

COMITE MARITIME INTERNATIONAL

**YEARBOOK
1995
ANNUAIRE**

PART I

**Organization of
the CMI**

Comité Maritime International

CONSTITUTION

(1992)

PART I - GENERAL

Article 1

Object

The Comité Maritime International is a non-governmental international organization, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects.

To this end it shall promote the establishment of national associations of maritime law and shall cooperate with other international organizations.

Article 2

Domicile

The domicile of the Comité Maritime International is established in Belgium.

Article 3

Membership

- a) The Comité Maritime International shall consist of national (or multinational) Associations of Maritime Law, the objects of which conform to that of the Comité Maritime International and the membership of which is open to persons (individuals or bodies corporate) who either are involved in maritime activities or are specialists in maritime law. Member Associations should endeavour to present a balanced view of the interests represented in their Association.

Where in a State there is no national Association of Maritime Law in existence, and an organization in that State applies for membership of the Comité Maritime International, the Assembly may accept such organization as a Member of the Comité Maritime International if it is satisfied that the object of such organization, or one of its objects, is the unification of maritime law in all its aspects. Whenever reference is made in this Constitution to Member Associations, it will be deemed to include any organization admitted as a Member pursuant to this Article.

Only one organization in each State shall be eligible for membership, unless the Assembly otherwise decides. A multinational Association is eligible for

Comité Maritime International

STATUTS

1992

IÈRE PARTIE - DISPOSITIONS GÉNÉRALES

Article 1er

Objet

Le Comité Maritime International est une organisation nongouvernementale internationale qui a pour objet de contribuer, par tous travaux et moyens appropriés, à l'unification du droit maritime sous tous ses aspects.

Il favorisera à cet effet la création d'Associations nationales de droit maritime. Il collaborera avec d'autres organisations internationales.

Article 2

Siège

Le siège du Comité Maritime International est fixé en Belgique.

Article 3

Membres

- a) Le Comité Maritime International se compose d'Associations nationales (ou multinationales) de droit maritime, dont les objectifs sont conformes à ceux du Comité Maritime International et dont la qualité de membre est accordée à toutes personnes (personnes physiques ou personnes morales) qui, ou bien participent aux activités maritimes, ou bien sont des spécialistes du droit maritime. Chaque Association membre s'efforcera de maintenir l'équilibre entre les divers intérêts représentés dans son sein.

Si dans un pays il n'existe pas d'Association nationale et qu'une organisation de ce pays pose sa candidature pour devenir membre du Comité Maritime International, l'Assemblée peut accepter une pareille organisation comme membre du Comité Maritime International après s'être assurée que l'objectif, ou un des objectifs, poursuivis par cette organisation est l'unification du droit maritime sous tous ses aspects. Toute référence dans les présents statuts à des Associations membres comprendra toute organisation qui aura été admise comme membre conformément au présent article.

Une seule organisation par pays est éligible en qualité de membre du Comité Maritime International, à moins que l'Assemblée n'en décide autrement. Une

Organization of the CMI

membership only if there is no Member Association in any of its constituent States.

- b) Individual members of Member Associations may be appointed by the Assembly as Titulary Members of the Comité Maritime International upon the proposal of the Association concerned, to the maximum of twenty-one per Member Association. The appointment shall be of an honorary nature and shall be decided having regard to the services rendered by the candidates to the Comité Maritime International and to their reputation in legal or maritime affairs. Titulary Members shall not be entitled to vote. Titulary Members presently or formerly belonging to an association which is no longer a member of the Comité Maritime International may continue to be individual Titulary Members at large, pending the formation of a new Member Association in their State.
- c) Nationals of States where there is no Member Association in existence and who have demonstrated an interest in the object of the Comité Maritime International may be admitted as Provisional Members but shall not be entitled to vote. Individuals who have been Provisional Members for not less than five years may be appointed by the Assembly as Titulary Members, to the maximum number of three such Titulary Members from any one State.
- d) The Assembly may appoint to Membership *Honoris Causa* any individual who has rendered exceptional service to the Comité Maritime International, with all of the rights and privileges of a Titulary Member but without payment of contributions.

Members *Honoris Causa* shall not be attributed to any Member Association or State, but shall be individual Members of the Comité Maritime International as a whole.

- e) International organizations which are interested in the object of the Comité Maritime International may be admitted as Consultative Members but shall not be entitled to vote.

PART II - ASSEMBLY

Article 4

Composition

The Assembly shall consist of all Members of the Comité Maritime International and the members of the Executive Council.

Each Member Association and Consultative Member may be represented in the Assembly by not more than three delegates.

As approved by the Executive Council, the President may invite Observers to attend all or parts of the meetings of the Assembly.

Article 5

Meetings

The Assembly shall meet annually on a date and at a place decided by the

Constitution

association multinationale n'est éligible en qualité de membre que si aucun des Etats qui la composent ne possède d'Association membre.

- b) Des membres individuels d'Associations membres visées dans la première partie de cet article peuvent être nommés membres titulaires du Comité Maritime International par l'Assemblée sur proposition de l'Association membre intéressée, à raison de vingt et un au maximum par Association membre. Cette nomination aura un caractère honorifique et sera décidée en tenant compte des services rendus au Comité Maritime International par les candidats et de la notoriété qu'ils auront acquise dans le domaine du droit ou des affaires maritimes.

Les membres titulaires n'auront pas le droit de vote.

Les membres titulaires appartenant ou ayant appartenu à une Association qui n'est plus membre du Comité Maritime International peuvent rester membres titulaires individuels hors cadre, en attendant la constitution d'une nouvelle Association membre dans leur Etat.

- c) Les nationaux des pays où il n'existe pas une Association membre mais qui ont fait preuve d'intérêt pour les objectifs du Comité Maritime International peuvent être admis comme membres provisoires, mais n'auront pas le droit de vote. Les personnes physiques qui sont membres provisoires depuis cinq ans au moins peuvent être nommées membres titulaires par l'Assemblée, à concurrence d'un maximum de trois par pays.

- d) L'Assemblée peut nommer membre d'honneur, jouissant des droits et privilèges d'un membre titulaire mais dispensé du paiement des cotisations, toute personne physique ayant rendu des services exceptionnels au Comité Maritime International.

Les membres d'honneur ne relèvent d'aucune Association membre ni d'aucun Etat, mais sont à titre personnel membres du Comité Maritime International pour l'ensemble de ses activités.

- e) Les organisations internationales qui s'intéressent aux objectifs du Comité Maritime International peuvent être admis en qualité de membres consultatifs, mais n'auront pas le droit de vote.

2ème PARTIE - ASSEMBLEE

Article 4

Composition

L'Assemblée est composée de tous les membres du Comité Maritime International et des membres du Conseil Exécutif.

Toute Association membre et tout membre consultatif peuvent être représentés à l'Assemblée par trois délégués au maximum.

Le Président peut, avec l'approbation du Conseil Exécutif, inviter des observateurs à assister, totalement ou partiellement, aux réunions de l'Assemblée.

Article 5

Réunions

L'Assemblée se réunit chaque année à la date et au lieu fixés par le Conseil

Organization of the CMI

Executive Council. The Assembly shall also meet at any other time, for a specified purpose, if requested by the President, by ten of its Member Associations or by the Vice-Presidents. At least six weeks notice shall be given of such meetings.

Article 6**Agenda and Voting**

Matters to be dealt with by the Assembly, including election to vacant offices, shall be set out in the agenda accompanying the notice of the meeting. Decisions may be taken on matters not set out in the agenda, other than amendments to this Constitution, provided no Member Association represented in the Assembly objects to such procedure.

Each Member Association present in the Assembly and entitled to vote shall have one vote. The right to vote cannot be delegated or exercised by proxy.

All decisions of the Assembly shall be taken by a simple majority of Member Associations present, entitled to vote, and voting. However, amendments to this Constitution shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting.

Article 7**Functions**

The functions of the Assembly are:

- a) To elect the Officers of the Comité Maritime International;
- b) To admit new members and to appoint, suspend or expel members;
- c) To fix the rates of member contributions to the Comité Maritime International;
- d) To consider and, if thought fit, approve the accounts and the budget;
- e) To consider reports of the Executive Council and to take decisions on the future activity of the Comité Maritime International;
- f) To approve the convening and decide the agenda of, and ultimately approve resolutions adopted by, International Conferences;
- g) To amend this Constitution;
- h) To adopt rules of procedure not inconsistent with the provisions of this Constitution.

PART III - OFFICERS**Article 8****Designation**

The Officers of the Comité Maritime International shall be:

- a) The President,
- b) The Vice-Presidents,
- c) The Secretary-General,

Constitution

Exécutif. L'Assemblée se réunit en outre à tout autre moment, avec un ordre du jour déterminé, à la demande du Président, de dix de ses Associations membres, ou des Vice-Présidents. Le délai de convocation est de six semaines au moins.

Article 6**Ordre du jour et votes**

Les questions dont l'Assemblée devra traiter, y compris les élections à des charges vacantes, seront exposées dans l'ordre du jour accompagnant la convocation aux réunions. Des décisions peuvent être prises sur des questions non inscrites à l'ordre du jour, exception faite de modifications aux présents statuts, pourvu qu'aucune Association membre représentée à l'Assemblée ne s'oppose à cette façon de faire.

Chaque Association membre présente à l'Assemblée et jouissant du droit de vote dispose d'une voix. Le droit de vote ne peut pas être délégué ni exercé par procuration.

Toutes les décisions de l'Assemblée sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote, et prenant part au vote. Toutefois, le vote positif d'une majorité des deux tiers de toutes les Associations membres présentes, jouissant du droit de vote et prenant part au vote sera nécessaire pour modifier les présents statuts.

Article 7**Fonctions**

Les fonctions de l'Assemblée consistent à :

- a) Elire les membres du Bureau du Comité Maritime International;
- b) Admettre de nouveaux membres et nommer, suspendre ou exclure des membres;
- c) Fixer les montants des cotisations des membres du Comité Maritime International;
- d) Examiner et, le cas échéant, approuver les comptes et le budget;
- e) Etudier les rapports du Conseil Exécutif et prendre des décisions concernant les activités futures du Comité Maritime International;
- f) Approuver la convocation et fixer l'ordre du jour de Conférences Internationales du Comité Maritime International, et approuver en dernière lecture les résolutions adoptées par elles;
- g) Modifier les présents statuts;
- h) Adopter des règles de procédure sous réserve qu'elles soient conformes aux présents statuts.

3ème PARTIE - MEMBRES DU BUREAU**Article 8****Désignation**

Les membres du Bureau du Comité Maritime International sont:

- a) le Président,
- b) les Vice-Présidents,
- c) le Secrétaire Général,

Organization of the CMI

- d) The Treasurer,
- e) The Administrator (if an individual), and
- f) The Executive Councillors.

Article 9**President**

The President of the Comité Maritime International shall preside over the Assembly, the Executive Council, and the International Conferences convened by the Comité Maritime International. He shall be an ex-officio member of any Committee, International Sub-Committee or Working Group appointed by the Executive Council.

With the assistance of the Secretary-General and the Administrator he shall carry out the decisions of the Assembly and of the Executive Council, supervise the work of the International SubCommittees and Working Groups, and represent the Comité Maritime International externally.

In general, the duty of the President shall be to ensure the continuity and the development of the work of the Comité Maritime International.

The President shall be elected for a full term of four years and shall be eligible for re-election for one additional term.

Article 10**Vice-Presidents**

There shall be two Vice-Presidents of the Comité Maritime International, whose principal duty shall be to advise the President and the Executive Council, and whose other duties shall be assigned by the Executive Council.

The Vice-Presidents, in order of their seniority as officers of the Comité Maritime International, shall substitute for the President when the President is absent or is unable to act.

Each Vice-President shall be elected for a full term of four years, and shall be eligible for reelection for one additional term.

Article 11**Secretary-General**

The Secretary-General shall have particular responsibility for organization of the non-administrative preparations for International Conferences, Seminars and Colloquia convened by the Comité Maritime International, and to maintain liaison with other international organizations. He shall have such other duties as may be assigned by the Executive Council and the President.

The Secretary-General shall be elected for a term of four years, and shall be eligible for reelection without limitation.

Article 12**Treasurer**

The Treasurer shall be responsible for the funds of the Comité Maritime International, and shall collect and disburse, or authorize disbursement of, funds as directed by the Executive Council.

The Treasurer shall keep the financial accounts, and prepare the balance sheet

Constitution

- d) le Trésorier,
- e) l'Administrateur (s'il est une personne physique) et
- f) les Conseillers Exécutifs.

Article 9**Le Président**

Le Président du Comité Maritime International préside l'Assemblée, le Conseil Exécutif et les Conférences Internationales convoquées par le Comité Maritime International. Il est membre de droit de tout comité, de toute commission internationale ou de tout groupe de travail désignés par le Conseil Exécutif.

Avec le concours du Secrétaire Général et de l'Administrateur il met à exécution les décisions de l'Assemblée et du Conseil Exécutif, surveille les travaux des commissions internationales et des groupes de travail, et représente, à l'extérieur, le Comité Maritime International.

D'une manière générale, la mission du Président consiste à assurer la continuité et le développement du travail du Comité Maritime International.

Le Président est élu pour un mandat entier de quatre ans et est rééligible une fois.

Article 10**Les Vice-Présidents**

Le Comité Maritime International comprend deux Vice-Présidents, dont la mission principale est de conseiller le Président et le Conseil Exécutif, et dont d'autres missions leur sont confiées par le Conseil Exécutif.

Le Vice-Président le plus ancien comme membre du Bureau du Comité Maritime International supplée le Président quand celui-ci est absent ou dans l'impossibilité d'exercer sa fonction.

Chacun des Vice-Présidents est élu pour un mandat entier de quatre ans, renouvelable une fois.

Article 11**Le Secrétaire Général**

Le Secrétaire Général a tout spécialement la responsabilité d'organiser les préparatifs, autres qu'administratifs, des Conférences Internationales, séminaires et colloques convoqués par le Comité Maritime International, et de poursuivre la liaison avec d'autres organisations internationales. D'autres missions peuvent lui être confiées par le Conseil Exécutif et le Président.

Le Secrétaire Général est élu pour un mandat de quatre ans, renouvelable sans limitation de durée.

Article 12**Le Trésorier**

Le Trésorier répond des fonds du Comité Maritime International, il encaisse les fonds et en effectue ou en autorise le déboursement conformément aux instructions du Conseil Exécutif.

Le Trésorier établit les comptes financiers, prépare le bilan de l'année civile écoulée ainsi que les budgets de l'année en cours et de l'année suivante, et sou-

Organization of the CMI

for the preceding calendar year and the budgets for the current and next succeeding year, and shall present these not later than the 31st of January each year for review by the Executive Council and approval by the Assembly.

The Treasurer shall be elected for a term of four years, and shall be eligible for re-election without limitation.

Article 13

Administrator

The functions of the Administrator are:

- a) To give official notice of all meetings of the Assembly and the Executive Council, of International Conferences, Seminars and Colloquia, and of all meetings of Committees, International Sub Committees and Working Groups;
- b) To circulate the agendas, minutes and reports of such meetings;
- c) To make all necessary administrative arrangements for such meetings;
- d) To carry into effect the administrative decisions of the Assembly and of the Executive Council, and administrative determinations made by the President;
- e) To circulate such reports and/or documents as may be requested by the President, the Secretary General, the Treasurer or the Executive Council;
- f) In general to carry out the day by day business of the secretariat of the Comité Maritime International.

The Administrator may be an individual or a body corporate. If an individual, the Administrator may also serve, if elected to that office, as Treasurer of the Comité Maritime International.

The Administrator, if an individual, shall be elected for a term of four years, and shall be eligible for re-election without limitation. If a body corporate, the Administrator shall be appointed by the Assembly upon the recommendation of the Executive Council, and shall serve until a successor is appointed.

Article 14

Executive Councillors

There shall be eight Executive Councillors of the Comité Maritime International, who shall have the functions described in Article 18.

The Executive Councillors shall be elected upon individual merit, also giving due regard to balanced representation of the legal systems and geographical areas of the world characterized by the Member Associations.

Each Executive Councillor shall be elected for a full term of four years, and shall be eligible for re-election for one additional term.

Article 15

Nominations

A Nominating Committee shall be established for the purpose of nominating individuals for election to any office of the Comité Maritime International.

The Nominating Committee shall consist of:

- a) A chairman, who shall have a casting vote where the votes are otherwise equally divided, and who shall be elected by the Executive Council,

Constitution

met ceux-ci, au plus tard le 31 janvier de chaque année, à l'examen du Conseil Exécutif et à l'approbation de l'Assemblée.

Le Trésorier est élu pour un mandat de quatre ans, renouvelable sans limitation de durée.

Article 13

L'Administrateur

Les fonctions de l'Administrateur consistent à :

- a) envoyer les convocations pour toutes les réunions de l'Assemblée et du Conseil Exécutif, des conférences internationales, séminaires et colloques, ainsi que pour toutes réunions de comités, de commissions internationales et de groupes de travail,
- b) distribuer les ordres du jour, procès-verbaux et rapports de ces réunions,
- c) prendre toutes les dispositions administratives utiles en vue de ces réunions,
- d) mettre à exécution les décisions de nature administrative prises par l'Assemblée et le Conseil Exécutif, et les instructions d'ordre administratif données par le Président,
- e) assurer les distributions de rapports et documents demandées par le Président, le Secrétaire Général, le Trésorier ou le Conseil Exécutif,
- f) d'une manière générale accomplir la charge quotidienne du secrétariat du Comité Maritime International.

L'Administrateur peut être une personne physique ou une personne morale. L'Administrateur personne physique peut également exercer la fonction de Trésorier du Comité Maritime International, s'il est élu à cette fonction.

L'Administrateur personne physique est élu pour un mandat de quatre ans, et est rééligible sans limite. L'Administrateur personne morale est élu par l'Assemblée sur proposition du Conseil Exécutif et reste en fonction jusqu'à l'élection d'un successeur.

Article 14

Les Conseillers Exécutifs

Le Comité Maritime International compte huit Conseillers Exécutifs, dont les fonctions sont décrites à l'article 18.

Les Conseillers Exécutifs sont élus en fonction de leur mérite personnel, en ayant également égard à une représentation équilibrée des systèmes juridiques et des régions du monde auxquels les Association membres appartiennent.

Chaque Conseiller Exécutif est élu pour un mandat entier de quatre ans, renouvelable une fois.

Article 15

Présentations de candidatures

Un Comité de Présentation de candidatures est mis en place avec mission de présenter des personnes physiques en vue de leur élection à toute fonction au sein du Comité Maritime International.

Le Comité de Présentation de candidatures se compose de :

- a) un président, qui a voix prépondérante en cas de partage des voix, et qui est élu par le Conseil Exécutif;

Organization of the CMI

- b) The President and past Presidents,
- c) One member elected by the Vice-Presidents, and
- d) One member elected by the Executive Councillors.

Notwithstanding the foregoing paragraph, no person who is a candidate for office may serve as a member of the Nominating Committee during consideration of nominations to the office for which he is a candidate.

On behalf of the Nominating Committee, the chairman shall first determine whether any officers eligible for re-election are available to serve for an additional term. He shall then solicit the views of the Member Associations concerning candidates for nomination. The Nominating Committee shall then make nominations, taking such views into account.

Following the decisions of the Nominating Committee, the chairman shall forward its nominations to the Administrator in ample time for distribution not less than one-hundred twenty days before the annual meeting of the Assembly at which nominees are to be elected.

Member Associations may make nominations independently of the Nominating Committee, provided such nominations are forwarded to the Administrator before the annual meeting of the Assembly at which nominees are to be elected.

Article 16

Immediate Past President

The Immediate Past President of the Comité Maritime International shall have the option to attend all meetings of the Executive Council with voice but without vote, and at his discretion shall advise the President and the Executive Council.

PART IV - EXECUTIVE COUNCIL

Article 17

Composition

The Executive Council shall consist of:

- a) The President,
- b) The Vice-Presidents,
- c) The Secretary-General,
- d) The Treasurer,
- e) The Administrator (if an individual),
- f) The Executive Councillors, and
- g) The Immediate Past President.

Article 18

Functions

The functions of the Executive Council are:

- a) To receive and review reports concerning contact with:
 - (i) The Member Associations,
 - (ii) The CMI Charitable Trust, and
 - (iii) International organizations;
- b) To review documents and/or studies intended for:

Constitution

- b) le Président et les anciens Présidents du C.M.I.;
- c) un membre élu par les Vice-Présidents;
- d) un membre élu par les Conseillers Exécutifs.

Nonobstant les dispositions de l'alinéa qui précède, aucun candidat ne peut siéger au sein du Comité de Présentation pendant la discussion des présentations intéressant la fonction à laquelle il est candidat.

Agissant au nom du Comité de Présentation, son Président détermine tout d'abord s'il y a des membres du bureau qui, étant rééligibles, sont disponibles pour accomplir un nouveau mandat. Il demande ensuite l'avis des Associations membres au sujet des candidats à présenter. Tenant compte de ces avis, le Comité de Présentation fait alors des propositions.

Le président du Comité de Présentation transmet les propositions décidées par celui-ci à l'Administrateur suffisamment à temps pour être diffusées cent-vingt jours au moins avant l'Assemblée annuelle appelée à élire des candidats proposés.

Des Associations membres peuvent, indépendamment du Comité de Présentation, faire des propositions, pourvu que celles-ci soient transmises à l'Administrateur avant l'Assemblée annuelle appelée à élire des candidats présentés.

Article 16

Le Président sortant

Le Président sortant du Comité Maritime International a la faculté d'assister à toutes les réunions du Conseil Exécutif avec voix consultative mais non délibérative, et peut, s'il le désire, conseiller le Président et le Conseil Exécutif.

4ème PARTIE - CONSEIL EXECUTIF

Article 17

Composition

Le Conseil Exécutif est composé:

- a) du Président,
- b) des Vice-Présidents,
- c) du Secrétaire Général,
- d) du Trésorier,
- e) de l'Administrateur, s'il est une personne physique,
- f) des Conseillers Exécutifs,
- g) du Président sortant.

Article 18

Fonctions

Les fonctions du Conseil Exécutif sont:

- a) de recevoir et d'examiner des rapports concernant les relations avec:
 - (i) les Associations membres,
 - (ii) le "CMI Charitable Trust", et
 - (iii) les organisations internationales;
- b) d'examiner les documents et études destinés:
 - (i) à l'Assemblée,

Organization of the CMI

- (i) The Assembly,
- (ii) The Member Associations, relating to the work of the Comité Maritime International or otherwise advising them of developments, and
- (iii) International organizations, informing them of the views of the Comité Maritime International on relevant subjects;
- c) To initiate new work within the object of the Comité Maritime International, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, and to supervise them;
- d) To encourage and facilitate the recruitment of new members of the Comité Maritime International;
- e) To oversee the finances of the Comité Maritime International;
- f) To make interim appointments, if necessary, to the offices of Treasurer and Administrator;
- g) To review and approve proposals for publications of the Comité Maritime International;
- h) To set the dates and places of its own meetings and, subject to Article 5, of the meetings of the Assembly, and of Seminars and Colloquia convened by the Comité Maritime International;
- i) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars and Colloquia convened by the Comité Maritime International;
- j) To carry into effect the decisions of the Assembly;
- k) To report to the Assembly on the work done and on the initiatives adopted.

The Executive Council may establish and delegate to its own Committees and Working Groups such portions of its work as it deems suitable. Reports of such Committees and Working Groups shall be submitted to the Executive Council and to no other body.

Article 19**Meetings and Quorum**

At any meeting of the Executive Council seven members, including the President or a Vice-President and at least three Executive Councillors, shall constitute a quorum. All decisions shall be taken by a simple majority vote. The President or, in his absence, the senior Vice-President in attendance shall have a casting vote where the votes are otherwise equally divided.

The Executive Council may, however, take decisions when circumstances so require without a meeting having been convened, provided that all its members are consulted and a majority respond affirmatively in writing.

PART V - INTERNATIONAL CONFERENCES**Article 20****Composition and Voting**

The Comité Maritime International shall meet in International Conference upon dates and at places approved by the Assembly, for the purpose of discussing and taking decisions upon subjects on an agenda likewise approved by the Assembly.

Constitution

- (ii) aux Associations membres, concernant le travail du Comité Maritime International, et en les avisant de tout développement utile,
 - (iii) aux organisations internationales, pour les informer des vues du Comité Maritime International sur des sujets adéquats;
 - c) d'aborder l'étude de nouveaux travaux entrant dans le domaine du Comité Maritime International, de créer à cette fin des comités permanents, des commissions internationales et des groupes de travail et de contrôler leur activité;
 - d) d'encourager et de favoriser le recrutement de nouveaux membres du Comité Maritime International;
 - e) de contrôler les finances du Comité Maritime International;
 - f) en cas de besoin, de pourvoir à titre provisoire à une vacance de la fonction de Trésorier ou d'Administrateur;
 - g) d'examiner et d'approuver les propositions de publications du Comité Maritime International;
 - h) de fixer les dates et lieux de ses propres réunions et, sous réserve de l'article 5, des réunions de l'Assemblée, ainsi que des séminaires et colloques convoqués par le Comité Maritime International;
 - i) de proposer l'ordre du jour des réunions de l'Assemblée et des Conférences Internationales, et de fixer ses propres ordres du jour ainsi que ceux des Séminaires et Colloques convoqués par le Comité Maritime International;
 - j) d'exécuter les décisions de l'Assemblée;
 - k) de faire rapport à l'Assemblée sur le travail accompli et sur les initiatives adoptées.
- Le Conseil Exécutif peut créer ses propres comités et groupes de travail et leur déléguer telles parties de sa tâche qu'il juge convenables. Ces comités et groupes de travail feront rapport au seul Conseil Exécutif.

Article 19**Réunions et quorum**

Lors de toute réunion du Conseil Exécutif, celui-ci ne délibère valablement que si sept de ses membres, comprenant le Président ou un Vice-Président et trois Conseillers Exécutifs au moins, sont présents. Toute décision est prise à la majorité simple des votes émis. En cas de partage des voix, celle du Président ou, en son absence, celle du plus ancien Vice-Président présent, est prépondérante.

Le Conseil Exécutif peut toutefois, lorsque les circonstances l'exigent, prendre des décisions sans qu'une réunion ait été convoquée, pourvu que tous ses membres aient été consultés et qu'une majorité ait répondu affirmativement par écrit.

5ème PARTIE - CONFERENCES INTERNATIONALES**Article 20****Composition et Votes**

Le Comité Maritime International se réunit en Conférence Internationale à des dates et lieux approuvés par l'Assemblée aux fins de délibérer et de se prononcer sur des sujets figurant à un ordre du jour également approuvé par l'Assemblée.

Organization of the CMI

The International Conference shall be composed of all Members of the Comité Maritime International and such Observers as are approved by the Executive Council.

Each Member Association which has the right to vote may be represented by ten delegates and the Titulary Members who are members of that Association. Each Consultative Member may be represented by three delegates. Each Observer may be represented by one delegate only.

Each Member Association present and entitled to vote shall have one vote in the International Conference; no other members or Officers of the Comité Maritime International shall have the right to vote.

The right to vote cannot be delegated or exercised by proxy.

The resolutions of International Conferences shall be adopted by a simple majority of the Member Associations present, entitled to vote, and voting.

PART VI - FINANCE

Article 21

Arrears of Contributions

Member Associations remaining in arrears of payment of contributions for more than one year from the date of the Treasurer's invoice shall be in default and shall not be entitled to vote until such default is cured.

Members liable to pay contributions who remain in arrears of payment for more than three years from the date of the Treasurer's invoice shall, unless the Executive Council decides otherwise, receive no publications or other rights and benefits of membership until such default is cured.

Contributions received from a Member in default shall be applied to reduce arrears in chronological order, beginning with the earliest year of default.

Article 22

Financial Matters

The Administrator shall receive compensation as determined by the Executive Council.

Members of the Executive Council and Chairmen of Standing Committees, International SubCommittees and Working Groups, when travelling on behalf of the Comité Maritime International, shall be entitled to reimbursement of travelling expenses, as directed by the Executive Council.

The Executive Council may also authorize the reimbursement of other expenses incurred on behalf of the Comité Maritime International.

PART VII - TRANSITIONAL PROVISIONS

Article 23

Entry into Force

This Constitution shall enter into force on the first day of January, a.d. 1993.

Constitution

La Conférence Internationale est composée de tous les membres du Comité Maritime International et d'observateurs dont la présence a été approuvée par le Conseil Exécutif.

Chaque Association membre, ayant le droit de vote, peut se faire représenter par dix délégués et par les membres titulaires, membres de leur Association. Chaque membre consultatif peut se faire représenter par trois délégués. Chaque observateur peut se faire représenter par un délégué seulement.

Chaque Association membre présente et jouissant du droit de vote dispose d'une voix à la Conférence Internationale, à l'exclusion des autres membres et des membres du Bureau du Comité Maritime International.

Le droit de vote ne peut pas être délégué ni exercé par procuration.

Les résolutions des Conférences Internationales sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote et prenant part au vote.

6ème PARTIE - FINANCES

Article 21

Retards dans le paiement de Cotisations

Les Associations membres qui demeurent en retard de paiement de leurs cotisations pendant plus d'un an depuis la date de la facture du Trésorier sont considérés en défaut et ne jouissent pas du droit de vote jusqu'à ce qu'il ait été remédié au défaut de paiement.

Les membres redevables de cotisations qui demeurent en retard de paiement pendant plus de trois ans depuis la date de la facture du Trésorier ne bénéficient plus, sauf décision contraire du Conseil Exécutif, de l'envoi des publications ni des autres droits et avantages appartenant aux membres, jusqu'à ce qu'il ait été remédié au défaut de paiement.

Les cotisations reçues d'un membre en défaut sont imputées par ordre chronologique, en commençant par l'année la plus ancienne du défaut de paiement.

Article 22

Questions financières

L'Administrateur reçoit une indemnisation fixée par le Conseil Exécutif.

Les membres du Conseil Exécutif et les présidents des comités permanents, des commissions internationales et des groupes de travail ont droit au remboursement des frais des voyages accomplis pour le compte du Comité Maritime International, conformément aux instructions du Conseil Exécutif.

Le Conseil Exécutif peut également autoriser le remboursement d'autres frais exposés pour le compte du Comité Maritime International.

7ème PARTIE - DISPOSITIONS TRANSITOIRES

Article 23

Entrée en vigueur

Les présents statuts entreront en vigueur le 1er janvier 1993.

Organization of the CMI

Article 24**Election of Officers**

Notwithstanding any of the foregoing provisions of this Constitution, no election of officers shall be held until the terms of office current at the time of entry into force of this Constitution have expired; at which time the following provisions shall govern until, in accordance with Article 25, this Part VII lapses.

- a) Following adoption of this Constitution by the Assembly, the Nominating Committee shall be constituted as provided in Article 15.
- b) For purposes of determining eligibility for office, all persons holding office at the time of entry into force of this Constitution shall at the expiration of their current terms be deemed to have served in their respective offices for one term.
- c) The President, Secretary-General, Treasurer and Administrator shall be elected as provided in Articles 9, 11, 12 and 13.
- d) One Vice-President shall be elected as provided in Article 10 above, and one Vice-President shall be elected for a term of two years. When the two year term expires, the election of Vice-Presidents shall become wholly governed by Article 10.
- e) Two Executive Councillors shall be elected as provided in Article 14; two Executive Councillors shall be elected for terms of three years, two shall be elected for terms of two years, and two shall be elected for terms of one year. When the one year terms expire, two Executive Councillors shall be elected as provided in Article 14. When the two year terms expire, two Executive Councillors shall be elected as provided in Article 14. When the three year terms expire, the election of Executive Councillors shall become wholly governed by Article 14.

Article 25**Lapse of Part VII**

When the election of all Executive Councillors becomes wholly governed by Article 14 of this Constitution, then this Part VII shall lapse and shall be deleted from any future printing of this Constitution.

Constitution

Article 24**Elections des membres du Bureau**

Nonobstant toute disposition précédente des présents statuts, il n'y aura pas d'élection de membres du Bureau avant l'expiration des mandats dans les fonctions en cours au moment de l'entrée en vigueur des présents statuts; à ce moment, les dispositions suivantes s'appliqueront jusqu'à ce que, conformément à l'article 25, la présente 7ème Partie devienne caduque.

- a) Après adoption des présents statuts par l'Assemblée, le Comité de Présentation de candidatures sera constitué conformément à l'Article 15.
- b) Pour la détermination des conditions d'éligibilité, toute personne titulaire d'une fonction au moment de l'entrée en vigueur des présents statuts sera, à l'expiration de son mandat en cours, réputée avoir accompli un mandat dans cette fonction.
- c) Le Président, le Secrétaire Général, le Trésorier et l'Administrateur seront élus conformément aux Articles 9, 11, 12 et 13.
- d) Un Vice-Président sera élu conformément à l'Article 10 ci-dessus, et un Vice-Président sera élu pour un mandat de deux ans. A l'expiration de ce mandat de deux ans, l'élection des Vice-Présidents deviendra entièrement conforme à l'Article 10.
- e) Deux Conseillers Exécutifs seront élus conformément à l'Article 14; deux Conseillers Exécutifs seront élus pour un mandat de trois ans, deux seront élus pour un mandat de deux ans, et deux seront élus pour un mandat d'un an. A l'expiration de ces mandats d'un an, deux Conseillers Exécutifs seront élus conformément à l'Article 14. A l'expiration des mandats de deux ans, deux Conseillers Exécutifs seront élus conformément à l'Article 14. A l'expiration des mandats de trois ans, l'élection des Conseillers Exécutifs deviendra entièrement conforme à l'Article 14.

Article 25**Caducité de la 7ème Partie**

Lorsque l'élection de tous les Conseillers Exécutifs sera devenue entièrement conforme à l'article 14, la présente 7ème Partie deviendra caduque et sera supprimée dans toute publication ultérieure des présents Statuts.

RULES OF PROCEDURE*

Rule 1

Right of Presence

In the Assembly, only Members of the CMI as defined in Article 3 of the Constitution, members of the Executive Council as provided in Article 4 and Observers invited pursuant to Article 4 may be present as of right.

At International Conferences, only Members of the CMI as defined in Article 3 of the Constitution (including non-delegate members of national Member Associations), Officers of the CMI as defined in Article 8 and Observers invited pursuant to Article 20 may be present as of right.

Observers may, however, be excluded during consideration of certain items of the agenda if the President so determines.

All other persons must seek the leave of the President in order to attend any part of the proceedings.

Rule 2

Right of Voice

Only Members of the CMI as defined in Article 3 of the Constitution and members of the Executive Council speak as of right; all others must seek the leave of the President before speaking. In the case of a Member Association, only a listed delegate may speak for that Member; with the leave of the President such delegate may yield the floor to another member of that Member Association for the purpose of addressing a particular and specified matter.

Rule 3

Points of Order

During the debate of any proposal or motion any Member or Officer of the CMI having the right of voice under Rule 2 may rise to a point of order and the point of order shall immediately be ruled upon

* Approved by the CMI Assembly held on 13th April 1996.

Rules of Procedure

by the President. No one rising to a point of order shall speak on the substance of the matter under discussion.

All rulings of the President on matters of procedure shall be final unless immediately appealed and overruled by motion duly made, seconded and carried.

Rule 4

Voting

For the purpose of application of Article 6 of the Constitution, the phrase "Member Associations present, entitled to vote, and voting" shall mean Member Associations whose right to vote has not been suspended pursuant to Articles 7 or 21, whose voting delegate is present at the time the vote is taken, and whose delegate casts an affirmative or negative vote. Member Associations abstaining from voting or casting an invalid vote shall be considered as not voting.

Voting shall normally be by show of hands. However, the President may order or any Member Association present and entitled to vote may request a roll-call vote, which shall be taken in the alphabetical order of the names of the Member Associations as listed in the current CMI *Yearbook*.

If a vote is equally divided, the proposal or motion shall be deemed rejected.

Notwithstanding the foregoing, all contested elections of Officers shall be decided by a secret written ballot in each category. Four ballots shall be taken if necessary. If the vote is equally divided on the fourth ballot the election shall be decided by drawing lots.

If no nominations for an office are made in addition to the proposal of the Nominating Committee pursuant to Article 15, then the candidate(s) so proposed may be declared by the President to be elected to that office by acclamation.

Rule 5

Amendments to Proposals

An amendment shall be voted upon before the proposal to which it relates is put to the vote, and if the amendment is carried the proposal shall then be voted upon in its amended form.

If two or more amendments are moved to a proposal, the first vote shall be taken on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote.

Part I - Organization of the CMI

Rule 6*Secretary and Minutes*

The Secretary-General or, in his absence, an Officer of the CMI appointed by the President, shall act as secretary and shall take note of the proceedings and prepare the minutes of the meeting. Minutes of the Assembly shall be published in the two official languages of the CMI, English and French, either in the *CMI News Letter* or otherwise distributed in writing to the Member Associations.

Rule 7*Amendment of these Rules*

Amendment to these Rules of Procedure may be adopted by the Assembly. Proposed amendments must be in writing and circulated to all Member Associations not less than 60 days before the annual meeting of the Assembly at which the proposed amendments will be considered.

Rule 8*Application and Prevailing Authority*

These Rules shall apply not only to meetings of the Assembly and International Conferences, but shall also constitute, *mutatis mutandis*, the Rules of Procedure for meetings of the Executive Council, International Sub-Committees, or any other group convened by the CMI.

In the event of an apparent conflict between any of these Rules and any provision of the Constitution, the Constitutional provision shall prevail in accordance with Article 7(h). Any amendment to the Constitution having an effect upon the matters covered by these Rules shall be deemed as necessary to have amended these Rules *mutatis mutandis*, pending formal amendment of the Rules of Procedure in accordance with Rule 7.

Officers

MEMBERS OF THE EXECUTIVE COUNCIL *

MEMBRES DU CONSEIL EXÉCUTIF *

<i>President - Président:</i>	Allan PHILIP
<i>President ad honorem:</i> <i>Président ad honorem:</i>	Francesco BERLINGIERI
<i>Vice-Presidents:</i> <i>Vice-Présidents:</i>	William BIRCH-REYNARDSON Hisashi TANIKAWA
<i>Secretary General:</i> <i>Secrétaire Général:</i>	vacant
<i>Administrator:</i> <i>Administrateur:</i>	Leo DELWAIDE
<i>Treasurer:</i> <i>Trésorier:</i>	Henri VOET
<i>Members:</i> <i>Membres:</i>	David ANGUS Luis COVA ARRIA Karl-Johan GOMBRII Patrick J.S. GRIGGS Eric JAPIKSE Jean-Serge ROHART Ron SALTER Frank L. WISWALL, Jr.

* The addresses of the Members of the Executive Council may be found either in the section relating to the Maritime Law Association to which they belong, or in the list of the Titulary Members.

MEMBER ASSOCIATIONS ASSOCIATIONS MEMBRES

ARGENTINA

ASOCIACION ARGENTINA DE DERECHO MARITIMO

(Argentine Maritime Law Association)

c/o Dr. José Domingo Ray, 25 de Mayo 489, 5th Fl.,
1339 Buenos Aires. - Telex: 27181 - Fax: 313-7765

Established: 1905

Officers:

President: Dr. José Domingo RAY, 25 de Mayo 489, 5th Fl., 1339 Buenos Aires Tel: 311-3011/4 - 313-6620/6617 - Fax: 313-7765 Tlx: 27181

Vice-Presidents: Dr. Antonio Ramon MATHE, Piedras 77, 6th Fl., 1070 Buenos Aires Tel: 343-8460/8484- Fax: 334-3677 - Tlx: 22331

Dr. Alberto C. CAPPAGLI, Carlos Pellegrini 887 - 1338 Buenos Aires

Tel: 322-8336/8796- 325-3500 - Fax: 322-4122 Tlx: 24328 - 27541

Secretary: Dr. M.Domingo LOPEZ SAAVEDRA, Corrientes 1145, 6th Fl., 1043 Buenos Aires Tel: 325-5868/8704/8407 - Fax: 325-9702

Pro-Secretary: Dr. Fernando ROMERO CARRANZA, L.N. Alem 1067, 15th Fl., 1001, Buenos Aires Tel: 313-6536/9619 - 311-1091/9

Treasurer: Sr. Francisco WEIL, c/o Ascoli & Weil, J.D. Peron 328 - 4th Fl., 1038 Buenos Aires Tel: 342-0081/3 - Fax: 331-7150 - Tlx: 22521

Pro-Treasurer: Dr. Carlos R.LESMI, Lavalle 421 - 1st Fl., 1047, Buenos Aires Tel: 393-5292/5393 - Fax: 393-5889 - Tlx: 25640

Members: Dr. Abraham AUSTERLIC, Sr. Jorge CONSTENLA, Sr. Ferruccio DEL BENE, Dr. Carlos LEVI, Dr. Marcial J.MENDIZABAL, Dr. Alfredo MOHORADE

Honorary Vice-President: Dr. Alberto N. DODERO

Titulary Members:

Jorge BENGOLEA ZAPATA, Dr.Alberto C.CAPPAGLI, Dr. FROMERO CARRANZA, Dr.Domingo Martin LOPEZ SAAVEDRA, Dr.Antonio MATHE, Dr. Marcial J. MENDIZABAL, Dr.Alfredo MOHORADE, Dr.José D. RAY, Dra.H.S.TALAVERA, Francisco WEIL.

Member Associations

AUSTRALIA AND NEW ZEALAND

THE MARITIME LAW ASSOCIATION OF AUSTRALIA AND NEW ZEALAND

c/o the Executive Secretary, Andrew TULLOCH,

Phillips Fox

120 Collins Street

Melbourne VIC 3000, Australia

Tel: 274 5000 - Telefax: 274 5111

Established: 1974

Officers:

President: Ian MAITLAND, Finlaysons, GPO Box 1244, Adelaide 5001, Australia, Tel.: 235 7400 - Fax: 232 2944.

Australian Vice-President: Ms. Anthe PHILIPPIDES, Griffith Chambers, 239 George Street, Brisbane 4000, Australia, Tel.: 229 9188 - Fax: 210 0648.

New Zealand Vice-President: Tom BROADMORE, Chapman Tripp Sheffield Young, P.O. Box 993, Wellington, New Zealand, Tel.: 499 5999 - Fax: 472 7111.

Executive Secretary: Andrew TULLOCH, Phillips Fox, GPO Box 4301PP, Melbourne 3001, Australia, Tel.: 274 5000 - Fax: 274 5111.

Assistant Secretary: John LEAN, Botany Bay Shipping Company Australia Pty Ltd., 6/6 Glen Street, Milsons Point 2061, Australia, Tel.: 929 4344 - Fax: 959 5637.

Treasurer: Drew JAMES, Norton Smith and Co., GPO Box 1629, Sydney 2001, Australia, Tel.: 930 7500 - Fax: 930 7600.

Immediate Past President: Stuart HETHERINGTON, Ebsworth and Ebsworth, GPO Box 713, Sydney 2001, Australia, Tel.: 234 2366 - Fax: 235 3606.

Titulary Members:

The Honourable Justice K.J. CARRUTHERS, I. MACKAY, R. SALTER, P.G. WILLIS.

BELGIUM

ASSOCIATION BELGE DE DROIT MARITIME BELGISCHE VERENIGING VOOR ZEERECHT

(Belgian Maritime Law Association)

c/o Firme HENRY VOET-GENICOT, Mechelsesteenweg 203 bus 6

B-2018 Antwerpen 1 -

Telex: 31653 - Tel.: (03)218.74.64 - Fax: (03)218.67.21

Established: 1896

Officers:

President: Roger ROLAND, Schermerstraat 30, 2000 Antwerp Tel.: 0032-3-203-4330 or 31 Fax: 0032-3-203-4339

Part I - Organization of the CMI

Vice-Presidents:

Jozef VANDEN HEUVEL, Schermersstraat 30, B-2000 Antwerpen 1, Belgique.

Jean COENS, Avocat, Frankrijklei 115, B-2000 Antwerpen 1, Belgique - Tel.: 03/233.97.97/96, Tlx: 72748 EULAW B.

Secretary: Henri VOET Jr., Mechelsesteenweg 203 bus 6, B-2018 Antwerpen 1.

Administrator: Leo DELWAIDE, Markgrvestraat 9, B-2000 Antwerpen Tel.: 32.3.231.56.76 - Fax: 32.3.225.01.30.

Treasurer: Henri VOET, Mechelsesteenweg 203 bus, 6, 2018 Antwerpen 1.

Titulary Members:

Claude BUISSERET, Jean COENS, Leo DELWAIDE, Albert DUCHENE, Geoffrey FLETCHER, Wim FRANSEN, Paul GOEMANS, Etienne GUTT, Marc A. HUYBRECHTS, Herman LANGE, Tony KEGELS, Jacques LIBOUTON, Roger ROLAND, Lionel TRICOT, Jozef VAN DEN HEUVEL, Jacques VAN DOOSSELAERE, Philippe VAN HAVRE, Jean VAN RYN, Henri F.VOET, Henri VOET Jr.

BRAZIL**ASSOCIACAO BRASILEIRA DE DIREITO MARITIMO**

(Brazilian Maritime Law Association)

Rua Mexico, 111 GR 501, Centro, CEP 20031-145

Rio de Janeiro - RJ. Brasil Tel.: 220.5488 - Fax: 220 7621

Established: 1961

Officers:

President: Pedro CALMON FILHO, Pedro Calmon Filho & Associados, Av. Franklin Roosevelt, 194/801, Rio de Janeiro, RJ.CEP 20021 - 120 (Tel.:532-2323 - Fax: 220-7621).

Secretary General: Jos, SPANGENBERG CHAVES

Vice-Presidents: Alvaro MARTINHO PAES da SILVA, Delio MAURY, Gilson FERNANDES TAVARES, Judge Maria Cristina de OLIVEIRA PADILHA

Titulary Members:

Pedro CALMON Filho, Maria Cristina DE OLIVEIRA PADILHA, Carlos DA ROCHA

GUIMARAES, Walter de SA LEITAO, Jorge Augusto DE VASCONCELLOS, Stenio DUGUET COELHO, Rucemah Leonardo GOMES PEREIRA.

Membership:

Physical Members: 350; Official Entities as Life Members: 22; Juridical

Entity Members: 20; Correspondent Members: 15.

Member Associations

CANADA

CANADIAN MARITIME LAW ASSOCIATION
ASSOCIATION CANADIENNE DE DROIT MARITIME

c/o John A. Cantello, Osborn & Lange Inc.

360 St. Jacques Ouest - Suite 2000, Montréal, Quebec H2Y 1P5

Tel.: (514)849-4161 - Fax: (514)849-4167

*Established: 1951*Officers:*President:* Ms. Johanne GAUTHIER, Ogilvy, Renault, 1981 McGill College Ave., Suite 1100, Montreal, Quebec H3A 3C1. Tel.: (514) 847-4469, Fax: (514) 286-5474.*Immediate Past President:* Professor Edgar GOLD, Huestis Holm, 708 Commerce Tower, 1809 Barrington St., Halifax, N.S. B3J 3K8. Tel. (902)423-7264 - Fax. (902)422-4713*Vice-President:* Nigel H. FRAWLEY, Meighen Demers, Box 11, 200 King Street West, Merrill Lynch Canada Tower, Sun Life Centre, Toronto, Ontario M5H 3T4, Canada. Tel.: (416) 340-6008, Fax: (416) 977-5239.*Regional Vice-Presidents:*

Peter G. BERNARD, Campney & Murphy, P.O.Box 48800, 2100-1111 West Georgia St., Vancouver, B.C. V7X 1K9. Tel. (604)688-8022 - Fax. (604)688-0829.

William SHARPE, Box 1225, 1664 Bayview Avenue, Toronto, Ontario M4C 3C2. Tel. and Fax. (416)482-5321.

Peter J. CULLEN, Stikeman, Elliott, 1155 René Lévesque Blvd. W., Suite 3700, Montreal, Quebec H3B 3V2. Tel. (514)397-3135 - Fax. (514)397-3222.

James E. GOULD, Q.C., McInnes Cooper & Robertson, Cornwallis Place, P.O. Box 730, 1601 Lower Water St., Halifax, N.S. B3J 2V1. Tel. (902)425-6500 - Fax- (902)425-6350.

Secretary and Treasurer: John A. CANTELLO, Osborn & Lange Inc., 360 St. Jacques W., Suite 2000, Montreal, Quebec H2Y 1P5. Tel. (514)849-4161 - Fax. (514)849-4167.*Chairman of Nominating Committee:* Professor Edgar GOLD.*Member of the Executive Council of the CMI:* Hon. W. David ANGUS, Q.C., Stikeman Elliott, 1155 René Lévesque Blvd. W., Suite 3700, Montreal, Quebec H3B 3V2, Canada. Tel.: (514) 397-3127 - Fax: (514) 397-3222.*Members of Executive Committee:*

Michael J. BIRD, Owen Bird, P.O.Box 49130, 595 Burrard Street, 28th Fl., Vancouver, B.C. V7X 1J5. Tel. (604) 688-0401 - Fax. (604) 688-2827.

Gordon L. BISARO, Bisaro & Company, P.O.Box 11547, 2020 - 650 West Georgia St., Vancouver, B.C. V6B 4N7. Tel. (604) 683-9621 - Fax. (604) 683-5084.

Ms. Nancy G. CLEMAN, McMaster Meighen, 1000 de La Gauchetière Street West, Suite 900, Montreal, Quebec H3B 4W5. Tel. (514) 954-3115 - Fax. (514) 954-4449.

Victor De MARCO, Brisset Bishop, 1080 Cote du Beaver Hall, Suite 1400, Montreal, Quebec H2Z 1S8. Tel. (514) 393-3700 - Fax. (514) 393-1211.

Rui M. FERNANDES, Cassels, Brock & Blackwell, 40 King St. W., 2100, Toronto, Ontario M5H 3C2. Tel. (416) 869-5799 - Fax. (416) 360-8877.

John L. JOY, White Ottenheimer & Baker, P.O.Box 5457, Baine Johnston Centre, 10 Fort William Place, St. John's, Nfld. A1C 5W4. Tel. (709) 722-7584 - Fax. (709) 722-9210.

A. William MOREIRA, Daley, Black & Moreira, P.O.Box 355, 1791 Barrington St., Halifax, N.S. B3J 2N7. Tel. (902) 423-7211 - Fax. (902) 420-1741.

John G. O'CONNOR, Langlois Robert Gaudreau, 801 Chemin St. Louis, Suite 160, Quebec, Que. G1S 1C1. Tel. (418) 682-1212 - Fax. (418) 682-2272.

George R. STRATHY, 401 Bay St., Box 69, Suite 2420, Toronto, Ontario M5H 2T4. Tel. (416) 601-6805 - Fax. (416) 601-1190.

Part I - Organization of the CMI

Representatives:

Constituent Members on the Executive Committee:

The Association of Average Adjusters of Canada, c/o Mr. Anthony E. BRAIN, Braden Marine Inc., 276 St. Jacques West, Suite 107, Montreal, Quebec H2Y 1N3, Tel. (514) 842-9060 - Fax: (514) 842-3540.

The Association of Maritime Arbitrators of Canada, c/o Mr. Clifford H. PARFETT, Marine Surveyors of Canada Ltd., 6 Desaulniers, Suite 202, St. Lambert, Que. J4P 1L3. Tel. (514) 923-7900 - Fax: (514) 933-7595.

The Canadian Board of Marine Underwriters, c/o Douglas McRAE Jr., Marine Underwriters Ltd., 1440 St. Catherine St. West, Suite 600, Montreal, Que. H3G 2T7. Tel: (514) 392-7542 - Fax: (514) 392-6282.

Canadian Marine Response Management Corp., c/o Mr. V. Bennett, Manager Operations, Suite 1201, 275 Slater St., Ottawa, Ontario K1P 5H9, Tel: (613) 230-7369, Fax: (613) 230-7344.

The Canadian Shipowners Association, c/o T. Norman HALL, 350 Sparks Street, Suite 705, Ottawa, Ontario K1R 7S8, Tel: (613) 232-3539-Tlx: 05-33522 - Fax: (613) 232-6211.

The Shipping Federation of Canada, c/o Georges ROBICHON, Fednav Limited, 1000 rue de la Gauchetière West, Suite 3500, Montreal, Quebec H3B 4W5, Tel: (514) 878-6608 - Fax: (514) 878-6687.

Canadian Marine Response Management Corp., c/o Mr. Victor BENNETT, Suite 1201, 275 Slater St., Ottawa, Ontario K1P 5H9, Tel: (514) 878-6608, Fax: (514) 878-6687.

The B.C. Ferry Corporation, c/o Ms. Josee Winsor, 1112 Fort Street, Victoria, B.C. V8V 4V2, Tel: (604) 381-1401 - Fax: (604) 381-5452,

The Canadian Bankers' Association, c/o Mr. David E. Phillips, Vice President and Legal Adviser, P.O. Box 348, Commerce Court Postal Station, Toronto, Ontario M5L 1G2, Tel: (416) 362-6092, Telex: 06-23402, Fax: (416) 362-7705,

The Canadian Bar Association, c/o Mr. Nils E. Dauglis, Bull Housser & Tupper, 3000-1055 West Georgia St., Vancouver, B.C. V6E 3R3, Tel: (604) 641-4884, Telex 04-53395, Fax: (604) 641-4949.

Canadian Ferry Operators Association, c/o Mr. J. Cormier, Northumberland Ferries Ltd., 92 Water Street, Charlottetown, P.E. I, C1A 7L3, Tel. (902) 566-3838, Fax: (902) 368-1550.

Canadian Shipowners Mutual Assurance Association, c/o Mr. J.H. Scott, McMaster Meighen, 1000 de la Gauchetière, Suite 900, Montreal, Quebec H3B 4W5, Tel. (514) 954-3118.

Canadian Ship Supply & Services Association, c/o Ms. Theresa Cardinal, 368 Notre-Dame St. W. Suite 100, Montreal, Quebec H2Y 1T9, Tel: (514) 842-1166, Fax: (514) 842-2332.

The Company of Master Mariners of Canada, c/o National Secretary, 59 North Dunlevy Avenue, Vancouver, B.C., V6A 3R1, Tel. (604) 288-6155, Telcx: 055-81186, Fax: (604) 288-4532.

Marine Atlantic Inc., c/o Mr. J.L. Brean, Q.C., 1791 Barrington Street, Suite 1400, Halifax, N.S. B3J 3L1, Tel: (902) 426-1867, Tlx. 019-22766, Fax. (902) 426-1863.

Maritime Employers Association, c/o Mr. Bryan P. Mackasey, Port of Montreal Building, Wing 2, cité du Havre, Montreal, Quebec H3C 3R5, Tel. (514) 878-3721, Fax. (514) 866-4246.

Vancouver Maritime Arbitrators Association, c/o Mr. P. Wright, 205-355 Burrard Street, Vancouver, B.C. V6C 2G8, Tel. (604) 922-1395, Fax. (604) 922-1395.

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Membership:

Constituent Members: 16 - Regular Members: 300 - Student Members: 4 - Total Membership including Honoraries & Constituent: 334.

CHILE

ASOCIACION CHILENA DE DERECHO MARITIMO

(Chilean Association of Maritime Law)

Prat 827, Piso 12, Casilla 75, Valparaiso

Tel.: (5632) 252535 - Tlx: 230398 SANTA CL - Fax: 56.32.252622

Established: 1965

Officers:

President: don Eugenio CORNEJO FULLER, Prat 827, Piso 12, Casilla 75, Fax: 5632 - 252622, Valparaiso.

Vice-President: Alfonso ANSIETA NUNEZ, Prat 827, Piso 12, Casilla 75, Fax: 5632 - 252622, Valparaiso.

Secretary: Juan Carlos GALDAMEZ NARANJO, Av.Libertad 63 Oficina 601, Vina del Mar, Fax: 032 680294.

Treasurer: Félix GARCIA INFANTE, Casilla 173-V, Valparaiso.

Member: José Tomas GUZMAN SALCEDO, Huérfanos 835, Oficina 1601, Fax: 5602 382614, Santiago, Chile.

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don Alfonso ANSIETA NUNEZ, don Eugenio CORNEJO FULLER, don José Tomas GUZMAN SALCEDO.

CHINA

CHINA MARITIME LAW ASSOCIATION

CCPIT Bldg., 1 Fuxingmenwai Street

BEIJING 100860 - CHINA

Tel: 8513344/1804 - Fax: 8511369 - Tlx: 222288 TPLAD CN

Established: 1988

Officers:

President: WU Bingze, President of China National Foreign Trade Transportation Corporation, Jiuling Bldg., 21 Xisanhuan Beilu, Beijing, China. Tel.: 8045968 - Fax: 8405910 - Tlx: 22867 TRANS CN.

Part I - Organization of the CMI

Vice-Presidents:

- LE Tianxiang, Vice President of China National Foreign Trade Transportation Corporation, Jiuling Bldg., 21 Xisanhuan Beilu, Beijing, China. Tel.: 8045928 - Fax: 8405910 - Tlx: 22867 TRANS CN - Cables: Sinotrans.
- ZHANG Zhongye, Deputy Director of Department of Policy & Legislation, Ministry of Communications of the P.R.C. 11, Jianguomennei Dajie Beijing, China.
- WU Xiaoping, Vice President of The People's Insurance Company of China, 410, Fuchengmennei Street, Beijing, China. Tel.: 6016688/1012 - Fax: 6011869 - Tlx: 22102/22532 PICC CN.
- LEI Hai, Vice President of China Ocean Shipping (Group) Company, Lucky Tower, 3, Dong San Huan Bei Road, Beijing, China. Tel.: 4661188/5823 - Fax: 4669859.
- WANG Maoshen, Deputy Chief Judge, Communication & Transportation Court, Supreme People's Court of the P.R.C. 27, Dong Jiao Min Xiang, Beijing, China. Tel.: 5122255-530.
- GAO Sunlai, China Global Law Office 3rd Floor, SAS Royal Hotel Beijing, 6A East Beisanhuan Road, Beijing 100028, China. Tel.: 4663388/307 - Fax: 4677891 - Tlx: 222222 CGLO.
- LIU Shujian, China Maritime Law Association, CCPIT Bldg., 1, Fuxingmenwai Street, Beijing, China. Tel.: 8513344/1807 - Fax: 8511369 - Tlx: 222288 TPLAD CN.
- ZHU Zengjie, China Ocean Shipping (Group) Company, Lucky Tower, 3, Dong San Huan Bei Road, Beijing, China. Tel.: 4661188/5926 - Fax: 4669859 - Tlx: 210740 CPC CN.
- SI Yuzhuo, President of Dalian Maritime University, Dalian 116024, China. Tel.: 4671271, Fax: 0411-471395 - Tlx: 86175 DMC CN.
- YIN Dongnian, Shanghai Maritime University, 1550, Pudong Dadao, Shanghai, China. Tel.: 21-8842337 - Fax: 21-8840909 - Tlx: 33557 SOR CN.
- Secretary General:* LIU Shujian, China Maritime Law Association CCPIT Bldg., 1, Fuxingmenwai Street, Beijing, China. Tel.: 8513344/1807 - Fax: 8511369 - Tlx: 222288 TPLAD CN.
- Deputy Secretary General:* MENG Yuqun, China National Foreign Trade Transportation Corporation, Erligou Xijiao, Beijing, China. Tel.: 8494470 - Fax: 8317664.
- Treasurer:* WANG Haiming, The People's Insurance Company of China, International Department, 410, Fuchengmennei Dajie, Beijing, China. Tel.: 6016688/1130-Fax: 6011869 - Tlx: 22102/22532 PICC CN - Cables: 42001.

Members:

- Mrs. YU Tianwen, China Ocean Shipping (Group) Company, Executive Division Legal Affairs Department, Lucky Tower, 3, Dong San Huan Bei Road, Beijing, China. Tel.: 4661188/5926 - Fax: 4669859 - Tlx: 210740 CPC CN.
- ZHU Jianxin, Department of Foreign Affairs, Ministry of Communications of the P.R.C., 11, Jianguomennei Dajie, Beijing, China. Tel.: 3265544/2462 - Fax: 3273943 - Tlx: 22462 COMCT CN.
- QU Zhiguang, Communication & Transportation Court of the Supreme People's Court of the P.R.C. 27, Dong Jiao Min Xiang, Beijing, China. Tel.: 5120831.
- Mrs. CHEN Zhenying, China Maritime Law Association CCPIT Bldg., 1, Fuxingmenwai Street, Beijing, China. Tel.: 8513344/1804 - Fax: 8511369 - Tlx: 222288 TPLAD CN.

Membership:

Group members: 161 - Individual members: 2200

Member Associations

COLOMBIA**Asociacion Colombiana de Derecho Y Estudios Maritimos
"ACOLDEMAR"**

Calle 85 Nr. 11-53

P.O. Box 253499

Bogotá, Colombia, South America

Tel. (571) 226 9489/(571)617 1090 Fax: (571) 226 9379

*Established: 1980***Officers:***President:* Dr. Ana Lucia ESTRADA MESA*Vice-President:* Admiral (r) Guillermo RUAN TRUJILLO*Secretary:* Dr. Ricardo SARMIENTO PINEROS*Treasurer:* Dr. Pablo Andrés ORDUZ TRUJILLO*Auditor:* Dr. Silvia PUCCETTI*Members:* Dr. Jaime CANAL RIVAS

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Dr. Luis GONZÁLO MORALES

Titulary Members:

Dr. Guillermo SARMIENTO RODRIGUEZ, Capt. Sigifredo RAMIREZ.

COSTA RICA**ASOCIACION INSTITUTO DE DERECHO MARITIMO DE
COSTA RICA**

(Maritime Law Association of Costa Rica)

P.O. Box 784, 1000 San Jos., Costa Rica

Tel.: (506) 34.6710 - Fax:(506) 34.1126

*Established: 1981***Officers:***President:* Lic. Tomas Federico NASSAR PEREZ, Abogado y Notario Publico. Apartado Postal 784 (1000) San Jos.,*Vice-President:* Licda. Roxana SALAS CAMBRONERO, Abogado y Notario Publico, Apartado Postal 1019, 100 San Jos.,*Secretary:* Lic. Luis Fernando CORONADO SALAZAR*Treasurer:* Lic. Mario HOUED VEGA*Vocal:* Lic. Jose Antonio MUNOZ FONSECA*Fiscal:* Lic. Carlos GOMEZ RODAS

Part I - Organization of the CMI

CROATIA

HRVATSKO DRUSTVO ZA POMORSKO PRAVO

(Croatian Maritime Law Association)

c/o Prof.Dr.Velimir Filipovic, President, Pomorski fakultet
Studentska 2, 51000 RIJEKA - Tel.: 385-51.338.411 - Fax: 385-51.336.755

Established: 1991

Officers:

President: Prof. Dr. Velimir FILIPOVIC, Professor of Maritime and Transport Law at the University of Zagreb. Trg. Marsala Tita 14, 10000 Zagreb Tel: 385.1.429 222. Fax: 385-1-464 030.

Vice-Presidents:

Prof. dr. Vojslav BORCIC, Professor of Maritime Law at the University of Rijeka, Legal Council of Jadroagent, c/o Jadroagent Ltd., Koblerov trg. 2, 51000 Rijeka.

Mrs. dr. Ljerka MINTAS-HODAK, Deputy Prime Minister for Internal Policy and Social Affairs, Hatzova 2, 10000 Zagreb.

Secretary General: Prof. Dr. Vinko HLACA, Professor of Maritime and Transport Law at the University of Rijeka, Hahlic 6, 51000, Rijeka.

Administrative Secretaries:

Dr. Aleksandar BRAVAR, University of Zagreb Faculty of Law, Trg Marsala Tita 14, 41000 Zagreb.

Mr. Igor VIO, University of Rijeka Faculty of Maritime Studies, Studentska 2, 51000 Rijeka

Treasurer: Mrs. Marija POSPISIL-MILER, Legal Counsel of Losinjska Plovidba, Splitska 2, 51000 Rijeka.

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Membership:

Institutions: 59

Individual Members: 166

DENMARK

DANSK SORETSFORENING

(Danish Branch of Comité Maritime International)

c/o Gorrisen Federspiel Kierkegaard

12 H.C. Andersens Boulevard DK-1553 Copenhagen V, Denmark
Tel.: (45) 33.15.75.33 - Tlx: 15.598 GFJUS - Fax: (45) 33.15.68.02

Established: 1899

Officers:

President: Jan ERLUND, Gorrisen Federspiel Kierkegaard, H.C. Andersens Boulevard 12, 1553 Kobenhavn V, Tel.: 33.15.7533 - Fax.: 33.15.6802.

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Membership:

Approximately: 94

ECUADOR

ASOCIACION ECUATORIANA DE ESTUDIOS Y DERECHO
MARITIMO - "ASEDMAR"

(Ecuadorian Association of Maritime Studies and Law)

Velez 513, 6th and 7th Floors, Acropolis Bldg.,

P.O. Box 3548, Guayaquil, Ecuador

Tel.: (593-4)320713/320714 - Tlx: (593-4)-3733 MAPOLO ED

Fax: (593-4) 322751/329611

Established: 1988

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President: Ab.Jose M. APOLO, Velez 513, Piso 6° y 7°, Guayaquil, Ecuador, P.O. Box 3548. Tel.: (593-4) 320713 or 320714, Faxes: (593-4) 322751 or 329611, Telex: 3733 MAPOLO ED.

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Dr.Pablo FARFAN, Elizalde 101 y Malecon (Asesoría Juridica Digmer) Tel.: 324254.

Capt.Pablo BURGOS C., (Primera Zona Naval) Tel.: 341238/345317.

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Ab.Jaime MOLINARI, Av. 25 de Julio, Junto a las Bodegas de Almagro, Tel.: 435402/435134.

Ab.Carlos L. ORTEGA S., Banco de Fomento, Panama 704, Tel.: 560111.

Titulary Member

José MODESTO APOLO

Part I - Organization of the CMI

EGYPT

EGYPTIAN MARITIME SOCIETY

32, Salah Salem Str. (Sherif Passage)

P.O.Box 1506

Alexandria, Egypt.

Tel. 4828681 - Tlx. 54046 UN - Fax. 4821900

Established: 1979

Officers:

President: Dr.Eng. Ahmed M.EFFAT, former Minister of Maritime Transport, 10 Abbani Str. Zezinia, Alexandria. Tel.5873750.

Vice-President: Dr. Ali EL-BAROUDY, Prof. of Commercial & Maritime Law, Alexandria University. Tel.5876097.

General Secretary: Ex Admiral Saleh M.SALEH, Advocate, Alexandria. Tel. 5977702.

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Dr.Ahmed Abdel Monsif MAHMOUD, International Affairs Adviser at the Arab Maritime Academy, Alexandria. Tel.5860030.

Mr.Moufid EL DIB, Advocate, Senior Partner in the Firm of Yansouni, El Dib & Partners, Honorary consul of Belgium and Chile in Alexandria 32, Sead Zaghloul Str., Alexandria. Tel.4820111 - Tlx. 546996 UN Fax 4821900.

Ex.Admiral Reda ZL.GOMAA, Advocate, 42 Abdel Latif El Soufani Str. Sidey Jaber, Alexandria. Tel. 8482263.

Ex.Admiral Mugib M.HILAL, Manager of the Societies Services Center in the Arab Maritime Academy, 32 Salah Salem Str. Alexandria. Tel. 4828681.

Dr.IIlesham A.SAADEK, Prof. of International Private Law, Alexandria University.

Mr.Saaïd M.SALEM, Accountant, 18 Talaat Harb Str., Alexandria. Tel. 4832409.

Mr.Mohamed Megahed MAHMOUD, 71 Port Said Str., Alexandria. Tel. 5971648.

Ex.Admiral Farouk M.MALASH, Lecturer in the Arab Maritime Academy, Alexandria, Tel. 861497.

Ex.Admiral Mohamed M.FAHMEY, 10 A Mohamed Faried, Boulkily, Alexandria. Tel. 865099.

Mr.Samir M.ABO ELKOAL, Legal Consultant at Alexandria Port Authority, Tel. 4919327.

Member Associations

FINLAND

SUOMEN MERIOIKEUSYHDISTYS
FINLANDS SJÖRÄTTSFÖRENING

(Finnish Maritime Law Association)

Åbo Akademi University, Department of Law,

Gezeliusgatan 2, 20500 Åbo, Finland

Tel.: 358.21-2654321 - Fax: 358.21-2654699

*Established: 1939*Officers:*President:* Peter WETTERSTEIN*Vice-President:* Nils-Gustaf PALMGREN*Secretary:* Peter SANDHOLMMembers

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Membership:

Private persons: 79 - Firms: 24.

FRANCE

ASSOCIATION FRANÇAISE DU DROIT MARITIME

(French Association of Maritime Law)

47, rue de Monceau - 75008 Paris

Correspondence to be addressed to Philippe BOISSON

Conseiller Juridique. Bureau Veritas,

17 bis Place des Reflets, Cedex 44 - 92077 Paris La Defense

Tel.: (1) 42.91.52.71 - Fax: (1) 42.91.52.94

*Established: 1897*Officers:

Président: Professeur Pierre BONASSIES, Faculté de Droit et de Sciences Politiques d'Aix Marseille, Chemin des Portails, 13510 Eguilles, France. Tel: 42.92.51-21 -

Fax: 42.92.68.92.

Présidents Honoraires:

Pierre LATRON, AFAMTAS, 20 rue de Vivienne, 75002 Paris, France. Tel: 42.96.12.13.

Claude BOQUIN, S.A. Louis Dreyfus & Cie., 87, av. de la Grande-Armée, 75782 Paris, Cedex 16, France. Tel: 40.66.11.11 - Fax: 45.01.70.28.

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Vice-Présidents:

Mme Françoise MOUSSU-ODIER, Comité Central des Armateurs de France, 47, rue de Monceau, 75008 Paris, France.

Pierre EMO, Parc d'Activités Technologiques de La Vatine, 41, rue Raymond (Aron) 76130 Mont-St Aignan, France. Tel: 35.59.83.63 - Fax: 35.59.99.63.

Sécretaire General: Philippe BOISSON, Bureau Veritas, 17 bis Place des Reflets, Cedex 44, 92077 Paris-La Défense, France. Tel: 42.91.52.71 - Fax: 42.91.52.94.

Sécretsaires Généraux Adjointes:

Monsieur Claude FOUCHARD, USINOR/SACILOR, Immeuble Ile de France, Cedex 33, 92077 Paris La Defense, Tel: 49.00.55.71.

Pierre DARDELET, SATA, 131 Boulevard Malesherbres, 75017 Paris, France. Tel. (1) 47.66.33.91 - Fax: (1) 42.67.96.01.

Tresorier: Jean-Serge ROHART, Villeneau Rohart Simon & Associes, 12 Bld. de Courcelles, 75017 Paris, France. Tel: (1)46.22.51.73 - Fax: (1) 47.66.06.37

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Membership:

Members: 318 - Corporate members: 39 - Corresponding members: 26

Member Associations

GERMANY

DEUTSCHER VEREIN FÜR INTERNATIONALES SEERECHT
(German Maritime Law Association)

Esplanade 6, 20354 Hamburg

Tel.: 40.350.97255 - 40.350.97240 - Tlx: 211407 - Fax: 40.350.97.211

Established: 1898

Officers:

President: Dr. Hans-Christian ALBRECHT, Hasche & Eschenlohs, Valentinskamp 88, 20355 Hamburg.

Vice-President: Dr. Thomas M.REME', Röhreke, Boye, Remé & v. Werder, Ballindamm 26, 20095 Hamburg.

Secretary: Dr. Hans-Heinrich NOLL, Verband Deutscher Reeder, Esplanade 6, 20354 Hamburg.

Titulary Members:

Hans-Christian ALBRECHT, Hartmut v. BREVERN, Walter HASCHE, Rolf HERBER, Bernd KROGER, Dieter RABE, Thomas M.REME', Walther RICHTER, Kurt v. LAUN.

Members:

Dr.Gerfried BRUNN, Geschäftsführer Verband der Schadenversicherer e.v. - VdS - Abteilung Transport Glockengießerwall 1, Postfach 106303, 20043 Hamburg, Tel. (040) 32107-576 - Fax: (040) 32107-570.

Prof. Dr. Rolf HERBER, Rechtsanwalt, Ahlers & Vogel, Schaartor 1, D-20459 Hamburg Tel: (040) 371075 Fax: (040) 371092.

Herbert JUNIEL, Attorney-at-Law, Deutsche Seereederei GmbH, Seehajen 1, 18125 Rostock, Tel. (0381) 458-0 - Fax. (0381) 458-4001.

Dr. Bernd KROGER, Managing Director of Verband Deutscher Reeder, Esplanade 6, 20354 Hamburg.

Prof. Dr.Ralf RICHTER, Attorney-at-law, Eggerstrasse 3, 18059 Rostock.

Prof. Dr.Norbert TROTZ, Director of Institut für Handels- und Seerecht zu Rostock, Kossfelder Strasse 11/12, Postfach 105170, 18055 Rostock.

Membership:

Part I - Organization of the CMI

GREECE

HELLINIKI ENOSSI NAFTIKOU DIKAIΟΥ

(Association Hellenique de Droit Maritime)

Dr. A. Antapassis, Akti Poseidonos 10, 185 31 Piraeus

Tel.: (301) 4225181 - Tlx: 211171 Alan GR - Fax: (301) 4223449

*Established: 1911*Officers:

President: Dr. Antoine ANTAPASSIS, Associate Professor at the University of Athens, Advocate, Akti Poseidonos 10, 185 31 Piraeus. Tel: (301) 4225181 (4 lines) - Tlx: 211171 Alan GR - Fax: (301) 4223449.

Vice-Presidents:

Constantinos ANDREOPOULOS, Advocate, Akti Miaouli 3, 185 35 Piraeus. Tel: (301) 4174183/4176338 - Tlx: 211436 Aran GR - Fax: (301) 4131773.

Paul AVRAMEAS, Advocate, Filonos 133, 185 36 Piraeus. Tel: (301) 4294580/4294687 Tlx: 212966 Ura GR - Fax: (301) 4294511.

Secretary-General: Panayotis MAVROYIANNIS, Advocate, Hiroon Polytechniou 96, 185 36 Piraeus. Tel: (301) 4510249/4510562/4133862 - Tlx: 212410 Lexm GR - Fax: (301) 4535921.

Deputy Secretary-General: Thanos THEOLOGIDES, Advocate, Bouboulinas 25, 185 35 Piraeus. Tel: (301) 4122230/4114496 Tlx: 1504 Teo GR - Fax: (301) 4114497.

Secretaries:

Elias DIMITRIOU, Advocate, Omirou 50, 106 72 Athens. Tel: (301) 3637305/3635618 - Tlx: 214168 Peca GR - Fax: (301) 3603113.

Defkalion REDIADES, Advocate, 41 Akti Miaouli, 185 36 Piraeus Tel: (301) 42.94.900/42.93.880-1/42.92.770- Tlx: 218253 Ura GR - Fax: (301) 41.38.593.

Treasurer: Petros CAMBANIS, Advocate, Omirou 50, 106 72 Athens. Tel: (301) 3637305/3635618 - Tlx: 214168 Peca GR - Fax: (301) 3603113.

Members:

George ISSAIAS, Advocate, Platia Egyptou 1, 10682 Athens. Tel: (301) 8831915 - Fax: (301) 8223242.

Aliki KIANTOU-PAMBOUKI, Professor at University of Thessalonika, Agias Theodoras 3, 546 23 Thessalonika. Tel: (301) 221503.

Ioannis KOROTZIS, Judge of the Court of Appeal of Piraeus, Ioanni Soutsou 24-26, 114 74 Athens. Tel: (301) 6449227.

Evangelos PERAKIS, Associate Professor at the University of Athens, Advocate, Omirou 6, 105 64 Athens. Tel: (301) 3229141/3223930/3245891 - Fax: (301) 3234363.

Ioannis ROKAS, Professor at the University of Economics of Athens, Advocate, Voukouristiou 25, 106 71 Athens. Tel: (301) 36.16.821/36.16.803/36.16.816 - Tlx: 214168 Peca GR - Fax: (301) 36.15.425.

Nicolaos SKORINIS, Advocate, Hiroon Polytechniou 67, 185 36 Piraeus. Tel: (301) 4525848-9/4525855 - Fax: (301) 4181822.

Panayotis SOTIROPOULOS, Advocate, Lykavittou 4, 106 71 Athens. Tel: (301) 3630017/3604676 - Tlx: 218253 Ura GR - Fax: (301) 3646674.

Honorary President: Kyriakos SPILIOPOULOS, Theotoki 8, 154 52 Paleo Psychiko. Tel: (301) 6713844.

Honorary Vice-President: Kyriakos ARVANITIS, 8 Akti Miaouli, 185 35 Piraeus, Tel: (301) 4174183/41.76.338 - Fax: (301) 41-31.773.

Titulary Members:

Christos ACHIS, George REDIADES, Panayotis SOTIROPOULOS, Kyriakos SPILIOPOULOS.

Membership:

Member Associations

HONG KONG**THE MARITIME LAW ASSOCIATION OF HONG KONG**

c/o Ince & Co., Solicitors and Notary Public,
Mr. Steven Hazelwood, 26th Floor, Asia Pacific Finance Tower,
Citibank Plaza, 3 Garden Road, Hong Kong
Tel.: 877.32.21 - Tlx: 65.582 - Fax: 877.2633

Established: 1988

Members:

Mark ROBERTS, Deacons; Raymond WONG, Richards Hogg International; Anthony DICKS; Capt. Norman LOPEZ, Hong Kong Polytechnic; Chris HOWSE, Richards Butler; Alec EMMERSON, Clyde & Co.; Howard MILLER, Haight Gardner Poor & Havens; Nigel TAYLOR, Sinclair Roche; Jon ZINKE, Walker & Corsa; Alvin NG, Lo Wong & Tsui; Philip Yang/James MOORE, Manley Stevens Ltd.; William WAUNG; Robin HEALEY, Ince & Co; Charles HADDON-CAVE; Chris POTTS, Crump & Co.

ICELAND**HID ISLENSKA SJORETTARFELAG**

(The Icelandic Maritime Law Association)

Domhusinu v/Laekjartorg
IS-150 Reykjavik, Iceland
Fax: 354-562-2903

Established: 1982

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Part I - Organization of the CMI

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INDONESIA**LEMBAGE BINA HUKUM LAUT INDONESIA**

(Indonesian Institute of Maritime Law and Law of The Sea)

Jl. Pintu Air Raya No.52,

2th Floor Jakarta 10710, Indonesia

Tel.: 62.021.361952/361725 - Fax: 62.021.3905772 - Tlx: 61521 CMYD 1A

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Member Associations

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Chief of Dept. Information Law service: Mrs. Azhar AZIS, S.H., Legal Bureau BULOG, Jl. Gatot Subroto, Jakarta, Indonesia. Tel.: 62.021. 512209.

Vice: Amir HILABI, S.H., Amir Hilabi & Ass., Jl. Biru Laut Raya No.30, Cawang Kapling, Jakarta, Indonesia. Tel.: 62.021.8190538.

Chief of Dept. Legal Aid: Mrs. Titiek ZAMZAM, S.H., Titiek Zamzam & Ass., Jl. Ex. Komplek AURI no. 6 Rt.005/03, Jakarta 12950, Indonesia. Tel.: 62.021.516302.

Public Relation Service: Mrs. Neneng SALMIAH, S.H., Notaris Neneng Salmiah Jl. Suryo No.6 Kebayoran Baru, Jakarta, Indonesia. Tel.: 62.021.7396811 - 7221042.

General Assistance: Z. FARNAIN, S.H., Chandra Motik Yusuf Djemat & Ass., Jl. Yusuf Adiwinata No. 33, Jakarta 10350, Indonesia. Tel.: 62.021.327 196 - 323340 - Fax: 62.021.3905772.

IRELAND

IRISH MARITIME LAW ASSOCIATION

Warrington House, Mount Street, Crescent, Dublin 2, Ireland
Tel.: 353-1-6607966 - Tlx: 32694 INPC EI - Fax: 353-1-6607952

Established: 1963

Officers:

President: J. Niall McGOVERN, Barrister-at-Law, 23 Merlyn Park, Dublin 4. Tel/Fax: 353-1-2691782.

Vice-President: Dermot McNULTY, Maritime Consultancy Services Ltd., 44 Tonleagee Road, Dublin 5, Tel: 353-1-848-6059, Fax: 353-1-848-0562.

Hon. Secretary: Miss Mary SPOLLEN, Barrister-at-Law, Irish National Petroleum Corporation, Warrington House, Mount Street Crescent, Dublin 2. Tel.: 353-1-6607966 - Tlx: 32694 - Fax: 353-1-6607952.

Hon. Treasurer: Sean KELLEHER, Manager, Legal Department, An Bord Baine, Grattan House, Lr.Mount Street, Dublin 2. Tel.: 353-16619599 - Fax: 353-1-6612776.

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Membership

Individual members: 37

Representative members: 57

Part I - Organization of the CMI

ISRAEL**HA-AGUDA HA ISRAELIT LE MISPHAT YAMI**

(Israel Maritime Law Association)

c/o P.G. Naschitz,

Naschitz, Brandes & Co.,

136 Rothschild Boulevard,

Tel-Aviv 65272

Tel.: (972-3)5617766 - Fax: (972-3)5620069/5617535

*Established: 1968***Officers:***President:* Justice Tova STRASSBERG-COHEN, Supreme Court, Jerusalem, Tel. (972-2)7597171.*Vice-Presidents:*

G. GORDON, S. Friedman & Co., 31 Ha'atzmaut Road, Haifa. Tel.: (972-4)670701 - Fax: (972-4)670754.

P.G. NASCHITZ, Naschitz, Brandes & Co., 136 Rothschild Boulevard, Tel-Aviv 65272. Tel.: (972-3)6857766 - Fax: (972-3)6857535/6850069

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Justice TOVA STRASSBERG-COHEN, R. WOLFSON.

Membership:

57.

ITALY**ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO**

(Italian Association of Maritime Law)

Via Roma 10 - 16121 Genova

Tlx: 270687 Dirmar - Tel.: (10)586.441 - Fax: (10)594.805

*Established: 1899***Officers:***President:* Francesco BERLINGIERI, O.B.E., President ad honorem of CMI, Former Professor at the University of Genoa, Via Roma 10 - 16121 Genova.*Vice-Presidents:*

Sergio M. CARBONE, Via Assarotti 20 - 16122 Genova.

Giuseppe PERASSO, Director of Confederazione Italiana Armatori, Piazza SS. Apostoli 66 - 00187 Roma.

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Giorgio CAVALLO, Via Ceccardi 4 - 16121 Genova.

Bruno DE VITA, Via G. Orsini 42 - 80132 Napoli.

Sergio LA CHINA, Via Roma 5 - 16121 Genova.

Member Associations

Marcello MARESCA, Via Bacigalupo 4/13 - 16122 Genova.
 Luciano OCCHETTI, Via XX Settembre 36 - 16121 Genova.
 Camilla PASANISI DAGNA, Via del Casaleto 483 - 00151 Roma.
 Emilio PASANISI, Via del Casaleto 483 - 00151 Roma.
 Vittorio PORZIO, Via Monte di Dio 25 - 80132 Napoli.
 Sergio TURCI, Via Ceccardi 4/30 - 16121 Genova.
 Enrico VINCENZINI, Scali d'Azeglio 52 - 57100 Livorno.
 Enzo VOLLI, Via San Nicolò 30 - 34100 Trieste.
 Stefano ZUNARELLI, Via Barberia 10 - 40123 Bologna.

Titulary Members:

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JAPAN

THE JAPANESE MARITIME LAW ASSOCIATION

9th Fl. Kaiun Bldg., 2-6-4, Hirakawa-cho, Chiyoda-ku, Tokyo

Tel.: 3-3265-0770 - Fax: 3-3265-0873

Established: 1901

Officers:

President: Tsuneo OHTORI. Professor Emeritus at the University of Tokyo, 6-4-508, Hikarigaoka 1-chome. Nerima-ku, Tokyo.

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Takeo HORI, Former Vice-Minister at the Ministry of Transport, 6-15-36 Ikuta, Tamaku. Kawasaki-shi, Kanagawaken. Japan.

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Norihiko NAGAI, Former President of Mitsui O.S.K. Lines Ltd., c/o M.O.L. 2-1-1 Toranomon Minato-ku, Tokyo.

Hisashi TANIKAWA, Professor at Seikei University, 15-33-308, Shimorenjaku 4-chome. Mitaka-shi, Tokyo.

Seiichi OCHIAI, Professor at the University of Tokyo, 2-1-12 Midori-cho. Koganei-shi, Tokyo.

Kenjiro EGASHIRA, Professor of Law at the University of Tokyo, 25-17, Sengencho 3-chome, Higashi-Kurume, Tokyo.

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Part I - Organization of the CMI

KOREA

KOREA MARITIME LAW ASSOCIATION

1002, Bosung Bldg., 63-3, 2-ga Ulchiro,
Jung-ku,

SEOUL 100.192, KOREA

Tel.: 0082 (02) 776.9154 - Fax: (02) 752.9582

Established: 1978

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Vice-Presidents:

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Dr. SANG-HYON Song, Professor at Seoul National University, Seoul.

Dr. DONG-CHUL Lim, Professor at Korea Maritime University, Pusan.

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Directors:

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Individual members: 135.

D.P.R. KOREA (PYONGYANG)

MARITIME LAW ASSOCIATION OF D.P.R. KOREA

Mr. PAK JONG IL, Secretary General

Dongheungdong, Central District, Pyongyang - D.P.R. Korea

Tel.: 850/2/816059-816027 - Fax: 850/2/814642 - Tlx: 36017 YONGSEN KP

Established: 1989

Officers:

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Mr. ZO KYONG GU, Captain, Senior Lawyer, Legal, Investigation Dep. of the Ministry of Marine Transportation.

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 Mr. HWANG GIL HWAN, Officer of Korea Chartering Corporation.

MALAYSIA

MALAYSIAN MARITIME LAW ASSOCIATION

20th Floor, Arab-Malaysian Building,
 55 Jalan Raja Chulan
 50200 Kuala Lumpur, Malaysia
 Tel.: (603) 2011788 [25 lines] - Fax: (603) 2011778/9 - Tlx: MA 30352

Established: 1993

Officers:

President: Nagarajah MUTTIAH, Shook Lin & Bok, 20th Floor, Arab-Malaysian Building, 55 Jalan Raja Chulan, P.O.Box 10766, 50724 Kuala Lumpur.

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Committee Members: Miss Joanne C.F. LONG, 701, 7th Floor, Box E8, Plaza Pekeliling, 2 Jalan Tun Razak, 50400 Kuala Lumpur.

Captain Wan Shukry Bin Wan KARMA, Malaysian Maritime Academy, P.O.Box 31, 78207 Sungai Baru, Malacca.

Steven GERARD, Nippon Kaiji Kentei (Malaysia) Sdn Bhd 2994A, 4th Floor, Persiaran Raja Muda Musa, 41100 Klang, Selangor.

Dave LOO, No.33, Wisma Malaysian British Assurance Jalan Gereja, P.O.Box 12485, 50780 Kuala Lumpur.

Joseph CLEMONS, Dass Jainab & Associates, 10th Floor, Bangunan Koperasi Polis, No.1, Jalan Sulaiman, 50000 Kuala Lumpur.

James HO, Hong Leong Assurance Sdn Bhd, Tingkat 18, Wisma HLA, Jalan Raja Chulan, 50200 Kuala Lumpur.

Miss Harinder KAUR, Paul Ong & Associates, Lot 7.4, 7th Floor, Bangunan Yee Seng, Jalan Raja Chulan, 50200 Kuala Lumpur.

Miss Ahalya MAHENDRA, Shook Lin & Bok, 20th Floor, Arab-Malaysian Building, 55 Jalan Raja Chulan, P.O.Box 10766, 50724 Kuala Lumpur.

Auditors:

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Romesh ABRAHAM, Shook Lin & Bok, 20th Floor, Arab-Malaysian Building, 55 Jalan Raja Chulan, P.O.Box 10766, 50724 Kuala Lumpur.

