

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 1 - 2000

QUARTERLY

COMITE MARITIME INTERNATIONAL

BULLETIN TRIMESTRIEL

This Issue Contains:

News from the CMI

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- Diary of future CMI and other maritime events
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Ratification of International Conventions

NEWS FROM THE CMI

EXCERPTS OF THE MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD IN LONDON, 12 NOVEMBER 1999

Attending

President:

Patrick GRIGGS

Vice-Presidents:

Hisashi TANIKAWA

Frank L. WISWALL, Jr.

Councillors:

Luis COVA ARRIA

Karl-Johan GOMBRII

David ANGUS

Jean-Serge ROHART

Ron SALTER

Panayotis SOTIROPOULOS

Thomas REMÉ

John HARE

Alexander VON ZIEGLER

Paul GOEMANS

Leo DELWAIDE

Pascale STERCKX

Allan PHILIP (excused)

Francesco BERLINGIERI

Secretary General:

Treasurer:

Assistant Administrator:

Past President:

Publication Officer:

Patrick Griggs, President of CMI, opened the Executive Council session and welcomed in particular the new member John Hare to the Executive Council. Patrick Griggs received the approval from the meeting to proceed pursuant to the agenda submitted to the Executive Council prior to the meeting.

1. Approval of the Minutes of the Executive Council meeting held in New York on May 6th 1999

The Minutes of the Executive Council meeting held in New York were approved by the Council.

2. To note the Minutes of the Assembly meeting held in London on May 8th 1999

The Executive Council took note of the Minutes prepared for approvement by the next Assembly of CMI.

On the question of the publishing of the Minutes P. Griggs, Alexander von Ziegler and F. Berlingieri will discuss a way of avoiding duplication of information when both Minutes of the Executive Council and the Assembly are reproduced in the Newsletter.

3. Finances

a) Contributions

Patrick Griggs reported on his continuing efforts to collect outstanding contributions and referred to the decision of the CMI Assembly in May 1999 to expel Egypt, India, and Sri Lanka for non-payment with effect from 11 November 1999.

It was therefore decided to follow the decision of the Assembly of May this year and to expel: Egypt, India and Sri Lanka. The President to write.

b) Audit Committee

D. Angus reported on the meeting with the London accountant Mr. N. King, of the accounting firm Moore Stephens. Meanwhile he has met with P. Goemans and P. Sterckx in Antwerp. He produced a report which was circulated to the Council.

Basic recommendations are that we have an annual audit of the CMI books and that we establish a proper (out-sourced) book keeping system based on a modern soft ware. Further some adaptations of the CMI Constitution on budgeting should be considered. Finally it becomes clear that an incorporation of the administrative section of the CMI was required.

Authority was given to Audit Committee to

- prepare incorporation including some personalities from Antwerp as directors;
- solicit Moore Stephens' view on the appointment of auditors (external or internal);
- consider the appointment of Moore Stephens' correspondent in Antwerp to advise on a book keeping package;

- consider the VAT situation (in particular in connection with publication costs).

c) Rationalising of procedure for collecting dues and publication / mailing expenses from National Associations

Reference was made to the letter of P. Sterckx dated 26th January 1999. Her proposals were endorsed by P. Goemans and accepted by the Council.

4. Next two meetings of the Executive Council

11th May 2000 in London
17th September 2000 in Toledo

5. Assembly 2000

12th May 2000 in London.

6. Nominating Committee

The vacant seat in the Nominating Committee (to be appointed by the Vice Presidents) had been offered to Prof. Zhu Zengjie, China. He has accepted.

7. CMI Charitable Trust

The President reported that CMI had supplied speakers for the Venezuela Conference 1999 and that the CMI Charitable Trust had agreed to pay the travel expenses for those speakers.

8. Planning Committee

Patrick Griggs recalled that at the CMI Centenary Assembly it had been resolved to set up a Planning Committee which would work in the year leading up to a major Conference on the future work program for the CMI. It was agreed that Patrick Griggs would ask J.M. Alcantara (Spain), D. Taylor (UK), C. Davis (USA), Dr. Alberto Cappagli (Argentina), Sean Harrington (Canada) and Stuart Hetherington (Australia) to join; further he will ask Prof. Zhu to recommend a person from the Asian region.

9. Publications

a) CMI on the Internet

F. Berlingieri advised that the CMI Website is fully operative and that parts of the Year Book are available. The following was agreed.

Newsletter: freely accessible on site: download allowed; 8 issues available at any one time.

Part I Yearbook: freely accessible and download allowed (including list of Titulary Members).

Part II Yearbook: 2 years freely accessible and download allowed.

List of Work in Progress, including names of the Chairmen and Members of Working Groups with addresses and e-mail details. The Secretary General will prepare a list.

It was discussed to establish a *discussion forum* on the site. This chat room could be organised by the Working Group Chairmen.

The President will write (based on the first draft prepared by F. Berlingieri) to the MLAs informing that the documents are available in order to make the information more accessible. He will, however, mention that this is done on the understanding that ways will be found of distributing this information within the membership of the MLA.

b) CMI archives

F. Wiswall advised on the progress made in collecting the material which should be made available on the CD ROM. In a next step the documents will be scanned and will have to be edited.

Further he referred to the Handbook of Maritime Conventions which will be reedited in a Millennium edition, which will update the content and correct mistakes found in the current version.

c) Cataloguing and storage of archives

The Assistant Administrator distributed a catalogue of all the CMI documentation stored in Belgium. She was thanked for her efforts in this connections.

d) LLMC 76

The President advised that the CMI Charitable Trust is supporting the efforts of F. Berlingieri in editing and publishing the *Travaux Préparatoires* on the LLMC 76.

e) UNCLOS: Hamburg Tribunal

The Hamburg Tribunal is now on the CMI mailing list.

