KINLEY: I think I would like to move that the clause be struck out. Senator SMITH: I second the motion.

Senator ROEBUCK: So long as it is not understood by the industry that this is a final action, I would vote for it. Let them go out and do the ground work they require and then come back to us, not with an order in council but with a bill setting out the provision they want enacted.

Senator John J. CONNOLLY: Before the question is put I wonder if Mr. Baldwin, who has given a statement and who has now heard the representation from the other side, would like to suggest some things that perhaps might be constructive in the event that the clause is stricken out and some further action taken between the department and the industry? We are a semi-judicial body here and I think this departmental official should have that opportunity.

The CHAIRMAN: I was thinking myself of asking Mr. Baldwin if he has any observations to make in the light of the course the discussion has taken this morning. It seems to me it is a matter which really needs further education or negotiation, and perhaps the wisest thing to do would be for the department to get in touch with the industry and try and work out some sort of regulations which the industry might be willing to accept. How do you feel about that, Mr. Baldwin? Perhaps it is a little embarrassing to ask you that question, but the committee members would appreciate anything you could say that would be helpful to them in making a decision in this matter.

Mr. BALDWIN: Mr. O'Brien has made a very generous statement which, taken with my earlier statement, perhaps helps to explain why we find ourselves in this position today. It had been our intention, as I endeavoured to make clear, to hold fully-detailed consultations with the industry. Had we been fully aware that they wished this to take place at an earlier date we certainly would have done our best to conform with that requirement. In the circumstances I think that we should give the assurance that we would like to have further consultations with the industry before making any attempt by way of legislative action, but at this particular stage, if it is not an imposition on the committee, I would like the chance, assuming that probably there will be a meeting at a future date, to discuss this matter with Mr. O'Brien, and perhaps there could be consultation with him as to whether there is any alternative proposal he would like to make. Is that an unreasonable request, sir?

Senator KINLEY: The clause can always be restored.

Senator BRADLEY: This would take a long time. You have a generation of men to get rid of, and the men who succeed them will have to start learning.

TRANSPORT AND COMMUNICATIONS

Senator ROEBUCK: They will have to learn from the book.

The CHAIRMAN: We have the question before us. The only question is whether the mover and seconder wish to proceed now, or defer it.

Senator KINLEY: I would like to get a ruling on the question.

Hon. SENATORS: Question?

The CHAIRMAN: It has been moved by Senator Kinley, and seconded by Senator Smith, that Section 6 be deleted. Is the Committee ready to vote on that question?

The motion carried.

Senator KINLEY: There is just another question I would like to ask Mr. Baldwin about, before he goes on, and that is with regard to section 2, which says:

8. Ships not exceeding fifteen tons register tonnage employed solely in navigation on the lakes, rivers or coasts of Canada and pleasure yachts not exceeding fifteen tons register tonnage wherever employed or operated are exempted from registry under this Act.

Now the register tonnage is ten, is it not?

The CHAIRMAN: Yes.

Senator KINLEY: What is the significance of raising it from ten to fifteen tons?

The CHAIRMAN: Senator Kinley has raised a question about section 2. Does the committee wish to consider section 2 now?

Senator BRADLEY: Perhaps Mr. Baldwin can explain.

The CHAIRMAN: Perhaps we might proceed to consider section 2, and Mr. Baldwin can answer Senator Kinley.

Mr. BALDWIN: The purpose of the amendment, Mr. Chairman, was the simplification and easing of present requirements. Ten to fifteen tons would not cover very large craft.

Senator BRADLEY: Do they not even register the open fishing boat now?

Mr. BALDWIN: That is done voluntarily. I may amplify on that point, Senator Kinley, by explaining that while a ship may be exempt under this amendment, it may still register voluntarily.

Senator KINLEY: That is the point. Section 2 says they are exempt. If they are exempt, they have the privilege to come in. Exempt means that you are out.

Mr. BALDWIN: It is customary to accept voluntary registration.

Senator KINLEY: Is there a law?

Senator BRADLEY: Because they are exempt does not mean they cannot register if they want to. Do those registered vessels carry passengers?

Mr: BALDWIN: Any form of vessel is covered, sir.

Senator BRADLEY: Then that means that a passenger-carrying vessel under fifteen tons need not register, and yet can continue to carry passengers. I am not inclined to agree with that myself.

Senator MCKEEN: There has been no change in the law. It brings in a lot of vessels under the exemption now.

Senator ASELTINE: It is a relieving section.

Senator McKEEN: Yes, it is a relieving section.

Senator BRADLEY: I am not sure that it is wise. I can recall one occasion about four years ago when I was coming out of Looseport I saw one of these boats going in. I would judge her to have been about 12 tons. I cannot say if 74222-2 she had a load at all, but she had at least 20 passengers on deck, and how many were below I do not know. Do you mean to tell me that boat ought not to be registered and that there should not be a record of the equipment aboard? These vessels carry passengers for hire.

The CHAIRMAN: I think an explanation from Mr. Baldwin of the thinking behind the amendment increasing the exemption tonnage would be in point.

Mr. BALDWIN: Quite apart from voluntary registration being admissible, the act of registration relieves them of a legal requirement under the act, and simplifies their position in that regard but does not free them from the safety requirements of the Act.

Senator BRADLEY: Well, that will make a difference.

Senator KINLEY: What I had in mind, Mr. Chairman, was this, that section 316 of the Canada Shipping Act deals with sick mariners and marine hospitals, and it says that the crew of a vessel to be eligible for this service, which is provided for a small sum of money, the vessel must be registered in Canada. I want to make sure that by raising the register tonnage from 10 to 15, the men will share in the sick mariners' fund, which is a very important thing for the fishermen; for instance, I would like to see the lobster fishermen get the benefit of that service. Can any boat be registered?

Mr. BALDWIN: I would say that 40 per cent of the boats are registered voluntarily which are in the exempt class.

Senator KINLEY: With regard to the payment of fishing bounty, when the Americans got certain rights from the Canadian fisheries they paid a certain amount into the Exchequer Court of Canada, and it affected the east coast fishermen, so the Government of that day decided that this money should be paid out to east coast fishermen. I understand that the regulation is that if the boat is registered, from 10 to 80 tons, they get \$1.00 a ton for the vessel; if she is smaller, they get \$1.00 for the boat, and the crew the same, I think. You can see, therefore, that if a boat has to be 15 tons they are going to lose \$14.00 because they only get \$1.00.

Mr. BALDWIN: I would think if they registered voluntarily they would still be eligible, but I couldn't be sure.

Senator KINLEY: If you are going to make the requirement of boats from 15 to 80 tons, the man will lose \$5.00 on his bounty. I think Mr. Baldwin's intention is that he is going to let them run up to 15 tons without a certificate. From there on it is very drastic. For instance, a boat 65 feet long is considered an inshore boat, and she is the only boat that can fish within 11 miles of our shore, in the case of Nova Scotia, except in the case of the Americans, because they have the privilege of coming in and they are outside our jurisdiction, but we do not allow bigger trawlers within the 11 mile limit. I think that is right.

Senator McKEEN: I would like to ask a question in regard to sales tax. Will not this make even ten ton boats liable to sales tax?

Mr. BALDWIN: I think so.

Senator McKEEN: Is not an exempt vessel required to be registered under the Canada Shipping Act?

Mr. BALDWIN: I should explain that our intention was relaxation for the industry in general, in the legal requirement of registry. Any benefits which might accrue to registry would still be available to them, because they could still register voluntarily.

Senator McKEEN: I understood that these vessels require to be registered under the Shipping Act, but if they were not so required, they would have to pay sales tax, a lot more than \$5, because it is on everything they buy,—maintenance and everything else.

TRANSPORT AND COMMUNICATIONS

Senator KINLEY: I wonder how far that sales tax applies.

Mr. BALDWIN: There are special regulations which apply to fishing vessels. Senator McKEEN: This is not only fishing vessels. This is all vessels.

The CHAIRMAN: Could we ask Mr. Baldwin for a memorandum on the significance of section 2 to boats of ten to fifteen tons, and whether it affects the sales tax?

Senator KINLEY: Or whether it affects the bounty?

be

'0-

he

Senator John J. CONNOLLY: Could a memorandum be directed to this purpose—for those of us who do not come from the Maritimes section,—that none of the benefits that are now available to people who operate these boats of ten tons or less are going to be lost as a result of increasing the exemption to fifteen tons, because of the fact that voluntary registration will still be available to them? My understanding of Mr. Baldwin's statement is that if they register voluntarily, they will get all of the benefits they now are entitled to.

The CHAIRMAN: That may be so, except on this question of sales tax.

Senator KINLEY: And the question of bounty.

The CHAIRMAN: I think we had better wait for Mr. Baldwin's memorandum.

Senator ROEBUCK: Just before we leave this section, let me point out, as a result of the discussion, that these ships of a certain tonnage are "exempted from registry under this Act". It is true that the old Act said exactly the same thing, using the same words,—

Senator KINLEY:, Except the tonnage.

Senator ROEBUCK: ... "are exempted from registry under this Act". It is true the department has accepted what they thought was registration, but which I very much doubt was registration. It was simply a list that they had in the department; and I think a court would interpret that to say they are not permitted to register under the Act, they are exempted from it; and we should never pass that and leave that doubt. I suggest we state, "are exempted from the requirement of registration", or we might go further: "and are permitted to register voluntarily".

Senator CONNOLLY: Perhaps the wording might be improved, to the benefit of the department as well as the industry, by saying that they may register.

Senator ROEBUCK: "Are exempted from the requirement of registry and may register voluntarily".

Senator KINLEY: Well, let us get the memo.

The CHAIRMAN: We might add Senator Roebuck's suggestion to those that have been made to Mr. Baldwin, and he can come up with an amendment of this kind to the section after consultation with the legal officers of the department.

Senator ROEBUCK: We are remodelling this Act now, and we should not leave anything indefinite.

Section 2 stands.

On Section 3-Deductions in Special Cases, etc.

Senator KINLEY: With regard to section 3, the provision, I think is a salutary one. It is new, and the purpose is to provide for engine room space allowance, similar to that provided for in the British Merchant Shipping Act. I think it would be advantageous to the cargo carrier. It may not help the big trawler, because she has got too much engine space, but it is helpful to the cargo carrier. I have here a letter from Canadian Vickers, which puts the matter very nicely:

In assessing the net tonnage of the vessel, certain deductions are made from the gross, the largest one being for the propelling power 74222-21 allowance. In both existing Canadian and new British regulations, the - amount of propelling power allowance depends on the ratio of gross tonnage to machinery space tonnage, and where the engine room tonnage exceeds 13% of the gross, the same deduction is applied under both regulations. The difference in allowance occurs when the engine room tonnage is less than 13% of the gross when the Canadian regulations state that the propelling power allowance shall be 1³/₄ times the machinery space tonnage, and the new British regulations state that it shall be 32% of the gross reduced proportionally.

Thus for the vessel under consideration, by the existing Canadian rule the propelling power allowance is $346 \cdot 3 \cdot 5 \times 13 = 605$ tons, and under the new British rule, the allowance is $3070 \times 32 \times 11 \cdot 3$

_____= 856 tons.

100 13

In this way, the Canadian registered vessel is penalized by approximately 250 tons on the net tonnage, upon which is based all towing, harbourage and canal dues.

That is, the more she has taken off for accommodation, the less she pays in dues; and with the new diesel engine she needs less space for engine room. I took this up with the Canadian Shipbuilding and Ship Repairing Association, through Mrs. Lett, the secretary, who is well qualified in these matters. As I say, I am convinced that the provision is salutary, and I guess the department thinks so too, because they have accepted it.

The CHAIRMAN: You approve of the section as it is?

Senator KINLEY: Yes. It does not help the fishing dragger, but that vessel does not pay pilotage dues.

Mr. BALDWIN: It would be a tremendous assistance to the vessels that go through the Panama Canal.

The CHAIRMAN: Does the witness wish an explanation of section 3? It seems rather a technical matter.

Senator KINLEY: Just measure the ship, measure the accommodations, and you have got the formula; apply the formula and the new one gives you a better chance than the old one. That is all there is to it.

The section was approved.

On Section 4, Repeal.

The CHAIRMAN: This is simply to repeal Section 112. Will you explain that, Mr. Baldwin?

Mr. BALDWIN: Yes. Section 109 was added to the Act on a previous occasion, and deals with the matter of licensing regulations for small vessels. That provision was subsequently implemented by the passage of regulations thereunder. Due to this fact, section 112 is no longer necessary. It could, I suppose, have been taken out when section 109 was originally passed, although there may in this case have been an hiatus before the regulations under 109 became effective. It is purely for clarification.

The section was agreed to.

On section 1,-Consular officer.

The CHAIRMAN: We have not dealt with section 1, so we might deal with it now. This is just for clarification?

Mr. BALDWIN: It is a request from the Department of External Affairs to introduce an amendment which will allow individuals acting on behalf of a Canadian consul or carrying out his duties to perform them under the authority of the Canadian Shipping Act, without the necessity of an order in council being passed in each instance. The section was agreed to.

On section 5.—Return of Vessels Licensed.

Senator KINLEY: That is only an internal matter.

Mr. BALDWIN: The previous requirement was the annual filing of a return by every customs officer, which made a heavy peak load of work. The present amendment merely provides that customs officers shall make and forward such returns as the Minister directs of ships licensed by him.

The CHAIRMAN: Shall section 5 carry?

Carried.

The CHAIRMAN: We have dealt with section 6.

Senator KINLEY: Section 6 is deleted.

The CHAIRMAN: Section 7—sufficient engineers for watch periods. What is the significance of what is proposed here, Mr. Baldwin?

Mr. BALDWIN: I wonder, Mr. Chairman, if I might ask Mr. Cumyn the Chairman of the Steamship Inspection Board, who is here, to speak on that.

The CHAIRMAN: By all means.

Mr. ALAN CUMYN, Chief and Chairman of Board of Steamship Inspection: Mr. Chairman, honourable senators. We found that the engineers hired on fishing boats particularly of the smaller types, while being sufficiently competent, have great difficulty in passing the written examinations we set for them. We have had to give them permits in order to more or less satisfy the requirements of the Act and we felt after discussion with industry that it would be better to take this fact into recognition and absolve them from having certificates when dealing with engines under 15 nominal horsepower, which is approximately engines up to 800 or 900 brake horsepower.

Senator KINLEY: 800 or 900 indicated horsepower?

Mr. CUMYN: There is no direct relationship between nominal horsepower and brake horsepower.

The CHAIRMAN: This is a relieving section.

Senator KINLEY: But it is a big engine?

Mr. CUMYN: Yes.

19

The CHAIRMAN: I assume Mr. O'Brien that you approve of this?

Mr. C. G. O'BRIEN: Yes, Mr. Chairman.

Senator SMITH: What type of a fishing vessel would have that large power —a large dragger? One of the old beam trawlers, for example, would have power like that?

Mr. CUMYN: Yes, Senator Smith. In further consultation with the industry we decided that engineers of fishing vessels having engines over that power should be provided with a special type of certificate the issue of which would involve not a written examination, because we are still having difficulty with fishermen writing written examinations, but which would involve a very thorough oral examination, and we are convinced on the basis of that examination we can satisfy ourselves on the competency of the fisherman.

Senator KINLEY: I think it is much better too.

Senator McKEEN: Is there anything in the act which prevents fishing boats which do not have to have complete certification of engineers competing with other boats who have to comply with the regulations?

Mr. CUMYN: It is not our intention to make any such relaxation for any other type of vessel.

Senator McKEEN: This bill says, "principally employed in fishing".

Mr. CUMYN: Those are for fishing boats which are more than six months of the year employed in fishing.

Senator McKEEN: But if during the other six months they want to go into the towing business can they do it under the same requirements?

Mr. CUMYN: No. If they are employed in the fishing industry for more than six months in the year they may engage in an occasional trip of cargo carrying provided they are not competing against cargoe vessels on regular routes.

Senator McKEEN: And if they do want to do this then they have to get regularly qualified engineers?

Mr. CUMYN: Yes.

Senator McKEEN: That is fair enough as long as that is it.

Senator CONNOLLY: As a matter of interest, suppose that they do carry cargo in excess or in violation of the regulations, how would you police it?

Mr. CUMYN: They would then be operating without a proper certificate of inspection; they would be operating on a certificate of inspection issued to a fishing vessel and they could not then be cleared by the customs.

Senator CONNOLLY: That is the sanction, is it?

Mr. CUMYN: Yes.

Senator CONNOLLY: And it is effective I take it?

Mr. CUMYN: It is fairly effective.

Senator ISNOR: Did this originate in the department?

Mr. CUMYN: This originated as a result of discussions we had with the fishing industry.

Senator KINLEY: I might say the diesel engine is a new thing in the fishing industry, and the proper care of it is very important. The job of skipper has been going on a long time, but the engineer is a new chap—he is a Johnny-come-lately, as they call him. The facilities for teaching diesel operating are very short just yet. I know we in our plant ran a school for General Motors last year because they were concerned with people destroying their engines after they were installed. They give a guarantee for a year and when there is a breakdown it is rather expensive for them. The Government of Nova Scotia is now considering a travelling caravan for the purpose of teaching diesel operation, and this may relieve the situation. I may say that there is a concession here to the fishing industry in that the second engineer—that is to say you have one who knows the job and the other one who watches need not be a certificated man. That is a concession to the fishing industry. I think it is important and I think it is good.

The CHAIRMAN: Shall section 7 carry?

Carried.

The CHAIRMAN: Let us go now to Section 8. Would you explain the purport of that section, Mr. Baldwin?

Mr. BALDWIN: There is a substantial difference between the technical requirements that a master must have up to the 150-ton level, and at levels above that figure. We have reached the conclusion that it would be desirable to increase the dividing line from 150 tons to 350 tons, so that a larger number of masters would be able to proceed with their jobs on a somewhat lower master's certificate.

Senator KINLEY: That is a home-trade certificate.

Mr. BALDWIN: Yes, a home-trade certificate.

Senator KINLEY: And of course it would cover inland and minor waters too?

Mr. BALDWIN: Yes.

Senator KINLEY: On anything below that figure.

Mr. BALDWIN: Yes.

Senator KINLEY: That would cover, for instance, a beam trawler. Mr. BALDWIN: I would think so.

Senator KINLEY: They are not that large, are they Senator Smith?

Senator SMITH: The biggest one I have any note of is 135 tons net.

Mr. BALDWIN: This would not apply to a beam trawler, which is a fishing vessel.

Senator KINLEY: My impression is you will only give a home-trade certificate to fishing skippers. You have done it before. I recall one time that a group of men were brought before the examiner at Lunenburg, and it was decided that they were eminently qualified, and they were given their tickets. I know that was done during the time I was in the House of Commons, and we had quite an argument about it.

Mr. BALDWIN: We have been considering them as fully exempt.

Senator KINLEY: As I say, my impression is that the ticket you will give is a home-trade ticket, which will carry them to Iceland and to the West Indies.

Mr. BALDWIN: We have not been giving any to the fishing industry.

Senator KINLEY: Fishermen with less than 150 tons have been given home-trade certificates, perhaps twelve years ago, to cover certain situations.

Mr. BALDWIN: I am informed we have not been doing that recently.

Senator KINLEY: I suggest you check your records.

Senator McKEEN: This does not directly affect fishing vessels.

Senator KINLEY: It is pretty liberal; I don't know what the master mariners will say about it.

The CHAIRMAN: Shall subsection 1 of section 8 carry?

Some SENATORS: Carried.

a

The CHAIRMAN: Subsection 2: This is a new subsection to section 116.

Mr. BALDWIN: This is merely consequential. It provides that present holders will—

Senator KINLEY: Yes, the men about which I spoke will be passed for 350 tons certificate instead of 150 tons for steamship, not passenger ship.

The CHAIRMAN: Shall subsection 2 carry?

Some SENATORS: Carried.

The CHAIRMAN: Section 9.

Mr. BALDWIN: This is purely consequential upon the passage of section 7, which has already been dealt with.

Some SENATORS: Carried.

The CHAIRMAN: Section 10. Is there any conflict as to this section? Senator KINLEY: That covers the 350 tons, and is consequential on the passage of the previous section.

Mr. BALDWIN: It is similar to it but not directly consequential. This is designed to take care of a time limit which previously existed but which runs out in 1958. We are now extending the time indefinitely, and at the same time we are introducing the 350 ton limit into the category of certificates which can be granted to certain mariners who have not passed examinations but have been granted certificates on the basis of their experience. Senator KINLEY: The strange part about this is that we talk of the experience of these men consisting of a full period of twelve months within ten years preceding the date of his application for a certificate of service. I cannot conceive of a skipper having less than ten years service. However, it is only a jump across from the old to the new.

Mr. BALDWIN: The purpose of this is particularly to deal with quite a number of cases in the province of Newfoundland.

Some SENATORS: Carried.

The CHAIRMAN: Section 11. Is that merely consequential?

Mr. BALDWIN: It is to correct a typographical error that occurred in a previous printing of the bill.

Some SENATORS: Carried.

The CHAIRMAN: Section 12. This would repeal section 128 and substitute a new section. What is the significance of it?

Mr. BALDWIN: This is largely to make a change as a result of technical changes from steam engines to internal combustion engines.

Senator KINLEY: You say in the explanatory note that four nominal horsepower is too low in the case of home-trade voyages, and that they might have a bigger engine.

Mr. BALDWIN: Yes.

The CHAIRMAN: This is simply an amendment to bring the matter up to date.

Mr. BALDWIN: That is correct, sir.

The CHAIRMAN: Section 12?

Some SENATORS: Carried.

The CHAIRMAN: Section 13. The purpose of the amendment is to delete the limitation of two years. What is limited to two years?

Mr. BALDWIN: As the statute reads now a pilot's licence must have a validity period of two years. In practice it has not proven possible or desirable to hold it to that limit; in fact the pilots themselves wish a shorter period, particularly as to apprentice pilots.

Some SENATORS: Carried.

The CHAIRMAN: Section 14 deals with a change of phraseology in the heading.

Mr. BALDWIN: Yes. It is really part of Sections 15 and 16 which as a whole readjusts the sections as to rights and liabilities of pilots.

Senator KINLEY: What rights are established or taken away?

The CHAIRMAN: Section 14 does not do anything except simply change the top heading.

Senator KINLEY: It puts in "rights and liabilities of pilots". What does it replace?

The CHAIRMAN: What is the present heading?

Mr. BALDWIN: It now reads: Rights of Pilots in Pilotage Districts in which the payment of Pilotage Dues is Compulsory.

Some SENATORS: Carried.

The CHAIRMAN: What is the change in section 15?

Mr. BALDWIN: In the first instance this is a technical change to take into account current practices. The communication is now given by radio telephone.

