

COMITE MARITIME INTERNATIONAL

DOCUMENTATION

1977

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RIO DE JANEIRO

INTERNATIONAL MARITIME COMMITTEE

**XXXIst INTERNATIONAL CONFERENCE
OF THE COMITE MARITIME INTERNATIONAL**

RIO DE JANEIRO



**XXXIème CONFERENCE INTERNATIONALE
du COMITE MARITIME INTERNATIONAL**

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**AGENDA AND OFFICERS
OF THE CONFERENCE**

**ORDRE DU JOUR ET BUREAU
DE LA CONFERENCE**

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.

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Mr. A.K. JOUDRO
Mr. W. MÜLLER
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Mr. J. WAROT
- SECRETARIES-GENERAL : Mr. P. CALMON Filho
Mr. K.PINEUS
Mr. H. VOET
- SECRETARIES : Mr. M. MOREIRA de BARROS e SILVA
Mr. J. RAMBERG
Mr. W. de SÁ LEITÃO

ORDRE DU JOUR

- Projet de convention concernant la compétence, la loi applicable, la reconnaissance et l'exécution de jugements en matière d'abordages en mer.
- Projet de convention concernant les engins mobiles « off-shore ».
- Termes dans les chartes-parties.

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LISTE DES PARTICIPANTS

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3

OPENING SESSION
SEANCE INAUGURALE

DISCURSO PROFERIDO PELO EXMO SR. DESEMBARGADOR
J.C. SAMPAIO DE LACERDA,
PRESIDENTE ASSOCIAÇÃO BRASILEIRA
DE DIREITO MARITIMO

Sente-se honrada a cidade do Rio de Janeiro em receber os membros do Comitê Marítimo Internacional, através as representações de suas associações nacionais e especialmente dos membros que o dirigem, para a realização de sua XXXI Conferência, onde serão examinados e debatidos temas de maior importância em razão de sua atualidade.

Essa honraria maior significação tem para nós brasileiros por ser a primeira vez que o Comitê Marítimo Internacional, se reúne na América do Sul e a terceira vez que isso ocorre em países estranhos ao território europeu.

Nesta sessão inaugural da XXXI Conferência, que será presidida antes de qualquer pronunciamento, devemos todos prestar duas homenagens, conquanto de natureza diversa.

A primeira delas — de uma satisfação imensa — é a de apresentar ao próprio Comitê, as nossas congratulações pelo transcurso de seu 80º aniversário, completados justamente este ano, desde que a primeira Conferência, logo após a sua constituição, data de 6 de junho de 1897, realizada na cidade de Bruxelas.

O Comitê Marítimo Internacional, durante esse período de existência, muito tem produzido para a unificação do direito marítimo, elaborando projetos sobre vários assuntos, muitos dos quais se tornaram realidade através a aprovação de dezoito convenções internacionais, na maior parte em vigor. Todas essas convenções, se reunidas, conteriam matéria para um verdadeiro código internacional marítimo, como disse Paul Chauveau.

E ainda hoje, mantém o Comitê o seu prestígio internacional pelo êxito de suas últimas conferências, mesmo em face da existência de outros órgãos internacionais, como a Organização Intergovernamental Consultiva para a Navegação Marítima, um dos órgãos especializados da Organização das Nações Unidas, pois, como já prevíamos, em 1963, passou a ser órgão de consulta daquela Organização.

A outra homenagem — de uma enorme tristeza — é a de uma saudade imensa e que por isso apresentamos ao próprio Comitê os nossos sentimentos profundos pela perda irreparável, em o ano passado, do ilustre e conceituado Prof. Albert Lilar que, durante tantos anos, ocupou a presidência do Comitê, de forma brilhante, ativa, inesquecível e cuja falta, todos nós ainda hoje lamentamos, ainda mais que foi com ele que a Associação Brasileira de Direito Marítimo manteve os entendimentos iniciais desta Conferência em nossa cidade do Rio de Janeiro.

Senhores delegados das associações estrangeiras, nossas coirmãs dentro do Comitê, Senhor Professor Francesco Berlingieri, atual presidente do Comitê, cujos trabalhos publicados e cuja atuação o elevaram merecidamente a esse cargo, Senhores demais membros componentes quer da diretoria como da secretaria do Comitê, as nossas boas vindas a esta cidade e os nossos agradecimentos antecipados pela confiança que demonstraram, não sô aceitando o nosso convite como aqui comparecendo, em atenção ao mesmo.

A cerca da finalidade e dos motivos desta Conferência melhor dirá o Prof. Francesco Berlingieri, presidente do Comitê em seu pronunciamento nesta sessão.

Devemos, entretanto, agradecer também, em nome da Associação Brasileira de Direito Marítimo a todas aquelas entidades que souberam, atendendo a nosso apelo, demonstrar o interesse por esse conclave, cooperando e colaborando de todos os modos, para a possibilidade da sua realização e esperamos sejam ainda reconhecidos os esforços de todos os que militam na Associação Brasileira de Direito Marítimo para que pudéssemos dar a nossos hóspedes uma recepção condigna com a tradição de nosso país.

Bem-vindos, pois, ao Rio de Janeiro, Senhores participantes da XXXI Conferência do Comitê Marítimo Internacional. O Rio de Janeiro, desde agora, lhes pertence. Usem-no desinibidos como se fosse esta cidade a sua própria e verdadeira cidade!

SPEECH DELIVERED BY PROFESSOR FRANCESCO
BERLINGIERI, PRESIDENT OF THE COMITE
MARITIME INTERNATIONAL

DISCOURS PRONONCE PAR LE PROFESSEUR
FRANCESCO BERLINGIERI, PRESIDENT DU COMITE
MARITIME INTERNATIONAL

Mes premiers mots ne peuvent être qu'un remerciement chaleureux à nos hôtes pour leur accueil, une bienvenue également chaleureuse à tous les amis qui sont convenus ici pour participer à la conférence, et parmi eux spécifiquement aux membres des deux nouvelles associations qui font maintenant partie du CMI, l'Association d'Australie et celle de Vénézuéla, et aux observateurs qui nous font l'honneur de suivre nos travaux.

Há algum tempo já, era desejo do CMI reunir uma conferência na América do Sul. Agora esse desejo se realiza, graças ao convite que a ABDM teve a grande cortesia de nos fazer.

A razão para promovermos uma conferência neste continente está em tornar mais estreitos os vínculos entre o CMI e os países da América Latina e de dar testemunho do grande interesse do CMI em que todos estes países participem dos seus trabalhos e se constituam prosélitos da unificação do direito marítimo.

Considero, de fato, que não se pode falar em verdadeira uniformidade internacional do direito marítimo sem que dela participem em medida significativa, os países deste continente.

Para a obtenção desse resultado é preciso que o CMI venha a conhecer melhor os problemas dos países da América do Sul e ao mesmo tempo que os juristas e empresários destes países se convençam de que a missão do CMI é indispensável para o sucesso dos trabalhos de unificação do direito marítimo.

O CMI é, com efeito, a única organização de todo o mundo que reúne nos diversos países a experiência de juristas especializados em direito marítimo e reúne as opiniões, as idéias e os interesses de todos os meios comerciais e marítimos, como sejam os armadores, os embarcadores, os seguradores, os banqueiros, os corretores, os agentes e os comissários de transporte.

O CMI pode dessa forma conhecer os pontos de vista de todas as categorias interessadas e elaborar as soluções que levem em consideração tais pontos de vista e que representem, portanto, a fusão dos mesmos.