Part I - Organization of the CMI

MALTA

MALTA MARITIME LAW ASSOCIATION

c/o Tonna, Camilleri, Vassallo & Co. Advocates

52, Old Theatre Street, Valletta Vlt 08 - Malta

Tel.: (356) 23.22.71/223316 - Tlx: MW 1886 TOCAVO - Fax: (356) 24.42.91

Established: 1994

Officers:

President: Dr. David TONNA, 52, Old Theatre Street, Valletta. Tel.: 232271/223316 - Fax: 244291

Vice-President: Dr. Robert TUFIGNO, 3, Independence Square, Valletta. Tel.: 248025/241507.

Treasurer: Dr. Max GANADO, 171, Old Bakery Street, Valletta. Tel.: 242096/235406-7-8 - Fax: 225908.

Secretary: Dr. Tonio FENECH, 198, Old Bakery Street, Valletta. Tel.: 241232/243929/222853 - Fax: 221893.

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Dr. Joseph A. SCHEMBRI, 12/13, Vincenti Bldgs., Strait Street, Valletta. Tel.: 222334/244367 - Fax: 240024.

Dr. Kevin DINGLI, 18/2 South Street, Valletta. Tel.: 236206/238256 - Fax: 240321.

Dr. Adrian GABARRETTA, 171, Old Bakery Street, Valletta. Tel.: 242096/235406-7-8 - Fax: 225908.

Dr. Anne FENECH, 198, Old Bakery Street, Valletta. Tel.: 241232/243929/222853 - Fax: 221893.

Dr. Henri MIZZLI, 9, Valletta Bldgs., South Street, Valletta. Tel.: 238989/237415 - Fax: 223048.

Dr. Richard CAMILLERI, 52 Old Theatre Street, Valletta, Malta. Tel.: 23.22.71/22.33.16 - Fax: 24.42.91.

Dr. Franco B. VASSALLO, 52 Old Theatre Street, Valletta, Malta. Tel.: 23.22.71/22.33.16 - Fax: 24.42.91.

MEXICO

ASOCIACION MEXICANA DE DERECHO MARITIMO, A.C.

(Mexican Maritime Law Association)

Montes Urales 365, 11000 M.xico, D.F.

Tel.: (525) 395.8899 - Tlx: 1771900 ANANME Fax: (525) 520.7165

Established: 1961

Officers:

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Dr. Ignacio L.MELO Jr.

Member Associations

MOROCCO

ASSOCIATION MAROCAINE DE DROIT MARITIME

(Moroccan Association of Maritime Law)

53, Rue Allal Ben Abdellah - 1er Etage, Casablanca 20.000, Morocco

All correspondence to be addressed to the Secretariat:

BP 8015 Oasis, Casablanca 20103, Morocco - Tel.: (2)230740 - Fax: (2)231568

Established: 1955

Officers:

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Mrs. Malika EL-OTMANI, Tel.: (2)254371/232324

Fouad AZZABI, Tel.: (2)303012 Abed TAHIRI, Tel.: (2)392647 or 392648

Hida YAMMAD, Tel.: (2)307897 or 307746

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Saad BENHAYOUN, Tel.: (2)232324

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Abderrafih BENTAHILA, Tel.: (2)316412/316597.

Tijani KHARBACHI, Tel.: (2)317851/257249.

Jean-Paul LECHARTIER, Tel.: (2)309906/307285.

Abdelaziz MANTRACH, Tel.: (2)309455.

Titulary Members:

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NETHERLANDS

NEDERLANDSE VERENIGING VOOR ZEE- EN VERVOERSRECHT

(Netherlands Maritime and Transport Law Association)

Prinsengracht 668, 1017 KW Amsterdam

Tel.: (020)6260761 - Fax: (020)6205143

Established: 1905

Officers:

President: Prof. R.E.JAPIKSE, Nauta Dutilh, P.O.Box 1110, 3000 BC Rotterdam, Tel.: (010)224 0251 - Fax: (020)224 0014.

Vice-President: Prof. G. VAN DER ZIEL, Professor of Transportation Law at Erasmus University Rotterdam, General Counsel, Nedlloyd Lines B.V., P.O. Box 240, 3000 DH Rotterdam. 40 Boompjes, 3011 XB Rotterdam, Holland, Tel.: (10)400.66.71 - Tlx: 24690 ndl nl - Fax: (10)400.70.30.

Part I - Organization of the CMI

Treasurer: J.W.WURFBAIN, Ing. Groep N.V., Strawinskylaan 2631, 107722 Amsterdam.
Tel: (020) 541-8702 - Fax: (020) 541-8223.

Secretary: J.M.C.WILDSCHUT, Prinsengracht 668, 1017 KW Amsterdam. Tel.: (020)6260761 - Fax: (020)6205143.

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D.M.ANDELA, p/a EVO, Postbus 350, 2700 AJ Zoetermeer, Tel.: (079)414 641 - Fax: (079) 342-3812.

Prof. R.CLETON, Klingelaan 31, 2244 AN Wassenaar, Tel.: (070)517-8295.

J.H. KOOTSTRA, Stichting Vervoeradres, P.O.Box 82118, 2508 EC 's Gravenhage, Tel.: (070)351 0707 - Fax: (070) 351.2005.

L. KRUIDENIER, Schiedamsedijk 77a, 3011 EM Rotterdam, Tel.: (010)4132435 - Fax: (010) 412-7549.

H.J. LEMS, p/a Hannover International Insurance (Nederland), P.O.Box 925, 3000 AX Rotterdam, Tel.: (010)403 6100 - Fax: (010) 403-6279.

J.A. MOOLENBURGH, Unilever B.V., P.O.Box 760, 3000 DK Rotterdam, Tel.: (010) 217.4204. - Fax: (010) 217-4207.

W.J.G. OOSTERVEEN, Ministerie van Justitie, Stafafd. Wetgeving Privaatrecht, Postbus 20301, 2500 EH 's-Gravenhage, Tel.: (070)370.70.50 - Fax: (070)370.79.32.

H.M.J. PEEREN, postbus 26094, 3002 EB Rotterdam, Tel.: (010)425.70.87 - Fax: (010)476.61.90.

H.A. REUMKENS, Ministerie van Verkeer en Waterstaat (DGSM), P.O. Box 5817, 2280 HV Rijswijk, Tel.: (070)395 5728 - Fax: (070) 399-6274.

T. TAMMES, Koninklijke Vereniging van Nederlandse Reders, Post bus 2442, 3000 CK Rotterdam.

A.N. VAN ZELM VAN ELDIK, Statenlaan 29, 3051 HK Rotterdam, Tel. (010) 422.57.55.

P.P. VREEDE, Alexander Gogelweg 37, 2517 JE 's-Gravenhage.

Prof. B.WACHTER, Nieuwe Gracht 88, 3512 LW Utrecht.

Individual members: 210

NIGERIA

NIGERIAN MARITIME LAW ASSOCIATION

P.O.Box 245, Lagos, Nigeria

Tel.: 836061 - Tlx: 27900/20117 - Fax: 836061/618869

Established: 1980

Officers:

President: Chief Chris OGUNBANJO, 3, Hospital Road, Lagos, Nigeria.

Vice-President: Fola SASEGBON, 6 Ijora Causeway, Ijora - Box 245, Lagos, Nigeria.

Hon. Secretary: Alao AKA-BASHORUN, 22A. Icbba Strcet West, Ebutc-Mctta, Lagos, Nigeria.

*Member Associations*Titulary Members:

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NORWAY

DEN NORSKE SJORETTSFORENING

Avdeling av Comite Maritime International
(Norwegian Maritime Law Association)

c/o Mr. Karl-Johan GOMBRII

Nordisk Skibsrederforening, Kristinelundvcicn 22, P.O.Box 3033

Elisenberg N-0207 Oslo, Norway

Tel.: 47.22.55.47.20 - Fax: 47.22.43.00.35

Established: 1899

Officers:

President: Karl-Johan GOMBRII, Nordisk Skibsrederforening, P.O.Box 3033 Elisenberg, N-0207 Oslo, Norway. Tel.: 47.22.55.47.20 - Fax: 47.22.43.00.35.

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Viggo BONDI, Norges Rederiforbund, Box 1452 Vika, 0116 Oslo. Tel.: 47.22.41.60.80 - Fax: 47.22.41.50.21.

Hans Jacob BULL, University of Oslo, Karl Johansgate 47, N-0162 Oslo. Tel.: 47.22.42.90.10 - Fax: 47.22.33.63.08.

Mrs. Nina FRISAK, Eidsivating lagmannsrett, P.O. Box 8017, N-0030 Oslo. Tel.: 47.22.33.46.50. Fax: 47.22.41.33.25.

Emil GAMBORG, Wilh. Wilhelmsen Ltd. A/s, P.O.Box 1359, Vika N-0113 Oslo. Tel.: 47.22.48.30.30 - Fax: 47.22.48.30.80.

Nicholas HAMBRO, Nordisk Skibsrederforening, Kristinelundv. 22, Postboks 3033 EL, N-0207 Oslo. Tel.: 47.22.55.47.20 - Fax: 47.22.43.00.35.

Stephen KNUDTZON, (Deputy Member) Thommessen Krefling Greve Lund, P.O. Box 413 Sentrum, N-0103 Oslo. Tel.: 7.22.42.18.10 - Fax: 47.22.42.35.57.

Havar POULSSON, Assuranceforeningcn Skuld, Stortingsgt. 18, 0158 Oslo. Tel.: 47.22.42.06.40 Fax: 47.22.42.48.85.

Jan-Fredrik RAFEN, Bugge, Arentz-Hansen & Rasmussen, Box 1524, Vika-N-0117 Oslo. Tel.: 47.22.83.02.70 - Fax: 47.22.83.07.95.

Frode RINGDAL, Askeveien 9, N-0275 Oslo. Tel.: 47.22.44.86.00.

Haakon STANGLUND, Wikborg, Rein & Co. P.O. Box 1513 Vika, N-0117 Oslo. Tel.: 47.22.82.75.00 - Fax: 47.22.82.75.01.

Gunnar VEFLING, Borgating lagmannsrett, P.O. Box 8017 DEP. N-0030 Oslo. Tel.: 47.22.03.52.00 - Fax 47.22.03.55.84/03.55.85.

Titulary Members:

Sjur BRAEKHUS, Per BRUNSVIG, Annar POULSSON, Knut RASMUSSEN, Frode RINGDAL.

Membership:

Company Members: 32 - Personal Members: 254

Part I - Organization of the CMI

PANAMA**ASOCIACION PANAMENA DE DERECHO MARITIMO**

(Panamanian Maritime Law Association)

Dr. Enrique De Alba, c/o Morgan & Morgan

Torre Swiss Bank Building

18th Floor

P.O. Box 1824

Panama 1, Republic of Panama

Tel:(507) 263.8822 Fax: (507) 263.9918

Established: 1978

Officers:

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Titulary Members:

Dr. Woodrow de CASTRO, Dr. Jos Angel NORIEGA-PEREZ.

PERU**ASSOCIATION PERUANA DE DERECHO MARITIMO**

(Peruvian Maritime Law Association)

Calle Chacarilla No. 485, San Isidro, Lima 27 - Peru

Tel.: 224101/401246/227593 - Tlx: 25634 PE NAFRISA - Fax: 401246

Established: 1977

Officers:

Executive Committee:

President: Dr. Guillermo VELA OCHAGA, Professor of Law at the Law School of the Catholic University of Lima, Av. Arcuipa n. 4015, Miraflores.

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No. 485, San Isidro, Lima.

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Membership:

Company Members: 11 - Individual Members: 65.

PHILIPPINES

MARITIME LAW ASSOCIATION OF THE PHILIPPINES (MARLAW)

Del Rosario & Del Rosario Law Offices

Mr. Ruben T. Del Rosario

5th Floor, Exchange Corner Building

107 Herrera cor. Esteban Street

Legaspi Village, Makati 1226, Metro Manila, Philippines

Tel.: (63)(2) 810.1791 - Fax: (63)(2) 817.1740/810.3632 - Tlx: 63.941 Pandi

Established: 1981

Officers:

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Executive Vice-President: Diosdado Z. RELOJ, Jr. Reloj Law Office, 9th Fl., Ermita Center Bldg., Roxas Boulevard, Manila, Philippines Tel.: (63)(2)505196 (63)(2)521.6922 - Fax: (63)(2)521.0606.

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Part I - Organization of the CMI

POLAND**POLSKIE STOWARZYSZENIE PRAWA MORSKIEGO**

z siedzibą w Gdańsku

(Polish Maritime Law Association, Gdańsk)

Maritime Institute, Gdańsk

c/o Morskie Biuro Prawne, 10 Lutego 24, 81-364 GDYNIA - Poland

Tel.: 48/58/278408 - Fax: 48/58/278590

*Established: 1934*Officers:

President: Michał RZESZEWICZ, LL.M. Head of Legal Department, c/o Morskie Biuro Prawne, 10 Lutego 24, 81-364 Gdynia. Tel.: 48/58/278408 - Fax 48/58/278590.

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PORTUGAL**MINISTERIO DA DEFESA NACIONAL
MARINHA COMISSÃO DE DIREITO MARÍTIMO
INTERNACIONAL**

(Committee of International Maritime Law)

Praça do Comércio, 1188 Lisboa Codex

Fax: 342-4137

*Established: 1924*Officers:

President: Dr. José Joaquim DE ALMEIDA BORGES.

Vice-President: Contra-Almirante José Deolindo TORRES SOBRAL.

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RUSSIAN FEDERATION

ASSOCIATION OF INTERNATIONAL MARITIME LAW OF THE COMMONWEALTH OF INDEPENDENT STATES (C.I.S.)

6 B. Koptievsky Pr., 125319 Moscow

Tlx: 411197 mmf su - Tel.: (7-095) 151.75.88/ 151.23.91/151.03.12

Fax: (7-095) 152.09.16/ 224.17.01/ 152.36.59

Established: 1968

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Dr. Peter D. BARABOLYA, Chairman of the International Committee "Peace to the Oceans", Moscow.

Ambassador Igor K. KOLOSSOVSKY, Counsellor, Ministry of Foreign Affairs to the Russian Federation.

S.N. LEBEDEV, Chairman of the Maritime Arbitration Commission, Russian Federation, Moscow.

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Part I - Organization of the CMI

SENEGAL

ASSOCIATION SENEGALAISE DE DROIT MARITIME

(Senegalese Maritime Law Association)

Head Office: 31, Rue Amadou Assane Ndoye

Secretariat: Port Autonome de Dakar,

B.P. 3195 Dakar, Senegal

Tel.: 23.45.45/23.19.70 - Tlx: 21404 padkr - Fax: (221) 21.36.06

*Established: 1983*Officers:*President:* Ibrahima Khalil DIALLO*1st Vice-President:* Serigne Thiam DIOP*2nd Vice-President:* Aboubacar FALL*3rd Vice-President:* Masokhna KANE*Secretary General:* Ousmane TOURE*1st Assistant Secretary:* Ndiogou NDIAYE*2nd Assistant Secretary:* Oumar NDIAYE*Treasurer:* Ndeye Sanou DIOP*Assistant Treasurer:* Bara FALLMembership:

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Titulary Members:

Ibr.Khalil DIALLO, Aboubacar FALL.

SINGAPORE

THE MARITIME LAW ASSOCIATION OF SINGAPORE

1801 Shell Tower

50 Raffles Place

SINGAPORE 0104

Tel.: 53.83.055 - Tlx: RS 21570 - Fax 53.83.066

*Established: 1992*Officers:*President:* Arul CHANDRAN.*Vice-President:* Vinogopal RAMAYAH.*Hon.Secretary:* Loo Choon CHIAW.*Hon.Treasurer:* Sheila LIM (Ms.).*Committee Members:* Chong Siong SIANG; Govindarajulu ASOKAN; Low Siew JOON;

Ian Stuart MCALPINE (resigned); Peter Koh Soon KWANG (co-opted on 18.3.92);

Stanley Yap Keng SENG (co-opted on 18.3.92).

Hon. Auditor: Ajaib HARIDASS.*Hon. Auditor:* William Edward JANSEN

Member Associations

SLOVENIJA

DRUSTVO ZA POMORSKO PRAVO SLOVENIJE

(Slovene Maritime Law Association)

Obala 55, 66320 Portoroz - Slovenija

Tel.: 386/66/70.145 - Fax: 386/66/75.867

*Established: 1993*Officers:

Chairman: mag. Gregor VELKAVERH, Home: Solska 1, Lucija, 66320 Portoroz, Slovenia. Tel.: (386)(66)70.145 Office: Ferrarska 12, 66000 Koper, Slovenia. Tel. and Fax: (386)(66)38.056.

Members of the Executive Board: dr.Marko ILESIC, mag. Andrej PIRS, Rasto PLESNICAR.

Secretary: Anton KARIZ, Head of Legal Department, Splosna plovba International Shipping and Chartering, Obala 55, 66320 Portoroz. - Fax: 386/66/75.867.

Supervision board: Joze MOZEK, Lojze PERIC, mag. Josip RUGELJ

Coordinator of activities: dr. Marko PAVLIHA, Company Lawyer, Reinsurance Company Sava Ltd., P.O.B. 267, Miklosiceva 19, 61001 Ljubljana. Tel.: 386/61/13.36.175 Fax: 386/61/318.563.

SOUTH AFRICA

THE MARITIME LAW ASSOCIATION
OF THE REPUBLIC OF SOUTH AFRICA

Safmarine House, 21st Floor

Riebeeck Street, Cape Town 8001

P.O. Box 27, Cape Town 8000, South Africa

Tel. 408-6244 Fax: 408-6545

*Established: 1993*Officers:

President: Mr. R.A.P. GIFFORD, Shepstone & Wylie, 41 Acutt Street, Durban. P.O.Box 205, Durban 4000. Tel.: (031) 302 0111/0472 - Fax: (031) 304 2862.

Vice President: Adv. D.J. SHAW, Q.C., 503 Salmon Grove Chambers, 407 Smith Street, Durban. P.O. Box 169, Durban 4000. Tel: (031) 301 0113/4, Fax: (031) 304 7170.

Secretary/Treasurer: Mr. J. SWART, 21st Floor, Safmarine House, Riebeeck Street, Cape Town. P.O. Box 27, Cape Town 8000. Tel (021) 408 6244, Fax: (021) 4086545 /6255.

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Mr. D. J. DICKINSON, Unicorn Lines Limited, Durban Bay House, 333 Smith Street, Durban. P.O. Box 3483, Durban 4000. Tel: (031) 302.7911/7160 - Fax: (031)304-8692/2527.

Mr. B.R. GREENHALGH, P.O. Box 2010, Durban 4000. Tel: (031) 301.8361/306-119 Fax: (031) 305 1732.

Prof. J. HARE, Shipping Law Unit, Institute of Maritime Law, Faculty of Law, University of Cape Town, Private Bag, Rondebosch 7700. Tel: (021) 650 2676, Fax: (021) 761 4953.

Mr. A.J.L. NORTON, P.O. Box 223, Durban 4000. Tel: (031) 305-9764(dir)/304-7595 (bus) - Fax: (031) 305 2102/(dir) 307-1108.

Part I - Organization of the CMI

Mr. M. POSEMANN, Adams & Adams, 1002 Kingsfield Place, Durban. P.O. Box 1538, Durban 4000. Tel: (031) 304 3773 - Fax: (031) 304 3799.

Professor H. STANILAND, Institute of Maritime Law, University of Natal, King George V Avenue, Durban 4001. Tel: (031) 260 2556/260 2099 - Fax: (031) 260 1456.

Mr. M.T. STEYN, Private Bag x10, Roggebaai, 8012, Tel (021) 418-6800 - Fax. (021) 418-6900.

SPAIN

ASOCIACION ESPANOLA DE DERECHO MARITIMO

c/ Mayor 16; 1º Dcha. 28013 Madrid

Tel.: (1) 3664494 - 3654506 - Fax: (1) 3664284

Established: January, 1949

Officers:

President: Prof. Rafael ILLESCAS ORTIZ.

Vice-presidents: José María ALCANTARA GONZALES, Raul GONZALEZ HEVIA.

Secretary: Prof. José Luis GABALDON GARCIA.

Treasurer: Javier GODINO PARDO.

Advisers: José Antonio BAURA DE LA PEÑA; Luis BERENGUER COMAS; Alejandro GARCIA SEDANO; Soledad GARCIA MAURINO, Rodolfo A. GONZALEZ-LEBRERO MARTINEZ; Juan GUTIERREZ ROSIQUE; Prof. Juan Luis IGLESIAS PRADA; Pedro MORENES EULATE; Jesús María ORTIZ DE SALAZAR; Miguel PARDO BUSTILLO; Pedro SAGASTIZABAL COMYN, Luis de SAN SIMON CORTABITARTE; Pedro SUAREZ SANCHEZ; José Francisco VIDAL COMAS.

Executive Committee:

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Ing. Pedro SUAREZ SANCHEZ, c/ Dr. Fleming, 16, 2, 2º D. 28036 Madrid, Tel (1) 3.44.00.86.

Ing. José Francisco VIDAL COMAS, c/ Playa de Sitges, 53, 28230 Las Rozas Madrid - Tel. 6.30.64.49 - Fax: 6.30.64.49.

Adv. Alejandro GARCIA SEDANO (ex chairman).

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Number of members of the Association:

Individual members: 98 Collective members: 30.

SRI LANKA

THE MARITIME LAW ASSOCIATION OF SRI-LANKA

State Bank Buildings, P.O.Box 346

Colombo 1, Sri Lanka

Tel.: 36107, 26664 and 584098 - Tlx: 21789 - Fax: 94.549574

Established: 1986

Officers:

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Vice-President: Professor M.L.S. JAYASEKARA LL.M. Ph.D.(London), Colombo.

Secretary: Ranjit DEWAPURA, Life Member of Bar Association of Sri Lanka, Colombo.

Treasurer: Miss Sujatha MUDANNAYKA, Life Member of Bar Association of Sri Lanka, Colombo.

SWEDEN

SVENSKA SJORATTSFORENINGEN

(The Swedish Maritime Law Association)

P.O. Box 3299, S-103 66 Stockholm, Sweden

Tel.: 8.23 79 50 - Tlx: 17348 - Fax: 8.21 80 21

Established: 1900

Officers:

President: Lave BECK-FRIIS, Advokatfirman Wistrand, ILLA BOMMEN 1, S-41104, Göteborg, Tel: 46.31.771.21.00 - Fax: 46.31.771.21.50.

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Jan SANDSTROM, Professor of Law at the University of Goteborg and Average Adjuster, Göteborgs Universitet, Viktoriagatan 13, S-41125 Göteborg, Tel. 46.31.711.44.32 - Fax. 46.31.711.51.48.

Bengt HOLTZBERG, Director, Walleniusrederierna, P.O.Box 17086, S-104 62 Stockholm, Tel: 46.08.772.06.59/070.772.06.59 - Fax. 46.08.640.68.54.

Treasurer: Mrs. Kristina NEDHOLM-EWERSTRAND, STENA REDERI AB, Insurance Department, S-405 19 Goteborg. Tel.: 45.31.85.50.00 - Fax: 45.31.12.39.76 - Tlx: 2559 STENA S.

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SWITZERLAND

ASSOCIATION SUISSE DE DROIT MARITIME SCHWEIZERISCHE VEREINIGUNG FÜR SEERECHT

(Swiss Association of Maritime Law)

c/o Stephan CUENI

55, Aeschenvorstadt, CH-4010 Basel

Tel.: +41.61.279.70.00 - Fax: +41.61.279.70.01

Established: 1952

Officers:

President: Dr. Alexander von ZIEGLER, Postfach 6333, Lowenstrasse 19, CH-8023 Zurich, Tel.: +41.1.215.52.75 - Fax: +41.1.221.11.65.

Secretary: Stephan CUENI, lic. jur., 55, Aeschenvorstadt, CH-4010 Basel, Tel.: +41.61.279.70.00 - Fax: +41.61.279.70.01.

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Membership:

Member Associations

TURKEY

DENİZ HUKUKU DERNEĞİ, TÜRKİYE

(Maritime Law Association of Turkey)

İstiklâl Caddesi Korsan Çikmazi Saadet Apt.

Kat. 4 Daire 8, 80050 Beyoğlu, İstanbul

Tel.: 2457892-2458514 - Fax: 2458514 - Tlx: 38173 oteo-TR

Established: 1988

Board of Directors:

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Adv. Hucum TULGAR, Attorney at Law / Chief Legal Advisor of Turkish Maritime Organization, Karaköy, İstanbul. Tel: 212-244-3405 - Fax: 212-249-5391.

Gen. Secretary: Yrd. Doç. Dr. Sezer İLGİN, İ.T.U. Maritime Faculty, Main Section of Maritime Law, Tuzia / İstanbul. Tel: 216-395-1064 - Fax: 216-395-4500.

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Doç. Dr. Samim UNAN, İ.U. Law Faculty, Main Section of Maritime Law, Beyazıt, İstanbul. Tel: 212-514-0301 - Fax. 212-512-4135.

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Part I - Organization of the CMI

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

BRITISH MARITIME LAW ASSOCIATION

Knollys House
11 Byward Street
London, EC3R 5EN

Established: 1908

Officers:

President: The Rt.Hon. The Lord MUSTILL

Vice-Presidents:

Hon. Sir Michael KERR

The Rt. Hon. The Lord LLOYD

The Rt.Hon. Lord Justice STAUGHTON

The Rt.Hon. Sir Anthony EVANS

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Treasurer and Secretary: Patrick J.S. GRIGGS, Knollys House, 11 Byward Street, London EC3R 5EN, Tel. 44-171-972-6223/623-2011, Fax. 44-171-623-3225.

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MEMBRES TITULAIRES

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Attorney at Law, Member of the Japanese Maritime Arbitration, 4117 Kami-Hongo, Matsudo-City, Chiba-Prefecture, Japan.

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General Manager, Horizon Insurance Co., Ltd., 26a Amalias Ave., Athens 118, Greece.

The Right Honourable Sir Adetokunboh ADEMOLA

G.C.O.N., K.B.E.Kt., C.F.R., P.C., First Nigerian Chief Justice, Nigerian Maritime Law Association, 22a Jebba Street West, Ebute-Metta, Box 245, Lagos, Nigeria.

Eduardo ALBORS MENDEZ

Lawyer, c/o Albors, Galiano & Co., Nunez de Balboa 46-1ºB, 28001 Madrid, Spain. Tel: 435.66.17 - Fax: 576.74.23 - Tlx: 41521 ALBEN.

H.C. ALBRECHT

Doctor of law, Advocate, Hasche & Eschenlohs, President of the Deutscher Verein für Internationales Seerecht, Valentinskamp 88, 20354 Hamburg, Deutschland.

José M. ALCANTARA GONZALEZ

Maritime lawyer in Madrid, Average Adjuster, Arbitrator, Past Secretary-General of the Asociacion Espanola de Derecho Maritimo, Secretary-General of the Maritime Institute of Arbitration and Contract (IMARCO), President of the Instituto Hispano Luso Americano de Derecho Maritimo, 16, Miguel Angel Street, 28010 Madrid, Spain. Tlx: 49438 LEXM. E. - Tel: 1.308.3095 - Fax: 1.310.3516.

Mme. Pascale ALLAIRE BOURGIN

CAMAT, 9 rue des Filles-St. Thomas, 75083 Paris-Cedex 02, France.

Tulio ALVAREZ LEDO

Lawyer and Professor, President of the Asociacion Venezolana de Derecho Maritimo, 3ra. Avenida con 10ma. Transversal, Urb. Los Palos Grandes, Caracas 1.060, Venezuela. Tel: 285.90.09 - 285.67.51 - Fax: 285.03.17.

W. David ANGUS, Q.C.

Past-President of the Canadian Maritime Law Association, Member of the Executive Council of CMI, Partner, Stikeman Elliott, 1155 René-Lévesque Blvd. West, Suite 3700, Montreal, Quebec H3B 3V2, Canada. Tel: (514)397.3127 - Fax: (514)397.3222 - Tlx: 05.267316.

Armando ANJOS HENRIQUES

Avocat, Membre de la Commission Portugaise de Droit Maritime (Ministère de la Marine), Professeur de Droit Maritime à l'Ecole Nautique de Lisbonne, Av.a Elias Garcia, 176-2. esq., 1000 Lisboa, Portugal. Tel: 7960371.

Part I - Organization of the CMI

Alfonso ANSIETA NUNEZ

Advocate, Professor of Commercial Law, Catholic University of Valparaiso, Vice-President Chilian Maritime Law Association, Prat 827, Piso 12, Casilla 75, Valparaiso, Chili. Fax: 56032.252.622.

José M. APOLO

Maritime Attorney, Bachellor in International Sciences in Ecuador, Executive President of the firm Estudio Juridico Apolo & Asociados S.A., Maritime & Port Group, President of the Euadorean Association of Maritime Studies and Law "ASEDMAR", Vice-President for Ecuador of the Iberoamerican Institute of Maritime Law, Vélez 513, Piso 6° y 7°, Guayaquil, Ecuador. P.O. Box. 3548, Tel. (593-4) 320713 or 320714. Fax: (593-4) 322751 or 329611, Telex (593-4) 3733 MAPOLO ED.

Fr. ARCA PATINOS

Lawyer, Member of the Executive Committee of the Peruvian Maritime Law Association, Trinidad Moran, 1235, Lima 14, Peru.

Pedro AREVALO SUAREZ

Lawyer, Maritima Aragua S.A. Centro Plaza, Torre A. Piso 15, Ofic. E. Av. Francisco de Miranda, Las Palos Grandes, Caracas, Venezuela. Tlx: 24029.

Ignacio ARROYO

Advocate, Ramos & Arroyo, Professor at the University of Barcelona, General Editor of "Anuario de Derecho Marítimo", Paseo de Gracia 92, 08008 Barcelona 8, Spain. Tel.: (93)215.77.11 -Tlx: 59398 FRME - Fax (93)215.96.02.

Eduardo BAGES AGUSTI

Managing Director of Compania Naviera Marasia, Member of the Executive Committee of the Association of Spanish Shipowners (ANAVE), Director of Chamber of Commerce and Industry of Madrid, Spanish representative of the Maritime Committee of the International Chamber of Commerce, member of the Spanish Committee of Lloyd's, temporary President of BIMCO, Director of Insurance Company CHASYR., Avda. Miraflores 55, Madrid (35) Spain.

Nicola BALESTRA

Avocat, Piazza Corvetto 2-5, 16122 Genova, Italy. Tel: (010)88.92.52 - Tlx: 283.859 - Fax: (010)88.52.59.

José Manuel BATISTA DA SILVA

Lawyer, Member of "Ordem dos Advogados", Assistant of Commercial law at Law School of the University of Lisbon (1979/1983). Assistant of Maritime Law at Seminars organized by the Portuguese Association of Shipowners, Legal adviser at "Direcção Geral de Marinha", Legal adviser to the Portuguese delegation at the Legal Committee of I.M.O., member of "Comissao do Direito Marítimo Internacional", R. Capitao Leitaio, 63-1° Dt°, 2800 Almada, Portugal. Tel: 2751691.

Mario Ferreira BASTOS RAPOSO,

Doctor of law, Lawyer, Dean of "Ordem dos Advogados" (1975/1977), Vice-Chairman of "Uniao Internacional dos Advogados" (1976/1978), Member of "Conselho Superior do Ministério Público" (1977/1978), Minister of Justice in former Governments, Member of the Parliament (1979-1981/1983), Member of "Secção de Direito Marítimo e Aéreo da Associação Juridica" (1964), Member of "Associação Portuguesa de Direito Marítimo" (1983), Chairman of "Comissao Internacional de Juristas-Secção Portuguesa", R. Rodrigo da Fonseca, 149-3° Dt°, 1070 Lisboa, Portugal. Tel: (351-1)-388-7250 / 3857-633-4/386-0576 - Fax: (351-1) 387-4776.

*Titulary Members***Stuart N. BEARE**

Solicitor, Partner, Richards Butler, Beaufort House, 15, St. Botolph Street, London EC3A 7EE, England. Tel.: 171-6211144 - Tlx: 949494 RBLAWG - Fax: 171-2475091.

Freddy J. BELISARIO-CAPELLA

Doctor of law, lawyer, Master in Admiralty Law Tulane University, U.S.A. Professor in Maritime Law in the Central University of Venezuela. VMLA's Director. Address: Quinta Coquito, Calle San Juan, Sorocaima, La Trinidad, Caracas, Venezuela.

Jorge BENGOLEA ZAPATA

Abogado, Professor Titular de Derecho de la Navegacion en la Facultad de Derecho y Ciencias Sociales de la Universidad de Buenos Aires, Professor de Derecho Maritimo y Legislacion Aduanera en la Facultad de Ciencias Juridicas de la Plata, Corrientes 1309, 7° p, of.19, Buenos Aires, Argentina.

Francesco BERLINGIERI

Advocate, former Professor at the University of Genoa, O.B.E., doctor of law honoris causa at the University of Antwerp, President of the Italian Maritime Law Association, President ad Honorem of C.M.I., 10 Via Roma, 16121 Genova, Italia. Tel: (010)58.64.41 Fax: (010)594.805 /58.96.74.

Giorgio BERLINGIERI

Advocate, 10, Via Roma, 16121 Genova, Italia. Tel: (010)58.64.41 - Fax: (010)594.805 /58.96.74.

William BIRCH REYNARDSON

Barrister at Law, Hon. Secretary of the British Maritime Law Association, C.B.E., Vice-President of the C.M.I., Adwell House, Tetsworth, Oxon, England. Tel. 0044-184-428-1204 - Fax: 0044-184-428-1300.

Miss Giorgia M. BOI

Advocate, Secretary General of the Italian Maritime Law Association, Professor at the University of Genoa, 10 Via Roma, 16121 Genova, Italia. Tel.: (010)58.64.41 - Fax: (010) 59.48.05/58.96.74.

Philippe BOISSON

Docteur en droit, Secrétaire Général de l'Association Française du Droit Maritime, Conseiller Juridique. Bureau Veritas, 17 bis Place des Reflets, Cedex 44, F-92077 Paris-La-Défense, France. Tel: (1)42.91.52.71 - Tlx: 615.370 - Fax: (1)42.91.52.94.

Lars BOMAN

Lawyer, Vice-President of the Swedish Maritime Law Association, Partner in Law Firm Morssing & Nycander, P.O.Box 3299, S-10366 Stockholm, Sweden. Tel.: 46-823.79.50 Fax: 46-8-218021 - Tlx: 17348 Anwalt.S

Pierre BONASSIES

Professeur à la Faculté de Droit et de Science Politique d'Aix-Marseille, Président de l'Association Française du Droit Maritime, Chemin des Portails, 13510 Eguilles, France. Tel: 42.92.51.21. - Fax: 42.92.6892.

Franco BONELLI

Advocate, Professor at the University of Genoa, Viale Padre Santo 5/8. 16122 Genova, Italy. Tel: (010)81.83.41 - Tlx: 271.583 Frabo - Fax: (010)81.38.49.

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Vojislav BORCIC

Docteur en droit, Conseiller juridique de la "Jadroagent" Agence Maritime et des Transports, Rijeka, Professeur à la Faculté Maritime des Transports, Rijeka, Secrétaire de l'Association Croate de Droit Maritime, c/o JADROAGENT LTD., Koblerov trg 2, 51000 Rijeka, Croatia.

Pierre BOULOY

Avocat à la Cour, Bouloy Grellet & Associés, 5 rue de Chaillot, 75116 Paris, France. Tel: (1)47.20.17.93.

Sjur BRAEKHUS

Professor of Maritime Law at the University of Oslo, Former President of the Norwegian Maritime Law Association, Nordisk Institutt for Sjørett, University of Oslo, Karl Johansgate 47, N-0162 Oslo, Norway. Tel: 47.2.42.90.10 - Fax: 47.2.33.63.08.

David BRANDER-SMITH Q.C.

Bull, Housser & Tupper, 3000 Royal Centre, P.O.Box 11130, 1055 West Georgia Street, Vancouver B.C., Canada V6E 3R3. Tel: (604)687-6575, direct line (604)641-4889 - Tlx: 04-53395 - Fax: (604)641-4949.

Jorgen BREDHOLT

Deputy Permanent Secretary (International Shipping Policy and Maritime Law) Ministry of Industry of Denmark, Svendsvej 3, DK-2990 Nivaa, Denmark. Tel: (45)33.92.33.50 - Fax: (45)33.12.37.78.

Hartmut von BREVERN

Rechtsanwalt, Partner in Rohreke, Boye, Remé, von Werder, President of the German Maritime Arbitrators Association, Ballindamm, 26, 20095 Hamburg, Deutschland.

Per BRUNSVIG

Barrister, Partner in the law firm Thommessen, Krefting & Greve, P.O.Box 413 Sentrum, N-0162 Oslo, Norway. Tel: 47.2.42.18.10 - Fax: 47.2.42.35.57.

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Avocat, Ancien Président de l'Association Belge de Droit Maritime, Professeur à l'Université Libre de Bruxelles, Louizastraat 32, B-2000 Antwerpen 1, Belgique. Tel: (03)231.17.14 - Fax: (03)233.08.36.

Thomas BURCKHARDT

Docteur en droit et avocat, LL.M., (Harvard), juge-suppléant à la Cour d'appel de Bâle. St. Alben-Graben 8, CH-4010 Basel, Suisse. Tel: 41/61/271.14.77 - Fax: 41/61/271.14.66.

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Docteur en Droit, Membre de la Chambre Arbitrale Maritime de Paris, Professeur à la Faculté de Droit et des Sciences Economiques de l'Université de Bretagne Occidentale, 38, Quai de la Douane, 29200 Brest, France. Tel: 98.80.24.42.

Pedro CALMON FILHO

Lawyer, Professor of Commercial and Admiralty Law at the Law School of the Federal University of Rio de Janeiro, President of the Brazilian Maritime Law Association, Pedro Calmon Filho & Associados, Av. Franklin Roosevelt 194/801, 20021-120 Rio de Janeiro, Brasil, Tel: 532-2323 - Fax: 220-7621

*Titulary Members***John A. CANTELLO**

Secretary and Treasurer of the Canadian Maritime Law Association, Lawyer and average adjuster, Osborne & Lange Inc., 360 St. Jacques Street W., Suite 2000, Montreal Quebec H2Y 1P5, Canada. Tel: (514)849.4161 - Fax: (514)849.4167 - Tlx: 055-60813.

Alberto C. CAPPAGLI

Maritime Lawyer, Vice-President of the Argentine Maritime Law Association, Asst. Professor at Faculty of Law of Buenos Aires, C. Pellegrini 887, 1338 Buenos Aires, Argentina. Tel: 322.8336/8796 - 325.3500 - Fax: 322.4122 - Tlx: 24328-27541.

Sergio M. CARBONE

Avocat, Professeur à l'Université de Gênes, Via Assarotti 20, 16122 Genova, Italy. Tel: (010)810.818 - Tlx: 282.625 Cardan I - Fax: (010)87.02.90.

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Advocate, Former President of the Maritime Law Association of the United States, 393 Carriage Lane, Wyckoff, NY 07481-2306, U.S.A.

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Robert CLETON

Counsellor, Member of the Board of the Netherlands Maritime and Transport Law Association, Klingelaan 31, 2244 AN Wassenaar, Nederland. Tel: 01751-728295.

Jean COENS

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Guilherme CONCEICAO SILVA

Docteur en droit, Capitaine de Frégate, Avocat, Représentant de l'Etat-Major de la Marine, Ancien Professeur de Droit Maritime International, Rua Victor Cordon, 1, 4º-Esq., 1200 Lisboa, Portugal.

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Luis S. CORREA-PEREZ

Doctor of law, Licentiate in Administration graduated from the Central University of Venezuela. Master in Maritime Insurance at the Insurance Institute in London and the New York Insurance Institute. VMLA's Vice-President of Publications and Events. Address: Av. Abraham Lincoln con Calle El Colegio, Boulevard de Sabana Grande Edificio Provincial, Piso 2, Ofic. 2F, Caracas 1050 or P.O. Box No. 4962, Carmelitas, Caracas 1010 A, Venezuela. Tel: (58-2)762.49.49/762.52.87 - Fax: (58-2)761.56.48.

*Part I - Organization of the CMI***Luis COVA ARRIA**

Advocate; Doctor in Law; Executive Councillor CMI; Professor Central University of Venezuela; President Maritime Arbitration Center (CEAMAR) of the Ibero-American MLA; Founder President Venezuelan MLA; Multicentro Empresarial del Este, Edif. Libertador, Anexo B, Piso 15, Ofic. 151-B, Chacao, Caracas 1010, Venezuela, P.O. Box 1200, Tel: (582) 265.9555 (Master) Fax: (582) 264.0305.

Stephan CUENI

Licencié en droit, avocat et notaire public. Wenger Mathys Plattner, Aeschenvorstadt 55, CH-4010 Basel, Suisse. Tel: +41-61-279.70.00 - Fax: +41-61-279.70.01.

John R. CUNNINGHAM Q.C.

Barrister & Solicitor, Campney & Murphy, P.O. Box 48800, 2100-1111 West Georgia Street, Vancouver, B.C. V7X 1K9, Canada. Tel: (604)688.80.22 - Fax: (604)688.08.29 - Tlx: 04-53320.

George DANIOLOS

Avocat au Barreau d'Athènes, Vice-Président de l'Association Hellénique de Droit Maritime, J. Drossopoulou 29, 112 57 Athènes, Grèce. Tel. (301)-82.26.801/4 - Tlx: 216021 DAND GR - Fax: (301) 82.17.869.

Carlos DA ROCHA GUIMARAES

Lawyer, Member of the Council of the Brazilian Bar Association, Rua Assembléia 93/C.j., 1203-4, Centro, Rio de Janeiro, RJ., CEP 20.011, Brasil.

Vincent de BRAUW

Lawyer, Partner of Nauta Dutilh, Weena 750, P.O.Box 1110, 3000 BC Rotterdam, Nederland. Tel: (10)224.00.00 - Fax: (10)414.84.44.

G. de GROOT

Former judge at the Supreme Court of the Netherlands, Lijsterlaan, 21, NL-3055 CC Rotterdam, Nederland. Tel: (010)422.61.57.

Colin DE LA RUE

Solicitor, Partner of Ince & Co., Knollys House, 11 Byward Street, London EC3R 5EN, England. Tel: 0171-623.2011 - Fax: 0171-623.3225 - Tlx: 8955043 INCE G.

Henri de RICHEMONT

Avocat à la Cour, Richemont et associés, 12 bis avenue Bosquet, 75007 Paris, Tcl. 45-55-64-15 - Fax: 45-51-81-18.

Alvaro DELGADO GARZON

Carlos III, 44 El Escorial, 28200 Madrid, Spain.

Nicolaos A. DELOUKAS

Professeur à la Faculté de Droit de l'Université d'Athènes, Ancien Vice-Président de l'Association Hellénique de Droit Maritime, 20, rue Massalias, 10680 Athènes, Grèce.

Leo DELWAIDE

Avocat, Professeur de Droit Maritime et du Droit des Transports aux Universités d'Anvers et de Bruxelles, Président de la Chambre des Appels de la Commission Internationale pour la Navigation du Rhin à Strasbourg, Administrateur du CMI, adjoint du Maire de la Ville d'Anvers et Président de l'Autorité portuaire d'Anvers, Markgravestraat 9, B-2000 Antwerpen 1, Belgique. Tel: 32/3/231.56.76 - Fax: 32/3/225.01.30.

*Titulary Members***Walter DE SA LEITAO**

Lawyer "Petrobras", Av. Epitacio Pessoa n° 100 apto.102, Rio de Janeiro CEP 22 471, Brazil.

Luis DE SAN SIMON CORTABITARTE

Abogado, founder and Senior Partner of Abogados Maritimos y Asociados (AMYA), c/Miguel Angel, 16-5°, 28010 Madrid, Spain. Tel: (1)308.30.95 - Fax: (1)310.35.16.

Jorge Augusto DE VASCONCELLOS

Lawyer, Attorney of the Brazilian Merchant Marine Superintendency, Rua Mexico 90, 20031-145 Rio de Janeiro, Brasil.

Ibr. Khalil DIALLO

Docteur en Droit, Port Autonome de Dakar, B.P. 3195 Dakar, Sénégal.

John Francis DONALDSON

The Rt. Hon. Lord Donaldson of Lynton, President of the British Maritime Law Association, 123 Shakespeare Tower, Barbican, London EC2Y 8DR, England. Tel/Fax:(171)588.6610.

Christopher J. DORMAN A.C.I.S.

Dorman Legal Services, 20 Harcourt Terrace, Dublin 2, Ireland. Tel: 353.1.76.51.86.

Michel DUBOSC

Avocat au Barreau, 157, Boulevard de Strasbourg, B.P. 1396, 76066 Le Havre Cedex, France. Tel: 35.42.24.41.

Albert DUCHENE

Dispatcheur, Docteur en Droit, Les Basses 17, 5590 Serinchamps, Belgique.

Stenio DUGUET COELHO

Lawyer, Rua Laranjeiras 328, Rio de Janeiro, R.J., CEP 22.240, Brasil.

Emmanuel DU PONTAVICE

Ancien Vice-Président de l'Association Française du Droit Maritime, Professeur à l'Université de Droit, d'Economie et de Sciences Sociales de Paris, Président Honoraire de la Chambre Arbitrale Maritime de Paris, 27 rue de Fleurus, 75006 Paris, France. Tel: (1)45.44.21.61.

Kenjiro EGASHIRA

Professor of Law at the University of Tokyo, 25-17, Sengencho 3-chome, Higashi-Kurume, Tokyo, Japan.

Jan ERLUND

President of the Danish Branch of CMI, Advokat, c/o Gorrissen Federspiel Kierkegaard, H.C. Andersens Bld. 12, DK-1553 Copenhagen V, Denmark. Tel: (45)33.15.75.33 - Fax: (45)33.15.68.02 - Tlx: 15598.

Aboubacar FALL

Docteur en droit - Avocat, 95 rue de Prony, 75017 Paris, France. Tel: 44.40.00.44-Fax: 44.40.40.52, 73 rue A. A. Ndoye - Dakar, Senegal. Tel. (221) 23-67-17 - Fax: (221) 23-66-86.

Part I - Organization of the CMI

Luis FIGAREDO PEREZ

Abogado, P° La Habana 182, Madrid, Spain.

Velimir FILIPOVIC

Professeur à la Faculté de Droit de l'Université de Zagreb, Président de l'Association Croate de Droit Maritime, Trg Marsala Tita 14, 10000 Zagreb, Croatie pp 175.

Geoffrey FLETCHER

MA (Cantab), dispacheur, Associé Langlois & Cie., 115 Frankrijklei, B-2000 Antwerpen 1, Belgique. Tel: (3)225.06.55 - Fax: (3)232.88.24.

Emmanuel FONTAINE

Avocat à la Cour, c/o Gide, Loyrette, Nouel, 26 Cours Albert 1er, F-75008 Paris, France. Tel: (1)40.75.60.00.

Omar J. FRANCO OTTAVI

Doctor of law, Lawyer, Master in Maritime Law LL.M. Professor on Maritime Law Universidad Catolica Andrés Bello Caracas, Executive vice-president of the Venezuelan Maritime Law Association, Avenida Francisco Solano, Edificio San German, Piso 3, Oficina 3 B, Sabana Grande, Caracas, Venezuela. Tel: (2)72.77.75/72.66.58 - Fax: (2)71.83.57.

Mrs. Wim FRANSEN

Avocat, Everdijstraat 43, 2000 Antwerp, Belgium.

Nigel Harvey Hugh FRAWLEY

Vice-President of the Canadian Maritime Law Association, Partner Meighen Demers, Barristers and Solicitors, Box 11, 200 King Street West, Toronto, Ontario M5H 3T4, Canada. Tel: (416)340-6008 - Fax: (416)977-5239.

Johanne GAUTHIER

President of the Canadian Maritime Law Association, partner/associée, Ogilvy Renault, 1981 McGill College Avenue, Suite 1100, Montreal, Québec, H3A 3C1 Canada. Tel: (514)847-4469 - Fax: (514)286-5474.

J.J.H. GERRITZEN

Average Adjuster, Vereenigde Dispecheurs Rotterdam B.V., P.O.Box 2839, 3000 C.V. Rotterdam, Nederland. Tel: (10)411.16.90 - Fax: (10)433.35.30.

Paul A. GILL

Solicitor, Partner of Dillon Eustace, Solicitors, Grand Canal House, One Upper Grand Canal Street, Dublin 4, Ireland. Tel: 353/1/667.00.22 - Fax: 353/1/667.00.42.

Guillermo GIMENEZ DE LA CUADRA

Abogado, Gabinete Juridico Mercantil Maritimo, Avda. Eduardo Dato 22, F. Huertas Del Rey, 41018 Sevilla, Spain. Tel: (95)464.46.42/492.13.35 - Fax (95) 465.98.51.

Philippe GODIN

Avocat à la Cour, Godin & Associés, 69 Rue de Richelieu, 75002 Paris, France. Tel: (1)44.55.38.83 - Fax: (1)42.60.30.10.

Paul GOEMANS

Avocat, Goemans, Mirdikian, Geerts, membre du Conseil Général de l'Association Belge de Droit Maritime, directeur et rédacteur de la revue "Jurisprudence du Port d'Anvers", Nationalestraat 5 bus 30, B-2000 Antwerpen 1, Belgique. Tel: 32-3-232.18.51 - Fax: 32-3-233.59.63.

*Titulary Members***Edgar GOLD**

Doctor of law, Professor of Maritime Law and Professor of Resource and Environmental Studies, Dalhousie University, Halifax, Canada; Executive Director, Oceans Institute of Canada, Immediate Past President of the Canadian Maritime Law Association; Counsel, Messrs Huestis Holm, Barristers & Solicitors, 708 Commerce Tower, 1809 Barrington Street, Halifax, N.S., B3J 3K8, Canada. Tel.: (902)423.7264 - Fax: (902)422.47.13.

Charles W.H. GOLDIE

Barrister, Partner, Thos. R. Miller & Son, International House, 26 Creechurch Lane, London, EC3A 5BA, Great Britain.

Bernhard GOMARD

Professor, Dr. Jur., Hammerensgade 3, 4. sal. 1267 Copenhagen, Denmark, Tel. (45) 33.32.80.20.

Rucemah Leonardo GOMES PEREIRA

Lawyer, Average Adjuster in Marine Claims, Professor of Maritime Insurance at Fundação Escola Nacional de Seguros - Rio de Janeiro, Chairman of Brazilian Association of Average Adjusters. c/o Rucemah and Sons Ltd. - Average Adjusting, Avenida Churchill 60, Grs. 302/04, 20020-050 Rio de Janeiro R.J., Brasil. Tel: 55(21)220.2326 - Fax: 55(21)262.8226 - Tlx: 2131842 RLGP BR.

José Luis GONI

Abogado, Partner Goni & Co. Abogados, Arbitrator of the Spanish Council of the Chambers of Commerce Industry and Shipping, Serrano 91 - 4º, 28006 Madrid 6, Spain. Tel: (1)563.47.40 - Fax: (1)563.11.43 - Tlx: 42344 MARL E.

Francisco GONI JIMENEZ

Abogado, Universidad Autonoma de Madrid, Master in Laws (Ll.M. Maritime Law) University of Cardiff, c/o Goni & Co., Serrano 91, 28006 Madrid 6, Spain. Tel: (1)563.47.40 - Fax: (1)563.11.43 - Tlx: 42344 MARL E.

Raul GONZALEZ HEVIA

Abogado, Average Adjuster, Head of the Marine and Navigation Department of Mutualidad de Seguros del Instituto Nacional de Industria (MUSINI), Vice-President of the Spanish Association of Average Adjusters, Avenida de America, 46, 28028 Madrid, Spain. Tel: (1)7.26.76.99.

Rodolfo Angel GONZALEZ LEBRERO

Lawyer, Doctor of Laws, Serrano 91, 4º, 28006 Madrid, Spain. Tel: (1)563.47.40 - Fax: (1)563.11.43.

Ivo GRABOVAC

Doctor of Law, Professor of maritime and other transport laws at the Law Faculty of the Split University, Pravni fakultet u Splitu, Domovinskog rata 8, 21000 Split, Croatia.

Nils GRENANDER

Juris Doctor, Former Managing Director of the Swedish Shipowners' Association, Gibraltargatan 12, S-41132 Goteborg C, Sweden.

Patrick J.S. GRIGGS

Solicitor of the Supreme Court of Judicature, Member of the Executive Council of the CMI, Senior Partner of Ince & Co (Solicitors), Knollys House, 11, Byward Street, London EC3R 5EN, England. Tel: 171.623.20.11 - Tlx: 8955043 Ince G. - Fax: 171.623.32.25.

Part I - Organization of the CMI

Kurt GRÖNFORS

Professor of Law, Göteborgs Universitet, Vasagatan 3, S-411 24 Göteborg, Sweden.

Etienne GUTT

Président Émérite de la Cour d'Arbitrage du Royaume de Belgique, Professeur émérite de l'Université de Bruxelles, 7 rue Basse, 1350 Jandrain -Jandrenouille, Belgique. Tel: 019.63.39.50.

José Tomas GUZMAN SALCEDO

Lawyer, Average Adjuster, Professor of Maritime & Insurance Law, Director of Chilean Maritime Law Association, Huérfanos 835, Oficina 1601, Santiago, Chile. Fax: 56.02.38.26.14.

Lennart HAGBERG

Senior Partner Mannheimer & Zetterlöf, Box 2235, S 40314 Göteborg, Sweden.

Taichi HARAMO

Dr.jur., Professor, Faculty of Law, Aoyama Gakuin University, 4-4-25 Shibuya, Shibuya-ku, Tokyo 150, Japan - Tel: 3.3409.8111 (office). 1,039 Fussa Fussa-shi, Tokyo 197, Japan - Tel: 4.2551.1549.

Sean Joseph HARRINGTON

Partner of McMaster Meighen Solicitors, 1000 de La Gauchetière Street West, Suite 900, Montreal, QC H3B 4W5 Canada. Tel: (514)954-3115 - Fax: (514)954-4449.

Walter HASCHÉ

Doctor of law, Advocate, Hasche & Eschenlohs, Former President of the Maritime Law Association of the Federal Republic of Germany, Valentinskamp 88, 20354 Hamburg, Germany.

Hiroshi HATAGUCHI

Member of the Japan Branch of the Int. Law Ass. and Japanese Society of Private Int. Law, 2-23-1, Asagaya minami, Suginami-ku, Tokyo, Japan.

George W. HEALY III

Advocate, Immediate Past President of the Maritime Law Association of the United States, Partner Phelps, Dunbar, Marks Claverie & Sims, 400 Poydras Street, New Orleans L.A. 70130 U.S.A. Tel: (504)566.13.11 - Tlx: 584.125 - Fax: (504)568.91.30.

Nicholas J. HEALY

Former President of The Maritime Law Association of the United States, Advocate, Honorary Vice-President of the Comité Maritime International, Healy & Baillie, Adjunct Professor of Law, New York University, 29 Broadway, New York, N.Y. 10006 U.S.A.

Per Erik HEDBORG

Former President of the Swedish Association of International Maritime Law, Former Managing Director of the Swedish Steamship Owner's Insurance Association, Götabergsgatan 34, S-411 34 Göteborg 4, Sweden.

Rolf HERBER

Professor, Doctor of law, Member of the Executive Council of the CMI, Rechtsanwalt, Ahlers & Vogel, Schaartor 1, D-20459 Hamburg, Germany. Tel. (49-40) 37-10-75 - Fax: (49-40) 37-10-92.

Titulary Members

James J. HIGGINS

Former President of The Maritime Law Association of the United States, Advocate, Kirlin, Campbell & Keating, 5 Hanover Square, 14th Floor, New York, New York 10004 U.S.A. Tel.: (212)425-7800, Fax: (212)425-7856.

Mats HILDING

Former President of the Swedish Association of International Maritime Law, Polhemsgatan 27, S-11230 Stockholm, Sweden.

Vinko HLACA

Doctor of law, Professor of Maritime and Transport Law at the University of Rijeka, Hahlit 6, 51000 Rijeka, Croatia.

John P. HONOUR

General Manager, The West of England Ship Owners' Mutual Insurance Services Ltd., Tower Bridge Court, 224 Tower Bridge Road, London SE1 2UP, England. Tel: (171)716.6000- Tlx:8958951 - Fax: (171)716.6111.

Chester D. HOOPER

Attorney, President of The Maritime Law Association of the United States, Haight, Gardner, Poor & Havens, 195 Broadway, New York N.Y. 10007, USA. Tel.: (212)341.7000 - Tlx.: 424.674 - Fax: (212)385.9010.

Takeo HORI

Former Vice-Minister at the Ministry of Transport, Vice-President of the Japanese Maritime Law Association, 6-15-36 Ikuta, Tamaku, Kawasaki-Shi, Kanagawaken, Japan.

Rainer HORNBORG

President of Board of AB Indemnitas, Director Hansakoncernen, Sturegatan 56, S-11436 Stockholm, Sweden.

Pierre HOUSSIN

Ancien Vice-Président de l'Association Française du Droit Maritime, 93, rue Boileau, F-75016 Paris, France. Tel: (1)46.47.97.84.

N. Geoffrey HUDSON M.A.

(Oxon) Barrister at law, Member and Past Chairman of the Association of Average Adjusters, Past President of the Association Internationale de Dispatcheurs Européens; Partner, Ernest Robert Lindley & Sons, Mansell Court, 69 Mansell Street, London E1 8AN, Great Britain. Tel: 171.709.0105 - Fax: 171.481.4474.

Neil Moore HUDSON

Watercroft Road 10, Halstead, Sevenoaks, Kent TN14 7DP, Great Britain.

Jean HULLIGER

Director of the Swiss Maritime Navigation Office, Head of the Division for Communications. Federal Department of Foreign Affairs; Département fédéral des affaires étrangères, Palais fédéral, CH-3003 Bern. Tel: 031/322.30.25 - Fax: 031/311.45.68 or 322.32.37.

Marc A. HUYBRECHTS

Advocate, Member of the Antwerp Bar, Professor of Maritime and Transport Law at the University of Leuven and the University of Antwerp, Amerikalei 73 B-2000 Antwerpen, Belgique. Tel: 248.15.00 - Tlx:71557 - Fax: 238.41.40.

Part I - Organization of the CMI

A. Stuart HYNDMAN Q.C.

Advocate, McMaster, Meighen, 630 René-Lévesque Blvd.W. 7th Floor, Montreal, Québec H3B 4H7, Canada. Tel: (514)879.1212 - Fax: (514)878.0605. Tlx:05-268637.

Juan Luis IGLESIAS PRADA

Uria & Menendez Abogados, c/Hermosilla 30-3°D E-28001, Madrid, Spain.

Flemming IPSEN

Advocate, Vice-President A.P. Moller, Esplanaden 50, DK-1098 Kobenhavn, Denmark. Tel: (45)33.14.15.14 - Fax: (45)33.93.15.43.

Th. IVERSEN

Direktor, Foreningen af Danske Soassurandorer, 10 Amaliegade, DK-1256 Kobenhavn, Denmark. Tel: (45)33.13.75.55 - Fax: (45)33.11.23.53.

Henrik Thal JANTZEN

Lawyer, Reumert & Partners, 26 Bredgade, DK-1260, Copenhagen K, Tel: (45)33.93.39.60 - Fax: (45)33.93.39.50.

R.E. JAPIKSE

President of the Netherlands Maritime and Transport Law Association, Advocate, Professor at the Leiden University, Member of the Executive Council, p/a Nauta Dutilh, Postbus 1110, 3000 B.C. Rotterdam, Nederland. Tel: (010)224.0251 - Fax: (010)224.0014.

Andrei Konstantinovitch JOUDRO

Ancien Président de I.M.L.A., Ancien Vice-Président du Comité Maritime International. 6.B. Koptievsky pr. 125319, Moscou, Russia.

John L. JOY

Partner of White, Ottenheimer & Green, P.O.Box 5457, Baine Johnston Centre, 10 Fort William Place, St.John's, Nfld., A1C 5W4, Canada. Tel: (709)722.7584 - Fax: (709)722.9210.

Gabriel JULIA ANDREU

Urgel 245, 3° 4a, 08036 Barcelona, Spain. Tel: 430.80.13.

Mrvoje KACIC

Attorney, Professor of Maritime Law University of Split, 41000 Zagreb, Petrova 21, Croatia. Tel: 445425.

Axel KAUFMANN

Landsretssagfører, Barrister, Skoubogade 1, DK-1158 Kobenhavn, Denmark. Tel: (45)33.13.12.42 - Fax: (45)33.93.19.03.

Yoshiya KAWAMATA

Professor of Law at Kyoto University. Office: Faculty of Law, Kyoto University, Yoshida, Sakyo-ku, Kyoto 606, Japan.

Marshall P. KEATING

Advocate, Kirlin, Campbell, & Keating, Treasurer of the Maritime Law Association of the United States, 5 Hanover Square, 14th Floor, New York, N.Y. 10004, U.S.A. Tel: (212)425-7800 - Fax: (212)425-7856.

Tony KEGELS

Avocat, Mechelsesteenweg 136, 2018 Antwerp, Belgium.

Sean KELLEHER

Manager, Legal Department, An Bord Baine, Hon.Treasurer Irish Maritime Law Association. Grattan House, Lr.Mount Street, Dublin 2, Ireland. Tel: 353.1.6619.599 - Fax: 353-1-661-2776.

Titulary Members

Takashi KOJIMA

Professor at Kōnan University Law School, 2-17, Hirata-cho, Ashiya City, Hyogo-Ken 659, Japan.

Bernd KRÖGER

Doctor of law, Managing Director of the Verband Deutscher Reeder, Esplanade 6, 20354 Hamburg, Deutschland.

Sergio LA CHINA

Avocat, Professeur à l'Université de Gênes, Président du Comité Gènois de l'Association Italienne de Droit Maritime, Via Roma 5/7, 16121 Genova, Italia. Tel: (010)541.588 - Fax: (010)592.851.

Herman LANGE

Avocat, Schermersstraat 30, B-2000 Antwerpen, Belgique. Tel.: (03)225.06.08 - Tlx.: 31477 Lexant - Fax: (03)223.73.78.

Pierre LATRON

Président de la Chambre Arbitrale Maritime de Paris, Ancien Président de l'Association Française du Droit Maritime, AFAMTAS, 20 rue de Vivienne, 75002 Paris, France. Tel: 42.96.12.13.

Alex LAUDRUP

Advocate, Gorrissen & Federspiel, H.C. Andersens Boulevard 12, DK-1553 Kobenhavn V, Danmark. Tel.: (45)33.15.75.33 - Tlx: 15598 qf jus dk. - Fax: (45)33.15.77.33.

Manfred W. LECKSZAS

Advocate, partner in Ober, Kaler, Grimes & Shriver, 120 East Baltimore Street, Baltimore, Maryland 21202-1643, U.S.A. - Tel: (301)685.1129 - Tlx: 87774 - Fax: (301)547.0699.

Antonio LEFEBVRE d'OVIDIO

Avocat, Ancien Professeur à l'Université de Rome, Via del Nuoto, 11 (Due Pini), 00194 Rome, Italia.

Hans LEVY

Direktor, Advocate, Assuranceforeningen SKULD, Frederiksborggade 15, 1360 Kobenhavn, Denmark. Tel: (45)33.11.68.61 - Fax: (45)33.11.33.41.

Jacques LIBOUTON

Avocat, chargé de cours à l'Université Libre de Bruxelles, Vice Président de la Licence spéciale en droit maritime et aérien de l'Université Libre de Bruxelles, c/p Gérard et associés, avenue Louise 523, bte. 28, 1050 Bruxelles, Belgique. Tél: 02/646-62-98 - Fax: 02/646-40-17.

Domingo Martin LOPEZ SAAVEDRA

Lawyer, former Professor, Av. Corrientes 1145-6th Fl., 1043 Buenos Aires, R. Argentina. Tel: 35-5868/8704/8407 - Fax: 325-9702.

Herbert M. LORD

Advocate, former President of the Maritime Law Association of the United States, Curtis Mallet-Prevost, Colt & Mosle, 101 Park Avenue, New York, New York 10178-0061, Tel.: (212) 696-6000, Fax: (212) 697-1559, Telex: 126811.

Part I - Organization of the CMI

Alberto LOVERA-VIANA

Doctor of law. Lawyer and Professor, Senator of the Republic of Venezuela, President of the Merchant Marine Sub-Committee of the Venezuelan Senate, VMLA's Vice-President of Institutional Relationships. Address: Centro Comercial Los Chaguaramos, Ofic. 9-11. Caracas 1041, Venezuela. Tel: (58-2)662.61.25/662.16.80 - Fax: (58-2)693.13.96.

Christian LUND

Legal Counsel The East Asiatic Cy. Ltd. A/S, Company House, Midtermolen 7, 2100, Copenhagen, Denmark. Tel.: 45.35.27.27.27 - Fax: 45.35.27.25.78.

Ian M. MACKAY

K.ST.J., LL.B., Master Mariner, Barrister and Solicitor. Founder Chairman of the New Zealand Branch and Former President of the Maritime Law Association of Australia and New Zealand, Chief Arbitration Commissioner for New Zealand, Chairman of the Maritime Safety Authority of New Zealand, 23A Perth Street, Ngāio, Wellington 4, New Zealand.

Roberto MAC LEAN UGARTECHE

Former Supreme Court Judge. Professor of International Law at the Law School of Universidad Mayor de San Marcos, Banco Central de Reserva del Perú, J.A.Miro Quesada N° 411 - Lima I, Perú.

Eamonn A. MAGEE, LL.B.,B.L.

Bachelor of Laws (Hons) Q.U.B., Barrister at Law, Insurance Corporation of Ireland Plc., Burlington House, Burlington Road, Dublin 4. Ireland. Tel: (353.1)702.30.00 - direct: (353.1)702.32.23 - Fax: (353.1)660.92.52.

B.N. MALOTT

Canadian Maritime Law Association, c/o Mr.J.A.Cantello, Osborn & Lange Inc., 360 St.Jacques West, Suite 2000, Montreal, Quebec. H2Y 1P5 Canada. Tel: (514)489.4161 - Fax: (514)849.4167 - Tlx: 055.60813.

Mohammed MARGAOUI

Vice-Président de la Chambre d'Arbitrage Maritime du Maroc, 30 Bld Mohammed V, Casablanca 01, Maroc. Tel: 27.19.41 - Tlx: 21969 - Fax: 26.18.99.

Antonio Ramon MATHE

Lawyer, Average Adjuster. Piedras 77. 6th Floor, 1070 Buenos Aires, Argentina. Tel: 343-8460/8484 - Fax: 334-3677 - Tlx: 22331.

Carlos MATHEUS GONZALEZ

Lawyer, Matheus & Ulloa, Asocs., Vice-President VMLA. Torre Banco Lara, piso 11, ofc. A-B Esquina Mijares, Caracas, 1010, Venezuela, Tel.: (58-2) 8611142 - Fax: (58-2) 838119 - Tlx: 27245.

Howard M. McCORMACK

Lawyer, Second Vice-President of the Maritime Law Association of the United States, Member of the firm of Healy & Baillie, 29 Broadway, New York, N.Y. 10006, U.S.A., Tel: (212)943-3980 - Fax: (212)425-0131.

Mrs. Petria McDONNELL

Solicitor, McCann Fitzgerald, 2 Harbournmaster Place. Custom House, Dock, Dublin 1, Ireland. Tel: 353.1.829.0000 - Tlx: 93.238 - Fax: 353.1.829.0010.

Brian McGOVERN

Senior Counsel, Law Library. Four Courts, Dublin 7. Ireland. Tel: 353.1.720.622

Titulary Members

J. Niall McGOVERN

Barrister-at-Law, President of the Irish Maritime Law Association, Honorary Vice-President of the Comité Maritime International. 23 Merlyn Park, Dublin 4, Ireland. Tel and Fax: 353.1.269.1782.

Dermot J. McNULTY

Barrister-at-Law, Maritime Consultancy Services Ltd., 44 Tongleeg Road, Dublin 5, Ireland. Tel. 353-1-848-6059 - Fax: 353-1-848-0562.

Hans G. MELLANDER

Former Vice-President and Legal Adviser to i.a. the Broström Group of Shipping Companies, the Eriksberg and Uddevalle Ship Yards and Svenska Handelsbanken, Delsjövägen 11, S-41266 Göteborg, Sweden.

Ignacio L. MELO Jr.

Lawyer, President of the Mexican Maritime Law Association, General Director of Asociación Nacional de Agentes Navieros, A.C., Montes Urales 365, Mexico 11000 D.F., Mexico.

Marcial José Z. MENDIZABAL

Doctor of law, Lawyer, Partner of Law Firm Edye, Roche, de la Vega Y Ray, 25 de Mayo 489-5th Fl., 1339 Buenos Aires, R. Argentina. Tel: 311-3011/ 14 - 313-6620/6617 - Fax: 313-7765 - Tlx: 27181.

Aurelio MENENDEZ MENENDEZ

Abogado, Presidente de la Comisión de Codificación, Rama Derecho Mercantil, Hermosilla 30, Catedrático de Derecho Mercantil, 28001 Madrid, Spain.

Jes Anker MIKKELSEN

Attorney at Law (Dragsted Advokat), 29 Toldbodgade, DK-1253 København K., Denmark. Tel: (45)33.33.88.88 - Fax: (45)33.13.40.44.

Dr. Ljerka MINTAS-HODAK,

Dr. iur., Deputy Prime Minister for International Policy and Social Affairs, Htzova 2, Zagreb, Croatia.

Kimio MIYAOKA

Board Counselor of the Board of Directors Nippon Yusen Kaisha, Vice-President of the Japanese Maritime Law Association, 2-3-2 Marunouchi, Chiyoda-Ku, Tokyo, C.P.O.Box 1250, Tokyo 100-91, Japan. Tlx: J 22236 (Yusen).

Alfredo MOHORADE

Doctor of law, Abogado, Sarmiento 412, 4th Fl., 1041 Buenos Aires, R. Argentina. Tel: 394-8223/7669 - Fax: 394-8223.

Enrique MONCLOA DIEZ CANSECO

Lawyer and Economist, Vice-President of Consorcio Naviero Peruano, Presidente Asociación Peruana de Derecho Marítimo, Director of Servicios Marítimos Internacionales, Alvarez Calderon n. 279, San Isidro, Lima, Perú.

John C. MOORE

Advocate, formerly Partner of Haight, Gardner, Poor & Havens, 195 Broadway, New York, N.Y. 10038, USA, formerly Secretary and formerly Vice-President of The Maritime Law Association of the United States. Home address, 102 Seabury Drive, Bloomfield, CT 06002-2650, U.S.A. (Tel.: 203-637-1555 or 637-5878 - Tlx.: 222974 HGPH).

Part I - Organization of the CMI

Mrs. Sumati MORARJEE

Chairman Emeritus of Scindia Steam Navigation Co., Bombay, c/o Scindia House, Narotan Morarjee Marg. Ballard Estate Bombay 400 038, India.

Hidetaka MORIYA

Lawyer, Braun Moriya Hoashi & Kubota, Room 911, Iino Building, 1-1, 2-chome, chisai-wai-cho, Chiyoda-ku, Tokyo - Tlx: 0.222.3753 LAWYER J - Fax: 3.3595.0985 - Tel: 3.3504.0251; Panel arbitrator of the Japan Commercial Arbitration Association and of the Japan Shipping Exchange Inc. Home: 33-17, Denenchofu 3-chome, Otaku, Tokyo, Japan.

James F. MOSELEY

Lawyer in Admiralty and Maritime Law, First Vice-President of the Maritime Law Association of the United States, President of Taylor, Moseley & Joynner P.A., 501 West Bay Street, Jacksonville, Florida 32202, U.S.A., Tel: 904/356-1306 - Fax: 904/354-0194 - Tlx: 5-6374.

Mme Françoise MOUSSU-ODIER

Chef du Service Juridique du Comité Central des Armateurs de France, 47 rue de Monceau, 75008 Paris, France. Tel: 1.45.62.03.06 - Fax: 45.62.02.08.

Walter MÜLLER

Docteur en droit, Conseiller Juridique, Vice-Président Honoraire du CMI, Ancien Président de l'Association Suisse de Droit Maritime, Aeussere Stammerau 10, CH-8500 Frauenfeld, Suisse. Tel: 41.54.21.73.56.

Norihiko NAGAI

Former President of Mitsui O.S.K. Lines Ltd, Vice-President of the Japanese Maritime Law Association c/o M.O.L. 2-1-1 Toranomom, Minatoko, Tokyo, Japan.

Masakazu NAKANISHI

Senior Managing Director of the Tokio Marine and Fire Insurance Co., Ltd., 2-1 Marunouchi 1-Chome, Chiyoda-ku, Tokyo 100, Japan. - Tlx: J24168 - Tel: 3.3285.1930/3 - Fax: 3.3215.2973. Home: 747-59 Ohzenji, Asoh-ku, Kawasaki-shi, Kanagawaken, Japan.

Bent NIELSEN

Lawyer, Reumert & Partners, Bredgade 26-DK-1260 Copenhagen K, Denmark. Tel: (45)33.93.39.60 - Fax: (45)33.93.39.50.

José Angel NORIEGA PEREZ

Doctor of law, Lawyer, Partner of law firm Arosemena, Noriega & Castro, Professor of civil and commercial law at the University of Panama, Member of the Academy of Law, member of the Banking Law Institute, former President of the Maritime Law Association, Member of the National Bar Association, of the Interamerican Bar Association and the International Bar Association. P.O. Box 5246, Panama 5, Panama.

Francis J. O' BRIEN

Lawyer, Former President of the Maritime Law Association of the United States, 21, West Street, New York N.Y. 10006, U.S.A.

Seiichi OCHIAI

Professor at the University of Tokyo, 2-1-12 Midori-cho, Koganei-shi, Tokyo, Japan. Tel: 3.3265.0770 - Fax: 3.3265.0873.

Michael A. ODESANYA

The Right Honourable Michael A. Odesanya, Former Judge of High Court of Lagos State of Nigeria, Former President O.A.U. Commission for Mediation, Conciliation and Arbitra-

Titulary Members

tion. Nigerian Maritime Law Association, 22a Jebba Street West, Ebute-Metta, Box 245, Lagos, Nigeria.

Chris O. OGUNBANJO

Chief Chris O. Ogunbanjo, Solicitor of the Supreme Court of Nigeria, President of the Nigerian Maritime Law Association. 3 Hospital Road, Box 245, Lagos, Nigeria.

Tsuneo OHTORI

Advocate, Emeritus Professor of the University of Tokyo, President of the Japanese Maritime Law Association, Honorary Vice-President of the Comité Maritime International, 2-6-4 Hirakawa-Cho, Chiyoda-ku, Tokyo, Japan.

Mrs. Maria Cristina de OLIVEIRA PADILHA

Judge of the Maritime Court, c/o Pedro Calmon Filho & Associados, Av. Franklin Roosevelt 194/8, 20021 Rio de Janeiro, Brasil. Tel: 220.23.23- Tlx:2121606 PCFA BR.

Manuel OLIVENCIA RUIZ

Catedrático de Derecho Mercantil de la Universidad de Sevilla, Delegado de España en Uncitral, Presidente de Comité Regional de Sevilla Asociación Española de Derecho Marítimo, Paseo de la Palmera 15, 41013 Sevilla, España.

Charles D. ONYEAMA

The Right Honourable Mr. Justice Charles D. Onyeama, Former Justice of the Supreme Court of Nigeria, Former Justice of the International Court at The Hague. Nigerian Maritime Law Association, 22a Jebba Street West, Ebute-Metta, Box 245, Lagos, Nigeria.

David R. OWEN

Advocate, Former President of the Maritime Law Association of the United States, 8028 Thornton Road, Towson, MD 21204, U.S.A. Tel: (410)583-5556 - Fax: (410)821-3107.

Claës PALME

Advocate, Honorary Member and former Honorary Secretary of the Swedish Association of International Maritime Law, Sturegatan 36B, S-11436, Stockholm, Sweden.

Richard W. PALMER

Advocate, Palmer Biezup & Henderson, Former President of The Maritime Law Association of the United States, 600 Chestnut Street, Public Ledger Building, Independence Square, Philadelphia, Pennsylvania 19106, U.S.A.

Roger PARENTHOU

Dispatcheur, Secrétaire Général Honoraire du Comité des Assureurs Maritimes de Marseille - Chargé d'Enseignement aux Facultés de Droit et de Sciences Politiques d'Aix-en-Provence et de Lyon, "La Michelière", Chemin des Garrigues, 83 147 Le Val, France.

Emilio PASANISI

Avocat, Conseiller à la Cour des Comptes, Via del Casaletto, 483, 00151 Roma, Italie. Tel: (06)534.63.36.

Mme Camilla PASANISI-DAGNA

Avocat, Conseiller de l'Association Italienne de Droit Maritime, Via del Casaletto 483, 00151 Roma, Italie. Tel: (06)534.63.36.

Gordon W. PAULSEN

Lawyer, Former President of The Maritime Law Association of The United States. Member of the Firm Healy & Baillie, 29 Broadway, New York, N.Y. 10006, U.S.A.

Part I - Organization of the CMI

Drago PAVIC

Doctor of law, Professor of Law, "Croatia" Insurance Corporation, Marine Association Limited, Branch Office Split, Kraj svete Marije 1, 58000 Split, Croatia. Tel: 385.58.35.57.71 - Fax: 385.58.48.949.

Allan PHILIP

Dr.Jur. Advocate, President of CMI, Professor at the University of Copenhagen, Vognmagergade 7, DK-1120 Copenhagen, Denmark. Tel: (45)33.13.11.12 - Fax: (45)33.32.80.45.

André PIERRON

Expert Répartiteur d'Avaries Communes, 3 Avenue de Saige, 33600 Pessac, France. Tel.: 56.45.03.47.

Knud PONTOPPIDAN

Advocate, Rederiet A.P.Möller, Esplanaden 50, DK-1298 Copenhagen K, Denmark - Tel: 45.33.63.33.63 - Fax: 45.33.63.36.44.

Alfred H.E. POPP Q.C.

Senior General Counsel Admiralty & Maritime Law Department of Justice, 239 Wellington Street, Room 524. Justice Building Ottawa, Ontario, K1A 0H8 Canada. Tel: (613)957.4666 - Tlx: 053.3603 - Fax: (613)996.9916.

Annar POULSSON

Former-Managing Director of the Assuranceforeningen Skuld, Hundsundv. 15, N-1335, Snaroya, Norway. Tel: 47.2.53.67.87.

Vincent Mark PRAGER B.A,B.C.L.

Partner of Stikeman, Elliott, 1155 Blvd. René-Lévesque W., 40th Flr., Montreal, Quebec, H3B 3V2, Canada. Tel: (514)397.3130 - Fax: (514)397.3222.

Manuel QUIROGA CARMONA

Lawyer LL.M. (Southampton), member of the Executive Committee of the Peruvian Maritime Law Association, Los Geranios N° 209, Lince, Lima, Perú.

Dieter RABE

Doctor of law, Attorney at Law, Sozietät Schön, Nolte, Finkelnburg & Clemm, Warburgstrasse 50, 20354 Hamburg, Deutschland. Tel: 040/41.40.30 - Fax: 040/41.40.31-30.

L.M.S. RAJWAR

Managing Director India Steamship Co.Ltd., 21 Hemanta Basu Sarani, Calcutta 700 001, India.

Jan RAMBERG

Professor of Law at the University of Stockholm, Honorary Vice President of the Comité Maritime International, Past President of the Swedish Maritime Law Association. Residence: Vretvägen 13, S-183 63 Täby, Sweden. Tel: 46.8.756.62.25/46.8.756.54.58 Fax: 46.8.756.24.60. / Office: AB Intralaw Birger Jarlsgatan 23, S-111 45 Stockholm, Sweden. Tel: 46.8.611.64.40/ 46.8.611.65.50 - Fax: 46.8.611.65.70.

Sigifredo RAMIREZ CARMONA

Captain-Colombian Merchant Marine, Lawyer-Admiralty law, Maritime surveyor, Lecturer at the Naval School and at the University, Carrera 15 N° 99-13, Of.503, Santafé de Bogotá, Colombia. Tel: 610.93.29/218.78.73 - Fax: 610.93.29.

*Titulary Members***Knut RASMUSSEN**

Barrister, Partner in the lawfirm Bugge, Arentz-Hansen & Rasmussen, Stranden 1, Postboks 1524 VIKÅ-0117 Oslo 1, Norway. Tel: (47)2.83.02.70 - Fax: (47)2.83.07.95.

Uffe Lind RASMUSSEN

Head of Division Danish Shipowners' Association, Amaliegade 33, DK-1256 København K, Denmark. Tel: (45)33.13.11.12 - Fax: (45)33.11.62.10.

José Domingo RAY

Professor Emeritus of the Faculty of Law and Social Science of the University of Buenos Aires, Member of the National Academy of Law and Social Science, President of the Argentine Maritime Law Association, Honorary Vice-President of Comité Maritime International, 25 de Mayo 489, 5th fl., 1339 Buenos Aires, Argentina. Tel: 311-3011/4 -313-6620/6617 - Tlx: 27181 - Fax: 313.7765.

George REDIADES

Avocat à la Cour du Pirée et à la Cour de Cassation, Akti Miaouli 41, 185 36 Le Pirée, Grèce. Tel: (301)429.4900/429.3880-1/429.2770 - Fax: (301)413.8593.

Patrice REMBAUVILLE-NICOLLE

Avocat à la Cour d'Appel de Paris. Membre du Barreau de Paris. Associé/Partner de la Société d'Avocats Rembauville Bureau et Michau, 161 Bld. Haussmann F-75008 Paris. France. Tel: (33)-1-45.63.63.36 - Fax: (33)-1-45.61.49.41.

Thomas M. REME

Doctor of law. Attorney at Law, Vice-President of the German Maritime Law Association, Röhreke, Boye, Remé & v. Werder, Ballindamm 26, 20095 Hamburg, Deutschland.

Mme Martine REMOND-GOUILLOUD

Professeur de Droit Maritime et de Transport, prix de l'Académie de Marine, diplômée de l'Institut des Etudes politiques de Paris, ancien auditeur de l'Institut des Hautes Etudes de Défense Nationale, Chevalier du Mérite Maritime: 19 Rue Charles V -F-75004 Paris. France. Tel: 33.1.42.77.69.30 - Fax: 33.1.42.77.71.73.

Rafaël REYERO A.

Lawyer. Legal Commercial Manager at Petroquímica de Venezuela S.A.(Pequiven), Professor at Escuela Superior de la Marina Mercante, Caracas. Calle Maneucre quinta "R.R.". El Marques, Caracas. Venezuela.

Walther RICHTER

Doctor of law. Professor, Former President of the Hanscatisches Oberlandesgericht Bremen, Former President of the Deutscher Verein für Internationales Seerecht, Mackensweg 4, 28195 Bremen, Deutschland.

Frode RINGDAL

Professor, Former President of the Norwegian Maritime Law Association, Partner Law Firm Vogt & Co, Roald Amundsensgt. 6, P.O.Box 1503 Vika, N-0117 Oslo, Norway. Tel: 47.22.41.01.90 - Fax: 47.22.42.54.85 - Tlx: 71236 LAWAD N.

José Luis RODRIGUEZ CARRION

University Commercial Law Professor-Master Mariner, c/o Estudios Marítimo Mercantil. Abogados, Av. Ramon de Carranza 20, 11006 Cadiz, Spain. Tel: (56)25.22.00 - Fax: (56)26.16.55/25.40.16.

Jean-Serge ROHART

Avocat à la Cour, membre du Conseil Exécutif du CMI, Villeneau Rohart Simon & Associés, 12 Bld. de Courcelles, F-75017 Paris. France. Tel: 1.46.22.51.73, Fax: 1.47.66.06.37.

Part I - Organization of the CMI

Roger ROLAND

Avocat, Président de l'Association Belge de Droit Maritime. Chargé de cours de droit maritime et des transports, ainsi que d'assurances maritimes à la Faculté de Droit de l'Université d'Anvers, Directeur et rédacteur de la revue de la Jurisprudence du Port d'Anvers, Schiermerstraat 30, 2000 Antwerpen, Belgium. Tel: (03) 203.43.30/1 - Fax: (03)203.43.39.

F. ROMERO CARRANZA

Doctor of law, Lawyer. Professor of Navigation Law at the Faculty of Law at the National Buenos Aires University. Member of the Executive Council of the Argentine Maritime Law Association. c/o Richards, Romero Carranza & Szeimbaum, L.N. Alem 1067, 15th Fl., 1001 Buenos Aires, Argentina. Tel: 313-6536/9619 - 311-1091/9 - Fax: 313-6875/9343/6066.

Robert ROMLÖV

Advocate, partner Advokatfirman Vinge, P.O.Box 11025-S-40421 Göteborg, Sweden, Past President Gothenburg Maritime Law Association. Vice-President of the Swedish Maritime Law Association. Tel: 46.31.805.100 - Tlx: 21119 Vinge S. - Fax: 46.31.158.811.

Annibale ROSSI

Directeur adjoint de La Neuclateloise-Assurances, Rue de Monruz 2, 2002 Neuchatel, Suisse. Tel: 038/23.52.44 - Fax: 038/23.55.55.

Sjoerd ROYER

President of the Supreme Court of the Netherlands. Member of the Permanent Court of Arbitration, P.O.Box 20303,2500 EH The Hague, Nederland.

Fernando RUIZ-GALVEZ y LOPEZ de OBREGON

Abogado, Velasquez 20, 28001-Madrid, Spain.

Fernando RUIZ-GALVEZ VILLAVERDE

Professor of Maritime Law, European Institute of Maritime Law, Gijon. Spanish Maritime Institute, Madrid. Ruiz-Gálvez Abogados, c/Alfonso XI, N. 7, 2º Izqda, 28014, Madrid, Spain. Tel.: 532.00.62 - Fax: 532.38.97.

Christer RUNE

Chief Justice Svea Court of Appeal, Stenkullavägen, 6, S-112 65 Stockholm, Sweden.

Richard RUTHERFORD

Adjuster of Marine Claims 10, Glebelhyrst, Sanderstead (Surrey)England.

Yuichi SAKATA

Attorney at Law, Legal Adviser to the Japanese Shipowners' Association and Nippon Yusen Kabushiki Kaisha etc., Honic: 1-13-1214 Shiohama 1-chome, Koto-ku, Tokyo 135, Japan - Tel: 3.3646.3135 - Fax: 3.3615.5697. Office: Suite 1004, Yusen Building, 3-2, Marunouchi 2-chome, Chiyoda-ku, Tokyo 100, Japan - Tel: 3.3284.0291 - Fax: 3.3285.0450.

Ronald John SALTER

Solicitor, former President of the Maritime Law Association of Australia and New Zealand, Member of the Executive Council of CMI, Chairman of Partners of Phillips Fox, 120 Collins Street, Melbourne, Victoria 3000, Australia. Tel: (3)274.5000 - Fax: (3)274.5111.

Fernando SANCHEZ CALERO

Abogado Catedrático de Derecho Mercantil en la Universidad de Madrid, Anct. Président de l'Association Espagnole de Droit Maritime, Quintana, 2-2º, 28008, Madrid, Spain.

*Titulary Members***Soren M. THORSEN**

Advocate, Reumert & Partners, Landsretssagfører, Bredgade 26, DK-1260 København K., Denmark. Tel: (45)33.93.39.60 - Fax: (45)33.93.39.50.

Alain TINAYRE

Avocat, Ancien Membre du Conseil de l'Ordre. Cabinet Tinayre, Duteil, Tardieu & Associés. 7, Rue Moncey F-75009 Paris, France. Tel: (1)45.26.35.81 - Tlx: 648.494 Avoclex - Fax: (1)48.74.69.78.

Shûzo TODA

Professor at the Faculty of Law of the University of Chûo, 9-15, 2 chome. Sakurazutsumi, Musashino-Shi, Tokyo, Japan.

Armando TORRES PARTIDAS

Doctor of law, Former President of the Asociación Venezolana de Derecho Marítimo, Abogado, Centro Parque Carabobo, piso 5, Ofic.511, Av. Universidad entre Monroy y Miseri-cordia, Caracas, Venezuela. Tlx: 24999.