The CHAIRMAN: There is no basic change.

TRANSPORT AND COMMUNICATIONS

Mr. BALDWIN: Paragraph 2 of section 15 is new and provides a penalty for employing an unlicensed pilot in certain circumstances.

Senator KINLEY: If a licensed pilot is available he shall be used? Mr. BALDWIN: Yes.

Senator KINLEY: In a port like Lunenburg we can use an unlicensed pilot because we have no licensed pilots in that port.

Mr. BALDWIN: That's right; you do not have to employ one at all.

Senator KINLEY: Well, the Navy demands it.

The CHAIRMAN: Shall section 15(1) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 15 (2) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 16 deals with the penalty.

Mr. BALDWIN: Section 16 is consequential upon section 15.

Senator KINLEY: Has the penalty been raised?

The CHAIRMAN: No.

Senator KINLEY: There was a penalty before?

Mr. BALDWIN: Yes but it applied only in the compulsory dues district. The penalty now is related to the previous clause.

Senator KINLEY: Is it the same penalty?

Mr. BALDWIN: I believe so, yes.

The CHAIRMAN: Shall section 16 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 17 deals with the payment of dues for a ship moved without a pilot.

Mr. BALDWIN: I understand this is a technical amendment relating to the movement of ships in a district.

The CHAIRMAN: It is non-contentious, in any event.

Mr. BALDWIN: That is right.

Senator KINLEY: You can move from place to place in a harbour without a pilot?

Mr. BALDWIN: That is right.

The CHAIRMAN: Shall section 17 (1) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 17 (2) carry?

Hon SENATORS: Carried.

into one. The CHAIRMAN: Section 18 reads: "The heading immediately preceding section 358 of the said Act is repealed." What is the present heading?

Mr. HOPKINS: "General rights of pilots".

The CHAIRMAN: I think we can pass section 18. Does section 18 carry?

The CHAIRMAN: We come now to new sections dealing with safety regulations, and so on. I think this would be an appropriate time to break off.

-The committee adjourned until Wednesday, May 9, at 11:00 a.m.

THE SENATE

STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

OTTAWA, Wednesday, May 9, 1956.

The Standing Committee on Transport and Communications, to whom was referred Bill H-7, an Act to amend the Canada Shipping Act, met this day at 11 a.m.

Senator HUGGESSEN in the Chair.

The CHAIRMAN: Honourable senators, we have a quorum. The commiteee will recall that our understanding was that this morning we should start with the consideration of this bill, an Act to amend the Canada Shipping Act, which deals with the subject of oil pollution and which is found in Section 495A of the bill, on page 9, and in the fourteenth schedule starting at the bottom of page 9, which is the International Convention for the Prevention of Pollution of the Sea by Oil, 1954.

There has been circulated to members of the committee since our last meeting a memorandum prepared by the draftsman of the bill, Mr. Drieger, the Assistant Deputy Minister in the Department of Justice. It is in a form of a letter addressed to our Parliamentary counsel. I would suggest that for order we should perhaps have this letter form part of our record. In fact, I would think perhaps the most logical way of proceeding would be for this letter to be read into the record, and Mr. Driedger being here we could then ask him questions on that letter and proceed from there.

Then if that be so I will read into the record the letter sent by Mr. Driedger sent to our Parliamentary counsel.

Hon. Mr. ROEBUCK: Now, Mr. Chairman, before you do that and in order to keep the record understandable let me also state into the record the objections which have already been raised to this section so that the reader will then know what the inquiry is about and why the memorandum.

The CHAIRMAN: If you prefer it that way, senator. I was going to call upon you after the memorandum had been read to state your objections to it, and then the committee would have both sides. It seems to me that would be the logical way to proceed.

Senator ROEBUCK: I thought the other way was the logical way, that is why I suggested making the statement now, but I do not care. Go ahead, please.

The CHAIRMAN: Well I am in the hands of the committee.

Senator ROEBUCK: No, I am satisfied to follow the chairman's suggestion.

The CHAIRMAN: This is the letter sent by Mr. Driedger to Mr. Hopkins and is dated May 1st, 1956.

DEPARTMENT OF JUSTICE CANADA

OTTAWA 4, May 1, 1956.

Re: Bill to amend the Canada Shipping Act.

Dear Mr. Hopkins:

I understand that a number of questions have arisen in the Senate with respect to this bill. I should be glad to appear before the Senate Committee and give whatever assistance I can. In the meantime, the following observations might be helpful.

I agree that conventions or treaties that require to be implemented by a change in the law should be approved by Parliament. This approval can be given either by a resolution or by statute. It is not usual to approve of the convention in the statute itself. Accordingly, when we draft a bill to implement a convention we do not provide for approval unless we are expressly instructed to do so. The bill is usually drafted before the session commences and some time during the session it is customary to bring down a resolution. In the present case, however, the Bill has been introduced and there has been no resolution, and I should think it would be appropriate to include in the bill an express approval of the convention.

If I may break off here for a moment: honourable senators who listened to the debate on second reading will recall that this was a suggestion made by Senator Farris at that time.

The letter continues:

Accordingly, I would suggest that the first five lines on page 9 of the bill be revised to read as follows:

495A. The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, set out in the fourteenth schedule, is approved, and the Governor in Council may make regulations

(a) to carry out and give effect to provisions of the convention while in force in respect of Canada;

With regard to implementation, there are various ways in which legal effect can be given to the Convention. The different forms might be:

- (1) To state that the convention has the force of law.
- (2) To write the provisions of the law into the statute.
- (3) To authorize the Governor in Councli to make regulations to implement the Convention.
- (4) A combination of two or more of the foregoing.

The particular method to be adopted is, of course, a matter of Government policy and is determined largely by the nature and subject-matter of the particular convention under consideration.

In the present case, the first method above would not be feasible, because the conventilon is not complete; it would be necessary, in any event, to make provision for penalties and punishments to give effect thereto, particularly Articles III and IX.

It is not usual to write the text of the law into the statute. For example, twenty conventions were implemented during the past ten years and in eighteen of these cases the Governor in Council was authorized to make regulations to carry the convention into effect. I am appending a table showing the various conventions that were ratified during the past ten years and how they were implemented.

If there is any further information I can give to assist the Senate or the Senate Committee in their deliberations, I should be glad to do so.

Yours truly,

E. A. DRIEDGER (signed) Asst. Deputy Minister.

Appended is a list of these various conventions that have been passed during the last ten years. Should I read these to the committee, or shall I take them as read?

Some Hon. SENATORS: Take them as read.

(The Appendix is as follows:)

TABLE

Conventions and Treaties ratified and Implemented during the years 1946-1956.

1. Tax Conventions declared to have the force of law and the Governor in Council authorized to make regulations to carry out the Conventions.

Canada-Ireland Agreements, 1955 cc. 10 and 11.

Canada-France Agreements, 1952 c. 18; 1951 cc. 40, 41. Canada-U.S.A. Agreements, 1951 (Second Session) c. 5. Canada-Sweden Agreement, 1951 c. 42. Canada-New Zealand Agreement, 1948 c. 34. Canada-United Kingdom Agreements, 1946 cc. 38, 39.

2. Conventions approved by statute and the Governor in Council authorized to make implementing regulations.

> Northwest Atlantic Fisheries Convention, 1953-54, c. 18. Northern Pacific Halibut Convention, 1952-53, c. 43. North Pacific Fisheries Convention, 1952-53 c. 44.

3. Not expressly approved by statute and Governor in Council authorized to make implementing regulations.

Great Lakes Fisheries Convention, 1955, c. 34.

Treaty of Peace (Japan), 1952, c. 50.

Privileges and Immunities (NATO) 1951 (Second Session), c. 32.

International Safety Convention, 1950, c. 26, s. 25

International Loan Line Convention

Four International Labour Conventions, 1948, c. 35, s. 21

Treaties of Peace (Italy, Roumania, Hungary and Finland) Act, 1948, 1948, c. 71.

Whaling Convention, 1951 (Second Session) c. 29.

4. Other conventions or treaties.

A. Visiting Forces (NATO) Act, 1951 (Second Session) c. 28. The law necessary to carry out this treaty was written into the statute. This was necessary because the treaty was in amendment of existing law, and related to such important matters as criminal law, the jurisdiction of foreign courts in Canada, liability of the Crown for damages, exemption from taxation, etc. B. Pelagic Sealing Act, 1948, c. 21.

Most of the implementing provisions were written into the statute; they dealt with the seizure and forfeiture of vessels and the exercise of jurisdiction with respect to foreign vessels.

That is Mr. Dridger's letter. Would the committee like to ask Mr. Dridger any questions on that letter now or would Senator Roebuck like to make his statement now?

Senator ROEBUCK: I have not come with any prepared statement or anything of that kind, and I have been away and engaged in other difficult matters. I think, however, I can state in a very few words what my objections at the present moment are on this particular statute. I would ask honourable senators to remember that we have had two of a somewhat similar nature before us in the Senate, but they are really very different. One declares a treaty to be law and it is restrictive and provides penalties. I objected to that very strongly. I am inclined to think that some of my colleagues went with me pretty strongly on the matter too. This, however, does not do that. This gives the Governor in Council power to make regulations which have the force of law and which in effect is criminal law.

My objection can be shortly put. I think when the executive undertakes to enter into an agreement of this kind, an international agreement, which is binding to the extent that the executive can make it binding, and is in the traditional way of making treaties, that it has gone far enough. When they agree to change the law of the land they should leave that change to Parliament and not assume to both enter into the agreement and also to change the law. That is going back to the time before we had constitutional government. I know we have met it in this bill as well that departments always like to gather into their own hands just as much power as possible. Of course, they will give you a good job too. If it went on at an accelerated rate from what we have had in the past, it would not be very long before we could get along nicely without Parliament at all. Just give the executive the power to do it and they will give you a good job, much better than we amateurs in Parliament can give. While I say that ironically, they do give a good job but they cannot in the nature of things bring to the legislative task the wisdom and the discussion given in these legislative assemblies of ours. We have proved over hundreds of years that there is a virtue in the enactment of law publicly in a legislative assembly where the clash of minds, where the bringing of thought into words and the answer of one to another is so fully important.

Now, here you have the Governor General entering into an agreement and then coming back and telling us so-asking us for our approval. I have no objection at all to approving a treaty either by resolution or by Act of Parliament, because in law the approval of a treaty is quite different from an enacting it as a law of the land. It has not got that effect. In the treaty to which I spoke after this one it was declared in the law that the treaty was the law. So just to approve does not make it law. And if we adopt this amendment expressing in this Act approval of the Convention it does not make the Convention law by so doing. I do not think it is good practice to enact in an Act of Parliament approval of a treaty. It has not anything to do with what we are doing. The Act is for the regulation of the dumping of oil, and the people who dump oil have no interest whatever in treaties. It only complicates the picture to say that we approve the treaty in the Act by which we prohibit the dumping of oil. The treaty is our motive, maybe, for proceeding. It is not our procedure, and it should not be our procedure. I do not see any reason at all for approving this treaty in the Act. If the Government desires a concurrence by Parliament let them bring in a resolution, and I am quite sure I would be ready to vote for it approving this treaty, but I am not prepared to mix up these two things, the approval of the treaty and the Act of Parliament providing for the restrictions that have been agreed to in the treaty.

Now, I see in the resolution that quite a large number of treaties have been dealt with in this way of handing to the executive the power to make the regulations. Well, I know we have done a good deal by order in council, and that procedure seems to be growing, but whether it is wise or not is another matter, and it may be that because we have done it in the past we have done it too often, and it may be a good argument why it should not be done in the future. It has got to be a habit of these departments to come on us in this way.

Senator McLEAN: Hear, hear.

Senator ROEBUCK: I notice the Assistant Deputy Minister in his letter says that "twenty Conventions were implemented during the past ten years and in eighteen of these cases the Governor in Council was authorized to make regulations to carry the Convention into effect." It may be eighteen too many, I do not know. There may be some special circumstances that would justify our leaving it to the Council to make the regulations, but I see none of them in this instance. There are a number of cases, too, according to this memorandum, where we declared the Convention to have the force of law. Well, that does not convince me that it is right, either. I am quite satisfied that that is a positively objectionable method of procedure.

Now, what is it we propose to do? I think it is a statute in the nature of criminal law that says that ships in certain areas shall not dump oil into the sea. And then glancing at the Convention it seems that there are different types of oil or material which it is proposed to restrict, that is to say, we must define oil, or otherwise, that is dumped into the sea. That is not a particularly complicated matter. There may be such things as reports on dumping of oil that could be covered by orders in council but I do not see the reason for it. Certainly, the enactment that it is an offence against the law of the land to dump oil into the sea is a mere matter of criminal law, such as we find in section after section of the Criminal Code: I submit to my fellow members that that is the way we should proceed in this instance.

Senator REID: Mr. Chairman, may I ask a question? The provisions under Part VIIA of the bill covering oil pollution gives the Governor in Council certain rights respecting inland waters under the three-mile limit, but not outside that area, even though we are carrying out the provisions of a treaty entered into by other countries. May I ask if we are to carry out provisions beyond the scope of the treaty?

Mr. DRIEDGER: Of course, sir, the Parliament of Canada would have jurisdiction over Canadian ships, whether they were within Canadian territorial waters or outside.

Senator REID: And it would have jurisdiction over all other ships within the three-mile limit.

Mr. DRIEDGER: Yes. Of course Canadian ships outside the territorial waters would have to comply with Canadian maritime law.

Senator REID: That is outside the three-mile limit?

Mr. DRIEDGER: Yes.

Senator REID: It does not say so in paragraph (b), which reads:

"for regulating and preventing the pollution by oil from ships of any inland, minor or other waters of Canada."

It says nothing about giving the Governor in Council the right to take care of ships outside the three-mile limit.

Mr. DRIEDGER: I might point out that it is paragraph (a) that deals with the convention; paragraph (b) is a separate matter, dealing with inland shipping.

Senator REID: But where is the power in the convention that would grant the government the right to go outside the three-mile limit?

Senator JOHN J. CONNOLLY: Article III.

Senator REID: Are we for the first time taking on to ourselves the right to control ships outside the three-mile limit? We have always had the right over ships within the three-mile limit, but once they leave that area they are in the open.

Senator BRADLEY: But they are still Canadian ships.

Senator JOHN J. CONNOLLY: May I put it this way, and perhaps Mr. Driedger can clarify the matter further. Canada has jurisdiction to deal with her own ships wherever they may be, and she is empowered to deal with any ships within Canadian territorial waters.

Senator REID: Then may I ask this further question? The provisions with respect to pollution under the treaty mention certain areas but exclude the Pacific Coast or the Atlantic Coast. If we are taking power to control ships with respect to oil pollution, why would we not mention the Atlantic Coast and Pacific Coast?

Mr. DRIEDGER: I am sorry, but that would be a question of policy which should be directed to the officials of the Department of Transport rather than to me.

Senator John T. CONNOLLY: Mr. Chairman, may I ask Senator Roebuck a question, because I am rather confused on one point he made? I should like to say something later to supplement some of the things he said, but first I should like to get one point clear. Senator Roebuck said that he preferred to see a treaty approved by resolution of the Houses of Parliament, and not by statute. Then later he related that to the matter of carrying out by regulation the penalty section provided in the treaty. And now I would like to leave the second point to be dealt with separately because I think that is something we should go into, but I wonder if Senator Roebuck might not agree that whether a treaty is approved by a statute along the lines of the proposed amendments suggested in Section 495A by Mr. Driedger or by a separate resolution apart from this legislation, in his opinion would there be any different effect produced?

Senator ROEBUCK: I do not think the difference would be great, but when we are talking about procedure I would like to see us do it as properly and wisely as possible, and so my reason for saying that I do not like to see the approval of the treaty in the bill to implement the treaty is that it has no business to be there. The person to whom the Act is directed is not interested in the treaty. He is being told what he has got to do or must not do, and the penalties for disobeying. That is all he is interested in.

Senator John J. CONNOLLY: Could we deal with it apart from penalties because I think what Senator Roebuck says about the penalty matter is something we should investigate, and I think the Senate is the ideal place to do it, but it may be more convenient in a case like this in amending the Canada Shipping Act to do it in one act of Parliament rather than have a bill making the amendments to the Act and then have a separate resolution approving the treaty.

Senator ROEBUCK: There is no need of having a resolution approving the treaty, there is no reason why we should do that. We can do so if we want to but there is no obligation. It does not mean anything in law to approve the treaty, and why should we put the burden on the person to whom the restriction is directed to read the treaty to see whether that modifies what we have said.

e of

Senator JOHN J. CONNOLLY: Perhaps if I said it this way: I think Senator Roebuck's main objection to the procedure adopted here lies in the fact that the penalty provisions which are contained in the treaty are actually going to be spelled out by regulation.

Senator ROEBUCK: Yes, and not only the treaty but the prohibitions, both of them, that are directed towards the individual.

Senator John J. CONNOLLY: All right. Assuming that the committee and the officials of the departments would agree to that, that instead of doing that by regulation those penalties should be prescribed by statute, whether it is in this statute or whether it is the Criminal Code or some other statute at the moment I do not care, assuming that that change and procedure is to be made as a result of this discussion still I am wondering whether the proposed amendment to Section 495A would be sufficient to carry away the objections that Senator Roebuck might have to so amending Section 495A.

Senator ROEBUCK: Where is that. Is that in the letter?

Senator John J. CONNOLLY: It is in the memorandum. It is the amendment suggested under Section 495A.

Senator ROEBUCK: This is the paragraph:

Accordingly, I would suggest that the first five lines on page 9 of the bill be revised to read as follows:

495A. The International Prevention of Pollution of the Sea by Oil, 1954, set out in the Fourteenth Schedule, is approved, and the Governor in Council may make regulations—

Well, my point is that there is no need to use those words at all. If we are going to give the Government power to make regulations all right, but I do not think we ought to.

Senator John J. CONNOLLY: If instead of providing the penalties by regulation if we were to provide them by statute then would Senator Roebuck's suggestion of approving the convention by statute disappear?

Senator ROEBUCK: Not quite.

The CHAIRMAN: I think his objection would then be that it should form no part of the Act but there should simply have a clause approving the convention and nothing more.

Senator ROEBUCK: That is my point, and not force a person to whom it is directed to read that convention to find out if the terms of the convention modify our legislation and the penalties attached.

Senator KINLEY: Mr. Chairman, this bill of course deals with oil pollution, and there are two parts: One is Part A which deals with control within our own territorial waters and the other part which deals with the convention, which would mean international control of this matter.

The CHAIRMAN: They are joined together in Part VIIA, Senator Kinley.

Senator KINLEY: No. Part VIIA is not a part of the convention.

The CHAIRMAN: Part VIIA, section 495A does both things. It first of all approves, as we propose to amend it, the convention, and authorizes the Governor in Council to make regulations to carry the convention into effect, and in part "B" it authorizes the Governor in Council to make regulations with regard to internal waters, so the two are joined together in 495A.

Senator KINLEY: I wanted to say, not so much from a legal point of view but from a practical standpoint, in the territorial waters of Canada the control of oil pollution might be a local matter, what might be good in one port might not be of any use in another, so I do not see how it would be possible to put the penalties in a statute. If the penalties are in the statute all right, but as far as a lake port and a sea port and other ports are concerned, all may be required to operate under different regulations and it seem to me that the only way that it can be done is to make regulations by Order in Council which is provided for here.

The CHAIRMAN: I was going to suggest to the committee that we might ask Mr. Driedger to expand the letter which he wrote to us, not by way of reply to Senator Roebuck in any way, but simply to tell us what was in the mind of the department in suggesting that the legislation go through in this form rather than in any other form. That is the basic point that is under discussion here is it not?

Senator ROEBUCK: No question about that.

The CHAIRMAN: Would the committee like to hear from Mr. Driedger now? You know the general situation Mr. Driedger, and the points raised in connection with it.

Mr. E. A. Driedger, Q.C., Assistant Deputy Minister of the Department of Justice, was called.

Mr. DRIEDGER: Mr. Chairman and honourable senators: I should like to preface my remarks by saying that I am not here to tell you that the law must be the way it is in the bill and that it must not be in any other way, nor am I here to say that the convention must be ratified and that these laws must be made. That is not my function.

As to the convention itself, that is a matter for the Department of Transport and so far as the form of the ratification and implementation is concerned I fully appreciate the arguments that have been made, the objections that have been advanced. I do not want to answer them or reply to them but I do want to place before the committee some additional considerations that I think might help in deciding the form of the implementing legislation.

I have, before coming here, examined the conventions and treaties that have received Parliamentary sanction over the past 30 years. I have not looked at them all in detail, but I have looked at them and I found that they fall into four categories, which in turn may be divided into two different groups. We have conventions or treaties dealing with taxation,-the avoidance of double taxation, we have conventions dealing with trade-they are not so frequent now as they were a decade or two ago, but we did have many trade conven-We have conventions relating to shipping and conventions relating to tions. fishing. There are a few additional ones, but those account for most of the conventions that have been acted upon by Parliament during the past 20 or 30 years. Prior to that time, there were not many treaties or conventions that were entered into by Canada alone. I think that all of these conventions can be divided into two groups. There are those that are in amendment or in modification of the existing law; and there are those that are in new fields of law. The two that I first mentioned, namely, the tax conventions and the trade conventions, are always in amendment of existing law. They make some exceptions to trade laws, and particularly to taxation laws, and the purpose of those conventions is really to amend existing law.

Senator CONNOLLY: Existing Canadian law.

Mr. DRIEDGER: Existing Canadian law—the Income Tax Act, the Customs Tariff and the Excise Act, statutes of that kind. I think you will find, on examining the statutes ratifying and implementing those conventions, that without exception they give to those conventions the force of law; they give to the Governor in Council authority to make regulations to carry them out;

74222-3

and they go one step further; they say that, to the extent the existing law is inconsistent with the convention, the convention is to prevail. That is about as wide and sweeping a provision as you can have.

Senator ROEBUCK: And it is about as objectionable.

Mr. DRIEDGER: They have been doing that for about 20 or 30 years. I cannot tell you why it was done originally, because I was not here, but I think I can guess at some of the reasons why that form was chosen.

These conventions, particularly those that are in amendment of existing law, actually override provisions of a statute; and if you went to the statute itself and wanted to amend every section that was affected, and amend it so that it would correspond to the convention, you might find that when you came to ratify a tax convention with Denmark, let us say, you would have to amend many, many complicated sections of the Income Tax Act; and when you had a convention with United States, you would have to do it again. If you had one with Great Britain you would have to do it once more.

The CHAIRMAN: In other words, every time we made a convention with respect to income tax, we would have to lengthen our Income Tax Act?