Ce travail peut être fait selon des techniques différentes. La première, classique pour le CMI, est celle de l'unification législative du droit substantiel uniforme, au moyen de Conventions Internationales. Cette technique est toujours utilisable par le CMI, qui, en accord

avec une ou plusieurs des organisations des Nations Unies s'occupant de l'unification du droit maritime, peut préparer des projets de convention. Dans les derniers dix ans le CMI a rédigé deux de ces projets, notamment celui de la Convention de 1969 sur la responsabilité civile pour dommages dus à la pollution par les hydro-carbures et celui de la Convention de 1976 sur la limitation de la responsabilité en matière de créances maritimes. La Conférence de Rio est appelée à discuter deux autres projets de convention, le projet de convention sur la compétence civile, la loi applicable, la reconnaissance et l'exécution des jugements en matière d'abordage et le projet de convention sur les plates-formes de forage.

La deuxième technique est celle de l'uniformité sur la base d'une adhésion volontaire dont le précédent le plus important se trouve dans les Règles d'York et Anvers. Le projet de définitions dans le domaine des chartes-parties est fondé sur cette technique.

La troisième façon de contribuer à l'unification du droit maritime est celle qui consiste à mettre au point des études de droit comparé dans certains domaines : C'est ce que le CMI est en train de faire pour les contrats de construction des navires.

Before embarking on the work of the Conference it is the tradition of the CMI to remember those Titulary Members recently deceased. However, the great number of members who have passed away since the Hamburg Conference does not allow me to pay tribute to each of them individually. I shall therefore mention their names and confine myself to saying a few words about our past President, who, as you all know, died a few days before the Assembly which would have made him Honorary President of the CMI. since he had decided not to stand for re-election as President.

Albert Lilar, who was President of the CMI for over 30 years, was the greatest artisan of the unification of maritime law. Thanks to him, international conventions in all areas of this branch of the law have been studied, perfected and signed. It is enough to remember the 1952 Brussels Convention on Civil and Penal Jurisdiction in Collision Cases and on the Arrest of Ships, the 1957 Conventions on the Limitation of Liability of Ship-owners and on the Carriage of Passengers, the 1962 Convention modifying that of 1910 relating to Salvage; three other conventions of the same year on the Carriage of Passenger Luggage, on the Registration of Rights in respect of Vessels under Construction and on Maritime Liens and Mortgages and, finally, the 1968 Convention modifying that of 1924 on Bills of Lading.

All these conventions are the result of studies conducted by the CMI and his presidency at the International Conferences of Antwerp, Amsterdam, Naples, Madrid, Rijeka, Athens, Stockholm, New York, Tokyo and Hamburg from 1947 to 1974. The success of Diplomatic Conferences and CMI Conferences was always guaranteed under his superb direction. He always had a thorough knowledge of the issues to be discussed.

The CMI must be even more grateful to him for the time he devoted to it over the last thirty years when one considers the great number of functions he performed in other areas and the great responsibilities he was always called upon to accept. His experience and his ability brought him, perhaps almost against his will, to the highest governmental positions in his country. He was Minister of Justice for about 11 years in five different governments and Vice-President of the Commission for Foreign Affairs of the Senate. One and a half years have elapsed since his death but our feeling of sadness at the loss has not in the least diminished.

Baroness Suzanne Lilar has decided to establish a Foundation in the name of her late husband, aiming to promote the study of maritime law. The Foundation has been approved by the Royal Decree of the 18 March 1977 and Article 10 of its Constitution provides that a prize will be awarded from the revenue of the fund every three years to a scientific study, published anywhere in the world, which the Board of Directors considers will contribute to the unification of maritime law and the study of comparative maritime law. It would be the desire of Baroness Lilar that the first prize be awarded in spring 1978 and therefore the Board of Directors would welcome the presentation of studies in the near future for their examination.

During the last three years we have lost, as I said before, a great many eminent members of the CMI, amongst whom were Wilbur Hecht, President of the Maritime Law Association of the United States from 1962 to 1964 and Prof. Plinio Manca; James-Paul Govare, for half a century one of the most familiar figures of the CMI; Albert C. Cappagli, Honorary Treasurer of the Argentine Maritime Law Association for more than twenty years; Placido Civiletti; Carlo van den Bosch, Honorary Secretary General of the CMI; Ménélas Prodromides who was Treasurer of the Association Française du Droit Maritime for many years; André Georges Vaes, Treasurer of the CMI, which task he performed with his usual drive and which he maintained until his death; Pierre Lureau, a great authority on maritime insurance and author of many books on that subject; Sture Petren, past President of the Court of Appeal of Svea and then Judge at the International Court at The Hague; Jesus Rubio Garcia Mina, Professor of Commercial Law at the University of Madrid; Egidio Dagna, General Manager of the Società Finanziaria Marittima (Finmare); Cyril Miller, in whom the CMI lost one of its greatest supporters and leaders and for whom the office of Honorary Vice President was specially created. The obituaries of all those whose names I have mentioned have been published in the CMI Documentation.

After the Hamburg Conference, during which the draft convention on Limitation of maritime claims and the revised York Antwerp Rules were approved, the CMI commenced work on new projects, whilst continuing its activity on those which had not yet been completed.

The first of these new projects is a new international convention on jurisdiction, choice of law recognition and enforcement of judgments in collision cases.

The aim is to revise the 1952 Brussels Convention on Civil Jurisdiction in matters of collision with a view to widening the scope of application and prepare rules which may obtain a wider support, thus bringing about a greater uniformity. The need to effect such a revision has also been confirmed by the IMCO Legal Committee which decided that the revision of the 1952 Brussels Convention on Civil Jurisdiction in matters of collision should be recommended for inclusion in its works program for 1978/79. When IMCO was informed that the matter had been taken up by the CMI, its Legal Committee agreed to await the outcome of the work in progress within the CMI.

The second international convention project is that relevant to the status of drilling platforms, which differs in the various jurisdictions, for in some of them these platforms are subject to the rules applicable to vessels, whilst in other jurisdictions they are not. In view of the increasing employment of drilling platforms in the territorial sea or in the economic zone of countries other than those to which the platforms belong, it has been felt to be increasingly important that these platforms be subject to uniform rules.

The International Sub-Committee appointed by the CMI has taken into consideration two different drafts; on the one hand that suggested by its working group according to which drilling platforms should be subject to the rules of the various international conventions applicable to vessels in the most important areas of maritime law, and on the other hand that suggested by the Norwegian MLA according to which the contracting states would undertake to apply the domestic rules applicable to vessels to drilling platforms in the above areas.

The third subject on the agenda of the Conference attempts to provide the definition of terms most commonly used in the chartering trade with a view to avoiding a different interpretation of these terms in different jurisdictions, thus achieving substantial uniformity in an area of great economic importance. In view of the fact that the chartering trade is very rightly left to the freedom of the parties and that any attempt to legislate in this area would impair the harmonious development of this trade, the only possibility of achieving greater uniformity is by preparing definitions which the parties can voluntarily incorporate by reference in the charter parties. This could bring about the result that the terms used in the charter parties would, when these rules are incorporated, be given the same meaning irrespective of the law governing the contract. The CMI has embarked upon this initiative in conjunction with other international organizations responsible for the preparation of most of the forms of charter parties i.e. the Baltic and International Maritime Conference and the General Council of British Shipping.

Tomorrow morning we shall commence our work and after the

Plenary Session has discussed the general principles underlying the three subjects on the agenda, I hope that, by the afternoon, the international sub-committees will be able to begin discussion of the drafts which have been submitted to the National Associations and that they will succeed in preparing texts which are acceptable to all delegations. I trust that all the international sub-committees, under the able direction of their chairmen, will be completely successful in their work.

Before closing I wish to express again, also on behalf of all the delegates, my warmest thanks and appreciation to the Brazilian Maritime Law Association and to its President, José Sampaio de Lacerda, for the splendid way in which they have organized this Conference. I have no doubt that we shall all very much enjoy the coming week and the hospitality of all our Brazilian friends.