10. Work in Progress

a) Transport Issues

A. von Ziegler reported on the progress made in this project since the last Executive Council Meeting in New York. In an intervention on 28th May 1999 during the General Assembly of UNCITRAL in Vienna he briefed the Intergovernmental Organisation on the status of the preparation and obtained wide support for the project. Meanwhile a questionnaire was sent out to the MLAs and some few replies received so far. The President prepared a Press Release on the project and on the involvement of CMI. On 30th June 1999 the President met, together with the Secretary General and S. Beare, Chairman of the Working Group, a number of International Organisations invited for the "round table meeting". Again, strong support was voiced but

also concerns that CMI should not wait and also embark on issues of liability. It was then decided to invite the International Organisations to respond to a special questionnaire which would also embrace the question on whether liability issues should be part of the current exercise. On 7th/8th October a delegation of CMI attended the Venezuela Conference and informed the participants of the project and the aims and issues involved therein. It was very encouraging to receive the views and the support for the project. At the same time it was again made clear how important it is to involve all geographical interests in the preparatory work in order to base the work of CMI on a broad basis.

In a discussion within the Council it was decided that the Secretary General should contact Dr. Hübner from the OECD (Shipping Committee) and invite the organisation to the "round table" group.

J.S. Rohart suggested that CMI is concentrating all its efforts on this project. It is very important that this is a CMI project in which all the MLAs are involved. John Hare suggested that the drafting should commence at an early stage. H. Tanikawa warned, however, drafting should not be done too early. K. Gombrii warned that too much emphasis on liability would be premature and distract from the work on transport issues.

The Executive Council appointed an International Sub-Committee with the following Terms of Reference:

To consider in what areas of transport law, not at present governed by international liability regimes, greater international uniformity may be achieved; to prepare the outline of an instrument designed to bring about uniformity of transport law; and thereafter to draft provisions to be incorporated in the proposed instrument including those relating to liability.

The International Subcommittee will convene the first time on 27th / 28th January 2000. Before that date, on 15th November 1999, the International Working Group will meet in order to prepare the documentation for this first ISC-Meeting next year. It is envisaged that some members of the Steering Committee will convene on 21st / 22nd March 2000 to prepare a draft text relating to the liability issues which will form a first basis for the International Sub-Committee once the project will join in liability issues into the whole exercise.

CMI will present a report to the General Assembly of UNCITRAL in June 2000 in New York. On 6th July 2000 UNCITRAL and CMI will jointly hold a Colloquium at the UN Headquarters in New York which will serve as a platform for wide information and discussion of the issues considered so far by the International Subcommittee.

b) Classification Societies

F. Wiswall advised that no developments have been noted in the discussion between the Societies and

the Shipowners. A judgement in a major US case was recently rendered where a Classification Society defended successfully claims made against it.

c) Offshore structures

The CMI Report on this subject remains in the Work Program of the IMO Legal Committee.

d) IMO 80th Session

The major focus of the IMO Legal Committee is on the Bunker Pollution Convention. A Diplomatic Conference will take place in 2001 to finalise a text.

It was suggested that CMI should also be present at IMO Safety Committee Meetings.

e) International Interests in Mobile Equipment

It was reported that in a recent lecture Prof. R. Goode made the point that CMI should reconsider its view on the Convention. However, T. Remé pointed out that the big difference between movable and ships is that ships are treated as immovable.

f) Arrest Convention

F. Berlingieri referred to the transcript of the Diplomatic Conference decisions and to the fact that his original draft-resolution regarding the signatories to inform UNCTAD/IMO of progress with implementation had failed. This was because, unfortunately, the resolution was altered to a proposal to prepare directives or guidelines for implementation. The proposal, so amended, was defeated as it was seen as suggesting that governments were not able to implement the Convention without help.

g) Issues of Marine Insurance

Thomas Remé reported on the replies received based on the questionnaire. It is planned to do a synopsis. During next week (Wednesday) the Working Group will convene in Antwerp and discuss the future of this project.

h) FONASBA

J.S. Rohart reported that J.P. Besman had completed his work on the Time Charterparty Interpretation Rules. It was put to the Board of FONASBA in Summer.

i) Piracy

F. Wiswall referred to the documentation in the bundle distributed prior to the Council meeting. He indicated that he will continue to be involved in this project through to the indicated preparation of a text at Singapore 2001.

The next meeting is planned to take place on 23rd / 24th March 2000 in London.

j) Implementation and Interpretation of International Conventions

F. Berlingieri presented a proposal to IMO Legal Committee in October relating to the implementation of the LLMC 76. This was widely welcomed by the IMO Legal Committee. CMI will

now issue questionnaires which will also be distributed to countries where there is no National MLAs but are signatories of the LLMC 76. At the same time the national MLAs will be asked to support the national government to provide the information.

CMI will ask IMO to produce a list of governmental entities which should be approached. F. Berlingieri will ask R. Shaw to assist him in this task.

k) General Average

P. Griggs referred to the initial correspondence with IUMI and the subsequent questionnaire issued by CMI. Subsequently CMI received a further document from IUMI containing specific studies and proposals. This second paper was also circulated. Replies show that there are very different views expressed within the membership of CMI. The main proposal is to re-establish the principle of "common safety" to replace the principle of "common benefit". T. Remé agreed to chair an International Working Group.

It is premature to decide whether this project will lead to a revision of the York - Antwerp Rules. If the first meeting of the International Sub-Committee evidences sufficient support for the revision, then preliminary work on a revision in Singapore may be feasible.

The Executive council appointed a Working Group composed of T. Remé (Chairman), Pierre Latron (France) and Arthur Pilkington (Norway) subject to their acceptance.

l) US COGSA

F. Wiswall reported that US COGSA is tabled for discussion in Congress but it is still not foreseeable whether it will pass before or after the election process in the US.

m) Seafarers

A meeting of the IMO / ILO Joint Committee took place during the Legal Committee meeting. CMI's role in this project is completed.

11. Various

a) Status of National Associations

J.S. Rohart reported on the replies received from African MLAs: South Africa and recently Nigeria have replied. It was agreed that John Hare will take over the watch on the relationship with the African Associations.

Ron Salter referred to his report made in New York. After some initial contact no written response was received from Singapore or Malaysia. He suggested that the CMI should develop further contacts with the Indonesian MLA, which is a semi-governmental organisation and to seek active involvement in the work of CMI. Regarding the Philippines it seems that the MLA does not have a strong financial background and is therefore not always in a position to actively participate in CMI. Luis Cova Arria reported on his efforts in the Latin

American region and referred to his written report.