Mr. DRIEDGER: You would need to have very involved and complicated amendments to the Income Tax Act. Perhaps that should be done. But it does raise some difficulties. In the first place, the ordinary Canadian taxpayer has enough difficulty finding his way through the Income Tax Act; but if you now put in provisions that do not concern him, provisions respecting conventions, he is going to find it even more difficult. Similarly the person who is interested in one convention, having income from two different sources, is not interested in conventions with all other countries. That is why, I suspect, this device was chosen; because it was the easiest and the best way of giving effect to a convention without making the law even more complicated than it was.

Those are just my suggestions as to why that method has been chosen; and I think you will find that, without exception, on conventions that modify or change existing law, that is the method which is chosen.

Now we come to a different kind of convention, one that is in a new field of law; that is true of this convention here dealing with oil pollution, as well as others that have been ratified in the past. I know that on the one hand people—and particularly departments, if I may say so—would like to see these implemented by regulations, because that is the easiest way; and I can understand that there might be very strong objection to that. There could be differences of opinion as to how it should be implemented. But so far as regulations generally are concerned, that is something, I am afraid, we will have to live with. We have regulations and we have had them for many, many years. They have them in every English-speaking country, and I suppose we shall always have them. But probably there will always be disputes as to whether a particular law should be in the regulations or should be in the statute. There can be differences of opinion about that.

Senator CAMPBELL: Do regulations enacted in a treaty approved by resolution have the same force and effect as those approved by statute?

Mr. DRIEDGER: Not unless parliament has given the executive authority to make those regulations.

Senator CAMPBELL: Yes, but if it has the authority to make those regulations?

Mr. DRIEDGER: Authority must be conferred by act of parliament, not by resolution.

Senator CAMPBELL: Then they have the same force?

Mr. DRIEDGER: Yes.

Senator CAMPBELL: In other words, the convention itself would not necessarily have to be approved by statute?

Mr. DRIEDGER: So long as parliament authorises the executive to make the regulations.

Senator John J. CONNOLLY: Just follow that point up, because Senator Roebuck spoke the other day on the tax convention between Canada and Denmark. That convention was approved; it is proposed by resolution, as I understand it. There was no suggestion of empowering any department to make regulations pursuant to any provision of that treaty. Therefore, I take it, the section of the resolution which says that the treaty has the force of law does all that is necessary in that respect?

Mr. DRIEDGER: No sir. That will be followed by a bill.

Senator John J. CONNOLLY: By a bill?

Mr. DRIEDGER: Yes.

50

me

.OW

ted

see

be

: 25

pose

ty to

hose

Senator John J. CONNOLLY: An amendment to the Income Tax Act?

Mr. DRIEDGER: By a statute in the same form as those that have been passed previously: an act respecting that convention.

The CHAIRMAN: That is the bill which is now before us.

Mr. DRIEDGER: It may have been preceded—I have not watched the proceedings—by resolution.

Mr. Russell HOPKINS: I believe the approval is right in the bill.

Senator John J. CONNOLLY: So that bill is going to approve a convention by statute?

Mr. DRIEDGER: Yes.

Senator John J. CONNOLLY: Will it empower the Governor in Council to make regulations?

Mr. DRIEDGER: Yes. It must be there.

Senator ROEBUCK: Not by giving it approval?

Mr. DRIEDGER: No.

Senator ROEBUCK: But by express enactment?

Mr. DRIEDGER: Yes. I will come back to that a little later, if I may. I would like to just finish my remarks on these conventions.

I want to bring to the attention of the committee some of the considerations that might influence a decision as to the form that an implementation should take. I am not advocating one or the other, but I do want to place before the committee some of the considerations.

First of all, these conventions are in a new field. I do not know whether the Department of Transport at this stage is ready, but very often the departments are not ready to have the regulations made, because they do not know what kind of a law they want.

Senator ROEBUCK: Then they could wait, I suppose?

Mr. DRIEDGER: True. Nevertheless, for political reasons, the Government might consider it advisable to have parliament take action now, so that when the time comes the convention can be implemented.

I am not suggesting that is the case here. I am suggesting that this is one reason why, in some cases, authority is given to make regulations.

Another type of case, which is rather similar, is where Parliament confers the authority, but it is a sort of blanket authority or rather a residual authority. It is not intended now to make the regulations because they are not needed, but they might be needed at some later time.

Another reason is what I might call sheer bulk. If you took all the regulations that have been made under the Canada Shipping Act and added $74222-3\frac{1}{2}$

them to the Canada Shipping Act, you would have a statute of possibly twelve to fifteen hundred pages. It may be questionable whether it is easier for the public and for those persons concerned to find their way through that than it is to find their way through the present act along with the particular regulations in which they happen to be interested. That is a matter of judgment.

I would just like to mention one or two other sections of the Canada Shipping Act. I do not know whether this covers them all, but section 235 authorizes the Governor in Council to make regulations carrying out four international labour conventions. You also have in section 430 authority in the Governor in Council to make regulations carrying out the Load Line Convention.

The CHAIRMAN: Are those conventions appended as schedules?

Mr. DRIEDGER: Yes.

The CHAIRMAN: Just as this bill proposes to do?

Mr. DRIEDGER: Precisely. It authorizes the same course. One might argue, and I am not arguing against it, that that should all be in the statute, but you would increase the bulk enormously. Whether any advantage is to be gained from that is questionable.

Senator CAMPBELL: A different procedure is followed in the Load Line Act.

Mr. DRIEDGER: In part. Another question on which I am no judge is the matter of parliamentary time that is involved. That is for the Government. The nature of the regulations is also material. I do not think these regulations differ in substance from many regulations that we now have under, shall we say, the Fisheries Act or many other statutes, where penalties are imposed for a breach of the regulations.

Actually the regulations contemplated here are more or less of a regulatory kind, keeping certain records, making certain reports, and so on. They do not differ very much at all from hundreds of regulations which we now have. Perhaps the rest of them should be in the statutes too. I do not want to express any opinion on that, but I do not think that the character of these regulations differs much from others.

I might mention that in the Department of Justice—and we prepare all government legislation—we do try to convince the departments that matters which really affect civil liberties, if you like, should be put into the statute.

I should like to refer to the NATO Visiting Forces Convention, which I have referred to in the memorandum that I submitted. That involved questions of civil liability, liability of the Crown, exemption from taxation and jurisdiction of courts. That was put into the statute. One of those Fisheries conventions involved the exercise of jurisdiction with respect to foreign vessels, and the seizure and forfeiture of ships and vessels; and another convention involved seal catches, which are very valuable. That was put into the statute.

There are other instances where laws of that kind are put into the statute. In some of these cases where authority is given to implement a convention by regulation some of the provisions, like seizure and forfeiture, are nevertheless put into the statute if it is feasible.

Another consideration is the change of law. For example, I would refer you to the Migratory Birds Convention regulations. There we have an act ratified by Parliament and authority given to the Governor in Council to carry it out, and every year new regulations are made.

Senator ROEBUCK: Only in detail.

Mr. DRIEDGER: True, but the penalties and the prohibitions are set out in the regulations made annually. The same is true of regulations under the Fisheries Act.

Senator ROEBUCK: Dates and so forth can be changed.

Mr. DRIEDGER: Yes. What is contemplated here, I do not know. Perhaps that argument has no bearing on oil pollution regulations, but I mention it as one of the considerations.

The CHAIRMAN: Except this, that the only authority we are proposing to give to the Governor in Council under proposed section 495A is limited to a penalty of a fine not exceeding \$500 or 6 months in prison.

Mr. DRIEDGER: Yes. It has been suggested the penalty should be in the statute. That is very often done. There are many instances and good reasons why that should be done. One difficulty, however, is this and it applies particularly where you are in a new field of law and you do not quite know what you are going to do. If you fix the penalty in the statute, chances are that you will look for the maximum penalty, the penalty that will take care of the severe cases. Thus you have left yourself no leeway and your severe penalty applies to all the minor infractions. That is why in this bill a maximum is fixed, leaving it to the Governor in Council to fix lesser penalties.

Senator JOHN L. CONNOLLY: Is that why you put subsection (c) there?

Mr. DRIEDGER: Yes, that is why that is usually done. In the absence of that, if the Governor in Council has no authority to prescribe penalties, the tendency would be to fix a penalty in the statute of \$500, for that is the penalty for a summary conviction offence under the Criminal Code. But if you leave it to the regulations, then lesser penalties can be provided; so that the purpose here is not to enable the Governor in Council to penalize people for infractions of the regulations but to enable him to prescribe lesser penalties than would apply if the penalties were fixed by the statute. That is the reason that is usually done. I think you will find at least in most modern legislation that if the Governor in Council is given authority to prescribe penalties, there is usually a maximum imposed by the statute.

Senator JOHN J. CONNOLLY: I think that is a good practice, is it not?

Mr. DRIEDGER: I think so, sir, but I think you will find too that in the earlier conventions that was not done. In the last decade or so that has been the usual rule, that limitations are imposed.

I should just like to say one word about the ratification, the approval of the convention itself. To state it shortly, I would agree wholeheartedly with what Senator Roebuck has said here and in the Senate. I might say I have read the Senate Hansard on this. It is not usual to say in a statute itself that it is ratified or confirmed or approved. It is done in certain cases however. For example, it was done in the case of the terms of union with Newfoundland. It is quite understandable why it would be done there. It is also done in the case of a tax convention, the reason probably being that taxation is normally a parliamentary matter. It relates to revenues and if the convention is to be approved or ratified it should be done by Parliament. I suspect that is the reason it is done.

Senator JOHN J. CONNOLLY: Would the same reasoning apply to a penalty if it were a criminal matter involved?

Mr. DRIEDGER: Well, penalties for infractions of rules and regulations are common. You find them in almost every statute. They are not put into the Criminal Code but into the regulations or the particular statute. But I might mention, too, that most of our legislation is prepared before the session. We do not know what the department is going to recommend or what the Government is going to do, and so do not provide for ratification in the statute itself. If we are asked to, we do it, and if during the course of debate either in the House of Commons or here such a provision is desired, well, we have no views one way or the other. In writing this letter I was not suggesting that ought to go in, I was merely suggesting that if it did go in it might go in in that way, because that is the way we would have done it in the first instance, perhaps. But normally the statutes do not provide for ratification.

I have spoken at some length, and if anyone wishes to ask any questions, I will endeavour to answer them.

Senator ROEBUCK: You have spoken very well and very acceptably, and if I might be permitted to say so, without seeming to say too much, I compliment you on your statement. But now may I ask a question or two?

Mr. DRIEDGER: Yes, sir.

Senator ROEBUCK: You say that legislation affecting the liberty of the subject should be in the statutes. I think we are all agreed with that. But does not this affect the rights and liberties of the subject, to dump oil in the sea? Where do you draw your line?

Mr. DRIEDGER: I had not intended to make such a broad statement, and perhaps I used unfortunate language. I was only saying what my own views were, having in mind any influence I might have in discussing legislation or regulations in their earlier stages. The sort of regulation I had in mind was seizure and forfeiture—those laws that empower officials to take people's property or to arrest them, and so on, beyond the ordinary criminal process. Seizure and forfeiture are two illustrations I had in mind. Confiscation of property would be another. That is the sort of thing I had in mind. But so far as penal regulations are concerned, certainly they affect the liberty of the subject. The Convention says that there is to be no pollution, dumping of oil, and so on. The penalty is in the statute, and the regulation perhaps sets out the instances or gives effect to the Convention, but it would have to be enforced by usual law enforcement agencies.

Senator ROEBUCK: Coming to your suggestion as to lesser penalties prescribed by order in council, that it is usually in the Criminal Code or by statute, is it not the fast that no penalty can be imposed or will be imposed except by fiat of a magistrate?

Mr. DRIEDGER: That is correct, yes, sir.

Senator ROEBUCK: So that he has the discretion to fit the penalty to the crime, whatever it may be, with all the facts before him?

Mr. DRIEDGER: Yes.

Senator ROEBUCK: Both in the one instance and in the other, whether it is in the statute or in the regulations. But would not your argument there about the flexibility of orders in council as compared with enactments of the Parliaments apply to every section of the whole Criminal Code?

Mr. DRIEDGER: What I had in mind, sir, was this, that when it come to making a particular regulation, the regulation might say that every person who violates this section is liable to a penalty of \$10, in which case the magistrate would have no discretion above that. The flexibility lies in establishing a smaller penalty by the regulations.

Senator ROEBUCK: But you can establish the penalty by Act of Parliament just as well as in the regulations. This merely switches the regulations around a little more freely, and keeps the industry on the string all the time, wondering what the law is as compared with the statute.

Mr. DRIEDGER: It could be done, sir, but then all the offences would have to be specified in the statute.

Senator ROEBUCK: Why not?

Mr. DRIEDGER: That would be the only way.

Senator ROEBUCK: You would have to specify them in the regulations.

Mr. DRIEDGER: That is true.

Senator ROEBUCK: Let me ask you one more question. You said that it was easier to do it by order in council rather than by statute. Now, you mean easier for the department?

Mr. DRIEDGER: I do not remember what I did say, but what I meant was that people would think it would be easier for the administrators to do these things by regulation.

Senator ROEBUCK: Yes, but is it easier for the person to whom the restriction is directed? And is it not a fact that you must put the Convention itself as a schedule to the Act, in which case have you not got very much more in the statutes if you put all these Conventions and schedules one after the other, with all their verbiage, than if you put into the statute the clear definite prohibition and the penalty, and let it go at that?

Mr. DRIEDGER: Perhaps I might divert a little there. We have an Act known as the Regulations Act, and that statute requires that all these regulations be published in the *Canada Gazette*.

Senator ROEBUCK: Which nobody reads.

Mr. DRIEDGER: And it provides that there can be no prosecution of any person for an infraction of those regulations unless they have been so published. So that provision has been made for publishing the regulations and for bringing them to the attention of those people who are concerned with them; and I should think that every person affected would be as likely to have the regulations as they would be to have the Shipping Act itself, because both would be obtainable from the department or from other sources.

Senator JOHN CONNOLLY: But they are not subject to parliamentary discussion before their enactment.

Mr. DRIEDGER: That gets us into a larger field. This may be subject to dispute, but I think we have a fairly good system here. The other jurisdictions where they do have parliamentary discussion have a different system with many regulations. Ministers and officials, a wide range of people, are given power to make regulations, whereas here it is almost always the Governor in Council—the Government as a whole must take responsibility. I think that is a difference that is quite important, but that is another field.

The CHAIRMAN: May I raise one question in connection with Senator Roebuck's position? It seems to me that it is going to be rather difficult for anybody to enact as statutes the various penalties which may arise under the Convention for oil pollution, because at the moment none of us knows if and when the Convention will ever come into force. Article XV says:

(1) The present Convention shall come into force twelve months after the date on which not less than ten Governments have become parties to the Convention, including five Governments of countries each with not less than 500,000 gross tons of tanker tonnage.

Now, if we were to attempt to enact by legislation penalties for these things in respect of the Convention which may never come into force, what we would be doing is to enact a lot of legislation which would have to be subject to the Convention coming into force, wouldn't we?

Senator ROEBUCK: Well, we could wait until it did come into force. I think that would be a very good reason for not acting at the moment.

Mr. DRIEDGER: I might add this, sir, that if the form of implementation here were to write into the statute the provisions of the law of pollution, then of course the penalty would have to be settled in the statute and would not be left to the Governor in Council. But if the particular rules of law are to be made by regulations, then it is difficult to have a half dozen or more penalty sections in the act, because we do not know what the regulations are going to be.

Senator ROEBUCK: And we might very well wait until you make up your mind as to those regulations.

Senator KINLEY: We don't know what other countries are going to do with respect to them.

Senator ROEBUCK: What is the hurry?

Senator KINLEY: That is what I say.

Senator JOHN J. CONNOLLY: Article XII of the convention says:

Each Contracting Government shall send to the Bureau and to the appropriate organ of the United Nations:---

(a) the text of laws, decrees, orders and regulations in force in its territories which give effect to the present Convention.

So, it does require the contracting parties to make regulations which will implement the Convention.

Senator ROEBUCK: But it does not say when they shall send them out.

Senator JOHN J. CONNOLLY: It does not prescribe the time.

Senator ROEBUCK: Certainly they will not be sent out before they are enacted.

Senator JOHN J. CONNOLLY: Just from reading the convention, and perhaps too casually, I observed that Article IX provides that ships shall carry an oil book in which shall be recorded what they do as to the disposal of oil and oily substances.

Those are the two main requirements in the Convention which are going to be the subject of future legislation by the contracting parties. If I am right in my premise, it seems to me that in this case the regulations might be fairly short, and perhaps they could be formulated and brought here. It might be a practical step to put them either into this statute or some other appropriate Dominion statute; and perhaps that could have been done with respect to some of the other twenty treaties that were mentioned by Mr. Driedger in his memorandum. Perhaps Parliament should have been doing that kind of thing over the years. There may be good reasons why some of the tax conventions should not be treated in that way, as mentioned by Mr. Driedger, but here is an instance where perhaps there is not too much additional work to be done, and the Department could do it that way.

Mr. DRIEDGER: I think what Senator Connolly has said is quite true; these things can be done. After the regulations are worked out it may or may not prove feasible, but I would suggest that it could not be done this session. It takes time to work these things out, and there may not be enough parliamentary time left. Actually legislation is prepared at a much earlier stage. On the other hand, that is a question of government policy as to how they want the legislation implemented. We have prepared it on the basis they wanted it, and it is not for me to say that it should be done some other way.

Senator ROEBUCK: Mr. Driedger, how many ships are there on the Canadian register now to which this applies?

Mr. DRIEDGER: I don't know, sir.

Senator CAMPBELL: There would be several hundred ships.

Mr. Chairman, it seems to me that we are getting a little too technical in this discussion about procedure. I can see the force of Senator Roebuck's

TRANSPORT AND COMMUNICATIONS

argument with respect to our passing a statute enabling the enactment of regulations that affect the subject or his property; but really, the principle of this proposed amendment to the Canada Shipping Act is to bring into force a convention which in principle we must all agree is a sound and constructive move. It follows procedure which has been adopted in the past, and I think it is constructive procedure to try to get companies engaged in shipping and various countries to agree to uniform provisions affecting shipping.

All we are being asked to do is approve in principle a convention which provides for the prohibition or prevention of dumping of oil. By paragraph (a) of section 495A the Governor in Council can only make regulations to carry out the Convention; there is nothing new in that provision. In paragraph (b) the power perhaps goes a little further:

for regulating and preventing the pollution by oil from ships of any inland, minor or other waters of Canada

That must be left in some specific manner in Canada, as against the other general regulations that other countries might invoke.

The CHAIRMAN: As Senator Kinley has pointed out, there might be special provisions.

Senator KINLEY: That is set out in the bill now.

Senator CAMPBELL: The only possible objection, it seems to me, could be taken under paragraph (c). I must say that with the limitations that are imposed there, I am not the least bit disturbed about the matter, even if there were fixed penalties. However, I do not think there should be fixed penalties in this case, because we are entering into a new phase of law by the enactment of this convention. It may be that the penalties should be lower than stated here; the Department by regulation will so provide. But as long as the maximum penalties are provided, it meets the situation, because no doubt when the regulations are passed and published, everyone engaged in shipping will become aware of them. One will find that the Canada Shipping Act with all its regulations, conventions and everything else is maintained by the masters on board ship. I do not see the slightest objection to proceeding in this way.

So far as delaying the enactment of the legislation which would authorize our entering into this convention, it seems to me wrong in principle to do so. If the convention does not come into effect, we will have done no harm by passing legislation which authorizes the government to enter into the agreement; if it does come into effect, it may do so at a time when Parliament is not in session, and I am sure any regulation passed under it will have to have enabling legislation to carry out the principle which is the subject of the convention. I think we should approve the principle on that basis.

The CHAIRMAN: Honourable senators, I am sure we all agree this is a most interesting and informative discussion. I would like to try to bring it into focus, if I may.

As was proposed by Senator Farris in his speech on second reading, and suggested by Mr. Driedger in his letter, I wonder if some honourable senator would move that the first five lines of section 495A in the bill be amended to read as follows:

The International Convention for the prevention of pollution of the sea by oil, 1954, set out in the fourteenth schedule, is approved, and the Governor in Council may make regulations

(a) to carry out and give effect to the provisions of the Convention while in force in respect of Canada, such regulations to conform in all respect to the said provision Those last few words I have suggested because similar words appear in section 389 of the Shipping Act, where it deals with another Convention and authorizes the Governor in Council to make regulations. If some honourable senator would move that as an amendment, and if Senator Roebuck wishes to move a sub-amendment I would suggest to him that it should be somewhat to this effect, that Section 495A of the bill and Section 30, which is the fourteenth schedule, be struck out, then we would have the question clearly before us. If you wish to go to that extent, Senator Roebuck, you could make such a motion.

Senator ROEBUCK: I do not wish to go quite to that extent. Remember I have no axe to grind here at all. I am just jealous of the rights of Parliament and anxious to have the procedure the best that we know how and proper. That is all I have got in mind. Now then if I were moving an amendment at all it would be to refer this back for re-drafting of the bill.

The CHAIRMAN: Might I suggest some honourable senator move this amendment which I have read, to Section 495A.

Senator KINLEY: If we move that amendment that means we approve the convention.

The CHAIRMAN: Yes. But Senator Roebuck can move a sub-amendment.

Senator KINLEY: There is more to it than Senator Campbell said. As far as he went I can go along with him, but there are prohibited zones in this legislation and I doubt whether they are eminently to the benefit of Canada. Now, Senator Reid asked a question as to how Canada is protected on our Pacific and Atlantic coasts, and I have taken the trouble during the week to mark up the chart and outline the Atlantic zone on the chart, and I find it is only for the protection of the British Isles and those countries surrounding the British Isles.

The Americans have not yet signed this convention, France has not signed it yet, neither has Mexico, and as Senator Smith states, neither has Panama. One thousand miles off the British Coast, and as far as Canada is concerned no protection any further than 50 miles out, unless we declare we want more and if we do not interfere with somebody else we can get more. Now is 50 miles out sufficient to protect Canada? The fishing banks of Newfoundland extend 300 miles off the coast of Newfoundland, and those of Nova Scotia extend at least 100 miles from the coast of Nova Scotia, and the United States would certainly have something to say about the Maine coast. I know what will be said: They will say the Gulf Stream running across the Atlantic takes the oil along with it, but when it reaches Newfoundland it is interfered with by the Labrador current and from there of course there is only a drift and the tides run from east to west, and so I can see where Nova Scotia and Newfoundland and even the whole Atlantic coast while it may not be imperilled is not given the protection that the innovators of this bill have thought. They go away out over a 1,000 miles from Northern Europe before they can discharge any oil. It looks to me as though they will clean their bilges near our coasts.

