INTERNATIONAL MARITIME COMMITTEE

DOCUMENTATION

1977

I

RIO DE JANEIRO

- ENGLISH TEXTS -

XXXIst INTERNATIONAL CONFERENCE
OF THE COMITE MARITIME INTERNATIONAL

RIO DE JANEIRO

- ENGLISH TEXTS -

XXXIst INTERNATIONAL CONFERENCE OF THE COMITE MARITIME INTERNATIONAL RIO DE JANEIRO 25th TO 30th SEPTEMBER 1977

Host Association :

ASSOCIAÇÃO BRASILEIRA DE DIREITO MARITIMO
Avenida Erasmo Braga nº 115
Palácio da Justica - Sala 205 - Corredor C.
RIO DE JANEIRO - BRASIL
Telephone : 231.1047

Conference Headquarters :

HOTEL NACIONAL RIO at RIO DE JANEIRO

Secretariat of the Conference :

XXXIe CMI CONFERENCE
c/o FOCO - Feiras, Exposiçôes e Congressos,
Av. Rio Branco, 143/18º
20.000 - RIO DE JANEIRO - Brasil
Phone : 224-0039 - 224-4511
Cable : THEMUDO - Telex : 02121864 FOCO BR

Agenda :

- Draft Convention on Jurisdiction, Choice of Law and Recognition and enforcement of Judgments in Collision matters.
- Draft Convention on off-shore mobile Craft.
- Charterparty Terms.

PROGRAMME OF THE CONFERENCE

Date	*Hours*	*Session/Function*
September 25 (Sunday)	9.00 to 19.00	Registration of delegates
	18.00	Opening session
	19.00	Welcome cocktail at Hotel Nacional Rio
September 26 (Monday)	9.00 to 12.00	Plenary session with reports from chairmen of International Subcommittees.
	14.00 to 18.00	Meetings of the three International Subcommittees chaired by Nick Healy, Frode Ringdal and Walter Müller.
	21.00	Night race at Jockey Club Brasileiro. C.M.I. prize.
September 27 (Tuesday)	9.00 to 12.00	International Subcommittee meetings (continued).
	14.00 to 18.00	Idem.
September 28 (Wednesday)	—	Drafting. Full day tour to Petropolis or half day boat tour on Guanabara bay.
September 29 (Thursday)	9.00 to 12.00	International Subcommittee meetings.
	14.00 to 18.00	Idem.
September 30 (Friday)	9.00 to 12.00	Plenary session.
	14.00 to 18.00	Idem.
		Closing session.
	20.00	Closing dinner at Rio de Janeiro Yacht Club.

WORKING PAPERS CONCERNING THE SUBJECTS ON THE AGENDA OF THE CONFERENCE

1. *Draft Convention on Jurisdiction, Choice of Law and Recognition and enforcement of Judgments in Collision matters.*

   — Final report of the chairman of the International Subcommittee, Prof. Nicholas Healy (Collisions-26/VII-77).

   — Text of the draft International Convention for the unification of certain rules concerning Civil Jurisdiction, Choice of Law, and Recognition and enforcement of Judgments in matters of Collision. London draft June 16, 1977 (Collisions-27/VII-77).

2. *Draft Convention on Off-Shore mobile Craft.*

   — Final report of the chairman of the International Subcommittee, Mr. Frode Ringdal (Dril. Ves-16/VI-77)

   — Draft Convention on Off-Shore Mobile Craft. Draft of the Working Group of the CMI Subcommittee, revised as of June 15, 1977. (Dril. Ves-17/VI-77).

   — Draft Convention on the unification of certain rules relating to Off-Shore Craft. Alternative text submitted by Norway, Draft revised as of June 20, 1977. (Dril. Ves-18/VI-77).

3. *Charterparty Terms.*

   — Report and draft text of the Chairman of the International Subcommitee, Dr. Walter Müller. (C/P-Terms-4/VII-1977).

   — Memorandum dated February 7, 1977 : « Charterparties - Definitions » by the Chairman of the Working Group, Mr W.A. Wilson. (Appendix 1 to C/P-Terms-4).

   — Draft of the International Subcommittee dated June 2, 1977. (Appendix 2 to C/P-Terms-4).

   — Draft of the International Subcommittee : « The Rio Charterparty Definitions » (Appendix 3 to C/P-Terms-4).

1

COLLISIONS

FINAL REPORT OF THE
INTERNATIONAL SUBCOMMITTEE ON

COLLISIONS

1. *The Background of the Project*

In mid-1974 the International Law Association (ILA) proposed a joint ILA - CMI study of the laws of the maritime States, for the purpose of determining the advisability and feasibility of formulating an international convention designed to minimize conflicts in national laws in such areas as jurisdiction, choice of law, and recognition and enforcement of foreign judgments in collision cases. The Secretary General (Executive) and the Chief Legal Officer reported the proposal to the Executive Council, and at its August, 1974 meeting, the Council decided to recommend its acceptance by the Assembly. Meanwhile, the undersigned was appointed Chairman of a Working Group, and he and the Chief Legal Officer prepared a Questionnaire, which was distributed to the National Associations by the Secretary General (Administrative) in January, 1975. The Council's recommendation was unanimously approved by the Fifth Assembly of the C.M.I. on March 14, 1975.

Constitution of the Working Group was then completed by the appointment of the following members, in addition to the Chairman :

Messrs. J.G.R. Griggs, United Kingdom
A. Stuart Hyndman, Canada
Allan Philip, Denmark
José Domingo Ray, Argentina
Hans Georg Röhreke, Federal Republic of Germany

The Working Group met at London on January 22, 1976, and at Aix-en-Provence on September 8, 1976. A meeting scheduled to be held at Brussels on March 19, 1976 had to be cancelled on account of the death of President Lilar. Two representatives of ILA attended the London meeting as observers. While it was agreed that the CMI and the ILA should work in close cooperation, the formation of a joint committee was found to be impractical, and a separate ILA Committee was therefore formed.

At the conclusion of the Aix-en-Provence meeting, the Working Group submitted its Report, wherein the provisions of the existing conventions relating to collisions were reviewed, the National Associations' replies to the Questionnaire were analyzed, and the following recommendations were made :

(1) That an International Subcommittee of the CMI be appointed for the purpose of drafting a new convention designed to cover (a) the correction of what are conceived to be deficiencies in the existing convention, (b) the recognition and enforcement of foreign judgments, and (c) problems of choice of law;

(2) That with regard to the foregoing the Subcommittee consult with the Legal Committee of the Intergovernmental Maritime Consultative Organization (IMCO) and with the ILA Committee on Collisions;

(3) That the draft convention approved by the CMI Subcommittee be placed on the Agenda of the next Plenary Session of the CMI, scheduled to be held at Rio de Janeiro in the fall of 1977, for consideration and action thereon by the delegates of the National Associations.

The Report was unanimously approved by the Executive Council at its meeting on September 11, 1976, and the undersigned was appointed Chairman of the new International Subcommittee. The Report was then circulated among the National Associations, each of which was invited to appoint a representative to the Subcommittee. The invitation was accepted by 17 Associations, and the following were appointed :

Messrs. Rudi Frenzel, M.L.A. of the German Democratic Republic
J.G.R. Griggs, British M.L.A.
A. Stuart Hyndman, Canadian M.L.A.
R.I. Japikse, Netherlands M.L.A. (1)
Hrvoje Kacic, Yugoslav M.L.A.
Manfred W. Leckszas, M.L.A. of the United States
J. Niall McGovern, Irish M.L.A.
Cläes Palme, Swedish M.L.A.
Allan Philip, Danish M.L.A.
José Domingo Ray, Argentine M.L.A.
Armando Redig de Campos, Brazilian M.L.A. (2)
H. Georg Röhreke, M.L.A. of the Federal Republic of Germany

(1) Prof. Jan C. Schultsz represented the Netherlands M.L.A. at the first meeting.

(2) Dr. J.C. Sampaio de Lacerda represented the Brazilian M.L.A. at the second meeting and Mr. José Rodrigues Negrao represented that Association at the third meeting.

A.A. Starostin, M.L.A. of the Union of Soviet Socialist Republics ([3])
Hisashi Tanikawa, Japanese M.L.A. ([4])
Jacques van Doosselaere, Belgian M.L.A.
Gunnar Vefling, Norwegian M.L.A.
Miss Alexandra Xerri, Italian M.L.A. ([5])

Mr. D.J.L. Watkins was named Secretary of the Subcommittee.

2. *The Work of the International Subcommittee*

The Subcommittee held three meetings. The first, held at London December 10-11. 1976, was attended by Mr. Thomas Busha of IMCO, representing both that organization and ILA, and 14 Sub-committee members, including the Chairman and the Secretary. At that meeting substantial agreement was reached on the scope of the proposed Convention, and some preliminary drafting was accomplished. A report of the meeting was circulated among the National Associations on March 8, 1977.

The second meeting, held at Brussels March 28, 1977, was attended by Mr. Busha, President Francesco Berlingieri, Prof. Jan Ramberg, and 16 members of the Subcommittee. At that meeting a preliminary Draft Convention was prepared and copies were distributed to the delegates to the Seventh C.M.I. Assembly the following morning. An oral report of the work of the Subcommittee was presented to the Assembly by the Chairman, and helpful suggestions were made by delegates representing a number of the National Associations, including those of Belgium, France, Netherlands, Norway, Switzerland and the United Kingdom. Following a full discussion, the Assembly unanimously decided to place the proposed Convention on the Agenda of the 31st Conference of the C.M.I., to be held at Rio de Janeiro September 25-30, 1977.

A report of the second meeting of the Subcommittee, with an edited copy of the Brussels Draft annexed, was distributed to the National Associations on April 26th. The report invited comments and suggestions with respect to the Draft, for consideration at the third meeting of the Subcommittee, to be held at London June 16th. A number of individuals replied, expressing personal views, and official comments were submitted by the Belgian, Brazilian, Japanese and French Associations, although the last was not received until after the June 16th meeting.

At that meeting, which was attended by President Berlingieri, Prof. Ramberg, Mr. Frode Ringdal, Chairman of the International Sub-

(3) Miss Ida Barinova represented the M.L.A. of the U.S.S.R. at the second meeting.
(4) Mr. Tohru Shibata represented the Japanese M.L.A. at the first meeting.
(5) Mr. Enrico Vincenzini represented the Italian M.L.A. at the third meeting.

committee on Drilling Platforms, and 13 members of the Sub-committee, a revised draft was prepared, in the form annexed to this Report. This draft, sometimes referred to herein as the « London Draft », will serve as a basis for discussion at the Rio de Janeiro Conference.

3. *The Existing Conventions*

There is at present no convention governing choice of law in collision cases. Nor is there any convention on recognition and enforcement of judgments relating specifically to such cases, although on February 1, 1971 the members of the Hague Conference on Private International Law (6) concluded a Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. There are also in force a number of special treaties and conventions, *e.g.*, the European Economic Community Convention of September 27, 1968, relating to recognition and enforcement of the judgments of particular States.

There is in force the International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision, signed at Brussels May 10, 1952 (the 1952 Convention). However, that Convention has not been adopted by a number of important maritime States, including Brazil, Italy (6A), Japan, Netherlands, the Scandinavian countries, the United States and the Union of Soviet Socialist Republics.

The 1952 Convention applies not only to collisions, but to damages caused by improper maneuvers, failures to maneuver, or non-compliance with regulations, even when there has been no actual collision (Article 4). It does not affect domestic laws relating to collisions involving warships or vessels owned by or in the services of a State (Article 5), or claims arising from contracts of carriage or other contracts (Article 6), nor does it apply in cases covered by the revised Rhine Navigation Convention of October 17, 1868 (Article 7). Its provisions are applicable as to all interested parties when all the vessels concerned in any action belong to contracting States, provided that each contracting State may make application of the Convention to interested parties belonging to a non-contracting State conditional upon reciprocity, and when all interested parties belong to the same State as the forum, national law, and not the Convention is applicable (Article 8).