**DISCURSO DO GOVERNADOR DO ESTADO
DO RIO DE JANEIRO, ALMIRANTE FARIA LIMA**

Desejava apresentar em nome do Governo do Estado os agradecimentos por haverem selecionado a cidade do Rio de Janeiro para a sede da XXXI Conferencia do Comite Marítimo Internacional.

É uma honra tôda especial para a nossa cidade, e faço votos que paralelamente ao sucesso dos trabalhos que se realizarão nesta semana, aqui neste Centro de Convenções do Hotel Nacional, os acompanhantes dos senhores delegados tenham a oportunidade de conhecer mais de perto a nossa cidade, conhecer mais profundamente o povo carioca, sempre com um humor todo especial para com nossos visitantes.

Assim, agradeço a todos aqueles que de países amigos vieram — ao Rio de Janeiro trabalhar em assuntos tão importantes para o nosso comércio marítimo, ao tempo em que lhes apresento as boas vindas da cidade, e com a permissão dos organizadores — desta conferencia, declaro encerrada esta sessão solene de inauguração dos trabalhos.

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CLOSING SESSION
SEANCE DE CLOTURE

STATEMENT BY MR T.A. MENSAH,
DIRECTOR, LEGAL DIVISION
INTER-GOVERNMENTAL MARITIME CONSULTATIVE
ORGANIZATION

DECLARATION DE MONSIEUR T.A. MENSAH,
DIRECTEUR, DIVISION LEGALE
ORGANISATION INTERGOUVERNEMENTALE CONSULTATIVE
DE LA NAVIGATION MARITIME

Mr. President, Ladies and Gentlemen,

Mr. Srivastava, the Secretary General of IMCO, who was keenly looking forward to being with you for at least part of this Conference, has asked me to convey to you his most profound apologies for his inability to be with you. As many of you know, Mr. Srivastava had completed his plans to travel to Rio. Unfortunately, unforeseen developments have made it necessary for him to be at Headquarters during the second part of this week. Mr. Srivastava is fully aware of the efforts which you, Mr. President, and the Conference, have made to accommodate his convenience, and he is therefore highly embarrassed not to be able to be with you after all. He has asked me to inform you that he is very sorry not to be able to come here to Rio this week and he has particularly requested me to assure the Conference that his inability to be here is due to circumstances which he could not foresee until this week. He has also asked me, on his behalf, to make the following statement to the Conference, to further reinforce the sentiments he expressed in his telex which you, Sir, read to the Conference at the inaugural session :

I am very happy indeed to bring to the CMI and the Conference the sincere well-wishes and felicitations of the governing organs and Secretariat of IMCO. We wish your Conference well and your great Organization continued success in the coming years. We in IMCO recall with gratitude the very warm, long-standing and fruitful cooperative relationship between our two organizations, the Inter-Governmental Maritime Consultative Organization (IMCO) and the Comité Maritime International (CMI), a relationship which we have cherished in the past and expect and hope to maintain and strengthen in the future.

The relationship between IMCO and the CMI is, of course, both natural and logical. For what could be more natural than two organizations, each concerned exclusively with maritime affairs, should co-operate and collaborate closely with each other. And what could be more logical than that IMCO, in turning its attention to problems of international maritime law, should have sought and received co-

operation and expert assistance from the CMI — the pioneering organization in the development of a uniform international regime in the field of maritime law. Indeed, the identity of objectives between IMCO and the CMI is so real and obvious that the fear has been, not that the two organizations would not co-operate sufficiently, but that some people might mistake our identity or purpose for an identity of our two related but separate organizations. This possibility of confusion could become greater with the change of IMCO's name to the International Maritime Organization. You will, I am sure, appreciate the confusion that can arise between our two organizations — particularly for those few who choose to refer to the CMI by its English name — International Maritime Committee. Fortunately, the CMI is known and appreciated all over the world by its more dignified French name; and the danger of confusion will, therefore, be very little, at least among those who are acquainted with maritime affairs.

I must hasten to assure you that my worry about the possible mistaking of IMCO for the CMI is not intended to be a reflection on the CMI. How could I, so acutely aware as I am of the CMI's reputation and accomplishments? I underline the separateness of IMCO and CMI firstly because of the different characters of the two, the one being intergovernmental while the other is non-governmental, and secondly and more importantly, because the two complement each other and do what neither one of them could do so well by itself. You in the CMI bring to the problems of maritime law the contribution which only those with direct acquaintance with maritime law issues in real life can provide; whilst IMCO brings to bear on these issues the essential policy objectives and direction which only governments can determine; policy objectives which, at the end of the day, can most effectively ensure the actual implementation on the widest possible international scale. In a field of such significance to world trade and development as maritime law undoubtedly is, a conscious and continuing blending together of what is technically and commercially possible with what is politically acceptable is indispensable for real and meaningful success. This success should consist in the elaboration of rules and regimes which become operative in fact; as opposed to the mere promulgation of dogmatic principles or legislative instruments which remain unenforced or which are disregarded by those to whom they are meant to apply.

The relationship between IMCO and the CMI has been so close, so mutually appreciated and so fruitful because it has been based on this necessary and realistic approach. That was the basis on which we collaborated in producing a feasible legal international response to the environmental challenge which the « Torrey Canyon » disaster presented to the international maritime law community in 1967. The 1969 Civil Liability Convention, in the preparation of which IMCO relied so very heavily on the advice and contribution of the CMI, is now accepted as one of the prime international arrangements for dealing with the problems of liability, compensation and insurance in

respect of pollution damage. Indeed, most of the major principles of that Convention — and even the actual formulations thereof — have been adopted in almost all the global and regional environmental conventions and treaties which have been adopted since 1969, including the environmental provisions of the Composite Negotiating Text now before the Third United Nations Conference on the Law of the Sea. That these principles — recommended by the CMI and accepted, in all their essential particulars, by Governments — should now be so universally adopted is, I believe, sufficient testimony of the inherent logic and realism of those principles and, above all, a justification of the decision of IMCO and the CMI to work together in this field of mutual concern and interest.

We in IMCO — the Secretariat, the Legal Committee, the Council and the Assembly — have always valued and appreciated our collaboration with the CMI. We have welcomed the readiness of the CMI to contribute to our work and to undertake preliminary studies for IMCO in specific areas. We welcomed and found most useful the CMI's help in preparing for the 1974 Athens Convention on the Carriage of Passengers and their Luggage by Sea. We derived invaluable help from the CMI's preliminary work which made it possible for us to complete work so expeditiously on the 1976 Convention on Limitation of Liability for Maritime Claims. The Legal Committee has already expressed its willingness to consider the results of two of the subjects before your present Conference, i.e. Civil Jurisdiction in respect of Collisions and Liability in respect of Drilling Platforms. In the case of the Collisions question, the Committee has already assigned a degree of priority to it, and expects to be able to begin work on it soon on the basis of the results of your work here. On Drilling Platforms, the Legal Committee has stated quite clearly that it will be most interested to examine the results of the CMI's studies when they are available.

We believe that the envisaged collaboration in these fields will produce results which will be as creditable as those which came from our joint efforts in the past. Above all, we sincerely expect and hope that the co-operation between IMCO and the CMI will continue and improve and that we shall find subjects and areas of common interest to us in which we can produce realistic and acceptable solutions, using the procedures and approaches which have served us so well in the past. We in IMCO recognize and appreciate the informed expertise of the CMI and its component national associations and are fully conscious of the benefit which we derive from having you in association with us. Our wish is to contribute to the effectiveness of your work by helping to give the necessary governmental input and administrative imprint.

It is of importance to us in IMCO that this blending of informed expertise and necessary governmental acceptance be maintained in all we do. My purpose today is primarily to underline our wish and determination to maintain our close relationship and to improve

it further. I want to assure you, Mr. President and distinguished delegates, that we in IMCO will do all we can to make our co-operation as easy but as effective as it has been in the past. From past experience, I have no doubts whatsoever that we can count on you, Mr. President, and your colleagues to reciprocate our efforts.