Senator BRADLEY: It comes across from Ireland anyway.

Senator KINLEY: It seems to me we should be very careful, and that we should have an explicit understanding with the people who are responsible for this convention, that it is in the interest of Canada. So far as our inland waters are concerned we can deal with them, the bill provides for that, but this international convention cannot come into force until ten countries have signed it, and some of them must be people who have a lot of shipping. The United States is nearest to us and they have huge shipping interests and yet they have not signed it, and I think before we pass a resolution to adopt this convention we should look further into the Atlantic zones the prohibited

TRANSPORT AND COMMUNICATIONS

zones on the Atlantic coast—having an eye on the protection of our fisheries the Atlantic zone goes to the Shetland Islands up to 65 degrees of north latitude. I have it all marked here on the map so that everybody can see. This is simply taking a section of the ocean that is congested. Well, they allow their own ships to discharge oil in that zone, that is to say ships that wholly operate in this zone, but ships cannot enter the zone and discharge oil, so it looks to me as though the interest indeed may be international but the protection is not international. Down in the Mediterranean I see they protect the Adriatic sea, they extend it 20 miles. Down in Australia they say 150 miles in parts of Australia, and certain parts are controlled otherwise. Now I think we should be very careful to protect our fisheries and look into this Atlantic zone and see if there is enough protection for the fisheries off the Newfoundland and Nova Scotia coasts.

The CHAIRMAN: Honourable senators realize of course that this is one of those cases where we can either approve the convention or refuse to approve it. We cannot amend the convention. The question is whether we are willing to accept half a loaf instead of a whole loaf.

Senator KINLEY: We can call for more information with regard to our own protection and as to what other countries are doing.

The CHAIRMAN: I was simply saying from the point of view of Parliamentary procedure we have no alternative other than to approve or refuse.

Now, with regard to the Atlantic waters I understand officials of the department have something to say on that.

Senator REID: I think we should have a clear explanation. If we pass this amendment you have just read then we are agreeing to the whole treaty.

The CHAIRMAN: Yes.

Senator REID: I think personally I would want more explanation before I agree to the treaty being ratified because I think there is an important point in this treaty which has not been explained, and that is why I raised the point. I demand an explanation before approving the whole treaty.

Senator BRADLEY: I am not an expert and I do not know just how far these waters go. But I recall this, that for some years there has been a great to-do internationally about Newfoundlanders killing these sea birds. I want to tell you that where a Newfoundlander kills one sea bird literally hundreds are killed by this oil, if my information is correct. I have heard this all over the northeast coast. I think you should take account of that.

Senator ROEBUCK: Now is that amendment made, Mr. Chairman?

The CHAIRMAN: Not yet. I was going to ask Mr. Baldwin to speak on the point raised by Senator Kinley and Senator Reid, to state whether he has any explanation as to the reason for the particular designation of protected waters which appears in the treaty at the present time.

Mr. BALDWIN: Yes. I think you explained the situation, Mr. Chairman, by the fact that this is a convention which is now before us for acceptance or rejection, as the case may be, not for amendment. But the limits which were set—and we have with us those who can speak in greater detail on this were set in the light of known information in regard to the pollution problem that exists; and there was no attempt on our part, in participating, to offer favoured treatment to United Kingdom, or to ask for less than we considered was necessary to protect Canadian interests. There is a prohibited zone to the north or northwest of the United Kingdom that is substantial in area, unquestionably; and there is very clear evidence that that is a zone that is subject to extremely heavy pollution at the present time. My understanding is that the representatives of the various countries participating did recognize that fact, and that, as a result, a large prohibited area was marked out in that particular region. Our own representatives and those of the United States felt that our interests were adequately protected at the present time by the 50 mile limit that in effect is set along the Canadian and the United States coasts. If we made a mistake in that regard, I am very sorry for it; but the information available to us and to the United States made us feel that that is a proper and adequate protection in this matter of pollution of shipping at the present time. In so far as some other areas are concerned, if you will examine the annex, I think you will find that narrow limits have been set and considered adequate in some other areas.

Senator KINLEY: Well, only in the Mediterranean. That is a different thing.

Mr. BALDWIN: I should also say it is my understanding that this matter has been before and a subject of consultation with the Shipping Federation and the Dominion Marine Association, which are the largest bodies of ship operators and owners whom we expect would be affected by this particular form of legislation.

Senator SMITH: What gives us on this coast that 50 mile zone? Under what convention is that?

Mr. BALDWIN: It is defined in the annex to this document.

Senator KINLEY: "Subject to paragraph (3) of this Annex, the prohibited zones in relation to tankers shall be all sea areas within 50 miles from land". Does that include all shipping?

Mr. BALDWIN: Not only tankers are included. The convention however does not apply to ships under 500 tons.

Senator BRADLEY: I wonder if you can say anything about this oil that is at present dumped in this area that is to be prohibited. Where will it be dumped in future?

Mr. BALDWIN: That will be disposed of in some other area.

Senator BRADLEY: It may be dumped in the western area, and we will be worse off then than we are now.

Senator ROEBUCK: May I have the indulgence of the committee? I have to go elsewhere. Here is an amendment which I would suggest and propose. Perhaps, Mr. Chairman, without your prior amendment, it would be a motion. However, I have written it this way:

That Section 495A be referred back for the purpose of redrafting, so that the prohibitions and penalties proposed shall be in statute form rather than by Order in Council.

That is all I have to say. Personally, I would like to say that I approve this act on our part, preventing the pollution of the ocean by oil. Any objections that I have are not to the general principle of the bill in that regard, only in regard to procedure. Are you going to meet again this afternoon?

The CHAIRMAN: I imagine we will have to. Senator Roebuck moved this motion. Are you ready for the question?

Senator KINLEY: To whom are you going to refer it?

Senator ROEBUCK: The department where it comes from. Say the Minister, if you like.

Senator Woop: Have we not already an amendment?

The CHAIRMAN: Not yet. I have one suggested, but no senator has moved it. Is the committee ready to vote on Senator Roebuck's amendment?

Senator KINLEY: The point is, what has Senator Roebuck in mind? Penalties only?

Senator ROEBUCK: And prohibitions. You cannot have the penalties without the prohibitions.

Senator KINLEY: Does that refer also to our territorial waters?

The CHAIRMAN: No, it does not refer to that.

Senator KINLEY: It refers only to the convention?

The CHAIRMAN: No, it does not refer only to the convention.

Senator CAMPBELL: I would suggest that Senator Roebuck allow his amendment to stand until we have heard witnesses on this question. It seems to me that we are all agreed on the principle that this legislation is desirable; but as to details, it seems to me that we should have some information as to whether these territories designated in the convention are really in favour of supporting the convention in that respect. Then we shall know whether or not we are satisfied with the provisions of the convention.

Senator ROEBUCK: I am quite satisfied to allow the amendment to stand, but I really must go. I presume we shall meet again.

The CHAIRMAN: Very well. Senator Roebuck's motion stands for further consideration at our next meeting.

Senator CAMPBELL: I realise that we cannot change the convention anyway, but apparently there are some people who would like to have information from the witnesses as to how amendments where proposed, and why there was not a greater area.

Senator KINLEY: The Atlantic zone extends a long way across the ocean. What I say is this: let us delay it in committee until we get information that satisfies us that our interests have been well considered; and furthermore I would like to see what the Americans are going to do with regard to the Atlantic coast. The Gulf Stream goes within thirty-five miles of Cape Hatteras, and it flows at the edge of the Grand Banks, and that is the stream that carries stuff along.

The CHAIRMAN: I think this 50-mile limit on our coast results from the first few words of Annex A, on page 20: "Prohibited Zones." It reads:

"(1) Subject to paragraph (3) of this annex, the prohibited zones in relation to tankers shall be all sea areas within 50 miles from land, with the following exceptions..."

And then you come to the Adriatic Zone, and so on.

Hon. Mr. KINLEY: Australia, the North Sea and the British Isles.

The CHAIRMAN: I gather that some members of the committee wish further information as to why we restrict ourselves to 50 miles.

Senator WOOD: We had an explanation of that here and everyone was satisfied that was far enough.

The CHAIRMAN: Mr. Baldwin, you said there were other officers who were here who could speak with more authority than you can on this point?

Mr. BALDWIN: Yes, we could give more information as to the details of the negotiations which led to the convention. I should add to what I said before that we found the United States was not in favour of anything more than 50 miles. We must remember we are introducing a new field of legislation which has to be made effective with the concurrence and support of the shipping industry, and if it is carried too far it could become a handicap and difficult for them. I think, as in most international meetings, given the fact there were varying interests to be taken into consideration, possibly the ultimate resolution reached was something in the nature of a compromise. If you had thought only of protection against pollution you might have put the limit farther out in some instances, and if you thought only of the shipping industry you might have brought the limit closer in. Trying to meld the two, 50 miles appeared to be in the opinion of the countries there represented the most reasonable general limit that could be set with the exception of the specified areas where a special and heavy problem exists that requires additional prohibitive zones to be made.

Senator ISNOR: I want to get clear in my mind about the 50 miles and the 100 miles. Senator Kinley has stressed the point of 50 miles, and Mr. Baldwin has more or less confirmed it. Annex A provides for certain exceptions, and then under "the Atlantic Zone" a 100 mile limit is set out. Which is it, 100 miles or 50 miles in so far as the Atlantic Zone is concerned?

The CHAIRMAN: It is 50 miles. Senator Isnor, the various exceptions coast of Canada is affected solely by the first few words in subsection (1) which makes a general prohibition of 50 miles from land.

Senator ISNOR: What about subsection (c)? I refer particularly to the last few lines of it.

The CHAIRMAN: The Atlantic coast?

Senator ISNOR: Yes.

The CHAIRMAN: That only has relation to the coast outside England, has it not?

Senator KINLEY: If they do not go outside the zone they can come back. The 100 mile limit applies there. It does not apply to us at all.

The CHAIRMAN: As I understand it, subsection (c) does not affect the coast of Canada in any way. Is that right, Mr. Baldwin?

Mr. BALDWIN: Yes.

The CHAIRMAN: It is 50 miles, no more or less.

Senator KINLEY: We can get 100 miles if we make a declaration and it goes before the Convention and it does not hurt anybody else.

The CHAIRMAN: Is there a provision for this?

Senator KINLEY: Yes, as long as it does not interfere with anybody else's rights. It is only a right to apply.

The CHAIRMAN: As I pointed out, we have no right to amend the Convention.

Senator KINLEY: No, but they have to satisfy us as legislators that it is in the interests of the country. We can destroy this if we want to.

The CHAIRMAN: Yes, but the only question then is whether we are willing to accept 50 miles or nothing, for the result of refusing to ratify this convention would be that we would have nothing.

Senator CAMPBELL: It seems to me that probably after we have heard one or two witnesses we would be satisfied to accept their opinion. Certainly we are not qualified to do more than make up our minds on the evidence presented to us. As Senator Kinley said, we probably should have that information before we just rubber stamp this convention. I think we would be entirely satisfied when we have heard from the witnesses that the principles and details embodied in the convention are at least the first step forward to obtaining something we have not got now. The next question is the one of principle raised by Senator Roebuck, and it seems to me that that is one we could deal with.

The CHAIRMAN: Mr. Baldwin, who do you think would be best qualified to give us evidence as to the formation of this treaty?

Mr. BALDWIN: I would suggest Mr. Alan Cumyn, Chief and Chairman of the Board of Steamship Inspection.

The CHAIRMAN: Mr. Cumyn, would you come forward, please, and give the committee a statement on this matter?

Mr. ALLAN CUMYN (Chief and Chairman of the Board of Steamship Inspection): Mr. Chairman and honourable senators, this convention was originally sought by Great Britain because the shores of that country and other countries of northern Europe are being severely polluted by oil, in particular crude oil from tankers. The reason for this is that when the Arabs seized the refineries in Iran the countries in northern Europe adopted a policy of having their own refineries in northern Europe, bringing the crude oil up from the Middle East rather than having it refined there. The résult is that there is a terrific increase in the amount of crude coming to the shores of northern Europe. These tankers discharge this crude oil at the refineries in Great Britain and northern Europe, and turn around, and immediately commence to wash their cargo tanks preparatory to taking on another cargo. In washing these tanks they discharge the oil-contaminated water overboard.

Senator BRADLEY: Into British waters?

Mr. CUMYN: Into British waters.

Senator BRADLEY: Into their territorial waters?

Mr. CUMYN: Not necessarily their territorial waters, but fairly close to it. Much of this discharge takes place in the gulf stream, and some in the North Sea. Many of the tankers have got into the habit of going to the North Sea and washing their tanks there before proceeding south.

Senator Wood: How do they wash them?

Mr. CUMYN: With hot salt water.

Senator WOOD: In port?

M. CUMYN: No, that would mean delay to the ships.

Senator Wood: What difference does it make whether it is a thousand miles away or in port?

Mr. CUMYN: Well, that is the custom, sir, that the tankers have developed over the lears. A tanker, of course, is a very expensive ship, and to lay it alongside the dock 24 hours a day meets with objection, naturally.

Before calling the conference the British Government set up a committee to investigate the problem and make recommendations. They recorded that they found most of this oil coming up the beaches from crude oil from tankers, and part of it was also fuel oil from dry cargo-burning ships. These are ships that burn oil under their boilers and carry that oil in their ballast tanks. Alternatively, they carry ballast water in those tanks, which becomes contaminated, and it is discharged overboard prior to taking over cargo. Dry cargo-oil burning ships coming to Montreal from New York harbour might discharge their ballast before loading, and they have been in the habit of discharging either in the harbour or just outside the harbour. So this committee recommended the complete abolition of the discharge of waste oil into the ocean. They stated that was the only cure. And the British Government circulated the report of this committee prior to calling the conference. These were their main recommendations: The complete abolition of discharge of oil into the sea. A procedure to be adopted by tankers washing out their tanks, which would enable them to retain this oil waste aboard. And there vas the fitting of separators to dry cargo ships to separate the oil from the water before discharging it overboard. It was the hope of the British Government that these three recommendations would form the basis for the Convention.

Before proceeding to the Convention the Canadian delegation discussed these recommendations with the Canadian shipping industry, and more or less received their approval of them, and they promised their support to a Convention based on them.

Senator REID: What was the attitude of the oil companies?

Mr. CUMYN: The attitude of the oil companies was one of unqualified support, sir.

Senator BAIRD: As far as they are concerned.

Senator KINLEY: They want facilities for putting oil overboard; they might not care so much about the ocean.

Mr. CUMYN: The recommendation was the complete abolition of discharge of oil into the sea.

Senator JOHN J. CONNOLLY: By fitting the ships with separators?

Mr. CUMYN: By fitting the dry cargo ships with separators and requiring tankers to adopt a procedure in washing out tanks whereby they could retain this oil discharge aboard; in other words, pump all this sloppy water into one tank and allow it to separate before dumping the water overboard. However, when the conference got underway these three main recommendations were opposed by many of the shipping nations present, headed by the United States.

Senator BRADLEY: What was the nature of that opposition?

Mr. CUMYN: They did not want to put these tankers to the inconvenience and delay in the procedure of washing out their tanks, and claimed that the fitting of oily water separators to dry cargo ships was rather early, expensive, and not justified because as yet this type of separator has not been properly developed.

Senator Wood: I remember the use of the separator for separating water from oil long ago.

Mr. CUMYN: But the type of oil-water separator developed for dry cargo ships has its drawbacks; it is by no means a perfect fitting. The British put on a separator on test on a ship in the pool of London to endeavour to prove that such separators could be efficient, but unfortunately, on account of the carelessness of one of the engineers, it was a complete failure, and only served to justify those nations who were in opposition. A basic zone of 50 miles, therefore, was established, giving countries of northern Europe added protection by this Atlantic zone, making it 1,000 miles to the gulf stream for tankers, and 100 miles for dry cargo ships, because of the fact that they are suffering severely from this nuisance. In conference with the American delegate we decided that 50 miles would give us as much protection as required as this time, and as much as we could police, because it is one thing to establish a zone, and another to police it.

Senator BRADLEY: Have you consulted the authorities as to whether the zone is sufficient around the Newfoundland coast, to see what they say about it?

Mr. CUMYN: Yes, we have, and up until this recent discharge of oil on your coasts, of which I do not know the details, I was not aware that you were suffering from pollution.

Senator BRADLEY: We have been for years.

Senator KINLEY: American interests are not quite our interests, you know. Their tankers run mostly up their coast or down to Central America, and they are inside of 50 miles nearly all the time, though not always, and of course they do not want to go offshore to dump oil.

The CHAIRMAN: At least, Senator Bradley, 50 miles will be some protection, won't it? You have none now.

Senator KINLEY: We will have this condition that the Atlantic area being a closed area leaves our coast open for pollution.

Mr. CUMYN: Within the 50-mile zone are mostly tankers bringing oil out from the South American ports, and the ports from the Middle East. And as you know, ships go down into the gulf stream, and in cleaning their tanks this oil is taken into the gulf stream and taken north, and this provision at least cures that, because a 50-mile limit will take them outside the gulf stream in a very large number of cases.

May I suggest that the oil in which we are interested and which we can control is that off our own coasts. Is it the opinion of these gentlemen that the density of shipping off our own coast is such that the oil comes a greater distance than 150 miles at this time? Is it that the oil which is causing the trouble off Newfoundland is oil discharged from American ports?

Senator BRADLEY: This problem has arisen during the past few years. I don't know that there has been any great increase in the use of oil in and around Newfoundland; I think it is coming from elsewhere.

Senator KINLEY: Herring and mackerel are surface fish and school along our coast and oil pollution is bad.

The CHAIRMAN: Is the position not this, that the United States has agreed to the 50-mile limit which will, according to Senator Campbell, do something to prevent the oil being discharged in the Gulf Stream and coming to the coast of Newfoundland. If we refuse to ratify this treaty, and the United States does not ratify it, we will lose at least whatever protection it would give, even though it is insufficient.

Senator BRADLEY: The United States is one of the greatest offenders.

Senator KINLEY: We signed, but they have not signed.

The CHAIRMAN: My point is, if they are willing to sign, it will at least provide some protection.

Senator BAIRD: It will give us something that we do not have now. As it is, they can now dump their oil anywhere, even within the two or three mile limit.

Senator REID: How are you going to enforce the rule of 50 miles, or even of a 150-mile limit?

Mr. CUMYN: That is going to be very difficult.

Senator REID: I am wondering how it is to be done, because you are out in the open sea.

Mr. CUMYN: Of course we can board ships coming in and examine their oil record books.

Senator CAMPBELL: The regulations will provide for certain records and returns.

Mr. CUMYN: Yes.

Senator CAMPBELL: Which is compulsory in so far as shipping companies are concerned. If they are honest about keeping those records, that should relieve you of some trouble.

The CHAIRMAN: Did you consult with the fishing interests before agreeing to the 50-mile limit?

Mr. CUMYN: I did, sir.

Senator BRADLEY: Did you consult with the Department of Fisheries at St. John's?

Mr. CUMYN: No, sir, I did not.

Senator BRADLEY: They are deeply concerned about it.

Senator MOLSON: May I ask if we have any regulations in force within our own territorial waters at the present time?

Mr. CUMYN: We have no regulation outside of the local regulations established by harbour authorities.

Senator Molson: That is a very serious question. Certainly in the St. Lawrence there are few areas coming up the river where one is not in a constant stream of oil.

Mr. CUMYN: It is my thought that we should enforce the regulations which we propose to make in our own territorial waters, and enforce those for the water 50 miles off our shores. Having done that, we will have gone about as far as we can go, pending the next convention at which it is hoped the total abolition of the pumping of oil into the sea will be agreed upon.

Senator BRADLEY: When do you expect that convention to take place?

Mr. CUMYN: It is hoped that it will take place within the next three years. At that time it is also hoped that those nations which have opposed this convention will by bitter experience, as our friends to the south are now doing, come to the conference in a more agreeable frame of mind.

Senator REID: May I ask why Australia asked for a 150-mile limit?

Mr. CUMYN: I could not tell you. The Australian delegate was very active, and of course Australia is off by herself; there was no one who took any objection, whether he wanted 150 miles or 500 miles.

Senator KINLEY: Take the ships that come from England, they will not discharge their oil when they are on the rough seas, but as soon as they hit smooth water in around Newfoundland they will dump their oil. They will be attracted here.

Senator CAMPBELL: They could not do it if we adopted this convention.

Mr. CUMYN: With this 1,000 mile tanker zone, tankers can come from the Middle East or ports of South America or the United States, and surely they would not come up the Gulf Stream before heading across the ocean.

Senator KINLEY: They will take advantage of the law; ships go everywhere. Tankers come into Canada; we have oil here, and we will no doubt be shipping it to other countries. I do not think we can say a statute is intended to apply to a certain lot of ships. They come and go everywhere.

Mr. CUMYN: It takes into consideration the existing situation, and makes provision for an extension of these boundaries, if they are not working properly.

Senator BRADLEY: The most encouraging feature about the whole thing is that you are to have another convention within three years—the sooner the better. Here we are on this side of the Atlantic, and to use the vernacular, we are going to get it in the neck very soon—we have it already.

Senator BAIRD: Yes; look at what happens to Newfoundland when we get a northeaster that may last for a fortnight.

Senator BRADLEY: Fifty miles is about as good as fifty inches.

Senator BAIRD: However, I agree we are starting off on the right foot to get something.

Senator BRADLEY: It is a good idea.

Senator KINLEY: But why not have some equity in it? Why let these countries have every protection on fisheries, even as far up as the Faroe Islands. They have included everything. Furthermore, this is going to be administered from the British Isles; that is where we have to make all our reports. And make no mistake about it, they are good shipping people.

Senator BRADLEY: If this agreement is ratified, it is quite obvious that all their stuff is going to be dumped in the western half of the ocean. Senator KINLEY: There is no protection for our fisheries.

The CHAIRMAN: This had been a most helpful discussion; it has at least given honourable senators an opportunity to express their views to the officials of the Department who will in due course have to attend the next Convention. Are there any further questions?

Senator ISNOR: Is there any provision for a change as suggested by Senator Kinley from 50 to 100 miles?

Mr. CUMYN: Yes; if and when the Convention comes into force, and we find the shores of Newfoundland are being polluted by oil discharged beyond the 50-mile limit, we can immediately apply for an extension of that limit.

Senator KINLEY: If they want to give it to us, they will.

Mr. CUMYN: I think the United States is the only country that possibly could take objection.

Senator KINLEY: Why do you say that?

Mr. CUMYN: Because they are the only country which adjoins our shores. Senator KINLEY: That is not covered in the bill.