An action for collision damage between sea-going vessels or between sea-going vessels and inland navigational craft may not be brought

(6) Austria, Belgium, Denmark, Finland, Federal Republic of Germany, France, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

(6A) It is understood that Italy may soon adhere to the Convention.

except (a) where the defendant has his habitual residence or a place of business, (b) where the defendant ship or a sister ship has been lawfully arrested or security has been furnished in lieu of arrest, or (c) in the case of collisions within the limits of a port or in inland waters, where the collision occurs (Article 1(1)). The choice among these jurisdictions is that of the plaintiff (Article 1 (2)), but a claimant may not bring a further action against the same defendant on the same facts in another jurisdiction, without discontinuing an action already instituted (Article 1 (3)). These provisions are without prejudice to the right of the parties to bring a collision action before a court chosen by agreement, or to arbitrate the claims (Article 2).

Counterclaims arising out of the same collision may be brought before the court having jurisdiction of the principal action (Article 3 (1)), and if there are several claims, any claimant may bring his action before the Court previously seized of an action against the same party arising out of the same collision (Article 3 (2)). The Convention does not prevent any Court seized of an action under its provisions from exercising jurisdiction under its national laws in further actions arising out of the same incident (Article 3 (3)).

The contracting States undertake to submit to arbitration any dispute between States arising out of the interpretation or application of the Convention, without prejudice to the obligations of contracting States that have agreed to submit disputes to the International Court of Justice (Article 9).

4. *The Proposed Draft Convention*

The London Draft consists of a Preliminary Article and seven others, grouped under four titles, (I) Jurisdiction, (II) Choice of Law, (III) Recognition and Enforcement of Judgments, and (IV) General Provisions. These will be discussed in order.

(a) *Preliminary (Article 1)*

In the Subcommittee's view, the proposed Convention should be designed to govern actions for damages (including detention as well as physical damage) suffered by the owners or operators of a vessel, or of property on board a vessel, resulting from a collision or similar incident, such as « crowding », *i.e.*, an improper maneuver, or a failure to maneuver, which embarasses the navigation of another vessel or vessels, and « wash damage » resulting from a vessel proceeding at an excessive rate of speed in a crowded waterway. The 1910 Collision Convention applies to such damage (see Article 13), as does the 1952 Convention, which provides, in Article 4, that the Convention is applicable to damage caused « through the carrying out of or the omission to carry out a maneuver or through non-compliance with regulations even when there has been no actual collision ».

It was proposed that a definition of « collision » should be included in the Draft Convention so as to make it clear that « crowding » and « wash damage » cases were within its coverage, or, alternatively, that Article 1 be worded so that the Convention would specifically apply to actions for damages « arising out of (an incident of) collision or through the carrying out of, or the omission to carry out a maneuver or through non-compliance with statutory or other regulations, even when there has been no actual collision ». It was suggested that the inclusion of the bracketed words « an incident of » would make it possible to substitute « incident » for « collision » throughout the body of the Convention.

Another proposal was that Article 1 (a) be worded so as to apply to « actions for damages and other pecuniary loss caused by one or more vessels to another vessel, and damage to and other pecuniary loss suffered in connection with property on board any such vessel, one at least of such vessels being sea-going, arising out of collision or through the carrying out of, or the omission to carry out a maneuver or through non-compliance with statutory or other regulations, even when there has been no actual collision ».

The consensus was, however, that « crowding » and « wash damage » actions would be embraced by the term « damage caused by one or more vessels ... whether or not a collision has actually occurred », and Article 1 (1) of the London Draft was therefore so worded.

There was some support within the Subcommittee for the inclusion of other types of damage caused by vessels, *e.g.*, damage by explosion, and oil pollution damage when it is not covered by the 1969 Brussels Convention on Civil Liability for Oil Pollution Damage, but the consensus was that the coverage of the Convention should not be extended so far.

The Subcommitee agreed that damage to piers, wharves, bridges and other fixed shoreside structures caused by vessels should not be covered, but that on the other hand, drilling platforms and other mobile floating structures should be included in the term « vessel », as used in the Convention. To insure this result, consideration was given to the addition of a definition reading substantially as follows :

« As used in this Convention the term 'vessel' includes an off-shore mobile structure and any other structure so designed as to be capable of moving or being moved on water ».

Another suggested definition would read :

« For the purposes of this Convention, the term 'vessel' shall include any object intended to float and to be capable of moving or being moved on water ».

Still another proposal was the addition of the phrase « including drilling rigs and other floating structures capable of navigating », following the word « vessels » when it first appears in Article 1 (1).

The Subcommittee finally decided, however, that it would be preferable not to add a definition, and to rely, instead, on the judicial interpretations of « vessel » under the 1910 Brussels Collision Convention. It was felt that the intention to include drilling rigs under the coverage of the proposed Convention could be assured by an appropriate provision in a convention on that type of structure.

The 1952 Convention does not by its terms apply to recourse (indemnity) actions, although conceivably some Courts might interpret « an action caused by one ship to another or to the property or persons on board such ships », as used in Article 4 of that Convention, broadly enough to include such actions. In any event, the Subcommittee were of the view that recourse actions in respect of such damages should be specifically included, and Article 1 (1) was worded accordingly.

Under Article 1 (2) the proposed Convention would not apply when none of the vessels involved was seagoing, nor would it apply to warships or government vessels used exclusively for public purposes, or to claims for damage to property which could be based on contract, *e.g.*, claims against a carrier for damage to cargo carried under a bill of lading issued by or on behalf of the carrier.

Article 5 of the 1952 Convention in effect excludes « warships or vessels owned by or in the service of a State » from the coverage of that Convention. In the Subcommittee's view, this language is too broad, as it would exclude State-owned or operated vessels used for commercial purposes. Article 1 (2) of the London Draft would therefore exclude only « ships of war or government vessels appropriated exclusively to a non-commercial service ».

There was a difference of opinion as to whether the Convention should be made applicable to claims arising out of personal injury and death, and it was decided to leave the question for further consideration at the Rio de Janeiro Conference. If the decision there is to exclude such claims, a phrase such as « or to claims for personal injury or death » should perhaps be added to Article 1 (2).

On the other hand, if it is decided that personal injury and death claims should be included, « persons or » or similar language should be inserted before « property on board any such vessel » in Article 1 (1).

(b) *Title I: Jurisdiction (Articles 2 and 3)*

This Title is designed to replace the 1952 Convention.

The opening phrase of Article 2, « Unless the parties otherwise agree », is intended to have the same effect as Article 2 of the 1952 Convention.

Article 2 (1) (a) corresponds to Article 1 (1) (a) of the 1952 Convention, but is somewhat broader, in that it would permit an action to be brought against an individual defendant wherever he

« resides », and not merely where he has his « habitual residence ». In the Subcommittee's view, in the unusual case of a vessel owned by an individual, the plaintiff should not have the burden of ascertaining which of several residences the defendant might have is his « habitual » residence.

Article 2 (1) (b) is likewise broader than Article 1 (1) (c) of the 1952 Convention, since it would apply to collisions occurring in the territorial sea or in internal waters, whereas Article 1 (1) (c) of the 1952 Convention would apply only to collisions occurring « within the limits of a port or in inland waters ». The term « internal waters », which is used in several recent conventions, would replace the term « inland waters », used in the 1952 Convention.

Article 2 (1) (c) corresponds to Article 1 (1) (b) of the 1952 Convention, with several drafting changes. It is designed to give jurisdiction to the Courts of a State :

(1) Where a vessel involved in the collision is present, and may be lawfully arrested, or

(2) Where a sister ship is present, and may be lawfully arrested, *e.g.*, under the Arrest of Ships Convention, or

(3) Where security is provided to avoid the arrest of a vessel which may be lawfully arrested, or

(4) Where the defendant has property subject to attachment under the law of the State, *e.g.*, the United States and Yugoslavia, whose laws under some circumstances permit attachment, not only of a sister ship, but of other property of the defendant.

The Japanese Association suggested the addition of a State where a limitation fund has been constituted.

Technical problems could conceivably arise under the present wording of Article 2 (1) (c) in States under whose practice an action is commenced *before* an arrest is made, *e.g.*, in England, where an action is commenced by service of a writ on the vessel, and thereafter, if security is not furnished, the vessel is arrested. Similarly, in the United States, an action *in rem* is commenced by filing a « complaint » with the Clerk of the United States District Court, which may be done even before the vessel arrives. This may be followed by an arrest, although in most cases no arrest is made unless it appears that security will not be furnished.

Taking the present wording literally, where security is not furnished in advance, the Court would not have jurisdiction at the time when, in England, the writ was served, or when, in the United States, the complaint was filed, because no arrest would have been made at that time. It is understood, however, that in England the legislation implementing the 1952 Convention has adapted the similar language of that Convention so as to conform to English practice, and presumably a similar accommodation would be made with respect to the proposed Convention.

The problem, which is essentially one of drafting may be given further consideration at the Rio de Janeiro Conference.

The first sentence of Article 2 (2) corresponds to Article 1 (3) of the 1952 Convention. with certain drafting changes. However, under the London Draft. to bring a new action it would not be necessary to discontinue the original action; it would suffice if the first action were simply stayed. Thus, if a plaintiff instituted an action in State A, but decided for good cause to proceed in State B instead, under the 1952 Convention he would first have to discontinue in State A. Under the London Draft, however, he could simply have the action in State A stayed. Then, if prosecution of an action in State B did not prove feasible, *e.g.*, because the defendant could not be served with process in State B. he could ask to have the stay lifted so as to be able to resume prosecution of the action in State A.

The second sentence of Article 2 (2) is of course designed to make a fully satisfied judgment obtained in one State *res judicata* in other States. *E.g.*, if a plaintiff obtained a judgment for £ 100,000 in State A, and the judgment was fully satisfied under the law of State A, he would not be permitted to bring a further action in State B in the hope of obtaining a larger award in that State. There is no corresponding provision in the 1952 Convention.

The sentence will be discussed further in connection with Title III, on Recognition and Enforcement of Judgments.

Article 2 (3) of the London Draft relates to *forum non conveniens* and similar doctrines. There is no corresponding provision in the 1952 Convention. While *forum non conveniens* as such appears to be recognized in very few jurisdictions. *e.g.*, the United States and Scotland, the Courts in certain others, *e.g.*, England,Ireland and Canada, may decline to exercise their jurisdiction under certain exceptional circumstances.

As presently worded. Article 2 (3) would simply confirm any right a Court might have to decline to exercice its jurisdiction; it would not confer such a right on Courts which do not already possess it. There was, however, strong support from Subcommittee members from States where *forum non conveniens* is presently unknown for a provision expressly extending the right to the Courts of all contracting States. This group proposed an addition to Article 2 (3) reading substantially as follows :

> In any event the Court seized of the case may decline jurisdiction in the cases referred to in Paragraph 1 (c) of this Article if in the view of the Court sufficient security has been or will be provided in one of the States provided for in Subparagraphs (a) or (b) of Paragraph 1 of this Article or in the State where the plaintiff resides or has a place of business.

The Danish member suggested that to this language there should be added :

« In the latter case an action may be instituted in the Courts of that State ».

It was suggested that Article 2 (3), as presently worded, might add little of substance; even if Paragraph (3) were deleted there would be nothing in the Draft Convention which would deprive a Court of any discretion it might have under its own law to decline to exercice its jurisdiction, and Courts already familiar with the *forum non conveniens* doctrine would undoubtedly apply it in accordance with their national laws.

The Norwegian member proposed that to discourage « forum shopping » a strong *forum non conveniens* provision be included, possibly in a separate article, and that it be worded as follows :

> If an action has been instituted or arrest has been made at a place referred to in Paragraph 1 (c), and there is no significant link between the collision and the State where such place is situated, the Court of that State shall decline to exercice its jurisdiction if, in the view of the Court,
>
> a) sufficient security for the claim of the plaintiff has been or will be provided
>
> (i) in the State referred to in Paragraph 1 (b), or
> (ii) in the State where the plaintiff resides, or
> (iii) in a State with a closer connection with the collision, and
>
> b) it would be reasonably convenient for the plaintiff to pursue his action before the Courts of such State.
>
> (alternative wording) or
>
> b) the plaintiff can reasonably be required to pursue his action before the Courts of such State.