That is the end of the Secretary General's message. May I on my own behalf add, Mr. President, that I have been deeply touched by the many expressions of interest and friendship which I have heard about IMCO and its Secretariat during the past week. I have also been impressed, once again, by the business-like and realistic way in which you have transacted business on the various important issues with so much expedition and yet with such seriousness. I have watched with deep respect and admiration the frankness with which you have stated your viewpoints, the clarity and readiness with which you have identified the differences between the respective positions, the earnestness with which you have all sought to work out meaningful compromises which are generally acceptable and practically applicable and, if I may venture to say so, the success with which you have achieved this rather elusive objective in such a short time. I can only hope that when the Legal Committee of IMCO comes to deal with these issues they will be able to bring to these issues the same spirit and the same approach; and I hope that the results of IMCO's work on your achievements here will be the production of yet another international instrument establishing a uniform set of legal norms in another important area of maritime law.

And now may I end by wishing you every success and thanking you for your kind indulgence.

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**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**

**PROJET DE CONVENTION INTERNATIONALE
POUR L'UNIFICATION DE CERTAINES REGLES
CONCERNANT LA COMPETENCE CIVILE,
LE CHOIX DE LA LOI, LA RECONNAISSANCE
ET L'EXECUTION DES JUGEMENTS
EN MATIERE D'ABORDAGE**

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

DRAFT APPROVED BY THE PLENARY SESSION OF THE CMI
CONFERENCE AT RIO DE JANEIRO, 30TH SEPTEMBER 1977

PRELIMINARY

Article 1

- (1) This Convention shall govern jurisdiction, choice of law, and recognition and enforcement of judgments in collision actions, including recourse actions, for damages resulting from :
- a) loss of or damage to a vessel;
 - b) loss of or damage to property on board a vessel.

For the purposes of this Convention « collision » means contact between two or more vessels, one of which at least is seagoing, and any other accident involving such vessels, arising from a manoeuvre, or a failure to manoeuvre, or from a failure to comply with any applicable rules of navigation, statutory or otherwise, even if no actual contact has occurred.

- (2) This Convention shall not apply to :
- a) ships of war or government vessels appropriated exclusively to a public non-commercial service, other than ferries;
 - b) claims which are capable of being founded in contract.

TITLE I - JURISDICTION

Article 2

- (1) Unless the parties otherwise agree, the plaintiff may prosecute such an action only in a Court of a State Party to this Convention :
- a) where the defendant has his habitual residence or domicile, or principal place of business; or

Editor's Note: A report of the Chairman of this Subcommittee, Professor N. Healy, will be printed in the next CMI-Documentation.

CONVENTION INTERNATIONALE POUR L'UNIFICATION
DE CERTAINES REGLES CONCERNANT LA COMPETENCE
CIVILE, LE CHOIX DE LA LOI, LA RECONNAISSANCE
ET L'EXECUTION DES JUGEMENTS
EN MATIERE D'ABORDAGE

PROJET APPROUVE PAR LA SEANCE PLENIERE DE LA CONFERENCE
DU CMI A RIO DE JANEIRO, LE 30 SEPTEMBRE 1977

PRELIMINAIRE

Article 1

- (1) La présente Convention régit la compétence, le choix de la loi, ainsi que la reconnaissance et l'exécution des jugements rendus en matière d'abordage sur les demandes en dommages-intérêts, y compris les actions récursoires, concernant :
- (a) la perte d'un navire ou les dommages subis par lui;
 - (b) les pertes ou dommages subis par les biens se trouvant à bord d'un navire.

Dans la présente Convention, « abordage » s'entend du heurt entre deux ou plusieurs navires, dont l'un au moins est un navire de mer, et de tout autre accident dans lequel sont impliqués de tels navires, résultant d'une manœuvre, de l'omission d'une manœuvre ou de l'inobservation de toute règle de navigation applicable, qu'elle soit ou non inscrite dans un Règlement, même si aucun heurt n'a effectivement eu lieu.

- (2) La présente Convention ne s'applique pas :
- (a) aux navires de guerre ni aux navires d'Etat exclusivement affectés à un service public non commercial, autres que des « ferries »;
 - (b) aux actions susceptibles d'être fondées sur un contrat.

TITRE I - COMPETENCE

Article 2

- (1) A moins que les parties n'en conviennent autrement, le demandeur ne pourra poursuivre de telles actions que devant le tribunal d'un Etat partie à la présente Convention :
- (a) où le défendeur a sa résidence habituelle, son domicile ou son établissement principal; ou bien

Note de l'Editeur : Un rapport du Président de la Commission Internationale, le Professeur N. Healy, sera publié dans la prochaine Documentation CMI.

- b) in the internal waters or territorial sea of which the collision has occurred; or
 - c) 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, has been arrested or security has been provided to avoid arrest on account of the collision; or
 - d) where the defendant has property subject to attachment under the law of that State and such property has been attached or security has been provided to avoid attachment on account of the collision; or
 - e) where a limitation fund has been properly constituted by the defendant in accordance with the law of that State on account of the collision.
- (2) If an action is pending in one State Party, any further action brought in another State Party 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 discontinued, or, if the Court so permits, stayed.

If judgment has been rendered on the merits in an action in one State Party, a party to such action shall not be permitted to bring a further action against the other party or parties to such action on the same facts in another State Party, unless, in the case of a successful party, the judgment cannot be fully satisfied in the State where it was rendered, in accordance with the law of that State.

Article 3

In the event of there being more than one claim to which this Convention applies arising out of the same collision, action on any such claim, whether by counterclaim or otherwise, may be brought against any party or parties to the proceedings before the Court seized of the original action.

TITLE II - CHOICE OF LAW

Article 4

Unless the parties otherwise agree, 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 in waters beyond the territorial sea, the law of the Court seized of the case shall apply, except that when all of the vessels involved are registered or otherwise documented or, if not registered or otherwise documented, owned in the same State, the law of that State shall apply, wherever the collision occurs.

- (b) dans les eaux intérieures ou dans la mer territoriale duquel s'est produit l'abordage; ou bien
 - (c) où un navire impliqué dans l'abordage (autre que celui du demandeur) ou bien un navire appartenant au même propriétaire, légalement susceptible d'être l'objet d'une saisie conservatoire, a été saisi, soit encore où une caution a été fournie pour éviter la saisie, relativement à l'abordage; ou bien
 - (d) où le défendeur a des biens susceptibles d'être l'objet d'une saisie conservatoire selon la loi de cet Etat, pourvu que lesdits biens aient été saisis ou qu'une caution y ait été fournie pour éviter la saisie, relativement à l'abordage; ou bien
 - (e) où un fonds de limitation a été valablement constitué par le défendeur selon la loi de cet Etat, relativement à l'abordage.
- (2) Lorsqu'une action est pendante dans un Etat contractant, toute autre action intentée dans un autre Etat contractant par le même demandeur contre le même défendeur en réparation du même dommage, sera suspendue à moins et jusqu'à ce que l'action introduite en premier lieu ait fait l'objet d'un désistement ou, si le tribunal de permet, ait été suspendue.

Lorsqu'un jugement sur le fond a été rendu dans un Etat contractant, une partie au procès n'aura pas le droit d'intenter pour les mêmes faits, dans un autre Etat contractant, une action nouvelle contre une ou plusieurs autres parties au procès, à moins que, s'il s'agit d'une partie ayant obtenu gain de cause, ledit jugement ne puisse pas être pleinement exécuté dans l'Etat où il a été rendu, conformément à la loi de cet Etat.

Article 3

Dans le cas où le même abordage donnerait lieu à plus d'une demande tombant dans le champ d'application de la présente Convention, cette demande ou toute autre action, reconventionnelle ou autre, pourra être intentée contre toute partie au procès déjà introduit devant le tribunal saisi de la demande originelle.

