ISSN 0778-9882

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 2 - 1999 COMITE MARITIME INTERNATIONAL
QUARTERLY BULLETIN TRIMESTRIEL

This Issue Contains:

NEWS FROM THE CMI

UNIFORMITY OF THE LAW OF THE CARRIAGE OF GOODS BY SEA - REPORT ON THE WORK OF THE INTERNATIONAL SUB-COMMITTEE

Introduction

The process of unification of the law relating to liability arising out of the carriage of goods by sea, which was begun by the CMI as long ago as 1907, continued satisfactorily until the Visby Protocol of amendment to the Hague Rules was adopted in 1968. At that time there were 73 States parties to the 1924 Convention, including most of the major maritime nations of the world. Some other States had introduced the provisions of the Hague Rules into their domestic legislation without ratifying the Convention. With the entry into force of the Visby Protocol in 1977, the degree of uniformity decreased, as only a limited number of States parties to the Convention became parties to the Protocol. Presently there are 60 States parties to the unamended 1924 Convention, 17 States parties to the Convention as amended by the Visby Protocol and 18 States parties to the Convention as amended by the Visby Protocol and by the SDR Protocol. Moreover, although about 8 States simultaneously ratified the Protocol and denounced the unamended Convention, about 12 other States have ratified the 1968 Visby Protocol without denouncing the original 1924 Convention.

After the Hamburg Rules entered into force, the pace of disunification increased significantly. In fact, whilst the amendments made to the original Hague Rules by the two Protocols did not affect the basic provisions of the Rules, contained in Articles 3 and 4, the Hamburg Rules brought about a system of liability which is significantly different from that of the Hague and Hague-Visby Rules.

Of the 25 States at present parties to the Hamburg Rules, 12 were parties to the 1924 Convention and 13 were not. The confusion is increased by the fact that only one of the States parties to the Hague Rules appears to have denounced them whilst the other 11 do not appear to have done so. Moreover several States parties to the Hague Rules, have amended their domestic legislation with which they have given effect to the Rules by amending some of its terms and adding other terms, based on certain provisions of the Hamburg Rules.

Several States, that were not parties to the Hague Rules, have in turn enacted or are moving toward the enactment of domestic legislation incorporating features of both the Hague Rules and the Hamburg Rules as well as unilateral innovations.

In 1988 the Assembly of the CMI decided that the Hague-Visby Rules should be revisited, in order to find out whether and to which extent its provisions were still in line with the requirements of the industry and provided a balanced solution of the conflicting interests of the carriers and their liability

insurers on the one hand and of the cargo owners and their insurers on the other hand. The International Sub-Committee established for such purpose produced a draft Study (Paris I, p. 54) which was submitted to the 1990 CMI Paris Conference. Certain amendments were made to the draft by the Conference who then approved the Study (Paris II, p. 104) and the accompanying "Paris Declaration"[1].

Subsequently the CMI Executive Council decided that the possibility of ensuring greater uniformity in this area should be further explored and that the views of National Associations should be solicited.

To that end it directed, at its meeting in Sydney on 2 October 1994, that the Working Group of Executive Council members previously appointed at its meeting in Oxford on 13 May 1994 should prepare a Questionnaire directed to the Member Associations.

Replies from 26 National Associations were received and a synopsis of the replies was published in the 1995 Yearbook (p. 115-177) followed by a synoptical table showing the most significant changes suggested by National Associations to both the Hague-Visby Rules and the Hamburg Rules.

The International Sub-Committee held five sessions during which the most relevant issues connected with matters dealt with by the aforesaid Conventions were identified and debated[2]. The Reports of the first four sessions, prepared by Dr. Frank Wiswall, who acted as Rapporteur, are published in the 1995 Yearbook (at p. 229-243) and in the 1996 Yearbook (at p. 360-420). A synopsis of such Reports is published in the 1997 CMI Yearbook (at p. 291).

A report was then prepared by the Chairman for consideration by the Antwerp Centenary Conference wherein the views of the International Sub-Committee (or of the majority of the delegates who attended its sessions) on each of the issues were summarized. The most significant amongst the aforesaid issues (liability regime, identity of the carrier, period of application of the uniform rules, jurisdiction and arbitration) were again discussed during the Conference and a Report on the discussion is published in the 1997 CMI Yearbook (at p. 288).

Meanwhile the CMI Executive Council, after consultation with the Secretariat of UNCITRAL, had decided that a wider investigation should be carried out in respect of a number of other important issues of transport law, such as the interfaces between contract of carriage and contract of sale of goods, relationship within the contract of carriage, transport documents, bankability of transport documents, EDI, and ancillary contracts.