Lionel TRICOT

Avocat, Ancien Président de l'Association Belge de Droit Maritime, Professeur Extraordinaire Emérite à la Katholieke Universiteit Leuven, Professeur Emérite à UFSIA-Anvers, Italiëli 108, B-2000 Antwerpen 1, Belgique. Tel: (03)233.27.66 - Fax: (03)231.36.75.

Sergio TURCI

Lawyer, Studio Legale Turci. Via R. Ceccardi 4/30 - I-16121 Genova, Italia. Tel: (10)553.52.50 - Tlx: 272205 Turci - Fax: (10)595.414.

Wagner ULLOA FERRER

Lawyer, Past-President Asociación Venezolana de Derecho Marítimo, Torre Banco Lara, piso 11. Ofic.A-B, Esquina de Mijares, Caracas 1010, Venezuela, Tlx: 27.245 - Fax: (02)83.81.19.

Anders ULRIK

Barrister, Deputy Director, Assuranceforeningen Skuld and Danish Shipowners' Defense Association, Frederiksborggade 15, DK-1360 København K., Denmark. Tel: 33.11.68.61 - Fax: 33.11.33.41.

Percy URDAY BERENGUEL

Doctor of law, Lawyer LL.M.(London), Secretary-General of the Peruvian Maritime Law Association, Chacarilla No 485, Lima 27, Per'u.

Rodrigo URIA GONZALEZ

Avocat, Catedrático de Derecho Mercantil, Hermosilla 30, 28001 Madrid, Spain.

Jozef VAN DEN HEUVEL

Ancien Bâtonnier et avocat, Professeur Extraordinaire: Vrije Universiteit Brussel, Professeur au RUCA Antwerpen, Schermersstraat 30, B-2000 Antwerpen 1, Belgique. Tel: 03/203.43.00 - Fax: 03/203.43.19.

Gertjan VAN DER ZIEL

Professor of Transportation Law at Erasmus University Rotterdam, General Counsel, Nedlloyd Lines BV, P.O.Box 240, 3000 DH Rotterdam. 40 Boompjes, 3011 XB Rotterdam, Holland, Tel: (10)400.66.71 - Tlx: 24690 nedl nl - Fax: (10)400.70.30.

Part I - Organization of the CMI

Jacques VAN DOOSSELAERE

Avocat, Co-directeur de la revue de la Jurisprudence du Port d'Anvers, membre du Conseil Général de l'Association Belge de Droit Maritime, Van Breestraat 25, B-2000 Antwerpen 1, Belgique. Tel: 03/232.17.85 - Fax: 03/234.03.61.

Philippe van HAVRE

Docteur en droit et dispacheur, Firms Langlois & Co, Frankrijklei 115, B-2000 Antwerpen 1, Belgique. Tel: 03/225.06.55 - Fax: 03/232.88.24.

Jean VAN RYN

Avocat honoraire à la Cour de Cassation, Professeur honoraire à l'Université Libre de Bruxelles, Anct. Vice-President de l'Association Belge de Droit Maritime, Avenue Louise 113, 1050 Bruxelles, Belgique.

Antoine VIALARD

Professeur de Droit Maritime à la Faculté de Droit, des Sciences Sociales et Politiques de l'Université de Bordeaux, Avenue Léon-Duguit, 33604 Pessac, France. Tel: 56.84.85.58 - Fax: 56.37.00.25.

Ricardo VIGIL TOLEDO

LL. M., Advocate, former Vice-President of the Peruvian Maritime Law Association, Chief, Maritime Legislation Section, Services Development, Shipping Division of UNCTAD Palais des Nations, Room E.10076, CH1211 Geneva 10, Switzerland.

Michael VILLADSEN

Lawyer, Advokatfirmaet Boel, Tiendeladen 7, Box 1363, DK-9100 Aalborg, Denmark. Tel: (45)98.10.20.15 - Fax: (45)98.12.65.65.

Enrico VINCENZINI

Avocat, Président du Comité Toscan de l'Association Italienne de Droit Maritime, Scali D'Azeglio 52, 57123 Livorno, Italie. Tel: (0586)897121 - Tlx: 500093 Vincelex - Fax: (0586)894474.

Henri VOET

Docteur en droit, Dispacheur, trésorier du CMI, Acacialaan 20, B-2020 Antwerpen, Belgique.

Henri VOET Jr.

Docteur en Droit, Dispacheur, Henry Voet-Genicot, Mechelsesteenweg 203 (bus 6) B-2018 Antwerpen 1, Belgique. Tel: (03)218.74.64 - Fax: (03)218.67.21.

Kenneth H. VOLK

Lawyer, Past President of the MLA of the United States. Partner in McLane, Graf, Raulerson & Middleton, Forty Congress Street, P.O.Box 4316, Portsmouth, N.H. 03802-4316, U.S.A. Tel: 603.436.2818 - Fax: 603.436.5672.

Enzio VOLLI

Professeur de droit maritime, Président du Comité de Trieste de l'Association Italienne de Droit Maritime, Via S. Nicolò 30, I-34131 Trieste, Italie. Tel: (040)68.384 - Tlx: 460425 - Fax: (040)360.263.

Kurt VON LAUN

Doctor of law, Goethestrasse 2a, 61350 Bad Homburg v.d.H., Deutschland.

Titulary Members

Alexander von ZIEGLER

Doctor of law, Avocat, LL.M. (Tulane), Président de l'Association Suisse de Droit Maritime. Chargé de cours de droit maritime et aérien à la Faculté de Droit de l'Université de Zürich. Postfach 6333, Löwenstrasse 19, CH-8023 Zürich, Suisse. Tel: 41.1.215.52.75-Tlx: 813182 SVSRCH - Fax: 41.1.221.11.65.

D.J. LLOYD WATKINS

Barrister, Secretary and Treasurer of the British Maritime Law Association, 3rd Floor, 78 Fenchurch Street, London EC3M 4BT, England - Tel: 171-4880078 - Tlx: 884444 - Fax: 171-4807877.

Francisco WEIL

Average Adjuster and Honorary Treasurer of the Executive Council of the Argentine Maritime Law Association, c/o Ascoli & Weil, Juan D.Peron 328, 4th Fl., 1038 Buenos-Aires, Argentina, Tel: 342.0081/3- Fax: 361.7150.

Peter WILLIS LL.B.

Former President of The Maritime Law Association of Australia & New Zealand, Solicitor, 35 Thornton Street, KEW. 3101, Australia. Tel: 861 9828.

Frank L. WISWALL, Jr.,

J.D., Ph.D.jur. (Cantab) of the Bars of Maine, New York and the U.S. Supreme Court, Attorney and Counselor at Law, Proctor and Advocate in Admiralty. Former Chairman of the IMO Legal Committee. Professor at the World Maritime University, the IMO International Maritime Law Institute and the Maine Maritime Academy. Executive Councillor of the CMI. P.O.Box 201, Castine, Maine 04421-0201, USA. Tel: 207-326-9460 - Fax: 207-326-9178.

R. WOLFSON

Advocate, Past President of the Israel Maritime Law Association, 63, Haazmuth Road, P.O.Box 33.381 Haifa, 31.333 Israel.

Akihiko YAMAMICHI

Attorney at Law, Member of the Japanese Maritime Arbitration, Senior Partner Yamamichi & Uono, 2-10-22, Kugenuma Sakuragaoku, Fujisawa, Kanagawaken, Japan.

Tomonobu YAMASHITA

Secretary-General of the Japanese Maritime Law Association, Professor of Law, Faculty of Law, The University of Tokyo, Hongo 7-3-1-, Bunkyo-ku, Tokyo 113, JAPAN.

PART II

The Work of the CMI

JOINT WORKING GROUP ON A STUDY OF ISSUES RE CLASSIFICATION SOCIETIES

HAMBURG, 16 JANUARY 1996

REPORT

The Joint Working Group on a Study of Issues re Classification Societies (**CSJWG**) was formed in 1992 upon an initiative of the Executive Council of the Comité Maritime International (**CMI**). The issues taken under consideration centre upon the legal rights, duties and liabilities of the Classification Societies, and the relationship between the Societies and the shipowners. The principle upon which the CSJWG was established is that measures which are adopted through cooperative efforts within the industry are generally felt preferable to those which originate outside the industry. The premise for this undertaking is that the Classification Societies play a unique and increasingly vital role in the promotion of maritime safety and environmental protection; a unique role because the Societies carry out as agents of governments the statutory survey and certification which is established and mandated by law, while they also perform their traditional private classification function applying rules established by the Societies in cooperation with the industry; an increasingly vital role because a broader range of statutory work is being delegated to the Societies by more governments, while at the same time both the regulations established by law and the classification rules grow in complexity. As expressed in the judgment of the House of Lords in the case of *The Nicholas H.*, the present-day role of the Societies is “to promote safety of life and ships at sea in the public interest.”¹

A serious problem was felt to be the increasing frequency of claims against the Classification Societies as additional ‘deep pocket’ defendants. If this increase in the claims exposure of the Societies were to continue unchecked, the Societies could, *in extremis*, be forced to withdraw some of the services which they perform in the public interest — the necessary result being a deterioration in maritime and

¹ [1995] 2 Ll. Rep. 299, 311 (H.L.E.), per Lord Steyn.

Part II - The Work of the CMI

environmental safety. Since the problem revolves around maritime private litigation of civil liability, CMI was felt to be particularly well equipped to organize a study of the issues and to assist in formulating recommendations. CMI has provided organizational and secretariat services for the Group.

The CSJWG has held eleven working sessions over the last three and one-half years. The individuals contributing to this effort have brought to bear a wide variety of relevant experience, largely gained in work with the international organizations most concerned with the subject. However, it is to be understood that the participation of these individuals as members of the Group is wholly without prejudice, and does not imply *a priori* any endorsements of the work product.

It is the consensus of the Group that the most broadly acceptable solution to the Societies' increased exposure to claims is to attack the problem at its roots in a preventive manner. One of the sources of difficulty has been that what the Societies do, and how and on whose behalf they do it, is not set forth to the general public in any uniform manner. For this reason the CSJWG has formulated Principles of Conduct for Classification Societies (see Annex A to this Report, dated Hamburg, 16 January 1996), setting forth standards which may be applied to measure the conduct of a Society in a given case. The Principles of Conduct cover the activities of the Societies with respect to statutory as well as classification surveys, and in order to achieve the desired end, the Principles of Conduct are intended to be applicable to *all* Classification Societies including those who are not members of the International Association of Classification Societies (IACS). Likewise the Principles of Conduct must apply whether or not a given Society is organized as a privately-owned corporation, or is established and/or owned by a Government and organized as a public corporation, or is otherwise structured.

A demonstrated adherence to these published standards should be held as *prima facie* evidence that the Society concerned in a case of maritime loss had not acted in a negligent manner. A claimant would in such case need to prove either that the Society had not complied with the Principles of Conduct or that these standards were so obviously deficient in the respect material to the case that the Society could not reasonably have applied them. The Group is nonetheless aware that experience may from time to time require review and adjustment of the Principles of Conduct by the Group.

Virtually from the outset of its work, the Group has considered whether the Classification Societies should be brought within the ambit of the International Convention on Limitation of Liability for Maritime Claims; its conclusion is that this must remain a long-term

Classification Societies

possibility which should be re-examined at such time as a substantial revision of the Convention is next considered by the International Maritime Organization (IMO). It is the strong consensus of the Group that the Classification Societies should be put on an equal footing with other presently-covered sectors of the industry and afforded protection under an international convention on Limitation of Liability; but because inclusion of the Societies under the umbrella of the 1976 Limitation Convention could not in any foreseeable circumstances be achieved quickly enough to provide an answer to the present concerns, the CSJWG has produced a set of model contractual clauses (see Annex B to this Report, dated Hamburg, 16 January 1996) which, *inter alia*, regulate and limit the liability of the Societies. In the form now proposed by the Group, these clauses stand as recommended models for use by individual Societies, which may modify them in accordance with commercial practice, particular national law or regulation, or otherwise as found appropriate.

The model clauses are divided into Part I dealing with agreements between the Classification Societies and Governments concerning statutory survey and certification work, and Part II dealing with the Rules for classification of ships — in so far as these Rules form part of the agreement between the Classification Society and the shipowner. Part I is self-explanatory. As to the regulation of liability arising in the performance of statutory survey and certification work, it is the view of the Group that because of the inherent public policy issues this is best dealt with by encouraging the adoption of national legislation as well as embodying the appropriate provisions in the agreements between Classification Societies and Governments. Part II of the model clauses is subdivided into an enumeration of the responsibilities of the Societies and the shipowners respectively on the one hand, and the liability and contractual limitation of the Societies on the other hand.

With regard to the exposure of the Classification Societies to claims both by shipowners and by third-party plaintiffs, it is important to note at the outset that there has been no attempt to give the Societies any immunity from suit upon a claim arising out of activities related to the Rules; it is a strongly-held view within the Group that civil litigation and/or the threat of litigation operates as a spur to awareness of the damaging consequences of certain acts or omissions. The Societies which accept the model clauses will by so doing recognize the duty of reasonable care (or its equivalent under applicable national law) towards the shipowners in the performance of their classification functions.

In developing the provisions of the model clauses, which provide

Part II - The Work of the CMI

some limitation of the civil liability of the Classification Societies, a number of alternatives were considered. Foremost among these was the basing of limitation upon the tonnage (grt) of the ship in question, as in the Limitation Convention and commonly in national laws regarding shipowners' limitation of liability. But while the classic limitation of a shipowner's liability has been the *fortune de mer* — the value of the ship, tackle, and pending freight — this is not a valid measure of the risk of a Classification Society, which performs essentially the same services regardless of the size or value of the classed ship. Uniform among the Rules of the various Classification Societies is the declaration that classification and certification do not constitute a warranty of the seaworthiness of the ship; that is not and has never been the purpose of classification. It is not the ship, but the service rendered by the Society — whose value is measured by the amount of the fee for the service which is payable by the shipowner — which in the consensus of the Group forms the fairest and most accurate basis upon which to calculate a limitation of liability.

In formulating the clauses dealing with limitation of liability, the Group examined a number of provisions presently existing in the Rules of several Societies. For example, the limitation of a multiple of the relevant fee in the Rules of one Society is 5, with a set amount of liability if no fee has been charged. The multiple of fee in the Rules of another Society is 10 or a stated amount - whichever is greater. This limitation may be increased in some instances by the purchase of a higher multiple: the Rules of one Society provide that a multiple of up to 25 may be secured by the shipowner prior to actual performance of the service(s), upon payment of an additional fee for each unit of increase in limitation. Based upon such examples of current practice, the Group has proposed clauses which base limitation of liability upon the fees charged by the Societies. Determination of the limitation multiple will reflect both market conditions and applicable law, and it is assumed that the actual number (represented by "X" in Annex B clause 9(a)) will be considerably influenced by the provision on breakability of the limit (see Annex B, clause 9(d)).

Thanks are due to those who have given freely of their time to participate in this work —

On behalf of the Comité Maritime International (CMI) —

W. R. Birch Reynardson, C.B.E., Vice-President

Jørgen Bredholt, Esq., Titulary Member

C. W. H. Goldie, Esq., Titulary Member

Karl-Johan Gombrii, Esq., Executive Councillor

Classification Societies

Dr. Bernd Kröger, Titulary Member
 Prof. Dr. Allan Philip, President ²

On behalf of the International Association of Classification Societies (IACS) —

Dr. Philippe Boisson, Bureau Veritas (BV)
 J. T. Harrison, Esq., Lloyd's Register of Shipping (LR)
 Ms. Gesa Heinacher-Lindemann, Germanischer Lloyd (GL) ²
 W. J. O'Brien, Esq. and Ms. S. M. Barton, American Bureau of Shipping (ABS)
 A. W. Skou, Esq., Det Norske Veritas (DNV)

On behalf of the International Chamber of Shipping (ICS) —

J. C. S. Horrocks, Esq., Secretary-General
 Ms. Linda Howlett, Legal Adviser

On behalf of the International Chamber of Commerce (ICC)

Bruce Farthing, Esq., Rapporteur, ICC Commission on Maritime and Surface Transport

On behalf of the International Association of Dry Cargo Shipowners (INTERCARGO) —

Bruce Farthing, Esq., Consultant Director

On behalf of the International Group of P & I Clubs (IGP&I) —

G. E. Greenwood, Esq., Steamship Mutual Club
 R. J. Palmer, Esq., U.K. Club
 D. J. L. Watkins, Esq., Secretary and Executive Officer of IGP&I

On behalf of the International Union of Marine Insurance (IUMI) —

Mr. Morten Hjemseter, Uni Storebrand ²
 Dr. A. von Ziegler, General Secretary of IUMI

On behalf of the Oil Companies International Marine Forum (OCIMF)

Mr. E. J. M. Ball, Director ²

On behalf of the International Maritime Organization (IMO)

E. Magnus Göransson, Esq., Director,
 Legal Affairs and External Relations Division

Respectfully submitted,

DR. F. L. WISWALL, JR.
 Chairman of the Joint Working Group
 Executive Councillor, CMI

² (Attended a single Session of the CSJWG)

ANNEX A

PRINCIPLES OF CONDUCT FOR CLASSIFICATION SOCIETIES

INTRODUCTION:

1. The following Principles of Conduct for Classification Societies have been drafted on the initiative of the Comité Maritime International (CMI) by a Joint Working Group of representatives of concerned Non-Governmental International Organizations, as described in the Group's Report. These Principles of Conduct are intended to be consistent with and to develop further the Guidelines for the authorization of Organizations acting on behalf of the Administration, as established by the International Maritime Organization (IMO).¹

2. Each Classification Society which adopts these Principles of Conduct shall maintain a status under national law such that, with respect to the surveys which it carries out and the reports and certificates which it issues, it stands independent of shipowners,² governments (except when acting as the agent of a government for purposes of statutory survey and certification) and all other parties having an interest in classification or statutory certification of a ship or ships.³ The Classification Society shall not enter into any agreement or understanding which would contravene its independence.

3. Each Classification Society which adopts these Principles of Conduct shall ensure that the agreed services pursuant to its Rules for classification or its agreement for statutory certification are performed impartially and in good faith.

4. Each Classification Society which adopts these Principles of Conduct undertakes via its contracts with clients to perform all agreed services related to ship classification and statutory certification using reasonable skill, care and judgment.

5. Each Classification Society which adopts these Principles of Conduct accepts the following duties:

(a) To publish Rules for the classification of ships and Guidelines for other services, to review them regularly, and to update them when necessary;

(b) To carry out its plan appraisal and its surveys in accordance with the requirements set forth in its Rules and Regulations and its other published requirements;

(c) To establish and maintain an international network of offices to provide survey and certification services where they are customarily required;

¹ See, e.g., Res. A.789(19) of November 1995.

² "Shipowner" for the purposes of these Principles of Conduct shall mean the individual or juridical person in a contractual relationship with the Classification Society.

³ "Ship" for the purposes of these Principles of Conduct shall include any type of vessel which is classed with or otherwise surveyed or certificated by the Classification Society.

Classification Societies

(d) To employ suitably qualified staff;

(e) To achieve and to maintain compliance with the International Association of Classification Societies (IACS) Quality System Certification Scheme (QSCS), as revised, or, at the discretion of the individual society, with a published quality system based upon the ISO 9000 series of quality system standards and which is at least equivalent to the IACS QSCS in effect; and

(f) To carry out a programme of technical research and development related, but not necessarily confined, to improvement of ship and equipment safety and of classification standards.

6. The provisions of the quality system of the classification society shall govern all matters related to performance, conduct and objectives.

STANDARDS OF PRACTICE AND PERFORMANCE:

Each Classification Society which adopts these Principles of Conduct undertakes to exercise the following standards of practice and performance in discharging its duties and responsibilities:

A: TECHNICAL, ADMINISTRATIVE AND MANAGERIAL:

(a) To establish and maintain such personnel and management structure as will ensure the performance of agreed services in accordance with its respective quality system;

(b) To maintain its Rules, Regulations and Guidelines in a systematic form;

(c) To take such action with regard to the application of its Rules, Regulations, Guidelines and other requirements as will facilitate compliance with them;

(d) To comply with the applicable requirements of national maritime Administrations for the statutory survey and certification duties delegated to it in respect of ships flying their respective flags.

B. TECHNICAL PERSONNEL:

(a) To establish and maintain appropriate standards for training and qualification of its technical staff;

(b) To establish and maintain periodic reviews of such standards for training and qualification;

(c) To require, prior to an individual's performance of plan appraisal, surveys or other engineering services, education of such technical staff by means of successful completion in a recognized institution⁴ of a course of relevant technical studies; and either

⁶ The term "recognized institution" includes but is not limited to:

(i) degree-granting academic institutions; and

(ii) training organizations or programs certified by flag Administrations in accordance with standards established by the International Maritime Organization.

Part II - The Work of the CMI

- (i) successful completion of a programme of technical training;⁵ or
- (ii) sufficient and documented prior employment experience at an appropriate technical level and relevant to their authorized tasks.

C. CERTIFICATES AND REPORTS:

(a) To issue classification reports and, where appropriate, certificates in conformity with its Rules and Regulations, and to issue statutory certificates in accordance with the applicable requirements of national maritime Administrations.

(b) To maintain records of the documents referred to in (a) for so long as the ship in question remains classed by the Society, plus a further period of at least five (5) years thereafter.

(c) To make copies of the documents referred to in (a) available:

- (i) upon request, to the owner or other person in an equivalent contractual relationship with the Society;
- (ii) to third parties when authorized by the owner or other person in writing or by judicial or administrative process; and
- (iii) to the flag or other national Administration having the necessary legal authority.

(d) To publish periodically a register containing the principal particulars of ships relevant to classification

D. CONFIDENTIALITY:

Subject to Section C above, each Classification Society which adopts these Principles of Conduct undertakes to treat as confidential all documents, materials and information relating to classification and statutory matters.

⁵ "The RO [Recognized Organization] should have implemented a documented system for qualification of personnel and continuous updating of their knowledge as appropriate to the tasks they are authorized to undertake. This system should comprise appropriate training courses including, inter alia, international instruments and appropriate procedures connected to the certification process, as well as practical tutored training; and it should provide documented evidence of satisfactory completion of the training." Report of the IMO Sub-Committee on Flag State Implementation, FSI3/17, 23 March 1995, Annex 5, p.8.

ANNEX B

MODEL CONTRACTUAL CLAUSES

INTRODUCTION

The following model contractual clauses have been drafted on the initiative of the Comité Maritime International (CMI) by a Joint Working Group of representatives of concerned Non-Governmental International Organizations, as described in the Group's Report. These clauses are intended to reflect the increasingly important role which Classification Societies play in maritime affairs with regard to safety, not only in the performance of quasi-governmental functions with regard to statutory survey and certification but also in the performance of their traditional classification work for the maritime industry.

In this regard, attention is called to IMO Assembly Resolution A.789(19) and MSC Circ. 710 / MEPC Circ. 307 on Guidelines for the Authorization of Organizations Acting on Behalf of the Administration,¹ and to EU Council Directive 95/57/EC of 22 November 1994 on Common Rules and Standards for Ship Inspection and Survey Organizations, &c.

The model clauses define and clarify, subject to applicable national law, the circumstances under which the civil liability of the Societies and their employees and agents should be regulated or limited. The rationale for such regulation and limitation is set forth in the Group's Report.

These model clauses are intended to be read in conjunction with both the Report and the Principles of Conduct for Classification Societies produced by the same Joint Working Group and dated 16 January 1996.

MODEL CLAUSES

PART I: For inclusion in agreements between the Societies and Governments

1. (a) The duties and functions of [*Classification Society*] pursuant to this agreement are as specified in Annex I attached.²

(b) [*Government*] shall be given the opportunity to verify that the quality system and performance of [*Classification Society*] continues to comply with the requirements specified in Annex I attached. In this regard [*Government*] may utilize appropriate audit methods, including recognition of audits performed on [*Classification Society*] by an independent body of auditors effectively representing the interests of [*Government*], such as the IACS QSCS auditors. The Principles of Conduct for Classification Societies referred to in the Introduction

¹ As expanded in the Reports and Annexes of the Flag State Implementation Subcommittee (FSI) of the IMO's MSC and MEPC, currently FSI 3/17 [23 March 95], 8.35-8.38 and Annex 6, 6.5-6.6.

² A model for Annex I is not offered. It is intended that Annex I should contain the technical and operational requirements to be agreed between the Government and the Classification Society.

Part II - The Work of the CMI

above shall be the standard ³ for measurement of performance by [*Classification Society*].

(c) [*Classification Society*] shall report to [*Government*], in accordance with the procedures agreed between them, the information specified in Annex II⁴ concerning surveys and certification performed by [*Classification Society*] on behalf of [*Government*], and shall promptly notify [*Government*] of any change in the status of the classification of a ship which is classed by [*Classification Society*] and is flying the flag of [*State*].

2. In carrying out the duties and responsibilities specified in Annex I, whether pursuant to applicable international agreements, conventions, national legislation, or this agreement, [*Classification Society*] acts solely as the agent of [*Government*], under whose authority or upon whose behalf it performs such work.

3. In any claim arising out of the performance of a duty or responsibility, or out of any certification with regard to work covered by Annex I, [*Classification Society*] and its employees and agents shall be subject to the same liabilities and be entitled to the same defenses (including but not limited to any immunity from or limitation of liability) as would be available to [*Government's*] own personnel if they had themselves performed the work and/or certification in question.⁵

PART II: For inclusion in the Rules of the Societies (which contain the terms of agreements between the Societies and Shipowners)

4. Responsibilities of [*Classification Society*] —

(a) [*Classification Society*] when acting pursuant to these Rules certifies the classification of a ship ⁶ to the shipowner,⁷ and does not certify the condition of the ship for any purpose other than the assignment of classification under these Rules.

(b) In carrying out its obligations pursuant to these Rules, [*Classification Society*] agrees that the Principles of Conduct for Classification Societies referred to in the Introduction above shall be the standard for performance of its services.

³ Without prejudice to the application of other internationally-agreed standards which are at a minimum substantially equivalent to those contained in the Principles of Conduct.

⁴ It is intended that Annex II should contain the detailed reporting requirements to be agreed between the Government and the Classification Society.

⁵ References to applicable provisions of national law should be added following the text of the clause.

⁶ "Ship" for the purposes of these Principles of Conduct shall include any type of vessel which is classed with or otherwise surveyed or certificated by the Classification Society.

⁷ "Shipowner" for the purposes of these Principles of Conduct shall mean the individual or juridical person in a contractual relationship with the Classification Society.

Classification Societies

5. Responsibilities of the shipowner —

(a) It is the responsibility of the shipowner:

- (i) to maintain a classed ship, its machinery and equipment in compliance with the Rules and requirements of [*Classification Society*]; and
- (ii) to operate the ship in accordance with all applicable Rules and conditions of class.

(b) It is the responsibility of the shipowner to ensure:

- (i) that plans and particulars of any proposed alterations to the hull, equipment or machinery which could invalidate or affect the classification of the ship are submitted to [*Classification Society*] for prior approval; and
- (ii) that all repairs or modifications to hull, equipment or machinery which are required in order that a ship may retain her class are carried out by the shipowner in accordance with the Rules and requirements of [*Classification Society*].

(c) It is the responsibility of the shipowner:

- (i) to make a classed ship available for survey in such a manner, location and condition as to ensure that all surveys necessary for the maintenance of class can be carried out by [*Classification Society*] at the proper time and in accordance with the Rules and requirements of [*Society*]; and
- (ii) to ensure that there is compliance with the requirements of [*Classification Society*] resulting from such surveys.

(d) It is the responsibility of the shipowner to inform [*Classification Society*] without delay:

- (i) of any change of the ship's flag, ownership, management or name ;
- (ii) of any collision or grounding of the ship;
- (iii) of any other damage, defect, breakdown, incident of navigation or proposed repair which might invalidate or affect the ship's classification; and
- (iv) of any change in the intended or actual use of the ship which might invalidate or affect the ship's classification.

6. A failure by the shipowner to fulfill the foregoing responsibilities may in the reasonable exercise of discretion by [*Classification Society*] result in, among other measures, suspension or cancellation of classification or the withholding of certificates or reports by [*Society*].⁸

7. [*Classification Society*] shall not be liable for any claim arising out of the performance of services pursuant to these Rules where such claim arises out of an act or omission:

⁸ It is recognized that it is also a common practice of Classification Societies to provide in their Rules that failure of the shipowner to make timely payment of fees charged for services rendered may, in the reasonable exercise of discretion by the Society concerned, result in suspension or cancellation of classification or the withholding of certificates or reports.

Part II - The Work of the CMI

(a) attributed to [Society] or its employees, agents or other persons acting on behalf of [Society], unless such act or omission violates the standard of reasonable care;⁹ or

(b) by any employee of [Society] acting outside the terms or scope of his employment; or

(c) by any agent or other person acting on behalf of [Society], when such act or omission exceeds the authority granted in writing by [Society] to such agent or such other person.

8. Without prejudice to clause 7 above, in any claim arising out of the performance of services pursuant to these Rules, [Classification Society] shall be liable only for losses resulting directly from its act or omission. In no event shall [Classification Society] be liable for any indirect or consequential losses.

9. (a) Without prejudice to clause 7 above, any liability of [Classification Society] for a claim arising out of the performance of a service pursuant to these Rules shall be limited to the amount of the fee specified or calculated by [Society] in respect of the service in question, multiplied by "X".¹⁰

(b) If any claims are made against an employee or agent or other person in respect of whose act or omission [Classification Society] is found liable, such person shall be entitled to avail himself of the limitation of liability provided in sub-paragraph (a) of this paragraph, unless it is proved that the damage giving rise to the claim(s) resulted from an act or omission done by such person with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.¹¹

(c) For an additional fee or such other consideration as may be agreed between the shipowner and [Classification Society], the shipowner may secure a higher multiple than that set forth in sub-paragraph (a) above.

(d) The limit of liability of [Classification Society] set forth in sub-paragraphs (a) and (c) above shall not apply where it is proved that the damage giving rise to the claim(s) resulted from an act or omission of [Society] with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

10. Any dispute arising out of or in connection with these Rules and any issues concerning responsibility, liability or limitation of liability shall be determined in accordance with the law of [State].¹²

11. Any suit or proceeding in respect of a claim arising out of or in connection with these Rules or the performance by [Classification Society], its employees or agents of a function pursuant to these Rules shall be instituted in or transferred to the appropriate court of [State and venue],⁵ which shall have exclusive jurisdiction to hear and determine any such dispute.¹³

⁹ Different standards or terms may be substituted in accordance with applicable national law.

¹⁰ The actual number to be substituted for "X" will be set by the Classification Society in consideration of market forces and applicable law.

¹¹ This provision is based upon Article 1(4) of the London Limitation Convention, 1976.

¹² This will normally be the State of domicile or situs of the Society.

¹³ In order to survive the common law test of *forum non conveniens*, the venue must be a reasonable one in terms of its legal system, the demonstrated competence of its courts in such cases, and its convenience to the claimant and to witnesses.

UNIFORMITY OF THE LAW OF CARRIAGE OF GOODS BY SEA

At its meeting in Oxford on 13 May 1994 the Executive Council of the CMI decided that the carriage of goods by sea further required the attention of the CMI and appointed a Working Group within its membership, consisting of Prof. Francesco Berlingieri, Prof. Rolf Herber, Prof. Jan Ramberg and Prof. William Tetley, with the instructions to consider the problem and to report at the next meeting scheduled to be held in Sydney during the CMI Conference.

At such meeting the Executive Council considered the report of the Working Group and decided to seek the views of the National Associations on the problem of the unification of the law relating to the carriage of goods by sea and to circulate to the National Associations an Introductory Report and a Questionnaire to which a digest of the present variations of the law of the carriage of goods by sea was annexed.

The Report and the Questionnaire, as approved by the Executive Council, were circulated to the National Associations in December 1994.

The replies of the National Associations to the Questionnaire, a summary of which was published in Issue No. 2/1995 of the CMI News Letter (p. 8 et seq.), were considered by the Executive Council at its meeting of 19 May 1995 on the basis of a report of Prof. Francesco Berlingieri, Chairman of the Working Group. The Executive Council decided to appoint an International Sub-Committee under the Chairmanship of Prof. Berlingieri and a Steering Group consisting, in addition to Prof. Berlingieri, of David Angus, Jean-Serge Rohart, Ron Salter and Frank Wiswall. Such decision was approved by the Assembly on 20 May 1995.

The First Session of the International Sub-Committee was held in London on 29 and 30 November 1995. A second session was held in London on 15 and 16 March 1996.

The following documents are published hereafter:

- I Questionnaire to the National Associations with the Introduction thereto and the Annex (p. 107).*

Part II - The Work of the CMI

II Replies of the National Associations to the Questionnaire (p. 115).

III Synoptical Table of the most significant changes suggested by the National Associations to the Hague-Visby Rules and to the Hamburg Rules (p. 178).

IV Report on the First Session of the International Sub-Committee (p. 229).

I

QUESTIONNAIRE FOR THE MEMBER NATIONAL ASSOCIATIONS

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 others 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 uniform system began to fracture, as only a limited number of the States parties to the Convention became parties to the Protocol. Presently there are 83 States parties to the Convention, but only 20 States have become parties to the Visby 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 1979 SDR Protocol entered into force in 1984, the fracture widened, though confined to the issue of limits of liability. At present only 14 States are parties to the SDR Protocol, of which 12 were already parties to the Visby Protocol but 2 were not.

Therefore, prior to the entry into force of the Hamburg Rules in 1992, the maritime world was divided into six areas, viz.:

1. Where the Hague Rules as amended by the two Protocols were in force: 14 States.
2. Where the Hague Rules as amended only by the Visby Protocol were in force: about 7 States.
3. Where the Hague Rules were in force without any amendment: about 63 States.
4. Where the provisions of the Hague Rules have been enacted into national legislation without ratification of the Convention: several States.
5. Where the provisions of the 1968 or 1979 Protocols have been enacted into national legislation without ratification of the Protocols: several other States.
6. Where the Hague Rules have not been enacted in any form, with the consequence that domestic law applies unless private international law (conflicts) rules provide otherwise: many States, including most of South America and Africa.

Part II - The Work of the CMI

After the Hamburg Rules entered into force, the pace of disunification increased. Of the 22 States at present parties to the Hamburg Rules, 10 were parties to the 1924 Convention and 12 were not. As a consequence the States parties to the unamended Hague Rules are or soon will be reduced to about 53 States. Moreover several States that were not parties to the Hague Rules have enacted or are moving toward enactment of domestic legislation incorporating features of both the Hague Rules and the Hamburg Rules as well as unilateral innovations.

Today, two areas must be added to the six previously described:

7. Where the Hamburg Rules are in force.
8. Where national law combines various provisions of the Hague Rules unamended, the Visby and SDR Protocols, and the Hamburg Rules, in addition to other non-uniform domestic provisions.

In the view of the Executive Council of the CMI, the time has come to consider whether an attempt should be made to halt this disintegration of uniformity of the law of carriage of goods by sea and, to the extent possible, reverse the process and achieve once again a high degree of uniformity. Several alternatives may be considered, including the following:

- a) To refrain from taking action so as not to interfere with the ongoing process of selection, in hopes that the best system will ultimately prevail.
- b) To promote widespread ratification of the Hamburg Rules.
- c) To suggest amendments to the Hamburg Rules which are designed to overcome real commercial problems and to clarify ambiguities, thereby making the Hamburg regime more broadly acceptable.
- d) To suggest amendments to the Hague-Visby Rules in order to modernize and broaden a regime which is already widely accepted.
- e) To prepare a new convention which would include, *inter alia*, those provisions of the Hague-Visby Rules and of the Hamburg Rules which have been shown to be both commercially viable and politically acceptable.

The Executive Council has decided that it is appropriate to solicit the views of the National Associations immediately. 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 this Questionnaire directed to the Member Associations. The Annex following the Questionnaire additionally sets forth a digest of the present variations in the law of carriage of goods by sea.

It is considered imperative that the Member Associations make their responses to the Questionnaire as quickly as possible, and direct such responses to the Administrator of the CMI.

On the basis of replies received by the end of January 1995, and after appropriate consultation with the concerned intergovernmental organizations, it will be decided what further action, if any, is advisable.

QUESTIONS

1. Do you consider that the current proliferation of differing legal regimes relating to the liability of the carrier of goods by sea is an acceptable situation?¹
2. If you consider that this is unacceptable, are you of the view that some efforts should be made by the CMI to remedy the situation?²
3. Should action be limited to urging straightforward acceptance of the Hamburg Rules? If not, please state why in general terms, and then specify which of the provisions of the Hamburg Rules you consider to cause unacceptable commercial difficulties or serious problems of interpretation. Please illustrate such difficulties and/or problems by example.³
4. Should action be taken to amend the Hamburg Rules? If so, what basic changes do you suggest be made to the Hamburg Rules?⁴
5. Should action be taken to modernize the Hague-Visby Rules? If so, what basic changes do you suggest be made to the Hague-Visby Rules?⁵
6. Should a new convention be drafted? If so, what provisions from the Hague-Visby and Hamburg Rules, respectively, do you suggest for inclusion in a new convention? What provisions not found in either of the present conventions do you suggest for inclusion in a new convention?⁶
7. Do you consider that some efforts other than those suggested above should be undertaken in order to reverse the current disintegration of uniformity? If so, what action(s) do you suggest?⁷

1. See replies at pages 116-120.
2. See replies at pages 120-123.
3. See replies at pages 123-138.
4. See replies at pages 138-158.
5. See replies at pages 158-169.
6. See replies at pages 170-173.
7. See replies at pages 173-177.

ANNEX

**PRESENT VARIATIONS
IN THE LAW OF CARRIAGE OF GOODS BY SEA***I. Five Principal Carriage of Goods by Sea Regimes*

Despite the stated desire of all parties concerned to achieve unification of the law, there are at least five major regimes of carriage of goods by sea in the world today:

- 1) States which have no Hague, Hague-Visby or Hamburg Rules legislation. Examples are: Brazil, Colombia, Panama and Venezuela.
- 2) States which - with or without ratification or accession - have enacted the Hague Rules into national law, with or without national variations. Examples are: Argentina, India, Ireland, Kuwait, Peru, Philippines, Portugal, Turkey, Russia, the United States and many former British colonies.
- 3) States which have ratified or acceded to the Hague-Visby Rules 1968, most of whom have also ratified or acceded to the 1979 SDR Protocol. They constitute, for the most part, the major shipping nations of the world.
- 4) States which have ratified or acceded to the Hamburg Rules - there are now twenty-two such States. Some of these States may not have enacted the Hamburg Rules into national law, for example Nigeria.
- 5) States which have enacted many provisions of the Hamburg Rules into national law, whilst also adopting or maintaining the basic principles of the Hague or Hague-Visby Rules - e.g. the People's Republic of China (PRC) and the Scandinavian States.

II. Nine Package or Kilo Regimes

Apart from the five regimes above, there also exist at least nine different types of package or kilo regimes:

- 1) States which are not party to the Hague Rules or the Hague-Visby Rules or the Hamburg Rules and have no national legislation on package limitation. Thus the package limitation in the bill of lading is subject to the local law on such matters as public order or policy and limitation clauses. Examples are: Brazil, Colombia, Panama and Venezuela.
- 2) States which apply the Hague Rules, but which invoke £100 sterling gold. Examples are: Argentina, India and Peru, and many of those

Uniformity of the Law of Carriage of Goods by Sea

former British colonies for which the United Kingdom ratified the Hague Rules in 1931 and which, since becoming independent, do not seem to have denounced the Hague Rules or to have adopted the Hague-Visby or Hamburg Rules.

- 3) States which apply the Hague Rules, but which impose a limitation in their own national currencies. Examples are: Cuba, Ireland, Kuwait, Philippines, Portugal, Turkey, Russia and the United States.
- 4) Germany, which applies the Hague-Visby Rules. Nevertheless, in respect of shipments to Hague Rules nations and shipments where the bill of lading was issued in a Hague Rules nation, only the Visby package limitation of 666.67 SDR applies and not the kilo limit of 2 SDR.
- 5) States which apply the Hague-Visby Rules, but have not adopted the 1979 SDR Protocol. They thus impose a limitation in Poincaré gold francs. Examples are: South Africa, Ecuador, Sri Lanka, Syria and Tonga.
- 6) States which apply the Hague-Visby Rules and the SDR Protocol and thus have a limitation of 666.67/package and 2.00 SDR/kilo. These are the major shipping nations of the world. (The Scandinavian States, although adopting many of the Hamburg Rules provisions, will retain the 666.67/package and 2.00 SDR/kilo limitations).
- 7) States which apply the provisions of the Hague-Visby Rules and the SDR Protocol without ratification or accession, and which impose different national limits. Thus the PRC converts the SDR at a nationally-established rate, while South Korea has a 500 SDR national package limitation.
- 8) States which have ratified or acceded to the Hamburg Rules and thus the 835 package and 2.5 SDR and kilo limitations. (But, see paragraph 9 following.)
- 9) States which ratified the Hamburg Rules with a reservation for five years under Art. 31(4), until 1 November 1997, as to the denunciation of the Hague-Visby Rules. For example, Egypt will apply the Hamburg Rules to Hamburg States parties, but until 1 November 1997, will apply the Hague-Visby Rules to other States.

III. *The Hamburg Rules*

It is important to consider the extent to which the Hamburg Rules are accepted today:

- 1) The Hamburg Rules came into force on 1 November 1992 and 22 States have, so far, ratified or acceded to them.
- 2) The Parliaments of France and Italy have authorised the ratification

Part II - The Work of the CMI

of the Hamburg Rules, but these States at present continue to apply the Hague-Visby and SDR Protocols.

- 3) The Commission of the European Union (E.U.) is presently evaluating the Hamburg Rules.
- 4) Both the PRC as of 1 July 1993, and the Scandinavian States as of 1 October 1994, have put many of the provisions of the Hamburg Rules into effect in their national law, whilst also adopting or maintaining the basic principles of the Hague or Hague-Visby Rules.
- 5) Australia enacted the Hague-Visby Rules into national law, effective November 1, 1991. The 1991 Statute also incorporated the Hamburg Rules, whose coming into force would have taken place on November 1, 1994, replacing the Hague-Visby Rules. However, both Houses of Parliament adopted a resolution postponing the adoption of the Hamburg Rules until November 1, 1997, which adoption can be postponed again every three years by resolution. (The Resolution may also strike the Hamburg Rules from the act.)
- 6) Canada neither ratified nor acceded to the 1924 Convention. In 1936, however, Canada did enact the Hague Rules as part of Canadian law. In May 6, 1993, Canada enacted the Hague-Visby Rules into national law with a provision that the Hamburg Rules will come into force on December 31, 1999, if so decided by the Minister of Transport of Canada, after having consulted Parliament. The decision, if postponed, will revive every five years, unless Parliament strikes the Hamburg Rules from the Act.

IV. *National Maritime Law Associations. Some Current Activity.*

- 1) The Maritime Law Association of the United States is presently preparing draft legislation with the intent of adding certain provisions of the Hamburg Rules and the Visby Protocol to the United States national legislation.
- 2) A Commission of the French Maritime Law Association has proposed amendments to the Hamburg Rules (See *Droit Maritime Français* 1994, 243).

II REPLIES TO THE QUESTIONNAIRE

ASSOCIATIONS WHO HAVE REPLIED TO THE QUESTIONNAIRE

<i>Argentina</i>	<i>Japan</i>
<i>Australia and New Zealand</i>	<i>Korea</i>
<i>Canada</i>	<i>Netherlands</i>
<i>China</i>	<i>Norway</i>
<i>Croatia</i>	<i>Portugal</i>
<i>Denmark</i>	<i>Spain</i>
<i>Finland</i>	<i>Sweden</i>
<i>France</i>	<i>Switzerland</i>
<i>Germany</i>	<i>South Africa</i>
<i>Greece</i>	<i>United Kingdom</i>
<i>Indonesia</i>	<i>United States</i>
<i>Ireland</i>	<i>Venezuela</i>
<i>Israel</i>	
<i>Italy</i>	

OTHER ORGANIZATIONS WHO HAVE REPLIED TO THE QUESTIONNAIRE

International Chamber of Shipping ("ICS")

General comments

Canada

We regret infinitely that we have had so little time to give our replies, both in respect to principle and practice, to such important questions. We have attempted to provide the answers within the due date of January 31, 1995. Assuming other national associations have not answered within that short delay, we would like to add to, or delete from, our answers during any official or unofficial extension of the delay. In particular, before giving a final answer, we would like to see an English translation of the new Scandinavian Carriage of Goods by Sea Act 1994, which adopts the Hamburg Rules in part. We would also like to see the report of the European Commission on the Hamburg Rules, which apparently is in preparation.

Finland

The current legislative situation is as follows: Finland is still a party to the Hague-Visby Rules. A new Finnish Maritime Code (674/94) entered into force on October 1, 1994. The new Code consists of new legislation regarding the carriage of goods by sea (Chapter 13). This new legislation is in substance the same as in the new Maritime Codes of Denmark, Norway and Sweden.

The new legislation is based on the Hamburg Rules (technically and in terminology); to the extent the Hamburg Rules are in conflict with the Hague-Visby Rules the new legislation follows the Hague-Visby regime, i.e., the scope of application, the basis of liability (error in navigation, etc.), the limits of liability and the time limits for actions.

During the preparation of the new legislation (Chapter 13) the Ministry of Justice expressed in their statement that the objective should be that the Hamburg Rules could in the future be made the basis for the legal regime. The Hamburg Rules can be considered, in terms of principle of law, as a more balanced regime between the carrier and the cargo owner. The principles regarding the liability in the Hamburg Rules correspond better than the present regime with the general legal principles of liability and compensation. Further, the Hamburg Rules correspond closer to the liability rules for carriage of goods by road, rail and air (cf. also the 1980 UN Convention on International Multimodal Transport of Goods).

France

The Association Française du Droit Maritime (hereinafter the AFDM) was very interested to receive the questionnaire of the Comité Maritime International. It had itself already raised the problem of the coexistence of differing legal regimes relating to the carriage of goods by sea. In July 1992, it wrote a report, at the request of the French administration (Conseil Supérieur de la Marine Marchande), about the situation caused by this coexistence in which it recommended that action be undertaken to modify the Hamburg Rules to allow them to be ratified more easily by the major shipping nations of the world. The present answers were inspired by this report, in particular by its conclusions, which are enlarged upon in this document.

Question 1

Do you consider that the current proliferation of differing legal regimes relating to the liability of the carrier of goods by sea is an acceptable situation?

Argentina

It is a reality but, of course, it is not the best situation.

Australia

No.

Canada

No.

Uniformity of the Law of Carriage of Goods by Sea

China

The laws relating to the carriage of goods by sea are various and complicated. Such status has led to uncertainty of the rights and responsibility of the relevant parties, thus causing the increase of disputes and legal proceedings and finally leading to the growing up of the burden on the consumers. This is an unfavourable reality.

Croatia

The current proliferation of different legal regimes relating to the liability of the carrier of goods by sea is unacceptable.

Denmark

No, but the annex to the Questionnaire seems to exaggerate the degree to which disintegration of uniformity of the law of carriage of goods by sea has taken place.

Finland

No. The aim of the conventions in the field of maritime transport is to achieve global harmonization. The parties involved in maritime transport have today to work with the Hague Rules, the Hague-Visby Rules, the Hamburg Rules and national regimes (cf. the annex to the CMI questionnaire). A situation which is far from satisfactory.

France

For the AFDM, the existence in 1994, after 100 years of considerable effort to harmonize and make uniform the law of carriage of goods by sea, of several international regimes relating to these rules is clearly unacceptable.

Germany

An increasing disunification of maritime transport law seems to be apparent. As it has been done in the questionnaire, one can make up eight categories of legal regimes and count the number of countries which adhere to each of them. One can also evaluate these figures under different aspects and come to the conclusion that most of the major trading nations adhere to the Hague-Visby regime and none of them to the Hamburg regime. Furthermore, one can state that after the entry into force of the Hamburg Rules among 20 countries only three countries of minor importance in the world trade acceded to the Hamburg Rules while important countries like Japan, Canada and Australia (at least for a period of another three years) decided against the Hamburg Rules but in favour of the Hague-Visby Rules.

However, these considerations focus too much on the *status de lege lata abstracta* but do not sufficiently reflect the reality of daily business in maritime transport. As we all know, the contracts of carriage of goods by sea in the main trading areas incorporate by paramount clauses the liability regime from the Hague-Visby Rules. So far we cannot recognize any serious lack of unification of maritime transport law for the time being. On the contrary, we are

Part II - The Work of the CMI

afraid that the actual state of unification of maritime transport rules would be endangered if the Hamburg Rules gain more importance.

Greece

The current proliferation of different legal regimes relating to the liability of the carrier of goods by sea creates problems as to the legal certainty in international trade and the carriage of goods by sea and therefore it cannot be considered as an acceptable solution.

On the other hand, it should be pointed out that unification should not be considered as the panacea for all problems related to carriage of goods by sea and that its value per se should not be overestimated. The legal environment of each country must be preserved and the unification should be limited only to the hard core rules governing international carriage of goods by sea.

Indonesia

No.

Ireland

No.

Israel

No. The proliferation of the different legal regimes relating to international carriage of goods is untenable, and creates a situation similar to the one which prevailed on the eve of the original Hague Rules.

Italy

No, the present situation is not acceptable.

Japan

No.

Korea

No.

Netherlands

The present level of unavoidable proliferation does not raise great concern, at least not yet. A large majority of bill of lading carriage in the world is made under the Hague (-Visby) Rules liability principles either by operation of law or through paramount and jurisdiction clauses in the bills of lading concerned, whilst even further uniformity is achieved through incorporation of such clauses in charter parties, sea waybills and the consignment notes as used in the ferry traffic.

Portugal

No doubt the co-existence of two different legal regimes in the international relationship is very inconvenient.

Uniformity of the Law of Carriage of Goods by Sea

The lack of coincidence in the areas covered must be underlined. Hamburg Rules do not exclude the considerations of questions regarding transport of live animals and also of deck carriage of goods.

But the main motive of conflict between the two regimes arises from different concepts of liability.

The list of reasons for liability exoneration is replaced in Hamburg Rules by a generic formula fixing the carrier's responsibility unless he may prove that, by himself and/or by his assistants, all the measures reasonably demanded in order to avoid the event and respective consequences, have been taken (Art. 5 §1).

This article - mainly due to the suppression of the classic nautical fault - aimed at being to the benefit of the shippers. However so far it seems that the practical effect is exactly the reverse, as well sustained by Rodière.

So, it is to predict a future situation depending mainly on the jurisprudence (considered in a broad sense, including doctrine) coming out from this controversial article.

As pointed out in the XXXIV CMI International Conference (Paris, 1990) the more important industrialized countries are keeping position in favour of being the nautical fault motive for carrier's liability exoneration.

So, a compromise solution between the two systems should be kept under consideration, even after the Hamburg Rules came into force, although such solution seems to be only possible through a new Convention.

South Africa

The current proliferation is undesirable.

Spain

No, quite unacceptable.

Sweden

No.

Switzerland

After a first general effort towards international unification in the first part of this century the law of International Carriage of Goods has unfortunately now reached a proliferation which is very difficult for the international trade and the transport industry to absorb. However, the mere trend in the number of recent ratifications and acceptances of the Visby Protocols to the Hague Rules of 1924 give hope that an international unification could be reached on the level of the Hague-Visby Rules at least for the major trading and shipping countries.

United Kingdom

Whilst the BMLA considers that the preamble to the Questionnaire somewhat over-emphasises the proliferation of differing legal regimes (for example whilst there may be nine package or kilo regimes, the major shipping nations of the world apply the Hague-Visby Rules and the SDR Protocol), and that Section III of the Annex implies that the extent of acceptance of the Hamburg

Part II - The Work of the CMI

Rules is greater than it really is, the current situation is not ideal. It nonetheless has to be accepted, whilst it prevails, by those actively engaged in maritime commerce and international trade. It has been the case for many years that whilst the Hague/Hague-Visby Rules have applied to international trade in the greater part of the world, a number of important trading countries, such as those given in the examples in section I (1) of the Annex to the Questionnaire, have not adopted their principles. Those involved in international trade, and their insurers, have lived with this situation for many years and the BMLA questions whether any of the suggestions set out in the Questionnaire are likely to change it. The ideal position therefore is unlikely to be attainable.

United States

No.

Venezuela

The current proliferation of different legal regimes relating to the liability of the carriers of the goods by sea is not an acceptable situation .

Other Organizations*ICS*

No. ICS is of the view that the uniformity of the law relating to the liability of the carrier of goods by sea is of paramount importance and should be actively promoted.

Question 2

If you consider that this is unacceptable, are you of the view that some efforts should be made by the CMI to remedy the situation?

Argentina

We consider that some efforts should be made by the CMI as has been considered in the meeting of the Executive Council in Knokke Zoute 1989.

Australia and New Zealand

Yes.

Canada

Yes.

China

The CMI has been doing a very hard job by striving for the improvement of the current situation, which is fully in conformity with the aim of the Committee.

Uniformity of the Law of Carriage of Goods by Sea

Croatia

Of course, the CMI has to make all the possible efforts to remedy the situation.

Denmark

Yes.

Finland

Yes, provided that the efforts promote uniformity.

France

The AFDM thinks the CMI has a fundamental role to play in putting an end to this situation.

Greece

As stated above, it is unacceptable that the legal regimes of the main issues, i.e. the hard core of the liability of the carrier of goods by sea are not unified, whereas the detailed regulation of other issues, should be left to the discretion of each State.

CMI is the proper and competent institution to promote international uniformity of maritime law, since it is a very experienced forum, which has played a decisive role in drafting the relevant conventions until this day. Moreover, CMI can justify its choices with scientific arguments, whereas governmental authorities base their choices rather on political and financial interests. However, national strategies and interests of the States involved render the mission of CMI very difficult. Therefore, a more intense and close cooperation of CMI with the governmental organizations would be required in order to ensure that the international cooperation is really effective and can procure the required solutions to the problems of international carriage of goods by sea.

Indonesia

Yes.

Ireland

Yes.

Israel

Yes. It is the role and duty of the CMI to strive to unify the rules in a manner which should be duly representative of the various interests of cargo/owners. The role of insurers, who - in the majority of cases - stands behind both interests, should be similarly taken into account.

Italy

Yes, efforts should be made by the CMI to remedy the situation. The CMI is certainly qualified for such action.

Part II - The Work of the CMI

Japan

Yes.

Korea

Yes.

Netherlands

As the promotion of uniformity of maritime law is the very basis of the existence of the CMI it is self-evident that the CMI should use its best endeavours to improve the uniformity of the liability rules relating to the carriage of goods by sea as well as the uniformity of their implementation. Also within the area of the regimes 1-5, as referred to in the introduction to the questionnaire, ample scope exists for further uniformity.

Portugal

It seems that the CMI, including representatives of most interested countries on the subject, is in very good condition to take the initiative of a meeting aiming expressly at that purpose. Although limited in scope to doctrinal aspects, we may recall the precedent meeting promoted by European Institute of Maritime and Transport Law, Antwerp University (pub. Bruylant, 1994).

South Africa

The CMI should endeavour to remedy the situation.

Spain

Yes, for the sake of uniformity in maritime law.

Sweden

Yes. We consider it to be of vital interest for the shipping industry that substantial efforts will be made - preferably by CMI - to limit the number of legal regimes relating to the liability of the carrier of goods by sea, hopefully leading to, in the long run, that there will be only one legal regime covering the carriers liabilities.

Switzerland

It is a long-standing tradition of the CMI to promote international uniformity of maritime law. CMI had also played the instrumental role for the drafting and enacting of the Hague Rules in 1924 and had successfully achieved the partial revisions in 1968 and 1979. Therefore, discussions and studies on matters regarding carriage of goods by sea are clearly within the scope of authority of the CMI. However, due to the political developments the CMI will not be able to invoke a diplomatic conference implementing any of the CMI drafts. This limitation limits the possible choice of directions of such efforts as will be discussed later. At some stage a cooperation with international governmental organizations (UNCTAD/IMO) will become necessary.

Uniformity of the Law of Carriage of Goods by Sea

United Kingdom

It has always been one of the main functions of the CMI to promote uniformity in maritime law. Uniformity means both uniformity of substantive law and uniformity of application. The CMI should assess any initiative against these criteria. The CMI should be cautious about taking an initiative unless the CMI is satisfied that the proposed initiative will lead not only to greater uniformity of substantive law, but also greater uniformity of application, and at an affordable price in terms of the costs of sea transport.

United States

Yes.

Venezuela

Yes, the CMI should make some efforts to remedy the situation.

Other Organizations***ICS***

In principle, yes. ICS recognises the important role of the CMI in promoting international uniformity of maritime law. The form such efforts might take is of course crucial to the exercise (see response to question (3) below).

Question 3

Should action be limited to urging straightforward acceptance of the Hamburg Rules? If not, please state why in general terms, and then specify which of the provisions of the Hamburg Rules you consider to cause unacceptable commercial difficulties or serious problems of interpretation. Please illustrate such difficulties and/or problems by example.

Argentina

The most unacceptable commercial difficulties are the principles of carrier's liability.

Australia and New Zealand

This Association does not believe that the Hamburg Rules have obtained sufficiently widespread support to justify their implementation in whole and believes that a better solution to the problem is along the lines of that currently being suggested by the US MLA, that is a revision of the Hague-Visby Rules by incorporating the provisions of the Hamburg Rules that seem to have fairly general support.

Canada

We do not believe in straightforward acceptance of the Hamburg Rules. We do believe, however, that a few important changes could form part of a Protocol to the Hamburg Rules, which changes would have to be acceptable to the

Part II - The Work of the CMI

present 22 States Party to the Hamburg Rules, as well as to a large number of Hague/Visby nations. We are not sure of the meaning of “unacceptable commercial difficulties”. We understand that (generally) shippers favour the Hamburg Rules and carriers and cargo insurers are opposed to them.

China

In the circumstances that the various shipping laws with different liabilities are co-existing at present, to urge a wider acceptance of the Hamburg Rules, we fear that will be an option which will face a strong opposition. To perfect operation on a modern vessel not only requires skillful modern navigation technology, but also requires to renounce or modify those inappropriate laws of carriage of goods by sea.

Croatia

We think that it is not opportune to insist on the acceptance of the Hamburg Rules, inter alia for the following problems:

- a. since 1978 there have been only 22 ratifications or accessions to the Hamburg Rules, and among these there are no States with significant fleet;
- b. The Hamburg Rules are not economically in favour of shippers, because by increasing of carrier's liability the cost of carriage itself is increased, and finally will be paid by the persons interested in cargo;
- c. The Hamburg Rules contain some provisions which may slow down the carriage by sea such as:
 - the exaggerated long term for the notice of loss or damage to the cargo;
 - the doubled limitation time (two years instead of one);
 - the rules relating to the letters of indemnity;
 - the rules on jurisdiction and arbitration.
- d. Having in view specific conditions of carriage by sea for the reasons universally accepted in the last century, we are of the opinion that the error in navigation and management of the ship should be maintained.

Denmark

No. The liability regime of the Hague-Visby Rules should basically be retained. The Hamburg Rules are based upon the presumption that by making the shipowner liable in many more cases than under the Hague-Visby Rules, the cargo owner can reduce his cargo insurance costs considerably, and the shipowner will take more care of the goods. These presumptions are very much disputed. It is hardly conceivable that the crew's care of the ship and of the goods would depend on the rules applicable as to liability of the shipowner. For a number of reasons including the safety of the crew and of the ship and for competitive reasons complete care will practically always be taken of the ship and of the goods. In those few instances where such care is not exercised, the rules on liability of the shipowner are certainly not taken into account. The cargo owner in any case has to continue to insure the goods, and it has been consistently pointed out inter alia by cargo insurers that cargo insurance will not decrease even if the Hamburg Rules were adopted widely. The level of premi-

Uniformity of the Law of Carriage of Goods by Sea

ums depends on many more factors than just the shipowner's liability. Furthermore the most efficient method to protect those who have an interest in the goods, is to let these interests themselves choose their insurance protection in a free negotiation of the conditions which are best adapted to the nature of the goods and to the pattern of the trade. Shippers would under the Hamburg Rules get something they do not need, but need something they do not get.

A number of provisions of the Hamburg Rules give cause to serious problems of interpretation. This is the case with the abstract liability rule, which is very difficult to apply in practice. It will be extremely difficult for carriers and shippers alike in any incident to predict with any certainty whether a court will come to the conclusion that the servant or agent of the carrier took all measures that could reasonably be required to avoid the occurrence and its consequences. At the time the Hamburg Rules were adopted the imprecision of the words was so apparent that the Conference was obliged to develop a common understanding in an attempt to clarify matters. However, the common understanding is not mandatory, and it is left to speculation how the various jurisdictions in the future will interpret such rules. Another ambiguous provision is the provision in Article 5 paragraph 3 according to which the shipper may treat the goods as lost if they have not been delivered within 60 consecutive days following the expiry of the time for delivery. This provision raises many questions as to what happens if it can be proved that the goods have just been delivered at a wrong place and are in perfect condition.

Views differ between the various parties in Denmark as to the above. However, it is the position of the Danish Maritime Law Association that it would not be advisable to urge straightforward acceptance of the Hamburg Rules.

Finland

Yes, this might be the wisest thing to do in order to achieve uniformity. It may be mentioned that there is a minority within the Finnish Maritime Law Association still supporting the Hague-Visby Rules.

France

A large majority of the AFDM is opposed to the ratification by France of the Hamburg Rules in their present form.

3.1. Some of the provisions of the rules are likely to cause serious commercial problems. This is true in particular of article 19(2) which fixes a time limit which is much too long (15 days) for the notice of loss or damage which the consignee must give in case of loss or damage which is not apparent. The provision concerning arbitration which allows the consignee to opt for arbitration at the port of discharge also is likely to cause serious problems in the case of "institutional" arbitration.

It also appears to the AFDM that the principle of liability which appears in article 5 of the Hamburg Rules (i.e. that the carrier is liable unless he proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences) is likely, because of its vagueness, to be a source of endless litigation. The AFDM observes that a very

Part II - The Work of the CMI

similar formula found in the Warsaw Convention on air transport has raised, at least in France, serious problems of construction.

3.2. On the other hand, the AFDM thinks that the elimination by the Hamburg Rules of the exception of liability in the case of negligence in the navigation or management of the ship is not unacceptable. During the preparation of the report for the Conseil Supérieur de la Marine Marchande this question was the object of a lengthy debate. The conclusion was that it would be extremely difficult to convince the signatory States to the Hamburg Rules and the international shipping community in general to reverse this abandonment of an exception to liability, no matter how traditional it was.

In addition, observing that the idea of negligence in the navigation or management of the ship had given rise to contradictory case law tending to limit the application of the exception, the AFDM thought that the time had probably come for shipping nations to abandon all reference to this concept. Some AFDM members, however, thought that during a debate concerning possible modifications of the Hamburg Rules, this concession should be made only if, for example, there were a reduction in the time allowed for notice of loss, damage or delay found in article 19 of the Rules.

3.3. Finally, it appears to the AFDM that certain important provisions found in the Hague Rules are missing in the Hamburg Rules: those in article 3(1) and (2), which set forth the obligations of the carrier concerning the ship and the carrying out of the voyage.

Of course the rule found in article 3(1) of the Hague Rules, that the carrier is bound to exercise due diligence to make the ship seaworthy, can, in the Hamburg Rules, be found implicitly in the provisions of article 5, to the extent that these provisions maintain the liability of the carrier who does not prove that he himself, his servants or agents took all measures that could reasonably be required to avoid the occurrence which caused the damage. Nevertheless, the AFDM thinks that the carrier's obligation of due diligence is so fundamental (American judges speak of a "paramount obligation") that it should be mentioned in the text of any convention concerning the carriage of goods by sea.

The rule found in article 3(2) of the Hague Rules that the carrier "shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried", has two advantages. Firstly, it reminds the carrier of his continuing obligation to take good care of the goods, just as he should take care of the ship. In addition, this rule creates an obligation to undertake the loading and discharge of the goods, at least as the Hague Rules have been interpreted by French courts (and by United States courts as well).

Because there is no provision similar to article 3(2) in the Hamburg Rules, these rules are much less clear. The fact that article 4(2)(b)(ii) provides that "the carrier is deemed to be in charge of the goods until the time he has delivered them...in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract", means that it can be argued that the bill of lading (contract of carriage) could stipulate that the goods would be delivered, on board, to a stevedore acting on behalf of the consignee, the carrier thereby transferring to the consignee the liability for the unloading operations.

Greece

The Hamburg Rules, albeit the most recent ones, have not been welcomed by the affected economic community as much as it would have been expected. Their main weakness is that they seek to encompass and regulate the entire contract on the transfer of goods by sea. This is a very difficult task, because the transfer of goods by sea is a rapidly evolving, international activity; it is very dependent on technical progress, while at the same time it has to absorb differences of technological development in the various parts of the world. Thus, a unification of rules at international level, although being a very ambitious task, ends up in restricting the evolution of the shipping industry and hinders private initiative in an era when deregulation is widely praised. Consequently, the Hamburg Rules do not leave the necessary margin for each individual case to be treated in the appropriate way. The CMR, an example of widely accepted rules, has a much narrower field of application, which has made its acceptance possible.

We believe that it would be preferable to supplement the Hague/Visby Rules by a new Protocol, rather than to promote the Hamburg Rules.

We may indicatively refer to particular commercial difficulties that the Hamburg Rules present. The abolition of the carrier's defences as set forth in the Hague/Visby Rules creates great uncertainties: the detailed defences listed in article IV of the Hague/Visby Rules have been operating quite satisfactorily and their application developed into a reasonably consistent set of precedents in shipping nations. The general and abstract wording of article 5.1 of the Hamburg Rules opens the way to large discrepancies of interpretation.

Further, and although vessels and consequently transport now became faster, the Hamburg Rules extend the limitation of action against the carrier to two years (Article 20).

Another questionable matter is the provision of six alternative adequate forums to file an action against the carrier.

Indonesia

No. Efforts should be made to achieve uniformity of the rules on liability of the carrier by sea, land and air.

Ireland

We do not think that action should be limited to urging straightforward acceptance of the Hamburg Rules because:

(1) They are a political, rather than a technical, solution to a technical problem.

(2) The ambiguities throughout the text probably will lead to such variances in interpretation between one jurisdiction and another and between judges in the same jurisdiction that, far from increasing uniformity, the Hamburg Rules are likely to destroy it.

(3) The radical alteration in the apportionment of risk is unlikely to benefit international commerce. On the contrary we believe that it will hinder such commerce by increasing the total cost of transportation by sea. It is unlikely

Part II - The Work of the CMI

that the increase in the cost of carrier's liability insurance will be offset by an equivalent reduction in the cost of cargo insurance.

(4) The alteration in the scope of application is likely to add to existing problems of conflict of laws.

Provisions which cause unacceptable commercial difficulties.

1. The most far reaching of these is the abolition of the defence of nautical fault which arises out of the provisions on the basis of liability contained in Article 5. The concentration of risk on the ship's liability underwriters rather than spreading it between the various underwriters of the cargo in the case of a total loss is commercially unacceptable and was not supported during the Diplomatic Conference by the representatives of either shipowners, cargo underwriters or merchants.

2. The provisions in Article 10 relating to the joint and several liability of the "carrier" and the "actual carrier" as defined in Article 1 is commercially unacceptable in transports in which groupage takes place. In major lines trades, break-bulk shipment has largely been replaced by shipment in container. Major exporters can fill a container with their products, but there are many shippers of general cargo whose volume of traffic at any given time is insufficient to fill a container. This has led to the practice of groupage whereby shipments from many small shippers bound for the same port are grouped in a container. Groupage is frequently done by forwarding agents who neither own nor operate ships. The forwarding agent obtains from a shipowner, whose ships are operating a container liner service between ports A and B, an empty container into which he packs many small parcels of cargo destined for port B which he receives from various shippers.

Very often the shipowner quotes the forwarding agent a fixed price for shipping the container from port A to port B regardless of the contents. The forwarding agent receives the goods for shipment, stows them in the container, issues his house bill of lading for each consignment to each shipper and charges each shipper a rate of freight sufficient to provide him with a profit after discharging his expenses, including the ocean freight payable to the shipowner. The rate charged by the forwarding agent usually varies with the commodity.

The forwarding agent delivers the full container to the shipowner who issues to the forwarding agent a transport document which, frequently, is a non-negotiable bill of lading or way-bill, on which the forwarding agent is shown as the shipper and his agent at the port of destination is shown as the receiver. When the goods arrive at port B the container is delivered to the consignee or receiver named in the transport document who then proceeds to unpack the container and deliver the various consignments stowed therein to their respective destinations.

In the circumstances outlined above the forwarding agent is the "carrier" within the meaning of Article 1.1, and the shipowner is the "actual carrier" within the meaning of Article 1.2. Article 10.4 provides that where and to the extent that both the carrier and the actual carrier are liable their liability is joint and several. The assets of the forwarding agent (the carrier) may be very insubstantial and in such circumstances cargo is likely to press the claim against

Uniformity of the Law of Carriage of Goods by Sea

the shipowner (the actual carrier). The claim under the Hamburg Rules may be one for which the actual carrier would not be liable under the Hague-Visby Rules. Suppose the forwarding agent (the carrier) by contract had agreed to a date of delivery which in all the circumstances might be totally unrealistic. The shipowner receiving the container from the forwarding agent might have no knowledge of any such arrangement with the shipper but might, nevertheless, find himself bound by such agreement as it would not fall within the exception contained in Article 10.3, which refers only to special agreements under which the carrier assumes obligations not imposed by the Convention, or waives rights conferred by the Convention. Furthermore, if the forwarding agent had notice of the dangerous character of some of the goods in the container, but failed to pass on such information to the shipowner, the shipowner who is the actual carrier might well find himself bound by constructive notice of the dangerous character of the goods. If that container was loaded under deck in a cellular ship there would be only very limited access to the contents during the voyage.

3. The definition of "goods" in Article 1.5 includes packaging. An attempt to have this restricted to packaging intended for multiple reuse was defeated during the Diplomatic Conference. Consequently damage to a crate in which machinery is shipped could give rise to a claim even though the machinery itself arrives undamaged. This is commercially unacceptable.

4. Article 15.1(f) provides that the date on which the goods were taken over by the carrier at the loading port must be shown on the Bill of Lading. It may take many days to load a full cargo of timber, iron ore or grain on a large bulk carrier. If the total cargo is divided into different parcels, covered by different bills of lading at the request of the shipper, it may be very difficult indeed to say precisely when each particular part of the cargo was loaded. There is no sanction in the Convention to enforce compliance with Article 15 but if a Court applying the Convention was ever to decide that failure to comply with Article 15 deprived the carrier of the defences available to him under the Convention this would be commercially unacceptable.

Provisions which cause serious problems of interpretation.

1. The general rule relating to the basis of liability under the Hamburg Rules is set out in Article 5.1. The Common Understanding which appears in Annex II states that the liability of the carrier is based upon the principle of presumed fault or neglect. However the words "fault or neglect" do not appear in Article 5.1 although they do occur elsewhere e.g. in Article 5.4(i) and (ii), Article 5.5, Article 5.7 and Article 13. In view of the omission of these words in Article 5.1 and their inclusion elsewhere in the Convention it becomes a matter for speculation as to whether the words "all measures that could reasonably be required to avoid the occurrence and its consequences" will be interpreted so as to include the defences of perils of the sea, inherent vice, latent defects not discoverable by due diligence, etc., set out in Article 4.2 of the Hague Rules 1924.

2. In Article 1 the "carrier" and the "actual carrier" are defined. These definitions do not state that the "carrier" includes the "actual carrier". Indeed

Part II - The Work of the CMI

the "carrier" and the "actual carrier" are each mentioned separately in a number of Articles (i.e. Article 2.2 and Article 10.1, 10.2, 10.3, 10.4, 10.5, and 10.6, Article 11.1, Article 12, Article 13.2, Article 14.1, Article 19.6, 19.7 and 19.8, Article 25.1). Nevertheless in many other Articles (i.e. Article 1.6 and 1.7, Article 2.3, Article 4.1, 4.2 and 4.3, Article 5.1, 5.2, 5.4, 5.5, 5.6 and 5.7, Article 6.1, 6.2 and 6.4, Article 7.1, 7.2 and 7.3, Article 8.1 and 8.2, Article 9.1, 9.2, 9.3 and 9.4, Article 13.4, Article 14.2, Article 15.1 and 15.2, Article 16.1 and 16.2, Article 17.1, 17.2, 17.3 and 17.4, Article 18.1, Article 19.1, 19.4 and 19.5, Article 20.2, Article 23.2 and 23.4, Article 24.2, Article 25.4) the "carrier" alone is mentioned without any reference to the "actual carrier". This raises the question whether those Articles which do not mention the "actual carrier" but mention only the "carrier" apply to both.

3. Lord Mustill raised some other interesting problems of interpretation in his Legal Analysis of the Hamburg Rules delivered in January 1979 at the CMI Colloquium in Vienna.

Israel

No. The fact that the Hamburg Rules have not been universally accepted proves that these rules should be reviewed. Basically, a 2-year extendable time bar, and increased per unit liability, should be adhered to.

Italy

No. Straightforward acceptance of the Hamburg Rules cannot be recommended because several provisions of the Rules are unsatisfactory. We think that unacceptable commercial difficulties would be caused by Articles 5, 11, 14, 18, 21 and 22. Very serious problems of interpretation would in our view arise in connection with Articles 4, 5(1), (4) and (7), 9 and 19. Rather than to give examples in reply to this question, we shall explain in our reply to the following question 4 the reasons for the changes we would suggest should be made in the Hamburg Rules.

Japan

No. First of all, we have to mention that Japan modified the code for the international carriage of goods by sea on the basis of the Hague-Visby Rules just in 1992. Therefore, we are not so ambitious to make further modifications on the basis of the Hamburg Rules at least in the near future.

The Hamburg Rules has made several important amendments as regards the responsibility of the carrier and strengthened its liability (e.g. abolition of nautical fault exemption, increase of the amount of limitation of liability - Art. 6, prolongation of limitation period - Art. 20 etc.).

But we are not quite sure that this new regime of carrier's liability can be admitted as a successful system of the fair risk allocation between the carrier and the shipper.

We have a fear for the increase of the premium in the carrier's liability insurance and consequently the increase of the freight of carriage. And also we anticipate that the Hamburg Rules might cause many problems on the practical side.

Uniformity of the Law of Carriage of Goods by Sea

Korea

No. Korea revised its maritime law on the basis of the Hague-Visby Rules at the end of 1991 (effective from 1993), and has no plan to replace it with the Hamburg Rules in the near future.

The Hamburg Rules made a serious change in the liability of ocean carriers which was established some half a century ago. We wonder whether the new regime of risk allocation provided in the Hamburg Rules is proper and fair. The ocean carriers liability regime of the Hague-Visby Rules should be maintained.

Netherlands

Certainly not. Straightforward promotion of the Hamburg Rules would decrease the uniformity of maritime law. One of the reasons thereof is the vagueness of several provisions of the Hamburg Rules, in particular of Article 5.1. The carrier's liability under the Hamburg Rules is based on the concepts of reasonableness and force majeure, which are subjective by nature. Instead, the Hague-Visby Rules allocates risks as between the parties on the basis of facts and events. In a convention to be applied world-wide in various systems of national law and in all kinds of different national cultures the Hamburg Rules concepts of reasonableness and force majeure will necessarily lead to much different interpretations. Even within Europe the CMR liability based on similar concepts has led to an enormous casuistry. We consider the Hamburg Rules as inherently desuniforming.

Norway

It is the view of the Norwegian Maritime Law Association that out of the several lettered alternatives submitted for consideration, the preferred one for the CMI should be to suggest amendments to the Hamburg Rules with a view to overcoming real commercial problems and to clarifying ambiguities in order to make the Hamburg regime more broadly acceptable. In respect of the collateral question posed in the questionnaire as to what basic changes should be made to the Hamburg Rules, we have the following comments:

In a maritime law perspective, which is the perspective of the Association, rather than a transportation law perspective, it is more important to have a high degree of unification of maritime law between different countries than a degree of harmonisation between the various disciplines of transportation law, such as between the laws of carriage by air, sea, road and rail. Hence, if an increased degree of unification between national maritime laws carries the "price" of decreased harmonisation between different disciplines of transportation law, it should nevertheless be strived for.

In the broader perspective, such a reduction of harmonisation is, of course, regrettable. However, it is believed that the relative harmony that would be achieved, e.g. by a widespread ratification of the Hamburg Rules as they are, is more of a theoretical concept than a practical one. Whilst the principles regarding the basis of liability would be basically the same irrespective of the mode of transport, there will still be so many particularities remaining in rela-

Part II - The Work of the CMI

tion to the one mode or other, that from a practical point of view, it will remain a major difficulty to have to decide the regime of which mode applies in a given case. Further, cargo liability cases are basically between liability insurers and property insurers. The prices for their services, their premia, are largely based on previous records and it is difficult to believe that a degree of harmonisation between different transportation law disciplines, such as a result of a widespread ratification of the Hamburg Rules, would lead to a reduction of total insurance premia and thus to a net saving to the customer.

It is well-known that shipowning interests - and shipowning countries - have basically been critical of the Hamburg Rules. There would seem to be two main grounds for the criticism. First, the new liability regime and particularly the deletion of nautical fault as a defence, is naturally believed to result in an increase of owners' exposure to liability. Secondly, the drafting inconsistencies and ambiguities, e.g. as described in Professor Tetley's article in *Lloyd's Maritime and Commercial Law Quarterly*, 1979, p.1, is believed to result in increased "friction" as that term was used in the preparatory work before the Hamburg Conference. In other words, new ambiguities and drafting deficiencies, as well as introduction of new concepts, such as Article 5.1, is expected to create uncertainty, lead to increased litigation and, therefore, result in increased costs which will have to be distributed between shipowners and cargo interests.

The second area of concern to shipowners, i.e. the increased "friction", would seem to be more widespread and be shared also by other than shipowning interests. The argument may be very conservatory and can be used against any new piece of legislation, particularly one that is not favoured in substance. However, the concern is believed to be genuine. On the other hand it is not as if there are two or three paragraphs or articles that are outstanding in this respect, and which by themselves, in isolation, create "unacceptable commercial difficulties or serious problems of interpretation", to use the language of the questionnaire. Rather, the concern is created by the sum of points where drafting improvements are required.

Portugal

We feel that the more important difficulties arising from Hamburg Rules have an external nature, that is they are scarcely due to the set of rules included. However, some aspects suggest the need for reappraisal, as in Art. 4.

It seems that, as in the 1924 Convention, loading and unloading operations should, in any case, be a responsibility of the carrier.

On the other hand, the carrier's responsibility for having the vessel in the necessary seaworthy conditions should be regulated expressly.

No need to say, that Article 5 must be reworded, namely in what respects the main question of nautical fault.

South Africa

Emphatically not. With the greatest respect to those responsible, the Hamburg Rules are poorly drafted and raise a host of problems. It would be an invidious task to endeavour to say which problems are serious problems, espe-

Uniformity of the Law of Carriage of Goods by Sea

cially as the Association believes that the Hamburg Rules are not acceptable. If more details of the criticisms are required, they can be furnished.

Spain

Yes, Hamburg Rules are well balanced and in conformity with modern patterns of international transport law. We have no knowledge of possible "unacceptable commercial difficulties" or serious problems of interpretation. The latter, instead, exist in Spain as regards Hague-Visby Rules.

Sweden

No. The Nordic countries have recently enacted new maritime codes comprising i.a. in principle all "Hamburg Rules" provisions which are believed not to be in conflict with the Hague-Visby Rules. The Swedish maritime code has been drafted in such a way that only a limited number of amendments have to be made if and when the Hamburg Rules will be ratified by Sweden. The aim of the Swedish government is to have the Hamburg Rules ratified simultaneously with the other Nordic countries and at a time when the rules have been ratified by the majority of the other more important countries with which Sweden is trading as for instance the EU countries and the United States of America.

In remedying the unfortunate situation of having several legal regimes in place and in the process of the unification of the provisions relating to liability arising out of carriage of goods it is indeed very important to find a regime acceptable not only to governments but also to the shipping industry as such and other parties concerned. In finding such a joint platform it could be argued, considering the number of regimes now being in force, that it would be preferable to draft another new convention rather than relying on an existing but controversial regime like the Hamburg Rules or for that matter the Hague/Visby Rules. We are however of the opinion that it would be neither practically nor commercially or legally acceptable to have a further convention. There is an obvious risk that we will get a further regime which, like some of the existing regimes, will only have a weak support by governments and the shipping industry.

Considering the above, the views of the Swedish government and the steps recently taken by the EU commission we could consider to suggest that all efforts should be made to promote the Hamburg Rules as a "platform" with the hope to get a widely spread and accepted legal regime regulating the liability of the carriers.

It is, however, our view that it is not possible to urge for a straightforward acceptance of the Rules. In making the Hamburg regime more broadly acceptable and in order to clarify certain ambiguities we do believe that it is necessary to modernize the 1978 Rules. If the Rules are not amended and/or modernized, there are grounds to believe that the Hamburg Rules will not be ratified by the more important shipping countries.

The parties concerned should be aware that in the existing major regimes - the Hague Rules and the Hague Visby Rules - the basic liability rule is word-

Part II - The Work of the CMI

ed in a similar way and that it has been established by a great number of law cases how this should be interpreted. There are reasons to believe that the quite different wording in for instance Art. 5.1 - Basis of liability - of the Hamburg Rules will be interpreted in another way and give cause to litigations for a long time ahead.

The carriers are denied the exception of errors in navigation or in management of the ship in the Hamburg Rules. Without taking a definite position of keeping or deleting the exception rule we would like to draw the attention to the fact that the above mentioned exception might still have some logic and it is indeed common for the now most widely spread regimes. It does not hurt the cargo-owner, because he is covered under his cargo-insurance anyhow. The cargo-insurance could continue to assume these risks within their efficiently built up and wide re-insurance system. The possibility of charging the carriers for cargo damage caused by errors in navigation or in management of the ship would probably not reduce cargo premiums. The P&I clubs have already today difficulties in getting their reinsurance cover; not only because the costs of such insurance has gone up but it is also hard to find underwriters willing to take such risks. To shift the burden of liability by taking away this exception could therefore hit one of the parties in the shipping market, the ship-owner, very hard.

Looking at the special provisions of the Hamburg Rules we would, without going into details, like to draw the attention to the following remarks.

- a) With reference to articles 1 and 10, substantial clarification of the mandatory scope should be made. Especially the relation to the charterer and other parts involved must be clarified.
- b) The Rules should have specific provisions clearly spelling out the duties of the parties involved and in particular the duties of the carrier. In this respect we would like to refer to the provisions regulating the duties of the carrier in the Hague/Visby Rules.
- c) Article 2.3. We cannot see any reason to limit applicability of the Rules to bills of lading if there is a reference to contracts of carriage other than charterparties. All types of contract of carriage as for instance sea waybills referred to in a charterparty should be covered by the provisions in article 2.3.
- d) We would like to have article 5.3 - conversions from pending delay into final loss - amended to reflect that the conversion shall not take place if it is proved that the goods have in fact not been lost during the 60 days period. Photos, Port and/or stevedores' statements and/or official certificates confirming that the goods in fact have not been lost during the "conversion" period could be acceptable as evidence.
- e) We are in favour of having article 17.3 regarding Letter of Indemnity deleted. The article creates more confusion than clarity to the controversial questions of issuing letter of indemnity.
- f) The articles regulating jurisdiction and arbitration should be deleted. These questions should be dealt with in a general convention and not in particular convention such as the Hamburg Rules convention.
- g) Provisions should be added to the rules, clarifying the applicability of the rules to seaway bills and the EDI technique.

Switzerland

The Hamburg Rules have many deficiencies which as such do clearly justify an outright rejection of the idea of urging straightforward acceptance of those Rules. The advantages of the Hamburg Rules have all been praised to be a modernization of the codification of international carriage of goods by sea and inclusions of issues not covered by the Hague Rules, which were drafted as "certain Rules".

The first advantage of modernization has in our view not brought any progress, since all general rules (as the definition of the basis of liability) will leave judges and lawyers, but also - and more particularly - the commercial parties of the shipping industry (shippers, carriers, P&I Clubs, insurers) in a very uncomfortable position. The position one finds itself in when trying to apply the Hamburg Rules is that those general terms give no indication on how each individual case should be handled. It is quite obvious that the major shipping nations will try to construe the Hamburg Rules in a traditional way and thereby read most of the Hague Rule-authorities and cases into the Hamburg Rules. At the same time some other jurisdictions, used to more drastic judicial reviews, will inevitably bring forward new and incompatible jurisprudence which will lead to a total loss of uniformity so carefully achieved by drafting and implementing the Hague-Visby Rules. All other changes falling under the aspect of modernization (EDI documents, container etc.) are already dealt with in the Hague-Visby Rules or in the CMI Electrodocus. All remaining issues could easily be included in a new Protocol to the Hague Rules (see point 5).

The second reason the Hamburg Rules are praised is that they cover in more general terms all aspects of the contract of carriage of goods by sea. This is true, but it has to be realized that the Hague and the Hague-Visby Rules clearly cover only "certain Rules" and that most national legislations have found many acceptable rules covering all those remaining points. Again, to include those points in an international convention is not difficult at all and could form part of a revision of the Hague-Visby Rules. When doing so one will have to decide carefully whether the mandatory nature of the convention should in fact also be extended to those ancillary questions of law.

United Kingdom

The basic questions posed in the first part of this Question and in the first part of Questions 4 and 5 are mutually exclusive. The BMLA does not consider that the CMI should either urge the straightforward acceptance of the Hamburg Rules, or promote changes to them and urge their acceptance in an amended form. The BMLA does consider that there is scope for modernising the Hague-Visby Rules. The BMLA's reasons for this view are as follows:

- (i) The International Sub-Committee appointed in 1989 to consider problems of uniformity of the law of the carriage of goods by sea decided by a large majority at its first meeting on 4th April 1989 to base its study upon the Hague-Visby Rules.
- (ii) The document drafted by the Chairman of the International Sub-Committee entitled "Uniformity of the Law of the Carriage of

Part II - The Work of the CMI

Goods by Sea in the 1990's" was discussed by the Committee of the 34th International Conference of the CMI in Paris in June 1990 (and 41 national associations participated in the discussion) largely on the basis of the Hague-Visby Rules.

- (iii) The plenary session of the 34th Conference approved the document as revised by the Committee ("the Document") as a basis for further work by a majority of 39 to nil with one abstention.
- (iv) The majority of the national associations have therefore as recently as 1990 participated in a study of the problem which the Questionnaire seeks to address on the basis of the Hague-Visby Rules and have approved the resultant Document as a basis for further work. The CMI should therefore develop its further work on the basis of the Document and on the basis of the Hague-Visby Rules.
- (v) The BMLA does not consider that there have been any international developments since June 1990 which lead it to believe that a substantially different consensus of view amongst national associations would now prevail. On the contrary Australia, Canada, China and Japan have since enacted legislation based upon the Visby Protocol and the Maritime Law Association of the United States has been actively considering modernisation of the United States Carriage of Goods by Sea Act whilst retaining the basic framework of the Hague Rules.
- (vi) The BMLA therefore considers that if the CMI were to urge the acceptance of the Hamburg Rules, whether in an amended or their unamended form, far from promoting uniformity of substantive law, such a course would have entirely the opposite effect.
- (vii) Such a course would not promote uniformity of application for the reasons we develop in answer to this Question below.

The BMLA considers that many of the provisions of the Hamburg Rules would cause unacceptable commercial difficulties and/or serious problems of interpretation. In the interests of keeping its responses to the Questionnaire reasonably short, the BMLA will confine its remarks to Article 5 ("Basis of Liability"). This constitutes the heart of the Hamburg regime and yet, in the view of the BMLA, it is commercially unacceptable for a variety of reasons:

- (i) There is a complete departure from concepts well-known to maritime law, such as the exercise of due diligence to make a ship seaworthy and the obligation properly and carefully to load, stow, carry and discharge the goods. Where concepts have acquired a settled meaning over the centuries, it is commercial folly to abandon these without good reason.
- (ii) Article 5 introduces, in place of the familiar concepts, a wholly imprecise and ill-defined test. It is not clear what is meant by "the occurrence which caused the loss". Great difficulty and imprecision is to be expected in the application of the words "took all measures that could reasonably be required to avoid the occurrence and its consequences". There is no definition of the concept of "servants or

Uniformity of the Law of Carriage of Goods by Sea

agents" and there is therefore uncertainty as to the classes of persons for whom the carrier is to be vicariously liable. The words "while the goods were in his charge" are also likely to cause difficulty. The lack of precision in Article 5 para 1 was noticed by a majority of the participants in the Hamburg Conference of 1978 and, to deal with this problem, a "common understanding" was adopted at Annexe II. But in some ways the Annexe only adds to the problems of interpretation raised by the Article.