TITRE II - CHOIX DE LA LOI

Article 4

A moins que les parties n'en conviennent autrement, lorsqu'un abordage se produit dans les eaux intérieures ou dans la mer territoriale d'un Etat, la loi de cet Etat s'appliquera, et lorsqu'un abordage se produit dans des eaux situées au delà de la mer territoriale, la loi du tribunal saisi de l'affaire s'appliquera, mais lorsque tous les navires impliqués sont immatriculés ou munis d'autres documents les rattachant au même Etat, ou encore si leurs propriétaires relèvent d'un même Etat, la loi de cet Etat s'appliquera, quelque soit l'endroit où ait eu lieu l'abordage.

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 apply any Convention to which all of such States have given effect.

Provided, further, that to the extent that it is established that the law of all of such States is in accordance with the principles of a convention, the Court seized of the case shall, to that extent, apply such law.

Notwithstanding anything contained in this article, any relevant local navigational rules or regulations, statutory or otherwise, shall apply.

Article 5

The law applicable as provided 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;;
- (9) the rules concerning prescription.

The application of a law declared applicable under this title may be refused only when such application would be incompatible with public policy.

Article 6

Wherever reference is made in this title to the law of a State, the law referred to is the internal law of that State.

TITLE III - RECOGNITION AND ENFORCEMENT OF JUDGMENTS

Article 7

- (1) This title applies to the recognition and enforcement of judgments, including judgments in limitation actions, rendered by a Court of a State Party in cases governed by this Convention, provided that the successful party is entitled to execution thereon under the law of the State where rendered.

Pourvu cependant que dans les cas mettant en cause des navires immatriculés ou munis d'autres documents ne les rattachant pas à un même Etat, le tribunal saisi de l'affaire applique toute Convention à laquelle tous ces Etats ont donné effet.

Pourvu également que, dans la mesure où il est établi que la loi de tous ces Etats est conforme aux principes d'une convention, le tribunal saisi de l'affaire appliquera cette loi dans la même mesure.

Quelles que soient les dispositions du présent article, il sera fait application des règles de navigation prévalant à l'endroit de l'abordage, qu'elles soient ou non inscrites dans un Règlement.

Article 5

La loi applicable, telle que la détermine l'article 4, sera celle qui régit :

- (1) les conditions de la responsabilité;
- (2) les causes d'exonération de responsabilité et tout partage de responsabilité;
- (3) la nature des dommages susceptibles de réparation;
- (4) le quantum des dommages;
- (5) les personnes ayant droit à réparation du dommage qu'elles ont personnellement subi;
- (6) la responsabilité du mandant pour les faits ou omissions de son mandataire, ou celle du commettant pour les faits ou omissions de son préposé, ou encore celle du navire ou de son propriétaire ou de son armateur-gérant pour les faits ou omissions d'un pilote;
- (7) la transmissibilité du droit à réparation;
- (8) la charge de la preuve et les présomptions;
- (9) les règles en matière de prescription.

Une loi déclarée applicable en vertu du présent Titre ne peut être écartée que si son application était contraire à l'ordre public.

Article 6

Chaque fois que dans le présent Titre il est fait référence à la loi d'un Etat, il s'agit de la loi interne de cet Etat.

TITRE III - RECONNAISSANCE ET EXECUTION DES JUGEMENTS

Article 7

- (1) Le présent Titre s'applique à la reconnaissance et à l'exécution des jugements, y compris les jugements en matière de limitation de responsabilité, rendus par un tribunal d'un Etat contractant dans les cas régis par la présente Convention, pourvu que la partie ayant obtenu gain de cause soit autorisée à en poursuivre l'exécution suivant la loi de l'Etat où la décision a été rendue.

- (2) Such judgments shall be recognized and enforced in a State Party under the conditions laid down in the following article, provided that such State and the State wherein the judgment was rendered have concluded a Supplementary Agreement to this effect.
- (3) 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.
- (4) 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 8

- (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 7;
 - c) such translations of the documents referred to in sub-paragraphs (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) the judgment debtor was not given reasonable notice of the proceedings and a fair opportunity to present his case.
- (3) Enforcement of a judgment shall be refused to the extent that the judgment has been satisfied.

- (2) De tels jugements seront reconnus et exécutés dans un Etat contractant aux conditions de l'article suivant, pourvu que cet Etat et celui dans lequel le jugement a été rendu aient conclu à cet effet un Accord complémentaire.
- (3) Le présent Titre ne s'applique pas aux jugements rendus avant l'entrée en vigueur de l'Accord complémentaire mentionné au paragraphe précédent, à moins que cet Accord n'en dispose autrement.
- (4) L'Accord complémentaire continuera à s'appliquer aux jugements pour lesquels une procédure de reconnaissance ou d'exécution aura été introduite avant que ne prenne effet toute dénonciation de cet Accord.

Article 8

- (1) Une partie qui demande la reconnaissance ou l'exécution d'un jugement devra fournir :
 - (a) une copie complète du jugement, certifiée conforme;
 - (b) les copies certifiées conformes de tous les documents nécessaires pour établir que le jugement remplit les conditions de l'article 7;
 - (c) toutes les traductions des documents auxquels il est fait référence aux lettres (a) et (b) de ce paragraphe, qui pourraient être exigées par le tribunal de l'Etat où la reconnaissance ou l'exécution est recherchée.
- (2) La reconnaissance ou l'exécution d'un jugement ne peut être refusée que si le tribunal a la certitude que :
 - (a) le tribunal qui a rendu le jugement n'en avait pas la compétence suivant la présente Convention; ou bien que
 - (b) le jugement a été obtenu par fraude; ou bien que
 - (c) la reconnaissance ou l'exécution du jugement serait incompatible avec l'ordre public de l'Etat dans lequel la reconnaissance ou l'exécution est recherchée; ou bien que
 - (d) le défendeur ayant encouru une condamnation n'a pas reçu une mise en demeure raisonnable pour la procédure et n'a pas équitablement eu la possibilité de se défendre.
- (3) L'exequatur d'un jugement doit être refusé dans la mesure où celui-ci a été exécuté.

TITLE IV - GENERAL PROVISIONS

Article 9

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

This Convention shall not apply to limitation of liability except as provided in Title III in respect of judgments in limitation actions.

Questions of procedure and any questions 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, to the extent that the provisions of the two conventions are incompatible.

TITRE IV - DISPOSITIONS GENERALES

Article 9

La présente Convention ne portera pas préjudice aux dispositions de tous autres Conventions ou Traités auxquels les Etats contractants sont ou deviendront parties.

La présente Convention ne s'applique pas à la limitation de responsabilité, sauf pour ce qui est réglé par le Titre III au sujet des jugements rendus en cette matière.

Les questions de procédure et toutes autres questions qui ne sont pas autrement réglées par la présente Convention seront régies par la loi du Tribunal saisi de l'affaire.

Pour ce qui concerne les relations entre les Etats qui ratifient la présente Convention ou y accèdent, celle-ci remplacera et abrogera la Convention Internationale pour l'unification de certaines règles relatives à la compétence civile en matière d'abordage, signée à Bruxelles le 10 mai 1952, dans la mesure où les dispositions des deux conventions sont incompatibles.

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DRAFT CONVENTION ON OFF-SHORE MOBILE CRAFT

PROJET DE CONVENTION SUR LES ENGINES MOBILES « OFF-SHORE »

DRAFT INTERNATIONAL CONVENTION ON OFF-SHORE MOBILE CRAFT

Article 1

DEFINITION

In this Convention « craft » shall mean any marine structure of whatever nature not permanently fixed into the sea-bed which

- a) is capable of moving or being moved whilst floating in or on water, whether or not attached to the sea-bed during operations, and
- b) is used or intended 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

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 for the unification of certain rules 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 rules of such convention or conventions to craft to which they would not otherwise apply.