The CMI Assembly held on 15 May 1998 then decided that the work on the liability regime should be concluded for the present in the form of a CMI Study summarising the position of the CMI and where appropriate suggesting possible wordings of a draft text, but took notice of the fact that in the context of the broader work of the CMI on issues of transport law it was quite possible that the questions of liability would be affected to a degree that at present it is difficult to assess.

Following the above resolution a fifth Session of the International Sub-Committee was held in London on 9 and 10 November 1998. During such session all the issues considered at the previous sessions were again debated with a view to reaching, whenever possible, a consensus at least in respect of some of them. It was, however, not deemed appropriate for the time being to draft any text, even on the issues on which a consensus was reached, in consideration of the possible future developments resulting from the study of other issues of transport law.

A conclusive report of the work of the Sub-Committee in respect of each of the issues that have been considered follows[3].

1. Definitions

There is a consensus on the need for a definition of the following terms:

- actual/performing carrier
- carrier
- contract of carriage of goods by sea
- goods
- shipper
- signature
- transport documents
- writing (including electronic communications)

The definition of goods should include also deck

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[1] The text of the "Paris Declaration" is reproduced below:

Paris Declaration on Uniformity of the Law of Carriage of Goods by Sea 29th June 1990

1. During the XXXIVth International Conference of the Comité Maritime International held in Paris from 24th to 29th June 1990, a draft Document entitled "Uniformity of the Law of the Carriage of Goods by Sea in the Nineteen Nineties" was discussed by a Committee of the Conference largely on the basis of the Hague-Visby Rules and in which discussion all the 41 National Associations represented at the Conference participated.
2. Following this discussion, the draft was amended to clarify certain points which were raised and to reflect views expressed by delegates which were not always unanimous. The Document, as amended, is attached. It was presented to a Plenary Session of the Conference on Friday, 29th June and was approved as a basis for further work.
3. In approving the Document as a basis for further work, the hope was expressed that the International Organizations concerned will continue to offer to the CMI the co-operation it has received in the past for the work that lies ahead.

[2] A list of the participants to each session is annexed as Table I.

[3] The degree of consensus reached in respect of each issue is shown in Table II.

cargo, but exclude live animals. The definition of the following additional terms may be considered:
- charter party
- electronic communication
- ship.

2. Scope of application

The uniform rules should apply both to outbound and inbound cargo irrespective of the document evidencing the contract of carriage, except for charter parties.
A provision along the lines of Article 2 of the Hamburg Rules is considered appropriate.

3. Period of application

There is a consensus that the period of application of the Hague-Visby Rules (Article 1(e)) is by far too limited and that the provision of the Hamburg Rules (Article 4) is not satisfactory. It is thought that the notion of "port" must be flexible, in that the movement of the goods which is required in order to deliver the goods to the consignee in a "port-to-port" contract of carriage should always, in principle, be governed by the rules applicable to such contract, irrespective of whether the movement takes place entirely in the port area (on the assumption that the port area may be defined) or not.

4. Identity of the carrier

The problem of the identity of the carrier arises when the carrier is not clearly named in the transport document.
In order to make it easier for the owner of the goods to identify the carrier, the following rules are suggested:
1. The carrier must indicate his name and address in the transport document.
2. When the carrier is named, then the person so named should be conclusively taken to be the carrier.
3. Where the carrier is not named, but the transport document contains a representation that the goods have been shipped (or received for shipment) on board a named ship, the registered owner of that ship should be conclusively taken to be the carrier unless the registered owner proves that the ship was at the time of the carriage of the goods under demise charter and the demise charterer accepts responsibility for the carriage of the goods.
4. If the registered owner declares that the ship was under demise charter the time bar should not run from the time when suit is brought against the registered owner but from the time when the demise charterer accepts responsibility for the carriage of the goods.

It should then be considered whether these provisions should apply, *mutatis mutandis*, to the performing carrier.