The next step is now to write back to the MLAs and encourage them to participate actively in the CMI Work and point them to the CMI Web Site.

b) Toledo 2000

This CMI/Spanish MLA seminar will take place between 17th and 21st September 2000.

The Agenda will contain:

Implementation and Interpretation of Conventions: Alcantara: Chair; Berlingieri: Rapporteur.

Issues of Transport Law: S.N. Beare: Chair; J.D. Ray: Deputy Chairman; M. Sturley: Rapporteur.

Issues of Marine Insurance: J. Hare: Chair; J.S. Rohart: Deputy Chariman; Trine Lise Wilhelmsen: Rapporteur.

General Average: Dr. T. Remé: Chair; Pierre Latron: Deputy Chairman; R. Shaw: Rapporteur.

Current issues of International Maritime Law: P. Griggs: Chair; F. Wiswall: Deputy Chairman; Speakers: R. Balkin, L. Cova-Arria on EDI.

c) Singapore

The Year Book "Singapore I" must be published and mailed by end of November 2000.

The dates are 12th February to 17th February 2001. P. Griggs reported on his meetings with the Organisers of the Singapore Conference.

Subjects: Prime topic will be the work on *Issues of Transport Law* and will occupy the whole week. On *Issues of Marine Insurance* it is not yet clear how this topic will develop. It is quite foreseeable that it will be unrealistic to plan actual drafting. On the other hand it may be possible to reach a consensus in Singapore on possible preferred principles and solutions to current problems and areas of criticism in the field of Marine Insurance narrowing down the gaps. One day to be set aside. On General Average it is difficult to predict what

the Singapore Conference will be able to achieve. As it looks today it is likely that one day could be sufficient to discuss the general conflict and then enter into the particular provisions. Time should also be set aside for the discussion/presentation of the draft Piracy-Model Law.

Thursday morning will be the excursion time which will allow some time for drafting. Friday a.m. will be the *Plenary Session* and the *Assembly* will take place Friday p.m.

On *Seminars* it is suggested to organise a session on the following two topics: "Implementation and Interpretation of Conventions" and "Athens Passenger Convention and Global Limits in Light of the Developments in Aviation Law".

The *Assembly* (Friday, p.m.) will include the report of the Planning Committee.

The *Executive Council* will meet on the Sunday, preceding the Conference, and on the Saturday following the Conference (if necessary).

A small Organising Committee should be formed with P. Griggs, A. von Ziegler, F. Wiswall and John Hare.

d) New MLAs

The Netherlands Antilles has shown interest in joining the CMI. It was decided to consult the Dutch Association in order to see whether the Country is sufficiently independent not to face a Constitutional problem.

e) Enquiries

In creation of the list of Working Groups it will be easier to direct enquiries involving the work of the CMI.

f) Report on the Seminar in Venezuela

F. Wiswall thanked on behalf of the CMI the Venezuelan MLA for the very successful organisation of the Seminar. The Documents could be put on the Web Site but they need to be converted. The CMI is unable to support the cost of publication of papers.

DIARY OF FUTURE CMI AND OTHER MARITIME EVENTS

YEAR 2000

In view of a misprint in the Diary published at page 3 of issue 4/1999, of some changes in the dates and of new meetings having meantime been arranged, the Diary for the period April-December 2000 is published again below

April 6 and 7 - London

International Sub-Committee on Issues of transport law

May 9 and 10 - London

Tulane/BMLA Seminar

May 11 - London

Executive Council

Average Adjusters AGM Dinner

May 12 - London

Assembly

July 6 - New York

Uncitral/CMI Colloquium on Issues
of transport law

July 7 and 8 - New York

International Sub-Committee on Issues of transport law

September 17/20 - Toledo

Colloquium

Topics:

- Implementation and interpretation of international conventions
- Issues of transport law
- Issues of marine insurance
- General average

October 16 and 17 (provisional)

International Sub-Committee on Issues
of transport law

October 24/26 - Shenzhen, China

China Maritime Law Association -

Fourth International Conference on Maritime Law

FIRST MEETING OF THE CMI INTERNATIONAL SUB-COMMITTEE ON ISSUES OF TRANSPORT LAW

OPENING STATEMENT OF THE PRESIDENT OF THE CMI

As long ago as June 1996 at its 29th Session UNCITRAL in the context of its work on electronic data interchange, drew attention to the fact that:

“...existing national laws and international conventions left significant gaps regarding issues such as the functioning of the bill of lading and sea waybill, the relation of those transport documents to the rights and obligations between seller and the buyer of the goods and to the legal position of the entities that provide financing to a party to the contract of carriage”.

The UNCITRAL Secretariat was authorised to gather information in relation to these matters and was specifically instructed to consult the CMI, ICC, IUMI, FIATA, ICS and others. The information obtained was to be analysed and on the basis of that analysis the Commission would decide on the nature and scope of any future work that might usefully be undertaken.

Responding to that invitation the CMI Executive Council set up an International Working Group under the Chairmanship of Stuart Beare.

The International Working Group held its first meeting in London on May 11th 1998 and has met on several occasions since. Its first task was to identify a number of issues related to the Carriage of Goods, not already covered by existing international agreements, where it was felt uniformity might be helpful. Based on a series of detailed studies produced by members of the International Working Group a Questionnaire was prepared and, in April 1999, this was distributed to all National Maritime Law Associations. Those of you here who were responsible for responding to that Questionnaire will know the detailed nature of the questions.

The response from National Associations has been encouraging and there is no doubt that the material drawn from the responses will form the firm basis upon which we seek to build consensus and a new Convention or set of Rules.

You will have noticed that the emphasis of the UNCITRAL Commission was on the review of areas of law governing the transportation of goods not previously covered by international agreement.

Liability for cargo is, as we all know, the subject of several international and numerous national and regional regimes. A reasonable criticism of the current project is that it does not appear to tackle issues of liability.