- (iii) With a rule as elastic, opaque and flexible as Article 5 para 1, it must follow that, even if the Hamburg Rules were uniformly adopted, there could be no uniformity of application.
- (iv) The BMLA disagrees with some of the basic principles of the Hamburg Rules on allocation of risk.
- (v) The BMLA can see no useful purpose in the provisions dealing with delay in delivery. Article 5 para 2 would render the carrier liable if he failed to deliver the goods "within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case". This provision would appear to be a recipe for costly, unnecessary and unpredictable litigation.
- (vi) The BMLA views with great concern the extraordinary provision in Article 5 para 3 that goods may be treated as lost 60 days after the time when they ought to have been delivered. No one has ever been able to explain how this can be expected to work in practice. The effect of this proposal is wholly unpredictable.

United States

No. The Hamburg Rules present language in broad terms subject to varying interpretation which can only foster litigation.

Venezuela

Action can not be limited to urging straightforward acceptance of the Hamburg Rules. In general terms some provisions of the Hamburg Rules may cause unacceptable commercial difficulties such as it may take cargo insurance business away from local markets, so national underwriters would lose business and shippers would lose the facility of obtaining indemnity promptly in case of loss or damage. Besides, there will be serious problems of interpretation such as the real meaning of the basis of liability of article 5 by which the carrier is liable unless he proves that he, his servant or agents took all measures that could reasonably be required to avoid the occurrence and its consequences. Another example is the loopholes of the port to port applicability provision of article 4, since the carrier according with Article (2)(b) (ii) may contract out of responsibility after tackle by a general clause in the bill of lading or by invoking custom.

Other Organizations***ICS***

Categorically, no. ICS regards the Hamburg Rules as a misguided attempt

Part II - The Work of the CMI

to change the basis of liability for the carriage of goods by sea. Consequently we are of the view that no action should be taken to encourage acceptance of that regime.

The Hamburg Rules were signed on 31st March 1978 and only came into force internationally on 1st November 1992 - almost 15 years later. They currently have 22 adherents, none of which is a major trading or maritime nation.

It is unthinkable that the CMI should urge "straightforward acceptance" of a regime which has been considered and rejected as not providing a commercially viable option by the world's major maritime nations.

Many of the provisions of the Hamburg Rules would cause unacceptable commercial difficulties and serious problems of interpretation. For example, a provision which would give rise to many problems is Article 5 - "Basis of Liability". This provision is drafted in an abstract manner which would make it extremely difficult in practice to decide after an incident had taken place whether or not the shipowner was liable for the damage. Furthermore, the exact intention of this abstract rule is so unclear that the authors of the Hamburg Rules had to adopt a resolution (a "Common Understanding") to interpret its meaning. Since this resolution is not legally binding there could be differing interpretation in national law and a global lack of clarity.

Question 4

Should action be taken to amend the Hamburg Rules? If so, what basic changes do you suggest be made to the Hamburg Rules?

Argentina

The best is to reconsider the system of the Hamburg Rules and to combine it with Hague-Visby Rules.

Australia and New Zealand

No.

Canada

We suggest amendments to clarify arts. 21 and 22 (See our answer to Question no. 7).

China

Since the Hamburg Rules has come into force for not a long time, it seems improper for the CMI to suggest a revision of the Hamburg Rules without any concrete requirement of the State Parties to the Hamburg Rules.

Croatia

No action should be taken to amend the Hamburg Rules.

The Republic of Croatia, following the suggestions made by our Association, has just ratified the Visby Rules with the 1979 SDR Protocol amending the International Convention for the Unification of Certain Rules of Law Re-

Uniformity of the Law of Carriage of Goods by Sea

lating to Bills of Lading, 25th August 1924, as amended by the Protocol of 23rd February 1968 (Official Gazette of the Republic of Croatia - International Agreements No. 3 of April 6, 1995).

We would like to point out that the Hague Rules already have a long period of life and that all the parties in carriage of goods by sea are familiar with it. The courts, arbitrators, insurers, P&I Clubs, they all have a long practice in the matters relating to the Hague and the Hague-Visby Rules, and nobody engaged in international trade has time or patience to wait for a very long period required for Hamburg Rules to gain similar wide acceptance and numerous precedents.

Denmark

See answer to question 5.

Finland

No. It is very difficult to see that these options would promote uniformity. Those states that have ratified - or are planning to ratify - the Hamburg Rules would hardly take a regime which would be less favourable to the cargo owners.

France

Taking into consideration the above remarks, the AFDM believes that action should be taken to amend the Hamburg Rules.

1. The first problem is to know how such an action could be begun. Two alternatives seem theoretically possible, but only the second one appears practical.

The first way would be to get the depositary (the Secretary-General of the United Nations) to call a conference to amend the rules. It is not clear that the Secretary-General would agree to a request to revise or amend coming from States other than Contracting States. In addition, holding a conference is costly, and the United Nations might refuse on that basis.

The second way would be to have the request for a conference come from States which have ratified the rules. Article 32 provides that the depositary (the Secretary-General of the United Nations) "at the request of not less than one-third of the Contracting States...shall convene a conference for revising or amending" the convention. It appears that the Secretary-General is obliged, if he receives such a request, to convene a Conference. The AFDM believes that it would not be impossible for the CMI itself, with the States which would co-operate with it, particularly those which are members of the European Union, to persuade a certain number of States (only seven are needed) to ask the United Nations Secretary-General to organize a conference to revise the rules. Such a conference would have the immense advantage for all States, and especially those already having signed the rules and presenting the request for revision, of finally allowing the unification of the law of carriage of goods by sea.

2. The second problem is to know what fundamental changes should be made to the Hamburg Rules. The opinion of the AFDM is as follows:

Part II - The Work of the CMI

Article 1 - Definitions: No suggested changes.

Article 2. - Scope of application: No suggested changes.

Article 3 - Interpretation of the Convention: No suggested changes.

Article 4 - Period of responsibility: As we have already mentioned above, the AFDM considers this text to be one of the most questionable of the Rules. It believes that it is necessary here to introduce into the Hamburg Rules the provisions of articles 3(1) and (2) of the Hague Rules (provisions which require the carrier on the one hand to exercise due diligence to make the ship seaworthy, to properly man, equip and supply it, and on the other hand to properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried). The problem would be to decide where to insert such an amendment. The ideal place would be to add an article at the beginning of Part II of the Rules, now entitled "Liability of the carrier". The title for Part II would become "Obligations and liability of the carrier". But this would mean that the articles would have to be renumbered, starting with article 4. To avoid this, a new subsection could be inserted in article 4 containing the dispositions found in article 3 of the Hague Rules. The title of article 4 would have to be modified, and it would become "Obligations of the carrier and period of responsibility". Alternatively, the suggested amendment could be inserted at the beginning of article 5, which would then be entitled "Obligations of the carrier and basis of liability". The rest of the provisions of article 4 seem to be acceptable as they stand.

Article 5 - Basis of liability: As indicated above, the AFDM believes that on the one hand it is not advisable to propose the reintroduction of the exception for negligence in the navigation and administration of the ship in any amended Hamburg Rules. On the other hand, it considers that the formula employed in the Rules to define the situations where the carrier is exonerated from all liability (proof that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences) is much too vague. The AFDM does not believe, however, that it would be possible to obtain a complete revision of the text. To improve it, the AFDM thinks that an amendment could be proposed adding to the present Hamburg Rules a certain number of specified exceptions, in the tradition of the Hague Rules. The AFDM suggests the following text:

"The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4.

The carrier is not liable for loss, damage or delay arising or resulting:

- a) from perils, dangers or accidents of the sea or other navigable waters;*
- b) from strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;*
- c) from inherent defect, quality or vice of the goods or wastage in bulk or weight as tolerated in the port of discharge;*

Uniformity of the Law of Carriage of Goods by Sea

- d) *from act or omission of the shipper, in particular from insufficiency of packing or marking the goods;*
- e) *from any other cause arising without his actual fault or without the actual fault or neglect of his agents or servants:*
if he proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences."

Concerning the rest, in spite of objections which could be made concerning details (in particular the regime concerning the exception of liability in case of fire, which is needlessly complex), it appears that the dispositions of article 5 can be maintained.

Article 6 - Limits of liability: No suggested changes.

Article 7 - Application to non-contractual claims: No suggested changes.

Article 8 - Loss of right to limit responsibility: The AFDM realizes that the question in this text is whether an act or omission by a servant of the carrier results in loss of the right to limit responsibility, a question which has received different answers when courts in different countries have interpreted an identical provision in the Visby Rules. It seems however that it would be preferable not to raise the question at any conference to amend the Hamburg Rules and to allow the courts of different countries to solve the problem. As for the rest, the AFDM suggests no changes to the text, which is very similar to provisions in the Visby Protocol.

Article 9 - Deck cargo: No suggested changes.

Article 10 - Liability of the carrier and actual carrier: This text was studied very carefully by the AFDM because, in case of a time charter, the quality of actual carrier might conceivably be attributed to the shipowner. But article 2(3) of the Rules proclaims that "the provisions of this Convention are not applicable to charter-parties". It can therefore be assumed that the courts will not apply article 10 to a shipowner. Even if they did, the shipowner's position concerning his liability would not be seriously aggravated. In many legal systems, the shipowner is considered to be a co-carrier along with the time charterer. In French law, if the consignee does not have an action in contract against the shipowner, he does have one in tort which is much more dangerous for the shipowner (because the time bar is not one year, the exceptions do not apply and there is no limitation of liability). The AFDM therefore has decided not to recommend any changes to article 10.

Article 11 - Through carriage: No suggested changes.

Article 12 - General rule (concerning the liability of the shipper): The AFDM thinks that the provisions of article 12, which states in what circumstances the shipper is not liable for loss or damage sustained by the ship, should be preceded by a text which makes the obligations of the shipper clear and which

Part II - The Work of the CMI

would serve as a parallel to the provisions concerning the obligations of the carrier. The AFDM therefore proposes to insert before the present text of article 12 the following provision:

"The shipper shall be bound to properly and carefully pack and mark the goods he delivers to the carrier. If he places the goods in a container, he shall also be bound to see to it that the goods are properly stuffed within the container".

Article 13 - Special rules on dangerous goods: No suggested changes.

Article 14 - Issue of bill of lading: No suggested changes.

Article 15 - Contents of bill of lading: No suggested changes.

Article 16 - Bills of lading: reservations and evidentiary effect: No suggested changes.

Article 17 - Guarantees by the shipper: No suggested changes.

Article 18 - Documents other than bills of lading: No suggested changes.

Article 19 - Notice of loss, damage or delay: This text is one of those that the AFDM considers unacceptable as it reads. If the time limit of 24 hours for the consignee to give notice of loss or apparent damage does not seem excessive, the situation is different concerning the time limit of 15 days in case of damage which is not apparent. Such a long time limit, which leaves time for fraud, is not a good idea. The AFDM is of the opinion that a proposition to amend the Hamburg Rules should be made reducing the time limit for giving notice to seven days (or perhaps five working days).

Article 20 - Limitation of actions: The time for bringing actions concerning the carriage of goods by sea is doubled in the Hamburg Rules. But many States have already accepted a time bar of two years for air transport (the Warsaw Convention), even though it concerns a field where speed is more important. The AFDM therefore considers that the text is acceptable as it stands.

Article 21 - Jurisdiction: This text was the subject of a long discussion within the AFDM. Some members were very reluctant to accept the provisions in article 21 which in fact render meaningless any choice of forum clause. This is true because they allow any subsequent holder of a bill of lading to bring an action against the carrier in the court of the port of loading or the port of discharge notwithstanding a choice of forum clause. Nevertheless, the AFDM believes that the Hamburg Rules correspond to a growing body of case law in many shipping nations. The courts of these States (Great Britain, the United States, Belgium, very recently France), even though they uphold these clauses in principle, often declare them unenforceable as against the consignee in individual cases. The AFDM therefore does not consider that it would be advis-

Uniformity of the Law of Carriage of Goods by Sea

able to propose an amendment to article 21.

Another provision of article 21 which was criticized was subsection 2 which provides that the action may be brought "in the courts of any port or place in a Contracting State at which the carrying vessel or any vessel in the same ownership may have been arrested in accordance with the applicable rules of the law of that State and of international law". The text however allows removal of the action to one of the courts which would otherwise have jurisdiction if the carrier furnishes sufficient security. Article 20 is inspired directly by the Convention of 1952 concerning arrest of seagoing ships which provides that the courts of the State in which the arrest was made have jurisdiction to decide the substantive issues especially "if the claim concerns the voyage of the ship during which the arrest was made". But article 20 enlarges upon the text of the Convention of 1952 because it allows not only the carrying vessel to be arrested but also any sister ship.

In spite of the wide reach of the text and of the fact that in practice nothing can stop the consignee from arresting the carrying ship or a sister ship (which arrest would easily be allowed by the local courts and would mean that the carrier would have to accept the jurisdiction of the local court), the AFDM thinks that it would not be advisable to propose an amendment which would probably have little chance of success.

Article 22 - Arbitration: This article provides that the claimant may choose to bring an arbitration proceeding in either the port of loading or the port of discharge notwithstanding any clause in the bill of lading to the contrary. This provision appears to the AFDM likely to create serious problems, especially in the case where the bill of lading provides for "institutional" arbitration, stipulating that the proceeding should be brought before a specific arbitration organisation. The rules of some of these organisations do not allow the arbitration to be held outside of the country where the organisation is located. The AFDM would be in favour of the abrogation of this provision which has no equivalent in the international conventions concerning air or road transport.

Article 23 - Contractual stipulations: In theory, article 23 provides that any contractual stipulation which derogates directly or indirectly from the Convention is null and void. It does not allow the possibility of any exceptions to this principle. This is the solution in French law, but article 6 of the Hague Convention provides that, in exceptional circumstances narrowly defined, the carrier and the shipper are free to make a contract in which they themselves define their obligations and responsibilities. The carriers have never taken unfair advantage of this provision. Its usefulness appears evident, for instance in the case of the carriage of unusual goods in close cooperation with the shipper, especially concerning loading and discharge of the goods.

The AFDM therefore suggests adding the following amendment to article 23:

"Notwithstanding the provisions of the preceding paragraph, a carrier and a shipper shall be at liberty, for goods not being an ordinary commercial shipment, and if the character or condition of the property to be carried

Part II - The Work of the CMI

and the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, to enter into a special agreement concerning the obligations and liability of the carrier. In this case, no bill of lading shall be issued, but only a non-negotiable instrument marked as such”.

Articles 24 and following: No suggested changes.

Greece

The Hamburg Rules have not met with the enthusiasm of the major shipping nations, due to their overall structure and their failure to balance the contrasted interests of the members of the shipping industry. Their amendment would not remedy this situation except if it consisted in a modification which would make them a supplement to the Hague-Visby Rules.

Indonesia

Yes.

Ireland

If one says “Yes” to the first part of this question some of those who support the Hamburg Rules may regard such a reply as an endorsement of the basic philosophy behind the Hamburg Rules. Other supporters of the Hamburg Rules will resist any suggestion that any of the principles enshrined in the rules should be altered. On the other hand a negative reply will suggest to some that we think that the Rules are incapable of repair. We do not share either of these extreme views. Although there is much that is unfortunate there are some good things in the Hamburg Rules. We indicate below some of the changes that would be desirable, in our view, if the solution of the problem is to be found in amending the Hamburg Rules.

Basic changes required to be made in the Hamburg Rules.

1. The defence of nautical fault must be restored.
2. The concept of the “carrier” and the “actual carrier” needs re-examination. This is not necessarily the best solution to the problem of identifying the carrier.
3. Article 21 (Jurisdiction) and Article 22 (Arbitration) should be deleted or radically altered.

4. The whole text should be redrafted to remove ambiguities.

Provisions in the Hamburg Rules which should be retained.

1. The rules should apply to all contracts for carriage by sea and not just to those covered by a bill of lading.
2. The rules should apply from the time the actual carrier takes charge of the goods at the loading port until they are discharged from the ship.
3. The provisions relating to the loss of the right to limit liability in Article 8 also should be retained.

Italy**Introduction**

Questions 4, 5 and 6 are strictly interrelated. We are of the view that the Hague-Visby Rules, whilst several provisions are still almost entirely satisfactory, have become partly obsolete since they do not consider problems that have arisen after their approval. Moreover, the exonerations from liability of the carrier are, in modern times, at least partly unjustified. None of the Conventions presently in force is, therefore, entirely satisfactory, but each contains provisions that are satisfactory.

Our replies to this Question imply which changes ought to be made to the Hague-Visby Rules if it will be decided to amend them, rather than to amend the Hamburg Rules.

We shall first consider the provisions of the Hamburg Rules that, in our view, would cause unacceptable commercial difficulties or serious problems of interpretation and, secondly, the provisions that we believe should be improved but the modification of which is not essential.

A. Provisions causing unacceptable commercial difficulties and/or serious problems of interpretation.

Article 4 - Period of Responsibility.

The provisions of this article would cause serious problems of interpretation. It is not at all clear whether the purpose of this article is to identify the period of responsibility of the carrier or the period of application of the Convention. The title of the article suggests that the purpose of this provision is to define the period of responsibility of the carrier. However, the wording of paragraph 1, where reference is made to the period of responsibility of the carrier "under this Convention", suggests that the actual purpose of this article is to state which is the period during which the Convention applies. The statement that the responsibility of the carrier "covers the period during which the carrier is in charge of the goods at the port of loading, during carriage and at the port of discharge" seems to confirm this latter view. If this is the correct interpretation of paragraph 1, it would follow that where the carrier is already in charge of the goods when the goods arrive at the port of loading and continues to be in charge of the goods when they leave the port of discharge, the commencement and the end of the period during which the carrier is in charge of the goods cannot be identified with reference to the provisions of the Convention, but to the provisions of the applicable national law.

However, paragraph 2 of this article identifies the period of responsibility of the carrier under the Convention as the whole period during which the carrier is in charge of the goods. In fact paragraph 2 provides that the period commences when the carrier takes over the goods from the shipper or an authority etc. and terminates when the carrier hands over (i.e. delivers) the goods to the consignee or an authority, etc. The assumption seems to be, therefore, that the carrier always takes over from the shipper the goods at the port of loading and hands over the goods to the consignee at the port of discharge.

But since this is not always the case, the situation where the goods are al-

Part II - The Work of the CMI

ready in charge of the carrier on their arrival at the port of loading and remain in charge of the carrier when they leave the port of discharge should be the subject of an express regulation in this article.

If the above comments are accepted, paragraph 1 of Article 4 could be amended as follows:

The period during which the responsibility of the carrier is governed by the provisions of this Convention is that during which the carrier is in charge of the goods at the port of loading, during carriage and at the port of discharge.

A new paragraph 3 should be added after paragraph 2, the present paragraph 3 becoming paragraph 4:

If the carrier is already in charge of the goods at the time of their arrival at the port of loading or continues to be in charge of the goods when they leave the port of discharge, the period during which the responsibility of the carrier is governed by the provisions of this Convention commences at the time when the goods arrive at the port of loading and ends at the time when they leave the port of discharge.

Paragraph 3 should be numbered 4 and should be amended so to include a reference to the new paragraph 4.

Article 5 - Basis of Liability

Paragraphs 1. and 4

We are of the view that the liability regime of the Hamburg Rules (the title of Article 5 is not correct) is unsatisfactory and that in many respects the regime of the Hague-Visby Rules is much to be preferred. A comparison between the two regimes will show the reasons of our conclusion. Such comparison has been made from the standpoint of (i) the basis of liability, (ii) the exonerations from liability, (iii) the allocation of the burden of proof, and (iv) the behaviour required of the carrier.

(i) Basis of liability.

It is generally agreed that in both regimes the basis of liability is fault. But whilst this appears clearly from the provisions of the Hague-Visby Rules, this is not the case for the Hamburg Rules.

In fact, under Art. 3(1) and (2) of the former, the obligations of the carrier are to exercise a "diligence raisonnable" and to exercise a duty of care and under Art. 4(2)(q), the carrier is exonerated from liability if he proves that the loss of or damage to the goods has resulted from a cause "ne provenant pas du fait ou de la faute du transporteur".

Under Art. 5(1) of the Hamburg Rules, the carrier is liable for loss resulting from loss of or damage to the goods unless he proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences. The difference in the language used in paragraph 1 of Article 5 and that used in paragraph 2 in respect of delay ("within the time which it would be reasonable to require of a diligent carrier") and in paragraph 4 in respect of fire (unless he proves that the fire arose from fault or neglect - "d'une faute ou d'une négligence" in the French text) might support the view

Uniformity of the Law of Carriage of Goods by Sea

that the liability of the carrier under paragraph 1 is more strict than that under paragraphs 2 and 4. The wording of paragraph 7 contributes to the confusion, because the part of the loss caused by two or more events for which the carrier is liable is described as having been caused by the fault or neglect of the carrier. The best evidence of the uncertainty created by these provisions is the fact that it was felt necessary to adopt the famous "Common Understanding".

We suggest that the traditional wording (the word "fault" suffices), which is still used in paragraphs 2 and 4, be maintained but that the language now used in paragraph 1 could be adopted in order to better clarify the nature of the proof that must be provided by the carrier in order to show the absence of fault.

(ii) Exonerations from liability.

The exonerations from liability that exist under the Hague-Visby Rules are three: (i) fault of the master or crew in the navigation, (ii) fault of the master or crew in the management of the vessel and (iii) fault of the master or crew in connection with fire. None of these exonerations technically exists under the Hamburg Rules, even if the reversal of the burden of proof regarding fire practically is very close to an exoneration.

In 1974 at Hamburg, the CMI had recommended to keep the exonerations under (i) and (iii) and to delete that under (ii). Consequently, the duty to exercise a "diligence raisonnable" to make the ship seaworthy would have become a continuous obligation. At Paris, 16 years later, there was a great majority in favour of keeping the exoneration for fault in the navigation and a bare majority in favour of keeping the exoneration for fault in the management of the vessel.

It may very well be that now, after four years, the views of the majority of the National Associations have changed. Our view is that the abolition of the two exonerations would not in itself create significant changes.

(iii) Allocation of the burden of proof.

The excepted perils listed in Article 4(2)(c-p) are all cases where the absence of fault of the carrier is presumed and, therefore, the burden of proof lies on the shipper. Article 4(2)(q) and the Protocol of signature confirm this.

Such reversal of the burden of proof, even for a more limited number of "excepted perils", should be maintained. It is worth mentioning that it is not a peculiar feature of maritime law, because it exists also under the CMR (Article 17, paragraph 4).

If it is agreed that the exonerations under Article 4(2)(a) and (b) may be abolished, Article 4 paragraphs 1 and 2 of the Hague Rules and Article 5 paragraphs 1 and 4 of the Hamburg Rules could be combined as follows:

1. *The carrier shall be liable for loss resulting from loss of or damage to the goods as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place when the goods were in his charge as defined in article 4, unless the carrier proves that neither his fault nor that of his servants or agents contributed to the loss or damage. In order to prove the absence of fault the carrier must provide evidence that he has taken the reasonable measures that the nature of the transport requires and, in particular, the measures described in paragraph 3 of this article.*

Part II - The Work of the CMI

As suggested below in sub-paragraph (iv), paragraphs 1 and 2 of Article 3 of the Hague-Visby Rules should become paragraphs 3 and 4 of Article 5 of the Hamburg Rules. As regards the reference to paragraph 3 in the text suggested above, it is necessary to decide whether in order to invoke one of the excepted perils and the consequential reversal of the burden of proof the carrier must first prove compliance with the duty set out in paragraph 3.

2. *When the carrier proves that the loss or damage has been caused by one of the following circumstances, it shall be presumed that to such extent neither his fault nor that of his servants or agents contributed to the loss or damage:*

- (a) *fire;*
- (b) *perils, dangers and accidents of the sea or other navigable waters;*
- (c) *acts of God;*
- (d) *acts of public enemies;*
- (e) *arrest or restraints of princes, rulers or people;*
- (f) *act or omission of the shipper or owner of the goods, his agents or representative;*
- (g) *strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;*
- (h) *riots or civil commotions;*
- (i) *saving or attempting to save life or property at sea or preventing or minimizing damage to the environment;*
- (j) *wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;*
- (k) *insufficiency of packing;*
- (l) *insufficiency or inadequacy of marks;*
- (m) *latent defects of the ship not discoverable by due diligence.*

This list reproduces all the excepted perils, save those under sub-paragraphs (a), (b) and (i) of Article 4 paragraph 2. It certainly must be modernized, but this may be done once the principle of the reversal of the burden of proof is accepted.

As regards fire, it is suggested that the very detailed regulation contained in paragraph 4 of Article 5 should be abolished.

(iv) Behaviour required of the carrier.

In Article 5 of paragraph 1 of the Hamburg Rules a theoretical approach to the regulation of the liability of the carrier has replaced the pragmatic approach that had been in force from the time of the entry into force of the Hague Rules and which even before that time, had been adopted in several national statutes. It wipes out the specific provisions set out in Article 3 paragraphs 1 and 2 of the Hague Rules that had for so long constituted a basic reference in order to establish what the obligations of the carrier are prior to and during the voyage in respect of the ship and the cargo. In support of the new rule it has been stated, *inter alia*, that there is no reason why the rules in respect of the carriage of goods by sea should differ from those in respect of the carriage of goods by air, road and railway. In reality, there are, besides tradition (which should not be bluntly ignored), very good reasons for this:

Uniformity of the Law of Carriage of Goods by Sea

- The mode of transport is different.
- The means of transport is different in its technical aspects and in size.
- The time of transport is different, normally much longer.
- The quantity, and, often, the quality, of the goods is different.

The replacement of the specific obligations set out in Article 3 paragraphs 1 and 2 of the Hague-Visby Rules with the generic obligation set out in Article 5 paragraph 1 of the Hamburg Rules is, therefore, unjustified and dangerous. It may lead to uncertainty and to a substantial increase of litigation.

We are, therefore, of the view that the provisions of the Hague-Visby Rules should be maintained. On the assumption that the duty to make the ship seaworthy becomes a continuous obligation and that the uniform rules apply to the whole of the period during which the goods are in charge of the carrier, paragraphs 1 and 2 of Article 3 of the Hague-Visby Rules could be reworded as follows and become paragraphs 3 and 4 of Article 5 of the Hamburg Rules:

3. *The carrier shall be bound, before and during the voyage, to exercise due diligence to:*
 - a. *Make and keep the ship seaworthy;*
 - b. *Properly man, equip and supply the ship;*
 - c. *Make the holds, refrigerating and cool chambers and all other parts of the ship, including the containers, if supplied by the carrier, in which the goods are carried fit and safe for their reception, carriage and preservation.*
4. *The carrier shall, for all the time during which the goods are in his charge, properly and carefully keep and care for the goods. He shall also properly load and carefully stow, carry and discharge the goods.*

Article 11 - Through Carriage

It is appreciated that Article 11 is an exception to the general rule of the joint liability of the carrier and of the actual carrier adopted in Article 10. However the scope of application of such exception, would be unreasonably restricted if the provision in paragraph 1 whereby in order to exclude the liability of the carrier for the part of the carriage not performed by him, it is required that the name of the on-carrier be specified in the contract of carriage, were left unaltered. In fact, the carrier quite often does not know at the time when the contract of carriage is made or the bill of lading is issued who the on-carrier will be. This is the case when a line is served by several carriers. It is suggested, therefore, that either the words "is to be performed by a named person other than the carrier" be replaced by the words "is to be performed by another carrier", or that a proviso be added, to the effect of excluding the operation of this rule if the carrier does not notify to the shipper the name of the on-carrier as soon as it becomes known to him.

Article 14 - Issue of bill of lading

Paragraph 1. The provision in this paragraph whereby the carrier must, on demand of the shipper, issue a bill of lading, combined with that of Article 23 paragraph 1, may create unacceptable commercial difficulties. In fact, an agreement between the carrier and the shipper to the effect that a document other than a bill of lading should be issued, and the more so a practice not to

Part II - The Work of the CMI

issue bills of lading in a specific trade would be null and void pursuant to article 23(1). It is suggested, therefore, that a proviso be added to paragraph 1 in order to cover the cases where either following an agreement between the parties or under the custom of the trade a document other than a bill of lading must be issued by the carrier.

Paragraph 2. Serious problems of interpretation may be caused by the provision in this paragraph that a bill of lading signed by the master is deemed to have been signed on behalf of the carrier. It is in fact settled in several jurisdictions (including Italy) that when the name of the carrier is not clearly indicated and the bill of lading is signed by the master or on behalf of the master the owner is deemed to be the carrier. It is appreciated that pursuant to Article 15 paragraph 1(c) the bill of lading must include the name and principal place of business of the carrier. But since there is no sanction in case this particular is omitted, it is likely that the present bad practice of issuing bills of lading without any indication as to who the carrier is will continue. It is, therefore, suggested that this provision be deleted. The alternative to deletion may be to refer in the second sentence to the owner and not to the carrier.

Article 18 - Documents other than bills of lading.

This provision may cause unacceptable commercial problems, for it prevents the use of sea waybills as an alternative document to the bill of lading, whilst the modern trend is to treat the sea waybill as much as possible as a bill of lading. Reference is made in this respect to the CMI Uniform Rules for Sea Waybills. It is therefore our opinion that Article 18 must be amended in such a way as not to create any obstacle to the adoption of voluntary rules on sea waybills such as the CMI Rules.

Article 21 - Jurisdiction.

The provisions of this article would cause unacceptable commercial difficulties and at the same time serious problems of interpretation.

Paragraph 1

A. The provision of alternative fora of competent jurisdiction is not in compliance with the growing tendency of international conventions on jurisdiction which calls for a single forum having general jurisdiction (and provide for other fora only for matters which require special or exclusive jurisdiction)

B. The anomaly of this provision is that an agreed exclusive jurisdiction clause is effective only in the rather remote situation wherein the other jurisdictional links are unapplicable. The provision whereby the port of loading and the port of discharge are both alternative fora of competent jurisdiction would create unacceptable commercial problems to owners who call occasionally at certain ports in countries where they neither have a place of business nor even general agents. Besides the expense of having litigations pending in several distant ports - an argument used only in shippers' favour - there would be a great uncertainty as to the result of the litigation and, therefore, as to whether and on which basis a settlement would be fair and convenient. On the contrary, from the shippers' side, this provision widens the possibilities to choose the place of jurisdiction; the foreseeable consequence will be the increase of "forum shopping".

C. Article 21 gives rise to serious problems of interpretation, for it does

not identify who the plaintiff is for the purposes of its paragraph 1. In the ordinary legal language, plaintiff is the party who commences judicial proceedings irrespective of the purpose for which he is acting. Therefore, the carrier may very well be the plaintiff not only when he is claiming damages from the receiver, but, also, when he aims to be declared exempt from any liability for damages and is asking the court to find that such court has jurisdiction on all disputes that have arisen or may arise in respect of the contract of carriage.

D. A serious discrepancy exists between Article 21 paragraph 1(b) of the Hamburg Rules and Article 5 paragraph 1 of the European Convention of 1968 on Jurisdiction and the Enforcement of Judgments of 1968, as well as Article 5, No. 1 of both the Lugano Convention of 1988 and the San Sebastian Convention of 1989. In order to solve such discrepancy, reference must be made to Article 57 paragraph 1 of the Brussels, Lugano and San Sebastian Conventions which state the priority of the provisions of Article 21 of the Hamburg Rules over those of the aforesaid Conventions.

Paragraph 2

A. Article 21 paragraph 2(a) provides in its second sentence that at the petition of the defendant, the claimant must remove the action from the court of the port or place where the vessel has been arrested to one of the jurisdictions referred to in paragraph 1. This is in conflict with Article 7 paragraph 2 of the Arrest Convention. Nor is such conflict avoided by Article 25 paragraph 2 of the Hamburg Rules, for Article 7 of the Arrest Convention applies irrespective of whether the claimant or the vessel that has been arrested and her owners are nationals of a State Party to the Convention or not, whilst Article 25 paragraph 2 applies only if the dispute arises exclusively between parties having their principal place of business in States members of the Hamburg Convention. The conflict would become even more radical in case a new Arrest Convention will replace that of 1952. In fact, the provision of Article 25 paragraph 2 of the Hamburg Rules applies only with respect to multilateral conventions already in force at the date of the Hamburg Convention (31st March 1978).

B. Moreover, attention is drawn to the very complex issue of the relationship between the Hamburg Rules on the one hand and the EC and Lugano Conventions on the other hand. It appears - or, at least, it could be reasonably maintained - that as far as the *forum arresti* is concerned, the provisions of the 1952 Arrest Convention are not only accepted by the EC and Lugano Conventions, but - after a provisional period of three years, which has now elapsed or is going to clapse according to the different States and the time of entry into force of the Conventions in such States - have to be regarded as mandatory (see art. 54-bis of the EC Convention and art. 54-bis of the Lugano Convention, where express reference to the Arrest Convention is made and its authority in the States mentioned therein is established). Thus, a co-ordination between all these Conventions - Hamburg Rules, Arrest, EC, Lugano - would be absolutely required and such co-ordination would be very difficult.

It is suggested, therefore, that this Article be deleted or that States Parties be permitted to exclude its application.

Article 22 - Arbitration

Also the provisions of this article would cause unacceptable commercial difficulties and serious problems of interpretation.

Paragraph 1. This provision does not seem necessary. The arbitration agreement (when of course the matter in dispute is arbitrable) does not need that an international convention contemplates the possibility for the parties to exercise what is their own will.

Paragraph 2. The "special annotation" required by paragraph 2 is not easy to understand. The usual practice is to incorporate the terms of the charterparty into the bill of lading and to make express reference to the arbitration clause. Will such reference be construed as a "special annotation" providing that the arbitration clause "shall be binding upon the holder of the bill of lading"? How must the provision that failing such "special annotation" the carrier may not make the clause "as against a holder having acquired the bill of lading in good faith" be interpreted? Does good faith mean the lack of knowledge that the charterparty generally incorporated in the bill of lading contained an arbitration clause? Is such lack of knowledge presumed?

Paragraph 3. The option granted to the claimant as regards the seat of the arbitration would create substantial difficulties in institutional arbitrations. Moreover, it would create substantial delays and considerable expenses in the conduct of the arbitration, since the arbitrators may be compelled to travel also to distant places to hold hearings.

Paragraph 3(b) calls for two special comments.

First, it is contrary to the general, and always and everywhere accepted principles of contractual law, that a clause agreed by both parties should not be binding for one of them only. Why should a party to a contract agree on an arbitration clause and designate the place of arbitration if the other party remains free to choose another place at his own choice? In our opinion, the Hamburg Rules should have found solutions consistent with international conventions on arbitration (first, but not alone, the New York Convention), as well as with national laws, which are more respectful of the freedom and equality of the parties in the field of arbitration. It is worth remembering that the criterion more frequently adopted in international instruments or in the rules of well recognized courts of arbitration is that the parties are free to agree on the place of arbitration. Only failing such an agreement shall the place of arbitration be determined by the arbitral tribunal, having regard to the circumstances of the case.

Second, and with some notable exceptions which have the origin in the decentralisation theory, it is essential to have regard to the law of the place in which the arbitration takes place, since this law will regulate (if only outline) many aspects of the arbitral process (like disclosure of documents, rules of evidence, freedom of the parties to be represented by counsel of their own choice and so on). In this light one can understand the great leverage given by this paragraph to the claimant which is left free to choose not only the place of arbitration among those indicated in paragraph 3(a) and (b) but also the law relating to the conduct of the arbitration (if the parties remained silent on this point in the arbitration agreements).

Paragraph 4. Also this provision seems unnecessary because if the carriage

Uniformity of the Law of Carriage of Goods by Sea

falls within the Hamburg Rules the arbitrators will have to make application of such rules. Moreover, as the rules of the States on arbitration are often mandatory for the parties, the provisions of paragraph 4 may give rise to very serious difficulties in the ratification or accession of States to the Hamburg Convention.

Paragraph 5. This provision deals with the consequences of the arbitrators' failure to comply with the provisions of paragraphs 3 and 4, which become part of every arbitration clause or agreement. This will raise conflicts at the moment of the enforcement of the award according to the 1958 New York Convention.

It is suggested, therefore, that this Article be deleted.

B. Provisions that should be improved.

Article 1 - Definitions.

This article contains actual definitions, which are identifiable by the use of the word "... means...", and statements that certain words, the meaning of which is impliedly considered so clear that no definition is required, must be deemed to cover also matters that might otherwise be in doubt. These latter types of "definitions" are used for the words "goods" and "writing".

As regards the first of such words, it is not quite certain that the meaning of "goods" is so clear that no definition is required. A definition, even if preceded by the word "includes", exists in the Hague-Visby Rules.

As regards the word "writing", it is suggested that reference to fax should be added.

Article 2 - Scope of Application.

Paragraph 3. The wording used in the second sentence is in our view less clear than that of Article 1(b) of the Hague-Visby Rules. We think that it would be more correct to say "from the moment at which it governs" than "if it governs".

Article 5 - Basis of liability.

Paragraph 2. It is not clear why reference to Article 4 is made in paragraph 3 ("...and have not been delivered as required by article 4...") and not in this paragraph ("...have not been delivered ...").

Paragraph 4(b). It is not clear why reference is made in this paragraph only to "shippers practices". We think that reference ought to be made also to the law, as in Article 4(2)(b)(ii).

Paragraph 5. It is not clear why in this paragraph the words "unless there is proof" are used rather than "if the claimant proves" as in paragraph 4(a)(i).

Paragraph 7. It is difficult to co-ordinate this paragraph with paragraph 1 of Article 5. Except in case of fire and delay, there is no need for the claimant to establish whether or not there has been a fault or neglect on the part of the carrier. The carrier is in fact liable unless he supplies the proof required by paragraph 1.

If paragraph 1 is amended as suggested, this paragraph will have to be adapted to the new provision replacing paragraph 1.

Part II - The Work of the CMI

Article 6 - Limits of liability.

Paragraph 2(a). We do not think that reference to "any other document evidencing the contract of carriage by sea" is correct. The wording used in Article 18 would be preferable and, therefore, reference should be made to "any other document evidencing the taking over of the goods by the carrier".

Article 8 - Loss of right to limit responsibility.

"Responsibility" should be replaced by "liability".

Article 9 - Deck cargo.

Paragraph 2. Also in this provision reference should be made to "other document evidencing the taking over of the goods".

Whilst in the first sentence it is stated that the carrier must insert the statement in the bill of lading or other document etc., in the second sentence reference is only made to the bill of lading. It follows that the carrier can invoke the agreement that the goods may be carried on deck against a third party if a document other than a bill of lading has been issued to evidence the receipt of the goods. However, according to Article 18 such other document has an evidentiary value, even if only *prima facie*.

Article 15 - Contents of the bill of lading.

Paragraph 2. Also under this paragraph there is an obligation to issue a shipped bill of lading and the provision is mandatory, as that in Article 14 paragraph 1. Reference is, therefore, made to the comments under that provision.

In this paragraph for the first time the words "or other documents of title" are added after "bill of lading". The reason of this addition is not clear and may create confusion, in particular because the relevant terms used in the Convention are all defined in Article 1. The definition of bill of lading in Article 1 No. 7 is wide enough to include any possible "document of title". In view of the conflicting interpretation of this term as used in the unofficial English translation of the Hague Rules and adopted in the U.K. 1924 Cogsas and in the U.S. 1936 Cogsas (as well as in other enactments of the Hague Rules), these words should be deleted.

Article 17 - Guarantees by the shipper.

Paragraphs 2-4. We believe that it would be preferable not to regulate in the Convention the letter of guarantee, for by so doing the wrong practice of issuing letters of guarantee is implicitly recognized. This would entail the deletion of paragraphs 2-4.

Paragraph 2. It is difficult to understand how a letter of guarantee issued by the shipper may be relevant vis-à-vis the consignee, in view of the provision of Article 16(3). The statement that the letter of guarantee "is void and of no effect as against any third party" is not legally correct. A letter of guarantee may not be void against a third party and be valid against the shipper. If it is void, it is void against all parties.

Paragraph 3. This provision may open the door to frequent denials of va-

Uniformity of the Law of Carriage of Goods by Sea

lidity of letters of guarantee by shippers, who, at least in the majority of cases, are those who may intend to defraud the consignees.

Article 19 - Notice of loss, damage or delay.

Paragraph 1. The reference to the “document of transport” is not correct. First, “document of transport” is not defined in Article 1. Secondly, the description of the goods is not contained in the document which evidences the contract of carriage, if different from the document which evidences the taking over of the goods by the carrier, but in such latter document, viz. in the bill of lading or other document referred to in Article 18.

The time when the notice of loss or damage must be given is indicated as the time when the goods are handed over to the consignee. It is not clear if and when the notice of loss or damage must be given in case the goods are handed over to an authority and not to the consignee himself, as provided in Article 4(2)(b)(iii), or are placed at the disposal of the consignee as provided in Article 4(2)(b)(ii).

Paragraph 2. Same comments as for paragraph 1. In addition, one may wonder why the words “consecutive days” have been used rather than “running days”.

Paragraph 5. Same comments as for paragraph 1.

Paragraph 6. In this paragraph reference is made to the “delivery” of the goods instead of to the “handing over”. One might think that the intention was to mark a difference between the two situations, but what the difference should be is difficult to say, for under Article 4(2) the handing over realizes the delivery.

Paragraph 7. In this paragraph reference is made for the first time to delivery in accordance with Article 4(2).

Article 20 - Limitation of actions.

Paragraph 1. This paragraph provides for a time bar of the action rather than for a prescription of the right as Article 3(6) of the Hague-Visby Rules (in the French text the words “prescription des actions” are used). The two-year period applies to “any action relating to carriage of goods” and, therefore, also to the actions of the carrier against the shipper or consignee. The wording is very wide and might include actions in respect of claims not covered by the Convention such as claims for payment of hire or demurrage.

Paragraph 2. The words “[T]he person against whom the claim is made” are not clear. If the claim is made against the wrong person - e.g. a person other than the carrier - the extension is granted by such person would not be relevant. If an extension is requested prior to making a claim, as frequently happens, the person who may grant an extension is not identified by this provision.

Article 23 - Contractual stipulations.

Paragraph 1. Reference is made to the comments on Article 14(1). The words “or in any other document evidencing the contract of carriage by sea” should be replaced by “or in any other document evidencing the taking over of the goods by the carrier”.

Paragraph 3. Same comment as for paragraph 1.

Article 24 - General average.

Paragraph a. The fact that Article 20 is excepted means that the time limit set out by such article does not apply in case of refusal of contribution. It is not clear, however, if that means that such refusal can be made at any time, or that the time limit of the applicable national law applies. Whilst on a theoretical level it may be accepted that no time limit applies to the refusal to contribute, it is by far more difficult to explain - and to accept - that no time limit applies to the claim for an indemnity, in case contribution has been paid.

Japan

No.

Korea

No.

Netherlands

No. The Hamburg Rules, even "improved", are ill-conceived for world-wide uniform application.

Norway

It is believed that the "friction" might be significantly reduced as a result of a revision based on a CMI draft. On the other hand, it is clear that although friction can be reduced it can never be entirely avoided. A certain degree of "friction" is inevitable as a result of new legislation and the legislator/the ratifying party will have to have enough faith in the substance to believe that its advantages outweigh the unavoidable "friction".

The first area of concern to shipowning interests, i.e. the new liability regime, is believed to be partly a question of substance, e.g. the removal of nautical fault as a defence, but partly also one of approach and drafting. Hence, the association believes that a widespread acceptance of the Hamburg Rules might be achieved if in addition to the "streamlining" of the Convention as described above the liability regime were to be based on the principles of the Hague-Visby Rules. Whether nautical fault, i.e. error in the navigation or the management of a vessel, should be retained as a defence, could be treated as a separate issue, in relation to which we reserve our position. It would, of course, be conceivable in principle, to have a liability regime based on the Hague-Visby approach, including express rules on seaworthiness and including the "catalogue" but without nautical fault as a defence.

At this stage, it is believed that rather than addressing each paragraph or article of the existing conventions piecemeal, it is necessary as a basis for further work, to agree on the basic principles or elements of a revised convention. It is believed that a draft revision of the Hamburg Rules could fruitfully be produced on the basis of such a "package". It is also believed that CMI with its particular expertise and drafting experience could significantly reduce the

Uniformity of the Law of Carriage of Goods by Sea

“friction” which seems to be built into the existing Hamburg Rules.

It is thus the view of this Association that in order for an increased degree of unification of maritime law to be achieved, the Hamburg Rules should be revised. Of overriding importance, however, is that it should be reasonably clear in advance of a diplomatic conference to revise the Hamburg Rules, or in advance of taking steps which more or less inevitably will lead to such a diplomatic conference, that a revised convention will effectively replace the existing Hamburg Rules. Hence, the acceptance by the present ratifying states will be of particular importance. Otherwise, the CMI and a revised convention will only create further disunity in a significant number of additional areas, in which the maritime world is presently divided, may have to be added to the eight areas that are listed in the questionnaire. A further objective, and of course no less important, is for a revised convention to attract the states which have not ratified the Hamburg Rules.

Portugal

See answer to question 3.

South Africa

Action should not be taken to amend the Hamburg Rules.

Spain

No. Any attempt to amend the Hamburg Rules should be avoided. In the present situation would result only in much more confusion. Who guarantees that a new Convention or Protocol will be widely accepted by a large majority of States? There will be time later, once and if uniformity is achieved by the Hamburg Rules, to think in new instruments (e.g. arts. 21 and 22 Hamburg Rules).

Sweden

See above.

Switzerland

The Hamburg Rules are, as many know, an ill-started convention which were conceived in a time of strong political polarisation. Any amendments of these Rules will lead to (1) a general signal to the world that CMI basically accepts the Hamburg Rules and (2) that the basic structure of the Hamburg Rules will be maintained.

United Kingdom

No, for the reasons which we have set out under Question 3 above.

United States

No.

Venezuela

No action should be taken to amend the Hamburg Rules but to modernize

the Hague-Visby Rules. The main reason is that States which have ratified or accepted the Hamburg Rules are now only twenty-two States none of which are major shipping nations of the world, which on the other part have ratified or acceded to the Hague-Visby Rules and also to the 1979 SDR Protocol.

Other Organizations

ICS

ICS is of the view that the Hamburg Rules are unacceptable in too many respects to make them workable even in amended form and that any attempt to undertake a revision would be an unproductive exercise.

Question 5

Should action be taken to modernize the Hague-Visby Rules? If so, what basic changes do you suggest be made to the Hague-Visby Rules?

Argentina

To adopt many principles admitted by the Hamburg Rules such as the period of liability, the distinction between mandatory rules and in certain areas to establish the freedom of contract.

Australia and New Zealand

Yes along the lines of the proposals currently being suggested by the US MLA.

Canada

See our answers to Question 3 and 4 above. The Hague-Visby Rules would benefit from the following modernization:

- (i) Responsibility of the carrier and actual carrier. (See Hamburg arts. 1(1), 1(2), 10(4) and 15(1)(c)).
- (ii) Live animals and deck cargo should be covered. (See Hamburg arts. 1(5) and 9).
- (iii) All contracts (bills of lading and waybills) should be covered. (See Hamburg arts. 1(6), 2(1) and 18).
- (iv) Responsibility should be from port to port. (See Hamburg art. 4(1)).
- (v) Abolition of error in navigation and management of the ship. (See Hamburg art. 5(1)).
- (vi) Due diligence at all stages of the voyage. (See Hamburg art. 5(1)).
- (vii) The package and kilo limit. (Both Hague-Visby and Hamburg should be increased to account for inflation, with an annual indexation factor).
- (viii) Two years to sue or arbitrate. (See Hamburg art. 20(1)).
- (ix) Stipulations as to jurisdiction and arbitration. (See Hamburg arts. 21 and 22).

Very many provisions of the Hamburg Rules clarify the Hague-Visby Rules by stipulating what the leading Hague-Visby Rules jurisprudence has held. For example:

Uniformity of the Law of Carriage of Goods by Sea

- (i) Bills of lading in a series are subject to the Rules. (See Hamburg art. 2(4)).
- (ii) Where one act of the carrier (for which the carrier is not responsible) is joined with another act (for which the carrier is responsible) then the carrier must separate the resulting damage or be held responsible for it all. (The Vallescura Rule). (See Hamburg art. 5(7)).
- (iii) The responsibility of a carrier who knows that cargo is dangerous is clarified. (See Hamburg art. 13).
- (iv) Documents other than a bill of lading are evidence of receipt of the goods by the carrier and that a contract of carriage has been entered into. (See Hamburg art. 18).
- (v) Notice to the agent is notice to the principal. (See Hamburg art. 19(8)).
- (vi) An agreement as to jurisdiction made by the parties after the event or after the loss is valid. (See Hamburg art. 21(5)).
- (vii) Arbitration clauses in charter-parties have no effect against a bill of lading holder, unless the bill of lading contains a special provision. (See Hamburg art. 22(2)).
- (viii) An agreement to arbitrate made by the parties after the event or after the loss is valid. (Hamburg art. 22(6)).
- (ix) An invalid stipulation in a bill of lading does not affect the validity of the other provisions in the contract. (Hamburg art. 32(1)).

China

In view of the fact that the States having accepted the Visby Rules are much less than those having accepted the Hague Rules, it is advisable to amend the Hague Rules by adopting those workable provisions contained in the Visby Rules and Hamburg Rules as the preferential subject matter.

Croatia

As far as we remember, this problem was raised in the working group dealing with the risk distribution in Carriage of Goods and was one of the topics in the CMI Paris Conference in 1990, as stated in the Declaration of Uniformity of the Law of the Carriage of Goods by Sea. Consequently, we think that action should be taken to amend the Hague-Visby Rules with some acceptable solutions contained in the Hamburg Rules and in other transportation conventions. For example, the term "reasonable measures" used in the Hamburg Rules seems better than "due diligence" of the Hague-Visby Rules. The enlargement of the carrier's liability for vessel seaworthiness during the whole voyage, as provided in the Hamburg Rules, would be acceptable. We are also in favour of the basis of liability provided in article 5, paragraph 4 (damages arising from fire) and in paragraph 6 of the same article (measures to save life or property at sea).

Denmark

In view of the fact that the Hague and Hague-Visby Rules are accepted by

considerable many more States than the Hamburg Rules, and in view of the fact that a number of countries including the Nordic countries have recently decided to remain or become contracting parties to the Hague-Visby Rules, the most prudent path to pursue would certainly be to take the Hague-Visby Rules as the starting point for a revision, if any, via a protocol to the Hague-Visby Rules.

Basically we believe that the Hague-Visby Rules should be retained. However, some changes can be made to align the Rules to current commercial practice. Thus liability could be extended to deck cargo and to the terminal period and waybills could be covered. Other changes may also be considered as long as the basic structure of the Hague-Visby Rules is retained. In this connection we would like to refer to the recent Nordic solution.

Finland

See answer to question (4) above.

France

1. After a very brief discussion, the AFDM agreed in principle to the procedure outlined in question 5, i.e. the introduction of some of the provisions of the Hamburg Rules through changes in the Hague-Visby Rules. This procedure would have the advantage of maintaining most of the Hague Rules, which by this time are well-known to professionals, while improving the Hague Rules by the introduction of the best provisions of the Hamburg Rules. It would also allow the text of the Hague Rules to be adapted to the evolution of the carriage of goods by sea (seaway bills, carriage of containers on deck, etc.). Of course some signatory States will not accept the changes, but if a large majority of States having signed the Hague-Visby Rules, and eventually those having signed only the Hague Rules, agree to the new rules, the differences remaining between the amended Hague Rules and the Hamburg Rules will not have much practical effect.

2. This method would also present important strategic advantages. Organizing a conference to revise the Hamburg Rules under article 32 would not be easy. On the other hand, the Belgian government, depositary for the 1924 Convention, would probably agree to call a meeting of the signatory States to adopt the revisions agreed upon, as it did in 1967-1968 for the Visby Rules. Such a meeting could be called for 1997, the 100th anniversary of the founding of the CMI.

3. From a practical standpoint, it would be fairly easy to amend the Hague Rules, either by revising specific provisions of the present text or by inserting new subsections if it were thought that certain provision of the Hamburg Rules which have no equivalent in the Hague Rules (for instance, provisions concerning letters of guarantee) should be added.

4. As far as substantial rules are concerned, the AFDM thinks that the new convention should reproduce as closely as possible the modifications to the rules of carriage of goods by sea found in the Hamburg Rules. It is not possible to detail, in a preliminary report such as this one, all the modifications which the AFDM thinks should be made to the Hague-Visby Rules. It is how-

Uniformity of the Law of Carriage of Goods by Sea

ever possible to state some general ideas which should guide the CMI.

The AFDM thinks the modifications to the Hague Rules should concern the following points:

- 4.1. General definitions: Concerning article 1(b), it is necessary to take into account the increasing use of seaway bills and to extend the definition of "contract of carriage" to contracts covered by them. The AFDM also wishes the new text to apply to the carriage of animals and to deck cargo. Article 1(c) should be modified to include these cases. Finally, it would be desirable to extend the period covered by the contract of carriage from the time the carrier takes control of the goods to the time they are delivered to the consignee. Article 1(e) should be amended to do this. On the other hand, the AFDM does not believe it is necessary to go into the detail found in article 4 of the Hamburg Rules. For the AFDM, the essential point is to make clear that the carrier should have responsibility for the loading and discharge of goods, a principle already found in article 3(2) of the Hague Rules (at least as it is interpreted by French courts).
- 4.2. Obligations of the carrier/obligations of the shipper. The provisions of the Hague Rules which define the obligations of the carrier [articles 3(1) and 3(2)] should undoubtedly be retained. On the other hand, it seems advisable to add certain provisions to the text of the 1924 Convention. The AFDM considers that provisions concerning delay, carriage on deck, actual carriage and through carriage should be added to the Hague Rules. Concerning all these questions, article 3 could be amended to include provisions inspired by the Hamburg Rules [articles 5(1) and 5(2) for delay; article 9 for deck cargo; article 10 for actual carriage and article 11 for through carriage]. Another possibility might be to add to article 3 a new subsection concerning the obligations of the shipper, perhaps by inserting the text suggested for inclusion in article 12 of the Hamburg Rules ("The shipper shall be bound to properly and carefully pack and mark the goods he delivers to the carrier. If he places the goods in a container, he shall also be bound to see to it that the goods are properly stuffed within the container"). A further possibility would be to add here the provisions concerning the obligations of the shipper in the case of shipment of dangerous goods (see article 13 of the Hamburg Rules).
- 4.3. Issuing of the bill of lading. The present text of the Hague Rules does not mention sea waybills. The proposed changes should take them into consideration by providing that the carrier is obliged, on demand of the shipper, to deliver a bill of lading or other agreed document of carriage. The drafters of the proposed changes will then have to decide if it would be advisable to increase the number of particulars to be given on demand of the shipper [article 3(3) of the present text], using as a model article 15 of the Hamburg Rules. The AFDM will accept the majority opinion. On the other hand, it feels strongly that provisions based on article 16 of the Hamburg Rules should be introduced in any proposed revised text in order to give the carrier the possibility of in-

Part II - The Work of the CMI

serting reservations in the bill of lading. The drafters will then have to study the problem of letters of guarantee. The AFDM believes that article 17 of the Hamburg Rules is entirely satisfactory and should serve as a model.

- 4.4. Liability of the carrier. In this field, the AFDM hopes for harmonisation of the Hague Rules and the Hamburg Rules containing the modifications it has suggested. It will therefore be necessary to eliminate from the list of exceptions in article 4 at least that of "act, neglect, or default of the master...in the navigation or in the management of the ship". The AFDM also considers that the present text could be simplified first by putting the related ideas of unseaworthiness and latent defects of the ship in the same subsection and then putting the exceptions found in letters (d), (e), (f), (g), (h) and (k) of the present text together under a general heading "any other cause". The last suggestion would be to group together in one subsection the cases concerning negligence of the shipper found in (i), (m), (n) and (o) of the present text. The new article 4 would read:
- "Neither the carrier nor the ship shall be responsible for loss, damage or delay arising or resulting from:*
- a) Fire, unless caused by the actual fault or privity of the carrier;*
 - b) Perils, dangers or accidents of the sea or other navigable waters;*
 - c) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;*
 - d) Saving or attempting to save life or property at sea;*
 - (e) Inherent defect, quality or vice of the goods or wastage in bulk or weight, according to the usual tolerance at the port of delivery;*
 - (f) Act or omission of the shipper or owner of the goods, his agent or representative, especially in the packing, conditioning and marking of the goods;*
 - (g) Unseaworthiness or latent defect not discoverable by due diligence;*
 - (h) Any other cause arising without his actual fault or without the actual fault or neglect of his agents or servants;*
- if he proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences."*
- 4.5. Limits of liability. The only problem here seems to be the maximum amount of the limitation. The AFDM considers that a revised Hague Convention should adopt at least the same amounts as found in the Hamburg Rules (835 SDR per package or 2,5 SDR per kilo).
- 4.6. Notice of loss and limitation of action. The Hague and Hamburg Rules are sharply different here. The AFDM would be willing to agree to an extension of the time bar to two years and the time allowed for notice of loss, damage or delay to 24 hours when apparent and to five (or even seven) days when not apparent.

Uniformity of the Law of Carriage of Goods by Sea

- 4.7. Jurisdiction clauses. The AFDM is not opposed to including in the revised Hague Rules provisions similar to those found in article 21 of the present Hamburg Rules. These could easily be placed at the end of article 3(8) of the present Hague Rules.

Germany

To a far extent and in contrast to the Hague-Visby Rules and the Hamburg Rules by demanding worldwide mandatory application pursue a state planning approach instead of free negotiation of contracts between merchants which is only restricted by minimum requirements with regard to liability. Because the Hague-Visby Rules are better in compliance with the principle of freedom of contract which is the prevailing principle today we are in doubt whether even amendments to the well working Hague-Visby Rules are necessary.

If any improvements to the existing regimes are held necessary it should be recalled that according to the 1990 Paris Declaration on Uniformity of the Law of Carriage of Goods by Sea, the CMI achieved the common position that future work should largely be based on the Hague-Visby Rules and not on the Hamburg Rules. Accordingly, substantial amendments to the Hamburg Rules, i.e. changes of the clauses on the scope of application, on jurisdiction, and on contractual stipulations (Articles 2, 21, and 23) would also form a suitable basis in order to leave it to the parties of maritime freight contracts to decide which regime in particular on liability should apply.

Greece

Issues such as the regulation of electronic transfer of rights to goods in transport, the calculation of indemnity in case of partial loss, the type of recoverable damage, are some of the important matters, on which CMI could focus a modernization of the Hague/Visby Rules.

Indonesia

Yes. The liability of the carrier should be increased.

Ireland

This question raises similar problems to the last. We prefer the Hague-Visby Rules to the Hamburg Rules. Therefore if this problem is to be solved by amending one of the other we would prefer to amend the Hague-Visby Rules because it would probably be easier to retain more of the basic philosophy of these rules in this way. However if the problem is to be solved by amending the Hague-Visby Rules we indicate below changes which might usefully be made in the Hague-Visby Rules.

Basic changes which should be made in the Hague-Visby Rules.

1. The definition of "Contract of Carriage" in Article 1 (b) should be changed to include all contracts of carriage by sea.
2. The definition of "Carriage of goods" in Article 1 (e) should be changed to include the period before loading during which the actual carrier is in charge of the goods.

Part II - The Work of the CMI

3. Article 7 should be amended in so far as it relates to the period prior to loading during which the actual carrier is in charge of the goods.

4. The limits of liability in Article 4.5 of the Hague Rules as amended by Article 2 of the Visby Rules should be re-considered.

Provisions in the Hague-Visby Rules which should be retained.

We think that the philosophy behind all the provisions of the Hague-Visby Rules other than those we have mentioned above should be retained. We think that in a new convention some of them may benefit from redrafting.

Italy

As stated in the introduction to our reply to Question 4, we are of the view that neither the Hague-Visby Rules nor the Hamburg Rules are satisfactory. The question whether the former or the latter should be modified is of secondary importance. From a theoretical standpoint it would be preferable to take as a basis the Hamburg Rules, since their general frame is more modern. From a practical standpoint it may prove easier to modify the Hague-Visby Rules. Whilst in fact the first alternative requires a request of one third of the Contracting States to the Hamburg Rules, the second only requires the request of one of the Contracting States. The changes we think ought to be made in the Hague-Visby Rules result from our comments on the Hamburg Rules.

They may be summarized as follows:

Existing provisions

Article 1

It should be amended on the basis of Article 1 of the Hamburg Rules.

Article 2

It should be amended so to reflect the concepts (but not the text) adopted in Article 4 of the Hamburg Rules.

Article 3

Paragraph 1. It should be amended in order to make the obligation of due diligence a continuous obligation.

Paragraph 2. It should be amended so to extend the obligation of the carrier to the period during which the goods are in his custody ashore.

Paragraph 3. Reference to the scawaybill or other transport documents should be made in this paragraph. The contents of the bill of lading should be revised in the light of Article 15 of the Hamburg Rules.

Article 4

Paragraphs 1 and 2. They could be replaced by the text suggested in our comments on Article 5 of the Hamburg Rules under sub-paragraph (iii), subject to the revision of the list of the excepted perils and to the reference in paragraph 1 to Article 3(1) and (2) in lieu of the reference to paragraph 3.

Paragraph 3. No change is strictly required.

Paragraph 4. No change is required.

Paragraph 5 (as amended). The limits of liability should probably be increased.

Paragraph 6. This paragraph should be revised taking into consideration

Uniformity of the Law of Carriage of Goods by Sea

Article 13 of the Hamburg Rules.

Article 5

The first paragraph should contain a reference to documents other than bills of lading. The second paragraph is superfluous.

Article 6

All the provisions of this article should be reconsidered.

Article 7

This article should be deleted.

Article 8

No change seems to be required.

Article 9 (as amended)

No change seems to be required.

Article 10 (as amended)

To be replaced by Article 2 of the Hamburg Rules.

Additional provisions (based on the Hamburg Rules)

Article 3.

Interpretation of the Convention.

Article 5(2), (5) and (7).

Should, subject to rewording, be adopted.

Article 9.

Deck cargo should be the subject of express regulation, even if the text of this article is not wholly satisfactory.

Article 10.

Liability of the carrier and actual carrier. The provisions of this article should be adopted.

Article 11.

Through carriage. A provision on through carriage seems to be necessary, subject to the comments made previously.

Article 14.

Issue of bill of lading. The adoption of some of the provisions of this article may be considered. Reference to the seawaybill should also be considered.

Japan

Yes. The basic changes to the Hague-Visby Rules which we would suggest

Part II - The Work of the CMI

to make will be for example as follows:

1. to apply the Rules also to the contracts of carriage under which no bills of lading or any similar documents of title are issued;
2. to widen the period of responsibility as commencing from the time of taking over the goods and ending at the time of delivery of the goods;
3. to include the actual carrier also into the concept of the carrier to be regulated under the Rules.

Korea

Yes. The Hague-Visby Rules better be modernized along the following lines:

- (a) The solution of actual carriers problem.
- (b) The inclusion of seawaybills and multimodal contracts in the application of the Hague-Visby Rules.
- (c) The solution of deck cargo issues.
- (d) The extension of the period of the carrier's responsibility as commencing from the time of taking over the goods and ending at the time of delivery of the goods.
- (e) The clarification and simplification of Article 4(2) and (4).

Netherlands

No, at least not in the form of an additional Protocol. The primary focus of the CMI should be on the promotion of the acceptance of the 1968 and 1979 Protocols by those Hague Rules States which have not already done so.

When considering possible "modernisation" of the Hague-Visby Rules we like to make the following caveats:

- (1) The Hague(-Visby) Rules liability regime is primarily based on facts and events, which in view of the required world-wide application of any liability regime in maritime transport, has to be retained.
- (2) An "improved" liability regime will in all probability be mandatory law again. Therefore, it should set minimum rules which should be applied under any circumstances and in any trades.

Mandatory law is meant to protect the economically weak party. Today, however, the bargaining power between the commercial parties in the shipping industry is much more balanced than it was in the past. Further, one should bear in mind that ocean shipping today is much more diversified than it was in the beginning of this century when the need for a uniform and mandatory liability regime came up.

This means that the natural boundaries of uniformity of mandatory liability law in maritime transport will be reached sooner than later and that the possible application of many "modernisations" could be left to the parties themselves. As an example, the liability of the carrier for delay is in some trades and in respect of some cargoes almost irrelevant, while in other trades and in respect of other cargoes it might be of paramount importance. Sometimes, in cases of cheap transportation some delay may already be calculated in the freight, whilst in other cases such as "just-in-time" deliveries parties will agree on an

Uniformity of the Law of Carriage of Goods by Sea

specific arrangement as to the time of arrival of the cargo. Also in respect of other possible modernisations, such as the application of the Hague-Visby liability regime to deckcargo, to carriage under a sea waybill and to a certain period before loading and/or after discharge make appropriate arrangements if and when their trade so requires.

It might be that in respect of many modernisations the legislator has no role to play and the CMI only the limited one as referred to in the answer to question 7.

Additionally, after all the Hague-Visby liability is not that much one-sided as it is often thought to be. The Mercer report, prepared on request of EU Commission, illustrates that. On page 31 it says that of total claims shippers absorb 18% themselves, insurers end up covering 45% of claims and carriers 37%. Assuming that the 18% absorptions relate to very small claims (the same report indicates on page 30 that 81% of all incidents have a value of less than USD 1000), the remaining balance is by no means one-sided. One has to bear in mind that these figures relate to the situation within the EU where the large majority of member states adheres to the Hague-Visby regime plus SDR-Protocol.

Portugal

See answer to question 3.

South Africa

This Association believes that action should be taken to modernise the Hague-Visby Rules. The main changes which this Association regards as desirable are:

- 5.1. Provisions to make it obligatory clearly to identify the carrier and to make it clear that, in the absence of any such clear identification, the owner is deemed to be the carrier (as a corollary, identity of carrier or demise clauses should also be dealt with).
- 5.2. A clarification of the question of the issue of a bill of lading where electronic data transmission is used.
- 5.3. A review as to whether there should not be stricter liability on the carrier to provide a seaworthy ship and, in any event, clarification of the extent to which the duty to take reasonable steps can be delegated, and whether such persons as classification society surveyors can be relied on by the shipowner.
- 5.4. A review and critical evaluation as to which, if any, of the exceptions should apply where there is a breach of the obligation to provide a seaworthy ship, and that the limitations of liability (whether per package or per unit) also do not apply, and similarly a critical review as to whether the limitations of liability (whether per package or unit) should apply under such circumstances.

Cautionary note: You will appreciate that in respect of 5.3 and 5.4, there will be differences of opinion between those legal interests normally representing ship and/or cargo. The pro cargo lobby would quite strongly feel that none of the exceptions should apply where

Part II - The Work of the CMI

there is a breach of the obligation to provide a seaworthy ship and that the limitations of liability also should not apply. We have decided to state the official view of our Association that a "critical review" of these provisions should be carried out. Clearly they are contentious.

- 5.5. The delegation of the exclusion of negligent navigation save, possibly, in the case of compulsory pilotage.
- 5.6. Clarification of Article 6.

Spain

No. Such an action will, again, bring more confusion in uniformity of maritime law.

Sweden

See above. For the reasons mentioned above and with reference to the long list of changes in the Hamburg Rules we would like to ask CMI to consider as an alternative to amend the Hamburg Rules to take action to have the Hague-Visby Rules modernized and provided with new let say Hamburg-influenced provisions. This might lead to a more rapid success when creating a widely accepted regime.

Switzerland

There are many areas of the Hague-Visby Rules which could be revised. However, most of them concern slight changes in the light of the difficulties some jurisprudence have shown over the past years. Further areas of change are new issues to be added to the Hague-Visby Rules which would make the convention a more complete codification of all issues regarding carriage of goods by sea.

Any modernization will either lead to

- (a) uniform rules which are incorporated by reference in the bills of lading,
- (b) new Protocol of the CMI, or
- (c) new convention.

While option (a) would leave all initiative to the parties of the shipping industry and most probably will not be uniformly used, both options (b) and (c) will face the problem that they have to pass a diplomatic conference where political pressure (especially from the circles favouring the Hamburg Rules) will be brought to bear.

Further, even if such Protocol or new convention would be successful it would clearly lead to a new layer of law still competing with the Hague, Hague-Visby and Hamburg Rules. Thereby, the main aim, namely to get rid of the current proliferation would never be met by those measures.

United Kingdom

The BMLA suggests that the principal areas for discussion relate to the following matters:

- (i) The identity of the carrier and problems of actual and performing carriers.

Uniformity of the Law of Carriage of Goods by Sea

- (ii) The applicability of the Rules to other documents, such as sea waybills and multi-modal contracts, and in the case of electronic transfer of rights in goods.
- (iii) Deck cargo.
- (iv) The period of application of the Rules and the period of responsibility of the carrier and the relationship of the Rules with other conventions.
- (v) Reconsideration of Article IV bis including extension to all servants, agents and sub-contractors.
- (vi) Consideration of the extent of the carrier's exemptions from liability.

United States

Yes. Consider revision of Nautical Fault Defense, coverage beyond tackle to tackle, increase of limitation amount, include provision allowing qualifying language as to quantity or weight on goods received by carrier in sealed containers, and provisions to cover independent contractors. We are considering such changes in proposed revisions to our cargo liability rules at our next meeting in May of 1995.

Venezuela

The action to be taken to modernize the Hague-Visby Rules-SDR 1979 Protocol is to complement it with rules similar to those of the Hamburg Rules, with respect to matters that are not covered by the Hague-Visby Rules, such as provisions regarding the structure of the contract of carriage of goods by sea, but retaining the carrier's right to exonerate from liability for loss, damage or delay caused by the faults of his servants in the navigation or management of the vessel, that is to adopt or maintain the basic principles of the Hague-Visby Rules, such as the PRC and the Scandinavian States have adopted as well has been proposed by the Venezuelan Maritime Law Association and adopted in the Draft of Law of Navigation and Commerce by Sea, sent for approval to the Venezuelan Congress.

Other Organizations***ICS***

As stated above, we believe it is essential that uniformity in the law relating to the carriage of goods by sea is promoted.

The Hague-Visby Rules have obtained widespread acceptance. ICS considers that they should be retained and that straightforward acceptance of them should be actively encouraged.

Nevertheless, if there is a clear need, for political or other reasons, to modernize the Hague-Visby Rules in the future, changes could be made via a Protocol provided that such changes were consistent with the fundamental principles of the Hague-Visby Rules.

Question 6

Should a new convention be drafted? If so, what provisions from the Hague-Visby and Hamburg Rules, respectively, do you suggest for inclusion in a new convention? What provisions not found in either of the present conventions do you suggest for inclusion in a new convention?

Argentina

There is the possibility to follow in the first place the system of the Hague Rules (1921) or to prepare a new convention or a Protocol to the Hague-Visby Rules incorporating certain provisions of the Hamburg Rules as suggested in the reply to Question 5.

Australia and New Zealand

No.

Canada

No.

China

In order to promote the unification, the alternative is either to draw up a new convention or to amend the old ones. In any case assurance should be given that it will not lead to a further multiplicity. If a new convention is to be drawn up, we suggest that the limitation of liability should be based on that contained in the Hague/Visby Rules and the workable provisions of the Hamburg Rules or other convention are to be adopted, such as provision for delay in delivery and the legal relation between the carrier and the holder of the bill of lading, including the consignee. The Maritime Code of the PRC might be of some use in this respect.

Croatia

No. To draft a new convention would add to the proliferation of legal regimes.

Denmark

No. We prefer a review, if any, to take place with the Hague-Visby Rules as the starting point.

Finland

See answer to question (4) above.

France

The AFDM is not in favour of the drafting of a new convention. The organization of the drafting of an entirely new convention, not related to any existing one, would certainly not be easy. It seems wiser to settle for the procedures envisaged in the answers to questions 4 and 5. If the drafting of a new convention were decided, the new convention should combine the best parts of the present conventions.

Germany

From our point of view, it would neither be justified to draft and implement a new convention nor to amend the existing ones. Any new regime which is not accepted by major trading nations would only increase the disunification as understood in the questionnaire. We feel that it is not realistic to expect that any substantial amendment to the existing regimes would gain sufficient acceptance.

A further consideration leads us to this conclusion. The Hamburg Rules are to be understood as a product of compromise between the main streams of economical thinking in the 1970's.

Greece

A new convention would only add a new layer of law to the already existing layers. It would probably face the scepticism of certain States, as all previous conventions have and its acceptance and ratification would thus be doubtful.

This situation would certainly not promote uniformity but would spread uncertainty and would increase the possibility of forum shopping. Even if the new convention was universally adopted, its definition and interpretation by the Courts would take many years, which would only increase the confusion. Before considering a discussion on a new convention, it would thus be a prerequisite that acceptance and acceptability by the international including the diplomatic community is reasonably secured and that the heritage of previous conventions does not preempt efficient application.

Indonesia

Yes. The limits of liability of the Hague-Visby Rules should be increased. The time bar period should be longer than the notice time as well.

Ireland

Yes on balance we think that a new convention could be drafted. In our reply to Question 3 we set out those provisions in the Hamburg Rules which should be retained. In our reply to Question 5 we have included those provisions in the Hague-Visby Rules which should be retained.

Italy

We think it would be dangerous to embark upon the preparation of a third convention. The best solution is the preparation of a protocol to one of the existing conventions.

Japan

No.

Korea

No.

Netherlands

No. A new convention would enhance the disintegration of uniformity of maritime law. The same danger exists in respect of any new protocol to the Hague Rules containing modernisations/alterations.

Opening up the present text of the Hague-Visby Rules may initiate a whole plethora of views and wishes, which will have to be compromised with the serious risk that nobody likes the compromise.

Portugal

We think there are many reasons to insist on having an opportunity for broad discussions with respect to the legal system of carriage of goods by sea. Portuguese legislation in force since 1986 (Decree Law 352/86, 21st October) is an excellent example of adaptation of the 1924 Convention to the new economic and technical realities namely in respect of transport of containers.

South Africa

As a matter of convenience, a new convention should incorporate the Hague-Visby Rules as proposed to be amended. This Association does not, however, favour a completely new convention departing entirely from the Hague-Visby Rules or trying to effect an uncomfortable marriage between Hague-Visby and Hamburg.

Spain

No. The approach is, once more, dangerous to the goal of uniformity. Efforts should be addressed to the wide acceptance of both Hamburg Rules and Multimodal Transport of Goods Convention (1980). Only in a latter stage would be wise to consider amendments.

Sweden

No, see above.

Switzerland

As stated above, a new convention will be faced with the problem of having to pass the obstacle of a diplomatic conference. However, a new convention would clearly give a chance to CMI to cover all aspects of the carriage of goods by sea and also introduce minor changes into the Hague Rules which would greatly assist clarification and better application of the Rules. Such a project should only be envisaged if it can be predicted that it will receive sufficient world-wide acceptance and at a certain stage would also be borne by UNCTAD and the governments that have ratified the Hamburg Rules. Should this prove not to be the case, a new convention would obviously only add a new layer of law to the already existing layers.

United Kingdom

No. A new convention would not replace the existing conventions and would merely add to the proliferation of legal regimes.

Uniformity of the Law of Carriage of Goods by Sea

United States

Only if it would lead to uniformity internationally on an acceptable commercial basis as per response 5.

Venezuela

No, as mentioned above the action should be to modernise the Hague-Visby Rules.

Other Organisations***ICS***

We do not believe that a new convention should be drafted. A new instrument would only add to the current proliferation of differing legal regimes relating to the liability of the carrier of goods by sea thus detracting further from the ultimate object of uniformity.

Question 7

Do you consider that some efforts other than those suggested above should be undertaken in order to reverse the current disintegration of uniformity? If so, what action(s) do you suggest?

Argentina

The alternative suggested in our reply to Question 6.

Australia and New Zealand

Yes. CMI should urge its member countries to recommend changes to their legislation along the lines of the proposed US MLA recommendations.

Canada

As pointed out above, we believe that both the Hague-Visby Rules and the Hamburg Rules would benefit from the amendments we have suggested. However, it is important to avoid creating a third regime. This does not only mean that the CMI should not create a new convention. It also means that amendments to either set of existing Rules can only be proposed if there is a certainty, or at least very strong likelihood, that these amendments will be acceptable to all the nations having already adopted the Rules concerned, as well as most of those who have not. The contrary would only promote further fragmentation.

The CMI's main goal at all times must remain the achievement of uniformity and certainty of the law. At the moment, neither set of Rules appear to contain all the elements of a compromise universally acceptable to all interests/parties involved in the carriage of goods by sea (for example, Canadian shippers feel that the Hague-Visby Rules contain unacceptable limits and exclusions of liability, whereas Canadian cargo insurers feel that, if the Hamburg Rules are the price to pay for uniformity, that price is too high). It is doubtful

Part II - The Work of the CMI

that the CMI is the proper forum to ascertain which additional elements will be required to achieve such a compromise. Political, as well as commercial, realities are now very much involved and it may well be that the CMI should concentrate its efforts on working in cooperation with UNCITRAL, UNCTAD and IMO, rather than trying to elaborate a solution of its own.

China

a. To study and draw up clauses to be incorporated in the bill of lading for voluntary adoption by the parties.

b. A drafting Committee or Group is to be set up by the CMI, members of which should include, in addition to those who are to be nominated by the CMI, maritime experts coming from different regions, especially those from China and the Scandinavian countries, since their maritime codes have adopted the workable provisions of various Rules.

Croatia

It is necessary to take all measures to save the unification. For this purpose the best way is to work on improvement of the Hague-Visby Rules keeping in mind acceptable solutions of the Hamburg Rules, and that is why we suggest that activities should be started to design a new protocol.

Denmark

Encourage States to ratify the Hague-Visby Rules.

Finland

As we consider that urging the acceptance of the Hamburg Rules seems to be the most appropriate way to take, it would be important to work for such common policy within the CMI.

France

Other than the changes to the present conventions, or the drafting of a new convention, the only other way to unify international carriage of goods by sea that seems possible is to draft a model bill of lading, which would require voluntary adoption on the part of the carriers of a certain number of the provisions of the Hamburg Rules (for example, the formula concerning liability found in article 5, thus eliminating the exception for negligent navigation). Nevertheless, the example of the Hague Rules shows that the drafting of a model bill of lading is very difficult. Most of the provisions which are found today in these Rules had already been inserted in a model bill of lading drafted in 1922 at the Hague. Because carriers refused to adopt this bill of lading, an international convention was called. Moreover, the adoption of a model bill of lading for carriers operating in the European Union would raise problems of competition law (it would be necessary to request an exemption from the ban on agreements in restraint of trade). While not excluding the possibility of drafting a model bill of lading, the AFDM thinks that the CMI should only undertake this if all attempt to amend either the Hamburg Rules or the Hague-Visby Rules fail.

Greece

In our opinion, CMI should mainly try to promote the Hague/Visby Rules, which are already regarded as the most credible and efficient convention. It should try to assure their uniform interpretation and give solutions to the questions raised by their application.

Moreover, every effort towards unification of legal regimes should follow the method adopted by the European Union for the approximation of legislations, i.e. the main issues are regulated by mandatory rules and the goal is clearly defined, but the remaining issues as well as the means in order to achieve the required result, are left to the discretion of the States.

Indonesia

Yes. Action should be taken to amend the rules on multimodal transport.

Ireland

The reasons for the current disintegration of uniformity are many. Not least amongst them is the fact that Governments for various reasons have begun to interfere in matters which are much more commercial than political. In doing so they have attempted to solve technical commercial problems by applying to them political rather than technical solutions, often ignoring, in the process the advice of those competent to suggest the appropriate technical solution.

We believe that if the disparate interests engaged in international commerce can agree amongst themselves the rules by which such commerce should be conducted governments should give effect to such rules in legislation provided that what has been agreed is for the common good and does not interfere with the rights of others. We think, therefore, that the drafting of any new convention dealing with the carriage of goods by sea, which is essentially a commercial matter, should be drafted, in the first instance, by an organisation such as the CMI in which the disparate commercial interests are represented. If time is taken to do the job competently in full consultation with the National Associations and with other interested commercial parties but without Intergovernmental Organisations it may be possible to present to governments a broad consensus of those engaged in international commerce on the rules under which such commerce should be conducted.

It is for governments then, meeting in Diplomatic Conference, to judge the political consequences and acceptability of what has been agreed by the commercial interests. If Governments wish to submit any CMI draft to one or more of the many Intergovernmental Organisations now competing with each other for a role in drafting international maritime law that is a matter for them. However it is questionable whether the turgid examination of such texts by IMO and UNCTAD in the past have led to any improvements in the texts which could not have been produced by a Diplomatic Conference.

Italy

We think that the amendment of the Hague-Visby Rules or, alternatively, of the Hamburg Rules is the proper course to be followed.

Part II - The Work of the CMI

Japan

No.

Korea

No. The modernization of the Hague-Visby Rules is required.

Netherlands

Primary focus should be on the inducement of the acceptance of the 1968 and 1979 Protocols by the Hague Rules countries and the 1979 Protocol by the Hague-Visby Rules countries. To that effect an action program should be developed, preferably with the assistance of the national associations of the countries which have not yet ratified both the Protocols. Such action program may include direct approaches to governments by the national associations concerned, CMI assistance in the form of organising seminars, offering legislative assistance, etc.

Additionally, the International Subcommittee should discuss possible modernisations of the Hague-Visby liability regime. Those adaptations which will appear to be generally acceptable and will not clearly be in conflict with mandatory form (e.g. model provisions of law, recommended contract clauses, etc.) than a new draft Protocol.

Uniformity in application should also be enhanced by the CMI and its national associations through seminars, articles and commentaries in legal magazines, etc.

All the above efforts should form part of a coordinated and planned program to be developed and implemented during the next couple of years.

Portugal

See answer to 6 above.

South Africa

If the efforts suggested were successful, then this Association believes that there would be no reason for further endeavours.

Spain

Constructive discussions with the P & I Clubs and shipowning associations in order to overcome the current negative policy toward the Hamburg Rules.

Sweden

Not for the time being.

Switzerland

It is our clear impression that as a first and imminent step a unified and concentrated promotion of the Hague-Visby Rules should be undertaken by CMI and the national MLAs in order to obtain at least a good basis for a possible revision at a later stage as stated under points 5 and 6 above. This would have the great advantage at least to raise the limitation level to an acceptable

Uniformity of the Law of Carriage of Goods by Sea

SDR-level and thereby also create less proliferation in the international community.

United Kingdom

No. The BMLA suggests that the way forward may be for the Working Group of Executive Council members to undertake a study of the problem of proliferation of legal regimes and, if such a study indicates that there are grounds for believing that a regime which built on the basic framework of the Hague Visby Rules, as, for example, is being developed by the Maritime law Association of the United States, might have a degree of acceptance by national associations, the Working Group should circulate a discussion document for further consideration.

United States

Urge shipping interests and organizations to voluntarily incorporate Hague-Visby Rules into Contracts of Carriage.

Venezuela

No additional efforts should be undertaken in order to reverse the current disintegration of uniformity other than the modernization of the Hague-Visby Rules as above mentioned.

Other Organizations***ICS***

As stated above, the most productive course is for the CMI to encourage ratification of the Hague-Visby Rules.

III

HAGUE - VISBY / HAMBURG RULES

Synoptical Table

of the most significant changes suggested by the National Associations to both the Hague-Visby Rules and the Hamburg Rules in their replies to the Questionnaire.

Note: The provisions of the Hamburg Rules have been arranged so to correspond to the maximum extent possible to those of the Hague-Visby Rules and thus enable a comparison to be made more easily.