(There would then follow a paragraph reading as Article 2 (3) is presently worded).

On the other hand, the Belgian, Brazilian and Japanese Associations are strongly opposed to the inclusion of any *forum non conveniens* provision, and the French Association, the only one thus far registering opposition to the Convention as a whole, has done so for the reason, among others, that the proposed *forum non conveniens* provision « would introduce a singularly regrettable element of uncertainty and insecurity ». (7)

The Brazilian Association considers it contrary to the concept of the judicial system to permit a Court having jurisdiction to refrain from dispensing justice to those who seek it from the Court. The Belgian Association's views are similar.

---

(7) The French Association's observations are set forth in greater detail in a document distributed to the National Associations with a letter from C.M.I. Secretariat dated June 15, 1977, under the reference : « Collisions - 25/VI-77 (tra) ».

The Japanese Association believes that *forum non conveniens* would hinder the achievement of uniformity; if each Court wherein an action was brought were to decline to exercise its jurisdiction, a plaintiff would be unable to bring the action in any Court under the Convention. The Japanese Association opposes the concept on the further ground that an appeal taken from a decision declining the exercise of jurisdiction might cause delay in the final resolution of the claim.

Article 3 (1) relates to counterclaims. There was originally some support for the « compulsory counterclaim » concept, *i.e.*, for a provision requiring any counterclaim to be brought in the Court seized of the original action. The consensus was, however, that this might only oncourage the owner of a vessel sustaining minor damage, but anticipating a very heavy claim for damage to the other vessel, to race with the commencement of an action in a forum of his choice, within the confines of Article 2 (1), in order to force the other vessel owner to bring his counterclaim in that forum. It was therefore decided to word Article 3 (1) so as to permit, but not require, a counterclaim to be brought in the Court seized of the original action. Article 3 (1) of the 1952 Convention is to the same effect.

Article 3 (2) of the 1952 Convention permits additional plaintiffs to proceed against an original *defendant* before the Court seized of an action against him, arising out of the same collision. Article 3 (2) of the London Draft, on the other hand, would permit any claim arising out of the same collision to be brought against *any* party to the proceedings before the Court seized of the original action. Thus, if one shipowner were to sue the other in State A, a third party sustaining damages as a result of the collision could bring an action against either or both shipowners in State A.

(c) *Title II : Choice of Law (Articles 4 and 5)*

While the primary aim of the C.M.I. remains the unification of private maritime law, Title II of the Draft Convention is designed to settle the choice of law questions which will continue to arise until unification of collision law can be achieved.

A major step toward unification of collision law was taken when the United States Supreme Court adopted the proportional fault rule in *Reliable Transfer Co. v. United States,* 421 U.S. 397, 1975 A.M.C. 541, thus bringing United States law into line with that of the 1910 Collision Convention States, insofar as it relates to damage to the vessels involved in a both-to-blame collision. However, there still remains one significant difference between United States law and that of the Convention States : under United States law cargo interests in a both-to-blame collision case may still recover in full from the non-carrying vessel, whereas in Convention States they may recover only in accordance with the degree of fault chargeable to the non-carrier.

Aside from this difference with respect to liability to cargo interests, there now remain two basis systems of legal liability in both-to-blame collision cases : (1) the proportional fault system of the Convention States, the United States, and Liberia (because the general maritime law, as announced by the United States Courts, is adopted by Liberia), and (2) the system followed in some Latin American States, whereby in a both-to-blame case the loss lies where it falls, and neither shipowner may recover from the other.

Article 4 would lay down two basic choices of law rules : (1) the *lex loci* would apply to collisions in internal waters or the territorial sea of a State, and (2) the *lex fori* would apply to high seas collisions.

Only two exceptions to these rules would be recognized : (1) if all of the vessels involved were documented (or, in the case of undocumented vessels, owned) in the same State, the flag law would apply, and (2) if all of the vessels involved were documented (or, if not documented, owned) in different States, all of which were parties to a Convention, the Court seized of the case would be obligated to give effect to the Convention.

The primary purpose of the second exception is to require the Court to apply the 1910 Collision Convention when the colliding vessels are documented in States adhering to the Convention. This exception was made because the 1910 Convention provides that it is mandatorily applicable as between contracting States, regardless of the place of the collision.

The Japanese Association was strongly in favor of application of the *lex loci delicti* to collisions in internal or territorial waters, even when they are between vessels of the same flag, unless all of the vessels involved are of 1910 Collision Convention States. The Japanese Association would also prefer a specific reference to the 1910 Convention, rather than a general reference to Conventions adopted by all of the States in which the vessels involved are documented (or, if not documented, owned). The consensus, however, was in favor of the language appearing in the London Draft.

Article 5 specifies the areas to be governed by the law applicable under the rules and exceptions specified in Article 4.

There was of course complete agreement that navigational questions and the like must be governed by the *lex loci delicti,* and that ordinary procedural matters must be governed by the *lex fori.*

The matters to be decided in accordance with the Article 4 formula are in the main substantive. In drafting Article 5, the Subcommittee adapted Article 8 of the Hague Convention on Products Liability and Article 8 of the Hague Convention on Traffic Accidents. However, a number of changes were made, the principal one being the omission of rules of prescription and limitation (Article 8 (8) of the Traffic Accidents Convention and Article 8 (9) of the Products Liability Convention). The consensus was that those questions should be left

to the *lex fori*, although the forum might, under its law of conflicts of laws, apply some other law, *e.g.*, the *lex loci delicti* or the flag law, in deciding them.

It was suggested that there should be included in Item (6) the liability of a principal for the acts or omissions of an independent contractor, but this suggestion was not adopted.

It was also suggested that the proposed Convention should include a provision concerning choice of law with respect to limitation of liability. However, the consensus was that this would more properly be dealt with in a convention of general application, rather than in one relating only to damage caused by vessels as a result of a collision or similar incident.

There was some support for the omission of a list such as that contained in Article 5. Thus, the Japanese Association indicated that it did not consider it necessary to include such a list, and the Brazilian Association suggested that Article 5 simply provide that « The law referred to in Article 4 is the law which governs all the juridical relationships that flow from a collision ».

The Brussels Draft contained an article (former Article 6), which provided : « The application of a law declared applicable under this title may be refused only where such application would be incompatible with public policy ».

At the Seventh Assembly the delegate of the French M.L.A. expressed the view that Article 6 was unnecessary, since no Court asked to recognize or enforce a foreign judgment would do so if it was against the public policy of the State wherein recognition or enforcement was sought. Following this suggestion, the Subcommittee, at its June 16th meeting, agreed that it should be deleted.

It has since been suggested, however, that the article would actually serve a purpose. If it had provided that application of a law « shall be refused » where application would be against public policy, it would clearly have been unnecessary. But the article was not, in fact, so worded. It provided, instead, that application of a law declared applicable under the Convention « may be refused only where such application would be incompatible with public policy ». It thus recognized public policy as the only ground on which a Court would have the right to refuse to apply the law of another State.

Similar provisions are contained in Article 7 (2) (c) of the London Draft, relating to recognition and enforcement of foreign judgments. If Article 7 (2) (c) is considered necessary, it would appear that the deleted article may likewise be necessary. In any event the possibility of reinstating it should be considered at Rio de Janeiro.

(d) *Title III : Recognition and Enforcement of Judgments*
Articles 6 and 7

This Title is perhaps the most controversial feature of the Draft Convention. The members of the Subcommittee were, however, in

substantial agreement that the Title should be included in the Convention, although it was decided at the final meeting that its application should be limited to cases where the States concerned had entered into a supplemental agreement to be bound by the Title.

The first sentence of Article 6 would require recognition and enforcement of judgments no longer subject to « ordinary forms of review ». A drafting change may be necessary because in Italy, and perhaps other States, there are « ordinary » and « extraordinary » forms of review, and what is there termed « extraordinary » might not be so categorized in other States.

The second, third and fourth paragraphs of Article 6 relate to the supplementary agreements referred to above, and are based upon Articles 21 and 22 of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (the Recognition and Enforcement Convention), with appropriate changes.

The inclusion of these paragraphs, which was suggested by the Subcommittee member representing the M.L.A. of the Federal Republic of Germany, would permit a State to ratify or adhere to the Convention without being bound to recognize and enforce the judgments of all other Contracting States. This would insure against the possibility of a Contracting State, by the ratification or adherence of the Convention by another State whose judgments it might not wish to recognize or enforce, thus becoming bound to recognize and enforce them.

Article 7 (1) sets forth the essential documents which the party seeking recognition or enforcement of a judgment would be required to furnish. It is based upon Article 13 of the Recognition and Enforcement Convention, with appropriate changes.

Article 7 (2), which is based to some extent on Article 5 of the Recognition and Enforcement Convention, sets forth the only four bases whereon a contracting State could refuse recognition or enforcement of a judgment of another contracting State : (1) lack of jurisdiction; (2) fraud; (3) incompatibility with the public policy of the State wherein recognition or enforcement was sought, and (4) failure to give the judgment debtor a reasonable opportunity to present his case.

Reverting to the second sentence of Article 2 (2) of the Draft Convention, the Subcommittee member representing the British M.L.A. suggested that the provision would be unnecessary in any case where the States concerned had entered into a supplemental agreement in accordance with Article 6. In such a case, if a judgment obtained in State A was not fully satisfied in that State, it would not be necessary to bring a fresh action in State B; the latter would be obliged to recognize and enforce the judgment, provided the documents required under Article 7 (1) were furnished and the judgment did not fall within one of the four exceptions recognized in Article 7 (2).

On the other hand, if no supplementary agreement had been made, it would indicate that States A and B did not wish to recognize and enforce each other's judgments, and would therefore presumably be unwilling to agree to the terms of the second sentence of Article 2 (2).

The question of possible deletion of that sentence will require further consideration at the forthcoming Conference.

(e) *Title IV : General Provisions (Article 8)*

This Title consists of a single article (Article 8).

The first sentence is intended to preserve any treaty obligations of the Contractiong State, *e.g.*, under the 1957 Brussels Limitation of Liability Convention or the 1910 Collision Convention.

The second sentence is designed to make it clear that the Convention does not govern jurisdiction and choice of law in limitation of liability cases. However, there would appear to be no reason why Title III, concerning recognition and enforcement of judgments, should not apply to judgments in limitation of liability proceedings, and the statement contained in the second sentence of Article 8 should perhaps be qualified accordingly.

The third sentence is intended simply to make it clear that the *lex fori* is to govern questions of procedure, except for any questions specifically regulated by the Convention, *e.g.*, the documents required under Article 7 (1) to obtain recognition and enforcement of a judgment in another Contracting State.

At the Seventh C.M.I. Assembly in March, 1977 the French delegate suggested that since the Draft Convention was intended to supersede the 1952 Convention, it should expressly so state, and this has been done in the fourth paragraph of Article 8.

5. *Cooperation with IMCO and ILA*

The Chairman has kept the ILA fully informed of the progress of the International Subcommittee's work.

IMCO and ILA were invited to have representatives attend all of the meetings of the Working Group and the International Subcommittee. ILA was representated at the first Working Group meeting and, as previously stated, Mr. Thomas Busha of IMCO's Legal Committee attended the first and second Subcommittee meetings as the representative of both IMCO and ILA, and made several valuable suggestions.

Helpful suggestions were also made by Mr. Donald Waesche, Chairman, and Prof. Peter Nygh, Rapporteur of the ILA Collision Committee, with whom the Chairman of the Subcommittee met at

New York on April 20, 1977 for the purpose of exchanging information.

President Berlingieri has met with IMCO officials on several occasions, and has reported to them on the progress of the Subcommittee's work. IMCO's Legal Committee is very much interested in the project, and has agreed to consider a C.M.I. Draft Convention, if one is approved at Rio de Janeiro, as a basis for a final draft for submission to a Diplomatic Conference.

July 17, 1977

Nicholas J. Healy, Chairman
D.J.L. Watkins, Secretary

LONDON DRAFT JUNE 16, 1977

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES CONCERNING CIVIL JURISDICTION, CHOICE OF LAW, AND RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN MATTERS OF COLLISION

PRELIMINARY

Article 1

(1) This Convention shall govern jurisdiction, choice of law and recognition and enforcement of judgments in actions for damage caused by one or more vessels to another vessel, one at least of such vessels being seagoing, or to property on board any such vessel, and in recourse actions in respect of such damage, whether or not a collision has actually occurred.