Those of you who read the Press Release which I put out in September may have noticed on the second page a reference to Issues of Liability. I gave notice that the CMI had been invited to prepare an Agenda note for the UNCITRAL Commission meeting due to take place in New York in June/July this year. This Agenda note will obviously cover the progress which we have made with the project covering the issues embraced by the Questionnaire. I also gave notice, however, that CMI would invite delegates to the UNCITRAL Commission meeting to agree that the present project should be extended to include an updated liability regime designed to complement the terms of the proposed new harmonising instrument. I am lead to believe that such a proposal is likely to be endorsed by UNCITRAL even though any new liability regime that arises from this exercise would not necessarily fit with the model of UNCITRAL's Hamburg Rules. However as part of a new, broadly based, harmonising instrument it might achieve the international support and recognition which the shipping industry badly needs.

I welcome you all to this first meeting of the International Sub-Committee. I know that Stuart and his team, who have already worked enormously hard on this project, will now expect you to work equally hard. The prize is a substantial one but I believe that this may be the last realistic opportunity to re-establish a uniform liability regime. I am sure that you are all conscious of the big responsibility which this places upon you. I am confident that the tried and tested methods of the CMI supported by its National Associations and individuals such as yourselves is the best way to produce the first draft of a harmonising instrument which will stand the test of time into the new Millennium. I wish you the best of luck. I will be following developments closely.

PATRICK GRIGGS

THE PUBLICATION OF THE TRAVAUX PRÉPARATOIRES OF THE LLMC CONVENTION AND OF THE PROTOCOL OF 1996

In connection with the study on the implementation and interpretation of the LLMC 1976 the CMI will soon publish the travaux préparatoires of the LLMC 1976 and of the Protocol of 1996. The travaux préparatoires have been edited by Francesco Berlingieri who has arranged them under each article of the Convention and of the Protocol, with the same technique he had previously used for the travaux préparatoires of

the Hague-Visby Rules.

It is expected that the volume, consisting of about 600 pages, will be ready by the end of June 2000. It will be on sale, with the accompanying CD-ROM, at the price of € 110.

Copies can be reserved by writing to the CMI Secretariat, Markgravestraat 9, 2000 Antwerp, Belgium – Fax: (3) 227.3528 – E-mail: admini@cmi.imc.org

JURISPRUDENCE ON MARITIME LAW CONVENTIONS

Il Diritto Marittimo is launching a new section for the year 2000 in which the journal will publish, in the English language, excerpts from or summaries of judgements in which Maritime Conventions have been applied and interpreted.

It is generally accepted that, in order to achieve uniformity, international conventions must be properly implemented by Contracting States. National courts must then apply and interpret the Conventions in the same manner as other Contracting States.

The purpose of this new section is to bring to the attention of judges and lawyers, in all Contracting States, as many judgments as possible which involve the application or interpretation of Maritime Conventions.

Il Diritto Marittimo has championed the cause of

unification of maritime law since its first publication over 100 years ago, and it is hoped that this initiative will contribute to the process of unification.

I welcome this initiative but for it to succeed it will be necessary to secure the co-operation of judges and lawyers in other maritime nations. I hope that all those who understand the importance of this exchange of information will be willing to co-operate and will send to the following e-mail address:

marlaw@dirmar.com

the full text or a summary of recent judgments in which provisions of Maritime Conventions have been applied and interpreted. Ideally all communications should be in the English language but translations from French and Spanish can be arranged.

PATRICK GRIGGS

NEWS FROM THE NATIONAL ASSOCIATIONS

THE 100TH ANNIVERSARY OF THE NORWEGIAN MARITIME LAW ASSOCIATION:

A PAPER BY PROF. ERLING SELVIG ON THE INTERNATIONAL SHIPPING LAW OF THE 20TH CENTURY

On 29th November 1999 the Norwegian Maritime Law Association celebrated its 100th Anniversary and in that occasion Prof. Erling Selvig read the paper we are publishing below, with his kind permission and that of the Norwegian Maritime Law Association.

The International Shipping Law of the 20th century under pressure

1. The international lawmakers

Let me start by recalling that, generally speaking, the larger part of the new Scandinavian maritime codes is based on international conventions designed to promote international uniformity of the shipping law. International cooperation for the purpose of elaborating, adopting and implementing conventions on key subjects of shipping law has now been going on for more than a century, and it has been particularly extensive during the last 50 years. For more than a century Comité Maritime International has been strongly advocating the need for international uniformity of shipping law. During most of this period the CMI has for practical purposes enjoyed close to a monopoly of initiating and preparing the drafts for the great many conventions and protocols thereto subsequently adopted by governments. The maritime law associations of the Nordic countries have always given strong support to the work of CMI.

How is it possible for a non-governmental organization such as CMI to assume a key role as international lawmaker in the important area of shipping law? The obvious answer is that, in addition to relying on its thorough knowledge and extensive expertise, CMI – by itself or through its international networks – has over the years been able to maintain close connections with governments. During the first two thirds of this century a close associate was the Belgian government. It called the necessary diplomatic conferences for the adoption of the proposed conventions setting out legal regimes designed to establish uniformity by subsequent implementation at the national levels. The last Brussels conference took place in 1968. During the subsequent three decades of this century the necessary CMI links to governments have been established mainly through the International Maritime Organization in London, which is part of the United Nations organization.

The activities of the IMO have brought some changes to the system. It was early pointed out that there was a need for governments to be involved also in the preparatory work on the amendments to and developments of the internationally uniform shipping law. IMO now fulfils that role, but the point of departure for the discussions in its Legal Committee is nearly always draft legislation prepared by CMI. The close cooperation between the CMI and IMO is a key to understanding the developments of international shipping law during the latter part of this century.

During the 1970's a serious competitor to this system entered the field. In the late 1960's the United Nations Conference on Trade and Development was established as a result of the political ambitions of the numerous group of developing nations. UNCTAD also turned its interest towards liner shipping, arguing the need for a code of conduct for liner conferences as well as for important changes in the Bills of Lading Conventions (the Hague-Visby Rules), which were felt to be detrimental to the trading interests of developing countries. The United Nations Commission on International Trade Law also became involved. The result was the adoption of the 1978 Hamburg Convention on sea carriage of goods and the 1980 Geneva Convention on multimodal carriage of goods. In the western world these Conventions still are highly controversial, particularly because they will mean that the traditional defenses of nautical fault and fire of the Hague Rules will disappear. Nevertheless, except on a few key Hague-Visby points, the Hamburg Rules have now been implemented in the new Scandinavian maritime codes. Internationally, measured by ratifications, the Hamburg rules have not yet replaced the Hague-Visby system, but the Hamburg issue is seriously considered by important countries (*infra* 4).