Note de l'Editeur: Un rapport du Président de la Commission, sera publié dans la prochaine Documentation CMI.

PROJET DE CONVENTION INTERNATIONALE SUR LES ENGINS MOBILES « OFF-SHORE »

Article 1

DEFINITION

Dans cette Convention « engin » signifie toute structure marine quelle qu'elle soit, non fixée de façon définitive au fond de la mer et qui est :

- a) apte à se déplacer ou à être déplacée en flottant sur l'eau ou sous l'eau, quelle soit ou non fixée au fond de la mer pendant les opérations;
- b) et utilisée ou destinée à l'exploration, l'exploitation, la transformation, le transport ou l'entreposage des ressources minérales du fond de la mer ou de son sous-sol, ou à des missions de servitude.

Article 2

ABORDAGE

Un Etat contractant qui est également partie à :

- la Convention internationale pour l'unification de certaines règles en matière d'abordage et au Protocole de signature du 23 septembre 1910,
ou à,
- la Convention internationale pour l'unification de certaines règles relatives à la compétence civile en matière d'abordage du 10 mai 1952,
ou à,
- la Convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage et autres événement de navigation du 10 mai 1952.

doit appliquer aux engins les règles de cette ou de ces Conventions qui ne leur seraient pas applicables autrement.

Note de l'Editeur : Un rapport du Président de la Commission sera publié dans la prochaine Documentation CMI.

Article 3

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 rules of the said convention or conventions with Protocol to craft to which they would not otherwise apply.

Article 4

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 rules of that convention to craft to which they would not otherwise apply.

Article 5

LIMITATION OF LIABILITY

A State Party which is also a party to

- 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 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, subject to Article 9 below, apply the rules of any such convention to craft to which they would not otherwise apply. In the case of the 1976 Convention, a State Party shall do so notwithstanding the provisions of Article 15, paragraph 5, of that convention.

Article 6

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

Article 3

ASSISTANCE ET SAUVETAGE

Un Etat contractant qui est également partie à :

- la Convention pour l'unification de certaines règles en matière d'assistance et de sauvetage maritimes et au Protocole de signature du 23 septembre 1910, ou à,
- ladite Convention avec le Protocole du 27 mai 1967, doit appliquer aux engins les règles de cette Convention, ou de la Convention avec le Protocole, qui ne leur seraient pas applicables autrement.

Article 4

SAISIE

Un Etat contractant qui est également partie à la Convention internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer du 10 mai 1952, doit appliquer aux engins les règles de cette Convention, qui ne leur seraient pas applicables autrement.

Article 5

LIMITATION DE RESPONSABILITE

Un Etat contractant qui est également partie à :

- la Convention internationale pour l'unification de certaines règles concernant la limitation de la responsabilité des propriétaires de navires de mer et au Protocole de signature du 25 août 1924, ou à,
- la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer et au Protocole de signature du 10 octobre 1957, ou à,
- la Convention sur la limitation de la responsabilité en matière de créances maritimes du 19 novembre 1976, doit appliquer aux engins, sous réserve de l'Article 9 ci-après, les règles de ces Conventions qui ne leur seraient pas applicables autrement. S'agissant de la Convention de 1976, un Etat contractant devra en appliquer les règles nonobstant les dispositions de l'Article 15, paragraphe 5, de ladite Convention.

Article 6

DROITS SUR LES ENGINES

Un Etat contractant qui est également partie à :

- la Convention internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes et au Protocole de signature du 10 avril 1926, ou à,

— 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, subject to Article 10 below, apply the rules of such convention or conventions to craft to which they would not otherwise apply, provided that the State Party has established a system of registration of rights in relation to such craft.

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

For the purpose of this Article a structure's status as a craft as defined in Article 1 shall be determined in accordance with the law of the State where a title to or a mortgage on such structure is registered.

Article 7

LIABILITY FOR OIL POLLUTION

Subject to the succeeding paragraph of this Article, a State Party which is also a party to the International Convention on civil liability for oil pollution damage dated November 29, 1969, shall apply the rules of that convention to the escape or discharge of oil contained in craft, in so far as they would not otherwise apply.

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

Article 8

APPLICATION OF NATIONAL RULES

Subject to the provisions contained in Articles 9 and 10, a State Party, in so far as it is not a party to a convention referred to in Articles 2, 3, 4, 5, 6 or 7, shall apply to craft the rules which the State Party applies to vessels, in relation to the subject matters dealt with in any such convention.

Nevertheless, a State Party may, when enacting legislation with regard to vessels subsequent to this convention coming into force for that State, exclude craft which are not vessels from the application of such new legislation.

- la Convention internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes du 27 mai 1967, ou à,
- la Convention internationale relative à l'inscription des droits relatifs aux navires en construction du 27 mai 1967,

doit, sous réserve de l'Article 10 ci-après, appliquer aux engins les règles de cette ou de ces Conventions qui ne leur seraient pas applicables autrement, à condition que l'Etat contractant ait établi un régime d'inscription des droit relatifs à ces engins.

Quant un tel régime permet l'inscription de la propriété de l'engin, un droit, régulièrement inscrit dans un Etat contractant, sera reconnu par les autres Etats contractants.

Pour l'application de cet Article, le statut d'une structure telle qu'un engin défini à l'Article 1 doit être déterminé par la loi de l'Etat dans lequel est inscrit un droit ou une hypothèque portant sur cette structure.

Article 7

RESPONSABILITE POUR POLLUTION PAR HYDROCARBURES

Sous réserve du second paragraphe du présent article, un Etat contractant qui est également partie à la Convention internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures du 29 novembre 1969, doit appliquer les règles de cette Convention aux fuites ou rejets d'hydrocarbures contenus dans l'engin, dans la mesure où ces règles ne leur seraient pas applicables autrement.

Toutefois un Etat contractant n'appliquera lesdites règles qu'à défaut d'autres dispositions sur la responsabilité, applicables en vertu d'autres Conventions internationales auxquelles il est également partie.

Article 8

APPLICATION DES REGLEMENTATIONS NATIONALES

Sous réserve des dispositions des Articles 9 et 10 ci-après, pour autant qu'un Etat contractant n'aura pas adopté une des Conventions visées aux Articles 2, 3, 4, 5, 6 et 7, cet Etat appliquera aux engins, dans les domaines régis par une quelconque de ces Conventions, les règles qu'il applique aux navires.

Toutefois, un tel Etat contractant, légiférant sur les navires postérieurement à l'entrée en vigueur de la Convention sur son territoire, pourra exclure de l'application de la nouvelle législation les engins qui ne sont pas des navires.

Article 9

MINIMUM LIMITS OF LIABILITY FOR PLATFORMS

For the purpose of calculating the limit of liability under Articles 5 and 7, craft which are platforms shall be deemed to be of not less than x tons. The same shall apply to the limit of liability under national law pursuant to Article 8 above if and insofar as such a limit is based on tonnage.

Article 10

MARITIME LIEN IN RESPECT OF POLLUTION

No maritime lien shall attach to craft in respect of liability for pollution damage of whatever nature other than that imposed by Article 7 or similar rules applicable under Article 8.

Article 11

NATIONALITY

If, under any of the conventions applicable pursuant to Articles 2, 3, 4, 5, 6 and 7 or the national rules pursuant to Article 8, nationality is a relevant factor, a craft shall be deemed to have the nationality of the State in which it is registered for title or, if not so registered, the State of its owner.

Article 12

SAVINGS

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

Article 9

**LIMITE MINIMUM DE RESPONSABILITE
POUR LES PLATES-FORMES**

Pour le calcul de la limite de responsabilité définie aux Articles 5 et 7, les engins qui sont des plates-formes sont réputés avoir une jauge minimum de x tonneaux.