5. The liability regime of the carrier

(a) <u>The need for a provision on the duties of the carrier.</u>

There is a consensus on the need for a provision such as that contained in Article 3(1) and (2) of the Hague-Visby Rules.
This provision in fact has been and will be in the future of great assistance to courts and to lawyers, as well as to carriers and shippers, because it provides a very useful guideline of what is required of a diligent carrier, and its abolition would not only deprive all those persons of an important guideline, but might also - and this would be very dangerous - be construed as an intentional change of the liability regime that has been known and applied for over half a century.
The duties of the carrier relate to the seaworthiness of the ship and to her fitness to receive and preserve the cargo during the voyage. Article 3(1) and (2) of the Hague-Visby Rules meets this requirement satisfactorily, except perhaps with respect to the time when the duties must be performed. However, the question whether the obligation of the carrier should be a continuous obligation or not continues to be the object of conflicting views. The practical importance of the issue was questioned for the reason that the continuous obligation in respect of seaworthiness may arise under paragraph 2 of Article 3.

(b) <u>Responsibility for the faults of servants or agents</u>[4].

(i) Fault in the navigation

The question whether or not the exoneration in respect of fault in the navigation of the ship should be maintained continues to be controversial.
In the document entitled "Uniformity of the Law of the Carriage of Goods by Sea in the Nineteen-Nineties", approved by the Paris CMI Conference in 1990, it is stated that at that time the "strongly prevailing view" was that the exemption should be retained. During the first four sessions of this Sub-Committee the position did not appear to have changed, nor has it changed during the fifth session, save that the majority in favour of the retention of the exemption was less significant.

(ii) Fault in the management of the ship.

Also in respect of this exemption there continue to be different views and, therefore, the question whether the exemption should be retained remains open.

(iii) Fire.

The provision of Article 4(2)(b) of the Hague-Visby Rules is considered still to be satisfactory.

[4] Table III shows the views expressed by the National Associations in the occasion firstly of the 1990 Paris Conference and then of the five sessions of the International Subcommittee.

(c) The allocation of the burden of proof. The catalogue of exceptions.

Save for the lack of agreement on the question whether sub-paragraph (a) of Article 4(1) should be retained, there is a consensus that all the subsequent "excepted perils" should be maintained. It is accepted that in case the carrier proves that the loss or damage has been caused by one of the excepted perils the cargo owner may in turn prove that the fault of the carrier or of his servants or agents contributed to cause the loss or damage.

There is however no consensus on the question whether the provision of paragraph 1 of the Protocol of Signature should be incorporated in the uniform rules, rather than remain a reservation.

6. Liability of the performing carrier

The liability regime of the performing carrier should be the same as that of the contracting carrier, save that the liability of the performing carrier should be limited to the part of the carriage performed by him.

The question was raised whether the independent contractors performing services ashore in respect of the handling of the goods from the time of discharge to the time of delivery to the consignee ought to be considered as performing carriers. No agreement, however, could be reached in this respect.

7. Through carriage

A distinction must be made between the right of the carrier to tranship the cargo en route, in which case he remains responsible for the performance of the whole carriage, and the right of the carrier to restrict his obligation to the part of the carriage performed by him, his only duty thereafter being that of entering into a separate contract of carriage with the owner of the vessel on which the goods will be transhipped for their carriage to the final port of destination.

In this latter case the obligation of the carrier terminates only if the transhipment is expressly mentioned in the transport document together with the place where it will be effected. It has been agreed by the majority of the delegates that it should not be a requirement of the termination of the obligation that the name of the carrier who performs the subsequent leg of the carriage be indicated in the transport document, provided that the original contracting carrier indicates his name to the owner of the goods when the goods are delivered to him at the place of final destination.

8. Deviation

The uniform rules should provide that they apply in any case of breach by the carrier of his obligations, including any breach that in certain legal systems may be qualified as fundamental, such as an unreasonable deviation.

9. Deck cargo

The uniform rules should contain an express provision on deck cargo, along the lines of Article 9 of the Hamburg Rules.

10. Delay

The uniform rules should apply in case of delay and a provision along the lines of Article 5(2) of the Hamburg Rules is considered satisfactory. There is no agreement, however, as to whether the rules should also contain a provision on constructive loss in case of excessive delay, such as that of Article 5(3) of the Hamburg Rules. A majority is of the view that they should, though the time limit ought to be longer, and that after the time limit has expired, it is irrelevant that the goods are found.

11. Limitation of liability

There seems to be general support for the package-kilo limitation.

A provision along the lines of those in the Hague-Visby Rules and of the Hamburg Rules is considered satisfactory, except that it should state that the unit is the shipping unit. A large majority considers that this provision should also state that the limits apply to the aggregate of all claims, including claims in respect of damages for delay.

12. Loss of the right to limit

The wording of Art. 8 of Hamburg Rules is preferable to that of Art. 4(5)(e) of the Hague-Visby Rules because it refers to "such loss". However, in the view of the majority, the fact that the act or omission should be a personal act or omission of the carrier should be specified, as in the LLMC (Art. 4) and in the HNSC (Art. 9 § 2).