I N D E X

Hague-Visby Rules

Art. 1	page 181
Art. 2	» 185
Art. 3	» 186
Art. 4	» 200
Art. 4 <i>bis</i>	» 210
Art. 5	» 216
Art. 6	» 217
Art. 7	» 218
Art. 8	» 218
Art. 9	» 218
Art. 10	» 220
<i>Protocol of signature</i>	» 228

Part II - The Work of the CMI

Hamburg Rules

Art. 1 — <i>Definitions</i>	page	181
Art. 2 — <i>Scope of application</i>	»	183,220
Art. 3 — <i>Interpretation of the Convention</i>	»	186
Art. 4 — <i>Period of responsibility</i>	»	183
Art. 5 — <i>Basis of liability</i>	»	200
Art. 6 — <i>Limits of liability</i>	»	204
Art. 7 — <i>Application to non-contractual claims</i>	»	210
Art. 8 — <i>Loss of right to limit responsibility</i>	»	208,211
Art. 9 — <i>Deck cargo</i>	»	212
Art. 10 — <i>Liability of the carrier and actual carrier</i> ...	»	213
Art. 11 — <i>Through carriage</i>	»	215
Art. 12 — <i>General rule</i>	»	204
Art. 13 — <i>Special rules on dangerous goods</i>	»	209
Art. 14 — <i>Issue of bill of lading</i>	»	187
Art. 15 — <i>Contents of bill of lading</i>	»	188,198
Art. 16 — <i>Bill of lading:</i> <i>reservations and evidentiary effect</i>	»	190
Art. 17 — <i>Guarantees by the shipper</i>	»	192
Art. 18 — <i>Documents other than bills of lading</i>	»	194
Art. 19 — <i>Notice of loss, damage or delay</i>	»	194
Art. 20 — <i>Limitation of action</i>	»	197
Art. 21 — <i>Jurisdiction</i>	»	221
Art. 22 — <i>Arbitration</i>	»	225
Art. 23 — <i>Contractual stipulations</i>	»	199,216
Art. 24 — <i>General average</i>	»	227
Art. 25 — <i>Other conventions</i>	»	218
Art. 26 — <i>Unit of account</i>	»	206

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 1 (a)		HAMBURG RULES — Art. 1 (1)-(4)	
Text	Proposed Amendments	Proposed Amendments	Text
<p align="center"><i>Article 1</i></p> <p>In this Convention the following words are employed with the meanings set out below:</p> <p>a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.</p>	<p>South Africa suggests that provisions should be inserted in order "to make obligatory clearly to identify the carrier and to make it clear that, in the absence of any such clear identification, the owner is deemed to be the carrier (as a corollary, identity of carrier or demise clauses should also be dealt with)".</p> <p>The following wording could perhaps give effect to this suggestion:</p> <p>"Carrier" means the owner or the charterer who enters into a contract of carriage with a shipper. Unless otherwise clearly stated in the bill of lading the owner shall be deemed to be the carrier.</p> <p>The British MLA suggests that reference should also be made to the actual and performing carrier. The definition of "actual carrier" in the Hamburg Rules — Art. 1(2) — might be considered.</p>	<p align="center"><i>In this definition it should be stated that "carrier" includes "actual carrier" (Ireland).</i></p>	<p align="center">PART I GENERAL PROVISIONS <i>Article 1</i> <i>Definitions</i></p> <p>1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.</p> <p>2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.</p> <p>3. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.</p> <p>4. "Consignee" means the person entitled to take delivery of the goods.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 1 (b-d)		HAMBURG RULES — Art. 1 (5)-(8)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.</p> <p>c) "Goods" includes goods, wares, merchandise and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.</p> <p>d) "Ship" means any vessel used for the carriage of goods by sea.</p>	<p><i>Canada, France, Japan and the United Kingdom suggest that all contracts of carriage should be included.</i></p> <p><i>If this suggestion were accepted a definition such as that in Art. 1(6) of the Hamburg Rules could be adopted.</i></p> <p><i>It has been suggested by France to include animals and deck cargo. Reference to deck cargo is also supported by Canada, Denmark and U.K.</i></p>	<p><i>Reference to packaging should be deleted or restricted (Ireland).</i></p>	<p>5. "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper.</p> <p>6. "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another. However, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.</p> <p>7. "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order, or to bearer, constitutes such an undertaking.</p> <p>8. "Writing" includes, <i>inter alia</i>, telegram and telex.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 1 (e)		HAMBURG RULES — Art. 2 (3) (4), 4 (1)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>e) "Carriage of goods:" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.</p>	<p>Many Associations (Argentina, Canada, Denmark, France, Ireland, Italy, Japan, United Kingdom) are of the view that the Convention should apply from delivery to redelivery. It should be considered whether this result could be achieved by amending this definition or by adopting a rule similar to that of Article 4 of the Hamburg Rules.</p> <p>Italy suggests the following wording: The period during which the responsibility of the carrier is governed by the provisions of this Convention is that during which the carrier is in charge of the goods at the port of loading, during carriage and at the port of discharge.</p>	<p><i>Reference should be made also to sea waybills and other transport documents (Sweden)</i></p>	<p><i>Article 2</i> <i>Scope of application</i></p> <p>3. The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.</p> <p>4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter-party the provisions of paragraph 3 of this article apply.</p> <p>PART II Liability of the Carrier <i>Article 4</i> <i>Period of responsibility</i></p> <p>1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES		HAMBURG RULES — Art. 4 (2)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods:</p> <p>(a) from the time he has taken over the goods from:</p> <p>(i) the shipper, or a person acting on his behalf, or</p> <p>(ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;</p> <p>(b) until the time he has delivered the goods:</p> <p>(i) by handing over the goods to the consignee; or</p> <p>(ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge, or</p>
		<p><i>France. The fact that article 4(2)(b)(ii) provides that "the carrier is deemed to be in charge of the goods until the time he has delivered them...in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract", means that it can be argued that the bill of lading (contract of carriage) could stipulate that the goods would be delivered, on board, to a stevedore acting on behalf of the consignee, the carrier thereby transferring to the consignee the liability for the unloading operations.</i></p>	

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 2		HAMBURG RULES — Art. 4 (2) - (3)	
Text	Proposed Amendments	Proposed Amendments	Text
<p align="center"><i>Article 2</i></p> <p>Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.</p>	<p><i>If the period of application is extended from delivery to redelivery, the wording of this article should be amended accordingly</i></p>		<p>(iii) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.</p> <p>3. In paragraphs 1 and 2 of this article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 3 (1) (2)		HAMBURG RULES — Art. 3	
Text	Proposed Amendments	Proposed Amendments	Text
<p><i>Article 3</i></p> <p>1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:</p> <p>a) Make the ship seaworthy.</p> <p>b) Properly man, equip and supply the ship.</p> <p>c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.</p> <p>2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.</p>	<p><i>The suggestion to make the obligations set out in this paragraph continuous obligations has been made by Canada, France and Italy. If such suggestion were accepted, the wording proposed by Italy might be considered:</i></p> <p>The carrier shall be bound, before and during the voyage, to exercise due diligence to:</p> <p>a. Make and keep the ship seaworthy;</p> <p>b. Properly man, equip and supply the ship;</p> <p>c. Make the holds, refrigerating and cool chambers and all other parts of the ship, including the containers, if supplied by the carrier, in which the goods are carried fit and safe for their reception, carriage and preservation.</p> <p><i>If the period of application is extended from delivery to redelivery, also this paragraph should be amended. Italy suggests the following text:</i></p> <p>The carrier shall, for all the time during which the goods are in his charge, properly and carefully keep and care for the goods. He shall also properly and carefully stow, carry and discharge the goods.</p>		<p><i>Article 3</i></p> <p><i>Interpretation of the Convention</i></p> <p>In the interpretation of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 3 (3)	Proposed Amendments	HAMBURG RULES — Art. 14 (1)-(3)	Proposed Amendments	Text
Text	<p>3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:</p> <p>a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.</p> <p>b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.</p> <p>c) The apparent order and condition of the goods.</p>	<p>According to France consideration may be given to adding a provision on the obligations of the shipper such as that in Article 12 of the Hamburg Rules:</p> <p>The shipper shall be bound to properly and carefully pack and mark the goods he delivers to the carrier. If he places the goods in a container, he shall also be bound to see to it that the goods are properly stuffed within the container.</p> <p>Reference to sea waybills is suggested by Canada, France and Italy. Reference to electronic transfer is suggested by South Africa.</p> <p>The description of the goods in the bill of lading or other document could be reviewed in the light of Article 15 of the Hamburg Rules.</p> <p>France is of the view that rules based on Article 16 of the Hamburg Rules should be introduced in order to enable the carrier to insert reservations in the bill of lading. If this suggestion were accepted, the rules that would be adopted might replace the proviso of this paragraph 3. France is also of the view that rules governing letters of guarantees should be introduced and that Article 17 of the Hamburg Rules is entirely satisfactory and should serve as a model.</p>	<p>It should be made clear that this provision is not mandatory (Italy).</p>	<p>PART IV TRANSPORT DOCUMENTS Article 14 <i>Issue of bill of lading</i></p> <p>1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.</p> <p>2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.</p> <p>3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.</p>

Part II. - The Work of the CMI

HAGUE - VISBY RULES — Art. 3 (3)		HAMBURG RULES — Art. 15 (1) - (a-g)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.</p>			<p><i>Article 15</i> <i>Contents of bill of lading</i></p> <p>1. The bill of lading must include, <i>inter alia</i>, the following particulars:</p> <p>(a) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;</p> <p>(b) the apparent condition of the goods;</p> <p>(c) the name and principal place of business of the carrier;</p> <p>(d) the name of the shipper;</p> <p>(e) the consignee if named by the shipper;</p> <p>(f) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;</p> <p>(g) the port of discharge under the contract of carriage by sea;</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES		HAMBURG RULES		— Art. 15 (1) (h-o)
Text		Proposed Amendments	Proposed Amendments	Text
				<p>(h) the number of originals of the bill of lading, if more than one;</p> <p>(i) the place of issuance of the bill of lading;</p> <p>(j) the signature of the carrier or a person acting on his behalf;</p> <p>(k) the freight to the extent payable by the consignee or other indication that freight is payable by him;</p> <p>(l) the statement referred to in paragraph 3 of article 23;</p> <p>(m) the statement, if applicable, that the goods shall or may be carried on deck;</p> <p>(n) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and</p> <p>(o) any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6.</p> <p>.....</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 3 (4) (5)		HAMBURG RULES — Art. 15 (3), 16 (1)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>4. Such a bill of lading shall be <i>prima facie</i> evidence of the receipt by the carrier of the goods as therein described in accordance with § 3, a, b and c. However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.</p> <p>5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particu-</p>			<p>3. The absence in the bill of lading of one or more particulars referred to in this article does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1.</p> <p><i>Article 16</i> <i>Bills of lading: reservations and evidentiary effect</i></p> <p>1. If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a "shipped" bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 3 (5)		HAMBURG RULES — Art. 16 (1) - (3)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>lars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.</p>			<p>these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.</p> <p>2. If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.</p> <p>3. Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this article has been entered:</p> <p>(a) the bill of lading is <i>prima facie</i> evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and</p> <p>(b) proof of the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.</p> <p>4. A bill of lading which does not, as provided in paragraph 1, subparagraph (k) of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES		HAMBURG RULES — Art. 16 (4) - 17 (1)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>loading payable by the consignee, is <i>prima facie</i> evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.</p>
		<p><i>This article should be deleted (Croatia, Italy, Sweden).</i></p>	<p><i>Article 17</i> <i>Guarantees by the shipper</i></p> <p>1. The shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading. The shipper must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES		HAMBURG RULES — Art. I (1) - (3)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea to any person other than the shipper.</p> <p>2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss resulting from the issuance of the bill of lading by the carrier, or by a person acting on his behalf, without entering a reservation relating to particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.</p> <p>3. Such letter of guarantee or agreement is valid as against the shipper unless the carrier or the person acting on his behalf, by omitting the reservation referred to in paragraph 2 of this article, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to paragraph 1 of this article.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 3 (6)		HAMBURG RULES — Art. 17 (4), 18, 19 (1)	
Text	Proposed Amendments	Proposed Amendments	Text
6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereunder the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be	France would not object to the notice being given within 24 hours of delivery.	<p>4. In the case of intended fraud referred to in paragraph 3 of this article the carrier is liable, without the benefit of the limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.</p> <p><i>Article 18</i> <i>Documents other than bills of lading</i></p> <p>Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is <i>prima facie</i> evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.</p> <p>PART V CLAIMS AND ACTIONS <i>Article 19</i> <i>Notice of loss, damage or delay</i></p> <p>1. Unless notice of loss or damage specifying the general nature of such loss or damage, is given in writing by the consignee or the carrier not later than the working day after the day when goods</p>	<p>4. In the case of intended fraud referred to in paragraph 3 of this article the carrier is liable, without the benefit of the limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.</p> <p><i>Article 18</i> <i>Documents other than bills of lading</i></p> <p>Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is <i>prima facie</i> evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.</p> <p>PART V CLAIMS AND ACTIONS <i>Article 19</i> <i>Notice of loss, damage or delay</i></p> <p>1. Unless notice of loss or damage specifying the general nature of such loss or damage, is given in writing by the consignee or the carrier not later than the working day after the day when goods</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 3 (6)	HAMBURG RULES — Art. 19 (1)-(5)	
Text	Proposed Amendments	Text
<p><i>prima facie</i> evidence of the delivery by the carrier of the goods as described in the bill of lading.</p> <p>If the loss or damage is not apparent, the notice must be given within three days of the delivery of the goods.</p> <p>The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.</p>	<p><i>This time limit is excessive (Croatia). The time limit should be reduced to 5 or 7 days (France).</i></p>	<p>were handed over to the consignee, such handing over is <i>prima facie</i> evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition.</p> <p>2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the consignee.</p> <p>3. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.</p> <p>4. In the case of any actual of apprehended loss or damage the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.</p> <p>5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES		HAMBURG RULES — Art. 19 (6)-(8)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>6. If the goods have been delivered by an actual carrier, any notice given under this article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.</p> <p>7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of article 4, whichever is later, the failure to give such notice is <i>prima facie</i> evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.</p> <p>8. For the purpose of this article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 3 (6)		HAMBURG RULES — Art. 20 (1)-(5)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.</p> <p>In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.</p> <p>6bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.</p>	<p>Canada suggests to extend the period of limitation to two years and France would not object.</p>	<p><i>The two years time limit is excessive (Croatia)</i></p>	<p><i>Article 20</i> <i>Limitation of actions</i></p> <ol style="list-style-type: none"> 1. Any action relating to carriage of goods under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. 2. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered. 3. The day on which the limitation period commences is not included in the period. 4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations. 5. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted. However,

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 3 (7)		HAMBURG RULES — Art. 20 (5) - 15(2)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in § 3 of Article 3, shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.</p>	<p><i>The wording of this paragraph should be amended in case reference is made to documents other than bills of lading. The words "document of title" should probably be deleted throughout the Convention.</i></p>		<p>the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.</p> <p><i>Article 15</i> <i>Contents of bill of lading</i></p> <p>2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier, the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if, as amended, such document includes all the information required to be contained in a "shipped" bill of lading.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 3 (8)		HAMBURG RULES — Art. 23 (1)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.</p>			<p>PART IV SUPPLEMENTARY PROVISIONS</p> <p><i>Article 23</i> <i>Contractual stipulations</i></p> <p>1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of the goods in favour of the carrier, or any similar clause, is null and void.</p> <p>.....</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES	— Art. 4 (1) - (2-a)	HAMBURG RULES	— Art. 5 (1) - (3)
Text	Proposed Amendments	Proposed Amendments	Text
<p><i>Article 4</i></p> <p>1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of § 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article.</p> <p>2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:</p> <p>a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;</p>	<p><i>The need for a separate provision on exoneration from liability for loss or damage arising from unseaworthiness which is not caused by the failure of the carrier to exercise due diligence is questioned by France who suggests to mention unseaworthiness together with latent defects in the list of the excepted perils. A similar view is impliedly expressed by Italy.</i></p>	<p><i>This provision should be replaced by the provisions of Articles 3(1) and (2) of the Hague Visby Rules (Greece, France, Ireland, Italy, Sweden, United Kingdom, United States, Venezuela), subject to considering the possible abolition of the defences of errors in the navigation and in the management of the ship (France, Italy, Norway)</i></p> <p><i>This provision should be deleted (United Kingdom).</i></p>	<p><i>Article 5</i></p> <p><i>Basis of Liability</i></p> <p>1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.</p> <p>2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.</p> <p>3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.</p>
<p>a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;</p>	<p><i>The abolition of the exoneration for loss or damage arising out of faults in navigation is suggested by Canada and France. It is also accepted by Italy.</i></p> <p><i>France suggests the following wording: "Neither the carrier nor the ship shall be responsible for loss, damage or delay arising or resulting from:</i></p>	<p><i>This provision should be amended to reflect that it does not apply if it can be proved that the goods have not been lost (Denmark, Sweden).</i></p> <p><i>This provision should be deleted (United Kingdom).</i></p>	

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 4 (2-b/p)		HAMBURG RULES — Art. 5 (4)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>b) fire, unless caused by the actual fault or privity of the carrier;</p> <p>c) perils, dangers and accidents of the sea or other navigable waters;</p> <p>d) act of God;</p> <p>e) act of war;</p> <p>f) act of public enemies;</p> <p>g) arrest or restraint of princes, rulers or people, or seizure under legal process;</p> <p>h) quarantine restrictions;</p> <p>i) act or omission of the shipper or owner of the goods, his agent or representative;</p> <p>j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;</p> <p>k) riots and civil commotions;</p> <p>l) saving or attempting to save life or property at sea;</p> <p>m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;</p> <p>n) insufficiency of packing;</p> <p>o) insufficiency or inadequacy of marks;</p> <p>p) latent defects not discoverable by due diligence;</p>	<p>a) Fire, unless caused by the actual fault or privity of the carrier;</p> <p>b) Perils, dangers or accidents of the sea or other navigable waters;</p> <p>c) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;</p> <p>d) Saving or attempting to save life or property at sea;</p> <p>e) Inherent defect, quality or vice of the goods or wastage in bulk or weight, according to the usual tolerance at the port of delivery;</p> <p>f) Act or omission of the shipper or owner of the goods, his agent or representative, especially in the packing, conditioning and marking of the goods;</p> <p>g) Unseaworthiness or latent defects not discoverable by due diligence;</p> <p>h) Any other cause arising without his actual fault or without the actual fault or neglect of his agents or servants;</p> <p>if he proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences”.</p>		<p>4. (a) The carrier is liable (i) for loss of or damage to the goods or delay of delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;</p> <p>(ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.</p> <p>(b) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.</p> <p>5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 4 (2)(q)	HAMBURG RULES — Art. 5 (5)-(7)
Text	Text
<p>q) any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.</p>	<p>carriage. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.</p> <p>6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.</p> <p>7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery the carrier is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in delivery not attributable thereto.</p>
Proposed Amendments	Proposed Amendments
<p><i>Italy suggests the following wording but states that the list of the excepted perils should be reviewed and simplified:</i></p> <p>1. The carrier shall be liable for loss resulting from loss of or damage to the goods as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place where the goods were in his charge as defined in article —, unless the carrier proves that neither his fault nor that of his servants or agents contributed to the loss or damage. In order to prove the absence of fault the carrier must provide evidence that he has taken the reasonable measures that the nature of the transport requires and, in particular, the measures described in Article 3 paragraphs 1 and 2.</p> <p>2. When the carrier proves that the loss or damage has been caused by one of the following circumstances, it shall be presumed that to such extent neither his fault nor that of his servants or agents contributed to the loss or damage:</p> <p>(a) fire; (b) perils, dangers and accidents of the sea or other navigable waters; (c) acts of God; (d) acts of public enemies;</p>	

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 4 (2)		HAMBURG RULES	
Text	Proposed Amendments	Proposed Amendments	Text
	<p>(e) arrest or restraints of princes, rulers or people;</p> <p>(f) act or omission of the shipper or owner of the goods, his agent or representative;</p> <p>(g) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;</p> <p>(h) riots or civil commotions;</p> <p>(i) saving or attempting to save life or property at sea or preventing or minimizing damage to the environment;</p> <p>(j) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;</p> <p>(k) insufficiency of packing;</p> <p>(l) insufficiency or inadequacy of marks;</p> <p>(m) latent defects of the ship not discoverable by due diligence.</p> <p><i>France suggests to insert provisions on loss or damage arising out of delay such as those in Article 5(2) of the Hamburg Rules.</i></p> <p><i>Canada suggests to insert a provision on loss or damage caused by an act for which the carrier is responsible and by an act for which he is not responsible such as that of Article 5(7) of the Hamburg Rules.</i></p>		

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 4 (3)-(5-a)	HAMBURG RULES — Art. 12 - Art. 6 (1-a)
Text	Text
<p>3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.</p> <p>4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this Convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.</p> <p>5.a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666,67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.</p>	<p>France suggests that the following provision should be inserted at the beginning of this article:</p> <p>“The shipper shall be bound to properly and carefully pack and mark the goods he delivers to the carrier. If he places the goods in a container, he shall also be bound to see to it that the goods are properly stuffed within the container”.</p>
<p>3. The shipper shall not be liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.</p>	<p>PART III LIABILITY OF THE SHIPPER</p> <p><i>Article 12</i> <i>General rule</i></p> <p><i>Article 6</i> <i>Limits of Liability</i></p> <p>1. (a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 4 (5-b/c)	HAMBURG RULES	— Art. 6 (1-b) (2-a)
Text	Proposed Amendments	Text
<p>b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, by reference to the normal value of goods of the same kind and quality.</p> <p>c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.</p>		<p>(b) The liability of the carrier for delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.</p> <p>(c) In no case shall the aggregate liability of the carrier, under both paragraphs (a) and (b) of this paragraph, exceed the limitation which would be established under subparagraph (a) of this paragraph for total loss of the goods with respect to which such liability was incurred.</p> <p>2. For the purpose of calculating which amount is the higher in accordance with paragraph 1 (a) of this article, the following rules apply:</p> <p>(a) Where a container, pallet or similar article of transport is used to consolidate goods, the packages or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport are deemed packages or shipping units. Except as aforesaid the goods in such article of transport are deemed one shipping unit.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 4 (5-d)		HAMBURG RULES — Art. 6 (2-b)(3)(4), 26(1)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national</p>			<p>(b) In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.</p> <p>3. Unit of account means the unit of account mentioned in article 26.</p> <p>4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.</p> <p><i>Article 26</i> <i>Unit of account</i></p> <p>1. The unit of account referred to in article 6 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be converted into the national currency of a state according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 4 (5-d)		HAMBURG RULES — Art. 26 (1)-(3)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:</p> <p>i) in respect of the amount of 666.67 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 10,000 monetary units;</p> <p>ii) in respect of the amount of 2 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 30 monetary units.</p> <p>The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900¹. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.</p>			<p>transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.</p> <p>2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as:</p> <p>12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogramme of gross weight of the goods.</p> <p>3. The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 4 (5-d/f)	HAMBURG RULES — Art. 26 (4) - Art. 8 (1)
Text	Proposed Amendments
<p>The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in sub-paragraph (a) of paragraph 5 of this Article as is expressed there in units of account. States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.</p>	<p>Proposed Amendments</p>
<p>e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.</p>	<p>4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.</p>
<p>f) The declaration mentioned in sub-paragraph a) of this paragraph, if embodied in the bill of lading, shall be</p>	<p><i>Article 8</i> <i>Loss of right to limit responsibility</i> 1. The carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 4 (5-g/h) (6)	HAMBURG RULES — Art. 13 (1) - (2-a)
Text	Text
<p>prima facie evidence, but shall not be binding or conclusive on the carrier.</p> <p>g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph a) of this paragraph may be fixed provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.</p> <p>h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.</p>	<p>the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.</p> <p>.....</p>
<p>6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damage and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods</p>	<p align="center"><i>Article 13</i></p> <p align="center"><i>Special rules on dangerous goods</i></p> <p>1. The shipper must mark or label in a suitable manner dangerous goods as dangerous.</p> <p>2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:</p> <p>(a) the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and</p>

Canada suggests to consider the provisions of Article 13 of the Hamburg Rules.

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 4 (6), 4 bis (1) (2)	HAMBURG RULES — Art. 13 (2-b)(3)(4), 7(1)
Text	Proposed Amendments
<p>shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.</p> <p style="text-align: center;"><i>Article 4 bis</i></p> <p>1. The defences and limits of liability provided in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.</p> <p>2. If such an action is brought against a servant or agent of the carrier, such</p>	<p>b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.</p> <p>3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.</p> <p>4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5.</p> <p style="text-align: center;"><i>Article 7</i></p> <p><i>Application to non-contractual claims</i></p> <p>1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the goods covered by the contract of carriage by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 4 bis (2)-(4)	Text	Proposed Amendments	HAMBURG RULES — Art. 7 (2) (3), 8 (2)	Text
	<p>servant or agent not being an independent contractor such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.</p> <p>3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.</p> <p>4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.</p>			<p>2. If such an action is brought against a servant or agent of the carrier, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.</p> <p>3. Except as provided for in article 8, the aggregate of the amounts recoverable from the carrier and from any person referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.</p> <p align="center"><i>Article 8</i></p> <p><i>Loss of right to limit responsibility</i></p> <p>2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES		HAMBURG RULES — Art. 9 (1) - (3)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p><i>Article 9</i> <i>Deck cargo</i></p> <p>1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.</p> <p>2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by sea a statement to that effect. In the absence of such a statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.</p> <p>3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES		HAMBURG RULES — Art. 9 (3) (4), 10(1) (2)	
Text	Proposed Amendments	Proposed Amendments	Text
	<p><i>Actual carrier</i></p> <p><i>A provision along the lines of Article 10 of the Hamburg Rules is suggested by Canada, France and Japan. Ireland instead thinks that the concept of actual carrier need re-examination.</i></p>	<p>Ireland. <i>The provisions in Article 10 relating to the joint and several liability of the "carrier" and the "actual carrier" as defined in Article 1 is commercially unacceptable in transports in which groupage takes place. (see detailed comments in the Synopsis).</i></p>	<p>from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of article 6 or article 8 of this Convention, as the case may be.</p> <p>4. Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act or omission of the carrier within the meaning of article 8.</p> <p align="center"><i>Article 10</i> <i>Liability of the carrier and actual carrier</i></p> <p>1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.</p> <p>2. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES		HAMBURG RULES — Art. 10 (2) - (6)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 apply if an action is brought against a servant or agent of the actual carrier.</p> <p>3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.</p> <p>4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.</p> <p>5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.</p> <p>6. Nothing in this article shall prejudice any right of recourse as between the carrier and the actual carrier.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES		HAMBURG RULES — Art. II (1) (2)	
Text	Proposed Amendments	Proposed Amendments	Text
		<p><i>The requirement that the name of the on-carrier be indicated in the bill of lading should be deleted (Italy).</i></p>	<p align="center"><i>Article 11</i> <i>Through carriage</i></p> <p>1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraph 1 or 2 of article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.</p> <p>2. The actual carrier is responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 5		HAMBURG RULES — Art. 23 (2) - (4)	
Text	Proposed Amendments	Proposed Amendments	Text
<p><i>Article 5</i></p> <p>A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this Convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.</p> <p>The provisions of this Convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this Convention. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.</p>		<p>France suggests to amend paragraph 2 as follows:</p> <p>Notwithstanding the provisions of the preceding paragraph, a carrier and a shipper shall be at liberty, for goods not being an ordinary commercial shipment, and if the character or condition of the property to be carried and the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, to enter into a special agreement concerning the obligations and liability of the carrier. In this case, no bill of lading shall be issued, but only a non-negotiable instrument marked as such.</p>	<p>PART VI</p> <p>SUPPLEMENTARY PROVISIONS</p> <p><i>Article 23</i></p> <p><i>Contractual stipulations</i></p> <p>2. Notwithstanding the provisions of paragraph 1 of this article, a carrier may increase his responsibilities and obligations under this Convention.</p> <p>3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee.</p> <p>4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present article, or as a result of the omission of the statement referred to in paragraph 3 of this article, the carrier must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier must, in addition, pay compensation for costs incurred by the claimant for the</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES — Art. 6		HAMBURG RULES — Art. 23 (4)	
Text	Proposed Amendments	Proposed Amendments	Text
<p><i>Article 6</i></p> <p>Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such. Any agreement so entered into shall have full legal effect.</p> <p>Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the</p>	<p><i>According to Italy all the provisions of this article should be reconsidered. In this connection attention should be paid to the amended text of Article 23(2) of the Hamburg Rules suggested by France (see p. 216).</i></p>		<p>purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 6-9		HAMBURG RULES — Art. 25 (3)-(5)	
Text	Proposed Amendments	Proposed Amendments	Text
<p>property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.</p> <p><i>Article 7</i></p> <p>Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connexion with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from the ship on which the goods are carried by sea.</p> <p><i>Article 8</i></p> <p>The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.</p> <p><i>Article 9</i></p> <p>This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.</p>			<p><i>Article 25</i> <i>Other conventions</i></p> <p>1. This Convention does not modify the rights or duties of the carrier, the actual carrier and their servants and agents, provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.</p> <p>2. The provisions of articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other multilateral convention already in force at the date of this Convention relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal place of business in States members of such other convention. However, this paragraph does not affect the application of paragraph 4 of article 22 of this Convention.</p> <p>3. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES		HAMBURG RULES — Art. 25 (3) - (5)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>(a) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or</p> <p>(b) by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions.</p> <p>4. No liability shall arise under the provisions of this Convention from any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.</p> <p>5. Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.</p>

Part II. - The Work of the CMI

HAGUE - VISBY RULES — Art. 10		HAMBURG RULES — Art. 2 (1)-(2)	
Text	Proposed Amendments	Proposed Amendments	Text
<p><i>Article 10</i></p> <p>The provisions of this Convention shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:</p> <p>a) the bill of lading is issued in a Contracting State, or</p> <p>b) the carriage is from a port in a Contracting State, or</p> <p>c) the contract contained in or evidenced by the bill of lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.</p> <p>Each Contracting State shall apply the provisions of this Convention to the bills of lading mentioned above.</p> <p>This Article shall not prevent a Contracting State from applying the Rules of this Convention to bills of lading not included in the preceding paragraph.</p>	<p><i>If it will be agreed that the Convention applies to all contracts of carriage by sea, reference to the bill of lading in the opening sentence should be deleted.</i></p> <p><i>The extension of the scope of application to cases where the port of destination is in a Contracting State should also be considered.</i></p>		<p><i>Article 2</i></p> <p><i>Scope of application</i></p> <p>1. The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:</p> <p>(a) the port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or</p> <p>(b) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or</p> <p>(c) one of the optional ports of discharge provided for in the contract of carriage of goods by sea is the actual port of discharge and such port is located in a Contracting State, or</p> <p>(d) the bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or</p> <p>(e) the bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.</p> <p>2. The provisions of this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.</p> <p>.....</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES		HAMBURG RULES — Art. 21 (1)	
Text	Proposed Amendments	Proposed Amendments	Text
	<p><i>Arbitration and Jurisdiction</i> <i>The addition of provisions on jurisdiction is suggested by Canada and France but opposed by other Associations.</i> <i>The addition of provisions on arbitration is suggested only by Canada, and opposed by other Associations.</i></p>	<p><i>This article should be deleted (Croatia, Ireland, Italy, Sweden)</i> <i>The provisions in this article should be clarified (Canada)</i></p>	<p><i>Article 21 Jurisdiction</i> 1. In judicial proceedings relating to carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places: (a) the principal place of business or, in the absence thereof the habitual residence of the defendant; or (b) the place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made; or (c) the port of loading or the port of discharge; or (d) any additional place designated for that purpose in the contract of carriage by sea.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES		HAMBURG RULES — Art. 21 (2)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>2. (a) Notwithstanding the preceding provisions of this article, an action may be instituted in the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that State and of international law. However, in such a case, at the petition of the defendant, the claimant must remove the action, at his choice, to one of the jurisdictions referred to in paragraph 1 of this article for the determination of the claim, but before such removal the defendant must furnish security sufficient to ensure payment of any judgement that may subsequently be awarded to the claimant in the action.</p> <p>(b) All questions relating to the sufficiency or otherwise of the security shall be determined by the court of the port or place of the arrest.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES		HAMBURG RULES — Art. 21 (3) - (4)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>3. No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paragraph 1 or 2 of this article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.</p> <p>4. (a) Where an action has been instituted in a court competent under paragraph 1 or 2 of this article or where judgement has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgement of the court before which the first action was instituted is not enforceable in the country in which the new proceedings are instituted;</p> <p>(b) for the purpose of this article the institution of measures with a view to obtaining enforcement of a judgement is not to be considered as the starting of a new action;</p> <p>(c) for the purpose of this article, the removal of an action to a different court within the same country, or to a court in another country, in accordance</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES		HAMBURG RULES — Art. 21 (4) - (5)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>with paragraph 2 (a) of this article, is not to be considered as the starting of a new action.</p> <p>5. Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, which designates the place where the claimant may institute an action, is effective.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES		HAMBURG RULES — Art. 22 (1) - (3)	
Text	Proposed Amendments	Proposed Amendments	Text
		<p>This article should be deleted (Croatia, France, Ireland, Italy, Sweden)</p> <p><i>The provisions in this article should be clarified (Canada)</i></p>	<p><i>Article 22 Arbitration</i></p> <p>1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.</p> <p>2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.</p> <p>3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:</p> <p>(a) a place in a State within whose territory is situated:</p>
		<p><i>This provision is likely to cause serious problems in case of institutional arbitration (France)</i></p>	

Part II - The Work of the CMI

HAGUE - VISBY RULES		HAMBURG RULES -- Art. 22 (3)-(6)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p>(i) the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or</p> <p>(ii) the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or</p> <p>(iii) the port of loading or the port of discharge; or</p> <p>(b) any place designated for that purpose in the arbitration clause or agreement.</p> <p>4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.</p> <p>5. The provisions of paragraphs 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith is null and void.</p> <p>6. Nothing in this article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.</p>

Uniformity of the Law of Carriage of Goods by Sea

HAGUE - VISBY RULES		HAMBURG RULES — Art. 24 (1)-(2)	
Text	Proposed Amendments	Proposed Amendments	Text
			<p><i>Article 24</i> <i>General average</i></p> <p>1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage by sea or national law regarding the adjustment of general average.</p> <p>2. With the exception of article 20 the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.</p>

Part II - The Work of the CMI

HAGUE - VISBY RULES — Art. 1 (a)		HAMBURG RULES	
Text	Proposed Amendments	Proposed Amendments	Text
<p>Protocol of signature</p> <p>At the time of signing the International Convention for the unification of certain rules of law relating to bills of lading the Plenipotentiaries whose signatures appear below have adopted this Protocol, which will have the same force and the same value as if its provisions were inserted in the text of the Convention to which it relates.</p> <p>The High Contracting Parties may give effect to this Convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Convention.</p> <p>They may reserve the right:</p> <ol style="list-style-type: none"> 1. To prescribe that in the cases referred to in paragraph 2 c to p of Article 4 the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph a. 2. To apply Article 6 in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article. <p><i>Done at Brussels, in a single copy, August 25th, 1924. (follow the signatures).</i></p>			

INTERNATIONAL SUB-COMMITTEE ON THE REGIME OF CARRIAGE OF GOODS BY SEA

REPORT OF THE FIRST SESSION

LONDON, 29TH AND 30TH NOVEMBER, 1995

1. The meeting was convened at the Cavalry and Guards Club, 127 Piccadilly, by the Sub-Committee Chairman, Professor Berlingieri, at 9:35 a.m. on Wednesday 29th November. Dr. Frank Wiswall served as Rapporteur. The final list of participants is attached as Annex "A".

2. A welcome was extended to the representative of UNCTAD. In response Dr. Faghfoury stated that while she had no mandate to discuss any changes to the Hamburg Rules, UNCTAD understood that the present lack of uniformity was not an ideal situation, and that she would therefore follow the discussions with interest.

3. At the outset the Chairman posed two general questions for discussion: (1) should matters concerning the regime of carriage of goods by sea ("COGBS") be left in the status quo? (2) should the CMI do something and, if so, what should it do?

4. The majority of participants were of the view that the CMI must do something to promote uniformity. Dr. Wiswall briefly recapitulated the discussions which had taken place at the New York session of UNCITRAL in 1994. The Scandinavian participants advocated a "mixed" system, containing features of both the Hague-Visby and Hamburg Rules, similar to the recent Scandinavian legislation. Prof. Tetley (Canada) noted that his country had adopted Hague-Visby in 1993, and for Canada the Hamburg Rules were not a burning issue at present; he felt, however, that the Scandinavian legislation had many problems, resulting in a conflict of laws between the Scandinavian States, and that a "mixed" regime would be very difficult to apply uniformly. Mr. Rasmussen (Denmark) disagreed; the problems of the Scandinavian States were limited to matters of jurisdiction and arbitration. Prof. Wetterstein (Finland) supported this view, and said that while something more must be done the solution was not a wholly new system.

5. Mr. Hooper (U.S.A.) observed that enough time had now passed to be able to see clearly that neither Hague-Visby nor Hamburg was wholly acceptable. Mr. Beare (U.K.) believed the chief problem to be a lack of uniformity in application, and consequently favoured a new regime. Mr. Kleiven (Norway) agreed, and felt that the best solution would be to replace Hamburg with a new convention. Mr. Cova-Arria (Venezuela) noted that the Venezuelan

Part II - The Work of the CMI

MLA favoured a new "third" convention, embodying the best features of both present regimes.

6. Dr. Raposo (Portugal) believed that technology and improved shipping methods had outmoded Hague-Visby, and that the solution was not Hamburg and not a wholly new convention, but a modernization of Hague-Visby. This view was supported by Mr. Rzeszewicz (Poland), who nonetheless felt that the modernization should include the best features of Hamburg. Dr. Kienzle (Germany) also agreed, noting the support for Hague-Visby in his country. Mr. Japikse (Netherlands) saw his country in a position similar to that of Canada: he was, however, willing to work on a marginal revision of Hague-Visby.

7. Prof. Tanikawa (Japan) noted that his country favoured Hague-Visby, but deplored the present situation. He observed that it may not be possible to amend Hague-Visby, as this would require the willingness of the Belgian Government to convene an XIV Conference on Maritime Law, which seems highly unlikely. On the other hand, if the CMI offers amendments to the Hamburg Rules, there will be no satisfactory opportunity to debate these in UNCITRAL — let alone to secure their adoption — as only States Parties to the Convention have the right to vote on amendments. His conclusion was that an alternative to both Hague-Visby and Hamburg is necessary. Mr. McGovern (Ireland) felt such a high political charge had built up in this matter that it is a practical impossibility to base work on either present regime: a new COGBS regime which is commercially sound and acceptable is the only chance for progress. This view was supported by Dr. von Ziegler (Switzerland), who saw the problem not to be a proliferation of regimes, but the inevitability of deadlock if work is based on either present regime: if there can be any solution it would have to be a "third" convention with the strong backing of a great majority of the commercial States.

8. Dr. Raposo (Portugal) reiterated that the work should be based upon Hague-Visby, but said that its form should be as a protocol to Hamburg. Mr. Herholdt (South Africa) stated that his country favoured a change from the present situation, but had no strong preference for either regime. Prof. Park (Korea) observed that his Government officially supported Hamburg, but that the commercial interests in Korea were very wary of the Hamburg regime. Mr. Chandler (U.S.A.) believed that the CMI should base its work solely on the commercial aspects of the problem, and that if the result is acceptable on that basis and the commercial interests are united behind it, the political problems will disappear.

9. Summing up, Prof. Berlingieri observed that several participants appeared to favour the status quo in view of the practical difficulties of convening a diplomatic conference to revise either Hague-Visby or Hamburg. A "third convention", on the other hand, could introduce even greater disuniformity. However, the CMI is a private non-political organization, and the question before the Sub-Committee should therefore be: is there a better alternative to the status quo, and if so what should be the substance of the alternative? It is necessary for the time being to lay aside the issue of what form such

Uniformity of the Law of Carriage of Goods by Sea

an alternative might take. The Sub-Committee should therefore proceed to identify specific practical problems and propose commercially-oriented solutions.

10. Mr. McGovern (Ireland) agreed that the Sub-Committee should work ahead, but that it should be prepared to accept the status quo if no practical alternative emerges. Dr. Wiswall doubted that any work product of the Sub-Committee could possibly make the present situation worse. Mr. Rasmussen (Denmark) observed that the thinking in the U.S.A. and Australia had already gone quite clearly in the direction of a third regime. Prof. Wetterstein (Finland) noted that the problem with the Hamburg Rules is that the commercial interests were ignored in fashioning that regime, and while Hamburg languishes the Hague-Visby Rules have become outdated; he wondered if it would be possible for a third convention to enter into force in time to answer the need for uniformity.

11. As to specific issues, Mr. McGovern (Ireland) felt that the terms "contract of carriage" and "carriage of goods" needed to be more clearly defined. This alone might be sufficient work for the present session. M. Siscantara (Spain) believed that the Sub-Committee should begin by examining the most controversial issues as revealed by the responses to the post-Hague Conference questionnaire.

12. Prof. Berlingieri proposed that the Sub-Committee begin with a point-by-point examination of the Hague-Visby Rules, using the Synopsis of Responses to the Questionnaire as the working document, and referring to provisions of or problems with the Hamburg Rules as these arose in the relevant column of the document. This was agreed.

13. SCOPE OF APPLICATION-DEFINITIONS

(a) *"Carrier" and "Actual Carrier"* — Mr. Rasmussen (Denmark) felt that "carrier" in Hague-Visby should be presumed to mean the "contracting carrier" as in Hamburg. Prof. Tetley (Canada) felt that the Hamburg definition should be used. Mr. McGovern (Ireland) believed that the Hamburg definition causes problems; "carrier" should include the "actual carrier", but some articles of Hamburg omit reference to the "actual carrier". Dr. Kienzie (Germany) pointed out the difficulty that the definition of "carrier" in both conventions is linked to the underlying liability regime, which in the case of Hamburg is based upon the Warsaw Convention for carriage by air. Both Prof. Berlingieri and Prof. Tanikawa (Japan) agreed. Mr. Rasmussen (Denmark) stated that the Hamburg definition is at least clear, whereas the Hague-Visby 'definition' is an illustrative list. Prof. Tetley (Canada) and Mr. Cova-Arria (Venezuela) concurred, favouring the Hamburg definition. Prof. Wetterstein (Finland) would prefer a 'simplified Hamburg' definition, as in the recent Scandinavian legislation. Prof. Berlingieri saw the majority view as being that the Hague-Visby definition of "carrier" is too loose.

(b) *"Shipper"* — Prof. Berlingieri pointed out that Hague-Visby has no definition of "shipper"; should there be one? Prof. Sturley (U.S.A.) felt that

there should be such a definition. Prof. Tetley (Canada) stated that the definition of "shipper" was a late addition to the Hamburg text. Prof. Wetterstein (Finland) pointed out that the Scandinavian legislation defines both the "contracting" and the "actual" shipper. Dr. Kienzle (Germany) cautioned that a definition of "shipper" should not get mixed up with the domestic law of agency. Prof. Berlingieri concluded that it remains an open question whether a definition of "shipper" is needed.

(c) "*Contract of Carriage*" — Prof. Berlingieri asked whether this term should be restricted to a certain document, or should be applied to whatever document is most relevant in any given case. Mr. Koronka (U.K.) felt that the term should be applied to any appropriate document, except a charterparty. Mr. McGovern (Ireland) queried why a voyage charterparty should be excluded. Mr. Rasmussen (Denmark) responded that charterparties are concluded between parties presumed to be commercial equals; therefore only bills of lading, EDI documents, and some but not all waybills should be covered. Prof. Wetterstein (Finland) supported this view. Prof. Sturley (U.S.A.) felt that charterparties should not be covered but remain open to free negotiation, whereas EDI documents should be covered. Prof. Tetley (Canada) supported this view. Mr. Chandler (U.S.A.) found Hamburg flawed in that it does not cover non-negotiable documents. Prof. Tanikawa (Japan) believed that a new regime should cover any contract of carriage, with freedom to depart from the rule in the case of charterparties. Dr. Faghfour (UNCTAD) questioned the status of bills of lading issued pursuant to charterparties; it would not be good to leave their status uncertain. Mr. Hooper and Mr. Chandler (U.S.A.) responded that coverage should extend to a 3rd party holder of any document issued subject to a charterparty or of any non-negotiable documents. Dr. Kienzle (Germany) observed that a bill of lading issued under a charterparty may not recite the charterparty but only incorporate it by reference; if a bill of lading issues under a charterparty, it is non-negotiable under the ICC Rules. Prof. Tetley (Canada) believed that nothing should be done with regard to the term "contract of carriage", as both Hague-Visby and Hamburg were really in accord in this respect. Prof. Berlingieri, summing up, felt that there was a consensus that the Hague-Visby definition is acceptable.

(d) "*Deck Cargo*" — Prof. Berlingieri pointed out that deck cargo was excluded from coverage under Hague-Visby. Mr. McGovern (Ireland) stated that deck cargo should be covered by a new regime, except for live animals. This view was supported by Prof. Sturley (U.S.A.) and Dr. von Ziegler (Switzerland). Prof. Berlingieri concluded that there was a consensus in favour of including deck cargo in general, but excluding live animals.

(e) "*Package*" — Following a brief discussion, Prof. Berlingieri concluded that there was no consensus whether a definition of "package" should be included.

(f) "*Ship*" — Prof. Berlingieri pointed out that while "ship" was defined in Hague-Visby, it was not defined in Hamburg. After a brief discussion, there appeared to be no consensus whether the term should be defined in the future work.

Uniformity of the Law of Carriage of Goods by Sea

(g) "*Carriage of Goods*" — Prof. Berlingieri saw the real question as whether coverage should be tackle-to-tackle, or whether the period of carriage should extend to coverage while the goods are in the custody of the carrier in the port. Mr. Rasmussen (Denmark) proposed that coverage should extend to the period while the goods are in the terminal (the "terminal period"). Mr. Japikse (Netherlands) asked how one would determine whether the carrier has custody of the goods. Prof. Tetley (Canada) responded that Hamburg answered that question in Art. 4(2)(b)(iii). Prof. Sturley (U.S.A.) explained that the original concept was that a uniform regime was needed only tackle-to-tackle, leaving the status of goods in the port or terminal to the national law of the port State. Prof. Berlingieri pointed out that, historically, not many carriers operated warehouses when the Hague Rules were drawn in the 1920's. Mr. Rohart (France) believed that where the shipper does not know the identity of the stevedore, there is an argument for extending the period of the carrier's liability. Mr. McGovern (Ireland) favoured liability for the carrier from taking charge of the goods through their discharge from the ship; there are too many variables in conditions following discharge to hold the carrier liable. This view was supported by Mr. Kleiven (Norway). Mr. Koronka (U.K.) proposed that the liability of the carrier should run for the period during which he is "in charge" of the goods, which would terminate when the goods are put "at the disposal of" the shipper; this event might occur beyond the boundaries of the port or terminal. Mr. Salter (Australia and New Zealand) supported the concept of an "in charge" period for liability, but this should commence at "delivery" of the goods to the carrier, as this is a better-known term; "delivery" may of course occur inside or outside the port. This concept recognized the 'container revolution' which has occurred since the Visby Amendments were drawn. Prof. Wetterstein (Finland) agreed, noting that Hamburg makes an excessively restrictive exception to the "bailee's liability". Dr. von Ziegler (Switzerland) also agreed. Mr. Chandler and Prof. Sturley (U.S.A.) were of the view that it is the bill of lading or waybill which determines the period of liability, and that this regime should only determine the extent of liability; they supported a "delivery-to-redelivery" concept. Prof. Tanikawa (Japan) did not oppose some extension of the period of liability, but felt that this should not go beyond the Hamburg maximum; the period should be limited to events which take place within the port or terminal. Dr. Raposo (Portugal) favoured a "custody within the port" rule; he pointed out that in Hamburg the definition only ran to the period of applicability of the rule. Mr. Rasmussen (Denmark) thought the COGBS regime should not apply to intermodal transport; he also favoured limitation to events occurring within the port or terminal. Mr. Japikse (Netherlands) did not favour any extension; in most cases liability beyond the port was covered by a multimodal through bill. Mr. Koronka (U.K.) felt that the COGBS regime should apply up to the point at which the CMR Convention governed. Prof. Berlingieri felt that there was at least a consensus that coverage should be "port-to-port", but queried whether this might conflict with other transport conventions and/or international law. Prof. Wetterstein (Finland) emphasized the need for a convention on combined transport to resolve these conflicts; he favoured port-to-port coverage in the COGBS regime. Mr. Chandler (U.S.A.)

Part II - The Work of the CMI

pointed out that, in most cases, the carrier will decide this issue by the terms of the bill of lading. Prof. Berlingieri concluded that there was a consensus on the concept of liability while the goods are in the custody of the carrier within the port of loading or discharge; there remained some doubts whether the COGBS regime could itself apply beyond the port. It was clear that Article 2 of Hague-Visby would need to be amended.

14. HAGUE-VISBY ARTICLE 3 — *"Duties of the Carrier"*:

Mr. Rohart (France) stated that his country wished to maintain the concept of due diligence so that some reciprocal obligations may be placed upon the shipper. Prof. Tanikawa (Japan) asked whether the obligation of the shipowner to exercise due diligence to maintain seaworthiness should be extended to cover the voyage itself. Mr. Rasmussen (Denmark) felt that due diligence should be kept, as concrete provisions are necessary for guidance; however, he had reservations over an extension to cover the voyage. Prof. Wetterstein (Finland) supported this position; due diligence to avoid unseaworthiness need not be mentioned if Hamburg Article 5 applies, but mention is necessary if the basis is Hague-Visby. Mr. Hooper (U.S.A.) saw the need to retain due diligence, but would not extend the obligation. Mr. Alcantara (Spain) favoured striking out due diligence and Article 3 of Hague-Visby. Dr. von Ziegler (Switzerland) was very much in favour of keeping due diligence, as under the civil law system the parties to a contract cannot realistically adopt it; due diligence was only deleted from the Hamburg text by a drafting committee composed chiefly of civil lawyers. Prof. Park (Korea) saw no reason to delete due diligence; to do so would create confusion among carriers. Dr. Raposo (Portugal) would keep due diligence and perhaps extend its application to containers as well as the ship. Mr. Salter (Australia and New Zealand) would ideally prefer to delete due diligence and use the Hamburg Article 5 delivery liability test. Mr. Koronka (U.K.) favoured keeping due diligence in an amended form; he would not want to extend the period, because in the end this would make no difference. Mr. Rzeszewicz (Poland), Dr. Kienzle (Germany), Mr. Japikse (Netherlands) and Mr. Kleiven (Norway) all spoke in favour of keeping the concept without change. Mr. Cova-Arria (Venezuela) would keep due diligence, but extend the period of coverage. Prof. Tetley (Canada) would keep both Hague-Visby Article 3 and Hamburg Article 5 without change, though he favoured the Hamburg provision. Prof. Berlingieri, summarizing, saw that a clear majority wished to keep at least Hague-Visby Article 3(1) and (2) in any event, but a few favoured deletion. Some would link it, regardless of the outcome, to the fate of Hague-Visby Article 4.

15. ARTICLE 4 - *"Liability Regime"*

Mr. McGovern (Ireland) would retain the list of exceptions including error in navigation, but would be willing to delete error in management. This position was supported by Mr. Salter (Australia and New Zealand), Mr. Rzeszewicz (Poland) and Prof. Tanikawa (Japan). Prof. Tetley (Canada) held that if the work was to be based upon Hague-Visby, then the list of exceptions

Uniformity of the Law of Carriage of Goods by Sea

should remain except for errors in navigation and management; if the basis of the work was to be Hamburg, as he preferred, the entire list should be deleted. This position was supported by Mr. Cova-Arria (Venezuela). Mr. Kleiven (Norway) and Dr. Kienzle (Germany) were in favour of retaining the entire list, reserving their position as to the errors in navigation and management. Mr. Japikse (Netherlands) did not care for the Hamburg approach; he supported the principle of reasonableness and so preferred to keep the list, including errors in navigation and management, as an aid to developing the facts of a given case. This position was supported by Dr. Raposo (Portugal) and Prof. Park (Korea). Mr. Koronka (U.K.) would keep the list, including errors in navigation and management, but would shift the burden of proof to the carrier. Dr. von Ziegler (Switzerland) would retain the list whether or not the regime was based upon Hague-Visby or Hamburg, as an explicit list was needed for guidance; he could, however, drop the errors in navigation and management. Mr. Alcantara (Spain) preferred Hamburg Article 5, but if Hague-Visby were the basis then he would delete the errors in navigation and management. Prof. Wetterstein (Finland) pointed out that the Scandinavian legislation had deleted the list; he was in favour of dropping the errors in navigation and management, but retaining the fire exception from Hamburg. Mr. Hooper (U.S.A.) would keep a list, but delete the errors in navigation and management; the burden of proof should lie equally upon ship and cargo, so that failure to carry the burden would result in a 50-50 division of damages. Mr. Rasmussen (Denmark) would keep the list, including errors in navigation and management, and would add the Hamburg fire exception; the list could also be 'overhauled' to modernize it. Mr. Rohart (France) felt that if Hague-Visby were the basis, Article 4(1) should be deleted and unseaworthiness should be listed with latent defects in sub-paragraph (p); he favoured a mixed text from Hague-Visby and Hamburg, but based on a list as in the French proposal at pp. 22-23 of the Synopsis. Mr. Chandler (U.S.A.) pointed out that particularity and clarity were necessary to promote settlement of claims; it was virtually impossible to reach settlements under Hamburg because of the ambiguities.

16. DEVIATION:

Mr. Koronka (U.K.) observed that the doctrine of deviation was now effectively dead in Great Britain. Dr. von Ziegler pointed out that deviation was originally linked to insurance, but is not needed now and should be dropped from the COGBS regime; only reasonable deviation for safety of life and property should be a listed exception. This position was supported by Prof. Tanikawa (Japan). Prof. Wetterstein (Finland) stated that there was no special rule on this in the Scandinavian legislation, but that reasonable deviation is an exception. Mr. Rasmussen (Denmark) noted that if containers were carried on deck in violation of the contract of carriage, then this was a constructive deviation giving rise to liability. Prof. Sturley (U.S.A.) saw a need to clarify the rule on deviation, because Article 4(4) now carries a negative implication.

17. LIMIT OF LIABILITY:

Prof. Wetterstein (Finland) favoured unlimited liability. Mr. Hooper (U.S.A.) felt a uniform rule to be more important than the extent of liability.

Mr. Chandler (U.S.A.) observed that, finally, cargo interests had decided that they preferred the Hague-Visby package limitation. Mr. Alcantara (Spain) felt that the trend was away from package limitation and toward a higher global limitation. Prof. Wetterstein (Finland) believed that cargo liability should not in any case be subject to global limitation. Mr. Rasmussen (Denmark) stated that the present Hague-Visby limits were too low and the limits of a new regime must at least equal Hamburg. Dr. Wiswall and Mr. Koronka (U.K.) were of the opinion that a higher limit than Hamburg would be essential in order to secure adoption of a new COGBS regime. Dr. von Ziegler (Switzerland) observed that while limitation can be "bought out", no shipper ever does it; the Hague-Visby and Hamburg limits should be adjusted for inflation, but there should not be a quantum increase. Prof. Sturley (U.S.A.) felt that a commercial approach to limitation was necessary. Mr. Koronka (U.K.) pointed out that most cargo was now self-insured. Mr. Rohart (France) believed that the problem lay in the package vs. kilo limitation; the differential between package and weight should be re-balanced. Mr. Hooper (U.S.A.) observed that the package limitation in container cases is so high that it very often exceeds the value of the goods; he did not see how the differential could be re-balanced. Prof. Berlingieri asked what were the negative consequences of the present limitation, given that the shipper always has the option of choosing the highest limit. Mr. Roland (Belgium) felt that the crux of the problem was that the package limit was too low and the kilo limit too high; there should be only one basis for limitation. Dr. von Ziegler (Switzerland) pointed out that the same discussion had taken place in Visby; he felt that if one limitation were chosen it should be based upon the kilo, as favoured by many at the Visby Conference. Prof. Tanikawa (Japan) supported the existing system, as there were many cases in which only the package limitation made sense; while his country's delegation at Visby opposed the package limit, it now accepted it; if the cargo was of a high value, the shipper always had the option to declare it and pay for the higher limit. Mr. Chandler (U.S.A.) saw it as essential that both limits be maintained; it could endanger acceptance of any new regime if one of the present limits was abandoned. Mr. Rasmussen (Denmark) agreed with this, but thought that the present limits could be adjusted. Mr. Roland (Belgium) pointed out the problem of defining a 'unit', and that is why his country preferred the present system; the serious problem was that of metric tons vs. kilos vs. long tons in bulk cargo cases, and there was an urgent need to focus on this issue. Prof. Berlingieri queried the real meaning in this context of "goods lost or damaged"; if for example a large machine is shipped in several component pieces and one critical piece is damaged, what is the weight of the goods for calculation of the limit? Mr. Kleiven (Norway) noted that the Scandinavians were trying to harmonise COGBS with CMR, as the latter will be applied to domestic traffic. Mr. Rasmussen (Denmark) stated that his country did not support this approach. Prof. Berlingieri saw one consideration in favour of the Hague-Visby limitations as being that a ship can carry more goods than any type of vehicle which is contemplated in the CMR Convention. Dr. von Ziegler (Switzerland) observed that the only constant measure in COGBS is weight, and this is why comparisons with the Warsaw Convention are invalid; he would prefer

Uniformity of the Law of Carriage of Goods by Sea

to keep both kilo and package limitations, pointing out that the limit under CMR is 17 SDRs per kilo. Prof. Sturley (U.S.A.) noted that limitation of liability works only when there is a limit, and cannot work if there is no available limit. Mr. McGovern (Ireland) recalled that the present Hague-Visby limitation system was the "Diplock compromise" which was reached in the last minutes of the Visby Conference, and thought it would be very unwise to attempt to reopen the basic issue.

18. LOSS OF LIMITATION:

Prof. Sturley (U.S.A.) pointed out that his country had unique provisions of domestic law of COGBS such as the "fair opportunity" requirement, which affected limitation differently from the Hague-Visby Rules. Mr. Hooper (U.S.A.) favoured the Hamburg wording "such loss or damage" rather than the Hague-Visby Article 4bis(4) wording "the loss or damage". Prof. Tanikawa (Japan) felt that the basic wording in both conventions should be maintained, with only minor adjustments.

19. CONTENTS OF THE BILL OF LADING - "*Identification of the Carrier*":

Prof. Berlingieri noted that Hamburg allows "other documents" to govern. Mr. McGovern (Ireland) found severe problems with Hamburg, as for example in Article 16(4); if cargo pays the carrier with a worthless cheque, Hamburg denies the shipowner a lien on the cargo. Mr. Roland (Belgium) saw that Article 15(g) of Hamburg created problems; under the law of his country, for example, the master of the ship must sign the bill of lading, whereas under Hamburg virtually anyone but the shipper himself may sign. Prof. Berlingieri observed that this problem also relates to that of the identity of the carrier. Prof. Tanikawa (Japan) held that the name and address of the carrier should be required to be entered in every bill of lading; Hamburg is notably deficient in this respect. Dr. von Ziegler (Switzerland) agreed. Mr. Chandler (U.S.A.) noted that the UCP 500 standard will accept charterparty bills of lading, but requires specific identification of the carrier — banks will not accept such bills unless the carrier's identity properly appears; carriers must therefore now use a clear form bill of lading. Prof. Berlingieri thought that a possible solution might be a rule that unless another name appears in the bill of lading, the contracting carrier will be absolutely deemed to be the carrier. Mr. Rasmussen (Denmark) agreed; the contracting carrier must be held to be the carrier unless the name of the performing carrier is entered. This was supported by Mr. Chandler (U.S.A.). Mr. McGovern (Ireland) agreed that the identity of the carrier was a crucial problem, but that the only solution was a [rebuttable] presumption that the shipowner was the carrier unless another carrier was listed. Prof. Tanikawa (Japan) posed the problem of a ship bareboat-chartered and subsequently voyage-chartered, where the agent of the voyage charterer has issued a bill of lading in the name of the master; what would be the result? Dr. Raposo (Portugal) noted that in his country the shipowner and the ship in rem are liable unless the carrier can be identified. Mr. Rasmussen (Denmark) saw the solution not only as a presumption against the contracting carrier, but also in joint and several liability with the performing carrier; he pointed out that it was equally important to

identify the shipper in the bill of lading. Mr. Koronka (U.K.) thought that very sloppy issuance of bills of lading was really to blame, and the problem with a presumption against the shipowner becomes clear where there is multiple COGBS — how does one determine which shipowner should be liable; he favoured the Danish approach of joint and several liability. Prof. Tetley (Canada) thought his country solved the problem as did Hamburg Article 10; but Prof. Berlingieri and Dr. von Ziegler (Switzerland) disagreed that Hamburg solved the problem. Dr. Wiswall saw a majority in favour of a presumption of liability against the contracting carrier. Prof. Berlingieri thought that the identification requirement was inadequate under Hague-Visby, but that some Hamburg requirements were not only commercially difficult and even impossible, but also dangerous. Mr. McGovern (Ireland) pointed out that Hamburg provided no means of enforcing the requirements of Article 15, especially considering Article 15(3). Dr. von Ziegler (Switzerland) felt that another remedy might be to lengthen the period for time bar to suit.

20. VALIDITY OF THE IDENTITY OF CARRIER CLAUSE:

Mr. Rasmussen (Denmark) felt this problem to be a cause of great commercial confusion; the clause should not be allowed to defeat a presumption against the contracting carrier unless the performing carrier was identified in the bill of lading or his identity later proved. Mr. Roland (Belgium) noted that in his country the clause was invalid and the contracting carrier was not allowed to evade responsibility. Mr. McGovern (Ireland) wondered if the contracting carrier were a forwarding agent without financial substance, why he should be the exclusive defendant in a suit? Dr. von Ziegler (Switzerland) answered that if this were the case it would be because the plaintiff shipper had chosen a straw man to issue the bill of lading rather than insisting upon the shipowner; the problem was shippers being encouraged to be careless by the present regime. Mr. Koronka (U.K.) agreed. Mr. Roland (Belgium) observed that if the bill of lading is required to be issued by the master, the shipowner must be the presumptive carrier. Dr. Raposo (Portugal) believed that at present the master seldom personally issues the bill of lading, and this is increasingly being done by computer on shore.

21. EVIDENTIARY VALUE OF THE BILL OF LADING:

Prof. Tanikawa (Japan) did not understand the necessity for provisions on evidentiary value, particularly with respect to sea waybills, which are non-negotiable; the present Hague-Visby provisions were satisfactory in this respect. Prof. Tetley (Canada) felt that the effect of the bill of lading was better stated in Hamburg than in Hague-Visby, but that what was really needed was a 'Bills of Lading Act' separate from either regime. Mr. Rasmussen (Denmark) believed the time had come to extend the provisions to cover waybills, referencing the CMI Rules on Sea Waybills; the present measures were otherwise satisfactory. Mr. Rohart (France), Prof. Park (Korea), Mr. Rzeszewicz (Poland), and Dr. Raposo (Portugal) believed the present provisions to be satisfactory, and did not favour extension to sea waybills. Mr. Japikse (Netherlands) felt that the present provisions should be extended to apply to sea waybills. Mr. Salter (Australia and New Zealand) believed that the Hague-Visby

Uniformity of the Law of Carriage of Goods by Sea

provisions should be reviewed in light of more recent developments in shipping technology, and agreed that the present provisions should be extended to apply to sea waybills. Mr. McGovern (Ireland) saw a problem in Hamburg Article 16(4); he favoured extension of Hague-Visby to sea waybills. Mr. Cova-Arria (Venezuela) favoured the Hamburg approach in this regard, so in that context there would be no need to provide particularly for sea waybills. Dr. Kienzle (Germany) noted that the law of his country provided a "concealed shipment" endorsement, obviating the need for extension to sea waybills. Mr. Hooper (U.S.A.) saw a need to remove the Hague-Visby prohibition of the "shipper's load and count"; such endorsements should be clarified as in Hamburg Article 16, but "shipper's load and count" should be permitted. Dr. von Ziegler (Switzerland) supported this view; it was especially needed where the cargo was pre-packaged or containerized, and a provision permitting the "shipper's load and count" endorsement should be added to Hague-Visby Article 3(4). Mr. Japikse (Netherlands) agreed. Mr. Koronka (U.K.) was uneasy about the present Hague-Visby provisions, and felt that there should be a positive obligation upon the master to verify shipments, especially when the container belonged to the carrier; he recalled that containers were originally introduced for the benefit of the shipowner rather than the shipper. Prof. Berlingieri, summing up, detected a slight majority in favour of extension of the Hague-Visby provisions to sea waybills and a majority in favour of permitting the endorsement of "shipper's load and count"; the present provisions seemed otherwise satisfactory.

22. DANGEROUS CARGO:

Dr. von Ziegler (Switzerland) saw no need for any changes in Hague-Visby. Dr. Raposo (Portugal) would change only the reference to "carrier". Prof. Tanikawa (Japan) found some confusion in Hamburg Article 13(1) and (2). Prof. Tetley (Canada) felt that while the wording of Hamburg Article 13 was not perfect, it was considerably better than Hague-Visby and should therefore be adopted. This view was supported by Mr. Rzeszewicz (Poland), Prof. Sturley (U.S.A.) and Mr. Rasmussen (Denmark). Prof. Berlingieri saw the majority as favouring the wording of Hamburg Article 13.

23. NOTICE AND TIME BAR:

Mr. Roland (Belgium) felt that time should begin to run (a) on discharge or (b) when the consignee has access to the goods; the best would be (c) when the goods reach their actual final destination. Prof. Tanikawa (Japan) felt that the time for notice provided in Hamburg Article 19(1) was too short, especially since the goods are already in the hands of the receiver; the carrier therefore would have the burden of proving intervening damage; the Hague-Visby provisions are better. Mr. Chandler (U.S.A.) thought the complexity of the Hamburg provisions likely to produce more litigation. Mr. Rasmussen (Denmark) believed that the 1-day rule of Hamburg caused injustice; the Hague-Visby provisions were preferable both for notice and time bar. Prof. Tetley (Canada) observed that the Scandinavian legislation did not accept Hamburg Article 19, but he felt that Hamburg 19 and 20 together constituted

Part II - The Work of the CMI

a system, and to extract one provision from this would be a mistake; one must take either Hamburg as a whole or Hague-Visby as a whole, and not pick-and-choose among the provisions. Mr. Rohart (France) preferred Hamburg Article 19, but felt that a 7-day period would be better than 15 days; he also preferred the 2-year time bar. Mr. Japikse (Netherlands) would have no problem with a 2-year time bar, but preferred the Hague-Visby notice provision. Mr. Salter (Australia and New Zealand) could accept a 2-year time bar, but was not really desirous of any change from Hague-Visby. Dr. von Ziegler (Switzerland) pointed out that the 2-year time bar in Hamburg was taken from the Warsaw Convention, which applies primarily to passengers and is not appropriate for marine cargo; he preferred Hague-Visby. Dr. Raposo (Portugal) agreed; the Hamburg 2-year time bar is excessive. Mr. Beare (U.K.) agreed and saw that the 1-year time bar of Hague-Visby operated in favour of insurers, and this helped to keep transport costs down. Prof. Park (Korea) also agreed; the Hague-Visby provisions for both notice and time bar were far preferable. This view was supported by Mr. Hooper (U.S.A.), Mr. Rzeszewicz (Poland), Dr. Kienzle (Germany), Mr. Cova-Arria (Venezuela) and Mr. McGovern (Ireland).

24. GEOGRAPHICAL SCOPE OF APPLICATION and NATIONAL CHOICE OF LAW:

Mr. Rasmussen (Denmark) stated that Hague-Visby applies only to the export end, whereas Hamburg is much broader; the broadest possible scope of application is preferable. Mr. Hooper (U.S.A.) noted that the American COGSA applied to both inbound and outbound carriage; application to the whole movement evidenced by the bill of lading was best. Prof. Tetley (Canada) felt that the multimodal convention should be applied to all movements originating or terminating outside the port. Mr. Alcantara (Spain) and Prof. Park (Korea) favoured application to both inbound and outbound carriage. Prof. Sturley (U.S.A.) felt that of the two, application to inbound carriage was more important than outbound, but that one could have both provided that there was a uniform system. Dr. von Ziegler (Switzerland) noted that most continental States have the Hague-Visby rule, so that it is important to judge the impact of any change; Article 10 of Hague-Visby was not a conflict-of-laws rule, but simply a rule of application. Prof. Philip observed that the parties have the option under Hague-Visby to choose another applicable law; one could not separate the scope of application from choice of law and conflicts. Prof. Berlingieri questioned the nature of the relationship between choice of law and uniform rules; in Italy the uniform rules to which the State is party prevail over the domestic conflict of laws rules; he noted in this regard that Italy had enacted the untranslated French text of the Hague Rules. Mr. Rzeszewicz (Poland) said that his country had the same rule as in Italy; he preferred application both inbound and outbound. Dr. Kienzle (Germany) noted that the rule in his country, as in Switzerland, drew no distinction between inbound and outbound carriage; in this regard it was interesting that Germany had enacted the English text of the Hague Rules. Mr. Roland (Belgium) stated that the law of his country applied Hague-Visby inbound as well as outbound; as to conflicts, priority was always given to an international convention. Prof. Sturley (U.S.A.) explained that in

Uniformity of the Law of Carriage of Goods by Sea

America conventions were on the same constitutional footing with statute law, so that conventional provisions can be effectively modified or nullified by later statutory enactments. Prof. Tanikawa (Japan) observed that the statute law of his country was based upon Hague-Visby, but applied to any carriage by sea, and that Japan was also a State party to Hague-Visby; the domestic conflict-of-laws rules will determine 'which version' of Hague-Visby will apply in a given case; the parties to a bill of lading may choose the rule of Hague-Visby or another rule. Mr. Japikse (Netherlands) noted that the Hague-Visby Rules were embodied in Dutch legislation, but he would not oppose extension to inbound carriage. Mr. Koronka (U.K.) favoured extension to inbound carriage, or even to the place of delivery. Mr. Rohart (France) also favoured extension to inbound carriage, and noted that the law of his country applied both pre- and post-tackle. Mr. McGovern (Ireland) also favoured extension to inbound carriage. Mr. Salter (Australia and New Zealand) noted that Australia was planning to enact a modified extension to inbound carriage. Prof. Berlingieri explained that Hague-Visby Articles 10(c) and Hamburg 2(1)(e) allowed application of the Convention *itself*, in which case the Convention provisions were binding; Hamburg Article 2 creates confusion over which is applicable: the Convention text or the domestic law enacting the Convention. Mr. Alcantara (Spain) wondered about applicability to domestic water transport; Hague-Visby appeared to exclude this possibility. Prof. Tetley (Canada) noted that the law of his country applied Hague-Visby internally as well as externally. Prof. Sturley (U.S.A.) observed that the common American practice is to incorporate COGSA in domestic bills of lading. Mr. Rasmussen (Denmark) favoured the extension to domestic carriage by water, for the sake of uniformity. Dr. von Ziegler (Switzerland) would tie domestic application of the Convention to the application of domestic law, including conflict-of-laws rules; this is the present situation in Switzerland and Japan. Prof. Philip noted that the Convention on a Uniform Law of Sales, for example, did not apply in all domestic cases. Prof. Berlingieri felt that the Sub-Committee should strive to avoid application of any conflicts rules. Prof. Tetley (Canada) agreed; it was enough to demand application to inbound and outbound carriage.

25. RULE OF INTERPRETATION — (Hamburg Article 3):

The question being put, there was an obvious consensus in favour of adopting this clause.

26. LETTER OF GUARANTEE — (Hamburg Article 17):

Prof. Tanikawa (Japan) found that the carrier fraud in 17(3) inevitably implied fraud by the shipper as well; this is an unfair provision. Mr. Alcantara (Spain) agreed that this is not a good provision and is eventually destructive. Prof. Tetley (Canada) and Mr. Roland (Belgium) were of the same view. Dr. Wiswall saw a further problem in that the provision must rely upon any distinctions in national law between criminal fraud and civil or commercial fraud, so that it could in no event have uniform application. Mr. Koronka (U.K.) felt this a fundamentally flawed provision which has no place in a COGSA regime. Mr. Rasmussen (Denmark) agreed, and noted that the Scan-

Part II - The Work of the CMI

dinavian legislation had omitted this provision. Mr. Rohart (France) suggested that such a letter of guarantee should be utterly void if the cargo is misdescribed. Mr. Hooper (U.S.A.) observed that the Pomerene Act in America made the issuance of such guarantees a crime. Prof. Berlingieri, summing up, stated the consensus that letters of guarantee should not be encouraged, and should perhaps be prohibited altogether.

27. PERFORMING CARRIER ("THROUGH CARRIAGE") — (Hamburg Article 11):

Mr. Salter (Australia and New Zealand) thought this a useless and wholly superfluous provision. Mr. Rohart (France) and Mr. Koronka (U.K.) supported this view. Prof. Tanikawa (Japan) observed that the original proposal was that the first carrier should be liable throughout the period of carriage; the present text was a bad compromise, promoted by certain academics. Mr. Rasmussen (Denmark) noted that this provision was taken into the Scandinavian legislation; he thought it a useful provision. Prof. Tetley (Canada) also favoured the provision. Mr. Alcantara (Spain) thought it caused no problems. Dr. Kienzle (Germany) felt that the provision may be in conflict with the multimodal convention. Mr. Japikse (Netherlands), Dr. von Ziegler (Switzerland) and Mr. McGovern (Ireland) were opposed to the provision in any COGBS regime. Prof. Berlingieri found that there was a majority opposed to the adoption of Hamburg Article 11.

28. JURISDICTION — (Hamburg Article 21):

Mr. Salter (Australia and New Zealand), Mr. Rohart (France), Prof. Tetley (Canada), Mr. Alcantara (Spain) and Mr. Hooper (U.S.A.) thought the provision acceptable, while conceding that it was not cast in the best possible wording. Mr. Rasmussen (Denmark) did not think this was a workable provision; it is contrary to widespread commercial practice, and it may be in conflict with the European Judgements Convention. Prof. Sturley (U.S.A.) noted that this provision was considered at the Hague Rules Conference in 1920 and was rejected as inappropriate. Mr. Koronka (U.K.) had sympathy with the provision, and did not think it complicated the situation. Prof. Tanikawa (Japan) pointed out that this provision was another drawn from the Warsaw Convention, and while it was appropriate for passengers it was not appropriate for marine cargo; it made no sense in the context of a COGBS regime, and he opposed it. Mr. McGovern (Ireland) also opposed the provision. Prof. Philip remarked that this was a strangely-worded jurisdiction clause. Dr. von Ziegler (Switzerland) agreed, noting that jurisdiction was not limited to States parties to Hamburg; this was a very serious flaw, which failed to ensure the applicability of the Convention. Mr. Roland (Belgium) would favour the principle, if the provision required the competent court to be in a State party to the Convention. Dr. von Ziegler (Switzerland) queried why there could not be a choice of the court of any State party. Mr. Roland (Belgium) and Prof. Philip felt that this would be in accord with Article 17 of the new European Judgements Convention. Summing up, Prof. Berlingieri found a majority in favour of a provision giving a reasonable choice of jurisdiction.

Uniformity of the Law of Carriage of Goods by Sea

29. ARBITRATION —(Hamburg Article 22):

Mr. Salter (Australia and New Zealand) did not like the wording of the provision and did not think it necessary or desirable; he would favour a provision stating that the parties might agree to arbitrate if they chose to do so, and to arbitrate anywhere they chose. Mr. Rohart (France) was opposed to this Hamburg provision. Mr. Japikse (Netherlands) was also opposed; all that was needed was a requirement that arbitrators apply the Convention. Mr. Alcantara (Spain) felt the provision should give a right to arbitration only when the parties were agreed, and should require arbitrators to apply the Convention; private justice should not be made mandatory, whereas public justice demanded protection of the weaker party by giving a right to invoke the jurisdiction of a competent court. Mr. Rasmussen (Denmark) believed the Hamburg provision would cause many problems. Prof. Sturley (U.S.A.) was concerned because of the recent SKY REEFER decision in his country; the proposed legislation being considered in the U.S. Association offered a choice to arbitrate within the United States. Prof. Tanikawa (Japan) thought that an arbitration provision was unnecessary. Prof. Tetley (Canada) pointed out that under Hague-Visby there is arbitration only if provided in the bill of lading, i.e., at the choice of the carrier; Hamburg at least guaranteed the claimant a reasonable choice of forum for arbitration. Dr. von Ziegler (Switzerland) felt that there should be both jurisdiction and arbitration clauses in the COGBS regime, so as not to 'undermine' liability; but the arbitration forum should be limited to States parties. Prof. Tetley (Canada) thought it should be provided that any jurisdiction and/or arbitration clauses were to be void unless agreed in writing between the parties. Mr. Rasmussen (Denmark) noted that the Scandinavian legislation applies the provision of Hamburg Article 22 only as between the Scandinavian countries. Prof. Berlingieri felt that in light of the discussions the Sub-Committee must resolve the jurisdiction clause issues before returning to consideration of the arbitration issues.

30. At the conclusion of the discussions each representative was supplied with a copy of the English translation of the Scandinavian legislation in the version printed by the Government of Finland. It was decided that the Report of this First Session of the Sub-Committee should be circulated to the participants at the end of the first week in January 1996, or as soon thereafter as possible. The participants will then submit comments, issues and proposals by fax to the CMI Administrator, Baron Delwaide (+32-3-227-3528) not later than the first week of February 1996.

31. It was also decided that the Sub-Committee should next meet in London on Friday 15 and Saturday 16 March 1996, at a location to be determined. The meeting was adjourned at 5:30 p.m. on Thursday 30 November 1995.

Respectfully submitted,

FRANK L. WISWALL, Rapporteur
FRANCESCO BERLINGIERI, Chairman

Part II - The Work of the CMI

ANNEX A

LIST OF PARTICIPANTS

Officers:

Chairman	Prof. Avv. Francesco Berlingieri, Hon. President, CMI
Rapporteur	Dr. Frank Wiswall, Executive Councillor, CMI
Ex-Officio	Prof. Dr. Allan Philip, President, CMI

Representatives:

Australia & New Zealand:	Ron Salter
Canada:	W. David Angus, Q.C. & Prof. William Tetley, Q.C.
Denmark:	Uffe Lind Rasmussen
Finland:	Prof. Peter Wetterstein
France:	Jean-Serge Rohart
Germany	Dr. Jost Kienzle
Ireland:	J. Niall McGovern
Japan	Prof. Hisashi Tanikawa
Korea:	Prof. Kiljun Park
Netherlands	R. Eric Japikse
Norway:	Ivar Kleiven & Karl-Johan Gombrii
Poland:	Michal Rzeszewicz
Portugal:	Dr. Mario Raposo
South Africa:	John Herholdt & Johan Swart
Spain:	José Alcantara
Switzerland:	Dr. Alexander von Ziegler
U.K.:	Stuart Beare & Paul Koronka
U.S.A.:	George Chandler, Chester Hooper & Prof. Michael Sturley
Venezuela:	Luis Cova-Arria

Observers:

ICS	Linda Howlett, Legal Adviser
UNCITRAL	Jernej Sekolec, Senior Legal Officer
UNCTAD	Dr. Mahin Faghfour, Legal Officer

MARITIME AGENTS

SYNOPSIS OF THE REPLIES TO THE QUESTIONNAIRES

*Part II - The Work of the CMI***TABLE OF CONTENTS**

	Page No.
1. Introduction	248
2. The CMI Questionnaires	250
3. General information on the functions to which the inquiry is directed	252
4. Specific information on each individual function	257
a. Persons performing the functions of negotiating and accomplishing the sale or purchase of a ship	257
b. Persons performing the functions of negotiating and supervising the charter of a ship	259
c. Persons performing the functions of collecting freight and/or charter hire where appropriate and all related financial matters	261
d. Persons performing the functions of arranging for customs or cargo documentation and forwarding of cargo and, more specifically, in respect of:	
(i) Ships clearance	263
(ii) Cargo clearance	264
(iii) Cargo documentation	266
(iv) On-forwarding or pre-forwarding of cargo	267
e. Arrangements for procuring, processing the documentation and performing all activities required to dispatch cargo	269
f. Organizing arrival or departure arrangements for the ship	271
g. Arranging for the supply of services to a ship while in port	272
h. Cargo solicitation, marketing and advertising	273
i. Container monitoring	275
j. Claims notification	276
k. Claims handling	277
5. Whether official qualifications such as passing exams organized under the supervision of Governmental Agencies, are required in order to perform any of the functions listed in para. 4	279
6. Whether the persons carrying out any of the functions listed in para. 4 must be registered in a public register	287
7. Whether there are professional associations of which the persons performing any of the functions listed in paragraph 4 are normally members	292
8. a. Whether such associations require professional or other qualifications from their members in respect of:	295
(i) education and professional expertise;	
(ii) financial capability;	
(iii) professional conduct.	
b. In respect of whom the professional or other qualifications are established in case the agent is a legal entity	298
9. Whether statutory rules are applicable to the persons performing any of the functions listed in paragraph 4	300

Maritime Agents

10. General description of the existing rules	309
11. a. Rules on the duties and liabilities of the agent towards his principal	313
b. Rules on the rights of the agent against his principal in respect of:	
(i) The payment of his remuneration and of his disbursements;	319
(ii) The termination of the agreement;	321
(iii) The indemnity, if any, payable to the agent upon termination of the agreement	328
c. Rules on the liability of the agent towards third parties	333
(i) Custom duties	334
(ii) Port dues	335
(iii) Crew wages	336
(iv) Contracts for supplies, repairs, etc.	337
12. Whether any of the existing rules are of a mandatory nature	339
a. Port agents and maritime agents	341
b. Ship and chartering brokers	341
c. Customs agents	342
13. Whether the remuneration payable in respect of the functions listed in paragraph 3, or in any of them, may be freely negotiated by the parties or tariffs are applicable and, if so, whether such tariffs are mandatory	342
14. Whether service of proceedings against the principal may be effected to the agent	348
Annex 1 EC Council Directive of 18th December 1986 (86/653/EEC)	352
Annex 2 UNCTAD Minimum Standards for Shipping Agents	358
Annex 3 General Business Conditions for Shipbrokers and Shipping Agents in the Federal Republic of Germany	360
Annex 4 Standard Trading Conditions of the Institute of Chartered Shipbrokers	363
Annex 5 By-Laws of the French Ships' Agents Association.	367
Annex 6 Swedish Shipbrokers Association Rules	371
Annex 7 Standard Liner Agency Agreement of the Federation of National Associations of Shipbrokers and Agents	372

1. Introduction

At its meeting of 6th December 1991, the Executive Council of the CMI decided that the subject of maritime agents deserved the attention of the CMI and assigned me the task, as a first step, of preparing and circulating a questionnaire with a view to identifying the rules existing in the various jurisdictions in respect of maritime agents. The main areas covered by the questionnaire were the following:

- (i) whether special qualifications are required to perform the activity of maritime agent (Question 1);
- (ii) whether maritime agents are required to be registered in a special register (Question 2);
- (iii) whether there are statutory rules governing the duties and responsibilities of maritime agents (Question 3);
- (iv) whether there are tariffs applicable to their services and, if so, whether or not they are compulsory (Question 4);
- (v) whether there are statutory rules governing the termination of the contract between the owner and the maritime agent (Question 5);
- (vi) whether the agent is entitled to an indemnity at the time of the termination of the contract (Question 6);
- (vii) whether the existing statutory rules are mandatory and, if so, whether a choice of law clause is valid (Question 7);
- (viii) whether or not jurisdiction and arbitration clauses in an agency agreement are valid (Question 8);

From the replies received, and from the exchange of views which took place during the meeting of the International Sub-Committee, subsequently set up by the Executive Council it appeared, however, that there did not exist uniformity with respect to the functions of maritime agents. It was, therefore, felt that it was necessary, in order to obtain a clear picture of the rules existing in various jurisdictions, to first identify the functions in respect of which the enquiry was conducted and then the areas of particular interest.

It was thus decided to issue a second questionnaire in order to extend the scope of the enquiry.

The functions in respect of which the enquiry should be conducted were described in the first question as follows:

- a. Negotiating and accomplishing the sale or purchase of a ship.
- b. Negotiating and supervising the charter of a ship.
- c. Collection of freight and/or charter hire where appropriate and all related financial matters.
- d. Arrangements for customs or cargo documentation and forwarding of cargo and, more specifically, in respect of:
 - (i) ship's clearance;
 - (ii) cargo clearance;
 - (iii) cargo documentation;
 - (iv) on-forwarding or pre-forwarding of cargo.

Maritime Agents

- e. Arrangements for procuring, processing the documentation and performing all activities required to dispatch cargo.
- f. Organizing arrival or departure arrangements for the ship.
- g. Arranging for the supply of services to a ship while in port.
- h. Cargo solicitation, marketing and advertising.
- i. Container monitoring.
- j. Claims notification.
- k. Claims handling.

The areas in respect of which it was deemed interesting to find out what the applicable rules are have been described in the eighth question as follows:

- a. Duties and liabilities of the agent towards his principal.
- b. Rights of the agent against his principal, in particular, in respect of:
 - (i) the payment of his remuneration and of his disbursements;
 - (ii) the termination of the agreement;
 - (iii) the indemnity, if any, payable to the agent upon termination of the agreement.
- c. The liability of the agent towards third parties and, in particular, in respect of:
 - (i) customs duties;
 - (ii) port dues;
 - (iii) crew wages;
 - (iv) contracts for supplies, repairs, etc.

It was also deemed convenient to repeat some of the questions already included in the first questionnaire in order to obtain replies covering the much wider spectrum of activities described in the first question and to find out whether there exist professional associations of which the persons performing any of the activities listed in the first question are normally members.

The following National Associations answered the first questionnaire:

Argentina	Mexico
Australia	Morocco
Belgium	Netherlands
Canada	Norway
Chile	Philippines
China	Portugal
Croatia	Slovenia
Denmark	Spain
Finland	Sweden
France	Switzerland
Germany	Turkey
Greece	United Kingdom
Ireland	United States
Italy	Uruguay
Japan	Venezuela

Part II - The Work of the CMI

The following Associations answered the second Questionnaire:

Argentina	Japan
Australia	Norway
Belgium	Philippines
Canada	Portugal
China	Slovenia
Finland	Spain
France	Sweden
Germany	Switzerland
Greece	United Kingdom
Ireland	Venezuela
Italy	

When the Executive Council decided that the synopsis of the replies of the National Associations to the two Questionnaires should be published in the CMI Yearbook and asked me to take care of such publication, I was confronted with the problem of whether the synopsis of the replies to each Questionnaire should be published separately or it would have been preferable to attempt to amalgamate them. I decided that this latter alternative would have been preferable, for it would give the reader a clearer picture, and render the information more easily accessible.

In order to do this, I have taken as a basis the second Questionnaire and added to the replies given to each question the replies given to the same or similar question in the first Questionnaire. I have then added the areas covered by the first and not by the second Questionnaire.

Genoa, 20th February 1996

FRANCESCO BERLINGIERI

2. The CMI Questionnaires.

The First Questionnaire

- 1. Is the performance of the activities of maritime agents free, or is it in whole or in part conditional to specific qualifications?*
- 2. Must maritime agents be registered in a public register in order to perform their activity?*
- 3. Are there any statutory rules governing the duties and responsibilities of maritime agents?*
- 4. Is there any tariff applicable to the services of maritime agents? If so, is the tariff compulsory or are the parties free to negotiate the amount of the agent's remuneration?*
- 5. Are there statutory rules in respect of the termination of the contract, such as minimum notice periods when the contract is concluded for an indefinite period?*
- 6. Are there statutory rules in respect of the indemnity due to the maritime*

Maritime Agents

agent at the time of termination of the contract? If so, what do these rules provide? Are they cogent in nature or not?

7. Are the statutory rules, or some of them, cogent in nature? If so, would they be applied even if the parties have chosen a different law to govern their contract?
8. Would a jurisdiction or an arbitration clause be valid?

The Second Questionnaire

1. Please state who is performing in your country each of the following functions. Please indicate the name under which such functions, or a part of them, are performed.
 - a. Negotiating and accomplishing the sale or purchase of a ship.
 - b. Negotiating and supervising the charter of a ship.
 - c. Collection of freight and/or charter hire where appropriate and all related financial matters.
 - d. Arrangements for customs or cargo documentation and forwarding of cargo and, more specifically, in respect of:
 - (i) Ship's clearance.
 - (ii) Cargo clearance.
 - (iii) Cargo documentation.
 - (iv) On-forwarding or pre-forwarding of cargo.
 - e. Arrangements for procuring, processing the documentation and performing all activities required to dispatch cargo.
 - f. Organizing arrival or departure arrangements for the ship.
 - g. Arranging for the supply of services to a ship while in port.
 - h. Cargo solicitation, marketing and advertising.
 - i. Container monitoring.
 - j. Claims notification.
 - k. Claims handling.
2. Please state whether official qualifications such as passing exams organized under the supervision of Governmental agencies, are required in order to perform any of the functions listed in paragraph (1) above.
3. Please state whether the persons carrying out any of the functions listed in paragraph (1) above must be registered in a public register.
4. Please state whether there are in your country professional associations of which the persons performing any of the functions listed in paragraph (1) above are normally members.
5. Please state:
 - a. Whether such associations require professional or other qualifications from their members in respect of:
 - (i) Education and professional expertise
 - (ii) Financial capability
 - (iii) Professional conduct.
 - b. To whom they are granted, in case the agent is a legal entity, i.e.: whether to such entity or to individuals forming part of its organization.

Part II - The Work of the CMI

6. *Please state whether statutory rules or rules of law are applicable to the persons performing any of the functions listed in paragraph (1) above.*
7. *If so, please describe generally such rules.*
8. *In particular, please state whether there are rules dealing with:*
 - a. *The duties and liabilities of the agent towards his principal.*
 - b. *The rights of the agent against his principal, in particular, in respect of:*
 - (i) *The payment of his remuneration and of his disbursements.*
 - (ii) *The termination of the agreement.*
 - (iii) *The indemnity, if any, payable to the agent upon termination of the agreement.*
 - c. *The liability of the agent towards third parties and, in particular, in respect of:*
 - (i) *Customs duties.*
 - (ii) *Port dues.*
 - (iii) *Crew wages.*
 - (iv) *Contracts for supplies, repairs, etc.*
9. *Please state whether any of the existing rules are of a mandatory nature.*
 - a. *Port agents and maritime agents.*
 - b. *Ship and chartering brokers.*
 - c. *Customs agents.*
10. *Please state whether the remuneration payable in respect of the functions listed in paragraph (1) above, or any of them, may be freely negotiated by the parties or tariffs are applicable and, if so, whether such tariffs are mandatory.*
11. *Please state whether service of proceedings against the principal may be effected to the agent.*

3. General information on the functions to which the inquiry was directed.

Argentina

The typical functions of the maritime agents are those relating to the assistance of the master and the ship in all the steps connected with the arrival of a ship at a port, the stay therein, and the departure therefrom. Those functions are connected with stowage, pilotage, loading and discharge, supplies, relations with authorities (specially with the Custom Authorities).

Finland

The term "shipbroker" in the wide sense includes the following subgroups of intermediaries:

1. Ship's agents representing foreign or domestic vessels whilst in Finland and Finnish ports, also in relation to customs authorities.

Maritime Agents

2. Shipbrokers in the strict sense, intermediaries in finding proper vessels for chartering or sale/purchase, cargo, shipyards etc. for their principals.
3. Liner agents representing on a permanent contractual basis a liner operator.

Forwarding agents are considered to be a different group of intermediaries dealing with cargo interests and taking on carriage with carrier liability under preconditions as stated in the Nordic Association of Forwarding Agents' Standard Conditions 1985. They have their own systems as, for example, interest organization and connections with the customs are concerned.