(2) This Convention shall not apply to ships of war or government vessels appropriated exclusively to a public non-commercial service, or to claims for damage to property on board a carrying vessel which are capable of being founded in contract.

TITLE I — JURISDICTION

Article 2

(1) Unless the parties otherwise agree such actions may only be instituted :

(a) before a Court of a State where the defendant resides or has a place of business; or

(b) when the collision has occurred in the internal waters or territorial sea of a State, before a Court of that State; or

(c) before a Court of a State where a vessel involved in the collision (other than the plaintiff's own vessel or a vessel under the same ownership lawfully subject to arrest, is arrested or security is provided to avoid arrest, or where

the defendant has property subject to attachment under the law of the State.

(2) If an action is pending in one State any further action brought in another State by the same plaintiff against the same defendant to recover for the same damage shall be stayed unless and until the previous action has been stayed or discontinued.
If judgment has been rendered in an action in one State a successful party shall not be permitted to bring a further action against another party or parties on the same facts in another State unless such judgment is not fully satisfied in the State where it was rendered, in accordance with the law of that State.

(3) Nothing herein contained shall be deemed to deprive the Court of any discretion it might have under its own law to decline for good cause to exercise its jurisdiction.

Article 3

(1) Any counterclaim arising out of the same collision may be brought before the Court seized of the original action in accordance with the provisions of Article 2.

(2) In the event of there being several claims arising out of the same collision, any action thereon may be brought against any party to the proceedings before the Court seized of the original action.

TITLE II — CHOICE OF LAW

Article 4

When a collision occurs in the internal waters or territorial sea of a State the law of that State shall apply, and when a collision occurs on the high seas the law of the Court seized of the case shall apply, except that when all of the vessels involved are regeistered or otherwise documented in, or, if not registered or otherwise documented, owned in the same State, the law of that State shall apply, whether the collision occurs in the internal waters or territorial sea of a State or on the high seas.

Provided, however, that in cases involving vessels registered or otherwise documented in, or, if not registered or otherwise documented, owned in different States, the Court seized of the case shall give effect to any Convention which has been adopted by all of such States.

Article 5

The law referred to in Article 4 shall be the law governing :

(1) the basis of liability;

(2) the grounds for exemption from liability and any division of liability;

(3) the kinds of damage for which compensation may be due;

(4) the quantum of damages;

(5) the persons who may claim damages in their own right;

(6) the liability of a principal for the acts or omissions of his agent, or of an employer for the acts or omissions of his employee, or of a vessel or her owner or operator for the acts or omissions of a pilot;

(7) the question whether a right to damages may be assigned or inherited;

(8) the burden of proof and presumptions.

TITLE III — RECOGNITION AND ENFORCEMENT OF JUDGMENTS

Article 6

This Title applies to the recognition and enforcement of judgments rendered by a Court of a Contracting State in cases governed by this Convention, provided that they are no longer subject to ordinary forms of review in the State where rendered.

Such judgments shall be recognized and enforced in a Contracting State under the conditions laid down in the following article, provided that such Contracting State and the State wherein the judgment was rendered have concluded a Supplementary Agreement to this effect.

This Title shall not apply to judgments rendered before the entry into force of the Supplementary Agreement provided for in the preceding paragraph unless that Agreement otherwise provides.

The Supplementary Agreement shall continue to be applicable to judgments in respect of which recognition or enforcement proceedings have been instituted before any denunciation of that Agreement takes effect.

Article 7

(1) A party seeking recognition or enforcement of a judgment shall furnish :

(a) a complete authenticated copy of the judgment;

(b) authenticated copies of all documents necessary to establish that the judgment fulfills the conditions of Article 6;

(c) such translations of the documents referred to in subparagraphs (a) and (b) of this paragraph as may be required by

the Court of the State wherein recognition or enforcement is sought.

(2) Recognition or enforcement of a judgment may be refused only if the Court is satisfied that :

(a) the Court which rendered the judgment did not have jurisdiction under this Convention; or

(b) the judgment was obtained by fraud; or

(c) recognition or enforcement of the judgment would be incompatible with the public policy of the State wherein recognition or enforcement is sought; or

(d) if, in the circumstances, the judgment debtor was not given reasonable notice of the proceedings and a fair opportunity to present his case.

TITLE IV — GENERAL PROVISIONS

Article 8

This Convention shall be without prejudice to the provisions of any other conventions or treaties to which any of the Contracting States are or shall become parties.

This Convention shall not apply to issues relating to limitation of liability.

Questions of procedure not otherwise regulated by this Convention shall be governed by the law of the Court seized of the case.

In respect of relations between States which ratify or accede to it, this Convention shall replace and abrogate the International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision, signed at Brussels on 10th May, 1952.

2

OFF-SHORE MOBILE CRAFT

DRILLING PLATFORMS

REPORT TO THE XXXIst CMI CONFERENCE IN RIO DE JANEIRO

FROM THE INTERNATIONAL SUB-COMMITTEE ON DRILLING PLATFORMS

I. — The CMI Executive Council in 1976 decided to make the legal problems related to Drilling Rigs etc. a topic of the CMI Conference to be held in Rio de Janeiro in September, 1977. An International Sub-Committee was formed under the chairmanship of Mr. Frode Ringdal, Norway, for the purpose of preparing a report and possibly a draft convention on the matter. The Sub-Committee has met three times : in London on the 20th January, 1977, in Brussels on the 28th March, 1977, and in London on the 15th June, 1977.

A Working Group consisting of Mr. Frode Ringdal, Mr. Piero Bernardini, Italy, Mr. Karin Bruzelius, Norway, Mr. Christer Rune, Sweden, and Mr. F. de May, United Kingdom, prepared a draft convention and other working papers for the Sub-Committee, including a questionnaire which was submitted to all National Associations. The Working Group met in Oslo on the 22nd-23rd February, 1977, and in Rome on the 25th-26th May, 1977.

In the Sub-Committee, representatives of the Associations of Denmark, France, Italy, Norway. Sweden. the United Kingdom, the United States and West Germany, have participated in all three meetings. The Belgian Association was represented at the first and the third meetings whilst some Associations were represented at one of the meetings. Thus, representatives of the Brazilian and the Irish Associations were present at the first meeting. representatives of the USSR Association at the second meeting and representatives of the Canadian and Japanese Associations participated in the third meeting. Altogether ten Associations have submitted replies to the questionnaire, viz. Canada, Denmark, France, Federal Republic of Germany, Italy, Japan, Norway, Sweden, the United Kingdom and the United States. The Norwegian Maritime Law Association has also submitted an alternative draft convention, together with an introductory paper. All of these documents shall be referred to below.

II. — At the end of 1976 there were 374 mobile drilling units in existence (excluding tenders). They were « registered » in 23 different countries although almost two thirds, or 306 of them, were registered in seven countries. There were 46 additional drilling units on order. The seven countries having the largest number of units were : the United States (139), Panama (79), Norway (27), Liberia (19), Venezuela (16), the United Kingdom (13) and Canada (13). The other countries had less than ten units each. The drilling units were working in about 20 geographical areas comprising about 25 different countries. The most important ones were the Gulf of Mexico (104 units), the North Sea (44), Arabian/Persian Gulf (36), Venezuela (26), Brazil (21), Mediterranean area (18), West Africa (17), South-East Asia (14) and Red Sea/Gulf of Suez (12).

Of the total number of drilling units in operation, 172 were jack-up rigs, 106 were semi-submersibles, 17 were submersibles and 58 were shipshape (vessels).

The figures (all of which have been obtained from Offshore Rig Data Services, Houston, Texas) clearly illustrate the international nature of the offshore drilling activities. The units are floating and movable and a large number of them are self-propelled. In addition to the drilling units there are a large number of auxiliary installations, such as crane-platforms, pipelaying craft, accommodation platforms and various types of working rigs which are also freely movable.

III. — There appears to be a consensus among the National Associations which have expressed a view that there is a need of formulating international rules for the maritime aspects of these craft. However, there are differing views on the urgency of the matter and with what speed the work should progress. Several Associations, notably the American, British and West German Associations, have expressed concern that it may be premature to draft a convention to be considered at the Rio de Janeiro Conference. They have urged a more deliberate approach permitting further study of the problems. On the other hand, the Scandinavian Associations, and notably the Danish Association, have emphasized the urgency to act now in order to try to obtain international unification before national legislation, presently under preparation in some countries, produces widely differing substantive rules. As far as it has been possible to ascertain, no country has yet enacted rules for offshore craft in the maritime field generally. But some countries are contemplating such legislation in certain limited areas, and in Norway a more comprehensive system of rules has been proposed.

The Sub-Committee does not want to make a firm recommendation to the Conference on whether or not to adopt a draft convention in Rio de Janeiro. But the Committee feels that there is a need for a thorough debate and consideration of the general principles of private law that could be applied to offshore craft. Such a debate should

precede the consideration of more detailed provisions. It is felt, however, that the deliberations at the Conference will be more fruitful and productive if tied to a draft convention such as the two alternative ones submitted herewith.

IV. — The particular features of drilling rigs and other offshore craft which merit consideration of the topic by the Comité Maritime International are their floating and mobile capacities. In that they can move through the sea from one location to another, they have the typical characteristics of vessels and they are, in fact, considered to be vessels in some countries. Thus, it is the maritime aspects which these installations share with vessels that it is felt desirable and necessary to regulate in the contemplated convention. It follows that the industrial aspects of the offshore activities, such as the drilling operations and the oil production processes, should not be dealt with by the CMI, nor should the liabilities or rights of the drilling operator or concessionaire. Only the problems confronting the rig owner, demise charterer or other maritime manager responsible for the maritime and nautical running of the craft should be covered by the convention. Furthermore, stationary and permanent installations such as the production platforms fall outside the scope of the work.

In the maritime field there is a need for rules on collisions, salvage, limitation of liability and on mortgages for facilitating the financing of the expensive craft. It seems natural to treat craft generally in the same way as vessels in these respects, not only because of their similarity with vessels nautically, but also because they are considered to be vessels in many countries. For the sake of international unification it would be preferable that the rules for vessels and offshore craft be identical so as to avoid different treatment in countries considering craft to be vessels and those that do not.

This consideration leads to the problem of what method should be adopted for the formulation of the required rules. The ideal solution from a theoretical point of view would be to set out in a convention the complete set of rules in the fields to be covered and to be made applicable to craft. But that would not only be a difficult task but also a very time-consuming matter, and all National Associations have replied in the negative to the question of whether that method should be adopted. Another method which the Working Group has proposed is to make the international maritime conventions applicable to craft to the same extent as they apply to vessels. That approach has been favoured by a majority of the Associations. A third method proposed by the Norwegian Association is to provide that in the specified fields covered, the craft shall be deemed to be vessels and in all respects be treated equally as such.

The Working Group proposal might lead to international uniformity as regards craft to exactly the same extent as regards vessels. The Norwegian proposal might also attain that result, but would

additionally lead to national uniformity as regards the two categories, craft and vessels. Although the various national laws of the State Parties may differ, the approach may lead to greater international uniformity where national legislations of different States may be identical or similar. The Working Group proposal does not preclude such a solution, but leaves to national law to regulate what is not covered by existing conventions.

In the replies to the Questionnaire, the Associations of Denmark, France, Italy, Japan, Sweden and the United Kingdom have favoured the Working Group approach, whereas Canada and the Federal Republic of Germany have favoured the Norwegian approach. The United States Association has not taken a firm position.

The Sub-Committee feels that there are merits and handicaps to both approaches and that both of them should be discussed and analysed in Rio de Janeiro. In the final Sub-Committee meeting six members felt that the committee should endorse the Working Group Draft in a recommendation to the Conference, whereas six members who felt that the Sub-Committee should not endorse a draft convention at all were in favour of both drafts being submitted to the Conference.