13. Transport Documents

The uniform rules should apply to all types of transport documents, except charter parties.

The obligation of the carrier to issue a bill of lading on request of the shipper should still be provided, but it ought to be made clear that the parties are free to agree otherwise.

As regards the signature of the transport documents, it is thought that a provision along the lines of Article 14(3) of the Hamburg Rules, updated in light of developing technology, would be proper.

14. Contractual stipulations

As a general rule, the uniform rules should be compulsory and a provision along the lines of Article 3(8) of the Hague-Visby Rules and Article 23(1) of the Hamburg Rules should be adopted. It is felt by a substantial majority, however, that certain exceptions are still justified and that a provision along the lines of Article 6 of the Hague-Visby Rules would be required. It would be necessary then to clarify what

it is meant by "particular goods" and whether the operation of such provision should always be conditional upon whether a bill of lading has been issued.

15. Contents and evidentiary value of the transport documents

1. Both in the Hague-Visby Rules and in the Hamburg Rules there are provisions on the contents of the bill of lading. Such provisions (subject to modification) ought instead to apply to all transport documents.
2. Whilst the Hague-Visby Rules provide (Article 3(3)(b)) that the carrier is bound to indicate in the bill of lading one particular regarding the goods (either the number of packages or pieces, or the quantity, or weight), the Hamburg Rules provide (Article 15(1)(a)) that the carrier shall indicate in the bill of lading both the number of packages or pieces and the weight or quantity of the goods. Furthermore, the Hague-Visby Rules require that the information concerning the goods must be furnished in writing by the shipper, whilst such requirement does not appear in the corresponding provision of the Hamburg Rules. It is the view of a clear majority that the provision of the Hague-Visby Rules is preferable to that of the Hamburg Rules.
3. The carrier is entitled to insert reservations in respect of the particulars concerning the goods supplied by the shipper and inserted in the transport document if he has reasonable grounds to suspect that they do not accurately represent the goods or if he has not reasonable means of checking such particulars. He, however, is not required to mention in the transport document the reasons for which the reservations are inserted. If the cargo owner wishes to challenge the validity of the reservations, the burden of proving that they have been inserted without justification is upon him.
4. In case of goods stuffed in a container by the shipper, there is a presumption to the effect that the carrier has not been able to check the number of packages or pieces. He, however, cannot refuse to insert the particulars supplied by the shipper in the transport document. In such a case the limit of liability is based on the number of packages and pieces declared by the shipper, unless the carrier proves that the number of packages or pieces actually stuffed in the container was different.

16. Duties and liability of the shipper

The uniform rules should contain a provision setting out the general duties of the shipper in respect of the goods delivered to the carrier, as well as his special duties in respect of dangerous goods (see paragraph 17), including the obligation to adequately prepare and package the goods for the carriage by sea. The general provisions outlined above should be followed by specific provisions along the lines of those set out in Articles 3(5) and 4(3) of the Hague-Visby Rules and in Articles 12 and 17(1) of the Hamburg Rules.

17. Dangerous cargo

Both the Hague-Visby Rules and the Hamburg Rules have a provision on dangerous cargo. The views are divided on which of such provisions is preferable. An argument in favour of the former is that its interpretation has been the subject of Court decisions and, in particular, of the recent decision of the House of Lords in *The "Giannis N. K."*.

18. Letters of guarantee

A clear majority is of the view that letters of guarantee ought not to be governed by the uniform rules. A substantial number are in favour of discouraging the use of letters of guarantee.

19. Notice of loss

There is a consensus on a provision along the lines of Article 3(6) of the Hague-Visby Rules, save that the provision should state that, in case of loss or damage which is not apparent, the notice must be given within three working days.

20. Time bar

The question whether the time bar period should be one or two years remains unsettled.

21. Jurisdiction

The uniform rules should contain a provision on jurisdiction along the lines of Article 21 of the Hamburg Rules save that:

(i) the second sentence of paragraph (2)(a) must be deleted, since it is in conflict with Article 7(1) of the 1952 Arrest Convention;
(ii) paragraph (2)(b) must be deleted, for the same reason;
(iii) paragraph 4 must be deleted, because the matters dealt with therein should be left to national law.