To day the developing countries are participating in the work of IMO. There are several reasons for this change of attitude on their part. UNCTAD has generally lost much of its vitality and influence, failing to meet the

level of expectations of the developing countries in the 1960-70's. Also, many developing countries have promoted their own shipping industry and expect to benefit from working with traditional shipping countries within IMO. International competitors having disappeared, IMO is now the forum for international cooperation in shipping law. Not even the European Union has entered the field. There have been adopted several directives relating to shipping, but, as most of the EU law, they primarily relate to questions of market access and competition arising in the context of the four freedoms embodied in the EU treaty.

However, the absence of competitors from the scene does not mean that the sky is entirely bright and clear for what seems to be a CMI/IMO alliance. The body of internationally uniform shipping law may increasingly be exposed to pressure from lawmakers at the national level. Discontent has appeared and may gain force particularly in the highly industrialized countries. Many of these countries are likely to question whether the body of law developed during the latter half of the 20th century will provide satisfactory answers to problems and conflicts of interests likely to surface or to grow in importance in future years. Will the international lawmaking machinery be able to provide the right answers in due time? Will the increasingly impatient parliaments in western countries be willing to keep hands off or to resist the pressure from day to day politics for urgent actions? Before forming any opinion it is necessary to highlight some of the characteristic features of the present system of international shipping law.

2. Standardized limitation of shipowners' liabilities

Nearly all of the Conventions adopted during the 20th century set out a legal framework for determining liabilities of owners and operators for injury or damage caused to different groups of third parties as a result of the operation of ships. The overriding objective of these Conventions appears to be to standardize the liability of owners and operators of ships by monetary limits of liability or other legal techniques having the effect of keeping the extent of liability on a moderate level.

The 1976 Convention on the global limitation of shipowners liability here holds the key role, reflecting the principle that all liabilities for claims arising out of one accident to a particular ship shall be subject to one monetary limitation amount. The global limitation is overriding in the sense that it also applies to claims arising under conventions governing liability for particular types of damage, such as cargo damages subject to the 1968 Hague-Visby Rules and injury to passengers under the Athens Convention 1974. These two Conventions also contain exemption clauses foreign to modern principles of civil liability in countries such as the Scandinavian countries.

During the last 20-30 years it has proved impossible to maintain the principle of global limitation in its traditional form. Thus, the 1976 Convention and its 1996 Protocol recognize that there is a need for a special limit of liability for passenger claims. Similarly, the 1976 Convention excluded claims for oil pollution which a few years earlier had been regulated by the 1969

Liability Convention and the 1971 Oil Pollution Fund Convention. These Conventions and the 1992 Protocols thereto, are based on the principle that damage in excess of the limit of the shipowners liability shall be indemnified by an international oil pollution fund established by contributions from the oil industry. A similar division of liability between the shipping industry and other industries is now laid down in a new convention on the liability for damage caused by hazardous and noxious substances. However, the rather heterogeneous character of the industries producing such substances has made it difficult to make such a system operative in this area.

Even claims in respect of salvage have been excluded from global limitation. However in most cases the principle of no cure no pay determines the extent of liability and, consequently, the salvage reward is limited to the value of the property salvaged. However, when the 1989 Salvage Convention recognized the importance of salvage as regards the prevention of damage to the environment, the special compensation to be allowed a salvor where property had not been salvaged, was made subject to specific limitations.

From this brief survey one is tempted to conclude, generally speaking, that while the international conventions on shipping law attempt to provide international uniformity of law, the main function of the conventions is to establish a system for keeping the liability of owners and operators of ships at a moderate level. Two matters may illustrate this.

First, let us take a look on the development of the limits of liability contained in the global limitation conventions from 1957 to 1996. For example, the increase of the limits in the 1976 Convention amounted to little more than adjustment of the figures in light of the depreciation of monetary values since its predecessor, the 1957 Convention was adopted.¹ And again, the 1996 Protocol to the 1976 Convention seemingly provides for a substantial increase of the limits for all ships, but, except for ships of less than 1500 tons, the 2 1/2 times increase of the limits is probably not sufficient to compensate the further depreciation of monetary values since 1976.² During the same period the Norwegian consumer price index increased 3 1/2 times.

Second, most of the conventions adopted during the last 30 years or so all try to remedy gaps and loopholes in the liability regimes established in order to ensure their efficiency. Aggregation of claims subject to one limit, channelling of liability to one person, and channelling of legal actions to states parties to the conventions are among the measures applied.³ In addition come provisions making the limits of liability virtually unbreakable irrespective of the seriousness of the faults committed. Much of the Visby Protocol in fact consisted of such countermeasures, and this Protocol has since served as model for equivalent measures in other conventions.⁴

3. Shortcomings of treaty-based shipping law

The objective of the conventions on shipping law is not only to create international uniformity. A main idea

¹ Selvig, An Introduction to the 1976 Convention, in Limitation of Shipowners' Liability, London 1986, pp. 3 et seq., at pp. 12-14. The limits of the 1957 Convention itself amounted merely to a monetary adjustment of the preceding 1924 Convention, op. cit. p. 6.

² Odelstingsproposisjon (Ot. prp.) nr. 90 (1998-99) p. 64, setting out the relevant tables.

³ The 1994 Maritime Code § 175 no. 4, § 176 second and third sub-paras, § 177 second and third sub-paras, and § 178, cf. § 174. Cf. Selvig, op. cit. note 1, p. 15.

⁴ The Visby Protocol 1968 arts. 2 and 3.

is also that as many countries as possible shall become parties to the conventions and thereby undertake a treaty obligation to implement as well as to maintain in national law the international legal regimes as long as the conventions are binding upon them. During this period a state party is not entitled to adopt national legislation even if thought necessary to address needs for law revision. In practice, the system also means that revision and modernization of the law become an international task, but the international machinery is not one easily responding to such needs at request.

First, the process of elaborating, adopting and implementing a new international convention is time-consuming and often difficult. For instance, the work on the new salvage convention started in the late 1970's, the convention was adopted 10 years later, and it was implemented in the Scandinavian countries in 1996 and entered into force in December 1997.