V. — Where offshore craft are considered to be vessels there is no need for a new, special convention. However, in most countries it is uncertain whether, or at least to what extent, craft will qualify as vessels. There is no universally accepted definition of « vessel » and it will hardly prove possible to agree on one now. But inasmuch as it is felt desirable to apply the rules on vessels to offshore craft, the contemplated convention should cover such craft as are not considered by a State Party to be vessels.

If a complete legal equalization of vessels and craft were intended, no further problems would arise in respect of the distinction between the two categories. But that is not the case. It is felt by several National Associations that craft in some respects require special treatment, for instance as regards limitation of liability, pollution liability and maritime liens. In these and some other fields it has been felt that a craft-owner should not be given the same legal treatment as has traditionally been accorded a vessel-owner. Consequently, the distinction between the two categories will continue to be relevant. For that reason clauses of definition and of the scope of application will be required in a new convention.

In the Working Group draft, Article 2 provides that the convention shall apply to craft which are not vessels under the law of the state of registration or, if not registered, the law of the state of their respective owners. Additionally, Article 9 provides that where nationality is relevant under any of the applicable international maritime conventions, the craft shall be deemed to have the nationality of the state of registration or, if not registered, that of the state of their owners. The essence of the two clauses is intended

to be that the convention shall not apply to vessels, (Article 2) and where nationality is relevant the law of the « home » state will decide whether or not the installation in question is a craft or a vessel. However, when lex fori conventions apply, for instance, in respect of limitation of liability, the articles do not expressly state whether or not the lex fori State Party shall accept the « home » State Party's definitions of « vessel » and « craft ». Some Sub-Committee members have argued that the law of the « home » state in all respects must decide the criteria for the two categories with binding effect for all other State Parties. Other members feel that the choice of law provisions of the lex fori must prevail, and that solution has been proposed in the Norwegian draft. It has been argued that states having substantial interests in drilling installations but not having offshore oil deposits of their own, should not be allowed to grant more protective limitation of liability rights world-wide to their installations by simply defining them as vessels in national law. The problem is one that requires further deliberation and it is illustrative of the many problems confronting State Parties where vessels and craft are treated differently.

VI. — « Craft », which are not vessels for the purpose of the new convention, have been defined in Article 1. As already mentioned, it has been felt that production platforms and other stationary units permanently fixed to the sea-bed are industrial plant units not having typical maritime features, and thus should be excluded. But for those structures which are intended to be moved, or can be moved, from one location to another, it should make no difference whether they are actually under way or at anchor during operations. The salient feature is their mobility.

The most typical offshore activity presently undertaken is the drilling for oil. However, other mineral resources may be extracted from the sea-bed subsoil by similar-type craft, as may minerals on the sea-bed such as manganese nodules. All such activities should be covered, as well as related or « ancillary » activities, by which is meant those undertaken by accommodation platforms, auxiliary rigs, crane units, etc.

By and large the Sub-Committee considers that the definition in Article 1 as now proposed meets the requirements and suggestions made in the replies to the Questionnaire, and should be generally acceptable.

VII. — There seems to be a consensus that fields to be covered by the convention should include collisions, salvage, arrest, limitation of liability and certain rights in craft. However, there is disagreement on questions related to the limitation issue, to oil pollution liability and maritime liens particularly for pollution claims. Some Associations have commented that if the international maritime conventions shall be made applicable to craft to the same extent as they apply to

vessels, a detailed study of the provisions of those conventions should be made in order to ascertain their suitability. The Working Group has felt that the substantive rules of the conventions are suitable and has provided for those rules to be applied.

VIII. — The most controversial issue before the Sub-Committee has been that of the limits of liability. In order to obtain equalization between vessels and craft and because it was considered that for the fields to be covered by the convention (collision, salvage, etc.) there is no compelling reason to distinguish between them, the Working Group initially proposed to make the provisions of the limitation conventions also applicable to craft. However, as a concession to the Norwegian Association, which strongly opposed what was considered to be too low limits in the existing conventions, the Working Group established the convention limits as minimum floors and reserved for the State Parties the right to establish higher limits of liability for craft. It subsequently appeared that the Norwegian Association did not want such a solution, but only wanted to vote for higher limit of liability. In consequence, the Sub-Committee has concluded that the provision in the Working Group draft ought not to be maintained.

The Norwegian draft, which generally makes national law rather than the maritime conventions applicable, provides that where limitation based on tonnage follows from the national law, the limitation tonnage shall be increased by using a multiplying factor, although no specific factor has been proposed. However, the Norwegian view is that considering the high value of the rigs relative to their tonnage as compared with vessels and to the established high ceilings for liability insurance available, the low limits resulting from the application of the conventions' rules are unjustified.

There has also been some discussion on whether the normal tonnage criteria are practical for limitation purposes also in respect of craft, or whether other criteria should be used, such as the value of the craft or even a fixed monetary ceiling for all of them. Again, where craft are considered to be vessels, the existing limitation conventions are directly applicable. But is is also a fact that most such craft are being measured for tonnage to-day, and there appear to be no substantial differences in the tonnage of drilling rigs compared to that of vessels. However, the Japanese member of the Sub-Committee has pointed out that the 1976 Limitation of Liability Convention in its Article 6, n° 5, has made reference to the International Convention on Tonnage Measurement of Ships, 1969, which has provided that tonnage calculation shall be based on the rules contained in Annex I to the said Convention and that said annex applies to ships only. That difficulty will have to be solved in the contemplated convention. The representative in question has also pointed out that the 1976 Limitation of Liability Convention in its Article 15, n° 5, expressly excludes offshore craft from its scope of application. In consequence,

Article 6 of the Working Group draft should provide that the 1976 Convention may apply to craft notwithstanding that exclusion.

In considering solutions to be adopted, the Sub-Committee feels it necessary to point out that the liabilities to be limited are intended to be those arising in connection with normal maritime operations and not those resulting from industrial activities, such as liability for blow-out damage in connection with drilling operations. Such liabilities will normally affect the concessionaire, who will not be covered by the convention. But to the extent that he may have a recourse claim against the craft owner. it is submitted that no great harm will result from the owner being allowed to limit his liability in the normal manners nows in effect. All National Associations which have expressed a view would like to maintain a system of liability for craft. Eight of them have wanted to apply to craft the same limits and provisions of the existing conventions as apply to vessels. The Norwegian and Canadian Associations have accepted to adopt the convention limit criteria to craft as well. although with higher unit limits.

IX. — The Working Group draft and the Norwegian draft both contain provisions on liability for oil pollution. but they are worded quite differently although both of them aim at limiting the liability covered to that resulting from the escape or discharge of oil contained in craft. The Working Group proposes to make applicable the substantive rules of the 1969 Convention on Civil Liability for Oil Pollution Damage. whereas the Norwegian Association, in following the method chosen in their draft. wishes to apply national law in the matter.

Some Sub-Committee members have raised the question whether provisions on oil pollution in respect of craft are really necessary, and they have in particular queried why the 1969 Convention should be given a wider application to craft than to vessels in covering *any* escape of oil from the craft. As will be known, that convention is only directly applicable to pollution caused by persistent oil contained in a « sea-going vessel » or in « any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo ». The Legal Committee of IMCO is presently preparing to extend the convention to cover other oil than persistent oil. and pollution caused by bunkers in empty tankers, or possibly also bunkers in other cargo vessels. In view of that, the Sub-Committee has felt that a similar extension should be made in respect of oil contained in craft, even though the IMCO Protocol has not yet been adopted. However, the Sub-Committee considers that Article 8 of the Working Group draft should ultimately be worded so as to correspond with the final wording of the IMCO Protocol.

In Article 7, the Working Group has provided that the substantive rules of the respective Lien Conventions shall apply to craft when applicable to vessels of State Parties. Although the oil pollution

liability covered by Article 8 will not include liability of the craft owner for blow-out damage etc., it could be that a recourse claim against the owner for such liability might be founded on other applicable legal provisions. As stated above, the Sub-Committee has felt that in such cases the owner should be entitled to limit his liability. But is has also been felt that should a maritime lien in the craft be granted in such cases, it would materially hamper the financing of the craft based on mortgage security. In consequence, a majority of the Associations have considered it desirable to make an express provision in Article 8 to the effect that no maritime lien on craft shall attach in respect of pollution damage liability other than the one covered in Article 8.

X. — The need to provide security for the financing of craft by way of mortgages has already been mentioned.

The establishment of mortgage in craft naturally is conditioned upon a system of registration of rights in craft being available. Above, under II, has been mentioned the number of craft « registered » in various countries. However, in many cases, registration in public registers has been for a variety of purposes other than to establish title to or rights in craft. The Working Group has felt it desirable to make the substantive rules of the existing Conventions on Liens and Mortgages also applicable to craft, and has so provided in Article 7 of the draft. Of particular importance has been to provide the additional provision that ownership to craft registered in a State Party shall be recognized by the other State Parties.

XI. — This Report has been approved by the Sub-Committee at its meeting in London on the 15th June, 1977.

Frode Ringdal

Sub-Committee Chairman

WORKING GROUP OF THE CMI SUB-COMMITTEE

Draft revised as of June 15, 1977

DRAFT CONVENTION ON OFF-SHORE MOBILE CRAFT

Article 1
Definition

In this Convention « craft » shall mean mobile structures, whether during operations they are floating or fixed to the sea-bed, for use in the exploration, exploitation, processing, transport or storage of the mineral resources of the sea-bed or its subsoil or in ancillary activities.

Article 2
Scope of Application

This Convention shall apply to craft, as defined in Article 1, which are not vessels under the law of the State of registration or, if not registered, under the law of the State of their respective owners.

Nothing in this Convention shall affect the rights or obligations of any person or company in their capacity of concessionaire, licensee or other holder of rights with respect to mineral resources.

Article 3
Collisions

A State Party which is also a party to

— the International Convention for the unification of certain rules of law with respect to collision between vessels and Protocol of signature dated September 23, 1910, or to

— the International Convention on certain rules concerning civil jurisdiction in matters of collision dated May 10, 1952, or to

— the International Convention for the unification of certain rules relating to penal jurisdiction in matters of collision or other incidents of navigation dated May 10, 1952,

shall apply the substantive rules of such convention or conventions to craft.

Article 4

Salvage

A State Party which is also a party to

— the Convention for the unification of certain rules of law relating to assistance and salvage at sea and Protocol of signature dated September 23, 1910, or to

— the said Convention with Protocol dated May 27, 1967,

shall apply the substantive rules of the said convention or convention with Protocol to craft.

Article 5

Arrest

A State Party which is also a party to the International Convention for the unification of certain rules relating to the arrest of sea-going ships, dated May 10, 1952, shall apply the substantive rules of that convention to craft.

Article 6

Limitation of Liability

A State Party which is also a party to

— the Internatonal Convention for the unification of certain rules relating to the limitation of the liability of owners of sea-going vessels and Protocol of signature dated August 25, 1924, or to

— the International Convention relating to the limitation of the liability of owners of sea-going ships and Protocol of signature dated October 10, 1957, or to

— the Convention on limitation of liability for maritime claims dated November 19, 1976,

shall apply the substantive rules of any such convention to craft (and in respect of the 1976 Convention notwithstanding the provision of its Article 15, paragraph 5).

(However, a State Party shall have the right to establish higher limits of liability for craft than those applicable under the rules of the relevant conventions).

Article 7

Rights in Craft

A State Party which is also a party to

— the International Convention for the unification of certain rules relating to maritime liens and mortgages and Protocol of signature dated April 10, 1926, or to

— the International Convention for the unification of certain rules relating to maritime liens and mortgages dated May 27, 1967, or to

— the International Convention relating to registration of rights in respect of vessels under construction dated May 27, 1967,

shall apply the substantive rules of such convention or conventions to craft, provided that the State Party has established a system of registration of rights in such craft.

Where such system permits the registration of ownership of craft, a right so registered in one State Party shall be recognized by the other State Parties.

Article 8

Liability for Oil Pollution

A State Party which is also a party to the International Convention on civil liability for oil pollution damage dated November 26, 1969, shall apply the substantive rules of that convention to the escape or discharge of oil contained in craft.