Lorsque par le jeu de l'Article 8 ci-dessus, la loi interne s'appliquera, la même règle sera retenue quant à la limite minimum de responsabilité pour autant que cette limite se base sur le tonnage.

Article 10

PRIVILEGES MARITIMES RELATIFS A LA POLLUTION

Aucune créance, née d'un dommage par pollution de quelque nature qu'il soit, autre que celles résultant de la responsabilité définie par l'Article 7 ou des règles similaires applicables en vertu de l'Article 8, ne peut donner naissance à un privilège maritime sur les engins.

Article 11

NATIONALITE

Si en vertu des Conventions applicables selon les Articles 2, 3, 4, 5, 6 et 7, ou des règles nationales applicables selon l'Article 8, la nationalité est prise en considération, un engin sera réputé avoir la nationalité de l'Etat dans lequel il est immatriculé ou, s'il n'est pas immatriculé, la nationalité de son propriétaire.

Article 12

CLAUSE DE SAUVEGARDE

Rien dans cette Convention ne préjudicie aux droits ou obligations des personnes physiques ou morales en tant que concessionnaires, détenteurs de permis ou autrement bénéficiaires de droits relatifs aux ressources minérales.

**DRAFT RIO DE JANEIRO CHARTERPARTY
(LAYTIME) DEFINITIONS**

**PROJET DES DEFINITIONS DE RIO DE JANEIRO
CONCERNANT LES CHARTES-PARTIES (STARIES)**

RIO DE JANEIRO CHARTERPARTY (LAYTIME) DEFINITIONS

The following numbered definitions (to which an appropriate distinctive title should be given) of words and phrases affecting laytime which are commonly used in charterparties, have been approved as a draft by the C.M.I. Conference held in Rio de Janeiro in September 1977.

If the owner and charterer wished to incorporate the whole or some of those definitions (when finally implemented) in their charterparty they could do so either by reference to the definitions by their title (excluding by reference to its number any definition which they did not wish to apply) or by attaching the definitions in extenso to the charterparty (deleting any definition which they did not wish to apply) with a suitable incorporating clause in the charterparty.

DEFINITIONS (LAYTIME)

The definitions (except such as are expressly excluded by deletion or otherwise) shall apply to words and phrases used in the charterparty, save only to the extent that any definition or part thereof is inconsistent with any other express provision of the charterparty. Words used in these definitions shall themselves be construed in accordance with any definition given to them herein. 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 within which ships are loaded with and/or discharged of cargo and includes the usual places where ships wait for their turn or are ordered or obliged to wait for their turn even if such waiting places are outside that area, no matter the distance from that area.

If the word « port » is not used, but the port is (or is to be) identified by its name, this definition shall still apply.

Editor's Note: A report concerning this subject will be printed in the next CMI-Documentation.

DEFINITIONS DE RIO DE JANEIRO CONCERNANT LES CHARTES-PARTIES (STARIES)

La Conférence du C.M.I. tenue à Rio de Janeiro en septembre 1977, a approuvé en tant que projet les définitions numérotées qui suivent (auxquelles un titre distinct et approprié devra être donné) pour des mots et expressions d'usage courant dans les chartes-parties concernant les staries.

L'armateur et l'affréteur peuvent, s'ils le désirent, incorporer ces définitions en tout ou en partie (après leur mise en œuvre finale), dans leurs Chartes-parties, soit en se référant à ces définitions par leur titre (en mentionnant le cas échéant les définitions devant être exclues par référence à leur numéro), soit en annexant ces définitions in extenso à la Charte-partie (en indiquant les définitions à exclure) par une clause appropriée d'incorporation à la charte-partie.

DEFINITIONS (STARIES)

Les définitions (excepté celles qui sont expressément exclues par radiation ou autrement) qui suivent s'appliqueront aux mots et expressions utilisés dans la Charte-partie, sauf en cas de conflit avec des dispositions expresses de celle-ci.

Sauf dans la mesure où ces définitions ou parties d'entre elles sont incompatibles avec toute disposition expresse de la Charte-partie.

Les mots utilisés dans ces définitions sont eux-mêmes interprétés conformément à toute définition qui leur est donnée ci-après.

Les mots ou expressions qui ne sont que des variantes ou des synonymes des mots ou expressions ci-après définis doivent être interprétés conformément aux définitions suivantes (par exemple, « notification de mise à disposition du navire » doit se référer à la définition donnée de « avis de mise à disposition »).

1. Le mot « port », (en anglais « port »), signifie une zone dans laquelle les navires sont chargés et/ou déchargés et comprend les lieux usuels où les navires attendent leur tour ou bien ont reçu l'ordre d'attendre leur tour ou bien sont obligés de l'attendre même si de tels lieux d'attente se trouvent situés en dehors de cette zone, quelle que soit la distance.

Si le terme « port » n'est pas utilisé mais que le port est (ou doit être) identifié par son nom propre, cette définition s'appliquera également.

Note de l'Editeur : Un rapport concernant ce sujet sera publié dans le prochain numéro de la Documentation CMI.

2. « *Berth* » means the specific place where the ship is to load and/or discharge.
If the word « berth » is not used, but the specific place is (or is to be) identified by its name, this definition shall still apply.

3. « *Laytime* » means the period agreed between the parties during which the owner will make the ship available for loading/discharging in return for the agreed freight. If the place specified (or to be specified) in the charterparty is a port and the ship waits at a place outside the area within which cargo is loaded and/or discharged, the time spent shifting from the waiting place to the berth will not count as laytime.

4. « *Per workable hatch per day* » means that laytime is to be calculated by multiplying the daily rate of loading/discharging the cargo by the number of the ship's hatches suitable and available for loading/discharging the cargo and dividing the quantity of cargo by the resulting sum.

5. « *Per working hatch per day* » means that the laytime is to be calculated on the basis of the loading/discharging time for the hold requiring the longest time to load/discharge.

6. « *As fast as the vessel can receive/deliver* » means that the laytime is a period of time to be calculated by reference to the maximum rate at which the vessel in full working order is capable of loading/discharging the cargo.

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

8. « *Holidays* » means days of the week or parts thereof on which cargo work on the ship would normally take place but is suspended at the place of loading/discharging by reason of:

2. L'expression « *poste à quai* », (en anglais « *berth* »), signifie le lieu précis où le navire doit charger et/ou décharger .
Si l'expression « *poste à quai* » n'est pas utilisée et que le lieu précis est ou doit être identifié par son nom propre, cette définition s'appliquera également.
3. Le mot « *staries* », (en anglais « *laytime* »), signifie la période convenue par les parties et durant laquelle l'armateur mettra son navire en état de charger ou de décharger moyennant le fret convenu.
Si le lieu indiqué, ou devant être indiqué suivant la charte-partie, est un port et que le navire attend en un lieu situé en dehors de la zone dans laquelle les marchandises sont chargées et/ou déchargées, le temps mis à déhaler de ce lieu d'attente en « *poste à quai* » ne sera pas compté comme *staries*.
4. L'expression « *par panneau utilisable par jour* », (en anglais : « *per workable hatch per day* »), signifie que les *staries* devront être calculées en multipliant la cadence quotidienne de chargement ou de déchargement par le nombre de panneaux du navire convenables et disponibles pour le chargement et le déchargement et en divisant la quantité de marchandises par la somme en résultant.
5. L'expression « *par panneau utilisé par jour* », (en anglais « *per working hatch per day* »), signifie que les *staries* seront calculées suivant le temps de chargement ou de déchargement du panneau exigeant le temps le plus long pour son chargement ou déchargement.
6. L'expression « *aussi vite que le navire peut recevoir ou délivrer* », (en anglais « *as fast as the vessel can receive/deliver* »), signifie que les *staries* sont une période devant être calculée en se référant à la cadence maximale à laquelle le navire est susceptible de charger ou de décharger la marchandise à plein rendement.
7. Le mot « *jour* », (anglais « *day* »), signifie une période continue de 24 heures de minuit à minuit sauf si le contexte impose une solution différente.
8. L'expression « *jours fériés* », (en anglais « *holidays* »), signifie les jours de semaine ou les parties de ces jours durant lesquels la manutention des marchandises sur le navire pourrait normalement se faire mais est suspendue au lieu de chargement ou de déchargement pour un des motifs suivants :

- (i) the local law; or
- (ii) the local practice; or
- (iii) the terms of employment generally applicable to workers essential to the working of the cargo.