Second, there are particular difficulties arising because several of the existing conventions are to some extent overlapping. Issues of conflict of conventions, and a complex network of treaty obligations, consequently often slow down the international process of elaborating new legislation to amend or to supplement existing regimes. At the national level, this subsequently complicates the implementation process. Existing treaty obligations based on older instruments require that during a transitional period, sometimes of several years, the national law will be based on a double track system. For instance, this was the case in the Scandinavian countries when the Hague Rules was retained in force simultaneously with the Hague-Visby system,⁵ and even more recently when the 1992 Protocols to the oil pollution liability and fund system was implemented.⁶ Now, the government bill for the implementation of the 1996 Protocol to the 1976 global limitation Convention contemplates the same solution.⁷

One consequence of this approach is that, during periods of great changes in social conditions in general, there develops a substantial gap in time between the international machinery's ability to respond to the need for law revision and the conduct of national lawmakers in other areas of the law when they attempt to meeting changing expectations of the public at large.

A third observation is that the degree to which international uniformity of law is actually achieved by the shipping law conventions varies a great deal. There are great differences between the groups of countries having ratified the various conventions, both in terms of numbers and membership. In several areas there are competing conventions, each with its own group of supporters. For instance, both the 1957 and 1976 Conventions on global limitation have their own followers, and the differences are likely to increase when the 1996 Protocol are put into force in many 1976 states. Moreover, for sea carriage of goods the Hague, the Hague Visby and the Hamburg Conventions are all in force at the same time.

4. Traditional shipping and marine insurance policy in stormy weather

Let us now turn to the question of which may be the

driving forces in the future international cooperation within the area of shipping law.

Historically, the obvious point of departure is that international shipping has generally been open to competition in nearly all market segments. The competitors were for a long time nationally based shipping industries, a great many coming from countries looking upon national shipping as an important export industry. The Nordic countries belong to this group. This created a demand for uniform legal frameworks applicable to all competitors because the applicable liability regimes will affect the level of cost of liability and hull insurance for the shipowners.

Anyone having participated in international work is familiar with the maxim that the liability imposed should not go beyond what can be insured at a reasonable cost. However, it was not for the shipowners, but the international marine insurance industries to make such forecasts. During all the conferences of the latter half of the 20th century great weight has been attached to the loud and clear views of their spokesmen. The limits of liability in the global limitation conventions and the oil pollution liability conventions were all determined in light of the need for restraint strongly advised by them.⁸ However, nowhere has the influence exercised by the marine insurers been more decisive than in the work on the Salvage Convention 1989. This Convention is based on a compromise between hull insurers and P&I insurers in the London market, the former agreeing to cover the increase of salvage rewards due to prevention of damage to the environment, while the P&I insurers accepted to provide cover for the special compensation payable even if no property was saved and thus no salvage award made.⁹

During a decade or two the picture as regards pressure groups and conflicting interests has changed considerably. The shipping industry is in the process of being truly internationalized with the consequence that the ties to any particular "shipping country" are substantially weakened. For many countries the international work on shipping law is no longer seen only as a problem of international shipping policy. At the same time many countries have become increasingly aware of the significance of their different interests as coastal states, particularly in terms of environment policy in the wide sense. This is the case not only in many European countries, but has surfaced in a pointed form in the recent discussions of oil pollution liabilities in the United States and other countries outside Europe. Furthermore, it has to be taken into account that the liability regimes for sea carriage of goods are also the legal framework for the carriage of a country's export and import trade, and not only legal regimes applicable to the shipowners of that country when serving the trade of other countries.¹⁰ The trading interests of countries like Australia and United States have consequently had an important role in the discussions of possible amendment to the Hague/Hague-Visby legislation of these countries.¹¹

When assessing how these changes in the shipping industry and in the interests of many states will affect the future work on international shipping law, it should be

⁵ Ot. prp. nr. 28 (1972-73) pp. 38-40.

⁶ The Maritime Code chapt. 10, as amended by an Act of March 17, 1995, cf. in particular 229 and 230. By an Act of May 15, 1998 the legal regimes based on the 1969 and 1971 Conventions were repealed, and chapt. 10 of the code now contains only the rules of these Conventions as amended by the 1992 Protocols.

⁷ Ot. prp. nr. 90 (1998-99) pp. 11-19.

⁸ This view was strongly expressed by the 1974 CMI Hamburg Conference and was generally accepted as the basis for the 1976 Convention, Selvig, op. cit. note 1, at pp. 9 and 11.

⁹ Norges Offentlige Utredninger (NOU) 1994:23 p. 35.

¹⁰ NOU 1993:36 pp. 12 and 20-22.

kept in mind that the winds of change have not yet hit the marine insurance industries. Basically, the traditional groups of hull, cargo and P&I insurers seem to remain essentially the same. Whether these groups will be able to exercise the same influence in the future is another question. Perhaps so much of the commercial interests of the insurance industry is in fact based on the existing international conventions that the marine insurers will be the strongest opponents to any change. Traditionally, they have also held a key position within the Comité Maritime International.

5. The never-resting national lawmakers may enter the field

Returning now to the question of the role of national lawmakers in shaping the shipping law for the next century, I shall first note that even in the past there has from time to time been expressed dissatisfaction with elements in the international shipping law, even in a traditional shipping country like ours. The Athens Convention on the carriage of passengers has never been ratified by Norway although its legal regime, with the exception of the limit of liability for passenger injury, has been implemented in our maritime code.¹² In general, however, the Scandinavian countries have tried to improve the international systems rather than resorting to national solutions. The bad side of the coin is that we have had to await the results of a slowly working international machinery and to retain, usually for many years, legislation outmoded by the events. The general view has been that one should not denounce one convention until its successor was in place.¹³ Thus, it took nearly eight years from the adoption of the Salvage Convention 1989 until its provisions became Scandinavian law.