However, there is a mixture of these functions commercially, depending on the firm.

In our replies only shipbrokers in the wide sense are taken into consideration. Should the need arise to cover forwarding agents as well, this will be expressly stated.

Any of the functions listed in para. 1 may be performed by the carrier or the shipowner or the cargo owner respectively, should he wish to do so; keeping in mind, however, that under certain preconditions a foreign vessel must have an appointed agent in Finland.

Greece

The activities of a maritime agent are various. They include tendering assistance to ships or cargo; therefore, a distinction is made between a ship's agent and a cargo agent.

The maritime agent's activities include in particular: assistance with port and customs authorities during loading and discharge, towage or pilotage services, provision of supplies and necessities, conclusion of contracts, issuing tickets for carriage of passengers and many others.

A person may exercise the profession of a maritime agent only if he is duly licensed. The licence is granted by the Port Authorities under certain conditions fixed by the law (see below para. 5 under C). A person running maritime activities without such a licence is subject to sanctions. However the acts performed remain valid, unless the law states otherwise.

Most of the functions listed in para. 4 below are performed by maritime agents. Some of them, however, as indicated below in para. 4, are performed by other professionals as well, such as brokers or chartering brokers and customs agents. All these persons are required to be licensed too, but that is in order to run a different main profession as follows:

- A. Brokers and chartering brokers act as intermediaries, bringing the parties concerned in contact. They don't take part in the conclusion of the contract; if they do so, they are considered agents and are subject to the law concerning agency as well.
- B. The profession of customs agent consists of fulfilling the formalities required by customs authorities (ship's or cargo clearance, cargo documentation etc.), during the export or import of home or foreign goods, accordingly. Customs agents, especially those established outside the area of Attica and Thessaloniki, are allowed explicitly by the law, to

Part II - The Work of the CMI

perform activities of maritime agency under the condition that they fulfil all requirements to be maritime agents. They have to declare their intention in advance and in writing to the relevant Customs House. It must be noticed, however, that the profession of a Customs agent is losing its significance, because Greece belongs to European Community and customs formalities among Member States have been already removed.

Italy

The functions listed in para. 1 are performed by different persons, with different qualifications. Such persons are the "agente marittimo" (maritime agent), the "raccomandatario marittimo" (port agent), the "mediatore marittimo" (ship and chartering broker), and the "spedizioniere doganale" (customs agent). It is necessary to identify immediately the scope of the activity of the port agent, since the port agent is subject to special rules, which instead do not apply to the maritime agent, unless he performs also the typical functions of the port agent.

The typical functions of the port agent are those relating to the assistance to the masters of ships in their dealings with port and customs authorities: towage, pilotage, berthing and unberthing, loading and unloading, supplies, etc. Such services have been recently identified by the Supreme Court with judgments 26 April 1991, No. 4616, *Ditta Bruno Bartolini v. Agenzia Dolphin* (1991 Dir. Mar. 707); 4 May 1991, No. 4935, *Adria Lines v. Agenzia Marittima Ugo Bos & Figli* (1991 Dir. Mar. 711) and 13 June 1991, No. 6718, *Italnoli v. Fallimento S.p.A. Maura* (1991 Dir. Mar. 714).

Norway

Only *skipsmegler* and *speditør* can be said to be terms of art. Their activities, rights and obligations are reasonably well defined and understood. *Skipsagent* on the other hand is a looser concept. The term agent in isolation is, of course, well known and defined also in legislation. It is, however, not clearly established what functions a *skipsagent* performs. A number of other terms, similarly loose, are also used such as *linjeagent* (liner agent), *trampagent* (handling agent), *klareringsagent* (clearing agent), *havneagent* (port agent) and maritime agent. It is believed that of those sub-terms, liner agent is relatively clear, whereas the others indicate a person carrying out functions relative to a port call of a vessel. A *linjeagent* normally solicits and books cargo and collects freight which is not typical for the others.

Philippines

The functions listed in para. 1 are primarily performed by the ship agent. "By ship agent is understood the person who is provisioning or representing the vessel in the port in which it may be found" (Art. 586 Code of Commerce).

Portugal

The functions listed in para. 1 are performed in Portugal by the "Agentes de Navegação" (Maritime Agents), "Agentes Transitários" (Forwarding

Maritime Agents

Agents), “Despachantes Oficiais” (Customs Agents) and “Mediadores” (Shipbrokers).

The role of the “Agentes de Navegação” (Maritime Agents) is very wide, covering such different fields as the traditional services provided in port (Ship’s Agent/Port Agent), fixing and marketing cargoes (Marketing Agent/Liner Agent), brokerage activities in the purchase and selling of ships as well as hire and freighting (acting as shipbrokers).

These activities are performed under the provisions of the Civil Code, Commercial Code and Code of Commercial Companies, as well as under the following specific legislation:

Agente de Navegação (Maritime Agent). Decree Law (D.L.) No. 178/86, July 3rd, amended by D.L. No. 118/93, April 13th, which gives effect to the EEC Council Directive No. 86/653 of December 18, 1986; D.L. No. 76/89 of 3rd March 1989; D.L. No. 148/91 of 12th April 1991.

Agente Transitário (Forwarding Agent). D.L. No. 43/83 of 25th January 1983; Despacho (Order) of the Ministry of Transportation No. 41/83 of 28th March 1983; Portaria (Administrative Rule) No. 561/83 of 11th May 1983; D.L. 76/84 of 5th March 1984; Order of Ministry of Social Equipment No. 137/MES/84.

Despachante Oficial (Customs Agent). D.L. No. 46311 of 27th April 1965, amended by Official Bulletin No. 142, series I of 29th July 1965: this D.L. is to be updated because it is facing several constraints due to the prevailing EEC regulations.

Slovenia

Terms used are:

- maritime agent (pomorski agent) which may and usually is including port agent (luski agent) and booking agent (without specific name in national language but usually named as “pomorski agent”).
- shipping broker (ladijski posrednik) deals in chartering and sales/purchase of ships.
- forwarding agent (speditör) organizes intermodal transports, custom formalities included.

Spain

The functions listed in para. 1 are performed mainly by three persons. Such persons are the “consignatario de buques” or “agente marítimo” (maritime agent), the “corredor marítimo” (ship and chartering broker) and the “agente de aduanas” (customs agent).

Sweden

The functions listed in para. 1 are carried out by various middlemen. The persons are known as “skeppsmäklare” (shipbroker), “skeppsklarerare” (port agent), “linjeagent” (liner agent) and “speditör” (forwarding agent).

There are, however, no clear and decisive dividing lines between these different agents. Their respective work is normally carried out within a

Part II - The Work of the CMI

somewhat specified area, but they can also take on tasks that usually lie within another agents' scope of activity.

In general, the shipowner himself can carry out some of the liner agents' functions in cases where the ship calls at a port where the shipowner has an office.

Switzerland

In Switzerland, which is a landlocked country, there are no port agents, shipbrokers and chartering brokers in the sense of persons performing the functions which are typical of such businesses on a permanent and exclusive basis. The activities mentioned in the questionnaire can be exercised, in principle, on a case by case basis by any person engaged in the marine business. They are mostly performed by the Swiss companies who call themselves "maritime agents" (Reedereiagenten "Agents maritimes" / "Agenti marittimi"/"Shipping agents"), and in the second place also by those acting mainly as freight-forwarders although, this type of business does generally speaking not relate to the core of their business.

United Kingdom

In general, in the United Kingdom all the intermediary roles in shipping are covered by the syllabus and examinations of the Institute of Chartered Shipbrokers which have been devised accordingly. The Institute is constituted under a Royal Charter with this as its prime duty. In Institute terms, all persons in the intermediary roles in shipping are "shipbrokers". The Institute's qualifications and the terms of the Royal Charter are acknowledged as providing a regulated profession in the United Kingdom of which the Institute is the designated authority. The appropriate legislation in the United Kingdom is "The European Community's (Recognition of Professional Qualifications) Regulations 1991. Statutory Instrument 1991 No. 824" which gives effect to the relevant EU Directive. (EEC 29/48).

Nevertheless, membership of the Institute is not compulsory, thus any of these roles may also be performed by personnel who are not members.

United States

It should be noted that individuals and entities perform numerous duties in port under the common name of "agent". The responses information for the United States relates only the law concerning those maritime agents who perform husbanding and supervisory services on behalf of tramp and liner vessels owners (including disponent owners). As will be seen, there is in the United States very little governmental regulation of such agents' business affairs. No consideration is given to the United States rules concerning other types of agents. For example, no attention given to freight forwarders (who are subject to licensing and other requirements), because freight forwarders by definition under United States law act on behalf of shippers (not carriers) in the liner trade. 46 Code of Federal Regulations § 510.2(m). In this connection, it should also be noted that a maritime agent who performs cargo

solicitation duties as the designated agent of a carrier for cargo to be carried under the carrier's bill of lading is, with respect to the agent's activities on behalf of that carrier, specifically exempted from the licensing requirements applying to freight forwarders. 46 Code of Federal Regulations § 510.4(c).

The information, in addition, does not related to the licensing and other regulatory requirements affecting customs brokers. While persons performing customs brokerage functions generally are subject to strict regulation by the United States Customs Service, "[a] person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker." 19 Code of Federal Regulations § 111.3(c). Under this rule, a maritime agent who performs customs functions relating to the entry and clearance of vessels is exempt from licensing as a customs broker. If, however, the agent were to perform customs brokerage functions with respect to the vessel cargo, he would be subject to regulation as a customs broker under United States law.

Venezuela

Article 4 of the National Merchant Marine's Protection Law states that in order to be able to act as a maritime agent before the Venezuelan authorities, one must be Venezuelan, in case of individuals or, in case of corporations, they must have been constituted in the Mercantile Register with no less than eighty per cent of their capital owned by Venezuelan individuals or corporations.

4. Specific information on each individual function.

a. Persons performing the functions of negotiating and accomplishing the sale or purchase of a ship.

In almost all countries these functions are performed by shipbrokers, except in China, where they are performed by trading companies, and in Switzerland, where they are performed by maritime agents.

Australia

Shipbrokers. There are few sale and purchase brokers in Australia and only a couple would be regarded as having specialist expertise, at least in respect of merchant ships. There are, of course, many involved in the sale of yachts, fishing vessels and pleasure craft generally.

Belgium

Shipbrokers. It is of course possible that a company has different departments, one of which is dealing with liner agencies, the other one specializing in shipbroking.

Part II - The Work of the CMI

Canada

Shipbrokers may at the same time act as chartering brokers.

China

Trading companies like China National Machinery Import Export Corporation or others, like China National Ship Scraping Company, etc. Occasionally, maritime agents may also attend to the sale or purchase of ships and sign contracts on behalf of the principal.

Finland

Shipbrokers in the strict sense.

France

It is rare that, in France, a shipping agent becomes involved in the negotiation of the sale/purchase of a ship. Where this does occur, it is mainly carried out in minor ports for small ships, especially fishing vessels.

Germany

Anybody would be entitled to negotiate and accomplish the sale and purchase of ships, but this is in practice limited to highly qualified brokers.

Greece

Sale and purchase brokers.

Ireland

The owner and shipbroker negotiate and accomplish the sale or purchase of a ship.

Italy

These functions are performed by the shipbrokers.

Japan

These functions are performed by shipbrokers.

Norway

Mainly shipbrokers. Some shipowners have "in-house" charterers who would also normally be active in the sale and purchase of ships. In some cases, shipowners have put up their own shipbroking companies. Some of these are competitive brokers, whereas others act as a chartering department for the parent company. The actual closing of a sale or purchase is normally done with the assistance of lawyers, either in-house or external.

Philippines

Shipbrokers. A ship broker may be a ship agent engaged in ship brokerage, or a professional expert in shipping specializing in particular types of tonnage or particular transaction (Hernandez / Penasalez, Philippine Admiralty & Maritime Law). A ship agent may act as ship broker if one of the purposes of its articles of incorporation, in case of corporations or partnerships, or business permit, in case of single proprietorships, is ship brokerage.

Maritime Agents

Portugal

The shipbrokering activities may be undertaken by individuals or companies (sociedades comerciais). The latter are used more often. The official corporate purpose of these companies must state that they are allowed to undertake shipbrokering activities.

Slovenia

Shipbrokers, acting for the account and in the name of one of the parties.

Spain

Shipbrokers (who may at the same time act as chartering brokers).

Sweden

Usually, shipbrokers, who may at the same time act as chartering brokers.

Switzerland

Maritime agents.

United Kingdom

Shipbrokers specializing in sale and purchase of ships.

b. Persons performing the functions of negotiating and supervising the charter of a ship.

In almost all countries these functions are performed by brokers, normally called chartering brokers. In China they are performed by the charterers or by maritime agents and also in Switzerland. It would appear that the names "shipbrokers" and "chartering brokers" are often used with the same meaning.

Australia

Shipbrokers of whom there are many. They are mainly charterers' brokers but do act for owners as well.

Argentina

Shipbrokers or sometimes agents through their chartering department or specialized personnel.

Belgium

Shipbrokers, or a department of the owner or of the charterer.

Canada

Chartering brokers, who may at the same time act as shipbrokers.

China

The charterer himself. However, maritime agents may also attend to chartering even though this does not happen often.

Finland

Shipbrokers in the strict sense.

France

It is possible, but quite rare, for a shipping agent to become involved in the chartering of a vessel. This is, for most of the time, a separate and independent activity. It is therefore not infrequent that the shipping agent can be called upon to deal with chartered ships which he has not chartered himself.

Germany

In Germany there are brokers who are more related to the cargo's side and brokers who are more related to the shipowner's side. Only a small number of brokers act as competitive brokers, i.e. in both functions.

Greece

Chartering brokers or maritime agents.

Ireland

Owners and shipbrokers negotiate and supervise the charter of a ship.

Italy

Chartering brokers, who may at the same time act as shipbrokers.

Japan

Chartering brokers, who may at the same time act as shipbrokers.

Norway

Mainly shipbrokers. Some shipowners have "in-house" brokers who would also normally be active in the sale and purchase of ships. In some cases, shipowners have put up their own shipbroking companies. Some of these are competitive brokers, whereas others act as a chartering department for the parent company. Some fixtures are made direct but that is believed to be the exception rather than the rule. In the offshore industry there are probably more direct fixtures. There direct negotiations are often based on contract tenders which are given by operators to interested owners.

Philippines

Ship agents engaged in charter brokerage in accordance with their articles of incorporation or business permit.

Portugal

Shipbrokers and also maritime agents if their official corporate purpose states that they are entitled to act as chartering brokers.

Slovenia

Shipbrokers as well.

Spain

Chartering brokers (who may at the same time act as ship brokers).

Sweden

Shipbrokers who may at the same time act as chartering brokers.

Maritime Agents

Switzerland

Maritime agents.

United Kingdom

Shipbrokers specializing in chartering.

c. Persons performing the functions of collecting freight and/or charter hire where appropriate and all related financial matters.

These functions are normally performed by the owners themselves or their agents. They, however, are performed also by shipbrokers (or chartering brokers) in Finland, Germany, Greece and the United Kingdom.

Argentina

The hire or freight are sometimes collected by the owners and sometimes by the maritime agents. In the liner trade, freight is normally collected by the maritime agents appointed by the carrier.

Australia

In Australia this is a transaction which takes place directly between charterers and owners. In the liner trades the freight is usually "warehoused" by the agent, then remitted in substantial lump sums, having paid port disbursements.

Belgium

Collection of freight in the liner business is normally done by the shipagent at the port of loading or at the port of discharge. Charter hire, however, is usually collected by the owner himself or his representative in the manner provided in the charterparty.

Canada

The shipowner or his maritime agent.

China

Normally, hire due by the time or voyage charterer is paid directly to the owner, in the manner provided in the charterparty. In the liner trade, freights are collected by the carrier or his (maritime) agent in the port of loading or in the port of discharge.

Finland

Ship's agents or shipbrokers in the strict sense if given specifically this task by proper authorization, or liner agents, depending, naturally, on the concrete arrangements as stated in the liner agency contract.

France

One of the main functions of a French shipping agent is the collection of freight and the ensuing financial operations.

Part II - The Work of the CMI

Germany

Shipbrokers. See remarks under (b) above.

Greece

Chartering brokers or maritime agents.

Ireland

The owner and shipbroker collect the freight and/or charter hire where appropriate and all related financial matters.

Italy

Normally, hire due by the time or voyage charterer is paid directly to the owner, in the manner provided in the charterparty. In the liner trade, freights are collected by the carrier or his (maritime) agent in the port of loading or in the port of discharge.

Japan

Normally, hire due by the time or voyage charterer is paid directly to the owner in the manner provided for in the charter party. In the liner trade, freight is collected by the carrier or his shipping agent at the loading port, the discharging port or at such other places as designated in the bills of lading.

Norway

Skipsagenter/linjeagenter in liner trades. Otherwise the function is handled by the owner. It is now an exception that a shipbroker collects voyage freight/time charter hire, whereas the opposite used to be the case. Shipbrokers, however, often have "operation departments", which follow up charter parties, including disputes thereunder such as with respect to demurrage etc. The actual collection, however, of outstanding sums is handled by the owners.

Philippines

Charter hire is normally paid directly to the owner. In the liner trade, freight is collected by the carrier or its ship agent either at the port of loading or port of discharge.

Portugal

The charter party (*carta partida*) regulates the payment of the freight (*frete*) and/or hire (*fretamento*), normally collected by the shipowner (*armador*) or through the shipbroker (*mediador*) as established by D.L. nr. 191/87 of April 29th 1987. In the liner trade (*linhas*) freight is collected by the shipowner or by his maritime agent under the conditions set out in the bill of lading (*conhecimento de embarque*) and may be prepaid (*na origem*), collect (*no destino*) or elsewhere (*local acordado*).

Slovenia

Collection of freight and/or charter hire when appropriate (that is rare, as these matters are often settled directly between the parties) is done by the broker. Other financial matters are prepared only by brokers, but executed by the parties to the charter.

Maritime Agents

Spain

Normally, hire due by the time or the voyage charterer is paid (directly to the owner) in the manner provided in the charterparty, normally to the Owner direct. In the liner trade, freight is collected by the carrier or his shipping agent in the port of loading or in the port of discharge.

Sweden

The function can be handled by a liner agent, a port agent or a shipbroker, depending on the terms in their respective agreement with the owner. The function can also be carried out by the owner.

Switzerland

Maritime agents.

United Kingdom

Shipbrokers specialized in chartering. Collection of freight may be part of a liner broker's duty (also a shipbroker in Institute terms).

- d. Persons performing the functions of arranging for customs or cargo documentation and forwarding of cargo and, more specifically, in respect of:*

(i) Ship's clearance.

Although the terms used vary (port agents, maritime agents, ships agents, liner agents), it appears that in the great majority of countries these functions are carried out by persons that can be generally described as maritime agents.

Australia

Port agents (ship's agents).

Belgium

This is a typical activity of ship agents.

Canada

Maritime agents.

China

These functions are typical activities of maritime agents.

Finland

Ship's agents.

France

The shipping agent has the right to complete all the necessary customs formalities if he undertakes the role of customs agent in addition to his traditional role.

Germany

Clearing agents.

Greece

Customs agents.

Ireland

The agent performs these functions.

Italy

Port agents.

Japan

Ship agents.

Norway

Skipsagenter: either liner agents in relation to liner business or by an agent with some other denomination as explained above in relation to other trades.

Philippines

Ship agents.

Portugal

Maritime agents (agente de navegação - Art. 1, D.L. 76/89).

Slovenia

Port agents (luski agent).

Spain

Maritime agents.

Sweden

Liner agents in relation to liner business and a port agents in relation to other trades.

Switzerland

Freight forwarders and their agents.

(ii) Cargo clearance.

These functions are carried out in some countries (Australia, Belgium, Canada, China, Italy, Japan, Portugal) by Customs agents or brokers or clearing agents (this is the name used in Germany). In other countries (China, France, Slovenia, Spain, Sweden) they are performed by maritime agents or (United Kingdom) by shipbrokers.

Australia

Customs agents.

Belgium

In principle, cargo clearance requires the intervention of a customs agent (douane-expéditeur). In order to be admitted to the profession of a customs agent, art. 127 of the general law on customs and excises of 1977 requires registration in a special register held by the Minister of Finance. The registration number must be shown on all commercial documents emanating from the company. The majority of maritime agents are established as customs agents as well.

Maritime Agents

Canada

Customs brokers.

China

Maritime or customs agents.

Finland

Forwarding agents.

France

All operations connected with the transportation of the goods, including completing the necessary documentation or the pre-/post-carriage of goods, can be carried out by the shipping agent if he also undertakes the role of freight forwarder.

Germany

Clearing agents.

Greece

Customs agents.

Ireland

Agents or clearance agents or cargo receivers perform this function.

Italy

Customs agents.

Japan

Shippers' forwarding agents who are also customs agents.

Norway

Skipsagenter: either liner agents in relation to liner business or by an agent with some other denomination as explained above in relation to other trades.

Portugal

Customs agents (*despachante oficial*) (Art. 426, D.L. 46311) except for EEC countries.

Slovenia

Cargo clearance (release) is usually done by the port agent (excluding custom formalities).

Spain

Maritime agents within EEC countries and Customs agents, within other countries.

Sweden

Liner agents in relation to liner business and port agents in relation to other trades.

United Kingdom

Shipbrokers. These functions may also form part of a freight forwarder's duty.

(iii) Cargo documentation.

In the great majority of countries, these functions are performed by maritime agents. In Canada and in the United Kingdom they are performed by freight forwarders.

Argentina

Maritime agents. A part of this activity was performed by the Customs House but it is wholly under the agents' responsibility.

Australia

Port agents (ship's agents) in conjunction with customs agents, or forwarding agents.

Belgium

This is a typical activity of ships agents.

Canada

Freight forwarders.

China

Maritime agents.

Finland

Ships agents or forwarding agents depending on the type of documentation.

France

All operations connected with the transportation of the goods, including completing the necessary documentation or the pre-/post-carriage of goods, can be carried out by the shipping agent if he also undertakes the role of freight forwarder.

Germany

Liner agents.

Greece

Shipping documentation by maritime agents. Customs documentation by customs agents.

Ireland

Ships agents perform this function.

Italy

Customs agents.

Japan

Shippers' forwarding agents.

Philippines

Cargo clearance and documentation required to load the cargoes are arranged by the shipper while those necessary to unload cargoes are done by the receivers.

Maritime Agents

Portugal

Maritime agents with respect to the bills of lading (Art. 1 and 11, D.L. 76/89) and customs agents with respect to the clearance of cargo (Art. 426 D.L. 46311).

Norway

Skipsagenter: either liner agents in relation to liner business or by an agent with some other denomination as explained above in relation to other trades.

Slovenia

Documentation concerning the release of the bill of lading or the ship's cargo manifest is done by port agents. However, this must not be confused with import/export cargo custom clearance.

Spain

Maritime agents.

Sweden

Liner agents, port agents or forwarding agents.

United Kingdom

These functions may form part of the a freight forwarder's duty.

(iv) On-forwarding or pre-forwarding of cargo.

There is no uniformity as to the persons performing these functions: carriers, maritime agents, freight forwarders, customs agents, etc.

Argentina

Carriers or maritime agents.

Australia

Port agents (ships agents), or freight forwarders.

Belgium

Under the so-called regime of merchant haulage, cargo interests take care of the inland transportation themselves. If however, they prefer to have it performed by the ocean-carrier (which is called carrier's haulage), same will be carried out by the ship agent for the account of the shipping line.

Canada

Freight forwarders.

China

Maritime agents, forwarding agents, NVOCCs or multi-modal operators.

Finland

Liner agents or forwarding agents, depending on the situation.

France

All operations connected with the transportation of the goods, including

Part II - The Work of the CMI

completing the necessary documentation or the pre-/post-carriage of goods, can be carried out by the shipping agent if he also undertakes the role of freight forwarder.

Germany

Liner agents.

Greece

If this service is included in the transport agreement (through transport), it is performed by maritime agents. If not, it is performed by the merchant-owner of the cargo directly or through a forwarder (who may also be the maritime agent).

Ireland

Ships agents perform these functions.

Italy

Carriers or maritime agents.

Japan

If this function is to be performed as a part of the through transport undertaken by the carrier, then it is to be arranged by the shipping agent. If it is to be performed for the account of the shipper, it is to be arranged by the shipper's forwarding agent or the freight forwarder.

Norway

Speditører (forwarding agents) save in respect of door-to-door liner transport in which case the matter is probably handled by a liner agent.

Philippines

The sender or receiver unless the carrier (including ship agent) assumes the same under the applicable contract.

Portugal

Customs agents (Art. I, D.L. 43/83).

Slovenia

Pre-forwarding and on-forwarding is organized by the forwarding agent (spediter) and this includes custom clearance, accepting or delivering the cargo, who, in such operation, is the opposite party to the port agent.

Spain

This function is performed by the carriers, shippers or maritime agents.

Sweden

Forwarding agents or liner agents.

e. Arrangements for procuring, processing the documentation and performing all activities required to dispatch cargo.

Also these functions are performed by different persons in different countries and even in the same country. They are mainly shippers or forwarding agents, carriers or maritime agents or shipbrokers.

Argentina

Carriers or ships agents.

Australia

Shippers, their forwarding agents or their customs agents.

Belgium

Part of the documentation is prepared by the sender of the goods or his forwarder: commercial invoices, certificates of origin, sanitary certificates, weight lists, preparing the bill of lading. Another part of the documentation is prepared by the ship agent: container announcement list, container stuffing and stripping lists, dangerous cargo lists, reefer cargo lists, issuing bills of lading, ocean freight invoices, manifests, etc.

Canada

Freight forwarders.

China

Maritime agents.

Finland

Mainly forwarding agents.

France

The functions are carried out by the freight forwarder. On the other hand, these functions (as is often the case) can be carried out by the shipping agent so long as he is in charge of "door to door" transportation. This is becoming a frequent occurrence.

Germany

The shipowner often appoints a port agent who takes care of all activities listed under d) (i), (ii), (iii).

Greece

Maritime agents.

Ireland

Ships agents or forwarding agents perform these functions.

Italy

If the documentation referred to herein is that required in order to ship the cargo, such as invoices, weight lists, sanitary certificates, etc., the sender or his forwarding agent (who both are outside the scope of this enquiry) are in

Part II - The Work of the CMI

charge of preparing it. If by "activities required to dispatch the cargo" it is meant activities such as booking space on board the ship, negotiating the freight and other terms of the contract of carriage, taking care of customs formalities, etc. the persons in charge are the sender, his forwarding agent and the customs agent.

Japan

If the documentation referred to herein is that required in order to ship the cargo, such as invoices, weight lists, certificates of origin, sanitary certificates, etc., the shipper's forwarding agent is in charge of preparing such documents. If "activities required to dispatch the cargo" means activities such as booking space on board the ship, negotiating the freight and other terms of the contract of carriage, taking care of customs formalities, etc., the persons in charge are the shipper's forwarding agent. On the other hand, in respect of documents to be prepared by the carrier such as the cargo manifest, the freight list, the exceptions list, etc., the person in charge is the carrier's shipping agent.

Norway

There is no firm practice. Customers, shipping agents as well as freight forwarders and terminals (in relation to liner services) may be involved.

Philippines

The sender or its forwarding agent.

Portugal

The activities of gathering and getting the cargo ready for shipment are undertaken either by the sender or by the forwarding agent (*agente transitário*). The latter is held responsible for its co-ordination. The bill of lading, the manifest and other necessary documents are prepared by the maritime agent (Art. 426, D.L. 46311) whenever the cargoes are not covered by the E.U. rules. The owner of the goods or his forwarding agent prepares the lists and all the necessary information which is to be delivered to the maritime agent that in turn undertakes the documents for shipment. The customs agent is in charge of customs documentation whenever needed.

Slovenia

If the question relates strictly to the cargo, the shipper or receiver, and consequently, their forwarding agent is the one to take care of the custom papers, different certifications which must accompany the cargo according to law, etc.

Spain

If the documentation referred to herein is that required in order to ship the cargo, such as invoices, weight lists, sanitary certificates, etc., the exporter or his forwarding agent are in charge of preparing it. If by "activities to dispatch the cargo" it is meant activities such as booking space on board the ship, negotiating the freight and other terms of the contract of carriage, taking care

Maritime Agents

of customs formalities, etc., the persons in charge are the sender, his forwarding agent and the customs agent.

Sweden

Port agents, liner agents or forwarding agents.

Switzerland

Freight forwarders and their agents.

United Kingdom

Shipbrokers. See above.

f. Organizing arrival or departure arrangements for the ship.

These functions are performed almost everywhere by maritime agents, port agents or liner agents.

Argentina

Ship's agents.

Australia

Port agents (ship's agents).

Belgium

Ship's agents.

Canada

Maritime agents.

China

Maritime agents.

Finland

Ship's agents.

France

These are the essential, traditional, functions of shipping agents in France.

Germany

The shipowner often appoints a port agent who takes care of all activities.

Greece

Maritime agents.

Ireland

Ship's agents.

Italy

Port agents.

Japan

Ship's agents.

Norway

Skipsagenter (shipping agents).

Portugal

Maritime agents (agente de Navegação) (Art. 1., D.L. 76/89).

Slovenia

Whatever concerns the vessel, i.e. arrival and departure, assistance to the captain while the ship is in the port, is performed by the port agent (luski agent) for the account of the port agent (luski agent) for account of the vessel and in the name of the Shipowner or the vessel/her captain.

Spain

Maritime agents.

Sweden

Port agents or liner agents.

Switzerland

Not applicable.

United Kingdom

Shipbrokers specializing as port agents.

g. Arranging for the supply of services to a ship while in port.

The information given hereunder and under the subsequent subparagraphs does not require any comment.

Argentina

Ship's agents.

Australia

Port agents (ships agents).

Belgium

Ship agents.

Canada

Maritime agents.

China

Maritime agents.

Finland

Ship's agents.

Maritime Agents

France

Again, these are the essential, traditional, functions of shipping agents in France.

Germany

The shipowner often appoints a port agent who takes care of all activities listed under d) (i), (ii), (iii).

Greece

Maritime agents.

Ireland

Ship's agents.

Italy

Port agents.

Japan

Shipping agents.

Norway

Skipsagenter (shipping agents).

Portugal

Maritime agents (*agente de navegação*) (Art. 1., D.L. 76/89).

Slovenia

Port agents. See (f) above.

Spain

Maritime agents.

Sweden

Port agents or liner agents.

Switzerland

Not applicable.

United Kingdom

Shipbrokers specializing as liner brokers.

h. Cargo solicitation, marketing and advertising.

Argentina

Carriers or maritime agents.

Australia

Port agents (ship's agent).

Belgium

Ships agents.

Canada

Maritime agents.

China

Maritime agents.

France

These functions are performed by the shipping agent when he acts for operators of line services.

Germany

Liner agents.

Greece

Maritime agents.

Ireland

Ships agents.

Italy

Carriers or maritime agents on carrier's behalf.

Japan

Ship's agents.

Norway

Owners and/o liner agents in the liner trade and owners and/or brokers in other trades, although advertising in the common sense of the word is not used in the latter context.

Portugal

Maritime agents (agente de navegação) (Art. 1., D.L. 76/89).

Slovenia

Cargo solicitation, marketing and advertising is done by maritime agents (pomorski agent).

Spain

Carriers or a maritime agents on the carrier's behalf if it is a liner service.

Sweden

Liner agents and/or owners in liner business and shipbrokers and/or owners in other trades.

Switzerland

Maritime agents.

Maritime Agents

United Kingdom

Ship brokers. See above.

i. Container monitoring.***Argentina***

Carriers or maritime agents.

Australia

Either the ship owner's staff or the port agents (ship's agent) head office for Australia.

Belgium

It is the duty of the ship agent to notify the principal of any claim introduced with him and affecting his principal's business.

Canada

Ship owners or their maritime agents.

China

Maritime agents.

Finland

Liner agents, if agents at all.

France

Once again, this function can be performed by the shipping agent if he acts for operators of line services.

Germany

Liner agents.

Greece

Maritime agents.

Ireland

Ships agents.

Italy

Carriers or maritime agents.

Japan

Ships agents.

Norway

Skipsagenter (shipping agents).

Portugal

Maritime agents (Art. 1, D.L. 76/89).

Part II - The Work of the CMI

Slovenia

Maritime agents, usually with port agents.

Spain

Carriers or maritime agents.

Sweden

Liner agents or port agents.

Switzerland

Maritime agents.

United Kingdom

Ship brokers. See above.

j. Claims notification.***Argentina***

Carriers or maritime agents.

Australia

Port agents (ships agent).

Belgium

It is the duty of the ship agent to notify the principal of any claim introduced with him and affecting the principal's business.

Canada

Consignees.

China

Maritime agents or sometimes carriers directly if the amount is too big.

Finland

Various.

France

French law allows that, as a principal rule, the vessel's captain can accept judicial documents (claims) destined for the shipowner (Article 10 of the decree of 19th June 1969). However, it is also permitted that all judicial documents (or extra-judicial) that the captain is authorised to receive can be notified to the vessel's agent (Article 18 of the decree of 19th June 1969).

As a result, the shipping agent is in a position to receive all judicial documents destined for the shipowner. It is then for the shipping agent to send them to the shipowner.

Germany

Liner agents.

Maritime Agents

Greece

Maritime agents.

Ireland

Ships agents.

Italy

Carriers or maritime agents on the carrier's behalf.

Japan

Shipper's forwarding agents.

Norway

Owners, underwriters, shipping agents in the liner trade and owners, underwriters, possibly with the assistance of brokers who may also act as intermediaries in other trades.

Portugal

Claims notifications are normally accepted by maritime agents who send them to the carriers (transportador).

Spain

Carriers or a maritime agents on the carrier's behalf.

Sweden

It varies.

Switzerland

Maritime agents.

United Kingdom

Ship brokers. See above. It may be part of a port agent's duty also.

k. Claims handling.

Argentina

Carriers or maritime agents.

Australia

Port agents (ship's agents).

Belgium

Unless expressly provided for in the agency agreement, claims handling is not automatically a part of the ship agent's activity.

Canada

Carriers or their P&I Club.

China

Maritime agents or carriers. See answer to (j) above.

Finland

Various.

France

The shipping agent handles the claims at first, on the condition that the claim does not exceed a certain amount. For more substantial claims or any litigious actions, the claims are handled by the owner or his P&I Club.

Germany

Liner agents.

Greece

Shipowners and P&I Clubs' agents.

Ireland

Ships agents.

Italy

Carrier or maritime agents.

Japan

Ships agents or claims handling agents.

Norway

See (j) above.

Philippines

Functions (f) to (k) are performed by the ship's agents.

Portugal

Carriers or maritime agents on their behalf.

Slovenia

Maritime agents, but under the control and according to instructions from the Owner or his P&I Club.

Spain

Carriers or maritime agents.

Sweden

The owner/carrier and/or his P&I Club or port agents acting as representatives for insurance companies.

Switzerland

Maritime agents.

United Kingdom

Ship brokers (see above). It may be part of port agents' duty also.

5. Whether official qualifications such as passing exams organized under the supervision of Governmental agencies, are required in order to perform any of the functions listed in paragraph 4.

Official qualifications are required in Argentina, Belgium, Chile, China, Finland, Greece, Italy, Japan, Mexico, Netherlands, Philippines, Portugal and Spain.

No qualifications, instead, are required in Australia, Canada, France (except for the Courtiers Interprètes et Conducteurs de Navires), Germany, Ireland and Norway.

Argentina

The Customs House Code establishes some requisites to act as maritime agent (under the name of "agente marítimo aduanero", Customs House ship agent).

Under the provisions of arts. 57 and 58 of the Customs House Code, those requisites are:

- Entry in the Customs Registry.
- High School Certificate.
- Commercial capacity.
- Passing an examination before the Customs House.
- To be domiciled in the jurisdiction of the Customs House.
- Delivery of an undertaking with respect to the fulfilment of all duties.
- Entry in the Commercial Public Register.
- No criminal record.

Australia

No official qualifications are required.

Belgium

There is a system of licensing already in existence for forwarders which will be extended to ship agents within short. At present, in Belgium there are no specific qualifications in order to practice as a ship agent.

The status of intermediaries in the field of transport of goods is governed by law 26th June 1967. This law instituted the requirement of a licence for those intermediaries as defined in article 1, namely the forwarder and the transport broker, but adding at the same time that the licensing requirement may be extended to other activities of intermediaries, as appropriate.

In execution of this basic law, two Royal Decrees have been promulgated, respectively in 1975 for the forwarder and in 1978 for the transport broker. It should be noted, however, that in practice the licensing system of transport brokers is limited to inland water transportation only. The license is granted on the following conditions:

1. The company must prove for each person in charge of the daily management that, at the time of the demand, he has in the previous six years participated uninterruptedly in activities related to the license requested for during at least five years. The fulfilment of these conditions is documented by a certificate of professional competence. Reductions to two or three years, or even six months are granted depending on the degree

Part II - The Work of the CMI

of education (e.g. University studies). Contrary to the clear wording of the law, it is administratively allowed that the above requirement be limited to one person only amongst those in charge of the daily management. Furthermore, the same person can perform the task in various affiliated or even completely independent companies.

2. For each license a surety bond of 500,000 BF must be delivered, with an overall maximum of 5,000,000 BF in case a company has various local branch offices throughout the country.
3. An annual fee of 3,000 BF must be paid. Another 3,000 BF are due as participation in the working of BITO (Belgian Institute of Transport Organizers).

Council Directive 82/470 of 29th June 1982 (O.J. L. 213 pl) introduced measures to ensure the free performance of services rendered by certain intermediaries in the field of transportation. Ship agents are explicitly mentioned. The Directive imposes on member States certain obligations with respect to the regulation of the reliability, commercial and professional proficiency and financial ability for the entry into certain professions.

The Royal Decree issued in the meantime is a reproduction of the other two already in existence, the basic elements of which have been described above.

Canada

No official qualifications are required.

Chile

In order to perform the activity of general agent or ship's agent, it is required:

- a. The registration as such with the Maritime Authority;
- b. Chilean nationality for physical persons or registration as a Chilean legal entity;
- c. Establishment of domicile in the ports where the activity is performed;
- d. Evidence of ability and financial responsibility;
- e. Guarantee for the performance of the obligations;
- f. Not to be inabilitated, prosecuted or condemned;
- g. Designation of the proxies who will act on their behalf.

China

In pursuance of the Regulations for the Management of the International Shipping Agency as promulgated by the Ministry of Communications of the People's Republic of China, a company performing the activity of maritime agent must be a state-owned enterprise. In order to set up such a company, certain qualifications must be satisfied and its establishment must be approved by the Ministry of Communication. Pursuant to the aforesaid Regulations, a shipowner has full discretion to choose the maritime agent with an exception for the following vessels, whose agency must be consigned to the maritime agent nominated by the Ministry of Communication:

Maritime Agents

- (1) foreign military ships;
- (2) vessels for training and practice and vessels for scientific exploration;
- (3) passenger ships (including pleasure boats) and private pleasure crafts;
- (4) engineering ships and their auxiliary vessels;
- (5) other vessels whose agents should be nominated.

At present, there are two companies in China performing the activity of maritime agent. One is China Ocean Shipping Agency and the other is China Marine Shipping Agency, both having several branches established across China in the light of the above Regulations.

The legal representative of a maritime agency must have the professional knowledge and experience in the business of international ocean shipping agency. The company must be staffed with full-time professionals to handle business, customs formalities and financial matters and also staffed with employees proficient at foreign language, well versed with China's relevant laws, regulations and requirements concerning international ocean-going ships and also being capable of overseeing and assisting ships under their husbandry to comply with these laws, regulations and requirements.

Finland

No governmental exams are required for the above-mentioned functions; the principle of free establishment of business prevails in this whole area of business. However, a ship's agent must, according to the Fairway Dues Act sec. 7 para 2, be appointed for any foreign vessel trading in Finnish ports (the formulation is not like this in the act, but the simple meaning is what is stated in this answer). Such an agent must be approved by the Customs Authorities. Approval presupposes a proper economic guarantee to the Customs Authorities in order to cover the liability arisen out of unpaid fairway dues for which the ship's agent is also liable. (He when needed, will have a recourse claim against his principal and a recourse claim against the vessel due to the claim being secured by a maritime lien on the vessel).

Forwarding agents have their own arrangements with the Customs Authority in order to become credit customers and for this purpose must provide a guarantee. In principle, forwarding agents are liable for customs dues on behalf of their principals. This is in accordance with the Customs Act sect. 8(e), sect. 12 para. 2 and sec. 44. Only a credit customer is allowed to pay customs duties by invoice, others will have to pay concurrently with customs clearance.

Sometimes the Customs Authorities accept the forwarding agent's guarantee arrangements to cover also ship's agents, should both of these functions be pursued by one and the same firm. The guarantee may be arranged through so-called guarantee circles or cross-guarantees comprised of firms in ship's clearance and forwarding.

Especially concerning the requirement for agents representing foreign vessels, it must be clarified whether this, in view of the present Finnish membership in the EEA (European Economic Area) and the possible full membership in the EU, is contrary to the principle of non-discrimination in view of EEA or EU ships visiting Finnish ports.

France

The function of a shipping agent, in the strict sense of the term, may be carried out by any physical or legal person capable of undertaking a commercial activity.

However, there is one very important restriction with regards the *Courtiers Intprètes et Conducteurs de Navires*. In fact, pursuant to Article 80 of the *Code de Commerce* (Commercial Code), the *Courtiers* benefit from a customs privilege, as well as a grant for the translation of documents, if the captain of a visiting vessel in a French port is foreign.

This protected and restricted activity can only be undertaken within the limits of the town for which the *Courtier* is named by the relevant and competent Minister.

The *Courtier Intprètes et Conducteurs de Navires* are becoming few and far between; there were 85 in 1990 for the whole of the French territory.

Germany

In Germany there are no statutory requirements for the access to the profession of a maritime agent. But competition in the open market requires that shipbrokers are to be highly educated and examined shipping merchants.

Greece

Maritime agents and other professionals performing any of the functions listed in para. 4 above are not required to pass examinations in most cases. However, they are required to obtain a special licence granted by an administrative authority under certain conditions and qualifications evidenced through certificates issued by official authorities. The qualifications and conditions required are more or less similar for all professionals running the activities set out in para. 4 (as it is exposed under C).

A. Brokers are required to be appointed by a Ministerial Decision, issued jointly by the Ministers of Agriculture, Commerce and Industry, under the conditions and qualifications prescribed by the law [art. 8 L.D. (Law Decree) of 2/10.11.1923 concerning the "Commodities Exchanges"]. In addition to the necessary qualifications, brokers have to deposit a sum of money as a guaranty before starting the exercise of their profession.

Chartering brokers are subject to the same legal status as brokers. However, if they are connected with professional tourist (and pleasure) vessels, they are governed specifically by the Ministerial Decision 5313/53/129/2.7.1977. According to this Decision, the chartering broker's licence is granted by the General Secretary of the Greek Tourist Organisation, under the conditions and qualifications fixed in art. 4 of such Decision.

B. Customs agents have to obtain a licence granted by the Customs House District Committee. In addition to the required qualifications, a customs agent must have a customs agent's diploma, which is granted after passing examinations organized yearly and supervised by the Customs Houses. The licence is granted after two years practical training in the Customs House (art. 7 et seq. of Law 718/1977 concerning "Customs Agents").

Maritime Agents

C. According to P.D. 229/1995 concerning "Maritime Agents" (more extensively below in paras. 9 and 10), the shipowner or the ship's operator must appoint a maritime agent in charge for every port called at by his ships. The appointment is compulsory and only concerns the ships belonging to certain categories listed in art. 9 P.D. 229.

Maritime agents are required to obtain a special licence granted by the competent authority (arts. 1 § 1, 7 P.D. 229), having checked for the existence of the following conditions:

Only Greek nationals may be appointed as maritime agents [art. 1 § 1 (a) P.D. 229]. However, since 1990, nationals of EC Member States may obtain a licence to work as maritime agents in Greece under the same conditions as Greeks [P.D. 530/1991 and P.D. 329/1990 related to the adjustment of Greek Legislation concerning Maritime Agents (EC Directive 82/470)]. Nationals of other EC Member States are additionally required to have a good knowledge of the Greek language, certified as art. 8 P.D. 229 states.

Greek nationals must have certain knowledge of the Greek language or an education related to a shipping profession (art. 2 § 1 c). They must also have a minimum of two years employment in a shipping or in any other shipping enterprise, with the exception of the persons mentioned in arts. 2 § 1 (f), 7 § 1, 1 § 2 and 13 P.D. 229. They must also have owned or hired professional premises (art. 2 § 1 e), with the exceptions set out in arts. 5 § 3 and 13 P.D. 229. They must not have been declare bankrupt, placed under interdiction, or have been condemned by a criminal court for any of the crimes listed in art. 2 § 1 (d) P.D. 229. Males must have fulfilled their military service obligation or have been exempted legitimately.

Ireland

No official qualifications are required.

Italy

Official qualifications are required, as a condition for the performance of the services, for the port agent (*raccomandatario*), the shipbroker and chartering broker (*mediatore marittimo*) and for the customs agent (*spedizioniere doganale*).

Port agent. Pursuant to Article 9 of Law 4 April 1977 No. 135, any person who wants to perform the functions of a *raccomandatario* (port agent) must submit an application to a commission created by decree of the then Ministry of Merchant Marine (now Ministry of Transport and Shipping) and sitting at each Italian Chamber of Commerce accompanied by the documents specified therein. The conditions for registration include, *inter alia*, two years of apprenticeship, and the passing of an exam before the commission.

Shipbroker and chartering broker. The profession of the "*mediatore marittimo*" (which corresponds to the ship broker and to the chartering broker) is governed by Law 12th March 1968, No. 478. The "*mediatore marittimo*" must be registered in a register kept by the local Chamber of Commerce and such registration is conditional to the passing of exams (Articles 1 and 8 of Law 478/1968). Pursuant to Article 25 of Law 478/1968

Part II - The Work of the CMI

the exercise of the profession of broker without registration is a crime punishable according to Article 665 of the Penal Code. Pursuant to judgment of the Corte di Cassazione (Supreme Court) 29 July 1983, No. 5238, *Società Mediterranée v. Sitrom*, 1983 Foro Italiano, Mass., 1082, a person who acts as "mediatore marittimo" without being registered in the special register referred to above is not entitled to the commission.

Customs agent. The customs agent (spedizioniere doganale) must be licensed by the Customs Authority.

Japan

A customs agent at his each office must employ some qualified persons who have passed exams organized under the supervision of a Customs Director and be licensed by him.

Mexico

To act as a maritime agent in Mexico the Maritime Navigation and Commerce Act (Art. 255-A) requires a permit which is granted by the Ministry of Communication and Transport and specifically by the General Direction of the Ports and Merchant Marine at its unique discretion and after a careful investigation.

These permits shall be granted only to Mexican citizens or companies established according to Mexican law and the shares must be issued to the name of the holder.

Netherlands

As far as a maritime agent in the Netherlands is concerned, the performance of his activities is not subject to any specific qualifications, other than those that apply in general for persons/parties conducting business in the Dutch jurisdiction. For instance Article 1 of the "Handelsregisterwet 1918" (the Act on the Trade Register) prescribes that any enterprise, established in the Netherlands, has to be registered with the competent trade register, whilst for some form of enterprises (like limited companies etc.) further requirements apply for keeping books, publishing of annual accounts etc.

Most Dutch maritime agents are - on a voluntary basis - members of one or more of the five existing Dutch associations of maritime agents, i.e.: Vereniging van Rotterdamse Cargadoors; Vakgroep Cargadoorsbedrijven der Scheepvaartvereniging Noord; Vereniging van Noord-Nederlandse Scheepvaartkantoren; Cargadoorsvereniging Vlissingen; Maritime Vereniging Terneuzen.

For the membership of such associations certain requirements have to be met on business and financial standing, whilst the associations recommend their members to perform their services only under application of certain standard terms and conditions, in which the rights and obligations of the agent and his principal are laid down.

Brokerage as such is protected by law (Articles 62 and ff., Commercial Code), in the sense that one may only call oneself a broker, if one is admitted thereto by being sworn in before a Dutch District Court. This is only possible

Maritime Agents

after having passed certain qualifying examinations, which differ according to the type of brokerage that one intends to perform.

Norway

No official qualifications are required.

Philippines

The ship agent must be registered with the Securities and Exchange Commission, if it is a corporation or a partnership, or with the Department of Trade and Industry, if it is an individual. In both cases, its principal officers must be shown to possess shipping or shipping-related experience or expertise. This registration is a condition precedent for the ship agent to be accredited by the Maritime Industry Authority (MARINA), which keeps a list of accredited ship agents.

Portugal

The maritime agents, forwarding agents and shipbrokers (mediadores) are not subject to prior examination by any Government Agency (entidade oficial) but have to be qualified as described in para. 6 below.

Applicants for customs agent (despachante oficial) need to pass documentary admission held by the Customs Excise Directorate General (Direcção Geral das Alfandegas) and, when not in accordance with all the conditions required by law, they are submitted to a special public examination (Art. 440, D.L. 46311).

Slovenia

There are no official exams for the time being under Governmental agency. The law which imposes examinations for custom brokers is under preparation, but has not yet been voted in Parliament. However, most of the managing personnel involved in this business either has a degree or holds a Captain's license for deep-sea navigation with the appropriate (but not yet prescribed by law) practice.

Spain

Port agents. In Spain, maritime agents are not subject to specific qualifications. Being a commercial entity (corporations, limited liability companies, etc.) the maritime agents must comply with the general requirements for business entities in Spain (such as keeping of books, publishing of annual accounts, etc.). However, the performance of their activities shall be subject to the authorization of the Port Authorities and in accordance with the conditions issued by the Port Authorities for each particular port.

Shipbroker and chartering broker. Official qualifications are not required as a condition for the performance of the services of the shipbroker and chartering broker. It only must be a commercial entity (corporations, limited liability companies, etc.) and must comply with the general requirements for business entities in Spain (such as keeping of books, publishing of annual accounts, etc.).

Part II - The Work of the CMI

Customs agents. The customs agent must be licensed by the Customs Authority after passing a course for his capability during three months or more. However, since Spain had joined the EEC, these requirements are no longer in existence except for export and shipments to and from countries which are not within the EEC.

Sweden

No official qualifications are required.

Switzerland

No official qualifications are required.

Turkey

There is no specific legislation in Turkey concerning maritime agents. They come under the notion of "Commercial Agents" who are subject to the provisions of Art. 116 of the Turkish Commercial Code.

Likewise, sometimes the provisions concerning "proxies", "brokers", "commercial intermediaries", etc. also apply to maritime agents and are similar to the activities indicated in Art. 2 of the UNCTAD Minimum Standards.

They have to register like any other commercial entity, with the Registry of Commerce.

They may either be personal firms - subject to unlimited liability - or private limited companies or corporations subject to liability limited with their declared capital. It may also be pointed out that there is a lot of similarity between the provisions of the Turkish Commercial Code concerning "Agents" (i.e. Art. 116 and subs) and the "Agent" as described at Art. 1(2) of the EC Directive - 86/653 /EEC. Although there is no specific provision to this effect, Maritime Agents have also in practice to register with the Harbour Master and the Customs Authorities of the port where they intend to practice.

The only restriction - to our knowledge - derives from an old law, "The Cabotage Law", dated 19.4.1926 Article 3 of which specifies that the profession of "maritime shopkeeper" (small business enterprise) is restricted to Turkish nationals. Whether or not the present modern concept of "maritime agents", which most of the time are corporations, corresponds to such archaic definition, is a matter subject to discussion with Harbour Masters who prevent corporations, whose total or majority capital is owned by foreign nationals, from practicing as maritime agents, whereas there are already many agents of foreign nationality in activity in Turkey, who benefit from acquired rights.

This attitude of some Harbour Masters towards companies which have obtained the investment permit from the Ministry of Finance and State Planning Organization by specifying that their main activity will be to act as "maritime agents" and after that their articles of association have been approved by the competent authorities and published in the Commercial Gazette, is obviously in contradiction with the present economic policy of the country according to which foreign investments are heartily encouraged and authorized with almost no restrictions. This matter is presently under

examination at the Ministry of Transport and it is hoped that it will be clarified and solved in a positive way in the near future.

United Kingdom

There are no specific qualifications required in order to practice as a maritime agent. There are, however, various trade associations which have been set up to regulate or support the activities of agents. Membership of the Association is not compulsory, but does convey certain benefits such as a higher prestige within the industry. For example, the Institute of Chartered Shipbrokers would like to see some qualification requirements imposed on shipping agents and would welcome exams in the same way as they train shipbrokers.

The work of shipping agents is subject to The Supply of Goods and Services Act 1982 and it is implied by that Act that work will be carried out in a good and workmanlike manner.

United States

Bearing in mind the definitional limitations on the term "maritime agent" set forth in paragraph 3 above, it can be said that there are no federal rules requiring that maritime agents in the United States be licensed. Nor are there any other rules setting minimum qualifications for such agents.

Uruguay

To become a maritime agent, it is necessary to show:

- a) if a company is involved, that it has been active in commercial activities for a period of two years.
- b) if an individual is involved, that he has been involved in trade or commerce, banks, etc., for a period of two years.

In any case, a bond for approximately USD 5,000 must be posted with the Customs National Agency.

Venezuela

Article 4 of the National Merchant Marine's Protection Law provides that the Ministry of Transport and Communications, shall keep a register to such end. In order to enrol oneself in this register, sufficient security must be constituted for the case of accidental damages to third parties.

6. Whether the persons carrying out any of the functions listed in para. 4 must be registered in a public register.

In most countries (Australia, Canada, Croatia, Denmark, Finland, France, Germany, Greece, Morocco, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, United Kingdom and United States) no special registration is required for maritime agents, although the general rules on registration of companies apply. A special registration

Part II - The Work of the CMI

is required for maritime agents in Chile, China, Italy, Japan, Mexico, Turkey, Uruguay and Venezuela.

Registration is required for Customs agents in Belgium, Italy, Norway, Portugal and Spain.

Argentina

To be a shipbroker it is necessary to be registered in a Public Register and to possess the requisites established by the Commercial Code.

The maritime agent must be registered in the Custom House and in the Commercial Register.

Australia

No registration is required.

Belgium

A customs agent must be registered in a special register held by the Minister of Finance. See para. 4(d)(ii).

Canada

No registration is required.

Chile

Agents must be registered in the Register of Ships Agents kept by the Maritime Authority in order to perform their activity.

China

The maritime agent established with the approval of the Ministry of Communications must be registered with the Administration Office of Industry and Commerce, where the maritime agent is located, and may conduct business activity only after obtaining the license.

Croatia

The independent Republic of Croatia, on October 8, 1991 (Off. Gazette 53/91), temporarily accepted a certain number of the laws of the former Yugoslavia.

The pertinent laws on the subject of maritime agents are the Maritime Code and the Law of Obligations, which is applicable when there are no specific rules in the Maritime Code.

There are no conditions for the exercise of the activities of maritime agents such as examinations or registration, except that companies performing activities of shipbroking or agency must be registered in the companies' register.

Denmark

There are no special registration requirements for maritime agents, but like other businessmen, maritime agents need a licence to trade from the Registry on Trades, which is run by the local police.

Maritime Agents

Finland

Any individual or company wanting to commence activities as a maritime agent must, like any other person wanting to commence business activities, register with the local Magistrate's Court or, in the country side, with the local police.

France

There is no obligation to be registered in a Public Register for Shipping Agents in France, with the exception of the *Courtiers Interprètes et Conducteurs de Navires*. Inscription in the Commercial Registry is, of course, obligatory for shipping agents, but this obligation also applies to every commercial trader.

The shipping agent can register with the *Registre Spécial des Agents Commerciaux* in each Commercial Registry, but this only serves as a precautionary measure to protect his rights.

Germany

No special registration is required. But being commercial agents or being constituted as partnerships or companies maritime agents must be registered in the ordinary commercial register of the local lower court.

Greece

Maritime agents have to be registered in the public register of maritime agents kept by the Port Authorities (art. 4 P.D. 229). They must also be registered in the Shipping Agents Pension Fund (TANPY) (art. 1 § 3 P.D. 229).

Customs agents have to be registered in the customs agents register, kept by the Secretary of the Customs House District Committee (art. 19 Law 718/1977).

There is no special register for brokers provided by law. However, brokers as merchants are members of the local Chambers of Commerce and as such they have to be registered in the general commercial registers kept by the Chambers of Commerce (art. 16 Law 1746/1988 concerning "Chambers of Commerce Regulation and other Provisions"). It is worth noting that all merchants, registered in the Chambers of Commerce Registers are entitled to carry out broker's activities (art. 16 § 3 Law 1746/1988); therefore, maritime agent's activities as well.

Ireland

No, not yet, but may have to do so in due course, pending the outcome of the submission referred to under para. 3 above.

Italy

Port agent. The port agent must be registered in the register of port agents kept by the Chamber of Commerce of the place where the Maritime Directorate within whose district the port agent performs its activity is located (Article 9 of Law 135/1977) and pay a bond in the amount fixed by the Commission. Pursuant to Article 12 of Law 135/1977 citizens of other EC member States may apply for registration, provided they meet the requirements prescribed by Article 9 and know the Italian language.

Part II - The Work of the CMI

Shipbroker and chartering broker. The ship broker and the chartering broker must be registered in a register kept by the local Chamber of Commerce. See para. 5 above.

Customs agent. The customs agent is required, pursuant to Law 22 December 1980, No. 1612, and Ministerial Decree 10 March 1964, to be registered in the register kept by each Customs Compartment and only Customs agents duly licensed may be registered.

Japan

The customs agent must obtain permission to undertake business from the Customs Director. The freight forwarder must receive a license from the Minister of Transport when performing transport business, and must be entered into the register kept by the Ministry of Transport.

The shipbroker and the shipping agent must report their names and outline of their business, etc. to the Minister of Transport.

Mexico

There is not an obligation to register in the National Maritime Public Register for the maritime agent, but the Minister of Communication and Transport through the General Direction of Ports and Merchant Marine takes notice of all the permits granted in respect of this activity.

Morocco

Maritime agents must be registered in the register of commercial enterprises.

Netherlands

As stated under para. 5 above, maritime agents must comply with the general requirements set out in respect of any person or company conducting business and, therefore, pursuant to Art. 1 of the *Handelsregisterwet 1918* must be registered with the competent trade register.

Norway

There is no public register designated especially for maritime agents. As approval must be obtained for keeping a customs warehouse, the agent will for that service be registered with the Customs Authorities.

Maritime agents must also, like all entities doing business in general, be registered with the Companies' Register.

Philippines

See para. 5 above.

Portugal

Maritime agent. A company must be set up, registered in the Commercial Registry Office (Conservatória do Registro Comercial), and at the Port Authority (Direcção Geral de Portos) and licensed (Art. 3, D.L. 76/89).

Forwarding agent. A company must be set up, registered in the Commercial Registry Office and licensed by the Ministry of Social Equipment.

Maritime Agents

Customs agent. If an individual, he must be registered and licensed by the Customs Excise Directorate General. It is also possible to set up a company registered in the Commercial Registry Office and complying with the requirements demanded by the Forwarding Agencies Regulations (Regulamento das Sociedades de Despachantes Oficiais e seus Empregados) (Art. 482, D.L. 46311).

Shipbroker. Shipbrokering is usually undertaken by companies registered in the Commercial Register Office and having that activity included in their official corporate purpose, although it can be performed by an individual (single person company) as accepted by the Commercial Code.

Slovenia

Persons carrying out these functions are not obliged to be registered, but the Company must be registered for such activity in the Court.

Spain

Port agents. They must not be registered in a public register in order to perform their activity. The only registration requirements are those required for commercial entities doing business in Spain.

Shipbroker and chartering broker. The same answer as (a) above.

Customs agent. The customs agent is required, pursuant to Decree 12 November 1964 D. 3753, to be member of the Official Association of Customs Agents, which is compulsory and it is subject to inspection and regulation by the Customs Governmental Agency.

Sweden

No registration is required.

Switzerland

In Switzerland, there is no registration requirement which applies specifically to maritime agents. However, maritime agents must comply with all general requirements which apply to persons conducting business in Switzerland, such as the obligation to be registered in the Commercial Register and to keep books and accounts, etc. Virtually, all Swiss maritime agents are members of the Associations of Swiss Maritime Agents (Vereinigung Schweizerischer ReedereiAgenten or "VSRA") in Basel and use its General Conditions which were published in the Swiss Official Trade Gazette of 15th February 1985.

Turkey

Maritime agents have to register with the Chamber of Commerce and Registry as it is the case for any commercial firm. In addition to the above, they have to register with the Maritime Chamber of Commerce.

United Kingdom

There are no registration requirements specifically relating to shipping agents. If the agent were a company then of course registration in accordance with the Companies Acts would be required.

United States

No registration of maritime agents is required in the United States.

Uruguay

Besides the normal registration with the Income Tax Office and with the Welfare Tax Collecting Office, they must register with Customs National Agency, Ports National Agency and with the Maritime Police. Each of these offices carries its own registry.

Venezuela

Article 4 of the National Merchant Marine's Protection Law, provides that the Ministry of Transport and Communications, will keep a register to such end. In order to enroll oneself in this register, sufficient security must be constituted in case of accidental damages to third parties.

7. Whether there are professional associations of which the persons performing any of the functions listed in para. 4 are normally members.

In practically all countries there exist professional associations. In the majority of such countries there are distinct associations for the principal amongst the activities under consideration, viz. ships agents, freight forwarders, shipbrokers, Customs agents.

Argentina

The maritime agents are members of the Navigation Center (Centro de Navegacion) which is a private association and where the registration is not compulsory but the majority of the ship agents are members.

Australia

There are such professional associations.

Belgium

The various ports in Belgium have professional associations of ship agents of which almost 90% of the companies are members. The forwarders too are organized on a regional and national level.

Canada

The associations are the following: The Shipping Federation of Canada, The Chamber of Shipping of British Columbia, The Canadian International Freight Forwarders Association, Inc.

China

There are no professional associations.

Finland

The Finnish Shipbrokers' Association has as its members shipbrokers in the wide sense.

Maritime Agents

France

In France, the majority of shipping agents are registered with the *Fédération des Agents Consignataires et Agents Maritimes de France (FACAM)*, whose head office is based at 76 avenue Marceau, 75008 Paris. This enables them to use the federation's logo, which will become the new standard ISO 9002. The Articles of Association of the FACAM, set out, for its members, "obligations" which have to be respected during the carrying out of their functions, but only in very general terms (Article 18).

It is underlined that these obligations are the same as those mentioned in Articles 3.01, 3.02 and 3.03 of the *Agent de Ligne* contract established by the FONASBA.

Germany

The vast majority of shipbroking enterprises are members of the Shipbrokers' Association. All enterprises have to be members of the local Chamber of Commerce.

Greece

There are local Shipping Agents Associations in Greece. Members of these associations may be maritime agents of the region. Similar professional associations for brokers and customs agents may also exist.

Ireland

The associations are the following:

- (a) Irish Ship Agents' Association ("ISAA").
- (b) Institute of Freight Forwarders of Ireland ("IFFI").
- (c) Institute of Chartered Shipbrokers ("ICS").

Italy

In Italy there is a Federation of Maritime Agents, Port Agents and Ship and Chartering Brokers of which all such agents are normally members.

Japan

In Japan there are associations of ship and chartering brokers, customs agents and foreign ship agents, of which all agents are normally members. The associations are comprised of companies, not individual members.

Norway

Shipbrokers are normally members of Norsk Skipsmeglerforbund (Norwegian Shipbrokers' Association). *Speditører* (forwarding agents) are normally members of Norges Speditørforbund (Norwegian Freight Forwarders' Association), whereas shipping agents used to have several organizations, an important function of which was to serve as an employers' organization dealing with tariff agreements and the like. That function has now been taken over by a central employers' organization which covers Norwegian industry as such. Other associations have replaced the former agents' associations insofar as other functions are concerned, mainly the function of being an industrial body generally. Examples of the latter are *Havne-og terminaloperatørenes Landsforening (HTL)* and *Dampskibsskspeditørernes Forening*.

Philippines

Ship agents in the Philippines are normally members of the Philippine Ship Agents Association.

Portugal

The associations are the following:

For maritime agents: Association of Maritime Agents of Northern Portugal; Association of Maritime Agents of Central Portugal; and Association of Maritime Agents and Port Companies of the South.

For forwarding agents: Portuguese Association of the Forwarding Agents.

For Customs agents: Official Chamber of Customs Agents (Câmara dos despachantes Oficiais - Art. 469, D.L. 46311).

For shipbrokers: There are no specific association.

Slovenia

The existing Associations are: The Slovenian Ship and Freight Agents Association and The Slovenian Forwarding Agents Association. Not all, but most agents are members in their respective Associations.

Spain

Port agents: In Spain there are maritime agents associations such as ANESCO and FEDETRAMAR of which the agents are normally members. However, it is not compulsory to be a member.

Ship brokers and Chartering brokers: There is an Association for the Ship and Chartering Brokers (ANCOR). However, it is not compulsory to be a member.

Customs agents: See para. 5 above.

Sweden

Forwarding agents are normally members of "Sveriges Speditörförbund" (Swedish Forwarders Association). Port agents, liner agents and shipbrokers are normally members of "Sveriges Skeppsklarare-och Skeppsmäklareföreningen" (Swedish Shipbrokers' Association). Many other companies acting in the transport business in Sweden have several functions and many of them are members both in the Swedish Freight Forwarders' Association and the Swedish Shipbrokers Association.

Switzerland

In Switzerland, the maritime agents belong to the VSRA, i.e. the "Vereinigung Schweizerischer Reederei-Agenten"/"Association of Swiss Maritime Agents" while the freight-forwarders are usually members of the SSV, i.e. the "Swiss Freight-Forwarders Association"/ "Association Suisse des Transitaires".

United Kingdom

See para. 5 above.

8. a. *Whether such associations require professional or other qualifications from their members in respect of:*

- (i) *Education and professional expertise***
- (ii) *Financial capability***
- (iii) *Professional conduct.***

In many countries (Argentina, Australia, Belgium, Canada, Germany, Japan, Switzerland) no qualification is required. In others qualifications are instead required (Finland, France, Greece, Italy, Philippines, Portugal, Slovenia, Spain, United Kingdom, Uruguay). They relate mainly to professional expertise and good professional conduct.

Argentina

If there are no special reasons the Executive Council accepts the registration of a maritime agent who presents an application to be a member of the Center always provided that the background of the applicant is known and no objections are raised.

Australia

- (i) Shipbrokers are expected to be members of the Institute of Chartered Shipbrokers but this is not compulsory. For agents no qualifications are needed.
- (ii) There is no requirement.
- (iii) There is no code.

Belgium

At present the Professional association of ship agents requires no specific qualifications on top of those described above under the licensing system. However, item (i) is under discussion and changes to the articles of association are to be expected in the near future. Presumably a higher minimum capital as the one required by company law is to be expected.

Canada

No professional or other qualifications are required.

China

In China there are no such associations.

Finland

- (i) No specific education is required for membership, but professional expertise is presupposed. There is no further definition of "professional expertise" and this is decided by the association case by case.
- (ii) No formal clarification of financial capability is required, but, naturally, if this is known not to be in order membership will not be granted.
- (iii) The same is true for professional conduct; this is more important during the membership and should it be shown that professional conduct has not been proper, the member might be expelled from the association.

Part II - The Work of the CMI

May it be added that UNCTAD Minimum Standards for Shipping Agents are used, to applicable parts, as grounds for allowing membership or in expelling a member. This acceptance has been decided by the Association's board of directors, but is not mandatorily required by Finnish law.

On the contrary, the present Finnish policy on trade is (politically and in the civil service) based on the principle of non-involvement in business life. Special circumstances have to prevail before intervention from the Government becomes topical.

France

The FACAM requests that its members, in order to benefit from the use of its logo, have genuine professional experience.

It stipulates that they take out an insurance policy covering their civil and professional liability.

The association requires from its members certain moral obligations with regards to the way they conduct their business affairs (Article 18 of the Articles of Association).

Germany

No professional or other qualifications are required.

Greece

- (i) Educational and professional expertise. The local Shipping Agents Associations require their members to have the identity of a maritime agent, duly licensed as above mentioned. To the best of our knowledge the local Shipping Agents Association of Thessaloniki requires a previous successful operation of six months before full acceptance of a new member.
- (ii) Financial capability is not required.
- (iii) Professional conduct is certainly required, during the membership of course. In case of unprofessional conduct a member may be reprimanded or even expelled.

Italy

- (i) In order to be members of the Federation, agents must be duly qualified. See para. 5 above.
- (ii) and (iii) See para. 5 above.

Japan

No professional or other qualifications are required.

Norway

Without going into detail, there are generally formulated requirements in respect of both (i), (ii) and (iii). Normally, the applicant will have to demonstrate a certain degree of experience and length of career evidencing the said requirements. An application is being considered materially, in the case of the Norwegian Shipbrokers' Association, only after the applicant has been seconded by at least two existing members. The Norwegian Shipbrokers' Association consists of legal persons as opposed to individuals, whereas in other organizations individuals as well as legal entities may be members.

Philippines

The sole requirement for membership with the Philippine Ship Agents Association is proof by the member that it has at least one foreign principal.

Portugal

The requirements are the following:

- (i) Education and professional expertise
- (ii) Financial capability
- (iii) Professional conduct.

Slovenia

The Associations require member-organizations to be registered as indicated in para. 5 above; to be equipped and have appropriate offices to perform the activity; and to have a minimum of one employee with at least five years experience as a shipping agent.

Spain

- (i) The Customs agent is required to be in possession of specific academic diplomas and/or bachelors degrees.
- (ii) As a commercial entity, the maritime agents and the ship and chartering brokers are required to be financially capable. Customs agents must deposit a guarantee within the Association.
- (iii) The Association of Maritime Agents (ANESCO) in its constitution (art. 8.2) requires good faith, loyalty and diligence from the maritime agent when exercising his duties.

The other Association, FEDETRAMAR in its Constitution (Art. 1.f) states that the agent must assist and protect his principal's interests. The same conduct is required in respect of the ship and chartering broker by the Association of Ship and Chartering Brokers (ANCOR) in its Constitution, Section IV; Article 7 b), c), d), e) and f). Article 9 of the Contract of Agency Act is applicable to both the maritime agent and the broker and requires good faith and loyalty and care for his principal's interests when exercising his duties. The Customs Agent being subject to the regulations of the Customs Governmental Agency, it is not allowed to any person who has been convicted of fraud or illegal offences to exercise the profession of a customs agent.

Sweden

Port agents, liner agents and shipbrokers. Sweden has had a specific legislation and a governmental control over port agents from 1934 until the end of 1994. The legislation was abolished with very short notice and the Swedish Shipbrokers Association has not yet officially issued any rules on professional or other qualifications for their members. According to their plans a preliminary list covering authorized port agents will however be issued in February 1995. The base for the private authority handled by the association will be the same as previously required by the Swedish government. Later during 1995 permanent rules will be issued. These rules will require that the individual members have a certain education, experience as trainees working for qualified shipbrokers and a certain financial

Part II - The Work of the CMI

capability including liability insurance. The general rules on professional conduct will most probably be based on the UNCTAD Code of Conduct.

Forwarding agents. The prerequisite for membership is that the member performs transport and/or forwarding business in relation to goods traffic and in that connection mainly acts on behalf of other legal entities. The Swedish Freight Forwarders' Association makes an assessment whether the prospective member fulfils the following demands:

1. The member must have been in the business for at least three years.
2. Its business must have a sufficient economic base.
3. All the business shall be carried out according to the rules of The Swedish Freight Forwarders' Association.
4. The prospective member must have a liability insurance covering its forwarding business.
5. The managing director must have sufficient experience and competence.
6. The prospective member company must be known to be serious.

Switzerland

The associations referred to in para. 5 do not require any particular qualification from their members, but accept as members all persons who are actively and professionally engaged in the business in question for a certain while.

United Kingdom

- (i) Qualifications in respect of education and professional expertise are required for individual professional members.
- (ii) Qualifications in respect of financial capability are required for company members.
- (iii) Qualifications in respect of professional conduct are required for both individual professional members and company members.

b. In respect of whom the professional or other qualifications are established in case the agent is a legal entity, i.e.: whether in respect of such entity or of individuals forming part of its organization.

As a general rule, when the agent or broker is a company, the qualifications relate to one or more of its managers. In France, however, they are recognized to the legal entity.

Argentina

The legal entity becomes the member.

Australia

Not applicable.

Canada

Not applicable.

Maritime Agents

Finland

Membership is granted either to a legal entity or to a private person should this person in his own name have a business not in company form. In practice, the latter alternative is very rare.

France

It is the legal entity which is normally the member of the FACAM.

Germany

Not applicable.

Greece

When the licence is granted to an association vested with legal personality the membership is attributed to the legal entity. It is not easy to say which qualifications are actually required by each individual memorandum of such association. However, the answer may be deduced from art. 2 § 3 P.D. 229/1995 concerning maritime agents. This article states that when a maritime agency licence is granted to a legal persons, the legal entity has to appoint in writing a representative (a natural person) to the Port Authority. The representative must have all qualifications required for individuals to be maritime agents.

Ireland

Membership is granted to the legal entity.

Japan

Membership is normally granted to a legal entity.

Portugal

Maritime Agents (Agente de Navegação). The agency technical manager must either have the official required qualifications or be able to demonstrate an "on the job" training period of no less than five years in one or more of the companies in the field of business. (Art. 3, D.L. 76/89). The company's share capital must be equal to a minimum of 5,000,000 pesetas (Art. 3, D.L. 76/89). As a security for their activities, the companies must provide towards port authorities a banking/deposit guarantee, an insurance or any other equivalent (Art. 9, D.L. 76/89). The amount of the guarantee is fixed for each port by the Ministry responsible for ports sector, having in consideration the opinion of the Maritime Agents Association concerned (Art. 9, D.L. 76/89). Managers and board members must fulfil their commercial and civil responsibilities (good repute) (Art. 3, D.L. 76/89).

Forwarding agent (agente transitario). The technical manager is required to exhibit proof of professional experience over a period of no less than five years and adequate skill to be assessed by the consultative board referred in Art. 10, n. 2 D.L. 43/83). The company's share capital must be 5,000,000 pesetas or higher. Civil liability with respect to forwarding agents activities and damages to persons and property must be covered by an insurance policy with a ceiling of not less than 15,000,000 pesetas (Art. 5, Administrative Rule n. 56/89).

Part II - The Work of the CMI

Customs agent (despachante oficial). The number of existing customs agents is fixed by the Customs Excise Directorate General. Only the following may be candidates to customs agent (Art. 44, D.L. 46311):

- Customs agents assistants
- Private customs assistants
- Clearance agents

Applicants need proof of at least five years of experience and are accepted through documentary admission including a bank guarantee. The applicants not having the prescribed time on duty will be subject to an official public examination with validity for five years.

Spain

Only in the case of the Customs agents, the license is granted to the individual.

Sweden

Port agents, liner agents and shipbrokers. The authority will be granted to individuals but the requirements concerning financial capability etc. will be applied to the companies where the individuals are employed.

Forwarding agents. Membership is only granted to legal entities.

United Kingdom

A company entity may be a member of the Institute of Chartered Ship Brokers provided it employs Institute of Chartered Ship Brokers professional members, demonstrates financial responsibility, and has adequate P&I Insurance.

9. Whether statutory rules are applicable to the persons performing any of the functions listed in para 4.

In the majority of countries (Australia, Canada, Denmark, Finland, France, Germany, Ireland, Japan, Netherlands, Norway, Philippines, Slovenia, Sweden, Switzerland, Turkey, United Kingdom, United States) there are no special statutory rules governing the rights and obligations of maritime agents, port agents and brokers. In most of such countries the general rules on the law of agency apply. Special rules for maritime and port agents exist in Argentina, China, Croatia, France, Greece, Italy, Mexico and Portugal. In Turkey, there are some rules that, however, relate only to the obligations of the agent towards the Customs and Port Authorities.

As regards the personal liability of the agent, same is normally excluded if the agent has made known that he is acting for a named principal (Belgium, Canada, Chile, Croatia, Denmark, Norway, Sweden). He instead appears to be liable generally in the Philippines and towards Customs Authorities in Turkey. He is also liable in Italy in case he has not obtained funds from the owner or has employed seamen without complying with the statutory rules.

Argentina

The applicable statutory rules have been mentioned in para. 5 above.

Australia

There is no specific legislation applicable to any of the occupations to whom reference has been made. All are subject to the general law.

Belgium

The rules of law in connection with the admission to the profession have been discussed under para. 5 when describing the licensing system.

The EU Council Directive of 18th December 1989 on the coordination of the laws of member States relating to self-employed commercial agents, unfortunately, has not yet been enacted into Belgian law, although, apparently, this seems to be the case in a few other EU countries.

Because the Council Directive is primarily aimed at commercial agents in the buying and selling business, the Antwerp Shipping Federation has had the opportunity to propose amendments in order to make the Belgian law also applicable and acceptable to the service sector.

The bill regulates the duties and liabilities of the agent and of the principal. It does not cover, however, the question of the liability of the agent towards third parties, the general consensus being that a ship agent is a proxy acting in the name and for the account of a known principal. The rules of civil law provide that, when acting within the limits of his mandate, the proxy does not assume personal responsibility, distinguishable from that of his principal.

Canada

There are no statutory rules governing the duties of maritime agents. There are limited statutory provisions regarding the responsibilities of maritime agents towards the Crown and the Crown agencies for port, customs, pilotage dues and matters under the Canadian Immigration Act. Under Canadian maritime law, provided the agency relationship is disclosed to any third party, the ship's agent does not have any personal responsibility: *Chartwell Shipping Limited v. Q.N.S. Paper Company Limited*, [1989] 2 S.C.R. 683 (S.C.C.)

Naturally, any agent, whether it be a custom broker, a freight forwarder or a maritime agent must comply with statutory laws regarding customs and excise, pilotage, harbours, etc.

Chile

See para. 5 above. It is interesting to note that the agents are not responsible for the obligation of the principal, provided in their first notice to the authority of the port of arrival requesting the husbanding of a vessel they indicate the domicile of the operator. If they do not provide such information or give false information, they are personally responsible for the obligations they enter into on behalf of their principal.

China

The relevant provisions for the duties and responsibilities of maritime agents may be found in Section 2 of Chapter 4 of the General Principles of

Civil Law of the People's Republic of China and the Regulations promulgated by the Ministry of Communication as a competent authority of the Government.

The business regulation of each maritime agent must be approved by the Ministry of Communication as the competent authority, and thereby the maritime agent may sign with its principals any contract specifying the liabilities and the obligations of both parties insofar as the law permits.

Croatia

The Maritime Code contains nine articles on the contract of agency. In two of them there are rules concerning the duties and responsibilities of maritime agents. The first generally provides that the agent must exercise due diligence in performing his activities. The second requires the agent to declare to third parties that he acts only as agent. On the contrary, the agent is liable to third parties in "bona fide". The other duties common to all those who perform commercial activities are provided in the Law of Obligations.

Denmark

There are no special statutory rules governing the duties and responsibilities of maritime agents.

There are, however, more general statutory rules on the duties and responsibilities of commercial agents. The EC Directive No. 653 of 1986 on commercial agents as implemented in Denmark by Act No. 272 of 2nd May, 1990, thus sets out a number of duties and responsibilities for commercial agents, but the directive and the act only apply to the sale or purchase of goods, not to the provision of services. Accordingly, a maritime agent whose duty is to enter into contracts of affreightment on behalf of shipowners, is not subject to the said statutory duties and responsibilities.

The maritime agent is, however, subject to the more general agency rules laid down in the Danish Act on Agreements and other Transactions (No. 242 of 8th May 1917, as subsequently amended). The said rules primarily deal with the issue of when the principal is bound by transactions entered into on his behalf by his agent. The act, however, also provides that the agent warrants that he has due authority to act on his principal's behalf. If the agent has no such authority when dealing with a third party and the principal is not bound by the transaction, the agent is obliged to indemnify the third party against any losses he may have suffered as a result thereof. The agent's duty to indemnify third parties, however, does not apply, if the third party knew or should have known that the agent was exceeding his authority.

Finland

See what has been stated in para. 5 above about requirements by Customs Authorities. Otherwise, there are no statutory or other rules covering persons performing any of the functions listed in para. 4 above. This is in accordance with the above-mentioned principle of non-involvement. Historically, the intention according to the 1919 Freedom to Pursue Business Act presupposed a concession for ship's agents, but no specific legislation on the basis of this has ever been enacted in Finland. Therefore, freedom to pursue business with

this function prevails. The original intention was to apply the same idea as in Sweden, where ship's clearance for foreign traffic was and is under concession.

France

The law of 3rd January 1969 and the decree of 19th June 1969 essentially apply to shipping agents:

- Articles 3, 11, 12, 13, 16 and 17 of the law of 3rd January 1969;
- Articles 2, 3, 4, 5, 16, 17, 18 and 19 of the decree of 19th June 1969; and
- Article 51 of the decree of 31st January 1966.

Germany

Although many provisions regarding the statutory rights of commercial agents are cogent in nature, §92 c Commercial Code expressly permits derogations if the commercial agent is a maritime agent. Therefore, the right to choose foreign law is not restricted save to the general order public clause.

Greece

Statutory rules concerning all the professionals performing maritime agency activities do exist in Greek law. However, all relevant statutes do not completely cover all matters concerning these professionals and their activities. Thus, the remaining gaps are filled in by statutory rules relating to similar contracts and applied by analogy. In particular:

- A. P.D. 229/1995, as amended, concerns ship's agents only. A specific statute governing cargo agents does not exist. Besides, P.D. 229, provides only for the professional status of the ship's agents: it does not include any provisions for the contract of maritime agency itself.
- a. The agency has just been mentioned in the Greek Commercial Code. And this is done in order to point out that a person performing agency activities by profession becomes a merchant (art. 2 of the Royal Decree of 2 May 1835 concerning the Competence of Commercial Courts and art. 1 of the Commercial Code). Therefore, the rules concerning the relations between a maritime agent and his principal (the shipowner or the ship's operator) and the relations of a maritime agent with third parties must be sought in rules governing contracts similar to the contract of maritime agency.
- b. As aforementioned, there is no specific statute concerning cargo agents in the whole country. Certain provisions as to cargo agents are included in the Port Regulations of Piraeus and Thessaloniki. The Regulations have a limited local scope and do not cover all Greek ports. However, the provisions of both Regulations regarding the professional status of cargo agents do not deviate considerably from those contained in P.D. 229 concerning (ship's) maritime agents, which may apply by analogy to the agents established in other Greek ports.
- B. Law Decree of 2/10.11.1923 concerning "Commodities Exchanges" and Ministerial Decision 5315/53/129/2.7.1977 provide the legal status of brokers and of chartering brokers, accordingly. Since 1988 Law 1746/1988 concerning Chambers of Commerce Regulation and other Provisions, stated

Part II - The Work of the CMI

that merchants registered in their registers are entitled to perform brokers activities, subsequently, maritime agency activities. Therefore, all merchants entitled and wishing to run maritime agency activities, are subject to the rules governing maritime agents also.

C. Law 718/1977 concerning "Customs Agents" provides more extensively and in detail not only for the legal status of customs agents (the conditions under which they are allowed to exercise their profession, their duties and liability towards the State and the disciplinary order); but also for the relations between a customs agent and his customer, his duties, obligations and liability towards him and for the termination of his function (arts. 11, 13, 17, 21, 22, 24).

Ireland

The Irish Ship Agents Association does have its own rules regulating the conduct of members.

Italy

Different statutory rules apply to the various types of agents.

Port agents. The profession of "Raccomandatario marittimo" is regulated by Law 4 April 1977 No. 135 entitled "Disciplina della professione di raccomandatario marittimo" (Discipline of the profession of port agent) and, unless otherwise provided therein, by the provisions of the Civil Code on the contract of agency (Articles 1742-1753) and by the general rules on contracts (Articles 1321-1467) as well as by those on obligations (Articles 1179-1320).

Maritime agents. Maritime agents who perform functions other than those specifically attributed to port agents, are subject to the provisions of the Civil Code on the contract of agency as well as to the general rules on contracts and on obligations referred to under (a) above.

Shipbrokers and chartering brokers. All such brokers are subject to the provisions of Law 12th March 1968, No. 487, on the "contratto di mediazione" (contract of brokerage), of the Civil Code (Articles 1754-1665) as well as to the general rules on contracts and on obligations referred to under (a) above.

Customs agents. Customs agents are subject, as stated above, to the provisions of Law 22nd December 1960, No. 1612 and of Ministerial Decree of 10th March 1964.

Japan

The Maritime Transportation Law, the Customs Agency Business Law and the Freight Forwarding Business Law are applicable to persons carrying out such businesses as specified in the respective laws.

The Civil Code and the Commercial Code contain provisions for agents including mandatory and commercial agents, brokerage, commission agents and forwarding agents.

Mexico

The duties of maritime agents are set out in articles 251 to 255-M of the Maritime Navigation and Commerce Act.

Netherlands

The Commercial Code (Articles 74-74s) governs commercial agency agreements in general, under which a regulation is given for certain rights and obligations of the commercial agent and his principal.

It has been held by Dutch courts that these articles of law also apply to maritime agency agreements (i.e. Rotterdam District Court 24.2.1989, *Schip & Schade* 1990, nr. 116, and a number of - not published - arbitral awards).

As far as the agent is concerned, Article 74a Comm.C. reads - in a free translation - :

- “1. The commercial agent has to look after the interest of the principal with due care and has to observe his reasonable instructions.
2. He (the agent) is under the obligation to provide the principal with all necessary information and particularly has to inform him without delay of any contracts, which he has concluded or mediated for the principal.”

Apart from the above statutory regulation, local port authorities require from maritime agents a bond to be put up before the maritime agent will be allowed to direct vessels of his principal to enter port. This bond is to secure a possible non-payment by the principal of port-dues. A legal ground for this bond cannot be traced. The actual ground is a historically grown and practical one, in order to avoid that an agent would have to pay port-dues in cash to the Municipality before being able to clear the vessel.

Norway

Apart from the service of keeping a customs warehouse, there are no statutory rules specifically governing the duties and responsibilities of maritime agents. General rules and principles of contract law will apply to them.

Towards his principal the maritime agent has the duty to act diligently and can be held liable for loss caused to his principal if he has not acted within the normal standard of care.

When the maritime agent has concluded agreements with third parties expressly stating that he has acted either as agent to or on behalf of a named principal he cannot be held liable for due performance of such agreements, provided, however, that he has acted within the authority given to him. If he, on the other hand, has concluded agreements in his own name he may be held personally liable for the obligations created thereby as a primary obligor, even if he has acted for the account of an undisclosed principal.

Philippines

The following rules apply to ship agents: provisions of the Civil Code of the Philippines on agency (Articles 1868-1932 CCP), obligations (Articles 1156-1304 CCP), contracts (Articles 1305-1437 CCP), quasi-delicts (Articles 2176-2181, 2194 CCP), damages (Articles 2195-2235 CCP) and Articles 586 to 605 of the Code of Commerce. The ship agent is also jointly liable with the owner, (*Behn Meyer & Co. v. McMicking*, ii Phil, 276).

Portugal

Maritime agent. The duties of maritime agents are set out in D.L. 76/89, of 3rd March 1989, amended by D.L. 148/91 of 12th April 1991.

Forwarding agents. Their duties are set out in D.L. 43/83 of 25th January 1983.

Customs agent. Their duties are set out in D.L. 46311 of 27th April 1965, Chapter II under the title "the rights, duties and incompatibilities of customs agents".

Shipbrokers. The duties are mentioned in several articles of the Civil Code, Commercial Code and Code of Commercial Companies.

Slovenia

No statutory rules are applicable for the time being.

Spain

Maritime agents. The duties and responsibilities of maritime agents are governed by the provisions of the Commercial Code on commission merchants (art. 244). Furthermore, as a consequence of the EC Directive 86/653, the Contract of Agency Act was enacted on 27th May 1992 and section II (arts. 9 and 10) sets out the duties of the agent.

Apart from these statutory regulations, the Port Administration and Merchant Marine Act makes a specific reference to the maritime agent. (Art. 73 and 59 of the Port Administration and Merchant Marine Act 27/1992 of 24th November 1992).