22. Arbitration

A clear majority is in favour of a provision along the lines of Article 22(1), (2), (4) and (5) (the reference to paragraph (4) being deleted) of the Hamburg Rules, but against a provision such as that of paragraph (4) of that Article.
A minority is instead of the view that the uniform rules should not contain any provision on arbitration.

FRANCESCO BERLINGIERI

TABLE I

LIST OF PARTICIPANTS

I	II	III	VI	V
Australia & New Zealand	Australia & New Zealand			Australia & New Zealand
	Belgium		Belgium	
Canada			Canada	Canada
	China	China	China	
Denmark	Denmark	Denmark	Denmark	Denmark
				Dominican Republic
Finland		Finland	Finland	
France	France	France	France	
Germany		Germany		
Ireland	Ireland	Ireland		
Japan	Japan	Japan	Japan	Japan
Korea	Korea	Korea	Korea	Korea
Netherlands	Netherlands		Netherlands	
Norway	Norway	Norway	Norway	Norway
	Panama			
Poland				
Portugal				
South Africa			South Africa	South Africa
Spain	Spain	Spain	Spain	Spain
		Sweden	Sweden	Sweden
Switzerland	Switzerland	Switzerland	Switzerland	Switzerland
UK	UK	UK	UK	UK
USA	USA	USA	USA	USA
				Venezuela

TABLE II

Consensus	*Large/Substantial/Clear/Great majority*	*No consensus*
1. Definitions	7. Through carriage	5. The liability regime of the carrier (b) Responsibility for the faults of servants or agents* (i) Fault in the navigation (ii) Fault in the management of the ship
2. Scope of application	11. Limitation of liability	
3. Period of application	12. Loss of the right to limit (*majority*)	
4. Identity of the carrier	14. Contractual stipulations	6. Liability of the performing carrier
5. The liability regime of the carrier (a) The need for a provision on the duties of the carrier	18. Letters of guarantee	10. Delay
5. The liability regime of the carrier (b) Responsibility for the faults of servants or agents (iii) Fire	22. Arbitration	17. Dangerous cargo 20. Time bar
5. The liability regime of the carrier (c) The allocation of the burden of proof. The catalogue of exceptions		
8. Deviation		
9. Deck cargo		
13. Transport Documents		
15. Contents and evidentiary value of the transport documents		
16. Duties and liability of the shipper		
19. Notice of loss		
21. Jurisdiction		* *See Table III*

TABLE III

	Fault in Navigation		*Management*	
	Retain	**Delete**	**Retain**	**Delete**
Report to Paris Conference (Paris I, 104)	Substantial majority	Some delegates	No consensus	
Paris Conference (Paris II, 152)	Strong prevailing view	—	Narrowly prevailing view	—
ISC-I (Yearbook 1995, 234)	Australia & New Zealand China Denmark Ireland Japan Korea Netherlands Norway Poland Portugal UK **11**	Canada Finland Spain USA Venezuela ***5***	China Denmark Korea Netherlands Panama Portugal Switzerland UK **8**	Australia & New Zealand Canada Finland Ireland Japan Norway Poland Spain USA Venezuela **10**
ISC-II (Yearbook 1996, 370)	Australia & New Zealand China Denmark Ireland Japan Korea Netherlands Panama Norway UK **10**	Belgium France Spain USA **4**	China Denmark Japan Korea Netherlands Panama UK **7**	Australia & New Zealand Belgium France Ireland Spain USA **6**
ISC-III (Yearbook 1996, 394)	**10**	**4**	**8**	**7**
ISC-IV	**—-**	**—-**	**—-**	**—-**
ISC-V	No consensus		No consensus	

THE CMI WEBSITE

A CMI Website is being opened.

The URL is: **www.comitemaritime.org**

The E-mail Internet address is:
cminews@comitemaritime.org

The information which will loaded will be the following:

MATERIAL FROM THE CMI YEARBOOK 1998:
- History of the CMI
- Constitution
- Rules of Procedure
- Headquarters and Members of the Executive Council
- National Associations
- Status of Ratification of Maritime Conventions

NEWS LETTERS NOS. 1 AND 2 OF 1999.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