The Scandinavian law on carriage of goods by sea, however, has twice been revised to a large extent independent of and beyond the Hague/Visby system. In the early 1970's, when the Visby Protocol was implemented, the solution was to include in the maritime codes a number of provisions dealing with matters not specifically addressed by the Hague/ Visby system, such as rules on transhipment and on-carriage, through-carriage and liability for delay.¹⁴ The same approach was followed in the 1990's when most parts of the Hamburg Rules – except a few provisions directly inconsistent with the Hague-Visby Rules – were incorporated into the maritime codes.¹⁵

A few years later Norway departed from the principle that the international rules shall also be made applicable to domestic carriage by sea, and enacted provisions to the effect that the defenses of nautical fault and fire should not apply to domestic carriage. Furthermore, the limit of liability for cargo damages was set at the much higher level applicable to domestic surface carriage. The overriding consideration was that

structural changes to the patterns for domestic carriage of goods required that the rules for sea carriage were brought in line with the other areas of transportation law.¹⁶ This rather courageous move by the Norwegian lawmakers was not particularly applauded by our Nordic colleagues. It appears from the preparatory works to the law revision, however, that the characteristics of domestic carriage of goods in Norway were believed to justify this departure from Nordic uniformity.

A similar approach can now be seen in the government bill relating to the implementation of the new and higher limits for global limitation contained in the 1996 Protocol to the 1976 Convention. It is proposed that the Protocol should be ratified forthwith, although the intention is to retain the ties to the 1976 Convention for a transitional period. Furthermore, and this is most interesting in this context, it is proposed that the new limits of liability should enter into force as national law without awaiting the entry into force of the Protocol itself, and that the scope of the 1976 regime should be confined as much as possible in view of Norway's treaty obligation as a 1976 state.¹⁷ Only ships coming from 1976 states will then be entitled to rely on the old regime. It is important to note that the main reasons justifying these proposals are the interests of Norway as a coastal state and the resulting need to improve the legal positions of injured parties without awaiting the actions taken by other 1976 states. It is expected that Finland and Sweden will adopt the same attitude, while Denmark seems to be inclined to wait until it is clear what international support the 1996 Protocol will get.

These examples suffice to justify a question whether even other countries will feel a need to rely to a greater extent on national legislation in order to mitigate unsatisfactory consequences of the treaty-based international shipping law conventions. The current work in the United States on a statute to substitute its Hague Rules legislation and the Hamburg Rules discussion in Australia may be mentioned as examples of an awareness of the problem. The pressure groups will most likely be various domestic interests, and the question is whether the international marine insurance industries will be sufficiently influential to resist such a development since it is not likely that a truly internationalized shipping industry will carry the same weight as before. The traditional shipping countries may have to modify their attitudes to shipping law questions in view of the realities of domestic politics from time to time. The structural changes having taken place in the political life of most countries during a fairly short period of time have to be taken into account even in matters of shipping law as we now enter the 21st century.

ERLING SELVIG

¹¹ Sturley, Proposed amendments to the US Carriage of Goods by Sea Act: a response to English criticisms, 1999 LMCLQ pp. 519 et seq., and Davies, Australian Maritime Law Decisions, 1998 LMCLQ pp. 394 et seq. and 1999 LMCLQ pp. 406 et seq.

¹² Ot. prp. nr. 32 (1982-83) p. 59 where it is argued that the limits of liability contained in the Convention are definitely too low and that, consequently, the need for international uniformity cannot be taken into account.

¹³ Ot. prp. nr. 34 (1995-96) pp. 9-10, Ot. prp. nr. 90 (1998-99) p. 11 (see, however, Ot. prp. nr. 32 (1982-83) pp. 18-19), and Ot. prp. nr. 28 (1972-73) pp. 38-40.

¹⁴ NOU 1972:11 pp. 15-16, 18-20 and 23.

¹⁵ NOU 1993:36 pp. 12-13.

¹⁶ Ot. prp. nr. 34 (1995-96) pp. 16-18, cf. pp. 4-5, and Innst. 0 nr. 50 (1993-94) p. 2. On the other hand, in Ot. prp. nr. 48 (1973-74), relating to implementation of the 1969 and 1971 Conventions on oil pollution liabilities, the Ministry of Justice rejected the idea of adopting a stricter regime for domestic oil spills because this would suggest that Norway did not consider the coastal interests adequately protected by the new liability regime, and that this could induce other coastal states to implement stricter liability rules at the national level (pp. 9-10).

¹⁷ Ot. prp. nr. 90 (1998-99) p. 12.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM BOLERO INTERNATIONAL LIMITED

BOLERO.NET – A SOLUTION FOR ELECTRONIC TRADE DOCUMENTATION

Introduction

Launched in September 1999, bolero.net is the electronic trade community created by the world's logistics and financial industries. It provides a common, open system by which businesses can exchange trade data and documentation electronically. This involves no paper and it is fast. Bolero.net acts as a trustworthy third party to ensure secure delivery and receipt of the information and provides a legal structure that binds together all users.

The organisation is jointly owned by the TT (Through Transport) Club, representing the world's container fleet carriers, ports and terminals and logistics companies; and the international banking cooperative S.W.I.F.T (the Society for Worldwide Interbank Financial Telecommunications). The 12,500 members of these two organisations work with almost every company worldwide involved in cross-border trade. This puts bolero.net in a unique position from which to anticipate the needs of the international business community.

The Synthesis of Technology and Law

Bolero.net is based on a multi-lateral contract between all users of the system. That contract provides certainty that when trading electronically they are trading under the same terms and conditions. Each company that would like to become a user of the bolero.net system is required to agree to comply with the Rulebook. The Rulebook provides the terms of the contract, regulating the relationships between the parties as well as the legal functions of the Title Registry, which provides facilities for exchanging transferable documents. The Rule Book incorporates also the Operating Procedures, which explain the technical functions of the system. Bolero.net's legal and technological infrastructure was developed side by side to ensure that the user is able to perform only those functions he is entitled to. This is particularly important in relation to the Bolero Bill of Lading.

The philosophy behind the Rule Book is to interfere as little as possible with existing business roles and contractual relationships and to seek to ensure that the parties' rights remain the same in the paperless world as in the traditional environment. The Rulebook does not intrude upon the underlying contracts forming an international trade transaction. It is up to the parties themselves to agree these contracts via the system (or otherwise).

English law governs interpretation of the Rulebook. Other disputes arising from commercial transactions using the bolero.net system are governed by whichever legal system the parties to that transaction choose, or are determined according to the appropriate legal rules.