Mr. CUMYN: I think if they thought that by putting up an objection that their ships were being inconvenienced—

Senator KINLEY: But how about the Portuguese fishing fleet, which may decide they will go into Newfoundland 100 or 150 strong every year; then they decide they want to clean their ships before they load them, and they clean them after they come out. I say, the United States is not so much interested. Perhaps they would be interested in the coast of Maine or up the Bay of Fundy. I think we should have more information on this proposed legislation.

Senator REID: If Australia is asking for a 150-mile limit, why could we not ask for it?

Senator KINLEY: The United States did not want it. Could we not declare a 12-mile limit on our territorial waters for the purpose of this legislation? We do it for rum running, why could we not do it for oil pollution?

Mr. CUMYN: I am not a lawyer; I could not tell you the extent of our territorial waters.

Senator CAMPBELL: Mr. Chairman, it is extremely interesting to hear from the witness that we possibly can extend this limit by application, and probably that would be the thing to do, and I believe it would be granted if the case is made out at a later date, but we should not lose sight of the principle that many of these conventions have started in a small way and have finally come to take in all the problems that arise.

We know that at the present time there is no control whatever to prevent ships operating coastwise in Canada or in the gulf or in the lakes from dumping oil, other than harbour regulations or other controls in the harbour. Here we have a convention, and if we turn it down now because we have not got enough it means waiting another year or two. It seems to me we should take what we have got in this convention since it has been negotiated by representatives who have thoroughly studied this problem and are people more qualified than we are to say what they were able to get and to give. I suggest that we should be given a lot more information when it is available, and that we should approve this legislation in its present form, the convention, and then ask that the departmental officials bear in mind the arguments put forth here to extend those areas and to hope we might get conditions under the next convention which will be a complete prohibition against dumping oil. It seems to me it would be unwise to turn down this convention because as far as Canada is concerned no doubt we will benefit greatly by it.

74222-41

As Senator Bradley says, we are not going to have any more ships operating in our waters, they are not going to travel hundreds of miles to dump their tanks, that the volume of shipping coming to Canada will not be affected by this in any manner whatsoever. It seems to me there are benefits and it may be the benefits that will be obtained will solve the problem that exists today, but if we turn this down we will still have the problem and it will be increasingly difficult. Many boats formerly powered by coal are now being powered by oil and you are going to have a continuance of this pollution. Take into consideration the terrific ship traffic from Panama and Venezuela and other oil producing countries travelling north, boats powered by oil, and almost all flushing their ships in the Gulf Stream: if we could eliminate that we will accomplish a great deal. It seems to me we should adopt the principle, pass the convention and put the legislation into the form suggested by you, Mr. Chairman. If I may say just one word on Senator Roebuck's proposal: what he says in effect is, we should not adopt this legislation until all these regulations to be made under the convention are put into statutory form. I do not think that it is practical. It is easier for the department to do that by following the legislation such as we have here of enabling the Governor in Council to make these regulations. It is a procedure which has been followed under previous statutes and which has worked out very well.

Senator KINLEY: It appears to me that by agreeing to let Senator Roebuck's resolution stand we stop at that point.

The CHAIRMAN: Yes.

Senator KINLEY: Well, I want to say this that I do not suggest for a moment that this may not be all right, but I want to know, and I think we all want to know. Now, this is a convention. Many countries have not signed it. We have signed it but other countries have not signed it. The American Senate will have something to say about this, you can bet your life, and while we talk about the ship masters and the shipping associations, their interests may not be the interests of the general public. Ships coming from Montreal might want to dump their oil outside of Anticosti before they get clear of Newfoundland and they might be offenders, they need to be controlled. This seems to me an important matter, it is a treaty, and it cannot come into effect for years and it takes five years to get out of it if one signs it. Well, the amendment is a difficult thing, it works by grace and not by right. I think we should go slowly on this.

Senator BRADLEY: I think it is all too true that the menace has been increasingly growing off the coast of Newfoundland. The idea is right but I am wondering just exactly what the passage of this convention and our implementation of it is going to do as far as some of our own territory is concerned particularly Newfoundland, in view of the fact that all this discharge is now going to be pushed into the western part of the ocean. Where is all that oil coming from—it is not our own.

Senator KINLEY: They will wait until they get past this deadline in the ocean and then they will dump it out.

Senator BRADLEY: And the Gulf Stream and a good northeaster will bring it in to us.

Senator REID: Looking at Article XXI of the convention I notice that there are different stipulations next to the names of those who signed the convention. Canada for instance says "subject to ratification", while others say "subject to acceptance". I know what ratification is, but what is "subject to acceptance"?

Mr. BALDWIN: It depends on the legal constitutional arrangements of the different countries. It merely indicates that not all Governments may proceed by ratifications, others may implement it by other procedure.

TRANSPORT AND COMMUNICATIONS

The CHAIRMAN: The only question now is as to what time shall we adjourn to. I suggest we might go on this evening.

Senator KINLEY: Put it over for another week. What is the hurry?

The CHAIRMAN: I am in the hands of the committee.

Senator KINLEY: Unless the department claims there is some urgency, but I cannot see any.

Senator BRADLEY: Where is the urgency? The United States have not even signed it yet.

Mr. BALDWIN: I think we fully recognize that the United States acceptance of this convention is extremely important if the objectives are to be achieved. We can give absolutely no assurance that the United States will accept or ratify this convention, but we in putting this forward feel that our chances of United States acceptance would be much better if we went ahead and showed our good faith by putting it into effect.

Senator KINLEY: Mr. Chairman, I move that we adjourn to the call of the Chair.

The CHAIRMAN: Our next meeting will be on Wednesday, May 16th at 11 o'clock.

53

THE SENATE

STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

OTTAWA, Wednesday, May 16, 1956.

EVIDENCE

The Standing Committee on Transport and Communications to whom was referred Bill H-7, an Act to amend the Canada Shipping Act, met this day at 10.30 a.m.

Senator HUGESSEN in the Chair.

The CHAIRMAN: Honorable sénators, we have a quorum, and we are again meeting in consideration of Bill H-7, an Act to amend the Canada Shipping Act, this being our third sitting devoted to that purpose. Honourable senators will recall that at the last meeting, which was confined to a discussion on the question of oil pollution, of the proposed section 495A of the Canada Shipping Act and of the International Convention, we had some unfinished business in the form of an amendment to Section 26 of the Bill, bringing in Section 495A of Canada Shipping Act an amendment by Senator Roebuck, reading as follows:

That Section 495A be referred back for the purpose of redrafting so that the prohibitions and penalties proposed shall be in statute form rather than by Order in Council.

I think we should now dispose of that business by taking up Senator Roebuck's amendment. Does the committee wish to discuss that amendment further, or are members ready to vote on it now?

Senator ROEBUCK: We discussed it pretty thoroughly.

The CHAIRMAN: We discussed it pretty thoroughly at the last meeting, and Mr. Deutsch of the Department made a long statement.

Senator ROEBUCK: He has not said anything with regard to that particular amendment.

The CHAIRMAN: Oh, no.

Senator ROEBUCK: Supposing we sent it back, what could he do with regard to it? Perhaps he could approach common ground, or make it a little more acceptable to somebody like myself—evangelically, as was said in the house last evening.

The CHAIRMAN: I do not know, Senator Roebuck, but Mr. Deutsch had expected to be here this morning, but I understand he is now very much taken up with legislation in the other house having something to do with a pipe line, I believe.

Senator KINLEY: That takes precedence now.

The CHAIRMAN: Is the committee ready to vote on Senator Roebuck's amendment? I will read it again:

That Section 495A be referred back for the purpose of redrafting so that the prohibitions and penalties proposed shall be in statute form rather than by Order in Council.

Are members of the committee ready to vote on that amendment? All in favour?

Senator ROEBUCK: Of course, I am voting for it.

The CHAIRMAN: Against? The amendment is lost.

Senator ROEBUCK: Let me say here that I did not expect the amendment to be carried, but I have given notice to the departments that at least one person in the Senate does not like this method of procedure. I do not like to see legislation which could be passed by an Act, by statute, taken into the hands of the executive. We do far too much of it. Now, it is perfectly all right on this particular subject, for it is under way, and perhaps it would be difficult to make the change now, but there is no question in my mind that the discussion has borne some fruit. Nobody has ever questioned it in the past, and it is becoming more and more a custom, and an objectionable custom. So I am perfectly satisfied with your vote. Of course, I vote for my resolution. But it will come on the floor, and I am going to say something evangelically when it reaches the floor.

The CHAIRMAN: As Chairman of the Committee, I must say that I think Senator Roebuck is performing a valuable service in directing our attention to the fact that we should have as much of this in statutory form and as little of it in the form of regulation as possible, although in this particular instance I must say it would be awfully difficult to put it all into statutory form.

Senator FARRIS: Some of these things that require flexibility we do not get into statutory form.

The CHAIRMAN: On this particular question of oil pollution it may be necessary to make special conditions for special harbours which could not find their way into legislation by statutory form.

Honourable senators, that having been disposed of, I would like the committee to consider an amendment to Section 495A, which has been prepared by the law clerk and myself, largely following the suggestion of Senator Farris in his speech on second reading last March, that the legislation should be changed to provide for a specific approval by parliament of this proposed convention. The proposed amendment will be found at the top of page 9. It would alter the first five lines of the top of that page to read as follows:

495A. The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, set out in the Fourteenth Schedule is approved, and the Governor in Council may make regulations:

(a) to carry out and give effect to the provisions of the Convention while in force in respect of Canada, such regulations to conform in all respects to the said provisions.

Will some honourable senator move that amendment?

Senator FARRIS: I suppose it would be appropriate for me to move it.

Senator KINLEY: That is an amendment to 495A, which deals with regulations?

The CHAIRMAN: Yes.

Senator KINLEY: Which includes the adoption of the whole convention? The CHAIRMAN: Quite; and on the amendment I am sure there will be some discussion. I understand you have a statement to make, Senator. I am asking that the amendment be moved so that we may have the discussion on it.

Senator KINLEY: Very well.

The CHAIRMAN: Senator Farris has moved the amendment. I shall read it again.

(Amendment read)

Senator REID: Are you taking out the present section 485A?

The CHAIRMAN: No; I was about to say that paragraphs (b) and (c) remain in: the first five lines are being amended.

Senator Power: What is the effect of the amendment?

The CHAIRMAN: The only effect, as Senator Farris pointed out in his speech on second reading of the bill, is that it seems rather unusual for Parliament to attach this convention to the statutes without formally expressing its approval of it.

Senator Power: Then, all we are doing now is approving the convention? The CHAIRMAN: Yes.

Senator Power: And we are still approving of any regulations that may be made?

The CHAIRMAN: We are still authorizing the Governor in Council to make regulations under the convention.

Senator KINLEY: We are doing this under the amendment to the regulations paragraph; we are approving of the bill without consideration.

The CHAIRMAN: I am suggesting to you, Senator, that this is the time for consideration, on this amendment that we will now discuss.

Senator HAYDEN: Could you answer this question for me, Mr. Chairman? Is there anything in the law at the present time that is contrary or different from the provisions of the convention which we are now asked to approve?

The CHAIRMAN: I understand, Senator, at the moment there is no legislation of any kind on our federal statute books which provides in any way for the regulation of oil pollution.

Senator HAYDEN: Therefore, there will be no inconsistency in its application?

The CHAIRMAN: No inconsistency. And I point out as well, under subsection (a) the Governor in Council is authorized to make regulations under the convention, dealing with international waters; but subsection (b) will permit him to make regulations in connection with oil pollution of our internal waters.

Senator BOUFFARD: Which is extremely important.

The CHAIRMAN: Yes.

Senator REID: Is this the first time we have taken power to regulate oil pollution in minor waters?

The CHAIRMAN: So I understand. Is that right, Mr. Baldwin?

Mr. BALDWIN: Yes.

The CHAIRMAN: Before the discussion starts, I should like to read a letter which I received from Senator Donald Smith, in which he tells me he is unable to be present today but wishes to express his views on this section, and has sent me a short memorandum giving his views. If I have the permission of the committee to read the memorandum, I shall put it on the record at this time.

Some Hon. SENATOR: Yes.

The CHAIRMAN:

With respect to the part of the Bill dealing with oil pollution there are several reasons why I believe this part should not be approved by the Committee at this time.

First, it appears that the International Convention, already signed in behalf of Canada, will assist in solving the problem of pollution of the sea by oil in so far as the United Kingdom and certain European Atlantic nations are concerned, while doing little or nothing toward solving the same problem as it affects the coastal waters of Canada. In other words,

TRANSPORT AND COMMUNICATIONS

the ratification and putting into legislative effect of the provisions and penalties of the Convention, do not appear to have in them the elements of equal treatment which the operators of our deep-sea shipping and others might expect of us.

Second, I would draw the attention of the Committee to the present situation where Canada, a nation which operates few merchant ships, has signed the Convention, while nations, such as the United States, Panama, the Netherlands and France, who have large fleets registered, have not yet signified their agreement to the terms of the Convention.

Third, the destruction of the sea-bird population by oil pollution of our Atlantic Coast and the potential danger to certain species of fish, are such as to warrant a re-examination of the terms of the Convention to the end that the protection of our Coastal waters from pollution by oil shall equal that proposed for the Eastern Atlantic Coastal waters.

I, therefore, hope that the members of the committee will decide to withhold approval of the part of Bill H-7, dealing with this subject until after the other nations referred to above have signed the Convention and until after the signators have agreed to extend the benefits in a manner more satisfactory to Canada.

Senator REID: Mr. Chairman, are the contentions made in the beginning of that letter correct?

Senator ISNOR: I think the contents as outlined in his letter are established.

The CHAIRMAN: I think he is correct in this sense, that the convention as it now reads does afford greater protection in the sense of area to certain European coastal waters than it does to our coastal waters on the Atlantic Coast.

Senator ISNOR: Mr. Chairman, I am in accord with the view as expressed by Senator Smith. We have spent considerable time discussing this and at the last meeting we went on to hear the evidence. All I want to say at this time is that notwithstanding that I am in accord with the views expressed by Senator Smith, I am prepared to vote in favour of the bill with the limits, namely, the 50 miles as against 100 miles, on the grounds that half a loaf is better than none. But I do take this opportunity of stressing the point, as Senator Roebuck did in his view of the matter, that we should draw to the attention of the officials who entered into this agreement representing Canada the fact that at the earliest possible date they should apply for an extension from the 50 mile limit to the 100 mile limit, so that we will be somewhat on the same footing enjoyed by the United Kingdom.

Senator ROEBUCK: In other words we are easy but not dumb.

Senator ISNOR: That is right. I just thought that I should put that forward in support of the contention raised by Senator Smith who has spent considerable time on this question. Those from the Atlantic Coast are interested in this phase of the bill.

The CHAIRMAN: I think we are all much indebted to the honourable senators from the Atlantic Coast for the views they have expressed on this bill.

Senator FARRIS: Mr. Chairman, I have listened with a great deal of interest to the letter that you just read. I have here a letter from Honourable Mr. Marler, Minister of Transport, expressing his views on some of these things. Perhaps the committee would like to hear them. I will read the whole letter. "I have been following the discussion of the Senate Committee which has been considering the amendments to the Canadian Shipping Act. I feel I should draw to your attention certain points in connection with the clause which deals with water pollution by oil from ships and which was the only clause discussed at the last meeting of the committee, since I am concerned that no misunderstanding should arise. I understand that no one questioned the desirability of legislation to deal with this matter. Discussion in the committee related mainly to the method employed by the Department of Justice in implementing the International Convention dealing with the matter; and there is now before the committee a motion by Senator Roebuck which would refer back to the clause for re-drafting, asking that the provisions be set forth in the statute in detail rather than granting power to the Governor in Council to make regulations.

"I also believe that interspersed with the discussion of legal points, discussion arose on the merits of the clause with certain members of the Committee (Senators Bradley and Kinley) expressing the view that the International Convention did not grant adequate protection to Canada; and that fifty mile area along coastlines, which is set up as the general prohibited zone in the Convention, should have been placed farther out in the case of Canada. Certain members of the Committee may be disposed to oppose the legislation on these grounds. Needless to say, it would be most unfortunate if these two different factors should become confused in any fashion in dealing with the legislation.

In the first instance, I understand that the representative of the Department of Justice has indicated in detail to the Committee the reasons why the legislation takes the form it does; and has pointed out that this is fully consistent with the practice followed by the government in its statutes over recent years.

On the second point, we recognize fully that the Convention does not go as far as many of us would like. It was, however, drawn up at an international conference where many nations were represented and where points of view varied widely. You, having participated in conferences of this sort, will recognize that quite frequently it is not possible for any one nation to gain all it wants and what comes out of a conference must represent a compromise agreed to by all parties as being acceptable. If, therefore, the objective is a desirable one (and no one appears to dispute this), I feel it is better to proceed towards it by such steps as may be internationally agreed upon, than to make no progress whatsoever.

The suggestion that we should have asked for a line farther out from the coast scarcely seems realistic in view of the fact that the United States was persuaded with difficulty to accept the present line; and the suggestion that we should not take action at the present time but should, for example, wait upon action by the United States is, similarly, one that is more likely to be harmful than helpful to the ultimate objective, particularly since I understand that a number of other countries are in the process of ratifying or accepting the Convention at the present time.

There is perhaps one other point I should mention. The clause in question also would grant the government authority to deal with this pollution within our own territorial waters—something which is not covered by the International Convention. No one in the Committee, so far as I am aware, questions the desirability of this. The debate centred entirely around the Convention.

I doubt, however, whether it would be feasible to strike out provisions relating to the implementation of the Convention while retaining only those which would allow the government to take action only within its own territory and inland waters. The two are considered as part of a single programme, and to proceed with one without the other could be a serious blow to the ultimate objective, which no one seems to question, of achieving complete international prohibition of this form of pollution.

I understand this clause will be the first item of business when the Committee meets again next Thursday, and in the circumstances I felt I should put this note before you.

Sincerely yours,

(Sgd.) G. C. Marler."

Senator KINLEY: I have a statement which, for greater accuracy, I have put in written form and I would like to read it into the record:

With regard to the Fourteenth Schedule in Bill H7 dealing with the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, may I submit that I support the principal of the bill, but it appears to me that certain provisions need careful review and study and I refer particularly to Annex "A" Prohibited Zones.

First of all and apart from the Convention, under Part VIIA (b) of the bill, oil pollution in inland, minor or other waters of Canada—under section 28 immediate provision can be made for the protection of the coastal waters of Canada with regard to oil pollution, so our objections would apply to certain parts of Annex "A" of the Convention, which defines Prohibited Zones. First, Prohibited Zones in relation to tankers shall be all sea areas within fifty miles from land. It appears to me that would designate Canada's position in that we would be protected from pollution to any area within fifty miles of land by the provisions of Section I.

Then comes certain exceptions to the general rule—paragraph "a"—The Adriatic Zones. This is in the Mediterranean Sea and it involves Yugoslavia and Italy. The treaty empowers these countries to deal between themselves in their own interests. I can see no objection to this paragraph and note that it gives a latitude for adjustment by the two governments concerned.

Then (b) The North Sea Zones. This zone shall extend a distance of one hundred miles from certain countries in Europe. I think that is the area between Norway, Sweden, Denmark and Britain, and perhaps Holland. I do not think there is much objection to that.

Then we come to (c) The Atlantic Zone. This is the zone that I think should give us concern. It is as follows-"The Atlantic Zone shall be within a line drawn from a point on the Greenwich meridian 100 miles in a northnorth-easterly direction from the Shetland Islands; thence northwards along the Greenwich meridian to latitude 64° north; then westwards along the 64th parallel to longitude 10° west; thence to latitude 60° north, longitude 14° west; then to latitude 54° 30' north, longitude 30° west; thence to latitude 44° 20' north, longitude 30° west; thence to latitude 48° north, longitude 14° west; thence eastwards along the 48th parallel to a point of intersection with the 50-mile zone off the coast of France. Provided that in relation to voyages which do not extend seawards beyond the Atlantic Zone as defined above, and which are to ports not provided with adequate facilities for the reception of oily residue, the Atlantic Zone shall be deemed to terminate at a distance of 100 miles from land." This is a very extended zone and you will note it comes as far west as 30° north longitude. Evidently it was thought advisable to protect the coast of northern Europe this distance, which is roughly over one thousand miles. In this zone the dumping of oil from ships is prohibited. I can see no objection to that, except that what is not dumped in that area must be dumped in other areas and it is on the sea lanes between northern Europe and ports in Canada and the northern United States. Canada is only protected to the extent of fifty miles from land. Off the Canadian coast are the greatest fishing banks in the world. I refer to the Grand Banks off Newfoundland, the St. Pierre Bank and the Banks along the Nova Scotia coast, including Georges Bank between the United States and Nova Scotia, at the entrance to the Bay of Fundy. With a fifty mile prohibited zone all these waters would be subject to oil pollution and it is shallow water. This convention will become the law of the countries subscribing to the agreement and it will be for the direction and information of ship masters at sea and the prohibited areas are closely defined. A shipmaster on reading the law would immediately find that he must keep well clear of the North European coast but that he can pollute the waters with oil to within fifty miles of the Canadian coast. In fact the Convention is rather an invitation for a ship master to do the dumping in the shallow waters, especially of the fishing Banks adjacent to the shores of Canada.

I suppose the Gulf Stream would be given as a reason for putting the line so far from Northern Europe, but the Gulf Stream comes up the United States coast, passes the Nova Scotia coast and in its course reaches the southern edge of the Grand Banks of Newfoundland, which it does in latitude 421 north in summer. In winter it runs about one degree farther south. At this point it is no longer called an ocean current, but is called the Gulf Stream Drift and divides into several branches. The Labrador Current which intercepts the Gulf Stream and flows down the coast of Labrador and Newfoundland southward, passes through the Gulf Stream, then southwesterly, and its effects are felt quite far south on the Atlantic coast, so that currents do affect the coast of Canada, as is shown by the drift ice coming down in the springtime. In addition to this we have the influence of the tides, which rise from east to west and there are extraordinary tides in the Bay of Fundy and on the coast of Maine. So while we are agreeable to the Northern countries of Europe having protection we think our country is entitled to adequate extended protection in the Convention. We are most concerned with our fisheries. It will be noted that the North Sea and European fisheries are well protected.

It will be noted (d) The Australian Zone extends to a distance of one hundred and fifty miles from the coast of Australia. Under the terms of Convention and Article XV—"The present Convention shall come into force twelve months after the date on which not less than ten Governments have become parties to the Convention, including five Governments of countries each with not less than 500,000 tons of tanker tonnage."

On the bill presented, twelve countries have signed, some subject to acceptance and other subject to ratification. Canada has signed subject to ratification and that ratification is the submission now before this committee. Twenty countries have not yet signed. It is significant that the countries immediately behind the one thousand mile protection area have signed, all conditionally, but the United States, France, Portugal and the Government of the Union of Soviet Socialist Republics have made no response and they all carry on fishing off the Canadian coast in the North Atlantic and naturally would be for protection of those areas.