Ship and chartering brokers. Same as above, except that the Port Administration and Merchant Marine Act does not apply to them.

Customs agents. Decree 12 November 1964 D. 3753; Ministerial Order of 22 February 1966; M.O. 21st February 1986; Decree 2721/1963; Decree 21 May 1943; M.O. 31st May 1965; M.O. 11th February 1992.

Sweden

As of January 1, 1995 there are no statutory or mandatory rules applicable to the persons performing the functions mentioned above. Instead, general rules of contract and agency apply.

There are special statutory rules governing the duties and the responsibilities of clearing agents.

The maritime agent could not be considered a commercial agent and the specific rules for commercial agents would not be applicable.

The maritime agent must perform his duties with due diligence and could be held liable for breach of such duty. Otherwise the maritime agent's general liability would be governed by the Swedish Act on Agreements and other Transaction as well as remnants of the old Commercial Code, still in force, from 1734. This has an effect that the agent's principal is bound by transactions entered into on behalf of his agent, however, only to the extent that the agent has acted with authority. In the event that the agent's principal, due to lack of the agent's authority, is unwilling to honour the agent's agreements on its principal's behalf, the agency agreement could still be valid

if the third party was in good faith with respect to the agent's authority. In that event the agent would be ultimately liable against his principal.

The laws of interest in this context are "Avtalslagen" (The Contracts Act), in particular the rules in Chapter 2 on "fulmakt" (authorization) and Chapter 18 on "sysslomannaskap" (commission), and "Lagen om redovisningsmedel" (The Act on Accounting for Money Deposited).

Switzerland

In Swiss law, maritime agency agreements are to be considered as "agency contracts" in the sense of Articles 418a - 418v of the Swiss Code of Obligations ("CO"). Article 418a CO defines the agent as a person "who obligates himself to act on a continuous basis as an intermediary on behalf of one or several principals in business transactions or to conclude such transactions in their name and for their account without being in an employment relationship with such principals". According to Article 418c CO, "the agents must safeguard the interest of his principal with the care of an ordinary merchant". The agent must not exploit or inform others of business secrets with which he has been entrusted, or of which he has obtained knowledge in the course of his agency relationship, including the use or the disclosure after termination of the contract" (Article 418d CO). There is, however, no prohibition against competition which would apply *ex lege*.

The general conditions of the VSRA makes it clear that a maritime agent acts merely as an intermediary for shipowners, NVOCC's and other "carriers" and shall never be considered as a forwarding agent or a carrier.

For customs agents, the special rules of the Federal Customs Act and, as of 1st January 1995, of Value Added Tax Decree shall be observed.

Turkey

The statutory rules governing the duties and responsibilities of maritime agents, are, in general, the same as the ones to which "commercial agents, brokers, proxies" are subject.

There are some specific provisions concerning maritime agents obligations and/or liabilities such as:

- a) The Law of Customs (n. 1615 dated 19.7.197): According to Arts. 151 and subs. of said law, maritime agents are jointly responsible with shipowners and masters for fines imposed directly by the customs as a consequence of short delivered cargo, according to the cargo manifest, and are subject to penal prosecution for overlanded cargo, - not declared in the cargo manifest - which is considered as attempted smuggling, and also gives rise to fining.
- b) The Law of Ports No. 618. According to Art. 7 of the Law of Ports, maritime agents are also invited by the harbour master to proceed with the removal of wrecks, but this does not entail their personal liability.

It is to be noted that there has been a period when maritime agents were considered by Turkish Courts as liable with their personal assets for cargo claims lodged by consignees and their underwriters. As a result of lengthy proceedings, a judgment which now constitutes a precedent was obtained in

Part II - The Work of the CMI

1986 from the Supreme Court in full session exempting agents from such personal liability, which should rest with the carrier himself.

United Kingdom

Although the agent's function may form part of operations which are governed by Statutory rules, e.g. the Hague Rules, there is no specific rule under English law which governs the relationship between a shipbroker and his client or a ship broker and a third party. These relationships will be governed by the general law regarding contracts and agency. Thus the terms of any contract would normally be negotiable and the matters set out in para 11 below are normally subject to agreement. By the same token the ship broker would normally be at pains to ensure that third parties understand that he acts only as agent. As a consequence liability for the matters set out in para. 11(c) below would normally be excluded.

They are freely negotiable but the following generally apply:

- In respect of the sale or purchase of ships, the fee is usually 1%
- In respect of the chartering of ships, the fee is usually 1.25%
- In respect of all other transactions referred to in para. 4(d) - (k) where port agents or other agents are involved, the Chamber of Shipping schedules apply. Such schedules can be varied but the majority of agents adhere to them where possible.

United States

There are no statutory or regulatory rules in the United States governing the responsibilities of maritime agents, other than those which govern the activities of business entities generally.

It is sometimes believed to be a requirement that a maritime agent post a bond before it may operate in a United States port. This is something of a misconception. The reality is that maritime agents in practice often post bonds that the law does not require them to provide.

There are a number of Customs regulations governing the conduct of ocean carriers, and setting penalties for these rules' violation. In order to ensure compliance with these rules, Customs regulations require the posting of a "carrier bond" before each vessel's entry to a United States port. The bond can be either a "single entry" or a "continuous" instrument, the latter obviating the need for a new bond to be posted upon each call of each vessel in port. While carrier bonds are intended to ensure compliance with applicable rules by carriers, in practice maritime agents often post such bonds on their principals' behalf. Indeed, United States Customs regulations permit the posting of a carrier bond by an "owner, master or agent". The rule makes for a convenient system, whereby an agent may post a single continuous bond to cover virtually all of the bonding requirements with regard to all of his carrier clients. (See 19 Code of Federal Regulations §§ 4.16, 113.64).

While the practice set forth in the preceding paragraph is customary, it must be emphasized that the law does not require a maritime agent to post a carrier bond. In fact, in light of the increasingly common situation in which agents have been found liable under their continuous entry bonds with regard to defalcations on the part of a principal, some agents, especially tramp

agents, may in the near future begin to require their carrier clients to post their own single entry or continuous bonds.

Uruguay

There are statutory rules concerning maritime agents.

Venezuela

There are few rules concerning the duties and responsibilities of maritime agents. Rules related to this aspect are found dispersed in different legal texts amongst which there is no connexion.

Article 45 of the Law of Pilotage provides that the dispatcher or consignee agent is jointly responsible for the duties of pilotage, authorization, tugboats and the payments of penalties and averages which are vessel's responsibilities, when said responsibilities arose from pilotage or tug operations. Some authors have pointed out that the inclusion of the term "averages" could extend the responsibilities derived from Article 45 to situations not necessarily connected with pilotage operations.

Likewise, the maritime agent has the duty of updating his situation before the register of shipping agents kept by the Ministry of Transport and Communications, as well as carrying out everything necessary to maintain the security mentioned in para. 5 above.

Article 7 of the Navigation Law sets forth the duty all maritime agents have of appearing before the maritime authorities when summoned.

Article 13 of Organic Customs Law states that every vehicle carrying out international traffic operations by sea or air, must have a representative domiciled in the place within Venezuelan territory where said operations are to be fulfilled. This representative will constitute sufficient and permanent security in favour of the National Treasury to cover obligations which might be incurred by the carriers, derived from the application of the above law, for which he will be jointly responsible.

The remaining obligations and responsibilities are governed by the provisions of the Civil and the Code of Commerce.

10. General description of the existing rules.

Argentina

The general rules may be found in the Commercial and Civil Codes. The agents must accomplish the duties of the representation. That means to do everything necessary in the sphere of the activities of the ships agents and in accordance with the instructions given by his principal.

Australia

The general law of contract and agency would clearly apply. There are no mandatory rules.

Belgium

See para. 9 above.

Canada

See para. 9 above. There are no mandatory rules.

China

The Regulations for Management of the International Shipping Agency are mandatory and must be strictly observed. The provisions in the Regulations shall not be affected by any other applicable law chosen by the parties to the contract.

It is impossible to provide a short summary of all the provisions of the laws that may apply to the contract of agency and to the contract of brokerage. It is felt, therefore, that such summary should be confined to the specific questions subsequently listed in this paragraph.

Denmark

There are no mandatory rules.

Finland

The parties to a maritime agency contract would be free to choose the applicable law of the contract.

In the most unlikely event that the Act on Commercial Agents and Salesmen would apply, the parties would, regardless of some of the provisions of the Act being mandatory, in principle be free to agree on the applicable law. However, such mandatory provisions of Finnish law which are of a public law nature or of important general public interest may still be applied even if the contract otherwise is subject to foreign law.

France

In French law, there does not exist a specific system with respect to the liability of shipping agents. The applicable texts refer back to the common law liabilities, namely that: the representatives are liable for their proved faults, and only the person instructing them can claim in respect of their liability.

Germany

Although many provisions regarding the statutory rights of commercial agents are mandatory in nature §92 c Commercial Code expressly permits derogations if the commercial agent is a maritime agent. Therefore, the right to choose foreign law is not restricted save to the general order public clause.

Greece

The following description only concerns the statutory rules in respect of the maritime agents, being the main topic of the questionnaire.

P.D. 229/22.6.1995 concerning "Maritime Agents" was amended by P.D. 427/24.11.1995 on "Obligations of Shipowners or Ship's Operators and Maritime Agents". According to art. 1 P.D. 229, the shipowner or the ship's operator has to appoint a maritime agent in charge for each ship and for each particular port called at by the ship. P.D. fixes the conditions and

Maritime Agents

qualifications required for a person to be maritime agent and sets out certain obligations and liabilities of a maritime agent. More specifically, P.D. 229 provide for the following subjects (as indicated in the titles of the relevant articles): a) the licence required for exercising the profession of a maritime agent (art. 1); b) the conditions required to obtain the licence (art. 2); c) the revocation of the licence (art. 3); d) the public register for maritime agents (art. 4); e) the establishment of subsidiaries (art. 5); f) the changes concerning maritime agents and their subsidiaries (art. 6); g) the licence granted to shipowners or to ship's operators or to their employees to work as maritime agents (art. 7); h) the licence granted to nationals of EC Member States (art. 8); i) the ships subject to compulsory agency (art. 9); k) the specific obligations of maritime agents of passenger ships and car ferries (art. 10); l) other persons authorized to issue passenger tickets and car ferry receipts (art. 12); n) interim provision (art. 13); o) the sanctions (art. 14); p) the abolished provisions of pre-existing law (art. 15); q) entry into force (art. 16).

The contents, as above described, make evident that the main concern of P.D. 229 is to better organise the profession of a passenger ship or car ferry agent; and further, to put order in the carriage of passengers by sea during the hot summer period. The measures provided in P.D. are intended to prevent the issuance of tickets exceeding the carrying capacity of each ship.

However, as aforementioned, P.D. 229 does not contain any substantial provisions concerning the contract of maritime agency. Therefore, many problems arising out of the performance of this contract remain unresolved and must be faced with other statutory rules applied by analogy. The determination of the legal nature of the maritime agency agreement is crucial for the application by analogy of statutory rules governing contracts similar to the contract of maritime agency. A subject matter which has given rise to much controversy. Therefore, opinions expressed about the law applicable by analogy to the contract of maritime agency were various up until today and did not of course ensure law certainty.

Now it is hoped, that this controversy will be reduced considerably after the promulgation of a statute concerning "Commercial Agents" (P.D. 219/1991 giving effect to EC Directive 86/653 concerning "The Co-ordination of EC Member States Legislations in respect of Commercial Agents"). Maritime agents are also agents, therefore the existing gaps in the legislation for maritime agents may be filled in first rank by the provisions of P.D. 219/1991, which contains certain substance rules, being applied by analogy.

Ireland

There are no mandatory rules.

Italy

It is impossible to provide a short summary of all the provisions of the special laws and of the Civil Code that may apply to the contract of agency and to the contract of brokerage. It is felt, therefore, that such summary should be confined to the specific questions subsequently listed in this paragraph.

Part II - The Work of the CMI

Both the rules of law 135/1977 and those of Art. 1750 Civil Code are compulsory. All the provisions of law 135/1977 are of ordre public and, therefore, are applicable irrespective of the law chosen by the parties. Art. 1750 Civil Code instead is not of ordre public.

Japan

Most of the rules are explained in the answers to the questions subsequently listed hereunder.

Mexico

There are no statutory rules of a mandatory nature in this matter and the parties are free in negotiating the contract.

Morocco

There are no statutory rules.

Netherlands

Some of the Articles 74-74s Comm. Code are of a mandatory nature. Where appropriate, reference to them will be made in the following subparagraphs.

Norway

Apart from the rules pertaining to the relationship between the holder of a customs warehouse and the Customs Authorities other matters relating to maritime agents would not be mandatory in nature.

Philippines

See para. 11 below.

Portugal

See para. 11 below.

Spain

Maritime agents. According to the Commercial Code (art. 244) the maritime agent is an agent working on commissions or fees; in other words, there is a contractual relationship between the maritime agent and the owner or carrier whereby the agent agrees to carry out certain services for his principal who in turn agrees to pay the former for these services. The Contract of Agency Act, 1992, section 1-8 arts. 9 and 10 relates to the duties of the agent. And the Port Administration and Merchant Marine Act provides that local port authorities will require from maritime agents a bond securing the payment of port-dues (art. 73 of the Port Administration and merchant marine Act).

Ship and chartering brokers. Being a commission merchant, and regulated by the Commercial Code, the ship and chartering broker is an agent working on commission or fees, the broker agrees to carry out contracts and services for his principal, either the owner or the charterer, who in turn agrees to pay the broker for his work. The same provisions are regulated in the Contract of Agency Act, 1992.

Customs agents. See para. 11 below.

Sweden

See para. 9 above.

Switzerland

The statutory rules applicable to persons carrying out the activities mentioned above are considered as special rules for the particular type of mandate in question and usually determine the duty of care of the persons mandated by their principals. The statutory rules referred to above determine in particular the required duty of care of the agents and their right to a remuneration towards their principals according to the legal nature of their mutual relationship, but not according to the particular function which the agents would perform in the marine business. It is, therefore, felt that a summary of these rules is of little interest in this connection.

It should be recalled that, as to the termination of the agency contract and the indemnity due thereon, the applicable rules can be found in Articles 418q and 418u of the Code of Obligations covering the legal situation prevailing in Switzerland.

For the liability of agents towards third parties, it should be noted that there is no personal liability of agents for the fulfilment of obligations arising out of contracts entered into in their capacity as agents, if they have acted on behalf of a named principal. Customs agents may be personally responsible in respect of customs duties only if they have given a personal guarantee to the State.

The provisions of Article 418q and 418u CO are mandatory pursuant to their terms.

Turkey

There are no mandatory rules.

United Kingdom

See para. 9 above.

There are no mandatory rules with regard to the employment of a ships' agent.

11. a. *The duties and liabilities of the agent towards his principal.*

The duties of the maritime agent towards his principal are, in general, those imposed on an agent on the basis of the law of agency. Some particular duties are prescribed in some countries for Customs brokers.

Argentina

There are no special rules for the maritime agents. Their behaviour should be to act in accordance with the rules on the representation of agents established by the Civil and Commercial Codes and specially with the provisions of the contract if it has been agreed with the principal.

Australia

There are no statutory provisions governing the relationship between principal and agent and the common law, which will be largely similar to that in the United Kingdom, would govern their relationship.

Belgium

See para. 9 above.

Canada

See para. 9 above.

China

The duties and liabilities of the agent are to exercise due diligence and to comply with the instructions; to protect the principal's proper rights and interests and fulfil the obligations; to guide principals, ships and crew under their husbandry to abide by China's relevant laws, regulations and rules; in case the principals, ships or crew violate these laws and regulations, to assist competent authorities to deal with the cases.

Finland

There is no legislative basis dealing with the matters topical hereunder. The Commercial Agents Act 1991 - based on the EU Council Directive on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ L 382 31.12.86 p. 17/86/653/EEC) - may perhaps to some extent be applied by analogy.

The Finnish Shipbrokers' Association Annual General Meeting approved in 1990 Standard Conditions for Members of the Association (hereinafter referred to as "Standard Conditions"). Ordinary rules of incorporating the Standard Conditions into an individual contract prevail. In practice, the Standard Conditions are rarely if ever applied, as disputes are resolved amicably or the dispute is not covered by the Standard Conditions. Also, any possible liability is generally caught up by shipbrokers' liability insurance, often taken on the London market or arranged through the firm's ordinary liability insurance as an additional coverage. Shipbrokerage in the wide sense and on its own is not large enough for the national Finnish insurance market. All the Nordic shipbrokers' associations, starting with the Finnish association, have clarified the possibility of group liability insurance through the respective association, but at least in Finland the commercial needs for proper coverage vary too much individually so that it would be possible for such arrangements.

Standard Conditions clauses 2-6 reflect the duties of the shipbroker as expressed in general terms. Liability in damages is based on fault, however, not on presumed fault. The shipbrokers' liability is limited to FIM 50,000 for each task.

France

There are no rules.

Germany

The duties of the agent are set out in § 86 Commercial Code.

The duties of the principal are set out in § 88 a Commercial Code.

Greece

It must be generally remarked that all matters dealt with in this para. 11 concern statutory rules related to the substance of the contract of maritime agency. In Greek law there are only few rules dealing with substantive matters arising out of the agency contract. Therefore, the gap must be filled in with other statutory rules applicable by analogy to the contract of maritime agency.

Until recently, various views were held as to the legal nature of the contract of maritime agency. According to our view the contract of maritime agency was considered a contract for services or a contract for work; according to another view it was considered a contract of mandate and pursuant to another, a "mixed contract" including elements from more than one of the contracts just mentioned. Therefore, gaps used to be filled in, accordingly, with various provisions of the Greek Civil Code, applied by analogy. The result was not satisfactory and the solutions arrived at were vague and more or less contradictory.

However, it is hoped that the controversy shall be reduced after P.D. 219/1991 concerning "Commercial Agents", as above para. 7 at the end. Actually, P.D. 219/1991 concerns commercial agents under the conditions that they are self-established professionals, connected with the principal on a permanent basis and action either by concluding buying or selling commodities contracts in the name and on the account of the principal or by negotiating such contracts concluded finally by the principal himself (art. 1 § 2 P.D. 219/1991).

The substantive rules of P.D. 219 seem most adequate to apply by analogy in filling in the gaps of Greek law in respect of the contract of maritime agency. Because a maritime agent is certainly a commercial agent: he likewise is a self-standing professional, connected with the shipowner on a permanent basis (art. 2 § 1 P.D. 229/1995 concerning Maritime Agents) and he is mostly acting in the name and on the account of the shipowner.

The same rules may apply by analogy to the cargo agency contract, where substance rules are also missing.

It must be observed once again that P.D. 219 shall apply to maritime agents only by analogy. Even though maritime agents are commercial agents, they have a more extensive field of activity than the actual commercial agents (P.D. 219/1991), who may only conclude contracts for buying or selling commodities or negotiate such contracts.

To complete these comments it should be added that an agreement of maritime agency has certain features of the contract for services and of the contract of mandate. Actually, a maritime agent offers his services to the shipowner or to the ship's operator on a permanent basis and for consideration; two main features of the contract for services. Besides this, a maritime agent takes care of someone else's affairs, which is a feature of the contract of mandate. For these reasons the still remaining gaps in respect of

Part II - The Work of the CMI

the rights, duties and liabilities of the maritime agent may be filled in with the provisions of the Civil Code governing the contract for services (arts. 648 et seq.) and/or the mandate (arts. 713 et seq.).

More specifically now, in respect of the points of the questionnaire in para. 8.

The duties and liabilities of the agent towards his principal are fixed in the contract of agency and by the law. In general, a maritime agent represents the principal in the conclusion of various content, or in the performance of other juridical acts. He also represents the principal before the relevant authorities. The power of representation of the agent is presumed to be general, unless otherwise stipulated and notified to third parties. This authority regularly covers all activities mentioned indicatively in para. 3 above. A maritime agent also has to perform the specific duties imposed by P.D. 229/1995 concerning the maritime agents; namely, to issue tickets and receipts for carriage of passengers and cars, accordingly, not exceeding the number of passengers provided by law and the ship's carrying capacity; also, to check the number of passengers embarked and cars loaded, etc. (art. 10 P.D. 229).

The maritime agent has to follow the instructions of the principal and to give him any necessary information which he may acquire (art. 4 § 1 b and c P.D. 219/1991).

The maritime agent is liable towards his principal for any fault committed in the performance of his duties. This is stated, in one way or another, in the provisions concerning all the above mentioned contracts, which may apply by analogy to the contract of maritime agency (art. 4 P.D. 219/1991, as to commercial agents, art. 652 of the Civil Code as to the employee, art. 714 as to the mandatory).

Ireland

The law of agency and contract, if any, apply.

Italy

Port agents and maritime agents. Pursuant to Article 1743 CC the agent (port agent or maritime agent) cannot represent in the same area persons who are in competition amongst themselves. Pursuant to Article 1746 CC the agent must perform the functions entrusted to him in compliance with the instructions received and supply to his principal all information relating to the market conditions in the relevant area. The agent is bound to professional confidentiality and sanctions are provided by Article 13 of Law 135/1977 in case of breach by the port agent. The most serious of such sanctions are suspension and deletion from the register, which prevent the port agent to exercise his activity.

Ship and chartering brokers. Pursuant to Article 1759 CC, the broker must inform the parties about all circumstances known to him in respect of the valuation and safety of the transaction that may exert some influence on its conclusion. If he fails to do so, he is personally liable: Corte di Cassazione, 9th April 1984, No. 2277, *Morandi v. Micciché*, 1984 Foro Italiano, Massimario, 451; Tribunal of Genoa, 29th January 1992, *Rimorchiatori Riuniti v. Consulgetra*, unreported. If the broker does not disclose to one

Maritime Agents

contracting party the name of the other party he is responsible for the execution of the contract (Article 1762 CC).

Customs agents. Pursuant to Article 2 of Law 22nd December 1960, the Customs agent must keep confidential all information received from his customer. The Customs agent cannot perform activities other than those permitted by Article 7 of such law.

Japan

Article 47 of the Commercial Code requires the commercial agent to give notice to the principal when the commercial agent has performed an act as agent or intermediary in any transaction, and Article 48 requires the duty of a commercial agent to avoid competition to the principal's activities.

Articles 545 through 549 of the Commercial Code set out the duties of a broker such as the duty to keep a sample until the transaction is completed (Article 545), the duty to prepare documents containing the name of each party, the date and summary of the transaction when it is effected between the parties and to deliver one of such documents to each party (Article 546), the duty to enter in his books the particulars of the transaction (Article 547), the duty not to disclose the parties' name (Article 548) and the obligation to personally perform the contract when the name of one of the parties is not disclosed (Article 549). Article 553 provides that a commission agent must personally perform the obligation of his principal.

Articles 644 through Article 647 of the Civil Code set out the duties of a mandatory nature. Article 644 of the Civil Code provides that the agent must manage with due diligence the affairs entrusted to him.

Article 645 provides that the agent has the duty to report to his principal; Article 646 provides that the agent has the duty to deliver all moneys and things together with fruits, which he has received or collected in the management of affairs entrusted to him. Article 647 provides that the agent has the duty to compensate any damage to the principal.

Article 19 of the Customs Agency Business Law provides that the customs agent has the duty not to disclose confidential information.

Norway

There are no special rules. General rules apply.

Philippines

The ship agent is bound to carry out the agency and is liable to the principal for damages in case of non-performance (Article 1884 CCP). The agent should act within the scope of his authority (Articles 1881 CCP) and in accordance with the instructions of the principal (Article 1887 CCP), but should not carry out the agency if its execution would manifestly result in loss or damage to the principal (Article 1888 CCP).

Unless otherwise agreed upon, the agent is forbidden to compete with its principal or else the agent is liable for damages (Article 1889 CCP). Every agent is bound to render an account of its transactions and to deliver to the principal whatever it may have received by virtue of the agency, even though it may not be owing to the principal. Any contrary stipulation is void (Article

Part II - The Work of the CMI

1891 CCP). Finally, the agent may withdraw from the agency by giving due notice to the principal (Article 1928 CCP).

Portugal

Maritime agents. Generally the role of maritime agent is to protect and to provide assistance to the ship owner and/or the carrier which he represents, undertaking the ship's interests defence and providing its captain with all specific information concerning his duties as well as acting on behalf of the latter, giving particular information if required and paying the necessary assistance. (Art. 1, D.L. 76/89).

The maritime agent's relationship with his customer is established by agreement between the parties (contract). These agreements are regulated by D.L. 178/86 placing duties and liabilities on both parties.

Forwarding agents. Generally the forwarding agents may intervene in juridical areas in their own names or on behalf of a party, subrogate or be subrogated on behalf of the owner of the goods and undertake business management on behalf of a party according to specific statement regarding the operations involved (Art. 6, D.L. 43/83).

Customs agents. Under the designation of "Despacho de Navios" (clearance of ships) are carried out all the operations and necessary formalities required for the customs clearance of goods carried by the ship. The process may be undertaken by the customs agents or by the owners (with some restrictions, if foreign) or by maritime company agencies working with private customs deputies on behalf of owners (Art. 426, D.L. 463/11).

Slovenia

The duties and liabilities of the agent towards his principal are determined by the contract between the principal and the agent and general terms and conditions of the Agents Association. There are no general rules in respect of termination and indemnity.

Spain

The agents must perform the functions entrusted to them in compliance with the instructions received and supply to the principal all information relating to the market conditions in the area (art. 254 Code of Commerce and art. 9.2.b) and c), Contract of Agency Act).

They cannot perform activities other than those permitted by their principals (Art. 256 Comm. Code).

They must act in good faith, loyalty and diligence, taking care of the interests of their principal (Art. 255 Commercial Code and art. 9.1, and 9.2 a) of the Contract of Agency Act).

Maritime agents and ship and chartering brokers will be responsible to their principals in the following cases:

- non performance of the functions entrusted to them (art. 252 Commercial Code).
- non compliance with instructions received from the principal (art. 256 Com. Code).
- execution of a more onerous operation (art. 258 Com. Code).

Maritime Agents

- delegation of work to other persons not authorized by the principal (art. 262 Com. Code).
- breach of rules of law governing the contracts and services he is instructed to execute (art. 259 Com. Code).

In all these cases, the agent's liability to this principal will be not only civil liability but also administrative responsibility.

The Customs agent, pursuant to Art. 4.1.A. of the Decree 1299/86 will perform his activities in the name of his principal for the cargo's clearance and he will be subsidiarily liable in respect of any amount due to the Customs Office and not paid, and also subsidiarily liable for fines imposed as a consequence of fraud or smuggling while performing his activities (Art. 3° of Decree 21st May 1943). He cannot perform activities other than those specially contracted (Art. 4° Decree 21st May 1943).

Sweden

See para. 10 above.

Switzerland

See para 10 above.

United Kingdom

See para. 10 above.

b. Rules on the rights of the agent against his principal in respect of:

(i) The payment of his remuneration and of his disbursements.

Although the information provided is rather scanty, it appears that only in a few countries the remuneration payable to the agent is fixed by tariffs of a binding nature (China, Italy, Philippines, Spain).

Argentina

There are no official fees for his services and for his duties, though there are only references approved by the Navigation Center.

Australia

This would be subject to the contractual provisions pursuant to which the agent has been appointed.

Belgium

See para. 10 above.

China

The principal must apply the Uniform Rates for Dues and Charges as set out by the Ministry of Communications.

Finland

Standard Clauses 7-9. It is noticeable that the shipbroker has the contractual right to set-off as against freight properly collected by him on behalf of his principal.

Germany

These rules are set out in §§ 86 b) - 87 d) Commercial Code.

Greece

The maritime agent's services are rendered for consideration. Therefore, a primary right of the maritime agent against his principal is the right to remuneration. Such a right is mostly regulated through tariffs (below para. 10). In case where tariffs are not applicable and in the absence of specific law provisions, the right to remuneration may be based on the provisions of P.D. 219/1991, concerning the commission paid to commercial agents (arts. 5-7), or on the provisions of the Civil Code concerning the salary payable to the employees (arts. 648, 653 et seq.).

A maritime agent is also entitled to demand restitution of any disbursements (expenses and other costs) effected in the performance of his duties. Disbursements may be demanded on the basis of arts. 721 and 722 of the Civil Code concerning the mandate.

Ireland

The law of agency and contract, if any.

Italy

As stated in para. 13 tariffs are published by the Ministry of Transport and Shipping for the services of port agents.

Japan

Article 512 of the Commercial Code provides that a trader (such as a commercial agent) who has performed on behalf of another person an act within the scope of his own business may demand reasonable remuneration.

Article 550 of the Commercial Code regarding the right of a broker to demand remuneration provides that a broker may not demand remuneration until after he has complied with the formalities prescribed in Article 546 and that a broker's remuneration shall be borne by both parties in equal proportions.

Article 561 regarding the right of a forwarding agent to demand remuneration provides that a forwarding agent may demand remuneration immediately after he has delivered the goods to the carrier and that where the amount of the freight has been fixed by contract, a forwarding agent may not demand any other remuneration unless a special agreement has been made.

Article 649 of the Civil Code provides that if any expenses are required for the management of the affairs entrusted to the agent, the principal shall upon demand pay them to him in advance. Article 650 provides that if an agent has defrayed any expenses which are considered necessary for the management of the affairs entrusted to him, he may demand reimbursement from the principal. And if a principal has assumed an obligation which is regarded as necessary for the management of the affairs entrusted to him, he may require the principal to perform it in his place and that if an agent, without any fault on his part, sustains damage through the management, he may demand compensation therefor from the principal.

Norway

General rules only are applicable.

Philippines

Ship agency fee is not allowed to go below existing tariffs. The parties are free, however, to stipulate above these tariffs. Commissions for ship brokerage are not governed by tariffs and are open to stipulation.

Spain

The remuneration of agents and ships and chartering brokers is not subject to a specific tariff. The provisions of the Commercial Code (Art. 277) as well as those of the Contract of Agency Act (Art. 11) provide that if the remuneration has not been agreed, it will be fixed in accordance with the commercial usages of the place where the activity is performed.

The Supreme Court by decision 16th April 1952 had ruled out the provision under which the agent or broker were entitled to a commission only with respect to the transactions performed.

Art. 18 of the Contract of Agency Act 1992 provides that the agent and the broker are not entitled to the payment of their disbursements.

The remuneration of the customs agent is fixed by a tariff approved by the National Association of Customs Agents (M.O. 13th January 1984).

Sweden

See para. 10 above.

United Kingdom

See para 10 above.

(ii) The termination of the agreement.

In the majority of countries (Argentina, Australia, Canada, Chile, China, Ireland, Mexico, Norway, Portugal, Sweden, United Kingdom, United States, Venezuela), there are no statutory rules.

In some others (Croatia, Japan, Chile, Finland, Switzerland, Turkey) there are general rules regarding the notice periods applicable also to maritime agents.

In several countries members of the European Union (France, Germany, Greece, Italy, Netherlands), the EC Directive 86/653/EEC (see Annex 1) has been implemented. Special rules on the notice periods for termination of agency agreements exist in Spain.

Argentina

There are no statutory regulations and consequently the contracts between maritime agents and shipowners are freely agreed upon.

Australia

There are no statutory rules.

Canada

There are no statutory rules. Provisions on the termination of the agreement are normally incorporated in agency agreements, except for ad hoc appointments.

Chile

There are no special statutory rules. The termination of the contract is governed by the general rules on the contract of mandate.

China

There are no statutory rules.

Croatia

In Croatia the termination of contracts is regulated by the law of obligations. According to this law a contract concluded for an indefinite period can cease by notice given within the time limit agreed by the parties. Failing of such agreement, the notice period is that provided by law or in conformity with usage. The usage in our legal system provides a notice of termination of three months.

Denmark

As maritime agents are not covered by the statutory rules on commercial agents (the aforesaid 1986 EC-Directive), the maritime agent is not protected by the minimum notice periods set out in that piece of legislation. Accordingly, shipowners and independent maritime agents can freely agree upon a certain notice period, or none at all, in their agency agreements.

If the maritime agent is not independent but can be considered an employee of the shipowner, the "agent" will be protected by the statutory minimum notice periods contained in the Salaried Employees Act.

Finland

Reference is made to Standard Clause 8, second sentence; in other respects general contract principles on termination of the agreement prevail taking, however, into consideration the special area of shipbrokerage with time pressure being an essential phenomenon.

In the absence of any agreed notice period the Finnish courts would most likely apply the corresponding provisions of the Act on Commercial Agents and Salesmen by analogy. (A supporting Supreme Court decision exists). According to the said Act, if the agreement is terminated during the first year, the period of notice is one month. After one year the period of notice is extended by one month per year. However, the longest notice period is six months.

In the very unlikely event that the Act on Commercial Agents and Salesmen, depending on the activities of the agent, would be applicable, the provisions of the said Act would have to be observed. The provisions governing the notice period of the Act are mandatory in that periods shorter than those prescribed in the act are not valid.

Maritime Agents

France

Only the common law rules will be applicable. It should, however, be noted that any shipping agent who is registered as a commercial agent or who can prove that he can benefit from the status of being a commercial agent will have the right to put forward the applicable text, notably the law of 25th June 1991 allowing the existence of a notice period and an indemnity in case relations are terminated.

Germany

§ 89 Commercial code has been brought into line with the EC-Directive 86/653/EEC. The actual version of § 89 has entered into force on 1st January 1990 and in respect of existing contracts on 1st January 1994.

Greece

The maritime agent has a right to terminate his contract according to the following rules:

A contract concluded for an indefinite period may terminate through a notice given a certain time in advance at the end of which period the contract shall come to an end. The minimum notice period, according to art. 8 § 4 P.D. 219/1991 is fixed as following: one month during the first year of duration of the contract; two months from the commencement of the second year; three months from the commencement of third year; four months from the commencement of the fourth year; five months from the commencement of the sixth year and the following years. A shorter notice may not be stipulated.

A contract (concluded either for a definite or an indefinite period) may terminate at any time for breach of the contract by the principal, without prior notice (art. 8 § 8 P.D. 219).

Ireland

This would be a matter which would be governed between the parties where they contract as separate contracting parties. Where the agent is engaged as a full-time employee of the principal, there are statutory protections for employees and minimum periods of notice which must be given if it is intended to terminate an employee's contract of employment.

Italy

It has been held (Court of Appeal of Genoa 14 July 1972, *S.n.c. Giacomo Costa fu Andrea v. Ditta Ersilio Vivaldi*, 1972 *Dir. Mar.* 622) that the rules of the Civil Code on commercial agents also apply to maritime agents. Art 1750 of the Civil Code provides that notice of termination must be given in conformity with usage. This provision has been amended by legislative decree 10 September 1991, No. 303 with effect as of 1st January 1993 in order to implement the rules of the EC Directive 86/653 in respect of commercial agents. The new rule states that the advance notice must be of at least one month during the first year of duration of the contract, two months if the contract has been in force for over one year, three months if the contract has been in force for over two years. The notice period increases by one month with a yearly increase of the duration of the contract. Such rule shall apply to

Part II - The Work of the CMI

contracts already in force as of 1 January 1990 commencing from 1 January 1994.

Japan

The Civil Code provides as follows:

Rescission

Article 651. 1. A mandate may be rescinded by either party at any time. If one of the parties rescinds a mandate at a time when it would be unfavourable to the other party, he shall compensate for any damage occasioned thereby; however, this shall not apply when unavoidable reasons exist for such rescission.

Article 652. The provisions of Article 620 shall apply mutatis mutandis to mandates. (cf. Article 620) If a lease has been rescinded, such rescission shall be effective only for the future; however, a demand of compensation for damages shall not be prejudiced thereby in cases where one of the parties is in fault.

Causes of termination

Article 653. A mandate shall terminate upon the death or bankruptcy of either the principal or the agent; the same shall apply, if the agent is adjudged incompetent.

Article 654. If, on the termination of a mandate, any circumstances of urgency exist, the agent, his successor or his legal representative shall take all necessary measures in respect of the affairs entrusted, until the principal, his successor or his legal representative is in a position to take over the management.

Article 655. No ground for the termination of a mandate can, whether it exists on the part of the principal or of the agent, be set up against the other party, unless he is given notice thereof or he is aware thereof.

Article 50 of the Commercial Code provides that in cases where the parties have not fixed a term for the duration of the contract, either of them may terminate it on giving two months' notice and that subject to unavoidable circumstances, either party may terminate the contract at any time irrespective of whether a term for duration of the contract has been fixed or not.

Mexico

There is no specific statutory rule for maritime agents in respect of the termination of the contract, but the provisions of the commercial legislation and of the Civil Code on commercial agents apply.

Netherlands

Article 74j Comm. Code reads - in a free translation - :

1. If the agency agreement is concluded for an indefinite period of time or for a definite period with the right of interim cancellation, each of the parties is entitled to terminate same, taking the agreed period of notice into consideration. If no period of notice has been agreed upon, same will be four months, to be increased by one month after three years duration of the agreement and with two months after six years duration of the agreement.

Maritime Agents

2. The period of notice cannot be shorter than one month in the first year of the agreement, two months in the second year and three months in the following years. If the parties agree to longer periods, these may not be shorter for the principal than for the agent.

3. Notice should be given towards the end of a calendar month."

The wording of this article is the result of changes made by the Dutch parliament in order to implement the EC Directive 86/653 in respect of commercial agents.

According to Article 74r Comm. Code Article 74j sub (2) cannot be departed from by private contract and is therefore to be considered the compulsory applicable minimum period of notice under an agency agreement.

Article 74l Comm. Code, however, gives the possibility to terminate an agency agreement with immediate effect on grounds of an urgent and pressing reason.

The article reads - again in a free translation -:

"1. The party who terminates an agency agreement during the contractual period of duration or without respecting the agreed period of notice, is obliged to pay damages if the other party does not agree with this termination unless there is an urgent and pressing reason for immediate termination and the other party is immediately informed of this reason.

2. An urgent and pressing reason will be present if the circumstances are of such a nature that it cannot reasonably be expected from the party, terminating the agreement, to continue same, even for a short period.

3. If termination of the agreement on grounds of an urgent and pressing reason is based on circumstances, for which the other party can be blamed, that party will be liable for damages.

4. A stipulation that leaves the decision whether or not an urgent and pressing reason is present to one of the parties, shall be null and void."

Article 74l Comm.Code is compulsorily applicable by virtue of Article 74r Comm. Code.

Furthermore, Article 74m Comm. Code gives the possibility to have the agency agreement dissolved by the court by reason of either Article 74l Comm. Code or a change in circumstances that is of such a nature that fairness prescribes the agreement to be terminated immediately or on short notice.

Also this article is compulsorily applicable, by virtue of the earlier mentioned Article 74r Comm.Code.

Norway

There are no statutory notice periods but in one case the Supreme Court applied the old rules in respect of commercial agents per analogy. As these rules have quite recently been replaced by the 1986-EC directive on commercial agents it is uncertain whether this analogy will be upheld.

Philippines

The general rule is that the principal may revoke the agent's authority at will (Article 1920 CCP) by notifying the agent. The law does not provide for

Part II - The Work of the CMI

the form of such notice (*Ambrosio Padilla*, Civil Law Civil Code Annotated, Vol. VI, 1987 ed., pp. 434-435). The exceptions are: (1) when the agency is "coupled with an interest", (2) when a bilateral contract depends upon the agency, and (3) when the agency is the means of fulfilling an obligation already contracted (Article 1927 CCP).

Portugal

There are no provisions regarding the contracts stipulated by maritime agents. Such contracts are therefore subject to the terms agreed by the parties and, in the absence of relevant terms, by the provisions of the Civil Code (Article 41 and 42) on contracts generally.

Spain

Pursuant to Art. 25 of the Contract of Agency Act, if the contract is concluded for an indefinite period of time, each of the parties is entitled to terminate same, always provided that notice in writing is given.

The period of notice shall be one month for each year of duration of the agreement, with a maximum period of six months.

- The parties may agree on longer periods and these may not be shorter for the agent or broker than for the principal.
- Unless otherwise agreed, the last day of the notice period will be the end of a calendar month.
- These rules also apply to those contracts concluded for a definite period but continuing after the agreed date.

Further, Art. 25 gives each party the possibility of terminating an agency agreement with immediate effect, notice not being necessary, on the following cases:

- If the other party has breached wholly or in part, statutory or contractual duties.
- If the other party has been adjudicated bankrupt or has applied for voluntary liquidation.

Sweden

See para. 10 above.

Switzerland

With respect to minimum notice periods, Article 418q CO provides as follows:

"If an agency contract was not concluded for a definite period of time, and if such period cannot be deduced from its purpose, it can be terminated by either party during the first year of the contract period effective at the end of a calendar month following the month during which notice was given. An agreement for a shorter period of notice must be in writing.

If the contract relationship has lasted for a period of at least one year, it may be terminated at the end of a calendar quarter by giving two months' prior notice. The parties may agree, however, upon a longer notice period, or upon another termination date.

No agreement shall provide for different notice periods for principal and for agent."

Maritime Agents

Article 418r CO provides furthermore that agency agreements may be terminated, without notice, if there are “valid reasons” for an immediate termination. An agency contract also terminates with the death of the agent, or his incapacity to act, or with the bankruptcy of the principal (Article 418s CO).

Turkey

If the agency agreement has not been entered into for a fixed period and if there is no valid reason justifying an immediate termination and/or if the agreement does not contain a clear voluntary provision about the necessity to serve a notice within a fixed period prior to termination, Art. 133 of the Code of Commerce provides for the service of a three-month notice of termination.

United Kingdom

If standard terms and conditions are used, they may contain clauses concerning the termination of the contract. Alternatively, a specific contract between a shipowner and an agent may contain a clause relating to the notice period. In the absence of clear contractual terms, the general law of contract would prevail and unless the agent was a servant of the shipowner in the sense of being his employee, no rules in relation to the contracts of employment would be relevant. A party to a contract, where no period is mentioned, must give reasonable notice. What that means is that all the surrounding circumstances of the contract will be taken into account before deciding what is the appropriate notice period. If a contract had been running for a number of years it would normally be implied that a longer period of notice should be given, but there is no general rule.

United States

There are no statutory rules setting minimum notice periods in agency contracts concluded for an indefinite period. The inclusion of such clauses will depend solely on the results of negotiation between the parties. It should be noted, in this connection, that such clauses are quite common in the liner trade, despite the absence of any statutory requirement.

Uruguay

There are no rules in respect of the termination of the contract.

Venezuela

There are no special statutory rules in respect of the termination of the contract. The parties may agree on this matter in their contracts, though contracts are generally for an indefinite period. Termination of the contract is governed by the provisions of the civil law, and there is not any notice stated therein when the contract is for an indefinite period.

Part II - The Work of the CMI

(iii) The indemnity, if any, payable to the agent upon termination of the agreement.

In the majority of countries (Argentina, Australia, Canada, China, Denmark, Finland, France, Mexico, Norway, Philippines, Sweden, United Kingdom, United States) there are no statutory rules.

In some other countries (Chile, Croatia, Greece, Japan, Switzerland, Turkey) general rules apply.

In some European countries, members of the European Union (France, Greece, Italy, Netherlands) the provision of the EC Directive 80/653/EEC (see Annex I) are applied.

In Germany and Spain there are special statutory rules.

Argentina

There are no special rules and the subject is dealt with by the general rules of the Civil Code and of Commercial Code on agencies and representation. The case must be considered in the light of the agreement between the maritime agent and his principal.

Australia

There are no statutory rules.

Canada

There are no statutory rules in this respect.

Chile

The rules of the *Codigo de Comercio* on the commercial mandate (*mandato mercantil*) apply.

China

There are no statutory requirements.

Croatia

According to the law of obligations, the principal, when liable for the termination of the contract, has to pay to the agent an indemnity by agreement or by court decision. Article 688 of the maritime code provides that the agent is entitled to the payment of his expenses and of a fee if he has concluded a contract for an on behalf of the principal, regardless of the fact that contract of agency is terminated or not.

Denmark

There are no such statutory rules for an independent maritime agent.

Finland

No statutory rules exist which would govern the question of indemnity due to the maritime agent at the time of termination of the contract. The Act on Commercial Agents and Salesmen contains certain provisions regarding indemnity.

Reference is made to Standard Clause 7, second sentence concerning shipbrokers in the strict sense only.

France

See sub-paragraph (ii) above.

Germany

According to §89 b Commercial Code, a commercial agent is entitled to a compensation for loss of clientèle if the principal terminated the contractual relationship. The compensation is limited to an annual commission assessed at the average commission of the preceding five years or as the case may be at the average of a shorter period. Two decisions of the Hanseatisches Oberlandesgericht Bremen are known which awarded 60 respectively 75 p.c. of a one year commission.

Greece

The maritime agent has a right to indemnity upon termination of his contract under certain conditions. He also has a right to recovery of any other damages sustained during the performance of his duties. Both rights may be based on statutory provisions concerning contracts similar to the contract of maritime agency, applied by analogy.

The most appropriate provisions to fill in the present gap seem to be articles 669 et seq. of the Civil Code concerning the employee's right to indemnity upon termination of his contract for services for the reasons stated below. A right to indemnity is granted to the maritime agent in the following cases: When the principal decides to terminate the contract of agency concluded for a definite time, before the expiration of the agreed period; when he decides to terminate a contract concluded for an indefinite period without an advance notice; and, when the contract terminates for breach of the contract by the principal (arts. 673 and 674 of the Civil Code).

As mentioned above, the right of the maritime agent to indemnity upon termination of his contract, could also be based on the provisions of P.D. 219/1991 concerning commercial agents or on the provisions of the Civil Code concerning the mandate. However, both groups of provisions seem inadequate to application by analogy to the present case, for the following reasons:

A. It is true that P.D. 219/1991 concerning commercial agents, includes a detailed regulation in respect of the agent's right to indemnity upon termination of his contract. Art. 9, specifically, states that this right dependant on the following conditions: that the agent has brought new customers to the principal or has significantly increased the volume of the principal's business with existing customers; moreover, that the principal continues to derive substantial benefits from the business with such customers. These detailed conditions are formulated by the drafters of P.D. 219 in view of the activities run by commercial agents who are able to bring new customers or to increase the volume of the principal's business by concluding contracts of purchase or sale of goods or by negotiating such contracts. This is not of course the case of a maritime agent, who, through his activities, is not able to impressively increase the principal's transactions, or at least is not able to prove such an increase or benefit, as stated in P.D. 219/1991. Notwithstanding this, a maritime agent has

Part II - The Work of the CMI

spent much time and offered considerable services to the principal on a permanent basis and, therefore, deserves to be recognized the right to compensation upon termination of his contract, for the reasons stated above.

B. Many court decisions, issued before P.D. 219, found that, according to art. 724 of the Civil Code (concerning the mandate), the shipowner or the ship's operator should be entitled to revoke the mandate at any time, without prior notice or any indemnity. Art. 724 concerns the contract of mandate, which is performed without remuneration (art. 713 of the Civil Code). A maritime agent, however, is not an actual mandatory and does not perform his duties without remuneration. Therefore, the application even by analogy of art. 724 of the Civil Code seems inappropriate.

Ireland

There are no statutory rules. There would, however, be rules arising out of the contract between the parties and the usual custom in the trade.

Italy

The provisions of the EC Directive have been implemented word for word in Article 1751 Civil Code.

Japan

Except Articles 651.2 of the Civil Code as referred to in (ii) above, there is no rule in either the Civil Code or the Commercial Code.

Mexico

There are not any statutory rules in respect of the indemnity due to the maritime agents at the time of termination of the contract, but the provisions of the Civil and Commercial Codes for the Commercial Agents apply.

Netherlands

Article 740 Comm. Code reads - again in a free translation -:

- "1. Irrespective of the right to claim damages, the commercial agent is entitled to receive upon termination of the agency agreement a "clients compensation" in as far as:
 - a. he has acquired new customers for the principal or has considerably enlarged the agreement with existing customers and the agreements with these customers still provide the principal considerable advantages, and
 - b. payment of such compensation is fair, taken into consideration all circumstances, particularly the commission lost under the agreements with these customers.
2. The amount of compensation will not be higher than the remuneration of one year, calculated as the average of the preceding five years or, in case the duration of the agreement was shorter, as the average of the full duration of the agency agreement.
3. The right to claim compensation will expire, if the commercial agent has not notified the principal within one year after the termination of the agreement that he requires compensation.

Maritime Agents

4. The compensation will not be due, if the agreement is terminated:
 - a. by the principal under circumstances which make the commercial agent liable for damages on grounds of article 741, sub (3);
 - b. by the commercial agent, unless the termination is justified by circumstances for the risk and account of the principal or is justified by the age, disablement or illness of the commercial agent, by reason of which one cannot reasonably require him to continue his activities;
 - c. by the commercial agent who, in accordance with an agreement with the principal, transfers his rights and obligations under the agency agreement to a third party."

Article 74o Comm.Code is, as far as the commercial agent is concerned, compulsorily applicable, again by virtue of Article 74r Comm. Code.

Norway

See para. 10(b)(ii) above.

Philippines

No indemnity is payable to the agent (Article 1820 CCP) except when the revocation of the agency agreement by the principal is tainted with fraud and bad faith. In the latter case the ship agent is entitled to damages (*Aiasat v. Intermediate Appellate Court*, 139 SCRA 250 [1985]).

Portugal

There are no provisions regarding the contracts stipulated by maritime agents. Such contracts are therefore subject to the terms agreed by the parties and, in the absence of relevant terms, by the provisions of the Civil Code (Article 41 and 42) on contracts generally.

Spain

Article 28 of the Contract of Agency Act provides that:

The Commercial agent is entitled to receive upon termination of the agency agreement (for a definite or an indefinite period of time) a "clients compensation" when he has acquired new clients for the principal or has considerably enlarged the operations with existing customers which provide the principal considerable advantages and payment of such compensation is fair taking into consideration all circumstances, particularly the last commissions and the existence of limitation of competition agreements.

The agent is also entitled to receive the "clients compensation" when the cause of the termination of the agreement is the agent's death.

The amount of compensation shall not be higher than the remuneration of one year, calculated over the average of the proceeding five years or, in case the duration of the agreement was shorter, over the average of the full duration of the agency agreement.

The agent is also entitled to claim damages compensation as far as the principal has terminated the contract concluded for an indefinite period, provided always that as a consequence of the termination of the agency agreement, the expenses incurred by the agent for the performance of the agreement have not been paid.

Part II - The Work of the CMI

The compensation shall not be due:

- a. If the agreement is unilaterally terminated by the principal because of the agent's breach of the legal or contractual duties.
- b. If the agreement is terminated by the commercial agent, unless the termination is due to circumstances for the risk and account of the principal or is justified by the age, disablement, or illness of the commercial agent, by reason of which one cannot reasonably require him to continue his activities.
- c. If the commercial agent, pursuant to an agreement with the principal, has transferred his rights and obligations under the agency agreement to a third party.

Sweden

See para. 10 above.

Switzerland

In respect of the agent's indemnity in case of termination, Article 418 u CO provides as follows:

"If the agent, through his activity, has substantially increased the principal's clientèle, and if, even after termination of the agency relationship, the principal or his successor in title benefits substantially from the business relations with the acquired clientele, the agent or his heirs have an inalienable right to an adequate compensation to the extent that such compensation is not inequitable.

This claim shall not exceed the net earnings for one year derived from this contract relationship, if the relationship has not existed for so long, then on the average of the total of such period.

No claim exists if the agency relationship was terminated for a reason for which the agent was responsible."

Turkey

Should the agreement be terminated without a three-month notice, or without a valid reason justifying such immediate termination, whether with or without a clear provision in the contract determining such period of notice, the party unduly terminating the contract has, according to Art. 1341 of the Code of Commerce, the obligation to compensate the prejudice caused to the other party.

Should such termination be the consequence of the death or bankruptcy of one of the parties, an indemnity to be assessed proportionally to the remuneration which would have had to be paid to the agent in case the work had been completed by said agent, may have to be paid as the case may be either to the agents, their heirs or to the receivers of the bankruptcy.

United Kingdom

See para. 10 above.

United States

There are no statutory rules in the United States providing for any form of indemnity upon termination of the contract between a maritime agent and its principal.

Uruguay

There are no rules in respect of the indemnity due to a maritime agent.

Venezuela

There are no special statutory rules in respect of the indemnity due to the maritime agent at the time of termination of the contract, but the Civil Code provides (Art. 1699) that the principal must refund all payments in advance and expenses disbursed by the agent to execute the mandate, as well as the losses suffered by the agent because of the management, provided there will not be fault attributable to the agent (Art. 1700), and also the interests caused by such credits. Moreover, the agent may claim for damages caused to him by the termination of the contract.

The parties may agree upon contractual indemnities in case of termination since there are no mandatory provisions in this respect.

c. Rules on the liability of the agent towards third parties

Although the basic rule seems to be that the agent is not liable, there are several exceptions, as it will be seen, in respect of obligations towards Customs and Port Authorities and seamen.

China

The liability of the agent towards third parties falls fully on the principal unless the agent does not take all precautions in accordance with authority and instructions given to him, he may not be innocent for his wrongdoing.

Greece

The liability of the agent towards third parties in Greek law may be described generally as follows, unless otherwise stated with respect to each specific subject:

A maritime agent is usually contracting in the name and on the account of the shipowner. Consequently, the rights from contracts so concluded are acquired and the obligations are assumed by the shipowner directly. Likewise, the liability for breach of contracts so concluded falls upon the shipowner. This means that the maritime agent bears no contractual liability towards third parties. However, Greek courts, even the Supreme Court (the Areopag), very often hold the maritime agent jointly and severally liable with the shipowner for breach of contracts for the carriage of goods concluded as above. Greek courts proceed further and actually try actions directed against the maritime agent (as defendant) for breach of contracts concluded in the name and on the account of the principal. This is certainly contrary to the general principles concerning agent's liability.

As a general rule a maritime agent shall be liable towards third parties only for his own faults (torts) committed in the performance of duties delegated to him. In such a case the shipowner is also held jointly and severally liable.

Norway

A person holding himself out as an agent and identifying his principal will in principle not be liable for obligations or liabilities stemming from a contract entered into on behalf of the principal.

Slovenia

The shipping agent, working for the account and in the name of the shipowners, has no direct liability towards third parties. However, he has the obligation to obtain necessary funds from owners before or during the call of the vessel, or enable third parties to otherwise protect their interests towards the owners. The port agent has nothing to do with crew wages unless specifically instructed by the principals.

United Kingdom

See para above.

and, in particular, in respect of:**(i) Customs duties.**

The agent is liable in Australia, Finland, Greece, Philippines and Spain. He is not in France (unless he is also a Customs agent) and Italy, whilst there are no rules in this respect in Germany, Finland and Sweden.

Argentina

The ship agent is liable before the Customs in some special cases.

Australia

The importer bears the primary liability for customs duty. However, where goods which have been imported cannot be accounted for to the satisfaction of the Collector of Customs, the shipowner has a responsibility. The definition of the word "owner" under the *Australian Customs Act 1901* includes agents.

Finland

The forwarding agent is liable for customs duties on cargo, see above.

France

The agent cannot be liable unless he is also a customs agent, but this does not involve the vessel, only the goods.

Germany

There are no rules in this respect.

Greece

Customs duties are normally paid by the owner of the cargo. However, customs agents are jointly and severally liable to pay customs duties for services rendered by them during the receipt and shipment and the discharge and delivery of the goods respectively. This is expressly stated in art. 12 of Law 718/1977 concerning customs agents.

Maritime Agents

Ireland

There are no rules in this respect.

Italy

Agents are normally not responsible in respect of customs duties unless they have provided a personal guarantee to the Customs Authority.

Philippines

The ship agent is liable for Customs overtime and expenses in supervising and under guarding the loading or discharge of cargoes subject to reimbursement by the principal.

Spain

The maritime agents, subject to Articles 44, 45 and 52 of the Decree 17th October 1947, will be liable to the Tax Office and Customs of the fines and other duties in respect of the goods.

On the contrary, the customs agents are always responsible in respect of customs duties, as they had provided a personal guarantee to the Customs Authority (Article 8° Decree 21st May 1943).

Sweden

See para. 10 above.

(ii) Port dues.

In several countries (Australia, Finland, France, Germany, Greece, Philippines, Portugal, Spain) the agent is liable. In Italy he must obtain sufficient funds from the owner, failing this he is liable.

Argentina

The ship agent is liable before the Customs in some special cases.

Australia

Most State legislation makes the agent as well as the owner liable for port and harbour dues.

Finland

The ship's agent is liable for fairway dues as stated above.

France

The agent is not personally liable even if he, quite often, advances the money.

Germany

Regulation on Harbour Costs (this Regulation is of mandatory nature).

Greece

Maritime agents may be held liable for the payment of fines imposed by administrative authorities for breach of law provisions or orders of Port Authorities.

Ireland

There are no rules in this respect.

Italy

See (iv) below.

Philippines

The ship agent is liable for port dues subject to reimbursement by the principal.

Portugal

The maritime agent is liable to the port authorities regarding taxes and other services provided to the ship (Art. 10, D.L. 148/91). The maritime agent acts on behalf of the shipowner, carrier or ship operator.

Spain

Only the maritime agent is responsible for the payment of port dues to the Port Authority (Art. 7.3 of the Law 27/1992 24th November, Ports Administration and Merchant Marine).

Sweden

See para. 10 above.

(iii) Crew wages.

The agent is not liable in Australia, Finland, France and Portugal. He instead is liable in the Philippines and Spain. He would be liable in Italy, unless he has procured an adequate guarantee from the owner and is liable in Greece when he acts for a foreign shipowner. No rules then exist in this respect in other countries, including Germany, Ireland, United Kingdom and United States.

Australia

The agent should not have a liability if crew have been retained by the agent on behalf of its principal. If, however, the agent has contracted as a principal it will have a liability to pay the wages and, pursuant to its contractual arrangements with its principal, would presumably have a right to be indemnified.

Finland

There is no liability for crew wages.

France

The agent is not liable for crew wages.

Germany

There are no rules in this respect.

Greece

The general rule is that the shipowner or the ship's operator is liable for

Maritime Agents

the payment of crew wages, under one exception established by Law 762/1978 concerning "Civil Liability of the Employer's Agent Concluding in Greece a Contract of Maritime Employment". In fact, Law 762 states (art. 1 § 1) that any person who enters into a contract of maritime employment as an agent of a shipowner domiciled abroad, is jointly and severally liable with the shipowner for the obligations arising out of this contract.

Ireland

There are no rules in this respect.

Italy

Pursuant to Article 4 of Law 4 April 1977, No. 135, the agent who employs seamen on board vessels of a nationality other than that of such seamen must certify to the maritime authority, under his personal responsibility, that the seamen have been covered by adequate social insurance and must prove that the owner has provided an adequate bank or insurance guarantee for the payment of the wages. Failing proper compliance with these provisions, the agent will be personally liable.

Philippines

The manning agent, which is any person, partnership or corporation duly licensed to recruit seafarers and which is distinct from the ship agent, is liable for crew wages.

Portugal

The maritime agent is not held responsible for the crew's salaries.

Spain

Pursuant to Article 246 Code of Commerce, whether the maritime agent is liable for the payment of the salary of the crew members if he has acted in his own name while entering into contracts of employment of crew members for the account of a foreign shipowner.

Sweden

See para. 10 above.

(iv) ***Contracts for supplies, repairs, etc.***

In most countries (Argentina, Australia, Finland, France, Germany, Greece, Ireland, Japan, Portugal) the agent is not liable. He instead is in the Philippines and Spain. He is also liable in Italy if he has not procured funds from the owner.

Argentina

There is no liability if the agent is acting in the name of his principal.

Australia

Provided the agent contracts as an agent and not as a principal it should not have liability to third parties where it has ordered supplies or repairs on behalf of its principal.

Finland

Liability to third parties for contracts for supplies, repairs, etc. is an important practical matter. This concerns primarily ship's agents. If the agent has made an order in his own name, then, according to general contract principles, he is liable for performance (payment). However, even when making an order in his own name (however, not explicitly), the agent may avoid liability if the supplier knew (and perhaps should have known) that the order for supplies was made on behalf of a named vessel. Such knowledge might have been formed, for example, due to previous business contacts between the agent and the supplier. If the agent makes an order explicitly on behalf of a named principal, he is not liable, but, in practice, any supplier in Finland would be reluctant to consent to such contractual arrangements, especially if the supplies concern a tramp vessel under time charter.

France

The agent is not normally liable, unless he took out the contract in his own name, and not in the name of the shipowner. Normal civil law rules then apply.

Germany

The agent is not liable.

Greece

There are no specific rules governing the liability of a maritime agent for contracts related to supplies, repairs, etc. of a ship. Consequently, the ship's agent liability shall be considered on the basis of the general statutory rules described under para. (c) above.

Ireland

No liability, unless contracted to do so.

Italy

As a general rule, if the port agent or the maritime agent have acted on behalf of a named principal, they are not personally liable for the fulfilment of the obligations arising out of contracts entered into by them in their capacity as agents. The fact that they require services in respect of a ship may not, in itself, suffice, because in such a case there is only an indication that the agent is acting for the account of a third party, but such third party is not named.

An exception to the general rule is made by Article 3 of law 135/1977. Pursuant to such provision, in fact, the port agent is required, prior to the sailing of a foreign flag vessel from an Italian port, to obtain the availability in the Italian territory of an amount sufficient to cover all sums due by the shipowner in connection with the call of the vessel at the Italian port where the agent performs his activity. This rule applies only with respect to the functions of the port agent and not to other functions, that may be performed either by the port agent or by the maritime agent: Court of Appeal of Ancona, 24th September 1992, *Consorzio Autotrasportatori Port Ancona v. A.M.A.*, 1993, Dir. Mar. 718.

If he fails to do so, pursuant to Article 5 he is jointly liable with his principal for the fulfilment of the obligations arising out of the contract made through him.

Japan

If the agent does not disclose the name of his principal, he will bear responsibility for these items as the case may be. Otherwise, there is no specific rule.

Philippines

This liability is borne by the ship agent (Articles 586, 587 and 587 Code of Commerce) who is entitled to reimbursement from the principal.

Portugal

These contracts are, in general, signed directly by the shipowner. The maritime agent normally intermediates or acts on behalf of shipowners (as an assistant).

Spain

See para. 11(b)(iii) above.

Sweden

See para. 10 above.

12. Whether any of the existing rules are of a mandatory nature.

In most countries (Belgium, China, Germany, Greece, Italy, Japan, Norway, Philippines, Portugal, Slovenia, Switzerland) the rules are of a mandatory nature. In others (Argentina, Australia, Finland, France, Sweden) they are not.

Argentina

There are no mandatory rules unless the liability can be engaged in front of the authorities by the agent's behaviour and for the representation in legal proceedings as it has been mentioned in point 1(c).

Australia

There are no rules of a mandatory nature.

Belgium

Some of the provisions are of a mandatory nature and cannot be departed from to the detriment of the agent.

China

The rules are of a mandatory nature.

Finland

The rules and principle are not of mandatory character.

France

None of applicable rules are obligatory.

Germany

§ 92 c) Commercial Code expressly provides that shipping agents are subject to the mandatory rules of the Commercial Code for commercial agents.

Greece

All provisions of the Greek law concerning the professional status of maritime agents, ship and chartering broker and customs agents are mandatory, as well as the provisions of P.D. 219/1991 (putting into force the EC Directive 86/653) and most of the provisions of Greek law concerning the rights of a maritime agent (including Law 762/1978). Consequently, any agreement deviating from these provisions is prohibited and therefore considered null and void.

Japan

Rules contained in the Maritime Transportation Law, the Customs Agency Business Law and the Freight Forwarding Business Law are mandatory. None of the rules contained in the Civil Code nor the Commercial Code are mandatory in nature.

Norway

Agents of the types described herein are only to a limited extent protected by statutory mandatory rules on agency. However, there is a mandatory provision in statutory contract law which gives the courts a right to censor unreasonable contracts. It may be added that the statutory rules on agency relate expressly only to "sales agents", but are applied by analogy to other types of agents insofar as practicable.

Philippines

The ship's agents registration requirements with either the Securities and Exchange Commission or the Department of Trade and Industry, and its accreditation with the Marine are mandatory in nature. Also, the agent's duty to render an account of all its transactions and to deliver to the principal whatever it may have received through the agency is not subject to stipulation by the parties. (Article 1891 CCP).

Portugal

The legislation respecting the activities of the maritime agents, forwarding agents and the custom agents is of a mandatory nature.

Slovenia

The law concerning shipping agents' activity and the transport by sea in general is under preparation and should be presented in Parliament during the second half of 1995. Therefore, it should be ready for implementation by the end of 1995/beginning of 1996.

The law concerning customs/forwarding agents exists and is mandatory in nature.

Maritime Agents

Sweden

See para. 11 above.

Switzerland

The above cited rules of Articles 418q and 418u clearly are of a mandatory nature in a purely national setting. However, it is sometimes said that the duty to pay an equitable indemnity in case of termination may be validly waived in an international contract by choosing a law which is favourable to such a consequence as well as a Swiss forum, even if the agent performs his principal duties in Switzerland or a foreign country where the local law would provide for such a compensation. This position has, however, never been tested in court so far as it would remain to be seen whether the agent could not successfully argue that the right to an indemnity cannot be validly waived in an international contract with a Swiss agent in such a way.

a. Port agents and maritime agents.***Canada***

There are no rules applicable, whether of a mandatory nature or not.

France

None of applicable rules are obligatory.

Italy

Both the rules of law 135/1977 and those of Art. 1750 Civil Code are mandatory. All the provisions of law 135/1977 are of public order and, therefore, are applicable irrespective of the law chosen by the parties. Art. 1750 Civil Code instead is not of public order.

The rules relating to the requirement of a license and to the registration of the port agent are of a mandatory nature.

Spain

The provisions of Contract of Agency Act are of a compulsory nature, applicable irrespective of the law chosen by the parties. Article 3 of the Act provides that the rules contained in it are cogent in nature unless they expressly provide otherwise.

Sweden

See 9 above.

b. Ship and chartering brokers.***France***

None of applicable rules are obligatory.

Ireland

There are no rules of mandatory nature.

Italy

The ship brokers and chartering brokers must, pursuant to Article 17 of Law 478/1968, comply with general rules of professional dignity and in case of breach may be subject to disciplinary proceedings and to sanctions, the most serious one being the deletion from the official register. They are required to enter into a book all contracts that have been made through them (Article 1760 CC) and the breach of this obligation is a crime punishable with a fine and with the suspension from the activity (Article 1764 CC).

The rule whereby the broker must inform his customer about all relevant circumstances of the transaction (Article 1759 CC) is probably mandatory.

c. Customs agents.**France**

None of applicable rules are obligatory.

Ireland

There are no rules of a mandatory nature.

Spain

All the rules above mentioned in respect of the customs agent relating to the requirement of a licence and to the registration or membership within the Official Associations, and general rules of professional dignity and disciplinary proceedings and sanctions in case of breach and suspension for his activities, are of a mandatory nature.

Sweden

See para. 10 above.

13. Whether the remuneration payable in respect of the functions listed in para. 4, or any of them, may be freely negotiated by the parties or tariffs are applicable and, if so, whether such tariffs are mandatory.

There are no tariffs and there is total freedom in Argentina, Belgium, Chile, France (except for the Courtiers Conducteurs et Interprètes de Navires), Ireland, Mexico, Norway, Portugal, Sweden, Switzerland, United Kingdom, United States and Venezuela.

There are tariffs, however, not binding on the parties, in Australia, Canada, Croatia, Denmark, Finland, France, Germany, Japan (except for Customs agents), Slovenia, Spain and Uruguay.

Only in few countries (China, Greece, Italy and Turkey) there exist compulsory tariffs.

Maritime Agents

Argentina

There is freedom to negotiate the fees and the funds that must be received to pay the duties of their principals.

Australia

They are freely negotiable but the following generally apply:

- In respect of the sale or purchase of ships, the fee is usually 1%
- In respect of the chartering of ships, the fee is usually 1.25%
- In respect of all other transactions referred to in para 4 (d) - (k) where port agents or other agents are involved, the Chamber of Shipping schedules apply. Such schedules can be varied but the majority of agents adhere to them where possible.

Belgium

The remuneration is freely negotiable between the contracting parties.

Canada

There are suggested tariffs by the Shipping Federation of Canada and Chamber of Shipping of British Columbia which are recommended to their members.

Such tariffs are not compulsory and the parties are free to negotiate the amount of their agent's remuneration.

Chile

The parties (Operator - Agent) are free to agree on the tariffs they deem proper.

China

Ships agents must apply the Uniform Rates for Dues and Charges as stipulated by the Ministry of Communications. No rebate nor rebate in other forms is permitted.

Croatia

There is a tariff setting out the minimum agency charges in Croatian ports. The agents have the duty to apply the tariff, but the relative provisions are not mandatory. Consequently, the parties can negotiate the amount of the agent's remuneration. The maritime agents in Croatia, through their association are asking to render such a provision compulsory by law.

Denmark

There are no compulsory tariffs and tariffs are, therefore, open to negotiation in individual cases. But, the Danish Maritime Agents Association published recommended tariffs on a yearly basis. The said tariffs, which are basically tied to the vessels' gross tonnages, are generally followed in practice.

Finland

Before 1st March 1993 it was possible for the Finnish Shipbrokers' Association to issue recommendations on shipbroker fees. In practice, the recommendations, which were issued once a year, covered ship's clearance

Part II - The Work of the CMI

and some few points on liner agency. Due to new Finnish competition legislation - the Competition Restriction Act 1992 - this has not been possible from that date onwards. Both the EC Treaty Article 85 and the EEA Agreement article 53 do not allow such recommendations.

The Finnish national act allows for application and granting of exemptions. So do the EC Treaty and the EEA Agreement. An application for exemption based on Finnish national legislation was made by the Finnish Shipbrokers' Association, but not granted by the Governmental Competition Office. An appeal for revision was made to the Competition Council which by decision of 24th August 1994 did not accept the appeal. One of the main motivations was that the association had not shown enough of reasons how the status of consumers would improve by granting an exemption, such an improvement being a precondition by law for granting an exemption. Value was not given to the association's reference to the fact that many EU member countries in practice allow publication of clearance tariffs and that this is necessary for the efficient international flow of chartering tramp vessels. Nor has the EU intervened in this practice. Also, the making of freight calculations becomes increasingly difficult without such recommendations. There is a global need on the market to preinform owners of fee levels in different ports. Owners have no time to negotiate individually of such things and after that issue an offer on freight on the market.

Finland being a member of the EEA and possibly soon of the EU makes the issue somewhat more complicated. The EEA Surveillance authority and the EU Commission are allowed, as said, to grant group and individual exemptions to the prohibition restriction arrangements.

FONASBA, the Federation of National Associations of Shipbrokers and Agents, negotiates about the possibility of granting group exemptions to shipbrokers and agents within the European integration process. Should these plans end in success, i.e. the granting of group exemptions covering also Finnish shipbrokers, the decision by the Finnish competition authorities would have no legal relevance, as the recommendations on clearance fees are meant to cover foreign ships visiting Finnish ports. Thus the matter becomes under the above-mentioned "European" authorities, the decision of which prevail over those made by national authorities. This interpretation is based on the supremacy doctrine starting already in 1964 in *Costa v. ENEL* (1964) Eur.Comm.Rep. 585. For competition law and EU level group exemption supremacy over national levels reference can, for example, be made to *Wilhelm v. Bundeskartellamt* (1969) Eur. Comm. Rep. 1 and *L'Oreal v. De Nieuwe AMCK* (1980) Eur. Comm. Rep. 3775.

Even if a group exemption would be allowed, the intention of the Finnish Shipbrokers' Association is that the clearance fees would not be of mandatory character. They are, however, necessarily due to long established practice of trade.

France

In principle, the remuneration for shipping agents is freely negotiable; in France, the only official rate is with respect to the *Courtiers Conducteurs et*

Interprètes de Navires, and specifically for their activity. This rate is published by the Government.

Each year, for shipping agents, FACAM publishes a rate which is only used as a reference guide. It is the rate which is used for negotiations between the shipping agent and his principal.

Germany

As regards the individual ship clearance, business maritime agents make use of common tariffs which have the quality of non-binding price recommendations. As regards long term agency contracts, the remuneration is bargained individually.

Greece

As a rule the remuneration is freely negotiated. Occasionally, however, there are tariffs fixed, which are mostly mandatory. In particular there are tariffs applicable in the main ports of Greece for services performed by maritime agents, with the exception of regular liner services, where fees and remuneration are freely negotiated.

Tariffs are mostly mandatory. However, from unofficial information, it seems that they are not always observed, due to the existing keen competition among various agents.

Ireland

The only tariffs which would be applicable would be taxes such as Value Added Tax which would be charged by the agents on the services rendered by them. The usual commercial levies or expenses would also be payable in relation to any contract concluded by the agent.

In relation to the remuneration of an agent this would be a matter for negotiation between the agent and the principal.

In relation to the Irish Ship Agents Association, there is a "tariff"/membership fee. It can be negotiated. Tariffs are not mandatory.

Italy

The remuneration payable to the port agent and the maritime agent in respect of the services listed in the tariff approved by the Ministry of Transport and Shipping (see paragraph 11(b) above) must be within the brackets indicated in the tariff. The remuneration for other services performed by the agent may be freely negotiated.

The commission payable to the broker may be freely negotiated (see paragraph 11(b) above).

Japan

The tariffs applied by the customs agent must be notified to the customers. If the Minister of Finance makes regulations regarding the fee, a customs agent is not allowed to apply a different fee.

The tariffs applied by forwarding agents must be filed with the Ministry of Transport.

Otherwise, they may be negotiated freely.

Part II - The Work of the CMI

Mexico

There is no tariff applicable for the services of maritime agents and there is not compulsory tariffs. The parties are free to negotiate the remuneration for the services of the maritime agents.

Morocco

There is a tariff for the services of port agents.

Netherlands

The earlier mentioned Dutch associations of maritime agents recommend their members (minimum) tariffs for certain services. These tariffs are not compulsory and therefore are open to negotiation in individual cases. As far as the remuneration for liner agencies is concerned, the associations of maritime agents do not give any tariff recommendation.

Norway

The remuneration is freely negotiated. Theoretically and in extreme cases, unreasonable demands may be censored.

Philippines

See para. 11(b)(i) above.

Portugal

Maritime agents. The parties may negotiate freely the remunerations involved, although the Ministry of the Sea (Ministério do Mar) may impose maximum tariffs to be collected by the maritime agents in accordance with proposals made by their associations and/or port authority's opinion on the subject. Port and Customs tariffs are fixed by the port authority and the Customs Directorate General, respectively.

Forwarding agents. Depending upon the terms of the contract freely negotiated between the parties.

Customs agents. There is a list with the costs of services provided fixed by customs agents official chamber.

Shipbrokers. Brokerage fees are freely negotiated between the parties.

Slovenia

Remuneration is set out in the tariff issued by the Association of Shipping Agents but this tariff is not mandatory except for Association members. Consequently, rates are negotiated, but using the Association tariff as a basis.

Spain

Maritime agents. The commission may be freely negotiated, and whether there is no agreement as to the commission, it will be determined by the trade (art. 277 of Commercial Code and art. 11.1 of the Contract of Agency Act).

The commission or remuneration determined by the trade, will be the tariff approved by the Shipowners Associations and/or Maritime Agents Associations.

Ship and chartering brokers. The broker gets a commission which is a percentage of the amount of the contract. For example, the commission on the

Maritime Agents

freight due under a charter party is freely negotiated.

Customs agents. The remuneration payable to Customs agents is based on tariffs approved by the National Association of Customs Agents and they are maximum tariffs. Therefore, within the maximum limits they may be freely negotiated.

Sweden

The remuneration is freely negotiated by the parties.

Switzerland

The remuneration payable to the agent in respect of its services may be freely negotiated between the parties, and there are no official tariffs of mandatory nature which would be applicable in this respect.

Turkey

There is a tariff for the remuneration of maritime agents, prepared by the Maritime Chamber of Commerce's Agents Professional Committee and approved by the Ministry of Commerce. The last tariff has been approved on 1st October 1987 and published in the Official Gazette dated 27th November 1987 No. 19647. This tariff is theoretically compulsory.

According to the general provisions of the Turkish Code of Commerce concerning "Agents" (see Art. 132) Maritime Agents have a lien on moneys and/or other assets of the owners or the carrier who has appointed them with this duty.

United Kingdom

There is no generally applicable tariff applying to the services of shipping agents. Our research with the Institute of Chartered Shipbrokers revealed that they tried to prepare a tariff some years ago for shipping agents who were members of their Association. However, in recent years the Office of Fair Trading prevented the publication of a scale of charges on the basis that this would be price fixing. Currently, the Institute has provided a guidance document, but it is not compulsory that the charges set out therein are utilized.

United States

There are no United States tariffs regulating the level of a maritime agent's remuneration.

In the early 1980's, the Association of Ship Brokers and Agents published the rates generally prevailing for agency services in various United States ports. The stated purpose was to provide carriers with information regarding the expenses that they might expect in such ports. However, these efforts were attacked by the United States Justice Department as illegal attempts to fix prices, and thus were discontinued. See e.g., *United States v. Association of Ship Brokers and Agents (U.S.A.) Inc.* 1985 - 1 Trade Cas. (CCH) §66,346 (D.Md. 1984); *United States v. Association of Ship Brokers and Agents (U.S.A.), Inc.* 1981-2 Trade Cas. §64,372 (S.D.N.Y. 1981).

Uruguay

Even though there is a tariff applicable to agents, with minimum rates to

be charged, as endorsed by the Association of Maritime Agents, this tariff is not compulsory.

Venezuela

There is no fixed tariff. The parties involved are free to agree on the prices for services rendered.

14. Whether service of proceedings against the principal may be effected to the agent.

Service of proceedings to the agent is permitted generally or under some conditions in Argentina, Australia, Canada, China, France, Greece, Ireland, Italy, Philippines, Portugal, Slovenia and Spain. In China and in Italy the agent may be sued in such a capacity, although the judgment is then effective against the principal.

Service of proceedings to the agent is instead not permitted, unless expressly authorized, in Belgium, Finland, Germany, Japan, Norway, Sweden, Switzerland and the United Kingdom.

Argentina

The provisions of the Navigation Act (Art. 193) authorize the service of proceedings against their principals, owner or charterer.

Australia

In certain circumstances where there is a foreign principal, service can be effected on the agent. Where the principal is within the jurisdiction the answer would be no.

Belgium

The answer to the question whether service of proceedings against the principal may be effected to the ship agent follows from the status of an agent. The agent needs an explicit mandate in order to be allowed to represent and to bind his principal legally. For the valid service of summons it is necessary that the principal has elected domicile at the address of his agent.

Canada

Service of proceedings may be effected to the agent.

China

The agent may sue and be sued as representative of his principal in relation to all matters in respect of which he has the power to act on his own.

Finland

Service of proceedings against the principal is not possible through his agent.

Maritime Agents

France

French law allows that, as a principal rule, the vessel's captain can accept service of proceedings against the shipowner (Article 10 of the decree of 19th June 1969). However, it is also permitted that all proceedings that the captain is authorised to receive can be notified to the vessel's agent (Article 18 of the decree of 19th June 1969).

As a result, the shipping agent is in a position to receive service of all proceedings against the shipowner. It is then for the shipping agent to send them to the shipowner.

Germany

Service of proceedings cannot be effected to the agent. This would be against the German law system.

Greece

As pointed out in para. 3 and in para. 11, confusion prevails in respect of the legal nature of the functions of a maritime agent, due to the lack of specific regulations. There is even more confusion as regards the agent's authority to receive service of proceedings addressed to his principal.

It may be observed in advance that the confusion does not concern the seafarer's contract, concluded by the maritime agent in the name of the shipowner, resident abroad [*supra* par. 8 under c (iii)]. Art. 1 § 1 of Law 762/1978 is quite clear; it states that the agent, concluding such a contract, is authorized to accept service of proceedings addressed to the shipowner in respect of matters related to this contract. Even more, the same provision states that the maritime agent is jointly and severally liable with the shipowner for the obligations arising out of such contracts, concluded in the above mentioned way.

Greek law does not provide for a general power of representation of the maritime agent to receive service of proceedings addressed to the principal, except in the aforementioned case. However, Greek courts have often decided that the maritime agent, as a general agent of the shipowner, may represent him in litigations arising out of acts performed by him; also, that he is entitled to receive writs and service of proceedings addressed to the shipowner.

Such a broad attitude, however, seems to contravene the provision of art. 142 of the Greek Code of Civil Procedure, according to which a maritime agent shall be entitled to receive service of proceedings only if he is authorized through a special power of attorney. To support the above broad attitude, reliance is made on art. 2 § 2 of the Code of Private Maritime Law, which states that the registration of a ship has to include "the appointment of a person domiciled in Greece, who is authorized to receive service of proceedings". The person appointed may be the ship's agent. But if this is not so, the problem remains unresolved, and may lead to conflicting decisions.

Ireland

Service of proceedings may be effected to the agent, but no liability is incurred by the agent.

Italy

Article 288 Navigation Code provides that the port agent may sue and be sued as representative of his principal in relation to all matters in respect of which he has the power to act on his behalf.

Japan

An agent does not have the power to receive service of proceedings against the principal unless a principal specifically agrees to give the agent such power.

Norway

In principle, service of proceedings against the principal may not be effected on the agent.

Philippines

Pursuant to Article 595 of the Code of Commerce, service of proceedings against the principal may be effected to the agent.

Portugal

The maritime agent is held responsible by the port authority for the payment of the tariffs, services and other additional charges due by the ship (Art. 10, D.L. n. 148/91), although he acts on behalf of either the shipowner or the carrier.

Slovenia

Notwithstanding the fact that the agent is acting "on behalf" of the principal, service of proceedings may be effected to him. Customs of the port and practice in the past show that agents are sued instead of the principal.

Spain

Maritime and ship and chartering broker. Several court decisions (24th June 1904, 3rd May 1924, 8th October 1966, 4th February 1986 and 18th October 1988) have held that the agent is responsible for all the acts of the principal. Court decisions of 24th June 1904 and 3rd May 1924 declared the agent responsible when he delivered the goods to another person who was not the consignee. By a decision of 8th October 1966, the agent was held bound to pay the damages suffered by the goods while they were awaiting to be shipped in the port of loading.

By court decisions of 4th February 1986 and 18th October 1988 the agent was considered responsible for damages to the goods before they were discharged.

Customs agents. They are only subject to disciplinary proceedings and sanctions in case of breach of their duties, and suspension from their activities.

Criminal proceedings may be commenced against them in case of fraud or smuggling.

Sweden

The only situation where service may be effected on the agent is when the principal has authorized the agent to receive service of proceedings on his behalf.

Switzerland

According to Swiss law, service of process against the principal must not be effected to the agent, unless the agent has been given a special power of attorney to this effect. In a case decided in 1964, where the execution of an Italian judgment rendered against an Italian port agent ("raccomandataro marittimo") was at issue, the highest court of Switzerland decided, however, that such a judgment could also be enforced against the principal, i.e. a Swiss charterer who owed certain monies to the shipper on account of reimbursement of prepaid freight. The Federal Tribunal came to this result because, before the Italian court, the charterer was deemed to be represented in court by his agent in virtue of the special provision of Article 288 of the Italian Code of Navigation, and it could therefore, hold that this procedure was not in conflict with the concept of "ordre public" as reserved by applicable Italo-Swiss treaty on recognition and enforcements of foreign decisions (see Federal Tribunal 13 May 1964, *Consortium de Transports Commerciaux S.A. v. Alleanza Industriale Trasporti S.A.*, ATF 90 I II seq.).

United Kingdom

Service of proceedings may be made against the agent only if he is so nominated by the principal to accept service. Generally only firms of solicitors are nominated to accept service.

ANNEX 1

COUNCIL DIRECTIVE
of 18 December 1986
on the co-ordination of the laws of the Member States
relating to self-employed commercial agents
(86/653/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community, and, in particular, Articles 57(2) and 100 thereof,
Having regard to the proposal from the Commission ¹,
Having regard to the opinion of the European Parliament ²,
Having regard to the opinion of the Economic and Social Committee ³,
Whereas the restrictions on the freedom of establishment and the freedom to provide services in respect of activities of intermediaries in commerce, industry and small craft industries were abolished by Directive 64/224/EEC ⁴;
Whereas the differences in national laws concerning commercial representation substantially affect the conditions of competition and the carrying-on of that activity within the Community and are detrimental both to the protection available to commercial agents *vis-à-vis* their principals and to the security of commercial transactions; whereas moreover those differences are such as to inhibit substantially the conclusion and operation of commercial representation contracts where principal and commercial agent are established in different Member States;
Whereas trade in goods between Member States should be carried on under conditions which are similar to those of a single market, and this necessitates approximation of the legal systems of the Member States to the extent required for the proper functioning of the common market; whereas in this regard the rules concerning conflict of laws do not, in the matter of commercial representation, remove the inconsistencies referred to above, nor would they even if they were made uniform, and accordingly the proposed harmonization is necessary notwithstanding the existence of those rules;
Whereas in this regard the legal relationship between commercial agent and principal must be given priority;
Whereas it is appropriate to be guided by the principles of Article 117 of the Treaty and to maintain improvements already made, when harmonizing the laws of the Member States relating to commercial agents;
Whereas additional transitional periods should be allowed for certain Member States which have to make a particular effort to adapt their regulations, especially those concerning indemnity for termination of contract between the principal and the common agent, to the requirements of this Directive,
HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope

Article 1

1. The harmonization measures prescribed by this Directive shall apply to the laws,

¹ OJ No. C. 13. 18.1.1977, p. 2; OJ No. C 56. 2.3.1979, p. 5.

² OJ No. C. 239. 9.10.1978, p. 17.

³ OJ No. C. 59. 8.3.1978, p. 31.

⁴ OJ No. 56. 4.4.1964, p. 869/64.

Maritime Agents

regulations and administrative provisions of the Member States governing the relations between commercial agents and their principals.

2. For the purposes of this Directive, "commercial agent" shall mean a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person, hereinafter called the "principal", or to negotiate and conclude such transactions on behalf of and in the name of the principal.

3. A commercial agent shall be understood within the meaning of this Directive as not including in particular:

- a person who, in his capacity as an officer, is empowered to enter into commitments binding on a company or association,
- a partner who is lawfully authorized to enter into commitments binding on his partners,
- a receiver, a receiver and manager, a liquidator or a trustee in bankruptcy.

Article 2

1. This Directive shall not apply to:

- commercial agents whose activities are unpaid,
- commercial agents when they operate on commodity exchanges or in the commodity market, or
- the body known as the Crown Agents for Overseas Governments and Administrations, as set up under the Crown Agents Act 1979 in the United Kingdom, or its subsidiaries.

2. Each of the Member States shall have the right to provide that the Directive shall not apply to those persons whose activities as commercial agents are considered secondary by the law of that Member State.

*CHAPTER II**Rights and Obligations**Article 3*

1. In performing his activities a commercial agent must look after his principal's interests and act dutifully and in good faith.

2. In particular, a commercial agent must:

- (a) make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;
- (b) communicate to his principal all the necessary information available to him;
- (c) comply with reasonable instructions given by his principal.

Article 4

1. In his relations with his commercial agent a principal must act dutifully and in good faith.

2. A principal must in particular:

- (a) provide his commercial agent with the necessary documentation relating to the goods concerned;
- (b) obtain for his commercial agent the information necessary for the performance of the agency contract, and in particular notify the commercial agent within a reasonable period once he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected.

3. A principal must, in addition, inform the commercial agent within a reasonable period of his acceptance, refusal, and of any non-execution of a commercial transaction which the commercial agent has procured for the principal.

Article 5

The parties may not derogate from the provisions of Articles 3 and 4.

Part II - The Work of the CMI

CHAPTER III
Remuneration*Article 6*

1. In the absence of any agreement on this matter between the parties, and without prejudice to the application of the compulsory provisions of the Member States concerning the level of remuneration, a commercial agent shall be entitled to the remuneration that commercial agents appointed for the goods forming the subject of his agency contract are customarily allowed in the place where he carried on his activities. If there is no such customary practice, a commercial agent shall be entitled to reasonable remuneration taking into account all the aspects of the transaction.
2. Any part of the remuneration which varies with the number or value of business transactions shall be deemed to be commission within the meaning of this Directive.
3. Articles 7 to 12 shall not apply if the commercial agent is not remunerated wholly or in part by commission.