However, such State Party shall apply such rules only in the absence of other applicable provisions on liability for oil pollution contained in other International Conventions to which it is a party.

No maritime lien on craft shall attach in respect of pollution damage liability of whatever nature other than that imposed by this Article.

Article 9

Nationality

If, under any of the conventions applicable pursuant to Articles 3, 4, 5, 6, 7 and 8, nationality is a relevant factor, a craft shall be deemed to have the nationality of the State in which it is registered or, if not registered, the State of its owner.

DRAFT CONVENTION ON THE UNIFICATION OF CERTAIN RULES RELATING TO OFF-SHORE CRAFT

ALTERNATIVE TEXT SUBMITTED BY NORWAY

Draft revised as of June 20, 1977

Article 1
Definition

In this Convention « craft » shall mean (drilling platforms and other similar floating and movable), (mobile), structures, whether or not fixed to the sea-bed during operations, for use in the exploration, exploitation, processing, transport or storage of the mineral resources of the sea-bed and its subsoil, or in ancillary activities.

Article 2
Scope of Application

Craft shall be subject to the rules applicable to sea-going ships under the law of a State Party to this Convention with respect to the following matters :

(1) Collision (including striking) with a fixed or movable object;
(2) Salvage of the craft;
(3) Arrest of the craft;
(4) The owner's liability for oil pollution damage resulting from escape of, or discharge of oil contained in the craft;
(5) Limitation of liability of thc owner of the craft and of the demise charterer and other person to whom the management of the craft has been entrusted as well as persons for whom he or they are responsible;
(6) Liens for claim against the owner of the craft or against the demise charterer or other person to whom the management of the craft has been entrusted;
(7) Mortgages.

The law of a State Party shall include the rules of any international convention having the force of law in that State. It shall also include the international private law of that State.

Article 3

Nationality

If, under the law applicable pursuant to Article 2, nationality is a relevant factor, a craft shall be deemed to have the nationality of the State in which it is registered or, if not registered, the nationality of the State of its owner.

Article 4

Limits of liability

If under the law applicable pursuant to Article 2, limitation of liability is based on tonnage, the tonnage of a craft shall be deemed to be (x) times the tonnage when measured in accordance with the applicable rules for tonnage measurement of ships.

(A State Party shall have the right to establish higher limits of liability than those resulting from the application of the provisions of Article 2 and the first paragraph of this Article).

Article 5

Pollution damage

Nothing in this convention shall affect liability, limitation of liability or liens for claim in respect of pollution damage whether from oil or other substances, occurring in connection with use of the craft in the exploration, exploitation, processing, transport or storage of natural resources of the sea bed, or in ancillary activities.

3

CHARTERPARTY TERMS

CHARTERPARTY TERMS

PRESIDENT'S REPORT AND DRAFT TEXT

The desirability of reducing the area of disputes between shipowners and charterers in the interpretation of Charterparty Terms is obvious and particular attention has been drawn to the resultant delays and expenses in the report of UNCTAD on Charterparties (issued by the United Nations 1974 reference No. TD/B/C/no. 4/ISL/13).

It is with this background that the Comité Maritime International resolved, at the meeting of its Executive Council in September, 1976, to study this whole matter in order to ascertain whether it would be possible, by drafting definitions of certain terms commonly used in charterparties, so to reduce disputes in the future.

It was appreciated that, before embarking upon this study, consultation with the main bodies responsible for the drafting of charterparties was essential. Two preparatory meetings were therefore held with the General Council of British Shipping and the Baltic and International Maritime Conference in July 1976 and in January 1977. At the latter meeting Mr. W.A. Wilson was appointed Chairman of the Joint Working Group when it was agreed that Mr. Wilson should draft an explanatory memorandum which is attached as Appendix 1. This was sent to all National Associations on the 14th February, 1977 and at the Meeting of the Assembly of the C.M.I. held on the 30th March, 1977 there was unanimous support that this subject should feature on the Agenda of the Rio Conference of the C.M.I. Subsequently I was appointed President of the International Sub-Committee.

The International Sub-Committee, which met on the 1st July was attended by representatives from Belgium, Italy, Sweden, Germany, Australia and Great Britain. The Sub-Committee took as the basis for its discussion a first draft text which was circulated to National Associations on the 10th June, 1977. This document is attached as Appendix 2.

At that meeting the International Sub-Committee produced for the consideration of all National Associations the draft text which is attached as Appendix 3.

It will readily be appreciated that this draft text produced by the International Sub-Committee is merely a modification of the first

draft. Some definitions have been adopted unchanged from that earlier draft, others have been altered but in the main to a small extent only.

The comments which followed each definition in the earlier draft have been omitted from the list of definitions drawn up by the International Sub-Committee. It is felt that these comments were useful at the earlier stage, but that now the list of definitions must stand or fall on its merits and that additional material is more likely to confuse than to assist those considering the list. It may however help to bear in mind two general points. First, that the definitions are intended to be clear and also fair as between the parties to the charter, but are not intended to codify the law or practice of any particular country. Second, that the list of definitions is not to have compulsory application but is merely to be available for voluntary adoption, in whole or in part, by parties entering into a charterparty contract.

In some cases the only significant alteration to a definition from the earlier draft is the deletion of a sentence added to the main definition in order to establish, clarify or alter a laytime 'rule' connected with the word being defined, which 'rule' or lack of it has been known to cause problems in the past. It was felt by the International Sub-Committee that, as its task was solely to produce a list of draft definitions of terms, the inevitable temptation to move beyond definitions and into the drafting of a laytime 'code' or of various laytime 'rules' should be rigorously resisted. It was appreciated, however, that the main definitions themselves, while worded as definitions, are intentionally drafted to encapsulate one or more underlying 'rules'. Moreover, it may be felt by the National Associations that the deletion of additional sentences from the earlier draft has cut away too much and reduced unacceptably the practical and legal usefulness of the definitions. Indeed, the International Sub-Committee feels that this may be a legitimate criticism of its work and particularly invites the National Associations to consider whether certain of the definitions should be expanded to embrace additional 'rules'. If this is to be done it is, however, suggested that it should indeed be done, where possible, by the expansion of the relevant main words of definition rather than by the addition to those main words of separate sentences containing separate 'rules'; this is not always possible, as the International Sub-Committee found with its definition No. 19 but often it can be done.

One particular problem inherent in such a list of definitions is that by its nature it will be ineffective, despite being expressly incorporated into the charterparty, unless at least one of the more important of the words defined is used in the particular charterparty. This will often be the case, but not always. In particular the places for loading and discharging are almost always identified in charters by their proper names and without use of the word 'port' or 'berth'; yet those words are fundamental in the law of laytime and therefore to the list of draft definitions itself. This is the reason for the additional sentence added to the main definition of each of these words. It is also part of the

reason for the second sentence of the introductory paragraph to the draft list of definitions.

National Associations are now invited, in the usual way, to comment on the text submitted and on the contents of this Report. In view of the work yet to be done on this project and of the approach of the Conference, it would be appreciated if comments are submitted as soon as possible, in and in any case, not later than August 15th.

W. Müller

President
International Sub-Committee
on Charterparty Terms

CHARTERPARTIES

DEFINITIONS

After some preliminary consultations with shipowning and chartering interests a Joint Working Group was set up and met in London in January 1977 under the auspices of the Comité Maritime International in order to consider the desirability of drawing up a set of definitions of terms commonly used in charterparties in a laytime context.

The idea had been prompted by two inter-connected factors. First was the seemingly never-ending flow of disputes world-wide over the meaning of laytime wording in charterparties; indeed, members of the Working Group were able to cite cases where precisely the same words were given one meaning in one jurisdiction and another meaning in a different jurisdiction and yet often the question of the jurisdiction or governing law of the charterparty is purely fortuitous. The second factor was the steady increase in the involvement as charterers and owners of the developing countries who at present may lack experience and expertise in the field of charterparties.

The view of the majority of the Working Group meeting under my chairmanship was that these factors were indicative of the need for clarification in this highly specialised field. But the Group felt that before taking the matter any further it was important that a wide enquiry should be made as to the views of the shipping industry in general.

The function of the laytime provisions in charterparties is to spell out who, as between shipowner and charterer, is to bear the cost of the time when the vessel is at or off the loading and discharging ports. It was felt unanimously that the greater the certainty between the contracting parties as to the division of the risk the better. If a list of definitions were prepared, it would make available to the parties at the time of negotiation a laytime dictionary for voluntary adoption.

It should be emphasized that there is no question of the drawing-up of a set of rules which would limit the liberty of the parties to negotiate. What is in mind is the list of definitions should be incorporated into charter-parties only on an entirely voluntary basis. If when negotiating their contracts the parties found the list of definitions generally acceptable, then they would adopt the list in the charterparty. The

list would be given a code or other form of identification. This would make the list part of the charterparty contract. If certain of the definitions were not acceptable to the parties they would be free to spell out their own meaning which would prevail over the definitions in the list.

It was suggested that there might be those in the shipping industry who would resent the existence of a set of definitions. They might say that with years of experience behind them they knew what they meant when they used certain words and they might not agree with a certain individual definition. There are several answers to such a point of view. First the use of the definitions as part of the contract would be voluntary. Second the growing interest in this aspect of commercial activity on the part of the developing nations cannot be ignored.

If the developing countries find the existing state of affairs unsatisfactory, then it is quite possible that they may avail themselves of the international inter-governmental organizations which are concerned with maritime affairs and that the question of improvement of the drafting of charterparties and their interpretation might pass from commercial hands.

If a word or phrase, which is often shorthand for a much more complex concept, e.g. 'weather working day', is defined and if the definition is contractually binding between the parties then thereafter it will not be open to one party to bring a case in the hope of persuading the tribunal to adopt a different meaning. Thus, certainty would be introduced into a sphere where, at present, there is uncertainty. If the definitions were only to halve the number of laytime disputes the saving in cost to both owners and charterers and ultimately the consumer would alone have made the exercise worthwhile.

It could be argued that the setting down of certain definitions would be to temporarily 'freeze' the law of laytime. But, on the analogy of the York-Antwerp Rules in the field of General Average there would be periodic revisions to ensure that the definitions kept pace with physical and other changes as necessary.

As stated above, the definitions would be confined to laytime terms and by way of example only the Working Group had in mind defining such words and phrases as :

Demurrage
Despatch money
Day
Working day
Weather working day
Strikes
Weather permitting
Whether inberth or not.

The Working Group look forward with considerable interest to the response of the parties to whom this Memorandum is sent. The task of preparing a set of definitions will not be easy and the Group have no desire to embark upon the task unless it appears from enquiries made beforehand that the general feeling in the industry is that there is a need for such a list.

W.A. WILSON
Chairman

7th February 1977

CHARTERPARTY TERMS

INTRODUCTION

For the benefit of those who may not have seen the letter adressed by the C.M.I. President to the Presidents of the National Maritime Law Associations and others on the 21st April 1977, the object of the Sub-Committee, which has been established to deal with this subject, is as follows :

'The aim of the international Sub-Committee will be to draft a list of definitions of terms commonly used in Charterparties in a laytime context, for example such words and phrases as 'weather working day', 'demurrage', 'strikes', etc. This list would be available to parties at the time of negotiation of the Charterparty for voluntary adoption and incorporation into it. The list would be given some name or other form of identification. If the list were adopted it would become part of the Charterparty contract and be contractually binding on the parties. However, if certain of the definitions were not acceptable to the parties they would be at liberty to specify their own meaning which would prevail over the definitions in the list.

It must be emphasized that no attempt is to be made to draw up a set of rules which would necessarily import an element of restriction into the liberty of parties to negotiate. The definitions would take the form of a 'laytime dictionary' available for adoption entirely at the option of the parties'.

By way of background, it may be explained that Charterparties, along with Bills of Lading and Policies of Insurance, constitute the documents most commonly in use in the movement of goods of all descriptions from one country to another on vessels of every type belonging to the flags of all maritime nations.

The Charterparty is thus a document or contract of a truly international character.