IMO LEGAL COMMITTEE - 79TH SESSION

The Legal Committee of IMO met under the Chairmanship of Mr. A.H.E. Popp Q.C. in London from 19th to 23rd of April; delegates from 63 member governments attended together with observers from 24 non-governmental organisations including CMI.
In his opening remarks the Secretary – General, Bill O'Neil, referred to the series of meetings which had taken place regarding the ratification and implementation of the HNS Convention. He alerted delegates to the fact that they would be invited to consider whether the topic of implementation of the HNSC should come back into the Work Programme of the Legal Committee. Intergovernmental meetings which had taken place since the terms of the HNS Convention had been agreed in 1996 had highlighted the complexities of implementation and the consequential need for governments to work together on a common implementation strategy.
The Secretary – General also referred to the successful outcome of the joint IMO/UNCTAD Diplomatic Conference on Arrest of Ships which had taken place in Geneva in March. Again the success or otherwise of this new Arrest Convention depended upon the number of ratifications achieved and the speed of implementation.
The following main topics were on the Agenda:

1. Provision of Financial Security
   (a) Passenger Claims
   (b) Guidelines on Shipowners Responsibilities in respect of Maritime Claims
2. Draft Convention on Wreck Removal
3. Compensation for Pollution from Ships Bunkers.

1. Financial Security

(a) *Passenger claims.*
A number of documents were placed before delegates including a draft Protocol to the Athens Convention, a consolidated text of the Athens Convention incorporating the changes proposed by the Protocol and a report presented by the CMI containing a synopsis of responses received to a questionnaire sent out to National Associations on a number of issues related to the carriage of passengers by sea.

A discussion of the draft protocol focused on a number of unresolved issues :-

i. *Liability of the performing carrier*
The Athens Convention draws a distinction between the "carrier" and the "performing carrier". The main purpose of the draft Protocol is to ensure that the person liable for death or injury to a passenger carries adequate insurance. There was general agreement that compulsory insurance should cover only the liabilities attaching to the performing carrier. The Protocol will thus provide that both liability and the obligation to carry insurance will be imposed upon performing carrier. (Though uninsured liability may be shared by others).

ii. *Form of Insurance*
Strong opposition was voiced to the CMI proposal of personal accident insurance (PAI) as an alternative to liability insurance. ICS representing shipowner interests were particularly keen to see the PAI option removed on the grounds that it could affect the comparative competitive position of carriers.
There was however considerable support for maintaining (PAI) as an optional means of satisfying the compulsory insurance requirement. One delegation pointed out that from the point of view of the insurance market it was anti-competitive to exclude the right of those involved in the personal accident insurance market to supply a suitable product.
A number of delegations suggested that the Protocol should be silent on the form of insurance to be used leaving it to Flag States to introduce there own regulations.
In the final event the arguments of ICS prevailed and if the Protocol goes through in its present form the only way in which a shipowner will be able to comply with his obligations would be to purchase liability insurance cover.

iii. *Basis of liability*
The delegation from Japan proposed, in a document submitted to the 79th Session, that the present basis of liability (involving a rebuttable

presumption of fault in the event of a maritime accident) should be replaced by a two tier liability regime. The first tier would be composed of strict liability up to a fixed amount. If claims exceed this amount the second tier of unlimited fault-based liability would apply. Delegates were informed that the ICAO is likely to revise the Warsaw Convention relating to the Carriage of Passengers by Air to adopt such a system.

There was some support for this proposal but the Committee decided that the current basis of liability set out in Article 3 of the Athens Convention should be maintained. The Japanese delegation reserved the right to reintroduce the proposal in future discussions.

iv. *Escape clause*

The Committee considered a complex proposal put forward by the Norwegian delegation for a provision which would allow States to escape from their obligations under the new Athens Protocol in order to commit themselves to new Conventions without needing to denounce the Protocol. This proposal was put forward in the interests of increasing the ability of States to cope with developments in international maritime law.

The Committee concluded that whilst the concept was sound it would be inappropriate to introduce it within the limited scope of the Athens Convention. The draft Escape clause was therefore excluded from the Protocol.

v. *Limits of liability*

It was agreed that it would be for the eventual Diplomatic Conference to fix the new limits. The CMI referred to its survey and pointed to the existence of a substantial disparity regarding the appropriate limits for compensation even amongst countries which were parties to the Athens Convention. The CMI put forward the revolutionary proposal that States might be allowed to fix different limits in accordance with their national law with a minimum threshold regulated by the Protocol. It was agreed, in the event, that the limitation figures in the draft Protocol should be left in blank.

vi. *Jurisdiction*

A balance needed to be struck here between giving claimants an opportunity to pursue their claims within a wide range of jurisdictions and the importance, from the point of view of the owners and insurers, that claims should, as far as possible, be dealt with in a single jurisdiction.