I think that more consideration and some delay might be quite salutary in regard to this Convention, and it may be that we should ask for better terms before ratification by Parliament. There are provisions in the treaty of this, but they are apt to be difficult, especially after signing.

I believe it has been claimed that the United States would be more inclined to accept the fifty-mile restricted area, therefore we should submit. While I think on the east coast at least the American conditions are different, in that the Gulf Stream flowing north is nearer to their shores, I do think they are greatly interested in the fisheries of the North Atlantic bordering on the coast of Canada, and it seems to me we should present this feature most strongly to our American friends. It seems that others are getting what they desire, and there is no reason why we should not put forward strongly our own interests to protect our adjacent waters and the particular resources contained therein. If the Americans want a fifty-mile limit on their coast, why should we object, and, on the other hand, why would they object to ample provision for Canada?

This treaty, while salutary, is not the last word; there are other ways to protect our waters from ships using our ports which would pollute our fishing grounds, but I believe the treaty is the answer, if we get proper consideration.

TRANSPORT AND COMMUNICATIONS

This bill originated in the Senate and we have not the advantage of any discussion from the House of Commons, nor have we any detailed information on the discussion in the Convention. That being so, it is more important that we pass it along after most careful consideration, because there is no basis for a review. It is our first, and maybe will be our last, look at the bill. It is a Government bill and for that reason we want to be careful, so I suggest that we put a provision in the bill that the Convention come into force by proclamation of the Governor-in-Council. That will show our signal to the Executive Branch of the Government that there should be mature consideration, with some delay, and perhaps negotiation, before final commitment.

At the moment we do not know if all the signatories will carry through, although we believe it is eminently favourable to the countries of Northern Europe. Some of the most important countries, from our point of view, have not indicated; even conditionally, their position. However, I think it is well to leave the last word for the Executive.

Now, Mr. Chairman, I quite see the conditions. I think that we in the senate are here for the purpose of advising and assisting in legislation. I do not want to unduly oppose a bill that is introduced by the government, but I think that the best way to keep the matter in our own hands until proclamation is for the bill to come into operation on the proclamation of the Governor in Council, and I so move that the resolution before the committee be amended to say that this bill will come into force on proclamation by the Governor in Council.

Senator FARRIS: The bill, or the convention?

Senator KINLEY: Not the bill, only that the convention shall come into force. We have a letter from the Minister saying that it is important. All right, it is important, but it is still in our hands as advisors to the Government of Canada on this important legislation.

Senator FARRIS: May I ask the honourable senator a question? I was not quite clear as to your position, and that is why I put this question. Is it your opinion that the treaty as far as it goes is beneficial, or is it your opinion that the treaty in its present form is harmful to Canada?

Senator KINLEY: I think the convention in its present form is unfair to Canada, and the only reason it has been put up before this committee that we should accept it immediately is that the United States has a 50 mile limit.

Senator FARRIS: You do not quite answer my question.

Senator KINLEY: No, I do not answer yes or no, because I say that the convention is the answer, that I say that we are here to look after the terms of the convention, and there are certain terms that need further consideration.

Senator FARRIS: Assuming this is the best at present that we can get, is it your opinion that it is harmful or beneficial?

Senator KINLEY: Well, all I say is this, I would like to leave it to the Minister to see if he cannot do better, because there is provision whereby we can ask for anything, and if others object we can get it, but because the United States at the Gulf Stream in cleaning at their shores within a few miles wants a 50 mile, I don't think Canada should be subject that condition.

Senator POWER: I would like to hear my friend Senator Roebuck on this proposition that we should delegate our powers. Here we are agitating about a treaty and handing it over to the Minister. I do not think much of the treaty if we are going to have a lot to say on it and then leave it to the executive. I would like to hear what Senator Roebuck has to say.

Senator HAYDEN: May I ask Senator Kinley a question? If this convention is the best we can get now, in its present terms, do you say we would be better off without it? Senator KINLEY: I would say yes to that. But I also say, let us take time to swallow it before trying to digest it; let us see that the lower house is in favour with what we say; let us give the Minister a chance to go into the question of this convention more fully with his colleagues.

Senator HAYDEN: But I am asking for help, and you know more about this operation on the east coast than I do. What I want to find out is, if this is the best we can get are we better off without it?

Senator KINLEY: We may be better off, because if we hold out we may get something better. Let us not take a half loaf because that is all that is offered to us. There is no hurry about this thing. It won't come into force until two years after it is signed; there are other features of shipping which don't come into force for a year after. What is to be lost by passing this along for further consideration, by way of a safeguard? It is somewhat like having an auditor come in to go over the books: If Parliament after it has gone over it thoroughly, thinks it is eminently in the interests of Canada, and we can do no better, very well. That is all I have to say: Give us a chance to let the executive of the government have the last word, after we have approved it.

Senator FARRIS: Does not the government take that position now, when it brings in a government bill?

Senator KINLEY: I don't know. If this bill is passed by us and the government assents to it in the other house, its conditions become law.

Senator Power: This is a government proposal, and we are saying how we feel about it.

Senator KINLEY: Yes, but when the government goes to the country, speakers will say to the fishermen throughout the Maritime area, "This bill passed the House of Commons and it passed the Senate—Kinley was there and he agreed to it without opening his mouth about it."

Senator POWER: I am a hundred per cent in favour of throwing the blasted thing out right now.

Senator BRADLEY: Is it possible to get information from the experts as to what is going to happen to the oil that is presently dumped east of the thousandmile line, and will be dumped west of it under this treaty? We have no information on that at all.

The CHAIRMAN: Do the officials have anything they could usefully say on that feature? The committee will recall that Mr. Cumyn gave evidence at our last meeting; he was the official who negotiated the treaty for Canada. Mr. Cumyn?

Mr. CUMYN: Sir, I have here a map of the world movements of oil which was got out in 1952 prior to the calling of this convention. It will be seen here that there was a movement of 14 million tons going across to the United Kingdom from Venezuela; that movement goes more or less northeast across the Atlantic. I don't think, sir, that any tanker on that route would deviate toward Newfoundland in order to escape dumping its oil in the prohibited zone, because the deviation would be too far and certainly would entail too much sacrifice for the tanker.

Senator VIEN: Will you tell us what you are reading from?

Mr. CUMYN: This document is a report got out by a committee appointed by the British government to investigate the problem of pollution.

Senator VIEN: What is its title?

Mr. CUMIN: It is entitled "Report of Committee on Prevention of Pollution of the Sea by Oil".

Senator VIEN: And the date?

TRANSPORT AND COMMUNICATIONS

Mr. CUMYN: 1953. This report has come to be known as the Falkner Report.

Senator KINLEY: How far north will that ship go in its passage?

Mr. CUMYN: I think it would be better if I showed you the routes, Senator.

The CHAIRMAN: Is that the principal movement of oil across the Atlantic, Mr. Cumyn?

Mr. CUMYN: That is one of the movements.

Senator KINLEY: That protected zone goes down to latitude 40, eastward along the 48th parallel to the intersection of the 50 mile zone off the coast of France. That ship in its passage will go 100 miles into that area, on its way to England. I think you would agree with that?

Mr. CUMYN: Yes, but that ship will not deviate and go within 100 miles of Newfoundland.

Senator KINLEY: She might.

Senator BRADLEY: Where will the oil go once it is dumped there?

Mr. CUMYN: I think the argument here is that we should have a 100-mile zone. The point I am trying to make is that these tankers on that run will not go anywhere near the 100-mile zone, which you gentlemen are proposing. In that respect a 100-mile zone would not be helpful. What we would require here is a complete western Atlantic zone, in order to take care of this tremendous flow of oil to the Atlantic seaboard, and which is reaching the shores of Newfoundland.

I found it very difficult to convince the American delegates that we should have even a 50-mile zone, because evidently they are going to have a hard time selling this convention to the American shipping interests. The American shipping interests had a very strong voice at this convention, although it was an undercover voice. They own a good many ships under the Pan-American flag, and even though they did not appear at the conference, they had a strong voice there.

For us to go ahead over their objection and ask for a 100-mile zone, would only render more difficult the task for the American delegates to put this convention across.

Senator KINLEY: But our 100-mile zone will not interfere with the Americans; we would not hurt them with that proposal.

Mr. CUMYN: No, but I am trying to point out that a 100-mile zone is not going to help Newfoundland with respect to the flow of oil in the Gulf Stream.

Senator KINLEY: If a ship is going directly from Venezuela to England, it will not affect Newfoundland; it goes too far east to enter this zone.

Mr. CUMYN: Yes.

Senator KINLEY: But we must think of the traffic between England and Canada, between Canada and England, between the European countries and to the United States.

Mr. CUMYN: Well, sir, there is no heavy flow of oil between England and Canada; that is not the main oil route.

Senator KINLEY: But there is a flow of ships.

Senator ISNOR: What is the next route?

Mr. CUMYN: The next route is some 48 million tons annually which go from Venezuela in the direction of Portland, Maine. You will see that comes very far south of Newfoundland, and a 100-mile zone around the coast of Newfoundland would not help much.

Senator KINLEY: That is the Portland pipeline?

Mr. CUMYN: Yes.

Senator ROEBUCK: If 50 miles will do us any good, won't 100 miles do us more good?

Mr. CUMYN: Carry that argument further, and you might ask for a 150 miles.

Senator BRADLEY: We are entitled to something, because the fact is that the oil is going in on the Newfoundland coast today.

Senator ROEBUCK: You have not answered my question: Is a 50-mile zone any good?

Mr. CUMYN: Yes I believe it is.

Senator ROEBUCK: Then why is a 100-mile zone not better?

Mr. CUMYN: I might say that a 100-mile zone might be better, but it must be borne in mind that if this convention is not signed by the United States il will never come into force. I may add that similar conferences have bogged down and produced no convention because the delegates have not been able to agree on important considerations as to the foundation of a proper convention.

The CHAIRMAN: And now you have the United States agreeing to 50 miles, which is as far as they have ever gone, and you say, let us get that now.

Senator KINLEY: I think that you will admit to me that the tankers going to Portland to feed that Montreal pipeline could be a menace to the coasts of Maine, New Brunswick and Nova Scotia, especially in view of the 45 to 60 foot tides in the Bay of Fundy. The Americans are eminently interested in any difficulties there, especially around the George's Bank, where their vessels frequent as a fishing grounds, and which is in the direct path of tanker ships calling at Portland.

Mr. CUMYN: I will admit that, but we found it difficult to persuade the Americans to approach this conference in a favourable mood at all. They were more or less against it.

Senator KINLEY: You thought they were wrong, especially around the Bay of Fundy, didn't you? You know the Bay of Fundy pretty well?

Mr. CUMYN: Yes sir, I do.

Senator KINLEY: There is located the place where the highest tide in the world comes in, and it runs in and out every 12 hours. It runs across the George's Bank, it is in the line of our migrating fish, the herring and the mackerel that come up the coast, as well as surface fish, and that is the very important part of it, that Bay of Fundy area.

Mr. CUMYN: May I respectively suggest that you are assuming that there is heavy pollution on the Bay of Fundy and we have no proof of that.

Senator KINLEY: The tankers are going to Portland and that will affect the Bay of Fundy.

Mr. CUMYN: I have spent some time on the beaches of the Bay of Fundy and I have never seen anything like the pollution to be found on the beaches of Britain and France.

Senator BRADLEY: What is the pollution there? What actually does it do on the beaches of Britain and France?

Mr. CUMYN: The number one nuisance is that it spoils beaches and kills sea birds, and some people claim that it kills spawning beds of fish.

Senator BRADLEY: Well, that is exactly what it is doing in Newfoundland today.

Senator ROEBUCK: May I ask this question? In your opinion would it be easier to extend the zone of 50 miles to 100 miles or greater as against getting 100 miles in the first instance. Do you think it would be easier to extend that zone later on to a 100 miles than to get the 100 miles in the first instance?

Mr. CUMYN: I do, sir. I think that if I had insisted on the 100 miles in the first place that the Americans would have found it more difficult to get their Government to accept this convention.

Senator KINLEY: Why?

Senator ROEBUCK: Do you think that having succeeded in getting the 50 miles it might not be so difficult in future years, after they get used to it, to extend it some few more miles?

Mr. CUMYN: Yes, sir. I may add that in my opinion from what I have seen of this pollution business we should make every effort to deal with our own domestic waters.

Senator KINLEY: We have got that, no question about that.

Mr. CUMYN: Yes, we have, and then we should move on to our 50 miles limit and endeavour to police that and I can tell you it is going to be a very difficult business to do it.

Senator KINLEY: You are not going to police it, the policing is going to be done by the ships themselves. Every ship has to carry a log book which he brings in and shows to the customs. We are not going to police it, the policing is going to be done by the crew.

Mr. CUMYN: After 10 years at sea I am sorry I do not agree with you.

Senator KINLEY: But you have unions now you did not have then.

Why do the Americans object to agreeing to 100 miles?

Mr. CUMYN: Well, sir, it is because a tanker, as you know, is worth \$4,000 to \$5,000 a day to operate, and any inconvenience or delay to that tanker is going to cost the owner money and the tanker owner is not going to spend money unless he is driven to it, and he has a very strong voice in the American shipping world.

Senator KINLEY: That is the man who does not want to protect the ocean but wants to protect his own business.

Mr. CUMYN: He is mostly interested in operating tankers.

Senator BRADLEY: And does not care who he hurts.

Senator KINLEY: As a seafarer naturally he wants to discharge into smooth water, he does not want to discharge into the rough water in the middle of the ocean, that is another factor.

Senator ROEBUCK: Would you explain why ships do discharge?

Mr. CUMYN: Well, a tanker discharges its oil cargo in port and as soon as it does it turns around immediately and heads out to sea. It is important that it get back to sea immediately, it cannot stay at the dock without losing money, and wash out its tanks. It does that when it goes to sea. The tanks are hosed out with hot salt water and it pumps that water and oil into the sea. Under the recommendations of this report the tankers would have adopted a procedure whereby they dump their oil, the washings of their tanks, into a slop tank in the tanker and let it lay there for 14 hours until it is separated by gravity, then dump the water out and retain the oil for ultimate disposal ashore.

Senator KINLEY: The agreement says that the principal ports must construct places in which they can dump this oil in the ports.

Mr. CUMYN: Not for tankers, though, that is for dry cargo ships. This procedure laid down in this report was what should have been adopted by the conference, but it was opposed by the Americans, backed up by other countries owning tankers.

74222-5

Senator VIEN: Outside of the oil carriers what are the interests who would be opposed to more stringent regulations?

Mr. CUMYN: Well sir, it was the World Tanker Interests dominated by the Americans that opposed the regulations.

Senator VIEN: That is not an answer to my question. I am asking you who, outside of the oil carriers are opposed to more stringent regulations.

Mr. CUMYN: There are no other interests besides the tanker owners.

Senator VIEN: Are the interests of the tanker owners so strong that they can overcome all the interests of all other groups in the United States and in Canada?

Senator HAYDEN: Just their own country would be enough.

Senator VIEN: Yes, but the witness has mentioned the opposition that came through the United States and the influence would seem to bear on the Government of the United States to refuse to accept more stringent regulations.

Mr. CUMYN: Yes, sir.

Senator VIEN: Then, would you say that the other interests could not have a voice strong enough to overcome that of the tankers?

Mr. CUMYN: Well sir, I would say so, based on my experience at that conference.

Senator ROEBUCK: We all know the effect of pressure groups in the United States. We have seen something of it here. And here we have a pressure group that has a great deal of money involved, very strong, and I can see them getting their own way irrespective of anybody else, riding roughshod over them.

Mr. CUMYN: I may say, sir, that many of the tankers of the world flying flags of convenience, such as those of Panama, are owned by American capital, and therefore, their representations were all with the Americans.

Senator KINLEY: That's because we do not protect our merchant marine.

Senator REID: May I ask if there is any large movement of oil by tankers up the St. Lawrence?

Mr. CUMYN: That movement is comparatively small. It is not a dense movement. You will see that it is not even given any recognition on this map.

Senator KINLEY: There are other types of ships and of course they will come under it after a while.

Mr. CUMYN: Well, sir, other types of ship are the dry cargo ships, which burn oil under their boilers, and carry that oil in their double-bottomed tanks. On alternative trips they carry ballast water in those tanks, and when they come to port to take a cargo they pump that ballast water out, and that ballast water is contaminated. Now I am sure that we can take care of those ships with our fifty mile zone.

Senator KINLEY: The witness seems to be dealing altogether with the Atlantic coast. This affects the Pacific coast also. Now there is the salmon fishery in British Columbia. Salmon is a migratory fish. I saw the other day where Peru stuck their line out 200 miles, and arrested a ship invading their fisheries 200 miles at sea, and imposed a fine; and that is an international route over which there is no problem. On the Pacific coast, which the United States is worried about, the current comes the other way.

The CHAIRMAN: Is not the answer that there is very little movement of oil along the Pacific coast?

Mr. CUMYN: Comparatively, sir. Before attending the conference I went through all our pollution files of the department, going back many years, and all of the complaints resulted from more or less local pollution in Canada, ships dumping oil within our own domestic waters. We are not suffering to any extent as far as I know from oil dumped outside our own domestic waters.

Senator KINLEY: How far do they think we can put our line to protect domestic waters without a treaty?

Mr. CUMYN: Well, I am not able to define that.

Senator KINLEY: Suppose we declared that the line for pollution of waters adjacent to our shores is 50 miles, don't you think we could do that?

Mr. CUMYN: I don't know, sir. I am not a lawyer.

Senator KINLEY: Well, the Americans can now fish within three miles of our coast, but a Canadian dragger has to go out 11 or 12 miles.

Senator VIEN: Are any steps taken to prevent pollution in our domestic waters?

Mr. CUMYN: Yes.

Senator VIEN: What are those steps?

Mr. CUMYN: We are going to prohibit entirely the discharge of oil into our own domestic waters.

Senator VIEN: Is there already a regulation in effect, or has it been put into effect?

Mr. CUMYN: That is to be in effect.

The CHAIRMAN: If we pass this statute.

Senator BRADLEY: That is the three mile limit you are talking about.

Senator REID: That answer gives rise to the further thought, what about pollution by chemicals? We had a case at the coast where a ship wanted to discharge some chemicals, and we told them that they would have to go at least 40 or 50 miles out to sea to do it. Oil is just one of the pollution agents. Have you given that matter any thought?

Mr. CUMYN: No sir.

Senator REID: Chemicals could be more injurious to fish than even oil is. Mr. CUMYN: The pollution of our waters by chemicals from ships has not come to my attention.

Senator REID: It is time you gave some thought to it.

Senator BRADLEY: Have you any idea or is there any means by which your department could find out where that oil is coming from that is going in on the Newfoundland coast today? Certainly we are not producing it.

Mr. CUMYN: I telephoned our representative in St. John's, Newfoundland. One of the gentlemen here referred to the Portuguese and Spanish trawlers which apparently might dump oil that could pollute the Newfoundland shores. You must remember that the only ships that we are concerned with are tankers and ships which burn oil under their boilers. We are not concerned with Diesel ships, because they, in the main at least, are burning a lighter Diesel oil which is not persistent and which is not counted as a polluting oil.

Senator KINLEY: The Portuguese ships are mostly Diesel, are they not?

Mr. CUMYN: Yes. Therefore, they are not in what we may call the "guilty" class. They go up to Greenland the biggest part of the year. After a few months in front of Newfoundland they go up to Greenland, so they are not a very big menace.

74222-51

Senator BRADLEY: They have not signed the treaty either.

Mr. CUMYN: Well, sir, in so far as their trawlers and fishing boats are concerned, unless they are of a class that are burning oil under the boilers which they are not, in the main—they are not a menace.

Senator KINLEY: Not as big a menace.

Senator BRADLEY: What is the telegram you received in reply?

Mr. CUMYN: "Your telephone call follows the general opinion that beach deposits are not spasmodic and cannot come from south, prevailing current around Newfoundland being Labrador current from the north". I talked to our man and endeavoured to get information from him as to where this spasmodic oil is coming from, but he has not been able to give me an opinion.

Senator BRADLEY: He doesn't know.

Mr. CUMYN: I doubt, sir, if anybody really knows. It is a thing that has got to be investigated.

Senator BRADLEY: We want to find out.

Senator ISNOR: The witness has given us information as to two routes. Is there a third and more northerly route?

Mr. CUMYN: No, sir. There is one route coming straight across the Atlantic from the Middle East to Portland, Maine.

Senator ISNOR: What is the quantity that comes over?

Mr. CUMYN: That is 9 million tons a year. There are two routes going northeast across the Atlantic, with 16 millions and 9 millions tons a year respectively. Those are the main routes across the Atlantic.

Senator ISNOR: Is there a route north of Portland carrying any great quantity?

Mr. CUMYN: No.

Senator HACKETT: The oil comes from Portland to Montreal by pipe, does it not?

Mr. CUMYN: Yes.

Senator BRADLEY: Witness, can you tell me whether any quantity of oilpolluted water is brought north by the Gulf Stream and along the American coast? Is there any information on that point?

Mr. CUMYN: No, sir, there is not. According to these reports the greatest distance that oil has actually been traced is 150 miles.

Senator KINLEY: You have got a thousand mile protection against the British Isles.

Senator BRADLEY: Why is that?

Senator KINLEY: Because they asked for it.

Mr. CUMYN: The depth of ships going along that thousand miles is very great.

Senator BRADLEY: If oil only travels a hundred miles, I do not see why the limit is pushed out half way across the Atlantic. The Gulf Stream runs along the northeast coast of America to within about 200 miles of Newfoundland, to the southeast of the island, where it meets the Arctic current on the Grand Banks. Where it goes to, the Lord only knows. Where does that oil go? It doesn't die.

Senator KINLEY: They tell me there is a vortex in the Sargasso Sea that is usually very much polluted with oil, and after a time it gets hard, and that the whales will eat it.

Senator BRADLEY: That is somewhere around the Equator? Senator KINLEY: No, near Bermuda.

Senator BRADLEY: The Sargasso?

Senator KINLEY: Southeast of Bermuda.

Senator REID: Have you any information as to how long oil stays on the water as oil once it has been poured onto the sea?

Mr. CUMYN: According to this report the greatest distance oil has been traced is 150 miles. I do not say that is the greatest distance it will travel.

Senator REID: That is from the time it is poured out of the ship? Mr. CUMYN: Yes.

The CHAIRMAN: Does it gradually coalesce with the sea and become neutralized?

Mr. CUMYN: It does spread out and become thinner and thinner.

The CHAIRMAN: And gradually disappears?