It has been observed over the years that (a) the same words or phrases in Charterparties have been given different meanings in the Courts or Arbitration Tribunals of different countries, and (b) particular words and phrases which have not been defined in the Charterparty in a manner which would make the definition binding between the parties have been given different meanings by the courts of the same country at different or the same levels of jurisdiction at different dates.

Although this applies to all aspects of Charterparties, and there is a case for an attempt at certainty and uniformity across the board, it is felt that it would be prudent to proceed with caution and to treat in the first instance with a limited area of the whole Charterparty field, namely laytime. That laytime happens to produce a multiplicity of disputes and that the money involved is frequently considerable is not an accidental consideration in the decision to select laytime for the first attempt at definitions, but if this first step were to be a successful one, it might well lead to the work being extended to all aspects of Charterparties and eventually to other contracts.

This introduction closes with two thoughts :

1) The objective of the C.M.I. has always been for uniformity and certainty in international maritime affairs. In the context of Charterparties this is now of particular importance given the facts that an ever increasing number of « users » of Charterparties are members of the rapidly so called « Developing Countries » and that although the English language may still be used in the case of most of the Charterparty forms in common use, there is an increasing tendency to confer jurisdiction upon bodies of an international character.

2) Even if the idea of formulating a set of definitions for voluntary uses obtains the necessary support and results in a « code » for voluntary adoption it cannot be perfect. Disputes will arise as to the meanings of the definitions. But this fact of life should not of itself be fatal to the attempt to draft a set of definitions.

It is one thing for a court or tribunal to have free range over the interpretation of a word or phrase and quite another for it to be restricted to the determination of a dispute which the parties may have about an agreed definition of such word or phrase. Hopefully the result of agreed definitions will be to limit and therefore reduce the scope for disputes and thus lead towards uniformity and certainty with a consequent reduction in wasteful legal expense and therefore of operating costs to Owners and Charterers.

What follows is a first attempt at a set of definitions. In each case a word or phrase has been defined and an explanation has been given of the reason for the definitions. Although this whole exercise has been conducted in the English language there has been no attempt to make a slavish rendering in the definitions of the decisions of the English Courts. On the contrary, account has been taken of the decisions of the courts and tribunals on a world-wide basis and some of the definitions are distinctly « un-English ».

If, in their final forms, the definitions are about the same length as those appearing in the document, they will print out on a single sheet. A simple incorporation clause would suffice to make the definitions part of the contract and the attachment of the sheet (as with clauses Paramount, War Risk Clauses and so on) to the Charter

would ensure that the definitions were known to the parties to it. Knowledge of the definitions by third parties (i.e. the holder in due course of a Bill of Lading incorporating the terms of the Charterparty) would be achieved by publicity through Maritime Law Associations and other international organs and assisted by the definitions being referred to by a name such as « The Rio Laytime Definitions ».

DEFINITIONS

It is proposed to formulate definitions in the chronological order in which the particular word or phrase would normally be met in the course of the performance by the vessel of a typical charterparty, which order is broadly reflected in the format of most voyage charterparties. Thus the opening definitions are of a general nature. Then there are definitions which relate to the calculation of the time allowed for loading and discharging which are followed by definitions of words and phrases which will be encountered in the context of the commencement of laytime, the interpretation of laytime once it has commenced and, finally, in the field of demurrage and despatch.

THE WORDS AND PHRASES DEALT WITH IN THE DEFINITIONS ARE AS FOLLOWS :

1. PORT
2. BERTH
3. LAYTIME OR LAYDAYS
4. PER WORKABLE HATCH
5. AS FAST AS THE VESSEL CAN RECEIVE (DELIVER)
6. DAY
7. HOLIDAYS
8. WORKING DAY
9. WEATHER WORKING DAY
10. SUNDAYS AND HOLIDAYS EXCEPTED
11. SUNDAYS AND HOLIDAYS EXCEPTED UNLESS USED
12. WEATHER PERMITTING
13. CUSTOMARY DESPATCH
14. AVERAGE
15. REVERSIBLE
16. NOTICE OF READINESS
17. REACHABLE ON ARRIVAL
18. TIME LOST WAITING FOR BERTH TO COUNT AS LOADING/ DISCHARGING TIME
19. WHETHER IN BERTH OR NOT

20. STRIKES
21. DEMURRAGE
22. DESPATCH MONEY

***

« Port » means an area in which ships are loaded and discharged and includes the usual places where vessels wait for their turn even if such places are outside that area. If a port is named this definition shall apply.

Comment :

An attempt in a few lines to define something which appears to have eluded the courts in most countries for 100 years or more. The difficulty is that the geography of no two ports in the world is the same. Consequently a tightly worded definition which covered the situation in Beirut might produce quite unexpected and undesirable results for Calcutta or New Orleans. Often the word « port » will not appear in the contract and geographical place names will be used — hence the second sentence.

***

« Berth » means a spot where the ship is to load or discharge. If a berth is named this definition shall apply.

Comments :

Again a simple definition designed to cover every possible loading spot including buoy moorings and trans-shipment situations.

***

« Per workable hatch » means that laytime is to be calculated by multiplying the daily rate of loading/discharging by the number of the ships hatches suitable for loading/discharging the cargo and dividing the resulting sum into the quantity of the cargo.

Comment :

More than one meaning is given to this expression. The one in the definition is known as the multiplication method. The alternative view is that the laytime should be calculated in relation to the time taken to fill up or empty the largest hold in the vessel at the agreed rate. It is felt that the meaning adopted in the definition is the simplest one to operate in practice.

***

« Laytime » or « Laydays » means the time during which the Owner agrees to make the ship available to the Charterers for loading and discharging without additional charge. If no time is agreed then the time shall be of such length as is reasonable in all the circumstances prevailing at the time when loading or discharging actually takes place. The Charterer has no right to load/discharge the ship before laytime begins unless the Owner consents.

Comment :

The first sentence is an attempt to define laytime in terms of money which is to say that it spells out that in return for the freight a Charterer gets the voyage from the loading to the discharging port plus an agreed time in which to load and discharge the ship.

The last sentence is intended to clarify an area of uncertainty.

***

« As fast as the vessel can receive (deliver) » means that the laytime is a fixed period of time calculated by reference to the rate at which the vessel is capable of loading/unloading and is not affected by circumstances prevailing to the time of loading or unloading.

Comment :

As with customary despatch the above phrase is given different meanings in different countries and the question is whether the phrase has the effect of producing a fixed period of laytime which can be determined in advance or whether the charterers' obligation is merely to do his best in the circumstances which might mean doing nothing if, for example, there was a strike at the port at the time the ship was there. For no particular reason the definition which produces a fixed and determinable laytime has been selected.

***

« Day » means a period of 24 hours which unless the context otherwise requires runs from midnight to midnight.

Comment :

In the laytime context the word « day » is used in two senses although in all instances it denotes a period of 24 hours. The most natural sense which is the one provided for in the definition is what might be described as he calendar day and this is the one which is relevant for holidays and so forth. But of course the laytime will often be

expressed in days and these days will rarely start at midnight. It is hoped that the definition will allow for both meanings to operate.

***

« Holidays » means days upon which by the law or practice of the place of loading/discharging cargo work on the vessel is suspended so that the workers may rest.

Comment :

This definition produces clarity but could result in a charterer having to pay overtime on a day on which other workers at the place in question were not working.

***

« Working day » means a day on which work is usually done at the place in question and which is not a holiday.

Comment :

It would be satisfactory if some of the time-honoured words and phrases which are used in the laytime context could be discarded and if new words and phrases could be proposed and defined, but the present exercise is limited to the drafting of a set of detinitions of existing terms. The definition proposed above is an attempt at simplicity coupled with an attempt to meet the difficulties regarding Saturdays. It may need to be expanded to cover parts of a day.

***

« Weather working day » means a day on which it is or would be possible to load or discharge without interference due to the weather. If such interference occurs (or would have occurred if work had been in progress) there shall be excluded from the laytime a period calculated by reference to the ratio which the duration of the interference bears to the time which would have or could have been worked but for the interference so that 8 hours of weather interference in a 24 hour working day results in 8 hours being excluded from the laytime, 2 hours lost in an 8 hour working day results in 6 hours (1/4) being excluded and so on.

Comment :

The definition makes it clear that the text is an objective one and also attempts, in the simplest possible fashion, to reflect the judgement of Lord Devlin in the Vancouver strike cases.

***

« Sundays and holidays excepted » means that these days do not count as laydays even if loading or discharging is done on them. At Muslim ports « Sundays » shall mean « Fridays ».

Comment :

The definition spells out the position if work is done on these days and attempts to meet the problem of the treatment of Fridays in Muslim countries.

***

« Sundays and holidays excepted unless used » means that if work is carried out on a Sunday or holiday the actual hours of work count as laytime.

Comment :

The definition is designed to solve the question which is still in issue as to whether if any work is done on a Sunday or holiday the whole day should count as laytime.

***

« Weather permitting » means that time during which weather actually prevents work being done shall not count as laytime.

Comment :

The definition reenforces the character of the phrase as an exception.

***

« Customary despatch » means that the Charterer must load or unload as fast as is possible in the circumstances prevailing at the time of loading or unloading and is only liable for delay when he is guilty of deliberate delay.

Comment :

The definition reflects the legal interpretation of the words, at least so far as the U.K. and the U.S.A. are concerned, but a great number of people are misled by the phrase and think that it should result in a fixed period of laytime capable of ascertainment by enquiry as to the time customarily taken to perform the loading or dicharging operation

at the port in question. This meaning is also given to the phrase in certain European countries. If this meaning were preferred it would be simple to substitute an appropriate definition but at least the definition given above would serve to remove any misunderstanding as to the meaning of the words.

***

« Average » means that separate calculations are to be made for loading and unloading and any time saved in one operation is to be set against any excess time used in the other.

Comment :

This definition, along with that of « reversible » is taken straight from the text-book. Although there has been litigation in the past the phrases now seem to be universally understood but the definitions would serve to avoid any future uncertainty.

***

« Reversible » means an option given to the Charterer to add together the time allowed for loading and discharging. Where the option is exercised the effect is the same as a time being specified for both operations.

Comment :

See comment on « Average ».

***

« Notice of Readiness » means a message in writing to the Charterer or his agent that the ship has reached the port or berth as the case may be and is ready to load/discharge as and when the Charterer wishes to perform that operation. If the notice is given before the ship is ready it will take effect as and when the statements of fact contained in it become true. A notice of readiness is required at each loading and discharging port, but any notice period shall apply only to the first loading and the first discharging port or berth.

Comment :

The penultimate sentence in the definition is designed to clarify a point on which uncertainty prevails. The last sentence has been inserted to try to bring uniformity into a fairly widely differing set of rules in a number of different countries.

***

« Reachable on arrival » means that the Charterer promises that when the ship arrives at the port there will be a loading (discharging) berth for her to which she can proceed without delay.

Comment :

This definition does not follow judicial precedent but attempts to give a reasonable interpretation of the phrase.

***

« Time lost waiting for berth to count as loading/discharging time » means that if an effective notice of readiness cannot be given solely because there is no loading/discharging berth available to the vessel, the laytime will commence to run when the vessel starts to wait for a berth and will continue to run until the vessel stops waiting. The laytime exceptions apply to the waiting time as if the vessel was at the loading/discharging berth. When the waiting time ends laytime ceases to count and restarts when the vessel berths subject to the giving of a notice of readiness if one is required.

Comment :

There is still considerable uncertainty in various jurisdictions as to the interpretation of this phrase. The definition operates to advance the commencement of laytime but as a consequence the laytime exceptions will operate while the ship is waiting. This seems to be a reasonable approach because it is difficult to see any logical reason why a ship at anchorage waiting for berth should be advantaged for laytime purposes over a ship which arrived earlier and became strike-bound at the berth.

***

« Whether in berth or not » means that if the place named for Loading/discharging is a berth and if the berth is not immediately accessible to the vessel, an effective notice of readiness can be given when the vessel has arrived at the port in which the berth is situated.

Comment :

Remembering that port includes the usual anchorage, it is felt that it is right to limit the entitlement to give a notice of readiness under this clause until the vessel has at least reached that anchorage.

***

« Strikes » means a refusal by workers to perform their normal duties for any reason whatsoever including working to rule, going slow and (where it is part of their normal duties) not working overtime.