Security

The bolero.net system uses digital signature technology to ensure security. This works with a key pair, a private key, which is unique to each user and

creates a digital signature, and a public key by which the recipient of a Bolero message, including a Bolero Bill of Lading, can verify that it is from the rightful person and that the signed data has remained intact. The Core Message Platform (CMP), which all messages go through, keeps track of the sent messages and sends an acknowledgment to the sender confirming that the recipient has received the message. In this way Bolero system ensures a secure delivery of the messages between the parties.

Writing Requirements

The Rule Book is based on a major international survey covering all major commercial jurisdictions and provides a legal basis for the admissibility of electronically created evidence. It provides that 1) any legal requirement for writing will be satisfied by a digitally signed bolero.net message, 2) a digital signature will be as binding on the users as a manual signature, 3) such messages will be admissible before any court or tribunal as primary evidence of its content and 4) no user will challenge the validity of any transaction or statement made via bolero.net on the grounds that it was made electronically.

Legal Functions

Dematerialised Bill of Lading

The Bolero Bill of Lading (BBL) has been designed to replicate the legal functions of a traditional paper bill of lading. In other words, the bill of lading has been dematerialized. The functions, no longer based on a paper, are performed by bolero.net system when a user entitled under the rules gives instructions to the bolero.net system to perform one or more of the functions.¹

Transferability Function

Attornment

Legally the most challenging aspect of a Bolero Bill of Lading was the need to devise a method by which rights over the goods described therein could be transferred from one user to another. Bolero system relies to a degree on the approach adopted by the CMI Rules on Electronic Data Interchange. A transfer of the right of control and transfer are affected by notification of the current holder to the carrier. Bolero.net, however, has developed a solution based on the contractual structure between the users, and the concepts of attornment and novation are used, to balance civil law and common law approaches. Attornment is very common in commercial transactions. The carrier has actual possession of the goods as they are on board his ship. The carrier thus acts as an independent bailee of the goods. The transfer of the shipper's interest in the goods, the constructive possession of the goods, occurs by the shipper

¹ There is a common misconception that a bill of lading acts as legal title to the goods. In some jurisdictions it is a rebuttable presumption that legal title to the goods also passes but in many, the intention of the parties as evidenced by the sale contract governs this matter. Thus, Bolero's draftsmen recognised the same obstacles as identified in the Vienna Convention on the International Sale of Goods.

designating a new party, which functions much like the transfer of a traditional paper bill of lading.²

Novation

Attornment deals only with the issue of constructive possession. There is still a requirement that the rights and liabilities under the contract of carriage are transferred to the new party. When this is not a problem in civil law jurisdictions, the problem of the privity of contract arises in traditional common law jurisdictions. The rule of privity of contract does not allow a stranger to a contract to have rights (or indeed liabilities) under that contract.

In Bolero.net system this is resolved by novation of the contract of carriage. A new contract on the same terms provided in the original contract between carrier and shipper is created between the carrier and a new holder. The rights and liabilities in the existing contract of carriage between the shipper and carrier are generally extinguished save for liabilities that arise prior to the novation. The carrier is the continuing party to the contract and the new holder has now all the rights and liabilities of the contract of carriage as provided in the original contract..

As the Bolero Bill of Lading transfers possessory rights over the goods, banks can create a security interest in the goods by means of specially designed rules

Applicability of International Conventions

By virtue of a clause in the Rulebook, a Bolero Bill of Lading is subject to the international convention, or national law giving effect to such international convention, which would have been compulsorily applicable if a paper bill of lading had been issued. Such

international convention or national law shall be deemed incorporated into the Bolero Bill of Lading. Terms and conditions of a contract of carriage are incorporated by reference to terms posted on a secure Website operated by bolero.net or, at the carriers discretion, can be incorporated by more traditional methods.

The Future

Rapid technological developments allow businesses to deliver goods and services in a faster speed and cheaper prices. The velocity of trade is thus increased. Companies are investing heavily in the new technologies as new markets open. Some are investing as a means to enter marketplaces and others are investing to ensure that their position in such marketplaces is maintained. This can be called as the classic greed and fear model. What is clear is that there is an almost insatiable demand for the opportunities that such new technology brings. The demands to produce international trade documentation electronically is small subset of this technological revolution. It seems likely that this, somewhat unglamorous area of trade law, may well be setting the stage for other cross border initiatives. Global businesses have been dealing with the difficulties of differing legal systems for some time and there is a clear drive towards the standardisation of processes and systems, which inevitably impacts on the legal elements of those processes and systems.

For more information about bolero.net, see <http://www.bolero.net>

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RATIFICATION OF INTERNATIONAL CONVENTIONS

Instruments of ratification of and accession to the following conventions have been deposited with the depositary:

- **Convention Internationale pour l'unification de certaines règles en matière d'abordage, 1910**
China - Macao Special Administrative Region: 20 December 1999
- **Convention Internationale pour l'unification de certaines règles en matière d'assistance et de sauvetage maritimes, 1910**
China - Macao Special Administrative Region: 20 December 1999
- **Convention internationale pour l'unification de certaines règles en matière de connaissance, 1924**
China - Macao Special Administrative Region: 20 December 1999
- **International Convention for the unification of certain rules relating to civil jurisdiction in matters of collision, 1952**
China - Macao Special Administrative Region: 20 December 1999
- **International Convention for the unification of certain rules relating to arrest of sea-going ship, 1952**
China - Macao Special Administrative Region: 20 December 1999
- **International Convention for the unification of certain rules relating to penal jurisdiction in matters of collision and other incidents of navigation, 1952**
China - Macao Special Administrative Region: 20 December 1999
- **International Convention relating to the limitation of the liability of owners of sea-going ships, 1957**
China - Macao Special Administrative Region: 20 December 1999

² The transfer of constructive possession of the goods, after the creation of a transferable Bolero Bill of Lading, will be effected by the designation of: a) a new Holder-to order, b) a new Pledgee Holder, c) a new Bearer Holder, or d) a Consignee Holder, Bolero Rule Book 3.4.1. Abovementioned "persons" are roles of the users created in the Rule Book and it depends on the role of each user which function he is entitled to perform. Designate means to name or appoint a user to a role in the Title Registry.