The International Group of P&I Clubs proposed that the performing carrier or the insurer should be entitled to constitute a fund in any of the courts stipulated in the LLMC 1976 (as amended by the 1996 Protocol) in order to consolidate the claims in one jurisdiction. There was considerable opposition to this proposal as it would restrict the rights of claimants to pursue their claims in their jurisdiction of choice. This issue was, in the event, left open.

vii. *Crew claims*

The Secretariat reported on the creation of a joint IMO / ILO Ad hoc Expert Working Group to consider issues of liability and compensation regarding claims for death, personal injury and abandonment of seafarers. Individuals from eight delegations attending the 79th Session were appointed to this Working Group which will meet with its ILO counterparts during the next (80th Session) of the Legal Committee in October 1999.

(b) *Guidelines on Shipowners Responsibilities for Maritime Claims*

The Committee considered a revised version of the draft IMO Guidelines on Shipowners Responsibilities in respect of Maritime Claims. The object of these guidelines is to give IMO States a set of standards by which to judge whether the owners of ships (flying their flag or visiting their ports) have adequate insurance cover.

Throughout the discussions it was emphasised that the guidelines were recommendatory in nature and should not be applied on a compulsory basis by port States.

Subject to one or two final adjustments its seems probable that the Guidelines will be finalised at the next meeting of the Legal Committee in October 1999 and presented to the next IMO Assembly meeting for adoption.

2. Draft Convention on Wreck Removal

The Committee considered a report of the Correspondence Group reflecting intersessional work by delegates and the comments of delegates at the previous session. The Committee also had before it a submission from the International Chamber of Shipping which revealed that the vast majority of wreck removal cases occurred within territorial waters where adequate national laws applied. ICS expressed its concern that this was not a harmonising instrument but simply gave powers to States to interfere with wrecks outside their immediate territorial waters. Finally the ICS argued that compulsory insurance, as proposed in the draft instrument, was quite unnecessary and the question of insurance could safely be left to be monitored in accordance with the Guidelines discussed under the previous heading.

The Committee embarked upon an article by article examination of the draft convention. The controversial issues were as follows :-

(a) *"Wreck" – "Casualty"*

There has, throughout, been some disagreement about the scope of this convention. Should it cover ships which are sunken or stranded and also ships which have been involved in a casualty and are drifting and expected to become wrecks. Further discussion failed to resolve this problem.

(b) *Geographical Scope*

Most of the discussion on this topic revolved around the importance of balancing the rights of coastal states and the traditional freedom of navigation. It is agreed that this subject needed further study.

(c) *Reporting of casualties*
Some delegations expressed concern about the extent of the obligation of the owner/master of a casualty to report the problem to flag and/or coastal States. Again this is a topic which will require to be discussed further.

(d) *Wreck marking*
There was an extensive debate amongst delegates as to whether the obligation to mark a wreck should be limited to situations where the wreck was a hazard to navigation as opposed to a threat to the environment. There was also some discussion regarding the practical problems of marking wrecks in certain areas where the natural conditions were severe.

(e) *Jurisdictional overlap*
Delegates recognised that there was a serious problem in deciding which adjacent State should have power to issue orders in relation to a particular wreck. This matter was referred back to the Correspondence Group for further consideration.

3. Compensation for Pollution from Ships Bunkers

The Committee had before it revised draft articles for a proposed Bunkers Convention. This is designed to be a free-standing convention rather than a Protocol to any existing pollution liability regime.

Again the Committee was invited to consider a series of unresolved issues as follows:-

a) *Definition of shipowner*
Since this topic was first considered by the Legal Committee attempts have been made to widen the definition of shipowner to include as many people associated with the operation of the ship as possible so that, in the event of pollution from bunkers, the claimant has a wide choice of targets. In this respect this convention differs from the CLC 1969 in which "shipowner" is given a narrow definition as the "registered owner".
One delegation suggested that the definition of shipowner should be extended to embrace the person responsible as defined in the new ISM Code. At the end of a lengthy debate the Committee decided that the group of sponsoring delegations should consider this ISM option before the text is finally agreed.

b) *Definition of pollution of damage*
IUCN proposed a completely revised definition of pollution damage which would identify, in positive terms, the damage in respect of which compensation would be paid as opposed to the CLC definition which lists types of damage which are excluded. The Committee concluded that the convention should contain the tried and tested CLC definition even though it was recognised that it was, in some respects, unsatisfactory.