Comment :

An attempt to offer a simple definition which avoids the requirement that the stoppages must arise out of grievances regarding conditions of employment and therefore embraces strikes which have a political or similar motive.

***

« Demurrage » means the money payable to the Owners for delay for which the Owners are not responsible, beyond the stipulated or a reasonable time, as the case may be for loading or unloading. Loading/ discharging is completed when the Charterer has done all that is necessary for his part to enable the vessel to leave the loading/ discharging port or berth.

Comment :

The definition avoids treating demurrage as damages for failing to load or discharge within the laytime. This is not a universally-adopted approach and it held no advantage as against the view that demurrage was an agreed payment.

***

« Despatch Money » or « Despatch » means the money which the Owner agrees to pay if the vessel is loaded or discharged in less than the laytime. Unless otherwise provided, it is payable for all time saved including holidays and other time excluded from the laytime.

Comment :

As with demurrage, the accent in the definition is upon demurrage being an agreed payment. Whether it is appropriate in the definition to bring in a reference to all time saved or whether that phrase and others like it should have their own definitions, is for consideration.

THE RIO CHARTERPARTY DEFINITIONS

The definitions which follow shall apply to this charterparty save only to the extent that any definition or part thereof is inconsistent with any express provision of the charterparty, but the parties may exclude any one or more of these definitions by express provision in the charter or on the face hereof. Words used in these definitions shall themselves be construed in accordance with any definition given to them herein. Words or phrases which are merely variations or alternative forms or words or phrases herein defined are to be construed in accordance with the definition (e.g. 'Notification of vessel's readiness'/'Notice of readiness').

1. 'Port' means an area in which ships are loaded and discharged and includes the places where ships wait for their turn even if such places are outside that area. If the word 'port' is not used but the port is (or is to be) identified by its proper name, this definition shall still apply.
2. 'Berth' means the specific place where the ship is to load or discharge. If the word 'berth' is not used but the specific place is (or is to be) identified by its proper name, this definition shall still apply.
3. 'Laytime' means the period during which the owner agrees to make the ship available to the charterer for loading and discharging without additional charge.
4. 'Per workable hatch per day' means that laytime is to be calculated by multiplying the daily rate of loading/discharging by the number of the ship's hatches suitable for loading/discharging the cargo and dividing the quantity of cargo by the resulting sum.
5. 'Per working hatch per day' means that laytime is to be calculated by dividing the quantity of cargo in the hold containing the most cargo by the result of multiplying the daily rate of loading/discharging per hatch by the number of hatches serving that hold and suitable for loading/discharging the cargo.
6. 'As fast as the vessel can receive (deliver)' means that the laytime is a fixed period of time calculated by reference to the rate at which the vessel is theoretically capable at the date of the fixture of loading/unloading, disregarding factors existing at the time of loading/unloading.

7. 'Day' means a continuous period of 24 hours, which unless the context otherwise requires runs from midnight to midnight, or such shorter period as may be agreed in the charter.

8. 'Holidays' means days on which cargo work on ships is usually suspended at the place of loading/discharging because they are recognised as such by the law or practice of that place.

9. 'Working days' mean days which are not expressly excluded from laytime by the charter.

10. 'Weather working day' means a day on which it is or would be possible to load or discharge without interference due to the weather. If such interference occurs (or would have occured if work had been in progress), there shall be excluded from the laytime a period calculated by reference to the ratio which the duration of the interference bears to the time which would have or could have been worked but for the interference.

11. 'Excepted', in relation to a day or days as in 'Sundays and holidays excepted', means that the specified days do not count as laytime even if loading or discharging is done on them.

12 'Unless used', in relation to a day or days as in 'Sundays and holidays excepted unless used', means that if work is carried out during the excepted days the actual hours of work only count as laytime.

13. 'Weather permitting' means that time during which weather actually prevents work being done shall not count as laytime.

14. 'Customary despatch' means that the charterer must load or unload as fast as is possible in the circumstances prevailing at the time of loading or unloading.

15. 'Average' in the context of laytime, means that separate calculations are to be made for loading and unloading and any time saved in one operation is to be set against any excess time used in the other.

16. 'Reversible' in the context of laytime, means an option given to the charterer to add together the time allowed for loading and discharging. Where the option is exercised the effect is the same as a total time being specified to cover both operations.

17. 'Notice of Readiness' means notice to the charterer, shipper, receiver, or other person as required by the charter that the ship has arrived at the port or berth as the case may be and is ready to load/discharge.

18. 'Reachable on arrival' means that the charterer undertakes that when the ship arrives at the port there will be a loading/discharging berth for her to which she can proceed without delay.

19. 'Time lost in waiting for berth to count as loading/discharging time' (or 'as laytime') means that if a valid notice of readiness

cannot be given solely because there is no loading/discharging berth available to the ship the laytime will commence to run when the ship starts to wait for a berth and will continue to run until the ship stops waiting. The laytime exceptions apply to the waiting time as if the ship were at the loading/discharging berth. When the waiting time ends, laytime ceases to count and restarts when the ship berths subject to the giving of a notice of readiness, if one is required by the charter.

20. 'Whether in berth or not' means that if the place named for loading/discharging is a berth and if the berth is not immediately accessible to the ship, a valid notice of readiness can be given when the ship has arrived at the port in which the berth is situated.

21. 'Strikes' means a refusal to work normally for any reason whatsoever, including working to rule, going slow and (where it is part of normal work) not working overtime.

22. 'Demurrage' means the money payable to the owner for delay in loading or discharging for which the owner is not responsible, beyond the stipulated or a reasonable time, as the case may be for loading or discharging.

23. 'Despatch money' or 'Despatch' means the money which the owner agrees to pay if the ship is loaded or discharged in less than the laytime.

4

RIDERS TO THE STATEMENT OF THE RATIFICATIONS OF AND ACCESSIONS TO THE INTERNATIONAL MARITIME LAW CONVENTIONS

ACCESSION BY ECUADOR AND ENTRY INTO FORCE OF TE PROTOCOL OF FEBRUARY 23RD 1968

In a communication dated April 5th 1977, the Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, advises that on March 23rd 1977 the instrument of accession of Ecuador was deposited with the Belgian Government in respect of

a) THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO

BILLS OF LADING

AND PROTOCOL OF SIGNATURE
SIGNED AT BRUSSELS ON AUGUST 25TH 1924

AND

b) THE PROTOCOL TO AMEND THIS CONVENTION SIGNED AT BRUSSELS ON FEBRUARY 23RD 1968.

In accordance with the provisions in Article 14, the Convention at a) shall, as regards Ecuador, come into force on September 23rd 1977.

In accordance with Article 13, 1, the Protocol at b) shall come into force on June 23rd 1977 (x).

List of ratifications and adhesions

State	*Date when ratification was deposited*	*Date when accession was deposited*
Singapore		April 25th 1972
Norway	March 19th 1974	
Syrian Arab Rep.		August 1st 1974
Sweden	December 9th 1974	
Lebanon		July 19th 1975
Denmark	Nov. 20th 1975 (1)	
Switzerland	December 11th 1975	
Great Britain	October 1st 1976 (2)	
France	March 10th 1977	
Ecuador		March 23rd 1977

(x) Article 13, 1 :
« This Protocol shall come into force three months after the date of the deposit of ten instruments of ratification or accession, of which at least five shall have been deposited by States that have each a tonnage equal or superior to one million gross tons of tonnage. ».

(1) does not apply to the Faroe Isles.

(2) applies to the Isle of Man.

RIDERS TO THE STATEMENT OF THE RATIFICATIONS OF AND ACCESSIONS TO THE INTERNATIONAL MARITIME LAW CONVENTIONS

RATIFICATION BY FRANCE

In a communication dated March 16th 1977, the Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, advises that on March 10th 1977 the instrument of ratification of France was deposited with the Belgian Government in respect of the

PROTOCOL SIGNED AT BRUSSELS ON FEBRUARY 23RD 1968 TO AMEND THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO

BILLS OF LADING

SIGNED AT BRUSSELS ON AUGUST 25TH 1924

This Protocol has not yet come into force, the conditions required in Article 13 not having been fulfilled.

At the present time, the list of ratifications and accessions reads as follows :

Country	*Date when ratification was deposited*	*Date when accession was deposited*
Singapore		April 25th 1972
Norway	March 19th 1974	
Syrian Arab Reb.		August 1st 1974
Sweden	December 9th 1974	
Lebanon		July 19th 1975
Denmark	Nov. 20th 1975 (1)	
Switzerland	December 11th 1975	
Great Britain	October 1st 1976 (2)	
France	March 10th 1977	

(1) does not apply to the Faroe Isles.
(2) applies to the Isle of Man.

RIDERS TO THE STATEMENT OF THE RATIFICATIONS OF AND ACCESSIONS TO THE INTERNATIONAL MARITIME LAW CONVENTIONS

PRINCIPALITY OF MONACO

In a communication dated February 11th 1977, the Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, advises as follows :

On January 24th 1977, the Belgian Government received a letter dated January 17th 1977 from the Plenipotentiary Minister of the Principality of Monaco in Brussels, notifying the denunciation by Monaco of the

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE

LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING VESSELS

AND PROTOCOL OF SIGNATURE
SIGNED AT BRUSSELS ON AUGUST 25TH 1924

In accordance with Article 20 of the Convention, this denunciation will become effective, as regards Monaco, one year after the date of receipt of the above notification, namely January 24th 1978.

On January 24th 1977, the instrument of accession by the Principality of Monaco was deposited at the Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, in respect of the

INTERNATIONAL CONVENTION RELATING TO THE

LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING VESSELS

AND OPTIONAL PROTOCOL

SIGNED AT BRUSSELS ON OCTOBER 10TH 1957

This instrument of accession contains the three reservations provided in paragraph 2, a), b), c), in the Optional Protocol.

In accordance with the provisions in Article 11 (2) of the Convention, these Acts shall, as regards the Principality of Monaco, come into force on July 24th 1977.

INDEX

DOCUMENTATION C.M.I. - 1977 N° I

1. *Collisions*

— Final report of the chairman of the International Subcommittee, Prof. Nicholas Healy (Collisions-26/VII-77). 6

— Text of the draft International Convention for the unification of certain rules concerning Civil Jurisdiction, Choice of Law, and Recognition and enforcement of Judgments in matters of Collision. London draft June 16, 1977 (Collisions-27/VII-77). 22

2. *Off-Shore mobile Craft*

— Final report of the chairman of the International Subcommitee, Mr. Frode Ringdal (Dril. Ves-16/VI-77) 28

— Draft Convention on Off-Shore Mobile Craft. Draft of the Working Group of the CMI Subcommittee, revised as of June 15, 1977. (Dril. Ves-17/VI-77). 36

— Draft Convention on the unification of certain rules relating to Off-Shore Craft. Alternative text submitted by Norway, Draft revised as of June 20, 1977. (Dril. Ves-18/VI-77) 39

3. *Charterparty Terms.*

— Report and draft text of the Chairman of the International Subcommittee, Dr. Walter Müller. (C/P-Terms-4/VII-1977) 42

— Memorandum dated February 7, 1977 : « Charterparties - Definitions » by the Chairman of the Working Group Mr W.A. Wilson. (Appendix 1 to C/P-Terms-4) 45

— Draft of the International Subcommittee dated June 2, 1977. (Appendix 2 to C/P-Terms-4) 48

— Draft of the International Subcommittee : « The Rio Charterparty Definitions » (Appendix 3 to C/P-Terms-4). 58

4. *Riders to the Statement of the Ratifications of and accessions to the International Maritime Law Conventions* 61

C.M.I. DOCUMENTATION

Applications for subscriptions are dealt with by the Administrative Secretariat of the International Maritime Committee, C/o Messrs. Henry Voet-Génicot, 17, Borzestraat, B-2000 Antwerp, Belgium.

DOCUMENTATION C.M.I.

Le service des abonnements est assuré par le Secrétariat Administratif du Comité Maritime International, C/o Firme Henry Voet-Génicot, 17, Borzestraat, B-2000 Antwerpen, Belgique.