9. « *Working days* » means days or parts thereof which are not expressly excluded from laytime by the charterparty and which are not holidays.
10. « *Weather working day* » means a working day or part of a working day during which it is or, if the vessel is still waiting for her turn, it would be commercially reasonable to load/discharge the cargo 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.
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, due to weather, it is not commercially reasonable to work and as a result no work takes place, shall not count as laytime.
14. « *Customary despatch* » means that the charterer must load and or unload as fast as is possible in the circumstances prevailing at the time of loading or unloading.

- (i) la loi locale; ou
- (ii) les usages locaux; ou
- (iii) les conditions de travail applicables d'une façon générale aux travailleurs dont l'intervention est essentielle à la manutention des marchandises.

9. L'expression « *jours ouvrables* », (en anglais « *working days* »), signifie les jours ou les parties de ces jours qui ne sont pas expressément exclus des staries par la charte-partie et qui ne sont pas des jours fériés.
10. L'expression « *jour ouvrable le temps permettant* », (en anglais : « *weather working day* »), signifie un jour ouvrable ou une partie d'un jour ouvrable durant lequel il est raisonnable — ou si le navire est encore dans l'attente de son tour il serait raisonnable — selon les exigences du commerce, de charger ou de décharger la cargaison sans entrave due au temps.
Si une telle entrave intervient (ou serait intervenue si le travail avait été en cours) il y aura lieu d'exclure des staries une période calculée en se référant à la proportion entre la durée de l'interruption et le temps pendant lequel le travail aurait ou pourrait avoir été effectué sans l'entrave.
11. Le mot « *excepté* », (en anglais « *excepted* »), se rapportant à des jours ou des parties de jours, comme dans l'expression « *dimanches et jours fériés exceptés* », signifie que les jours indiqués ne comptent pas dans le calcul des staries, même si le chargement ou le déchargement est effectué ces jours là.
12. L'expression « *sauf utilisés* », (en anglais « *unless used* »), se rapportant à des jours ou à des parties de jours comme dans l'expression : « *dimanches et jours fériés exceptés, sauf utilisés* », signifie que lorsque le travail est effectué, ces jours exceptés, les heures de travail réellement exécuté seront seules comprises comme staries.
13. L'expression « *le temps permettant* », (en anglais : « *weather permitting* »), signifie que la période durant laquelle à raison des conditions atmosphériques il n'est pas raisonnable de travailler suivant les exigences du commerce et à la suite desquelles aucun travail n'a lieu, ne sera pas compté comme staries.
14. L'expression « *célérité suivant l'usage* », en anglais « *customary despatch* »), signifie que l'affrètement doit charger et/ou décharger aussi vite que possible dans les circonstances prévalant à ce moment.

15. « *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.
16. « *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 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 waiting for berth to count as loading/discharging time* » (or « *as laytime* ») means that if the only reason why a notice of readiness cannot be given is that 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, unless previously exhausted, until the ship stops waiting.

The laytime exceptions apply to the waiting time as if the ship was at the loading/discharging berth. When the waiting time ends time ceases to count and restarts when the ship reaches the loading/discharging berth subject to the giving of a notice of readiness if one is required by the charterparty and to any notice time if provided for in the charterparty, whether or not the ship is then on demurrage.

15. Le mot « *moyenne* », (en anglais « *average* »), signifie que des calculs distincts doivent être faits pour le chargement et le déchargement et que tout gain de temps dans une opération compensera toute perte de temps dans l'autre.

16. Le mot « *réversible* », (en anglais « *reversible* »), signifie que le choix est laissé à l'affréteur de totaliser le temps alloué pour le chargement et celui qui est alloué pour le déchargement. Lorsque ce parti est adopté, l'effet est le même que si une période de temps global avait été spécifiée pour couvrir les deux opérations.

17. L'expression « *avis de mise à disposition* », (en anglais « *notice of readiness* »), signifie l'avis donné à l'affréteur, au chargeur, au destinataire ou à toute personne indiquée dans la charte-partie que le navire est arrivé au port ou au poste à quai, suivant le cas, et qu'il est prêt à charger ou décharger.

18. L'expression « *accessible dès l'arrivée* », (en anglais « *reachable on arrival* »), signifie que l'affréteur s'engage à ce qu'à l'arrivée du navire au port il y ait un poste à quai disponible pour son chargement ou son déchargement et auquel il pourra se rendre immédiatement.

19. La phrase « *le temps perdu en attente d'un poste à quai comptera comme temps de chargement ou de déchargement* » (ou « *comme staries* »), (en anglais « *time lost waiting for berth to count as loading/discharging time* » (ou « *as laytime* »)), signifie que si le seul motif pour lequel un avis de mise à disposition ne peut être donné consiste dans l'absence de poste à quai disponible pour le chargement ou le déchargement du navire, le point de départ des staries est fixé au moment où le navire commence à attendre un poste à quai et les staries continueront à courir — sauf si elles ont été auparavant entièrement utilisées — jusqu'à ce que le navire cesse d'attendre.
Les exceptions applicables aux staries s'appliquent aussi au temps d'attente comme si le navire se trouvait à son poste à quai de chargement ou de déchargement.
Lorsque l'attente cesse, le temps cesse de courir et il recommence à courir lorsque le navire atteint le poste à quai de chargement ou de déchargement, sous réserve de la délivrance d'un avis de mise à disposition si celui-ci a été prévu dans la charte-partie et sous réserve du temps en franchise s'il a été prévu dans la charte-partie, que le navire soit ou non en surestaries.

20. « *Whether in berth or not* » or « *Berth no berth* » mean that if the place named for loading/discharging is a berth and if the berth is not immediately accessible to the ship, a notice of readiness can be given when the ship has arrived at the port in which the berth is situated.

21. « *Strikes* » means a concerted refusal by workers to work normally for any reason whatsoever, which prevents or delays the loading/discharging of the cargo.

22. « *Demurrage* » means the money payable to the owner for delay for which the owner is not responsible in loading and/or discharging beyond the laytime.

23. « *On demurrage* » means that the laytime has expired.

24. « *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.

20. Les expressions « *qu'il y ait un poste à quai ou non* » et « *à quai ou non* », (en anglais « *whether in berth or not* » et « *berth no berth* »,) signifient que si le lieu désigné pour charger ou pour décharger est un poste à quai et si ce poste à quai n'est pas immédiatement accessible au navire, un avis de mise à disposition peut être donné lorsque le navire est arrivé au port dans lequel le poste à quai est situé.

21. Le mot « *grèves* », (en anglais « *strikes* »), signifie un refus concerté des travailleurs de travailler normalement quelqu'en soit le motif et qui empêche ou retarde de charger ou de décharger.

22. Le mot « *surestaries* », (en anglais « *demurrage* »), signifie la somme due à l'armateur pour le retard dans le chargement et/ou le déchargement au-delà des staries et dont il n'est pas responsable.

23. L'expression « *en surestaries* », (en anglais « *on demurrage* »), signifie que les staries ont expiré.

24. Les mots « *prime de célérité* » et « *célérité* », (en anglais « *despatch money* » ou « *despatch* »), signifient la somme que l'armateur consent à payer lorsque le navire est chargé ou déchargé en un temps inférieur aux staries.

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C.M.I. DOCUMENTATION

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