Mr. CUMYN: No, it remains.

Senator ROEBUCK: It would evaporate in time, would it not?

Mr. CUMYN: Not the persistent oil.

Senator FARRIS: It gets so thin that it becomes harmless.

Mr. CUMYN: No, sir, it still remains. That is why it is called persistent oil. I will say that it spreads out so thin that the ships engaged in following it in order to produce this report were unable to follow it any longer because of weather conditions and other factors that spread it out.

Senator VIEN: Is there any factual evidence with respect to the current that carries oil to North Atlantic seashores?

Mr. CUMYN: We know that the Gulf Stream washes the shores of northern Europe and we know that the oil is going up on those shores in great quantities.

Senator BRADLEY: At that rate it is being carried a couple of thousand miles.

Senator KINLEY: The Gulf Stream comes up the United States coast, passes the Nova Scotia coast and in its course reaches the southern edge of the Grand Banks of Newfoundland. At this point it is no longer called an ocean current, but it is called the Gulf Stream drift and divides into several branches. One goes north and one goes as far as Nova Zembla and another to the Azores. The current runs four or five miles an hour on the American coast but when it gets overseas it is imperceptible. It runs in places within 35 miles of the American coast. It also goes eastward south of Sable Island, which is a fishing ground area.

Mr. CUMYN: Then we should make every attempt to come to an agreement with the Americans.

Senator KINLEY: I think so, and it is always well to agree before final settlement.

Mr. CUMYN: May I suggest the idea that we should have asked for a 100-mile zone—

Senator KINLEY: I did not say 100 miles. I only compared. I said they had 150 miles in Australia. I say that next to England we have the most important problem of any country, because of our fisheries.

Mr. CUMYN: I think, sir, that our pollution problem cannot compare with the pollution problem they are undergoing in northern Europe.

Senator KINLEY: I said that. I said "next to England".

Mr. CUMYN: I think we must agree that if we are going to do anything about this pollution business we should come to some agreement. If your province is suffering from oil discharge it is a discharge in the Gulf Stream a long way from Newfoundland, far more than 100 miles off the American seaboard.

Senator KINLEY: The Gulf Stream runs across the lower end of the Grand Banks.

Mr. CUMYN: The oil is being discharged in that Gulf Stream, not a hundred miles from Newfoundland.

Senator BRADLEY: It goes as far north as Bonavista in the summertime.

Senator KINLEY: What do you say about the Bay of Fundy?

Mr. CUMYN: I spent a few years there, as you know, and I never saw any sign of oil pollution on the beaches.

Senator KINLEY: How long have we had the pipe line from Portland which brings oil into Canada?

The CHAIRMAN: Since 1940.

Senator KINLEY: That is not very long. I suppose, Mr. Cumyn, you have not been to sea for five or ten years. You are Chairman of the Steamship Inspection Service, are you not, sir?

Mr. CUMYN: Yes.

Senator KINLEY: That is a very important job but you know you have the Bluenose down there in the Bay of Fundy, and it is pretty difficult waters. You know that.

Mr. CUMYN: I have not been to sea sir, but I have been stationed at Saint John and I have been up and down the beaches of the Bay of Fundy and I have never seen any pollution. Therefore I say that as far as I am aware we have not got a pollution problem in the Bay of Fundy.

Senator POWER: I am puzzled to know what effect our action of withholding assent would have on the American authorities. I understood from the letter of the Minister that it would have some effect if we refused to sanction this treaty, that it would have some effect on the American position. Would it?

Mr. CUMYN: In my opinion, sir, the more difficult we make the provisions of this convention; that is to say, the greater we extend our limits the more difficult it will be for those sections of the American people who are in favour of the convention to put it across. The objections which will be raised by the shipping industry will be that much greater.

Senator KINLEY: Why?

Senator POWER: Do I understand their shipping interests have acquiesced in this 50-mile limit?

Mr. CUMYN: Not officially. The Aemricans came to the conference with the avowed intention of restricting the conditions as much as possible.

Senator POWER: Is there any assurance that this treaty will be assented to? Mr. CUMYN: Not the slightest.

Senator POWER: Notwithstanding the compromise which I take it the Canadian people made with their American vis-à-vis to settle on fifty miles.

Mr. CUMYN: That is right.

Senator POWER: But the influence which you mentioned is still strong and not entirely in favour of any restriction whatsoever. Am I right in that?

Mr. CUMYN: I would say so but I may add that Adminral Sheppard of the United States Coast Guard, who represented the American contingent, made the claim several times that they had solved their pollution problem in the United States and that they are not suffering from pollution.

Senator Power: How did they solve it?

Senator HACKETT: They sent it to us.

Mr. CUMYN: They claimed they were not suffering from pollution, that by publicity and by bombarding ship owners with pamphlets they were able to persuade the ships coming into American ports not to dump oil on their beaches. I myself have visited New York harbour and I can say definitely they have not solved their pollution problem. We also know they have not solved it in Florida. So I feel they will come back to the next conference and possibly these people suffering from pollution there will have a stronger voice at that time.

Senator POWER: I take it from what is being said here that the northeastern states would suffer more from this than other seaboard states. Is there a strong body of public opinion in favour of stringent measures in regard to this problem?

Mr. CUMYN: I should think there is but they did not appear to be organized enough to have a strong voice at this conference.

Senator KINLEY: Mexico has not signed, has she?

Mr. CUMYN: No.

Senator KINLEY: There is a problem with the tourist trade down there, with their beaches being contaminated by the Gulf Stream running north, because of oil, I suppose, coming out of the Gulf of Mexico, and you can see that they have the Gulf Stream to follow, and the oil flows away, and that they do not have the problem that we have. I do not see why they should object to our having that protection.

Mr. CUMYN: The American objection is that the greater the limit the more inconvenience and delay to the ship owner, and the ship owners have a strong voice on this continent, whether we like it or not.

Senator VIEN: Should we not lend our support to a system which would fight this injury being done by the money and oil interests which goes above the interest of the fishermen and so many other branches of the community?

Mr. CUMYN: May I suggest that refusing to sign this convention is not going to be an effective way of fighting it, in my opinion. I should say the way would be to sign the convention, police it as well as we can, and then we will go to the next conference armed with the fact, if it is a fact, that the limits which have been given to us are not sufficient. We will have actual experience to show that.

Senator ROEBUCK: When will the next conference take place?

Mr. CUMYN: It is hoped that the next conference will take place within the next three years.

Senator VIEN: What steps are actually being taken to determine these currents which bring oil to the shore?

Mr. CUMYN: Well, sir, our Hydrographic Department knows all about our currents: they can supply us with very good maps of currents.

Senator VIEN: But I am speaking of actual pollution, and from what sources.

Mr. CUMYN: Sir, no steps have been taken towards that end yet.

Senator VIEN: Do you intend taking steps?

Mr. CUMYN: Yes, sir.

Senator Bradley: If this treaty goes into effect, is it a fact that the oil pollution area, if I may call it so, is concentrated and pushed farther into the northwest Atlantic?

Mr. CUMYN: No, sir.

Senator BRADLEY: Well, sir, it is certainly not in the eastern end of the Atlantic any more.

Mr. CUMYN: But, sir, as a shipping man you can see quite clearly that no tanker, at a cost of four or five thousand dollars a day, is going to deviate from its course simply to avoid dumping oil into the sea.

Senator BRADLEY: That is not my point. They want to be allowed to dump east of this line in future.

Mr. CUMYN: Yes, sir, but the main tanker routes are not coming anywhere near Newfoundland.

Senator BRADLEY: Then what is the line where it is for?

Senator REID: May I ask what machinery is being set up for enforcement?

Mr. CUMYN: That is a difficult question. You would have to seek the cooperation of the R.C.M.P. and the navy and the air force; and if there is oil coming out of the shores of Newfoundland we will have to take out boats, and try to face it.

Senator BRADLEY: As I have said, the fact is you may not be getting any oil in Fundy, but we are in Newfoundland. It may not be coming in every day—you say spasmodically—but complaints are made about it, and scores of fishermen have told me they have found hundreds of these dead birds on the beach literally covered with oil.

Mr. CUMYN: But if that oil is coming from the American seaboard and dumped on the Gulf Stream of the American seaboard we have to come to an agreement in a zone off their shore.

Senator BRADLEY: You do not know where it is coming from, from the start.

Mr. CUMYN: But if we find that it is coming up from the Gulf Stream the Canadian Government cannot demand anything without getting an agreement from the Americans.

Senator BRADLEY: I agree with that, but you are not going to get a zone off our seaboard without getting an agreement from us, and surely we are just entitled to protect our own people as the Americans are, even though we do injure some of these tankers.

Mr. CUMYN: Are you certain that a zone off our own shores would protect Newfoundland in view of the fact that the main flow of oil does not come near Newfoundland?

Senator BRADLEY: I do not know anything about that. I know we are getting oil there.

Senator KINLEY: We are listening to an expert who knows this thing, I think, pretty well. Of course, he has a different objective from we who are trying to protect our interests on the Atlantic coast. But my amendment says, in effect, "Yes, we will approve this as the best we can get, but we leave it to the experts, to the Minister and the Executive Branch of government, and we say that this will come into force when you say so, and we are satisfied that you have done the best you can." I think that is the best solution.

The CHAIRMAN: I have some slight difficulty about your amendment, Senator Kinley. You have not put it in the form of an actual amendment to this particular section of the statute. It would need to be rather carefully devised; it would certainly need a re-drawing of the present Section 495A. Would the committee be willing, knowing the sense of Senator Kinley's amendment, which will be an amendment to the motion now before the house, to amend the first five lines at the top of Section 495A?

Senator KINLEY: Supposing, Mr. Chairman, the resolution of approval was dealt with, would you permit another resolution and then say that it shall come into force when approved by proclamation?

The CHAIRMAN: Well, that is my difficulty, Senator Kinley. The way the Act is phrased now, I think you would have to amend the resolution. Now, the resolution now before the committee provides for the approval of the convention and gives the Governor in Council the right to make regulations to it. Now, what you would have to do would be to move a sub-amendment authorizing the Governor in Council to bring the convention into force by Order in Council when he feels like it, and thereafter give him the power to make resolutions. That would be the sort of amendment you would have to move, would it not?

Senator KINLEY: We say this is the best we can do, and move it with reservations. It goes to the Commons, the Commons does the same, and then we say this shall come into force by Order in Council—by proclamation. And if the government does not want to proclaim it, it can hold it off for a year or two. When it is the law of the land they are open to criticism if they do not carry through.

The CHAIRMAN: I am going to ask the Law Clerk what form the amendment should take to bring into effect what Senator Kinley asks.

Mr. HOPKINS (*Law Clerk*): I think the fact is that the passage of this bill is not ratification of this convention. It will remain as an executive act to be done by the exectuive even after this bill is passed.

Senator ROEBUCK: Has our executive not signed the convention?

Mr. HOPKINS: The effect of this bill is to give approval to the convention; and as you mentioned, Senator Roebuck, I think the ratification is an executive action which will have to be taken by the government, and in my opinion Senator Kinley's point was made by ratification.

Senator ROEBUCK: I asked twice, but did not get a reply. Has this convention been signed by the executive?

Mr. HOPKINS: It has been signed subject to ratification.

Senator KINLEY: What does signed subject to ratification mean?

Senator ROEBUCK: I asked a question twice but I didn't get a reply: Has this convention been signed by the executive?

Mr. HOPKINS: It has been signed, subject to ratification.

Senator KINLEY: What does "subject to ratification" mean? We have some countries signing subject to acceptance and others signing subject to ratification. What is the difference?

Mr. HOPKINS: There is no difference. Some countries prefer to call it acceptance, while other countries prefer to call it ratification, but there is no difference at all. In either case it is subject to executive action.

Senator BRADLEY: When ratified by us, is it not then the law?

Mr. HOPKINS: No.

Senator KINLEY: When it is accepted and passed by Parliament and assented to by the Governor General, does it not then become law?

Senator FARRIS: No; there seems to be a little confusion, Mr. Chairman. In this country and I think in all of the British countries, the Governor—that is Her Majesty the Queen or the Governor General acting on her behalf—has the power to make a treaty; and of course, she acts through her advisers, the executive, and they can enter into a treaty with another country which, between the two nations, is binding.

But in order to give full effect to the treaty we must have a statutory law, making it the law of the country. That is entirely different from the procedure in the United States. When a treaty is made there it is not binding internationally until it is ratified by the Senate—I think it requires a twothirds majority—and under the constitution of that country once that is done, it is not only binding internationally but it is also binding as the law of the country. But that is not our point here. The Governor General has not ratified this treaty.

Mr. HOPKINS: He has signed the convention subject to ratification, and that means subject to ratification by the executive.

Senator ROEBUCK: Not by Parliament.

Mr. HOPKINS: That is right. Parliamentary approval is not actually required, constitutionally.

Senator ROEBUCK: Then it has not been signed.

Senator FARRIS: It has not been signed and is not internationally binding by Canada yet.

Mr. HOPKINS: That is right.

Senator FARRIS: And will not be until this executive action of ratification takes place. All Canada has done, as I understand it, is to admit that we approve of this convention, subject to ratification.

Senator KINLEY: Are we not dealing with ratification now?

Senator FARRIS: We have nothing to do with ratification; that is an act of the executive government. The government can do it without our ratification, but the usual practice is to ask for the approval of parliament before doing it.

Senator BOUFFARD: Do you mean to say that if we pass this bill with the amendment to the effect that the convention is approved, that it is not the law? What if the Governor General refuses to sign it?

Senator FARRIS: Of course we can pass an act in Canada making it law, in Canada, whether we are a party to the treaty or not; but in order to make this treaty internationally binding, it is not done by Parliament but by Her Majesty.

Senator BOUFFARD: Why should we pass a section by which we approve of the treaty?

Senator FARRIS: That gives sanction to the Government to make it binding.

Senator BRADLEY: It is a treaty that can be denounced by either party, even if it is internationally binding?

Senator FARRIS: That depends on the terms of the treaty.

Senator KINLEY: Within five years.

Senator FARRIS: If you denounce before the time passes, you violate the terms of the treaty, and the remedy for that is war.

Senator POWER: May I ask what the executive would do if we refused to ratify the convention?

Senator FARRIS: I would expect they might not accept the actions of the Senate, because the Senate cannot defeat the Government.

Senator POWER: But if we refuse to pass it, it would not go beyond us. Senator FARRIS: If the House of Commons refused to ratify or sanction it, naturally the government, which depends on a majority in that house, is not going to bind the country in a treaty against the will of that house.

Senator KINLEY: Would it not be a vote of non-confidence if the Commons turned it down, but it would not be if we turned it down?

Senator Power: It would not get beyond the Senate, if we turned it down. Senator KINLEY: No.

The CHAIRMAN: I think with respect to the specific point of Senator Kinley's amendment, all we are asked to do by the amendment to 495A is to approve the treaty. We don't ratify it as Parliament; the actual act of rati-

fication is done by the executive under Article XIV of the convention, at page 14 of the Schedule, subsection 3 of which reads:

Acceptance shall be effected by the deposit of an instrument of acceptance with the Bureau, which shall inform all Governments that have already signed or accepted the Convention of each signature and deposit of an acceptance and of the date of such signature or deposit.

In other words, it still lies with our own executive after Parliament has expressed its approval of the treaty to advise the date as and from which it shall be accepted. So, it is still within the power of the executive.

Senator KINLEY: Do you say they have the power to pass it?

The CHAIRMAN: Yes.

Senator KINLEY: Even after we have passed it and the Governor General has signed it, the Government still has a choice?

The CHAIRMAN: All we are asked to do is express our approval of the treaty.

Senator KINLEY: But we are passing a bill.

The CHAIRMAN: That is not done as an act of ratification. The Governor General is asked to ratify, and he can ratify as soon as Parliament passes the bill, or wait a year, or never do it.

Senator BOUFFARD: Then the amendment suggested by Senator Kinley is useless.

The CHAIRMAN: That is what I am coming to.

Senator KINLEY: There is no protection.

The CHAIRMAN: There is no protection; he can do it anyway.

Senator KINLEY: Do you say that this bill before us, the second part of which contains the convention, if it is passed by us today, goes to the Commons and is passed there, comes back to the Senate and is assented by the Governor General, that it is not then the law of Canada?

The CHAIRMAN: Exactly. All the Governor General does when he assents to the bill is approve the fact that Parliament has approved the treaty and has authorized the executive to ratify as and when the executive wishes to do so.

Senator BRADLEY: But is it not then the law of the land?

The CHAIRMAN: Senator Farris is a much greater constitutional authority than I. Would he agree with my views on it?

Senator FARRIS: I am afraid, Mr. Chairman, I did not follow all you have said. As far as I did follow it—and I am not responding on the suggestion of being any special authority on constitutional questions, although Senator Roebuck and I were in touch with some of these problems in the Privy Council, both being on the same side. . .

Senator ROEBUCK: Some twenty years ago.

Senator FARRIS: And we have learned a lot since. I repeat, treaties are not made by Parliament; they are made by the Crown in our case, and by a similar authority in other countries. If this treaty is to become internationally binding, it can only be done by ratification by the Governor in Council. There is no question about that; I am sure every lawyer agrees.

Senator VIEN: May I ask a question? What is the legal or constitutional necessity of our ratifying this convention?

The CHAIRMAN: We are not ratifying it; we are approving it.

Senator FARRIS: There is one other point. As I pointed out in my earlier remarks, while a treaty is binding internationally, it cannot be enforced against the citizens of Canada unless it is backed up by a statute. In other words, unless the Canadian Parliament is prepared to implement what the Government has done, we would have a very embarrassing situation of an international obligation being created on behalf of the people of Canada, which the people of Canada refuse to accept. That is one reason why if you are to have a treaty, you should have it in legislation to make it good if it is to be binding on all of the people.

The other reason, and I dealt with this when I made a statement on second reading, is this, that in the form it was, before this amendment that was read by the Chairman this morning, the approval of Parliament was only by inference, and those of us who discussed it felt if you are going to approve it come out and say so openly. Now that is not necessary constitutionnally. The Governor in Council can say, "Never mind Parliament, we are going ahead and do it" but that would not be good constitutional procedure and would have very serious repercussions on the Government, so naturally the Government want to have the assurance of Parliament, particularly the House of Commons on whom they depend for their majority, to say, if you bind Canada by an executive act of approval we endorse you and give you our blessing. That is the situation.

The CHAIRMAN: May I ask this question, dealing specifically with Senator Kinley's amendment: Does the fact that we pass Section 495A approving of the convention, in any way bind the Governor in Council as to the time he will ratify this convention?

Senator FARRIS: No.

The CHAIRMAN: Is that not the answer?

Senator KINLEY: Well, naturally, pressure cannot come with that rider on, but pressure can come on the Government if it is an open statement. That is to say if the act is there and on the books and it is the law of Canada "Why don't you enforce it?" If we put that note on it that is shall come into force on proclamation then they say, "This is our job and we do it when we think it is good to do it".

Senator Isnor: Mr. Chairman, would you read the amendment to Section 495A again.

The CHAIRMAN: The amendment to Section 495A reads as follows:

495A. The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, set out in the Fourteenth Schedule is approved, and the Governor in Council may make regulations

(a) to carry out and give effect to the provisions of the Convention while in force in respect of Canada, such regulations to conform in all respects to the said provisions.

Senator BRADLEY: The only legal effect of that is to allow the Governor in Council to make regulations to prosecute me.

The CHAIRMAN: And to sign the convention when he wishes to.

Senator BRADLEY: He can do that now.

The CHAIRMAN: Yes.

Senator ROEBUCK: But he would feel more comfortable after we give it approval.

Senator VIEN: Section 495A does not call upon us either to approve or to reject?

The CHAIRMAN: No, we approve.

Senator FARRIS: We just say to the Government we think this is a good idea.

Senator VIEN: Where do we fit in then?

The CHAIRMAN: In the amendment to Section 495A, Senator Vien, which I have just read, and which I will read again as follows:

495A: The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, set out in the Fourteenth Schedule is approved, and the Governor in Council can make regulations

(a) to carry out and give effect to the provisions of the Convention while in force in respect of Canada, such regulations to conform in all respects to the said provisions.

Senator BRADLEY: There you are into it:... "and the Governor in Council may make regulations..."

Senator FARRIS: That approval has no legal effect whatever except to tell the Government to go ahead and do it.

Senator BRADLEY: In the second part of it it has. It gives the Governor in Council power to make regulations under which they can prosecute me.

Senator KINLEY: That is our signal. We give to them a signal as advisors, and an important signal it is. We must be careful about this. We say do not approve it until we are satisfied.

Senator BOUFFARD: I think that the Governor in Council should only be authorized to sign the treaty. Will this make the regulations enforceable?

Senator ROEBUCK: I want to say, Mr. Chairman, that I agree with your statement with regard to this matter. What Senator Farris has been saying is exactly in line with what I said in the house, that is a division of responsibility between the sections of Government. Now in this instance somebody has signed the treaty when they were negotiating and he made it subject to ratification by the executive. That ratification I am told has not yet been given. Now, then, we have a bill before us which says that we approve the action of the Government. That means nothing beyond giving the Government a little better assurance to go ahead and carry it out. But we also see in the bill that we give the Governor in Council power to pass the legislation necessary to implement the terms of the treaty. That is all we are doing. Now then the amendment in my judgment would do as the Chairman has said, nothing, It would only empower the Government to bring the bill into effect on proclamation which would be just about the same thing as the Government ratifying the treaty except that so soon as we pass the bill we give the Government power to pass the regulations, but so far as the treaty is concerned it would make no difference whatsoever, and then when you add to that the fact that the bill gives the Government power to make regulations within the area of our own limits, it is necessary that we pass the bill in order that they may do that, and therefore, it would be inadvisable to hold up the bill and would accomplish nothing beyond obstructing our own regulations within our own limits. I am in favour therefore, of going ahead.

Senator KINLEY: Mr. Chairman, I think we have accomplished our purpose. This legislation must now go to the House of Commons, and the Government has been alerted, and my amendment has no virtue and is unnecessary. I will not press it unless some other members of the committee want it pressed.

Senator ROEBUCK: Your amendment has no effect but your memorandum has.

The CHAIRMAN: Honourable senators, has Senator Kinley the consent of the committee to withdraw his amendment?

Agreed.

Senator BRADLEY: I am sure the chairman of our Steamship Inspection Division will see to it that we have another crack at it within three years.

Senator KINLEY: The House of Commons has yet to have a crack at it.

The CHAIRMAN: Is the committee ready for the question on the amendment. I will read it again:

495A: The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, set out in the Fourteenth Schedule is approved, and the Governor in Council may make regulations

(a) to carry out and give effect to the provisions to the Convention while in force in respect of Canada, such regulations to conform in all respects to the said provisions.