c) *Exemptions from liability*
Draft article 3 (5) lists those (including servants and agents of the shipowners, salvors and those taking preventative measures) from suit at the hands of claimants. One delegation suggested that this should be deleted in view of the fact that "shipowner" in article 1 covers such a wide range of people involved in the operation of ships. In other words with so many potential targets it is unlikely that the claimants will seek to pursue claims against any of the persons intended to be excluded by article 3 (5).
It was agreed by the Committee to delete article 3(5) though the sponsoring delegations were asked to consider whether some protection should be given to those taking preventative measures.

d) *Threshold for compulsory insurance*
Article 7 of the draft convention seeks to establish which vessels are required to carry compulsory insurance against liability for bunker pollution. Delegates were asked to consider whether these vessels should be identified by minimum gross tonnage, bunker capacity or length overall. Delegates agreed that whilst in the context it would be technically better to define vessels by bunker capacity it would be more practical to use gross tonnage as the criteria. The gross tonnage threshold figure would be left in blank for the eventual Diplomatic Conference to determine.

The Committee then considered upon whom the burden of purchasing insurance should fall. It was clear to delegates that it would be impractical to impose the obligation to purchase insurance upon all those persons falling within the definition of shipowner in article 1. The CMI suggested that the obligation should be placed on the "registered owner" in the belief that this would result in insurance cover being available for all parties who might become liable under the Convention. When this debate was taking place there was no representative of the International Group of P&I Clubs in attendance and it seems probable that this provision will need to be amended because P&I Clubs, which are mutual in nature, cannot cover the liability of the range of persons falling within the definition of shipowner in article 1 who are not, by definition, members of the relevant Club. The solution may be to require the registered owner to take out the insurance on the basis that all claimants would then have rights of action against the wide range of persons coming within the definition of shipowner as well as a direct right of action against the insurance company. On the basis that the registered owner is one of those jointly and severally responsible for pollution the rights of the claimants will thereby be fully protected.

The Committee also considered a number of technical clauses relating to implementation which are not examined here.

Work Programme for the 2000-2001 Biennium and Long - Term Work Plan

The Committee concluded that work on the Athens Convention (in connection with the provision of financial security) and on a Bunker Pollution Convention was so advanced that it could be concluded in the coming sessions of the Committee.
The Committee decided that a recommendation should be made to the IMO Council and to the Assembly for the convening of a Diplomatic Conference to consider draft international instruments in connection with these two subjects as soon as possible. In consequence the Committee decided to devote its next session to the Protocol to the Athens Convention with the Bunker Convention also to be considered if time was available.
The Correspondence Group associated with the draft Wreck Removal Convention should continue its work though this work would be recorded less priority than before.
The Committee also considered the problems of implementation of the HNS Convention and the possible inclusion of this subject in the Work Programme. The Committee agreed, in principal, to consider the establishment of a Correspondence Group on the implementation of the HNSC based on terms of reference to be agreed.
The Committee also decided to delete from the Work Programme consideration of a draft convention on Civil Jurisdiction, choice of law, recognition and enforcement of judgements in matters of collision at sea. This subject has been in the Legal Committee Work Programme for many years and delegates have no enthusiasm for it.
It was decided not to delete the subject of Offshore Mobile Craft. There is still extant a detailed examination of this subject prepared by the CMI which the Committee will consider at some future date.
The Committee decided to leave its long-term work plan for the period beyond 2001 unchanged with the following subjects :-
(a) Consideration of the legal status of novel types of craft, such as air-cushion vehicles, operating in the marine environment;
(b) A possible convention on the regime of vessels in foreign ports;
(c) Possible revision of maritime law conventions in the light of proven need and subject to the directives in resolution A.500 (xii).
The 80th Session of the Legal Committee will take place between October 11th and 15th 1999. As indicated in this report most, if not all, of that session will be devoted to the proposed Protocol to the Athens Convention to improve the rights of passengers.

PATRICK GRIGGS

NEWS FROM BIMCO

At the 1999 BIMCO General Meeting held in Lisbon on 19th May 1999 the following officers were elected to the Executive Committee:

President
Mr. Philippe Poirier d'Angé d'Orsay, France

President Designate
Mr. Michael Everard, United Kingdom

Vice Presidents
Mr. Sooho Cho, Korea
Mr. Esref Cerrahoglu, Turkey

Chairman, Documentary Committee
Mr. Stelios Niotis, Greece

Immediate Past President
Mr. Ronald Bergman (ex officio member)

Other Committee Members
Mr. Dieter Ostendorf, Germany
Mr. Bjarne Tvilde, Denmark
Mr. Wei Jia Fu, China
Mr. Philip Embiricos, Greece
Mr. Karl Timmermann, Hong Kong