The remainder of 495A, Paragraphs (b) and (c) stay as they are. Carried.

The CHAIRMAN: Now, we have come to the end of the discussion on the point of oil pollution. We do have to consider a number of other sections of the bill. You will recall that at our first meeting we dealt with 17 or 18 sections but that we reserved section 2 for further consideration. Section 2 is a section which increases from 10 to 15 tons tonnage of ships which are not obliged to register under the act.

Questions were raised on that section first of all as regards the effect of that amendment in regard to sick mariners benefits and fishermen's bounty, and secondly, as to whether it would not be advisable to provide specifically that ships under 15 tons may register even if they are not bound to. Now we asked the Deputy Minister to investigate that, and I am going to ask him to come here and give us the result of his investigation as to the comments that were made on Section 2 at our first meeting.

Mr. J. R. BALDWIN (*Deputy Minister*): Thank you, sir. We did investigate and consult with the other departments concerned on the problems that have been referred back to us in connection with this particular section of the bill; and with your consent I would like to read a memo into the record which we prepared on these points.

With reference to the proposed amendment to section 8 of the Canada Shipping Act, which would have raised the lower limit of compulsory registration from 10 to 15 tons, the Department of Transport has consulted with the Departments of National Health and Welfare, Fisheries and National Revenue in regard to Sick Mariners Benefits, Fishermen's Bounty, and Sales tax, with the following results,—

(1) Providing ships between 10 and 15 tons may register voluntarily, as is the Department's intention, there would be no change in the position of such ships vis-a-vis Sick Mariners Benefits or Fishermen's Bounty;

(2) As regards sales tax benefits, the Department of National Revenue has agreed that it will relate the sales tax to the 10-ton figure so that the situation will remain unchanged in this regard.

That, I think, deals with the various questions of benefits.

On the legal point as to whether any amendment to the clause proposed in this bill is necessary to insure that voluntary registration may be continued, we did examine this matter and have consulted with the Department of Justice and our law officers, as well as those of the Department of Justice, advise us that no further amendment for this purpose is considered necessary. Perhaps the best thing I can do in that connection is to refer to the existing section 7 of the Canada Shipping Act, which states, in the second part, that any British ship not registered elsewhere within the Commonwealth may be registered in Canada. So that provision for voluntary registration already exists under the Act.

The CHAIRMAN: That is, regardless of title?

Mr. BALDWIN: Regardless of title.

Senator REID: Is one of the reasons for the increase from 10 to 15 tons to allow a greater number of fishermen with their boats to operate without a licence?

Mr. BALDWIN: From the legal requirement of registration, that is the case.

Senator VIEN: There is a general easing of the legal requirements with regard to registration to allow a somewhat larger number of boats in this category to operate without the legal necessity of having to go through the process of registration.

Senator KINLEY: I think that that memorandum is the perfect answer.

Senator BRADLEY: I think so, too.

Senator VIEN: Does this apply to foreign ships?

Mr. BALDWIN: No, this applies to the Canadian shipping only.

Senator KINLEY: Senator Roebuck brought up the question whether under clause 2, amending section 8 of the Act, ships not exceeding 15 tons have the privilege of registering or not registering. I would like to know whether exemption is obligatory, or can they go in if they choose to do so?

Mr. BALDWIN: The Act states that any ship may be registered, and it then goes on to state that ships over a given tonnage must be registered.

Senator VIEN: Would that have the effect of allowing foreign ships to ply in Canadian waters without registration?

Mr. BALDWIN: That has no bearing on that point. This relates to Canadian registry.

Senator KINLEY: Up to 15 tons.

The CHAIRMAN: Within that exception is the committee ready to pass Section 2

-Section agreed to.

The CHAIRMAN: Subject to correction, I think we have dealt with the bill as far as Section 18.

Mr. BALDWIN: That is what my record shows.

The CHAIRMAN: I think we can proceed fairly rapidly on the remaining sections.

Clause 19: "Barge, etc., used to carry crew making voyages over 15 miles from land".

Senator KINLEY: That is all right.

The CHAIRMAN: What is the explanation?

Mr. BALDWIN: This, sir, is an additional safety requirement with regard to barges and scows, which we think is necessary from the point of view of inspection, due to a series of rules which have been adopted.

Senator BRADLEY: You are quite right there.

Senator FARRIS: Does it relate to vessels carrying passengers?

Mr. BALDWIN: Not passengers. Barges that do not carry passengers are covered by this clause.

-Section agreed to.

The CHAIRMAN: Clause 20: "Repeal of and substitution for old Section 478".

Mr. BALDWIN: The main purpose of this is to bring the clause up to date to take account of certain newer types of equipment that are now to be found on the vessels involved.

The CHAIRMAN: Compressed air tanks and so on?

Mr. BALDWIN: Rock drills, floating pile drivers, and so on. -Section agreed to.

The CHAIRMAN: Clause 21 repeals Section 479 of the Act.

Mr. BALDWIN: That is consequential upon the preceding sections. —Section agreed to.

The CHAIRMAN: Clause 22: Section 481 repealed and replaced. What is the purport of that?

M. BALDWIN: I believe that also is a consequential change relating to towed powered barges. They are dealt with under the amendment you have just approved, and therefore will not require to be dealt with under this clause.

-Section agreed to.

The CHAIRMAN: Clause 23 deals only with fire extinguisher equipment. That seems to be a very small.

Mr. BALDWIN: It is a provision for inspection of certain fire extinguishing equipment.

The CHAIRMAN: In addition to other matters requiring to be inspected. That seems simple enough.

-Section agreed to.

The CHAIRMAN: Clause 24 is a penalty clause which is replaced.

Mr. BALDWIN: The only change in the penalty clause is the elimination of the minimum fine of \$50 which now exists. It was considered desirable by our own officials and those of the Department of Justice that the minimum fine should be eliminated to allow the magistrate in dealing with these cases a certain degree of flexibility.

The CHAIRMAN: That is a relieving section. Shall section 24 carry? Hon. SENATORS: Carried.

The CHAIRMAN: Next is section 25—Certain Products not considered Cargo. Senator REID: Is the word "steamships" used broadly in the act? Mr. BALDWIN: Oh yes.

Senator REID: Is it confined to steamships?

Mr. BALDWIN: It is an exclusive term.

Senator KINLEY: Anything that is not a sailing ship is a steamship.

Mr. BALDWIN: That is right, sir.

The CHAIRMAN: I see that the object of section 25 is to exclude from cargo the products of sealing ships.

Mr. BALDWIN: The reason for that is that with the Act of Union between Canada and Newfoundland we acquired as part of Canada a sealing industry which we did not have previously, and we consider that it should be given identical treatment with the whaling industry. Therefore this would provide for that.

The CHAIRMAN: Do you approve of that, Senator Bradley?

Senator BRADLEY: I do not see any reason why I would have any objection to that. It seems fair.

The CHAIRMAN: Shall section 25 carry?

Hon SENATORS: Carried.

The CHAIRMAN: Section 26 is next. It has to do with pollution of the sea by oil. It concerns section 495A, and we have dealt with that.

Next is section 27, an exemption.

Mr. BALDWIN: Sir, this is because of a typographical or drafting error which occurred on a previous occasion. We have not been able to ascertain whether it was a drafting or typographical error, but at the present time it reads "This section" and it was intended all along to read "This subsection".

The CHAIRMAN: Shall section 27 carry?

Senator ISNOR: Just a minute, please. Mr. Baldwin, would you enlarge on that just a little bit?

Mr. BALDWIN: You mean the purpose of the amendment?

Senator ISNOR: Yes. It has to do with coastal trade.

Mr. BALDWIN: Mr. Chairman, would you care to read the section?

The CHAIRMAN: Yes. The present subsection (3) of section 558 reads:

"This Minister shall not direct the holding of a formal investigation in respect to any shipping casualty occurring to or in respect of a ship registered in any part of Her Majesty's dominions other than Canada save at the request, or with the consent, of the government of that part in which the ship is registered."

Then: subsection (4) provides: "This section does not apply in the case of a shipping casualty that occurs on or near the coast of Canada or occurs in respect of a ship wholly engaged in the coastal trade of Canada".

Senator VIEN: It means that subsections (1) and (2) as well as (3) will apply to the exemption.

Mr. BALDWIN: No, it is the reverse of that.

The CHAIRMAN: Subsection (1) and (2) really do not deal with this matter at all. It is merely subsection (3) which deals with this question of investigation, and subsection (4) provides that this subsection shall not apply in certain cases.

Senator VIEN: I see. Subsection (3) alone will apply.

Senator KINLEY: Will not apply.

The CHAIRMAN: It provides that subsection (3) alone will not apply 'in certain cases.

Senator VIEN: Instead of the whole section.

The CHAIRMAN: Yes.

Senator KINLEY: And that means the coastal trade is open to inspection of our own authorities.

Mr. BALDWIN: Yes.

Senator ISNOR: That is the answer I wanted.

The CHAIRMAN: Shall section 27 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Next is section 28. I think there was some comment on that in the debate in the Senate. This appears to widen the power of the Governor in Council to make orders and regulations.

Senator BRADLEY: Is it not a rather curious verbiage? Ie refer to the words "inland, minor or other waters". Inland seems to be the more important one, minor the lesser important one and "other" would include the rest. Would that take in coastal waters?

The CHAIRMAN: The present act reads: "minor waters". Mr. Baldwin, why do you put in "inland, minor or other waters"?

Mr. BALDWIN: Because the problem concerning the regulations of small pleasure boats, which has become an increasingly complicated matter, is made somewhat more difficult by the fact that the present limitation applies to minor

74222-6

waters, which are defined in the act, and at the present time we are not able to do anything outside the minor waters as defined.

The CHAIRMAN: The committee would be interested in a definition of minor waters. As defined in the act it reads: "'minor waters of Canada' means all inland waters of Canada other than Lakes Ontario, Erie, Huron (including Georgian Bay), Superior and Winnipeg and the River St. Lawrence east of a line drawn from Father Point to Point Orient, and includes all bays, inlets and harbours of or on the said lakes and said Georgian Bay and such sheltered waters on the sea coasts of Canada as the Minister may specify;"

Senator KINLEY: Inland waters includes the Great Lakes except the parts of Michigan.

The CHAIRMAN: Minor waters excludes them.

Mr. HOPKIN: Inland waters is also defined.

The CHAIRMAN: Yes. Inland waters is defined in the act as follows: "'inland waters of Canada' means all the rivers, lakes and other navigable fresh waters within Canada, and includes the River St. Lawrence as far seaward as a straight line drawn from Cap de Rosiers through West Point Anticosti Island extending to the north shore;" In other words, inland waters includes minor waters.

Senator KINLEY: Yes.

The CHAIRMAN: Why do we not strike out the reference to minor waters? Senator HACKETT: What about the Saguenay?

Senator BRADLEY: I do not like the terms "other waters".

Senator HACKETT: Is the Saguenay a minor water within the definition?

Senator BRADLEY: Why do they not say "all waters" and be done with it?

Mr. BALDWIN: This is again a drafting point on which Mr. Dreidger advised us. Our objective is the coverage of the waters of Canada. The best explanation I can give is that this was a definition offered to us, which was all inclusive, which we wanted.

Senator BRADLEY: It is curious wordage but if you are satisfied with it then it is all right.

Senator HACKETT: I am curious to know if the Saguenay River is an inland water.

Mr. BALDWIN: I believe it is a minor water.

Senator KINLEY: I do not know about that. Read the definition again of minor waters.

Mr. BALDWIN: "'minor waters of Canada' means all inland waters of Canada other than Lakes Ontario, Erie, Huron (including Georgian Bay), Superior and Winnipeg and the River St. Lawrence east of a line drawn from Father Point to Point Orient..."

Senator KINLEY: I see.

The CHAIRMAN: Does the committee approve of subsection (a)?

Senator STAMBAUGH: Mr. Baldwin spoke about navigable waters and also about pleasure boats. Do not the regulations with regard to pleasure boats come under provincial jurisdiction?

Mr. BALDWIN: No, sir.

The CHAIRMAN: We have dealt with subsection (a) of the proposed section 4. Subsection 4 (b) reads: "For the licensing of operators of vessels on such waters . . .". That is new. I see the explanatory notes set out that

the purpose of the amendment is to cover other waters of Canada and to provide for the licensing of operators of vessels on such waters.

Mr. CUMYN: This, as a whole, deals with the small boat class and the regulation thereof, and it has been built up gradually, as honourable senators will know, over a period of years, in an attempt to cope with this problem. Since World War II there has been a rapid, almost fantastic growth of pleasure boating in Canada, in Canadian waters on the coast, but particularly the inland waters. We have had great difficulty in dealing with this from the safety point of view, and the efforts we have made hitherto, while I hope not entirely fruitless, have not been adequate in the opinion of many who have made representations to us, to cope. with this problem of the small pleasure boat activity that has developed in the country. We have had a great many representations from a great many areas in Canada that something more and better should be done to provide that safety exists here. In some cases these representations have taken the form of demanding that the government set up a very extensive and expensive marine search and rescue operation for the benefit of the private pleasure boat operator, but it was considered not desirable or feasible to do that sort of thing. We have, as honourable senators who may have participated in the last amendments to this Act know, provided for the licensing of boats in cases where they use a motor of more than 10 h.p., and this has to some extent aided in dealing with the situation, but basically the problem still exists that a great many of these owners of pleasure boats have very little adequate knowledge of what you might call the rules of the road as far as marine traffic is concerned and have a tendency to display a certain recklessness in their activities. Perhaps we concern ourselves too much with the boat operator who does that sort of thing, but at least we are gravely concerned with the people in the vicinity who might suffer thereby, and after a very extensive series of consultations with the Royal Canadian Mounted Police, who have been attempting to administer the existing regulations, and after receipt of representations, we came to the conclusion that the only proper solution is to deal with the problem on a basis comparable with that existing in road traffic, and that is the licensing of the small pleasure boat operator, because that will enable us to establish direct contact with him and at least ensure that in some fashion we can put in his hands information regarding the rules of the road for boating.

Senator BRADLEY: And do those rules you propose to make vary?

Mr. CUMYN: They will be based upon the standard traffic marine rules, sir.

Senator BRADLEY: Seafaring rules?

Mr. CUMYN: Seafaring rules.

Senator KINLEY: Fundamentally, it means keep to the right.

Mr. CUMYN: Fundamentally, it will mean keep to the right, yes.

Senator REID: Will those rules apply in the same manner as to motor cars? Mr. CUMYN: That would be our hope. We propose to have consultation with municipal, and possibly provincial bodies, as well as with a number of important existing organizations, in an attempt to establish an educational process, but basically the intent is to try to ensure that the man driving a pleasure boat knows all the rules of the road, so to speak, at sea.

Senator BRADLEY: I agree with that completely.

Senator STAMBAUGH: Does that include outboard motors?

Mr. CUMYN: Outboard motors are a most troublesome problem, and they would have to be included to be effective at all. I speak with feeling, because

I am the owner of a rather powerful outboard motor, and I know how dangerous they can be.

Senator STAMBAUGH: Do you make regulations as to what speed a boat may go up to a dock or what speed it may go within a certain distance of a swimmer?

Mr. CUMYN: The present regulations do not go into that degree of detail, and I am not sure it will be necessary. There are a good many regulations which are put forward, without making an amendment to the Act, which would cover that type of detail. If necessary, we may have to, but our basic objective is to teach what the rules of the road are.

Senator STAMBAUGH: The reason I brought that out with regard to provincial jurisdiction is that in Alberta this year the Provincial Government passed a lot of rules in regard to boating.

Mr. CUMYN: We have written to the province about that and obtained a copy, and we are aware of that, Their rules are much more stringent and go into much more detail than we have hitherto contemplated, but while I am not a lawyer and perhaps should not express an opinion on constitutional matters, I believe it is the opinion of our legal adviser that there may be some doubt, or is some doubt, as to the constitutional validity of those regulations, and that is properly a federal responsibility.

Senator KINLEY: Are you not going to charge a license fee for the licensing of a boat?

Mr. CUMYN: Not unless it is forced upon us by circumstances beyond our control.

Senator KINLEY: If it was so and you had the power, you might do so? Mr. CUMYN: Yes, I would think we would, sir.

Senator KINLEY: This does not apply to sailing vessels?

Mr. CUMYN: It does not apply to sailing vessels.

Senator KINLEY: Only to power boats?

Mr. CUMYN: Yes. If any license fee would become necessary it would be as a token payment to cover the ministerial costs.

Senator KINLEY: It does not apply to fishing vessels?

Mr. CUMYN: Not to fishing vessels.

The CHAIRMAN: Why does it not apply to fishing vessels? Is there a definition here that excludes fishing vessels and sailing yachts? The Act looks pretty broad, it says here, "Operation of vessels in such waters." What is the definition of "vessels" in the Act?

Mr. HOPKINS: It is defined in the Act as follows: "Vessels includes any ship or boat or any other description of vessel used or designed to be used in navigation."

Mr. CUMYN: It would cover in that case, the master of the fishing vessel. I think that could or would be taken care of in the same manner that we thought we would have to do to be able to take care of your seafaring man in a harbour or on a coastal area who does operate a small craft but is experienced in marine matters now; and in consultation with our officials we came to the conclusion that there are two methods under the regulations. First, that type of man would qualify for whatever license may be required so easily that it would be no problem for him.

Senator BRADLEY: I agree.

Mr. CUMYN: And, secondly, if necessary, could be exempt anyway under the regulations.

Senator BRADLEY: Why should he be exempt, if a fellow is going fishing, and he does not know his business?

Senator KINLEY: Sailing yachts, of course, are not in the class with motor boats. Often a man goes out and wants his wife to take the tiller, which is often done, or a man wants his boy to learn to sail, and it seems to go a long way to interfere with the operation.

The CHAIRMAN: Of fishing vessels?

Senator KINLEY: Fishing vessels and yachts.

The CHAIRMAN: The intention is to deal with power boats, is it not?

Mr. CUMYN: The intention is to deal with power boats of the pleasure class. That is basically the objective we have.

Senator BRADLEY: Why not the sailing boat, too? I cannot see any distinction between them, one can be as dangerous as the other.

Senator KINLEY: Well, I don't know.

Senator HACKETT: What happens in the case of a sailing boat if it is given an auxiliary engine?

Mr. CUMYN: If it is given an auxiliary engine it would become a vessel under the definition of this clause, I understand.

Senator KINLEY: The power boat must keep clear of the sailing boat, under the rules of the road; she has the right-of-way, and therefore, I cannot see the danger. As far as the sailing boat is concerned, it seems to me to be going a long way to interfere with a man who is sailing a little yacht, or skiff, or a little boat.

Senator BRADLEY: I don't agree with you. I can see circumstances where they could be a danger—a fellow who might not understand how to handle his boat. You know, they are not as easily handled in many respects as a motorboat.

Senator KINLEY: The Department does not wish to include fishing vessels? Senator BRADLEY: That is up to them.

Senator KINLEY: The Chairman thinks the law might make them do it. The CHAIRMAN: It empowers the Governor General with respect to sailing boats and motorboats.

Senator KINLEY: We don't have to do it until regulations are made.

The CHAIRMAN: No.

Senator KINLEY: Then it is in their hands.

The CHAIRMAN: Shall Section 28 carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 29?

Mr. BALDWIN: This involves a legal point which I am not sure that I can explain adequately. It is a case where there are certain reciprocal relationships between our own shipping act and other merchant shipping regulations within the Commonwealth. This was put in at the suggestion of the Department of Justice, in the interests of clarification in relation to United Kingdom legislation.

Senator VIEN: To bring it in line with United Kingdom legislation?

The CHAIRMAN: I think I can see the reason behind it, Senator Vien. Subsection 3 reads:

A reference in this section to any part of Her Majesty's dominions other than Canada shall be construed as including a reference to the United Kingdom.

I suppose, technically, the United Kingdom is not a dominion of herself.

Senator VIEN: What becomes of Southern Ireland? The CHAIRMAN: That is not one of Her Majesty's dominions.

Senator KINLEY: The United Kingdom and Northern Ireland.

Senator VIEN: It applies only to dominions. What about the colonies? If it said "the Commonwealth", it would be more embracing.

Mr. BALDWIN: I don't know that we have had any problem in this field of registration within the Commonwealth. I think the colonies registration would be identical with the British registration, and that would automatically be taken care of.

The CHAIRMAN: Shall section 29 carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 30 carry? We have already discussed that at length.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Shall the preamble carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill as amended? Some Hon. SENATORS: Carried.

The CHAIRMAN: Thank you, honourable senators.

Whereupon the committee adjourned.

APPENDIX A

MEMBER ORGANIZATIONS OF FISHERIES COUNCIL OF CANADA

Prince Rupert Wholesale Fish Dealers Association, Prince Rupert, B.C. Prince Rupert Fishermen's Cooperative Association, Prince Rupert, B.C. Fisheries Association of British Columbia, Vancouver, B.C. Vancouver Wholesale Fish Dealers Association, Vancouver, B.C. Prairie Fisheries Federation, Winnipeg, Man. Fish Distributors Association of Ontario, Toronto, Ont. Ontario Council of Commercial Fisheries, Port Dover, Ont. Montreal Fish Merchants Association, Montreal, P.Q. Quebec and Northern New Brunswick Fish Producers and Exporters Association, Quebec, P.Q. Quebec United Fishermen, Montreal, P.Q. New Brunswick Fish Packers Association. Moncton. N.B. Canadian Atlantic Salt Fish Exporters Association, Halifax, N.S. Nova Scotia Fish Packers Association, Halifax, N.S. Atlantic Fisheries By-Products Association, Halifax, N.S. Prince Edward Island Fisheries Federation, Charlottetown, P.E.I. Newfoundland Fish Trades Association, St. John's, Newfoundland. The Burin Peninsula Fisheries Association Limited, St. John's, Newfoundland.

APPENDIX B

REPORT OF THE COMMITTEE

WEDNESDAY, May 16th, 1956.

The Standing Committee on Transport and Communications to whom was referred the Bill (H-7), intituled: "An Act to amend the Canada Shipping Act", have in obedience to the order of reference of April 19th, 1956, examined the said Bill and now beg leave to report the same with the following amendments:—

1. Page 3, lines 8 to 13 both inclusive: delete clause 6 and renumber the subsequent clauses.

2. Page 9: delete lines 1 to 5 both inclusive and substitute therefor the following:—

"495A. The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, set out in the Fourteenth Schedule, is approved, and the Governor in Council may make regulations;

(a) to carry out and give effect to the provisions of the Convention while in force in respect of Canada, such regulations to conform in all respects to the said provisions;"

All which is respectfully submitted.

ADRIAN K. HUGESSEN, Chairman.