Article 7

1. A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract:
 - (a) where the transaction has been concluded as a result of his action; or
 - (b) where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.
2. A commercial agent shall also be entitled to commission on transactions concluded during the period covered by the agency contract:
 - either where he is entrusted with a specific geographical area or group of customers,
 - or where he has an exclusive right to a specific geographical area or group of customers,

and where the transaction has been entered into with a customer belonging to that area or group.

Member States shall include in their legislation one of the possibilities referred to in the above two indentations.

Article 8

A commercial agent shall be entitled to commission on commercial transactions concluded after the agency contract has terminated:

- (a) if the transaction is mainly attributable to the commercial agent's efforts during the period covered by the agency contract and if the transaction was entered into within a reasonable period after that contract terminated; or
- (b) if, in accordance with the conditions mentioned in Article 7 the order of the third party reached the principal or the commercial agent before the agency contract terminated.

Article 9

A commercial agent shall not be entitled to the commission referred to in Article 7, if that commission is payable, pursuant to Article 8, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents.

Article 10

1. The commission shall become due as soon as and to the extent that one of the following circumstances obtains:
 - (a) the principal has executed the transaction; or
 - (b) the principal should, according to his agreement with the third party, have executed the transaction; or
 - (c) the third party has executed the transaction.
2. The commission shall become due at the latest when the third party has executed

Maritime Agents

his part of the transaction or should have done so if the principal had executed his part of the transaction, as he should have.

3. The commission shall be paid not later than on the last day of the month following the quarter in which it became due.

4. Agreements to derogate from paragraphs 2 and 3 to the detriment of the commercial agent shall not be permitted.

Article 11

1. The right to commission can be extinguished only if and to the extent that:

- it is established that the contract between the third party and the principal will not be executed, and
- that fault is due to a reason for which the principal is not to blame.

2. Any commission which the commercial agent has already received shall be refunded if the right to it is extinguished.

3. Agreements to derogate from paragraph 1 to the detriment of the commercial agent shall not be permitted.

Article 12

1. The principal shall supply his commercial agent with a statement of the commission due, not later than the last day of the month following the quarter in which the commission has become due. This statement shall set out the main components used in calculating the amount of commission.

2. A commercial agent shall be entitled to demand that he be provided with all the information, and in particular an extract from the books, which is available to his principal and which he needs in order to check the amount of the commission due to him.

3. Agreements to derogate from paragraphs 1 and 2 to the detriment of the commercial agent shall not be permitted.

4. This Directive shall not conflict with the internal provisions of Member States which recognize the right of a commercial agent to inspect a principal's books.

CHAPTER IV

Conclusion and termination of the agency contract

Article 13

1. Each party shall be entitled to receive from the other on request a signed written document setting out the terms of the agency contract including any terms subsequently agreed. Waiver of this right shall not be permitted.

2. Notwithstanding paragraph 1 a Member State may provide that an agency contract shall not be valid unless evidenced in writing.

Article 14

An agency contract for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency contract for an indefinite period.

Article 15

1. Where an agency contract is concluded for an indefinite period either party may terminate it by notice.

2. The period of notice shall be one month for the first year of the contract, two months for the second year commenced, and three months for the third year commenced and subsequent years. The parties may not agree on shorter periods of notice.

3. Member States may fix the period of notice at four months for the fourth year of the contract, five months for the fifth year and six months for the sixth and subsequent years. They may decide that the parties may not agree to shorter periods.

4. If the parties agree on longer periods than those laid down in paragraphs 2 and 3,

Part II - The Work of the CMI

the period of notice to be observed by the principal must not be shorter than that to be observed by the commercial agent.

5. Unless otherwise agreed by the parties, the end of the period of notice must coincide with the end of a calendar month.

6. The provisions of this Article shall apply to an agency contract for a fixed period where it is converted under Article 14 into an agency contract for an indefinite period, subject to the proviso that the earlier fixed period must be taken into account in the calculation of the period of notice.

Article 16

Nothing in this Directive shall affect the application of the law of the Member States where the latter provides for the immediate termination of the agency contract:

- (a) because of the failure of one party to carry out all or part of his obligations;
- (b) where exceptional circumstances arise.

Article 17

1. Member States shall take the measures necessary to ensure that the commercial agent is, after termination of the agency contract, indemnified in accordance with paragraph 2 or compensated for damage in accordance with paragraph 3.

2.(a) The commercial agent shall be entitled to an indemnity if and to the extent that:

- he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers, and
- the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers. Member States may provide for such circumstances also to include the application or otherwise of a restraint of trade clause, within the meaning of Article 20;

(b) The amount of the indemnity may not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question;

(c) The granting of such an indemnity shall not prevent the commercial agent from seeking damages.

3. The commercial agent shall be entitled to compensation for the damage he suffers as a result of the termination of his relations with the principal.

Such damage shall be deemed to occur particularly when the termination takes place in circumstances:

- depriving the commercial agent of the commission which proper performance of the agency contract would have procured him whilst providing the principal with substantial benefits linked to the commercial agent's activities,
- and/or which have not enabled the commercial agent to amortize the costs and expenses that he had incurred for the performance of the agency contract on the principal's advice.

4. Entitlement to the indemnity as provided for in paragraph 2 or to compensation for damage as provided for under paragraph 3, shall also arise where the agency contract is terminated as a result of the commercial agent's death.

5. The commercial agent shall lose his entitlement to the indemnity in the instances provided for in paragraph 2 or to compensation for damage in the instances provided for in paragraph 3, if within one year following termination of the contract he has not notified the principal that he intends pursuing his entitlement.

6. The Commission shall submit to the Council, within eight years following the date

Maritime Agents

of notification of this Directive, a report on the implementation of this Article, and shall, if necessary, submit to it proposals for amendments.

Article 18

The indemnity or compensation referred to in Article 17 shall not be payable:

- (a) where the principal has terminated the agency contract because of default attributable to the commercial agent which would justify immediate termination of the agency contract under national law;
- (b) where the commercial agent has terminated the agency contract, unless such termination is justified by circumstances attributable to the principal or on grounds of age, infirmity or illness of the commercial agent in consequence of which he cannot reasonably be required to continue his activities;
- (c) where, with the agreement of the principal, the commercial agent assigns his rights and duties under the agency contract to another person.

Article 19

The parties may not derogate from Articles 17 and 18 to the detriment of the commercial agent before the agency contract expires.

Article 20

1. For the purposes of this Directive, an agreement restricting the business activities of a commercial agent following termination of the agency contract is hereinafter referred to as a restraint of trade clause.

2. A restraint of trade clause shall be valid only if and to the extent that:

- (a) it is concluded in writing; and
- (b) it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by his agency under the contract.

3. A restraint of trade clause shall be valid for not more than two years after termination of the agency contract.

4. This Article shall not affect provisions of national law which impose other restrictions on the validity or enforceability of restraint of trade clauses or which enable the courts to reduce the obligations on the parties resulting from such an agreement.

*CHAPTER V**General and final provisions**Article 21*

Nothing in this Directive shall require a Member State to provide for the disclosure of information whether such disclosure would be contrary to public policy.

Article 22

1. Member States shall bring into force the provisions necessary to comply with this Directive before 1st January 1990. They shall forthwith inform the Commission thereof. Such provisions shall apply at least to contracts concluded after their entry into force. They shall apply to contracts in operation by 1st January 1994 at the latest.

2. As from the notification of this Directive, Member States shall communicate to the Commission the main laws, regulations and administrative provisions which they adopt in the field governed by this Directive.

3. However, with regard to Ireland and the United Kingdom, 1st January 1990 referred to in paragraph 1 shall be replaced by 1st January 1994.

With regard to Italy, 1st January 1990 shall be replaced by 1st January 1993 in the case of the obligations deriving from Article 17.

Article 23

This Directive is addressed to the Member States.

Done at Brussels, 18th December 1986.

For the Council
The President M. JOPLING

ANNEX 2

General

UNCTAD/ST/SHIP/13

7 September 1988

Original: English

**UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
UNCTAD MINIMUM STANDARDS
FOR SHIPPING AGENTS****Introduction**

The following Minimum Standards were prepared by the UNCTAD Secretariat in close consultation with the organizations involved in shipping agency matters, in response to a request from the UNCTAD *Ad hoc* Intergovernmental Group to Consider Means of Combating all Aspects of Maritime Fraud, including Piracy. The Committee on Shipping at its thirteenth session in March 1988, having endorsed these Minimum Standards, recommended their use as appropriate. They are non-mandatory in nature and are to serve as guidelines for national authorities and professional associations in establishing their own standards.

Article 1

The objectives of these Minimum Standards are:

- (a) To uphold a high standard of business ethics and professional conduct among shipping agents;
- (b) To promote a high level of professional education and experience, essential to provide efficient services;
- (c) To encourage operation of financially sound and stable shipping agents;
- (d) To contribute to combating maritime fraud by ensuring improved services by better qualified shipping agents;
- (e) To provide guidelines for national authorities/professional associations in establishing and maintaining a sound shipping agency system.

Article 2

For the purpose of these Minimum Standards:

“*Shipping agent*” means any person (natural or legal) engaged on behalf of the owner, charterer or operator of a ship, or of the owner of cargo, in providing shipping services including:

- (i) Negotiating and accomplishing the sale or purchase of a ship;
- (ii) Negotiating and supervising the charter of a ship;
- (iii) Collection of freight and/or charter hire where appropriate and all related financial matters;
- (iv) Arrangements for Customs and cargo documentation and forwarding of cargo;
- (v) Arrangements for procuring, processing the documentation and performing all activities required related to dispatch of cargo;
- (vi) Organizing arrival or departure arrangements for the ship;
- (vii) Arranging for the supply of services to a ship while in port.

“*National authority*” means the body constituted under national law to implement the legislation governing the licensing/registration of shipping agents.

“*Professional association*” means an organization constituted for the purposes of:

- (i) Providing a central organization for those engaged in the profession of shipping agents;

Maritime Agents

(ii) Establishing and upholding standards of conduct and practice for the profession;

(iii) Exercising supervision over the members and securing for them such professional standards as may assist them in the discharge of their duties.

“*Professional examination*” means an examination carried out on subjects specifically related to the profession in order to ensure adequate knowledge and expertise.

Article 3

Professional qualifications

To be considered professionally qualified, the shipping agent must:

1. (a) Have obtained the necessary experience in the profession by working for at least three years in a responsible capacity with a qualified shipping agent;
- (b) Be of good standing and be able to demonstrate his good reputation and competence. For example by positive vetting and signified approval of at least two agents of good repute who are also in his business and his geographical area of activity; and
- (c) Have passed such professional examination(s) as required by the relevant national authorities/professional associations. The scope and details of such examination(s) shall be determined by the said authorities/professional associations;
2. In the case of a corporate entity, employ such persons professionally qualified as above to ensure the proper performance of the entity's functions as an agent.

Article 4

Financial qualifications

To be considered financially sound a corporate entity and where and relevant the shipping agent individually must:

- (i) Have financial resources adequate to its business evidenced by references from banks, financial institutes, auditors and reputable credit reference companies, to the satisfaction of the national authorities/professional associations; and
- (ii) Have adequate liability insurance through an internationally recognized insurance company or mutual club to cover all professional liabilities.

Measures must be taken to ensure that the above financial standards continue to be met. This could be achieved through annual scrutiny of shipping agents by the national authorities/professional associations.

Article 5

Code of professional conduct

The shipping agent shall:

- (i) Discharge his duties to his principal(s) with honesty, integrity and impartiality;
- (ii) Apply a standard of competence in order to perform in a conscientious, diligent and efficient manner all services undertaken as shipping agent;
- (iii) Observe all national laws and other regulations relevant to the duties he undertakes;
- (iv) Exercise due diligence to guard against fraudulent practices;
- (v) Exercise due care when handling monies on behalf of his principal(s).

Article 6

Enforcement

National authorities/professional associations, as the case may be, should ensure that these rules are complied with. In proved cases of non-compliance they shall determine the appropriate disciplinary measures applicable. These may include:

- (i) Warnings;

Part II - The Work of the CMI

- (ii) A requirement for undertakings as to the shipping agent's future conduct;
- (iii) Temporary suspension of membership from the relevant professional association;
- (iv) Temporary suspension of authorization to operate as shipping agent, if/where granted by the relevant national authority;
- (v) Expulsion of membership from the relevant professional association;
- (vi) Cancellation of authorization to operate as shipping agent, if/where granted by the relevant national authority.

*Article 7**Compliance*

Shipping agents already operating who do not meet the foregoing standards should be given reasonable time to conform with the requirements.

ANNEX 3

Discretionary recommendations relating to

**GENERAL BUSINESS CONDITIONS
FOR SHIP BROKERS AND SHIPPING AGENTS
IN THE FEDERAL REPUBLIC OF GERMANY**

Approved By: Bundeskartellamt

§ 1 Scope of application

- (1) The General Business Conditions specified below shall apply to all member companies of the following associations(*) belonging to the Zentralverband Deutscher Schiffsmakler e.V.⁵ and engaged in ship freighting and clearance, shipping agency operations and the purchase and sale of vessels, including intermediary services for the procurement of contracts in connection with bunkering, towage, transshipment of cargo or any related services (hereinafter referred to as Ship Brokers).
- (*) Vereinigung Hamburger Schiffsmakler und Schiffsagenten e. V.
 Nord-Ostsee Küstenschiffsmakler und Schiffsagenten e. V.
 Schiffsmakler-Vereinigung für Küsten- und Seeschiffsbefrachter e. V.
 Vereinigung Lübecker Schiffsmakler und Schiffsagenten e. V. zu Lübeck
 Schiffsmakler-Vereinigung Kiel e. V.
 Interessengemeinschaft der Schiffsmakler Flensburg/Schlei e. V.
 Vereinigung Wilhelmshavener Schiffsmakler und Schiffsagenten e. V.
 Schiffsmakler-Verband "EMS" e. V.
 Schiffsmakler-Verband Rhein-Ruhr e. V.
 Vereinigung Binnenlandischer See-Reedereiagenten e. V.
 Schiffsmaklerverband Mecklenburg-Vorpommern e. V.

⁵ German Ship Brokers Association

Maritime Agents

- (2) These General Business Conditions shall apply in respect of all future business relations, irrespective of whether the Ship Broker is or has been commissioned as such on a permanent basis (in which case 84 HGB⁶ applies) or only occasionally.

§ 2 Nature of activities

- (1) The Ship Broker will at all times act on behalf and for account of another party and undertakes to perform this activity with the care of a prudent businessman⁷ and duly exercise such care in selecting the persons to assist him in fulfilling his obligations.
- (2) The Ship Broker shall be authorised and empowered to take all measures he deems necessary in the execution of an order; in particular, he shall be entitled to conclude agreements with third parties subject to the usual terms and conditions.
- (3) The Ship Broker is exempted from the restriction of 181 BGB⁸.
- (4) All offers submitted by the Ship Broker shall remain without engagement until an order is placed unless anything to the contrary was expressly agreed in writing.
- (5) Should the Ship Broker be ordered by his principal to execute pre-carriage or on-carriage work on ocean transport assignments or any related ancillary activities, irrespective of whether such ancillary activities are based on freight agreements on the part of the principal as stipulated in Bills of Lading, Combined Bills of Lading or Charter Parties, the Ship Broker acts on behalf and for account of his principal at all times.
- (6) If the Ship Broker conducts the activities of a forwarding agent, his liability as such shall be subject to ADSp⁹.
- (7) The Ship Broker must be notified if the goods constituting the subject-matter of the agreement require special treatment and care in terms of loading, storage, receipt, delivery and transportation or may be subject to certain approval and/or notification requirements. This applies in particular to dangerous goods in accordance with the IMDG Code.
- (8) The Ship Broker shall not be bound on behalf of his principal to issue guarantees to third parties, provide collateral security or render any payment for which he has no cover or for which he deems the collateral security available to him to be inadequate.

§ 3 Liability

- (1) The Ship Broker shall be liable to his principal for damage or loss only if caused through gross negligence or wrongful intent. This also applies to persons who assist him.
- (2) The risk of incomplete, faulty and/or delayed transmission of messages, particularly when employing the postal services, radio, telephone, telex, facsimile or data transmission or telegraphic communications, shall be borne by the principal.
- (3) The Ship Broker shall not be liable for any losses occasioned by exchange rate fluctuations.
- (4) The Ship Broker shall not be liable for any conventional penalties or fines and the like that may be imposed on the principal.
- (5) In the event that the Ship Broker is held liable, the extent of such liability shall be limited to the sum of DM 50,000.00 for each particular case of loss or damage. This limited liability shall not apply if the damage is attributable to malicious

⁶ German Commercial Code

⁷ As defined by § 347 of the Commercial Code

⁸ German Civil Code

⁹ General Business Conditions for German Forwarding Agents

Part II - The Work of the CMI

intent or gross negligence on the part of the Ship Broker or the latter's managerial staff or if the damage is the typical result of an intentional or grossly negligent infringement of a primary contractual obligation by the Ship Broker's authorised employees. The onus of proof in this respect shall rest on the principal.

§ 4 Remuneration/Accounts receivable

- (1) In return for his activities, the Ship Broker shall be remunerated to an extent freely negotiable unless such remuneration is subject to a scale established by collective bargaining or to statutory regulations. Such remuneration shall be payable immediately after invoicing.
- (2) The Ship Broker shall be entitled to a commission of at least 2.5% for all guarantees he may be required to assume and/or out-of-pocket expenses he may incur, regardless of the claim for reimbursement he may already have in respect of all expenses such as interest, bank charges and the like.
- (3) Foreign-currency-denominated claims by the Ship Broker or invoices issued by him in foreign currency shall entitle him, at his own discretion, either to require payment in that particular foreign currency or in DM at the current exchange rate - again, at the Ship Broker's discretion - either on the invoice date or on the date of payment.
- (4) The Ship Broker shall be entitled to pay any freight invoices denominated in foreign currency or any other claims or receivables he may collect on behalf of his principal in DM at the rate prevailing on the date of such payment.
- (5) Any of the Ship Broker's claims outstanding not paid by the principal within 30 days of the invoice date shall bear 1% interest on arrears per month as of the invoice date.
- (6) The Ship Broker shall be entitled to apply the funds collected by him on his principal's behalf (in particular, freight collections) in satisfaction of any claims he may have on the principal.
- (7) The Ship Broker may require payment in advance.
- (8) Any expenses arising in connection with, or as a result of, any transfers by, to or on behalf of the principal shall be assumed by the principal.

§ 5 Set-off, retention and lien

- (1) The Ship Broker shall be entitled to satisfy his claims by set-off at any time such claims become due and payable; furthermore, he shall have a right of retention.
- (2) The Ship Broker is hereby granted a contractually agreed right of lien to all assets of his principal in the Ship Broker's possession, or which he may acquire possession of, in respect of all claims he may have on the principal, irrespective of the reason for such claims or the time at which they arose.
- (3) The Ship Broker shall be entitled to realise any of the principal's assets in his possession at his own discretion, either by free sale or public auction if, after a period of 30 days has elapsed from the time the Ship Broker sent the principal a final notice by registered mail providing for a final term for payment of 20 days, the principal fails either to render payment or provide collateral security of a nature or extent considered adequate by the Ship Broker.

§ 6 Prescription under Statute of limitations

- (1) All claims on the Ship Broker, regardless of the legal basis of such claims, shall lapse unless filed and made pending in court within six months.
- (2) The period of prescription shall begin to run once the claim arises, and if the claim is based on a case of loss or damage, at the time at which the person entitled is actually notified of such loss or damage or could reasonably be expected to have obtained knowledge thereof.

§ 7 Jurisdiction

- (1) Any disputes with the Ship Broker shall be subject to the exclusive jurisdiction of

Maritime Agents

the competent court of his registered place of business as evidenced by registration in the Commercial Register.

- (2) The Ship Broker's overall performance, even if wholly or partly rendered abroad, shall be subject exclusively to the laws of the Federal Republic of Germany.

§ 8 Concluding provision (severability)

Any invalidity of individual clauses of the terms and conditions specified above shall not lead to the remaining terms and conditions being invalidated.

DATED AT HAMBURG, AUGUST 1993

ANNEX 4

STANDARD TRADING CONDITIONS OF
THE INSTITUTE OF CHARTERED SHIPBROKERS
FOR LINER AND PORT AGENCY

All transactions entered into by

(the I.C.S. member) (hereinafter "the Company") in connection with or arising out of the Company's business as a port agent or liner agent or booking agent shall be subject to the following terms and conditions unless otherwise agreed or stated by the Company in writing.

1. In these conditions the following expressions have the following meanings respectively

- (1) "Supplier" means the company firm or person who contracts through the Company to supply services or goods to the Principal or Merchant
- (2) "Merchant" means the company firm or person who ships, receives, owns or forwards goods in respect of which the Company, whether as agent or principal, has agreed to provide or procure services.
- (3) "Principal" means the company firm or person who has or whose representatives have instructed the Company and who is the owner or charterer or manager of the vessel represented by the Company and/or the carrier under the bill of lading in connection with which services are provided by the Company and
- (4) "Forwarding Services" means those services usually provided or arranged by a freight forwarder including the carriage of goods to the port of loading and from the port of discharge, the storage, packing or consolidation of goods and the stuffing and stripping of containers.

Transactions with the Supplier

The following terms and conditions shall apply to transactions with the Supplier:

2. Unless otherwise stated in writing, when the Company is acting as a port agent or liner agent or booking agent, it acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Supplier as agent for the Principal. The Company shall not be personally liable to pay any debt due to the Supplier from the Principal.
3. Where the Company is acting as a forwarding agent, unless it is acting as agent for the Principal in accordance with clause 2 hereof or otherwise agrees in writing, it acts at all times as agent for and on behalf of the Merchant and has authority to enter into contracts with the Supplier as agent for the Merchant. The Company shall not be personally liable to pay any debt due from the Merchant.

Part II - The Work of the CMI

Transactions with the Merchant

The following terms and conditions shall apply to transactions with the Merchant:

4. When acting as port agent or liner agent or booking agent, the Company acts at all times as agent for and on behalf of the Principal and has authority to enter into contracts with the Merchant as agent for the Principal. The Company shall not be personally liable to pay any debt due from the Principal.
5. Unless otherwise agreed in writing, where the Company is instructed by the Merchant to arrange Forwarding Services, the Company shall act as agent for the Merchant in procuring the requested services from a Supplier.
6. Where the Company arranges services for the Merchant's goods which are or will be carried in accordance with a contract with the Principal contained in or evidenced by a bill of lading, charterparty or other contract of affranchisement, all services including Forwarding Services are arranged by the Company as agent for and on behalf of the Principal. The provision of such services shall be subject to the terms and conditions of the Principal's bill of lading and tariff rules (if any), which may be inspected on request, or other contract between the Principal and Merchant.
7. If the Company agrees in writing that it will be personally responsible for the provision of Forwarding Services, unless otherwise agreed in writing, the Company shall be relieved of any liability for loss or damage if it can establish that such loss or damage resulted from:
 - (a) the act or omission of the Merchant or his representative or any other party from whom the Company took charge of the goods;
 - (b) inherent vice of the goods, including improper packing, labelling or addressing (except to the extent that the Company undertook to be responsible therefor);
 - (c) handling, loading, stowage or unloading of the goods by the Merchant or any person acting on his behalf other than the Company;
 - (d) seizure or forfeiture under legal process;
 - (e) riot, civil commotion, strike, lock-out, general or partial stoppage or restraint of labour from whatever cause;
 - (f) any consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power of confiscation or nationalisation or requisition or destruction of or damage to any property or goods by or under the order of any Government or public or local authority;
 - (g) any cause or event which the Company was unable to avoid and the consequences whereof the Company was unable to prevent by the exercise of due diligence.
8. Where so requested in writing by the Merchant or his representative, the Company shall enter and/or clear goods through Customs and/or arrange insurance for the goods as agent for the Merchant. The Company shall have authority to appoint agents to perform such services on behalf of the Merchant, and the agents so appointed shall act as the Merchant's agents and not the Company's agents.
9. Where the Company agrees to provide or arrange services for the Merchant's goods, the Merchant shall be deemed to have authorized the Company to conclude all and any contracts necessary to provide those services. The Merchant shall reimburse on demand the Company with all taxes, charges or fines whatsoever incurred by the Company as a result of providing or arranging the services, or undertaking any liability in connection with the services, particularly in respect of any bond issued to H.M. Customs and Excise by the Company.
10. The Merchant shall declare to the Company full details of goods which are of a

Maritime Agents

dangerous or damaging nature, including those goods which are more particularly described in the IMO Code. Should the Merchant fail to provide such details at the time of contract the Merchant shall be responsible for all costs and damages arising as a result thereof and the Company shall have the right exercisable on behalf of itself or its Principal to rescind the contract.

11. Unless otherwise agreed in writing, the liability of the Company to the Merchant shall in all circumstances be limited to the lesser of sums calculated in the following manner:
 - a) where the goods are lost or damaged:
 - (i) the value of goods so lost and damaged; or
 - (ii) a sum calculated at the rate of £800.00 per tonne of the gross weight of any goods lost or damaged;
 - b) in all other circumstances:
 - (i) the value of the goods the subject of the relevant transaction between the Company and the Merchant; or
 - (ii) a sum calculated at the rate of £800.00 per tonne of the gross weight of the goods the subject of the transaction; or
 - (iii) £50,000.
12. The company shall not be liable for loss or damage to goods unless it is advised thereof in writing within three days after the termination of transit and the claim is made in writing within 7 days, alternatively advice is given within 28 days of the commencement of transit and the claim is made in writing within 42 days, provided always that these limits shall not apply if the Merchant can establish that it was not reasonably possible for him to make a claim in writing within the time limit and notice was given within a reasonable time.

Transactions with the Principal

The following terms and conditions shall apply to transactions with the Principal:

13. The Company shall be the Principal's agent and shall exercise due care and diligence in performing services for and on behalf of the Principal.
14. The Principal shall indemnify the Company in respect of all liabilities incurred by the Company when acting as a port agent or liner agent or booking agent on the Principal's behalf.
15. The Principal shall pay forthwith by telegraphic transfer to the Company's bank account such sum as the Company may request as an advance on port disbursements which the Company estimate will be incurred whilst the Principal's vessel is in the Company's agency. If the Principal should fail to comply with the Company's request, the Company may at any time give notice of the termination of its agency.
16. The Company shall be entitled to deduct from sums held by the Company for the Principal's account any amounts due to the Company from the Principal.
17. The liability of the Company to its Principal in respect of any negligent act, error or omission committed by the Company, its directors or employees shall not exceed the amount of the fees or commission payable by the Principal to the Company in respect of the vessel or shipment involved (whichever is less) which fees or commission shall be deemed earned in any event.
18. The Company shall not be liable to indemnify the Principal in respect of any contractual fine, penalty or forfeit incurred by the Principal.
19. Subject to any written instructions to the contrary, the Company shall have authority to appoint agents to perform services on behalf of the Principal, including such services as may be the subject of these conditions, and the agents so appointed shall act as the Principal's agents and not the Company's agents.
20. Where the Company acts as liner agent and/or booking agent for the Principal, the

Part II - The Work of the CMI

Principal shall give six months' written notice of termination of the agency.

General

21. If the Merchant or the Principal, as the case may be, fails to make payment in full of any sums due to the Company on demand or within any period agreed in writing, the Company shall be entitled to recover interest on any sums outstanding at the rate of 2% above the average of the daily base lending rates of National Westminster Bank Plc applicable during the period when the sums are outstanding.
22. The Company shall have a general lien on all goods and documents relating to goods in its possession, custody or control for all sums due at any time from the Principal or the Merchant and/or their representatives and shall be entitled to sell or dispose of such goods or documents as agent for and at the expense of the Principal or the Merchant and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the goods. The Company shall, upon accounting to the Principal or the Merchant for any balance remaining, be discharged from all liability whatsoever in respect of the goods.
23. The company shall be entitled to retain and be paid all brokerages, commission, allowances and other remunerations, usually retained by or paid to freight forwarders.
24. The Merchant, the Supplier and the Principal each undertake with the Company that no claim or allegation of any kind shall be made against any of the Company's directors officers or employees (herein collectively called the "Beneficiaries") for any loss damage or delay of whatsoever kind arising or resulting directly or indirectly from any negligent act, error or omission of the Beneficiaries in the performance of the services the subject of these conditions. The Beneficiaries shall have the benefit of this undertaking and in entering into this contract the Company, to the extent of this provision, does so not only on its own behalf, but also as agent or trustee for the Beneficiaries, who shall, to the extent of this clause, only be or be deemed to be parties to this contract.
25. The Company shall perform the services it undertakes to provide with due dispatch but shall not be liable for any loss or damage arising from any delay which it could not reasonably prevent.
26. The Company shall be discharged from all liability whatsoever to the Principal, the Supplier or the Merchant unless suit is brought within one year of delivery of the goods or the date when they should have been delivered or of the act or default complained of, whichever is the earlier.
27. These conditions shall be subject to English law. Any dispute arising in connection with the Company's business shall be determined by arbitration in London pursuant to the L.M.A.A. Terms (1987) by a person appointed for that purpose by the parties by agreement in writing. Failing such agreement, each party shall appoint its own arbitrator, and the two thus chosen, if they cannot agree, shall nominate an umpire, whose decision shall be final.
28. If there is any conflict between the terms set out herein and any other terms and conditions agreed between the parties these Conditions shall prevail unless the Company specifically agrees otherwise in writing.

ANNEX 5

Free translation

F. A. C. A. M.

FRENCH SHIPS' AGENTS ASSOCIATION

By-laws

The present By-Laws have been approved by the Extraordinary General Meeting held on June 7th, 1989.

Name

Art. 1. - In accordance with the provisions of the law dated 21st March 1884, modified by law dated 28th October 1982 (Livre IV du Code du Travail) a Federation is formed between associations, syndicates or professional groups of shipagents, under the following name:

Federation des Agents Consignataires de Navires
et Agents Maritimes de France
(F.A.C.A.M.)

Aims

The aims of the Federation are,

- to study and defend the general interest of the whole community of its Members, as well as interests of the Principals.
- to help Members in their development and prosperity.
- to assist them in their contacts with the Government. Public Bodies, Autonomous Ports. Chambers of Commerce. and all types of private Companies, etc...
- to apply to the proper Authorities for all changes thought to be useful to the interests represented by its Members.
- to represent them with the Public Authorities and all Jurisdiction every time a common action will be necessary.
- to act as conciliation magistrate or referee for all disputes brought forward the Federation.

Definition of the shipbroker/shipagent

Art. 17 - Acting as proxy for his principal (i.e. the carrier), the shipbroker, also described as shipagent when he is in charge of vessel's port operations, will perform within a set geographical area, all functions that the carrier would accomplish himself, would he decide to open a branch-office of his own within the same area.

In other words, the carrier will entrust his interests, either to a branch-office manager, attached to his own staff, or to an independent local shipbroker/shipagent, whatever the most convenient for him.

Both will perform the same duties, but, essentially, will be distinguished from one another by their mode of remuneration.

The branch-office manager is basically a wage-earner, who receives a fixed salary. On the other hand the shipbroker/shipagent's remuneration varies in accordance with the volume and type of activities performed.

The branch-office itself represents exclusively the interests of a single carrier while the shipbroker/shipagent may represent several carriers.

As regards legal liabilities, their status is identical. Considering that both act as proxy, they can only be responsible vis a vis their principal.

Part II - The Work of the CMI

The shipbroker/shipagent and/or port agent represents in a port and/or inland one or several carriers.

In principle, on behalf and upon request of his Principal, he is entitled to negotiate transport contracts, quote, book and collect freight, deliver cargo, sign and release bills of lading, be responsible for containers logistics and negotiate any contract related to other operations.

The port agent has, in addition, the duty of assistance to the ship. For ship's account, the agent undertakes all operations that the captain and/or the carrier are not performing.

If the shipbroker/shipagent and/or the port agent is appointed as General Agent, he may have to designate port agent in different ports and also inland agents.

*Quality label**Definition*

The Quality Label confers a warranty delivered by the National Federation of shipagents "Fédération des Agents Consignataires de Navires et Agents Maritimes de France".

This Quality Label satisfies to the following standards:

- a) to uphold a high standard of business ethics and professional conduct among shipping agents,
- b) to promote a high level of professional education and experience, essential to provide efficient services,
- c) to encourage operation of financially sound and stable shipping agents,
- d) to contribute to combat maritime fraud,
- e) to provide guidelines for professional associations in establishing and maintaining a sound shipping agency system.

Delivery of the quality label

Art. 20 - The Quality Label is delivered by the National Federation of Shipagents on the representation of a file made out by the local professional association for each of their members and after the examination of the case by six members of the Profession consisting of a Commission, plus one representative of the local association getting their mandate. The members of the Commission are appointed by the Management Committee for a renewable period of two years.

In his application the candidate must bind himself formally to:

- respect all the rules and professional disciplines stipulated in the By-Laws of its local association and of those of the National Federation,
- to abide by the awards the Disciplinary Commission, provided for in article 21 hereafter, may make against him,
- to exhibit on his letter-paper all distinctive signs chosen by the Federation.

The application must also state:

A - Professional qualifications

To be considered as having the professional qualification, the local manager of a shipping agency must have:

1. a) got the necessary professional experience by working at least during 5 years with a qualified shipagent and assumed a post with responsibilities,
- b) been of acknowledged honourable character and able to justify of one's respectability and efficiency through the control officially approved and notified of at least two shipagents of good reputation working in the same activity and same geographical area,
- c) have succeeded the professional examinations requested by the qualified professional associations.

The procedure of these tests are decided by the aforesaid professional associations and confirmed by the National Federation.

Maritime Agents

2. In case of a legal entity the managerial staff will get the aforesaid professional qualification so that the activities of shipagent/shipbroker will be fulfilled.

B - Financial conditions

To be considered financially reliable a legal entity or the shipagent/shipbroker as an individual entity must:

- a) get financial background in proportion to their activities,
- b) be adequately insured for civil liability towards internationally reputed underwriters to cover all professional responsibilities and show the proof at the National Federation. In case the insurance would be yearly renewable this proof will have to be given each year.

Respect of the quality label

The local Associations must take care that the above rules are well observed. On the contrary these cases will be of the competence of the Disciplinary Commission, structure and work of which are hereafter described:

Disciplinary commission

A Disciplinary Commission is instituted; it constitutes a statutory organ of the Federation in the similar rights as the Management Committee and the Chairman of the Management Committee.

In consideration of the commitments subscribed by the members of the local associations of shipagents on delivery of the quality Label by the National Federation on their admission, it is essential that any infringement of its Rules and of the obligations of the Profession, be referred to the Disciplinary Commission for punitive sanction if required.

Such infringements or breaches of discipline whether observed directly by the Chairman of the Federation or by the Management Committee, or having been the object of a complaint by the member of a local association, or even whether brought to the notice of the Chairman by the Authorities, a person or an organ outside the Federation, give rise immediately to the constitution of a case.

After a summary inquiry, the Chairman of the Federation, or should the Chairman be involved in any way in the case, a Member of the Management Committee appointed by the Management Committee, and provided he is not involved in the case in question nor a Member of the Disciplinary Commission, summons the person concerned, places before him the facts which are reproached to him and collects his remarks and explanations. If necessary he allows him up to fifteen days to collect his documentation.

At the end of this inquiry and within the next five days, the Chairman or his substitute, with due approval of the Management Committee, decides whether or not the case requires being pursued further.

Consequently,

- in the first case the file is immediately placed before the Disciplinary Commission duly constituted as indicated hereunder;
- in the second case the matter is shelved.

In both cases the decision taken by the Chairman or his substitute, is notified to the person in question. If there has been a complaint, the plaintiff is also advised.

Constitution.

The Disciplinary Commission is composed by the five Members appointed for two years by the Management Committee and may be renewable.

Substitutes amounting to three, shall also and under the same conditions as the titular members, be appointed to take the place of any titular member unable to take part as provided for in the following paragraph or for any other reason, in the deliberations and decisions of the Commission. The appointment of a substitute to be called upon to

Part II - The Work of the CMI

take the place of a titular member prevented from participating, shall be made by a draw held during a meeting of the Disciplinary Commission.

No Member of the Disciplinary Commission involved in the case submitted to its appreciation, can validly take part in the deliberations and decisions of the Disciplinary Commission.

Immediately after its first meeting, the Disciplinary Commission appoints amongst its members, the one who will chair the proceedings.

The Secretariat of the Disciplinary Commission is in the hands of the Secretary General of the Federation.

Each person sitting in this Commission must keep under secret the proceedings of the Commission.

Powers.

The Disciplinary Commission thus constituted has full powers to:

- summon in writing with five days notice, the person concerned and hear his explanations,
- summon the plaintiff and collect any extra particulars which may be required,
- give receipt for documents which the person concerned, the plaintiff, and/or any other person may deposit in its custody,
- consult, if necessary, any person. Member of the Federation or not, whose advice may throw light on the legal, technical and/or other aspects of the case,
- proceed with all confrontations as well as all conciliations justified by the interests of the Profession and of the Federation.

Inquiries.

The Disciplinary Commission fixes the dates of its meetings and conducts, as quickly as possible, the inquiry into the dispute which has been submitted to it. Except when materially impossible, in which case due advice must be given to the Chairman of the Federation, or to his substitute, the award of the Disciplinary Commission must be rendered within maximum two months of reception of the documents of the case.

The summons to the person concerned must mention the facts retained against him and the proposed sanction.

The person in question may be assisted by another Member of the Federation and/or by Counsel of his choice.

He shall have right of access to the documents, decisions, deliberations and consultations submitted to the Disciplinary Commission's appreciation, fifteen days prior to the meeting date.

The summons issued to the person concerned must be recorded in the minutes of the Disciplinary Commission's meeting.

The person concerned who, duly summoned, does not appear, cannot thereby suspend the action initiated against him. The inquiry then continues and the sanction, if any, is pronounced by default. The sanction becomes definite and enforceable.

Sanctions.

The sanctions at the disposal of the Disciplinary Commission are:

- verbal warning,
- written reprimand,
- written blame,
- suspension of the Quality Label for a specified period,
- striking off the Quality Label.

Furthermore, the publicity to be given, within the scope of the Profession, to the sanction decided upon, is left to the initiative of the Commission and must appear in the award.

The act for the Member of a local Association of having wrongly accused another Member, constitutes a breach which in principle must be sanctioned. The decision is

Maritime Agents

within the competence of the Disciplinary Commission.

Notification.

The decision of the Disciplinary Commission is notified by the Chairman of the Federation or his substitute, to the person concerned summoned to the Head Office in the presence of the Chairman and the Members of the Disciplinary Commission. It is enforceable immediately, unless otherwise provided for by the Disciplinary Commission in its award. The benefit of a remission of sentence may be afforded under the same conditions.

Competence.

Anything related to the discipline provided for in the By-Laws, to the observance of the professional obligations, and those of good confraternity, may be submitted by the Management Committee of the Federation for consideration, by the Disciplinary Commission. The cases for exclusion when any arise, are submitted by the Disciplinary Commission for decision as provided for in Article VIII hereabove.

The above-mentioned dispositions are not in contradiction with the article L.471-1 of the "Code du Travail".

(Omissis)

ANNEX 6

Free translation

**THE SWEDISH SHIPBROKERS ASSOCIATION'S RULES ON
AUTHORIZATION OF PORT AGENTS**

The purpose of these rules is to guarantee a certain standard on the persons and companies, which are representing the ships sailing to Swedish ports.

Conditions for authorization

1. The Swedish Shipbrokers Association (hereinafter the Association) may upon application from a person who is a member of the Association or from a person employed in a company which is a member of the Association grant authorization to act as a port agent.

The authorization includes the right to perform clearance of ships in Swedish ports.

2. The meaning of the authorization is that the Association, after having tried the personal and economical qualifications, may recommend the authorized person for work as a port agent.

The authorization does not mean that the Association have any liability for the work carried out by the port agent.

3. The authorization is given for a period of three years, after which time the authorization is taken under renewed consideration. The authorization may, in accordance with Section 11, be revoked at any time.

4. The authorization is only given to individuals and in accordance with the conditions set out below.

5. A condition for authorization is that the port agent has acquired sufficient working experience as a port agent. The guideline of the Association is that the port agent should have worked as such for three years. The person applying for authorization has to prove his practical experience through three independent references.

6. The Association requires that the applicant in general should be considered suitable for acting as a port agent. The applicant must attend the theoretical courses

Part II - The Work of the CMI

given by the Association. The board of the Association may in specific cases grant an exemption from the requirement of theoretical education.

7. An essential requirement for obtaining and maintaining the authorization is that the port agent does not consider any other interests than those of the party he is representing.

8. The applicant for authorization shall prove that he/she, or the company where he/she is employed, has such economical stability that the interests of the principal is not jeopardised.

9. A condition for authorization is that the authorized person or the employer of the authorized person, takes out and maintains a liability insurance in accordance with the minimum terms stipulated by the board of the Association. This condition enters into force on 1st July 1996.

10. The port agent shall undertake to observe the recommendations given in the "UNCTAD Minimum Standards for Shipping Agents".

11. If it comes to the Association's knowledge that the conditions for the authorization no longer exists, the board shall revoke the authorization.

12. The board of the Association has the right to charge a fee for the handling and consideration of an application for and the maintaining of an authorization.

ANNEX 7

THE FEDERATION OF NATIONAL ASSOCIATIONS
OF SHIP BROKERS AND AGENTS
FONASBA

STANDARD LINER AGENCY AGREEMENT

Fourth Edition
Revised and adopted July 1993

It is hereby agreed between:

_____ of _____ (hereinafter referred to as the
Principal) and

_____ of _____ (hereinafter referred to as the Agent)
dated the _____ day of _____
19 _____

that:

- 1.00 The Principal hereby appoints the Agent as its Liner Agent for all its owned and/or chartered vessels including any space or slot charter agreement serving the trade between _____ and _____
- 1.01 This Agreement shall come into effect on _____ and shall continue until _____. Thereafter it shall continue until terminated by either party giving to the other notice in writing, in which event the Agreement shall terminate upon the expiration of a period of _____ months from the date upon which such notice was given.
- 1.02 The territory in which the Agent shall perform its duties under the Agreement shall be _____ hereinafter referred to as the "Territory".
- 2.00 *General Conditions*

Maritime Agents

- 2.01 This Agreement covers the Port and/or Inland Agency work within the Territory. It includes the duties of marketing the Principal's services and of handling of all types of cargo entering or leaving the Territory whether direct or by transshipment. It also includes the handling of vessels owned, chartered (including any slot or space charter agreement) or otherwise operated by the Principals within the port(s) of the Territory. Work performed as Liner Agent under this Agreement will be strictly separated from any work performed as General Agent for which a separate Standard General Agency Agreement and separate remuneration will be applicable. In case of any ambiguity as to which agreement governs the work in question, the terms of the Standard Liner Agency Agreement will prevail.
- 2.02 The Agent undertakes not to accept the representation of other shipping companies nor to engage in NVOCC or such freight forwarding activities in the Territory, which are in direct competition to any of the Principal's transportation activities, without prior written consent, which shall not unreasonably be withheld.
- 2.03 The Principal undertakes not to appoint any other party in the Agent's Territory for the services defined in this Agreement.
- 2.04 Where any of the activities of the Agent in the Territory are not covered by this Agreement, then the local General Conditions in the latest version or established custom of the trade and/or port shall apply and form part of this Agreement, unless otherwise agreed. The Agent undertakes to acquaint the Principal with any relevant local custom or practice and to furnish the Principal with a copy of the local General Conditions if any.
- 2.05 In countries where the position of the agent is in any way legally protected or regulated, the Agent shall have the benefit of such protection or regulation, unless otherwise agreed.
- 2.06 All aspects of the Principal's business are to be treated confidentially and all files and records pertaining to this business are the property of the Principal.
- 3.00 *Duties of the Agent*
- 3.01 To represent the Principal in the Territory, using his best endeavours to comply at all times with any reasonable specific instructions which the Principal may give, including the use of Principal's documentation, terms and conditions.
- 3.02 In consultation with the Principal to recommend and/or appoint on the Principal's behalf and account, Sub-Agents if required.
- 3.03 In consultation with the Principal to recommend and/or to appoint on the Principal's behalf and account, Stevedores, Watchmen, Tallymen, Terminal Operators, Hauliers and all kinds of suppliers if required.
- 3.04 The Agent will not be responsible for the negligent acts or defaults of the Sub-Agent or Sub-Contractor unless the Agent fails to exercise due care in the appointment and supervision of such Sub-Agent or Sub-Contractor. Notwithstanding the foregoing the Agent shall be responsible for the acts of his subsidiary companies appointed within the context of this Clause.
- 3.05 The Agent will always strictly observe the shipping laws and regulations of the country and will indemnify the Principal for any fines, penalties, expenses or restrictions that may arise because the Agent wilfully failed to comply with those laws or regulations.
- 3.10 *Marketing and Sales*
- 3.11 To provide marketing and sales activities in the Territory, in accordance with general guidelines laid down by the Principal, to canvass and book cargo, to publicise the services and to maintain contact with Shippers, Consignees, Forwarding Agents, Port and other Authorities and Trade Organisations.

Part II - The Work of the CMI

- 3.12 To provide statistics and information and to report on cargo bookings and use of space allotments. To announce sailing and/or arrivals, and to quote freight rates and announce freight tariffs and amendments.
- 3.13 To arrange for public relations work (including advertising, press releases, sailing schedules and general promotional material) in accordance with the budget agreed with the Principal and for his account.
- 3.14 To attend to Conference matters if required on behalf of the Principal and for the Principal's account.
- 3.15 To issue on behalf of the Principal Bills of Lading and Manifests, documents requested by conferences, delivery orders, certificates and such other documents as may be reasonably required.
- 3.20 *Port Agency*
- 3.21 To arrange for berthing of vessels, loading and discharging of the cargo, in accordance with the local custom and conditions.
- 3.22 To supervise and co-ordinate all activities of the Terminal Operators, Stevedores, Tallymen and all other Contractors, in order to ensure the proper performance of the customary requirements for the best possible operation and despatch of the Principal's vessels.
- 3.23 To arrange for calling forward, reception and loading of outward cargo and discharge and release of inward cargo and to attend to the transshipment of through cargo.
- 3.24 To arrange for bunkering, repairs, husbandry, crew changes, passengers, ship's stores, spare parts, technical and nautical assistance and medical assistance as required.
- 3.25 To carry out the Principal's requirements concerning claims handling, P&I matters, General Average and/or Insurance, and the appointment of Surveyors.
- 3.26 To attend to all necessary documentation and to attend to consular requirements if required.
- 3.27 To arrange for and attend to the clearance of the vessel and to arrange for all other services appertaining to the vessel's movements through the port.
- 3.28 To report to the Principal the vessel's position and to prepare a statement of facts of the call and/or a port log.
- 3.29 To keep the Principal regularly and timely informed on Port and working conditions likely to affect the despatch of the Principal's vessels.
- 3.30 *Container and Ro/Ro Traffic*
Where "equipment" is referred to in the following section it shall comprise containers, flat racks, trailers or similar cargo carrying devices, owned, leased or otherwise controlled by the Principal.
- 3.31 To arrange for the booking of units of the vessel.
- 3.32 To arrange for the stuffing and unstuffing of LCL cargo at the port and in consultation with the Principal to arrange for the provision of inland LCL terminals, and the supervision of these activities where required.
- 3.33 To prepare the additional container shipping documentation.
- 3.34 To provide and administer a proper system, or to comply with the Principal's system for the control and registration of equipment. To organise equipment stock within the Agent's Territory and if required make provision for storage, positioning and repositioning of the equipment.
- 3.35 To comply with Customs requirements and arrange for equipment interchange documents in respect of the movements for which the Agent is responsible and to control the supply and use of locks, seals and labels.
- 3.36 To make equipment available and to arrange inland haulage as required.
- 3.37 On behalf and for the account of the Principal to undertake the leasing of

Maritime Agents

- equipment into and re-delivery out of the system.
- 3.38 To operate an adequate equipment damage control system in compliance with the Principal's instructions. To arrange for equipment repairs and maintenance, when and where necessary and to report on the condition of equipment under the Agent's control.
- 3.40 *Accounting and Finance*
- 3.41 To provide for appropriate records of the Principal's financial position to be maintained in the Agent's books, which shall be available for inspection as required and to prepare periodic financial statements as may be reasonably required.
- 3.42 To check all vouchers received for services rendered and to prepare a proper disbursement account in respect of each voyage or accounting period.
- 3.43 To advise the Principal of all amendments to port tariffs and other charges as they become known.
- 3.44 To calculate freight and other charges according to Tariffs supplied by the Principal and to exercise every care and diligence in applying all terms and conditions of such Tariffs or other freight agreements. If the Principal organises or employs an organisation for checking freight calculations and documentation the costs for such checking to be entirely for the Principal's account.
- 3.45 To collect freight and related accounts and remit to the Principal all freights and other monies belonging to the Principal at such periodic intervals as the Principal may require. All bank charges to be for the Principal's account. The Agent shall advise the Principal of the customary credit terms and arrangements. If the Agent is required to grant credit to customers due to commercial reasons, the risk in respect of outstanding collections is for the Principal's account unless the Agent has granted credit without the knowledge and prior consent of the Principal.
- 3.46 The Agent shall have authority to retain money from the freight collected to cover all past and current disbursements, subject to providing regular cash position statements to the Principal.
- 3.47 The Agent in carrying out his duties under this Agreement shall not be responsible to the Principal for loss or damage caused by any Banker, Broker or other person, instructed by the Agent in good faith unless the same happens by or through the wilful neglect or default of the Agent. The burden of proving the wilful neglect of the Agent shall be on the Principal.
- 4.00 *Principal's Duties*
- 4.01 To provide all documentation, necessary to fulfil the Agent's task together with any stationery specifically required by the Principal.
- 4.02 To give full and timely information regarding the vessels' schedules, ports of call and line policy insofar as it affects the port and sales agency activities.
- 4.03 To provide the Agent immediately upon request with all necessary funds to cover advance disbursements unless the Agent shall have sufficient funds from the freights collected.
- 4.04 The Principal shall at all times indemnify the Agent against all claims, charges, losses, damages and expenses which the Agent may incur in connection with the fulfilment of his duties under this Agreement. Such indemnity shall extend to all acts, matters and things done, suffered or incurred by the Agent during the duration of this Agreement, notwithstanding any termination thereof, provided always, that this indemnity shall not extend to matters arising by reason of the wilful misconduct or the negligence of the Agent.

Part II - The Work of the CMI

- 4.05 Where the Agent provides bonds, guarantees and any other forms of security to Customs or other statutory authorities to cover the movement of cargo on behalf of the Principal or the Principal's containers, stores or other equipment then the Principal shall indemnify and reimburse the Agent immediately such claims are made, provided they do not arise by reason of the wilful misconduct or the negligence of the Agent.
- 4.06 If mutually agreed the Principal shall take over the conduct of any dispute which may arise between the Agent and any third party as a result of the performance of the Agent's duties.
- 5.00 *Remuneration*
- 5.01 The Principal agrees to pay the Agent and the Agent accepts, as consideration for the services rendered, the commissions and fees set forth on the schedule attached to this Agreement*. Any fees specified in monetary units in the attached schedule shall be reviewed every 12 months and if necessary adjusted in accordance with such recognised cost of living index as is published in the country of the Agent.
- 5.02 Should the Principal require the Agent to undertake full processing and settlement of claims, then the Agent is entitled to a separate remuneration as agreed with the Principal and commensurate with the work involved.
- 5.03 The remuneration specified in the schedule attached is in respect of the ordinary and anticipated duties of the Agent within the scope of this Agreement. Should the Agent be required to perform duties beyond the scope of this Agreement then the terms on which the Agent may agree to perform such duties will be subject to express agreement between the parties. Without prejudice to the generality of the foregoing such duties may include e.g. participating in conference activities on behalf of the Principal, booking fare-paying passengers, sending out general average notices and making collections under average bonds insofar as these duties are not performed by the average adjuster.
- 5.04 If the Tariff currency varies in value against the local currency by more than 10% after consideration of any currency adjustment factor existing in the trade the basis for calculation of remuneration shall be adjusted accordingly.
- 5.05 If the Agent utilises computers and computer systems, any extra expenses occasioned by specific additional requirements of the Principal in the use of such computer equipment for the performance of the Agent's duties to the Principal shall be borne by the Principal.
- 6.00 *Duration*
- 6.01 This Agreement shall remain in force as specified in clause 1.01 of this Agreement. Any notice of termination shall be sent by registered or recorded mail.
- 6.02 If the Agreement for any reason other than negligence or wilful misconduct of the Agent should be cancelled at an earlier date than on the expiry of the notice given under clause 1.01 hereof, the Principal shall compensate the Agent. The compensation payable by the Principal to the Agent shall be determined in accordance with clause 6.04 below.
- 6.03 If for any reason the Principal withdraws or suspends the service, the Agent may withdraw from this Agreement forthwith, without prejudice to its claim for compensation.

* There is annexed to the Agreement a form of "Remuneration Schedule", all percentages of the remuneration being left in blank.

Maritime Agents

- 6.04 Where applicable the current local General Conditions in the latest version and failing those the National Law on the termination of Agency Contracts will apply to this Agreement. Where no such conditions of Statute Law apply, the basis of compensation shall be the monthly average of the commission and fees earned during the previous 12 months or if less than 12 months have passed then a reasonable estimate of the same, multiplied by the number of months from the date of cancellation until the contract would have been terminated in accordance with clause 1.01 above. Furthermore the gross redundancy payments, which the Agent and/or Sub-Agent(s) is compelled to make to employees made redundant by reason of the withdrawal or suspension of the Principal's service, or termination of this Agreement, shall also be taken into account.
- 6.05 The Agent shall have a general lien on amounts payable to the Principal in respect of any undisputed sums due and owing to the Agent including but not limited to commissions, disbursements and duties.
- 7.00 *Jurisdiction*
- 7.01 a) This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of this Agreement shall be referred to arbitration in London, one arbitrator being appointed by each party, in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. On receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single Arbitrator appointed shall apply. If two arbitrators properly appointed shall not agree they shall appoint an umpire whose decision shall be final.
- b) Any dispute arising out of this Agreement shall be referred to arbitration at _____ subject to the law and procedures applicable there.

a) and b) are alternatives, if subclause b) is not filled in then a) shall apply.

PART III

**Status of ratifications to
Maritime Conventions**

**Etat des ratifications
aux Conventions de Droit Maritime**

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS INTERNATIONALES DE DROIT MARITIME DE BRUXELLES

(Information communiquée par le Ministère des Affaires Etrangères,
du Commerce Extérieur et de la Coopération au Développement
de Belgique, dépositaire des Conventions).

Notes de l'éditeur

(1) - Les dates mentionnées sont les dates du dépôt des instruments. L'indication (r) signifie ratification, (a) adhésion.

(2) - Les réserves formulées par les Etats contractans lors du dépôt des instruments de ratification ou d'adhésions sont publiées dans l'Annuaire 1992 après l'état des ratifications de chaque convention.

(3) - Certaines Conventions ont en certains Pays été incorporées dans la loi nationale sans que ces Pays aient formellement ratifié ou adhéré à la dite Convention. Ces Pays ne sont pas repris dans les listes. Pour toute certitude une vérification locale est toujours conseillée.

(4) - A la suite de l'unification de l'Allemagne les conventions, qui avaient été ratifiées par la République Fédérale d'Allemagne avant l'unification, sont également en vigueur dans les nouveaux états fédérés qui constituaient naguère la République Démocratique Allemande (Brandebourg, Mecklembourg Vorpommern, Saxe, Saxe Anhalt et Thuringe): voir l'article 11 du "Vertrag zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands-Einigungsvertrag". Les conventions uniquement ratifiées par la République Démocratique Allemande ne sont plus en vigueur à la suite de la dissolution de la République Démocratique Allemande.

(5) - Le 30 juillet 1992 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement de Belgique une note verbale par laquelle la République de Croatie notifie qu'elle se considère liée par les Conventions suivantes et qu'elle succède à partir de la date de l'indépendance de la Croatie, c'est-à-dire au 8 octobre 1991, aux droits et aux obligations souscrits antérieurement par la République socialiste fédérative de Yougoslavie.

1. Abordage (1910)
2. Assistance et sauvetage (1910)
3. Assistance et sauvetage - Protocole (1967)
4. Connaissance (1924)
5. Compétence civile (1952)
6. Compétence pénale (1952)
7. Saisie conservatoire (1952).

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

(Information provided by the Ministère des Affaires Etrangères,
du Commerce Extérieur et de la Coopération au Développement de Belgique,
depository of the Conventions).

Editor's notes:

(1) - The dates mentioned are the dates of the deposit of instruments. The indication (r) stands for ratification, (a) for accession.

(2) - Reservations made by Contracting States at the time of the deposit of the instruments of ratification or accession and other relevant information are published in the Yearbook 1992 after the status of ratification of each convention.

(3) - Some Countries may have enacted in their domestic law some Conventions without having formally ratified or acceded to such Convention. Those Countries are not listed herein. For certainty local verification is always recommended.

(4) - As a consequence of the German unification the Conventions ratified by the Federal Republic of Germany prior to the unification are in force also in the new Federal States formerly constituting the German Democratic Republic (Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt and Thüringen): see Art. 11 of the "Vertrag zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands-Einigungsvertrag". The Conventions ratified only by the former German Democratic Republic are not effective anymore, owing to the dissolution of the German Democratic Republic.

(5) On 30th July 1992 a note verbale has been received by the Ministry of Foreign Affairs, of Foreign Trade and of Co-Operation and Development of Belgium whereby the Republic of Croatia notifies that it considers itself bound by the following Conventions and that it succeeds as of the date of independence of Croatia, namely of 8th October 1991, to the rights and obligations previously pertaining to the Socialist Federal Republic of Yugoslavia:

1. Collision (1910)
2. Assistance and Salvage (1910)
3. Assistance and Salvage - Protocol (1967)
4. Bills of Lading (1924)
5. Civil Jurisdiction (1952)
6. Penal Jurisdiction (1952)
7. Arrest of Ships (1952)

*Abordage 1910**Collision 1910*

**Convention internationale pour
l'unification de certaines
règles en matière
d'Abordage
et protocole de signature**

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1er mars 1913

**International convention
for the unification of certain
rules of law relating to
Collision between vessels
and protocol of signature**

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Angola	(a)	20.VII.1914
Antigua and Barbuda	(a)	1.II.1913
Argentina	(a)	28.II.1922
Australia	(a)	9.IX.1930
Norfolk Island	(a)	1.II.1913
Austria	(r)	1.II.1913
Barbados	(a)	1.II.1913
Belgium	(r)	1.II.1913
Brazil	(r)	31.XII.1913
Canada	(a)	25.IX.1914
Cape Verde	(a)	20.VII.1914
China	(a)	28.VIII.1994
Cyprus	(a)	1.II.1913
Croatia	(a)	8.X.1991
Denmark	(r)	18.VI.1913
<i>(denunciation 1 September 1995)</i>		
Dominican Republic	(a)	1.II.1913
Egypt	(a)	29.XI.1943
Estonia	(a)	15.V.1929
Fiji	(a)	1.II.1913
Finland	(a)	17.VII.1923
France	(r)	1.II.1913
Gambia	(a)	1.II.1913
Germany	(r)	1.II.1913
Ghana	(a)	1.II.1913
Goa	(a)	20.VII.1914
Greece	(r)	29.IX.1913
Grenada	(a)	1.II.1913
Guinea-Bissau	(a)	20.VII.1914
Guyana	(a)	1.II.1913
Haiti	(a)	18.VIII.1951
Hungary	(r)	1.II.1913
India	(a)	1.II.1913
Iran	(a)	26.IV.1966
Ireland	(r)	1.II.1913
Italy	(r)	2.VI.1913
Jamaica	(a)	1.II.1913
Japan	(r)	12.I.1914

*Abordage 1910**Collision 1910*

Kenya	(a)	1.II.1913
Kiribati	(a)	1.II.1913
Latvia	(a)	2.VIII.1932
Luxembourg	(a)	22.IV.1991
Libyan Arab Jamahiriya	(a)	9.XI.1934
Macao	(a)	20.VII.1914
Madagascar	(r)	1.II.1913
Malaysia	(a)	1.II.1913
Malta	(a)	1.II.1913
Mauritius	(a)	1.II.1913
Mexico	(r)	1.II.1913
Mozambique	(a)	20.VII.1914
Netherlands	(r)	1.II.1913
Newfoundland	(a)	11.III.1914
New Zealand	(a)	19.V.1913
Nicaragua	(r)	18.VII.1913
Nigeria	(a)	1.II.1913
Norway	(r)	12.XI.1913
Papua New Guinea	(a)	1.II.1913
Paraguay	(a)	22.XI.1967
Poland	(a)	2.VI.1922
Portugal	(r)	25.XII.1913
Romania	(r)	1.II.1913
Russian Federation	(r)	10.VII.1936
Saint Kitts and Nevis	(a)	1.II.1913
Saint Lucia	(a)	3.III.1913
Saint Vincent and the Grenadines	(a)	1.II.1913
Solomon Islands	(a)	1.II.1913
Sao Tome and Principe	(a)	20.VII.1914
Seychelles	(a)	1.II.1913
Sierra Leone	(a)	1.II.1913
Singapore	(a)	1.II.1913
Slovenia	(a)	16.XI.1993
Somalia	(a)	1.II.1913
Spain	(a)	17.XI.1923
Sri-Lanka	(a)	1.II.1913
Sweden	(r)	12.XI.1913
<i>(denunciation 19 December 1995)</i>		
Switzerland	(a)	28.V.1954
Timor	(a)	20.VII.1914
Tonga	(a)	13.VI.1978
Trinidad and Tobago	(a)	1.II.1913
Turkey	(a)	4.VII.1913
Tuvalu	(a)	1.II.1913

*Abordage 1910**Collision 1910*

United Kingdom	(r)	1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, Hong Kong, Falkland Islands and Dependencies, Cayman Islands, British Virgin Islands, Montserrat, Caicos & Turks Islands, Saint Helena, Wei-Hai-Wei	(a)	1.II.1913
Uruguay	(a)	21.VII.1915
Zaire	(a)	17.VII.1967

* Pursuant to a notification of the Ministry of foreign affairs of the Russian Federation dated 13th January 1992, the Russian Federation is now a party to all treaties to which the U.S.S.R. was a party. Russia had ratified the convention on the 1st February 1913.

*Assistance et sauvetage 1910**Assistance and salvage 1910*

**Convention internationale
pour l'unification de certaines
certaines règles en matière**

**d'Assistance et de sauvetage
maritimes
et protocole de signature**

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1 mars 1913

**International convention
for the unification of
certain rules of law
relating to**

**Assistance and salvage at
sea
and protocol of signature**

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Algeria	(a)	13.IV.1964
Angola	(a)	20.VII.1914
Antigua and Barbuda	(a)	1.II.1913
Argentina	(a)	28.II.1922
Australia	(a)	9.IX.1930
Norfolk Island	(a)	1.II.1913
Austria	(r)	1.II.1913
Bahamas	(a)	1.II.1913
Barbados	(a)	1.II.1913
Belgium	(r)	1.II.1913
Belize	(a)	1.II.1913
Brazil	(r)	31.XII.1913
Canada	(a)	25.IX.1914
<i>(denunciation 22.XI.1994)</i>		
Cape Verde	(a)	20.VII.1914
Cyprus	(a)	1.II.1913
Croatia	(a)	8.X.1991
Denmark	(r)	18.VI.1913
Dominican Republic	(a)	23.VII.1958
Egypt	(a)	19.XI.1943
Fiji	(a)	1.II.1913
Finland	(a)	17.VII.1923
France	(r)	1.II.1913
Gambia	(a)	1.II.1913
Germany	(r)	1.II.1913
Ghana	(a)	1.II.1913
Goa	(a)	20.VII.1914
Greece	(r)	15.X.1913
Grenada	(a)	1.II.1913
Guinea-Bissau	(a)	20.VII.1914
Guyana	(a)	1.II.1913
Haiti	(a)	18.VIII.1951
Hungary	(r)	1.II.1913
India	(a)	1.II.1913
Iran	(a) -	26.IV.1966

*Assistance et sauvetage 1910**Assistance and salvage 1910*

Ireland	(r)	1.II.1913
Italy	(r)	2.VI.1913
Jamaica	(a)	1.II.1913
Japan	(r)	12.I.1914
Kenya	(a)	1.II.1913
Kiribati	(a)	1.II.1913
Latvia	(a)	2.VIII.1932
Luxembourg	(a)	22.IV.1991
Macao	(a)	20.VII.1914
Malaysia	(a)	1.II.1913
Malta	(a)	1.II.1913
Madagascar	(r)	1.II.1913
Mauritius	(a)	1.II.1913
Mexico	(r)	1.II.1913
Mozambique	(a)	20.VII.1914
Netherlands	(r)	1.II.1913
Newfoundland	(a)	12.XI.1913
New Zealand	(a)	19.V.1913
Nigeria	(a)	1.II.1913
Norway	(r)	12.XI.1913
Oman	(a)	21.VIII.1975
Papua - New Guinea	(a)	1.II.1913
Paraguay	(a)	22.XI.1967
Poland	(a)	15.X.1921
Portugal	(r)	25.VII.1913
Romania	(r)	1.II.1913
Russian Federation	(a)	10.VII.1936
Saint Kitts and Nevis	(a)	1.II.1913
Saint Lucia	(a)	3.III.1913
Saint Vincent and the Grenadines	(a)	1.II.1913
Solomon Islands	(a)	1.II.1913
Sao Tomé and Príncipe	(a)	20.VII.1914
Seychelles	(a)	1.II.1913
Sierra Leone	(a)	1.II.1913
Singapore	(a)	1.II.1913
Slovenia	(a)	13.X.1993
Somalia	(a)	1.II.1913
Spain	(a)	17.XI.1923
Sri Lanka	(a)	1.II.1913
Sweden	(r)	12.XI.1913
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Timor	(a)	20.VII.1914
Tonga	(a)	13.VI.1978
Trinidad and Tobago	(a)	1.II.1913
Turkey	(a)	4.VII.1955
Tuvalu	(a)	1.II.1913

*Assistance et sauvetage 1910**Assistance and salvage 1910*

United Kingdom (1)	(r)	1.II.1913
Anguilla, Bermuda, Gibraltar, Hong Kong, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks & Caicos Islands, Saint Helena	(a)	1.II.1913
United States of America	(r)	1.II.1913
Uruguay	(a)	21.VII.1915
Zaire	(a)	17.VII.1967
<i>(denunciation 12.XII.1994 effective also for Falkland Islands, Montserrat, South Georgia and South Sandwich Islands)</i>		

(1) Including Jersey, Guernsey and Isle of Man

Protocole portant modification de la convention internationale pour l'unification de certaines règles en matière d'Assistance et de sauvetage maritimes
Signée à Bruxelles, le 23 septembre 1910

Protocol to amend the international convention for the unification of certain rules of law relating to Assistance and salvage at sea
Signed at Brussels on 23rd September, 1910

Bruxelles, 27 mai 1967
 Entré en vigueur: 15 août 1977

Brussels, 27th May, 1967
 Entered into force: 15 August 1977

Austria	(r)	4.IV.1974
Belgium	(r)	11.IV.1973
Brazil	(r)	8.XI.1982
Croatia	(r)	8.X.1991
Egypt	(r)	15.VII.1977
Jersey, Guernsey & Isle of Man	(a)	22.VI.1977
Papua New Guinea	(a)	14.X.1980
Slovenia	(a)	13.X.1993
Syrian Arab Republic	(a)	1.VIII.1974
United Kingdom	(r)	9.IX.1974

*Limitation de responsabilité 1924**Limitation of liability 1924*

**Convention internationale pour
l'unification de certaines
règles concernant la
Limitation de la responsabilité
des propriétaires
de navires de mer
et protocole de signature**

Bruxelles, 25 août 1924
Entrée en vigueur: 2 juin 1931

**International convention for
the unification of certain
rules relating to the
Limitation of the liability
of owners
of sea-going vessels
and protocol of signature**

Brussels, 25th August, 1924
Entered into force: 2 June, 1931

(Translation)

Belgium	(r)	2.VI.1930
Brazil	(r)	28.IV.1931
Denmark	(r)	2.VI.1930
<i>(denunciation - 30.VI.1983)</i>		
Dominican Republic	(a)	23.VII.1958
Finland	(a)	12.VII.1934
<i>(denunciation - 30.VI.1983)</i>		
France	(r)	23.VIII.1935
<i>(denunciation - 26.X.1976)</i>		
Hungary	(r)	2.VI.1930
Madagascar	(r)	12.VIII.1935
Monaco	(r)	15.V.1931
<i>(denunciation - 24.I.1977)</i>		
Norway	(r)	10.X.1933
<i>(denunciation - 30.VI.1963)</i>		
Poland	(r)	26.X.1936
Portugal	(r)	2.VI.1930
Spain	(r)	2.VI.1930
Sweden	(r)	1.VII.1938
<i>(denunciation - 30.VI.1963)</i>		
Turkey	(a)	4.VII.1955

*Règles de La Haye 1924**Hague Rules 1924*

**Convention internationale pour
l'unification de certaines
règles en matière de
Connaissance
et protocole de signature
“Règles de La Haye 1924”**

**International convention for
the unification of certain
rules of law relating to
Bills of lading
and protocol of signature
“Hague Rules 1924”**

Bruxelles, le 25 août 1924
Entrée en vigueur: 2 juin 1931

Brussels, 25 August 1924
Entered into force: 2 June 1931

(Translation)

Algeria	(a)	13.IV.1964
Angola	(a)	2.II.1952
Antigua and Barbuda	(a)	2.XII.1930
Argentina	(a)	19.IV.1961
Australia	(a)	4.VII.1955
Norfolk	(a)	4.VII.1955
Bahamas	(a)	2.XII.1930
Barbados	(a)	2.XII.1930
Belgium	(r)	2.VI.1930
Belize	(a)	2.XI.1930
Bolivia	(a)	28.V.1982
Cameroon	(a)	2.XII.1930
Cape Verde	(a)	2.II.1952
Cyprus	(a)	2.XII.1930
Croatia	(r)	8.X.1991
Cuba	(a)	25.VII.1977
Denmark	(a)	1.VII.1938
<i>(denunciation - 1.III.1984)</i>		
Dominican Republic	(a)	2.XII.1930
Ecuador	(a)	23.III.1977
Egypt (1)	(a)	29.XI.1943

(1) On 17 February 1993 Egypt notified to the Government of Belgium that it had become a party to the U.N. Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) but that it deferred the denunciation of the 1924 Brussels Convention, as amended, for a period of five years. If, as provided in Article 31 paragraph 4 of the Hamburg Rules, the five years period commences to run on the date of entry into force of the Hamburg Rules (1 November 1992), the denunciation made on 1 November 1997 will take effect on 1 November 1998).

*Règles de La Haye 1924**Hague Rules 1924*

Fiji	(a)	2.XII.1930
Finland	(a)	1.VII.1939
<i>(denunciation — 1.III.1984)</i>		
France	(r)	4.I.1937
Gambia	(a)	2.XII.1930
Germany	(r)	1.VII.1939
Ghana	(a)	2.XII.1930
Goa	(a)	2.II.1952
Greece	(a)	23.III.1993
Grenada	(a)	2.XII.1930
Guyana	(a)	2.XII.1930
Guinea-Bissau	(a)	2.II.1952
Hungary	(r)	2.VI.1930
Iran	(a)	26.IV.1966
Ireland	(a)	30.I.1962
Israel	(a)	5.IX.1959
Italy	(r)	7.X.1938
<i>(denunciation — 22.XI.1984)</i>		
Ivory Coast	(a)	15.XII.1961
Jamaica	(a)	2.XII.1930
Japan	(r)	1.VII.1957
<i>(denunciation — 1.VI.1992)</i>		
Kenya	(a)	2.XII.1930
Kiribati	(a)	2.XII.1930
Kuwait	(a)	25.VII.1969
Lebanon	(a)	19.VII.1975
Malaysia	(a)	2.XII.1930
Madagascar	(a)	13.VII.1965
Mauritius	(a)	24.VIII.1970
Monaco	(a)	15.V.1931
Mozambique	(a)	2.II.1952
Nauru	(a)	4.VII.1955
Netherlands	(a)	18.VIII.1956
<i>(denunciation — 26.IV.1982)</i>		
Nigeria	(a)	2.XII.1930
Norway	(a)	1.VII.1938
<i>(denunciation — 1.III.1984)</i>		
Papua New Guinea	(a)	4.VII.1955
Paraguay	(a)	22.XI.1967
Peru	(a)	29.X.1964
Poland	(r)	4.VIII.1937
Portugal	(a)	24.XII.1931
Macao	(a)	2.II.1952
Romania	(r)	4.VIII.1937
Sao Tomé and Principe	(a)	2.II.1952
Sarawak	(a)	3.XI.1931
Senegal	(a)	14.II.1978
Seychelles	(a)	2.XII.1930
Sierra-Leone	(a)	2.XII.1930

*Règles de la Haye 1924**Hague Rules 1924*

Singapore	(a)	2.XII.1930
Solomon Islands	(a)	2.XII.1930
Somalia	(a)	2.XII.1930
Spain	(r)	2.VI.1930
Sri-Lanka	(a)	2.XII.1930
St. Kitts and Nevis	(a)	2.XII.1930
St. Lucia	(a)	2.XII.1930
St. Vincent and the Grenadines	(a)	2.XII.1930
Sweden	(a)	1.VII.1938
<i>(denunciation — 1.III.1984)</i>		
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Tanzania (United Republic of)	(a)	3.XII.1962
Timor	(a)	2.II.1952
Tonga	(a)	2.XII.1930
Trinidad and Tobago	(a)	2.XII.1930
Turkey	(a)	4.VII.1955
Tuvalu	(a)	2.XII.1930
United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)	(r)	2.VI.1930
<i>(denunciation — 13.VI.1977)</i>		
Gibraltar	(a)	2.XII.1930
<i>(denunciation — 22.IX.1977)</i>		
Bermuda, Hong Kong, Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.		
<i>(denunciation 20.X.1983)</i>		
Anguilla	(a)	2.XII.1930
Ascension, Saint Helène and Dependencies	(a)	3.XI.1931
United States of America	(r)	29.VI.1937
Zaire	(a)	17.VII.1967

*Règles de Visby 1968**Visby Rules 1968*

**Protocole portant modification de
la Convention Internationale pour
l'unification de certaines
règles en matière de
connaissance, signée à Bruxelles
le 25 août 1924
Règles de Visby**

Bruxelles, 23 février 1968
Entrée en vigueur: 23 juin 1977

**Protocol to amend the
International Convention for
the unification of certain
rules of law relating to
bills of lading, signed at Bruxelles
on 25 August 1924
Visby Rules**

Brussels, 23rd February 1968
Entered into force: 23 June, 1977

Belgium	(r)	6.IX.1978
Denmark	(r)	20.XI.1975
Ecuador	(a)	23.III.1977
Egypt	(r)	31.I.1983
Finland	(r)	1.XII.1984
France	(r)	10.VII.1977
Greece	(a)	23.III.1993
Italy	(r)	22.VIII.1985
Lebanon	(a)	19.VII.1975
Netherlands	(r)	26.IV.1982
Norway	(r)	19.III.1974
Poland	(r)	12.II.1980
Singapore	(a)	25.IV.1972
Sri-Lanka	(a)	21.X.1981
Sweden	(r)	9.XII.1974
Switzerland	(r)	11.XII.1975
Syrian Arab Republic	(a)	1.VIII.1974
Tonga	(a)	13.VI.1978
United Kingdom of Great Britain	(r)	1.X.1976
Bermuda, Hong-Kong	(a)	1.XI.1980
Gibraltar	(a)	22.IX.1977
Isle of Man	(a)	1.X.1976
British Antarctic Territories, Caimans, Caicos & Turks Islands, Falklands Islands & Dependencies, Montserrat, Virgin Islands (extension)	(a)	20.X.1983

*Protocole DTS 1979**SDR Protocol 1979*

**Protocole portant modification
de la Convention Internationale
pour l'unification de certaines
règles en matière de
connaissance
telle qu'amendée par le
Protocole de modification du
23 février 1968.
Protocole DTS**

**Protocol to amend the
International Convention
for the unification of
certain rules relating to
bills of lading
as modified by the
Amending Protocol of
23rd February 1968.
SDR Protocol**

Bruxelles, le 21 décembre 1979
Entré en vigueur: 14 février 1984

Brussels, 21st December, 1979
Entered into force: 14 February, 1984

Australia	(a)	16.VII.1993
Belgium	(r)	7.IX.1983
Denmark	(a)	3.XI.1983
Finland	(r)	1.XII.1984
France	(r)	18.XI.1986
Greece	(a)	23.III.1993
Italy	(r)	22.VIII.1985
Japan	(r)	I.III.1993
Mexico	(a)	20.V.1994
Netherlands	(r)	18.II.1986
New Zealand	(a)	20.XII.1994
Norway	(r)	1.XII.1983
Poland	(r)	6.VII.1984
Spain	(r)	6.I.1982
Sweden	(r)	14.XI.1983
Switzerland	(r)	20.I.1988
United Kingdom of Great-Britain and Northern Ireland	(r)	2.III.1982
Bermuda, British Antarctic Territories, Virgin Islands, Caimans, Falkland Islands & Dependencies, Gibraltar, Hong-Kong, Isle of Man, Montserrat, Caicos & Turks Island (extension)	(a)	20.X.1983

**Convention internationale pour
l'unification de certaines
règles relatives aux
Privilèges et hypothèques
maritimes
et protocole de signature**

Bruxelles, 10 avril 1926
entrée en vigueur 2 juin
1931

**International convention
for the unification of
certain rules relating to
Maritime liens and
mortgages
and protocol of signature**

Brussels, 10th April, 1926
entered into force 2 June,
1931

(translation)

Algeria	(a)	13.IV.1964
Argentina	(a)	19.IV.1961
Belgium	(r)	2.VI.1930
Brazil	(r)	28.IV.1931
Cuba	(a)	21.XI.1983
Denmark	(r)	2.VI.1930
<i>(denunciation — 1.III.1965)</i>		
Estonia	(r)	2.VI.1930
Finland	(a)	12.VII.1934
<i>(denunciation — 1.III.1965)</i>		
France	(r)	23.VIII.1935
Haiti	(a)	19.III.1965
Hungary	(r)	2.VI.1930
Iran	(a)	8.IX.1966
Italy	(r)	7.XII.1949
Lebanon	(a)	18.III.1969
Luxembourg	(a)	18.II.1991
Madagascar	(r)	23.VIII.1935
Monaco	(a)	15.V.1931
Norway	(r)	10.X.1933
<i>(denunciation — 1.III.1965)</i>		
Poland	(r)	26.X.1936
Portugal	(a)	24.XII.1931
Romania	(r)	4.VIII.1937
Spain	(r)	2.VI.1930
Switzerland	(a)	28.V.1954
Sweden	(r)	1.VII.1938
<i>(denunciation — 1.III.1965)</i>		
Syrian Arab Republic	(a)	14.II.1951
Turkey	(a)	4.VII.1955
Uruguay	(a)	15.IX.1970
Zaire	(a)	17.VII.1967

*Immunité 1926**Immunity 1926*

**Convention internationale pour
l'unification de certaines règles
concernant les**

**Immunités des navires
d'Etat**

Bruxelles, 10 avril 1926

et protocole additionnel

Bruxelles, 24 mai 1934

Entrée en vigueur: 8 janvier 1937

**International convention for the
unification of certain rules
concerning the**

**Immunity of State-owned
ships**

Brussels, 10th April, 1926

and additional protocol

Brussels, May 24th, 1934

Entered into force: 8 January 1937

(Translation)

Argentina	(a)	19.IV.1961
Belgium	(r)	8.I.1936
Brazil	(r)	8.I.1936
Chile	(r)	8.I.1936
Cyprus	(a)	19.VII.1988
Denmark	(r)	16.XI.1950
Estonia	(r)	8.I.1936
France	(r)	27.VII.1955
Germany	(r)	27.VI.1936
Greece	(a)	19.V.1951
Hungary	(r)	8.I.1936
Italy	(r)	27.I.1937
Luxembourg	(a)	18.II.1991
Libyan Arab Jamahiriya	(r)	27.I.1937
Madagascar	(r)	27.I.1955
Netherlands	(r)	8.VII.1936
Curaçao, Dutch Indies		
Norway	(r)	25.IV.1939
Poland	(r)	16.VII.1976
Portugal	(r)	27.VI.1938
Romania	(r)	4.VIII.1937
<i>(denunciation — 21.IX.1959)</i>		
Somalia	(r)	27.I.1937
Sweden	(r)	1.VII.1938
Switzerland	(a)	28.V.1954
Suriname	(r)	8.VII.1936
Syrian Arab Republic	(a)	17.II.1960
Turkey	(a)	4.VII.1955
United Arab Republic	(a)	17.II.1960
United Kingdom	(r)	3.VII.1979
United Kingdom for Jersey, Guernsey and Island of Man	(a)	19.V.1988
Uruguay	(a)	15.IX.1970
Zaire	(a)	17.VII.1967

**Convention internationale pour
l'unification de certaines règles
relatives à la
Compétence civile
en matière d'abordage**

Bruxelles, 10 mai 1952

Entrée en vigueur:

14 septembre 1955

**International convention for the
unification of certain rules
relating to
Civil jurisdiction
in matters of collision**

Brussels, 10th May, 1952

Entered into force:

14 September 1955

Algeria	(a)	18.VIII.1964
Antigua and Barbuda	(a)	12.V.1965
Argentina	(a)	19.IV.1961
Bahamas	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica	(a)	13.VII.1955
Côte d'Ivoire	(a)	23.IV.1958
Croatia	(r)	8.X.1991
Cyprus	(a)	17.III.1994
Djibouti	(a)	23.IV.1958
Dominican Republic	(a)	12.V.1965
Egypt	(r)	24.VIII.1955
Fiji	(a)	10.X.1974
France	(r)	25.V.1957
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany	(r)	6.X.1972
Greece	(r)	15.III.1965
Grenada	(a)	12.V.1965
Guinea	(a)	23.IV.1958
Guyana	(a)	29.III.1963
Haute Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Ireland	(a)	17.X.1989
Italy	(r)	9.XI.1979
Khmer Republic	(a)	12.XI.1959
Kiribati	(a)	21.IX.1965
Luxembourg	(a)	18.II.1991
Madagascar	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958

*Compétence civile 1952**Civil jurisdiction 1952*

Mauritius	(a)	29.III.1963
Morocco	(a)	11.VII.1990
Niger	(a)	23.IV.1958
Nigeria	(a)	7.XI.1963
North Borneo	(a)	29.III.1963
Paraguay	(a)	22.XI.1967
Poland	(a)	14.III.1986
Portugal	(r)	4.V.1957
Romania	(a)	28.XI.1995
Sarawak	(a)	29.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands	(a)	21.IX.1965
Spain	(r)	8.XII.1953
St. Kitts and Nevis	(a)	12.V.1965
St. Lucia	(a)	12.V.1965
St. Vincent and the Grenadines	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.IX.1965
United Kingdom of Great Britain and		
Northern Ireland	(r)	18.III.1959
Gibraltar, Hong-Kong	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Caiman Islands, Montserrat	(a)	12.V.1965
Anguilla, St. Helena	(a)	12.V.1965
Turks Isles and Caicos	(a)	21.IX.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and Dependencies	(a)	17.X.1969
Zaire	(a)	17.VII.1967

*Compétence pénale 1952**Penal jurisdiction 1952*

**Convention internationale
pour l'unification de
certaines règles
relatives à la
Compétence pénale
en matière d'abordage et
autres événements
de navigation**

Bruxelles, 10 mai 1952
Entrée en vigueur:
20 novembre 1955

**International convention
for the unification of
certain rules
relating to
Penal jurisdiction
in matters of collision
and other incidents
of navigation**

Brussels, 10th May, 1952
Entered into force:
20 November 1955

Antigua and Barbuda	(a)	12.V.1965
Argentina	(a)	19.IV.1961
Bahamas	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Burman Union	(a)	8.VII.1953
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica	(a)	13.VII.1955
Croatia	(r)	8.X.1991
Cyprus	(a)	17.III.1994
Djibouti	(a)	23.IV.1958
Dominican Republic	(a)	12.V.1965
Egypt	(r)	24.VIII.1955
Fiji	(a)	29.III.1963
France	(r)	20.V.1955
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany	(r)	6.X.1972
Greece	(r)	15.III.1965
Grenada	(a)	12.V.1965
Guyana	(a)	19.III.1963
Guinea	(a)	23.IV.1958
Haiti	(a)	17.IX.1954
Haute-Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Italy	(r)	9.XI.1979
Ivory Coast	(a)	23.IV.1958
Khmere Republic	(a)	12.XI.1956
Kiribati	(a)	21.IX.1965

*Compétence pénale 1952**Penal jurisdiction 1952*

Lebanon	(r)	19.VII.1975
Luxembourg	(a)	18.II.1991
Madagascar	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958
Mauritius	(a)	29.III.1963
Morocco	(a)	11.VII.1990
Netherlands	(r)	
Kingdom in Europe, West Indies and Aruba	(r)	25.VI.1971
Niger	(a)	23.IV.1958
Nigeria	(a)	7.XI.1963
North Borneo	(a)	29.III.1963
Paraguay	(a)	22.XI.1967
Portugal	(r)	4.V.1957
Romania	(a)	28.XI.1995
Sarawak	(a)	28.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands	(a)	21.IX.1965
Spain	(r)	8.XII.1953
St. Kitts and Nevis	(a)	12.V.1965
St. Lucia	(a)	12.V.1965
St. Vincent and the Grenadines	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Suriname	(r)	25.VI.1971
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	10.VII.1972
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.IX.1965
United Kingdom of Great Britain and		
Northern Ireland	(r)	18.III.1959
Gibraltar, Hong-Kong	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Anguilla, Caiman Islands, Montserrat,		
St. Helena	(a)	12.V.1965
Turks Islands and Caicos	(a)	21.IX.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and dependencies	(a)	17.X.1969
Viet Nam	(a)	26.XI.1955
Zaire	(a)	17.VII.1967

*Saisie des navires 1952**Arrest of ships 1952*

**Convention internationale pour
l'unification de certaines
règles sur la
Saisie conservatoire
des navires de mer**

**International convention for the
unification of certain rules
relating to
Arrest of sea-going ships**

Bruxelles, 10 mai 1952
Entrée en vigueur: 24 février 1956

Brussels, 10th May, 1952
Entered into force: 24 February, 1956

Algeria	(a)	18.VIII.1964
Antigua and Barbuda	(a)	12.V.1965
Bahamas	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica	(a)	13.VII.1955
Croatia	(r)	8.X.1991
Cuba	(a)	21.XI.1983
Denmark	(r)	2.V.1989
Djibouti	(a)	23.IV.1958
Dominican Republic	(a)	12.V.1965
Egypt	(r)	24.VIII.1955
Fiji	(a)	29.III.1963
Finland	(r)	21.XII.1995
France	(r)	25.V.1957
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany	(r)	6.X.1972
Greece	(r)	27.II.1967
Grenada	(a)	12.V.1965
Guyana	(a)	29.III.1963
Guinea	(a)	12.XII.1994
Haiti	(a)	4.XI.1954
Haute-Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Ireland	(a)	17.X.1989
Italy	(r)	9.XI.1979
Ivory Coast	(a)	23.IV.1958
Khmere Republic	(a)	12.XI.1956
Kiribati	(a)	21.IX.1965
Latvia	(a)	17.V.1993
Luxembourg	(a)	18.II.1991

*Saisie des navires 1952**Arrest of ships 1952*

Madagascar	(a)	23.IV.1958
Marocco	(a)	11.VII.1990
Mauritania	(a)	23.IV.1958
Mauritius	(a)	29.III.1963
Netherlands	(r)	20.I.1983
Niger	(a)	23.IV.1958
Nigeria	(a)	7.XI.1963
North Borneo	(a)	29.III.1963
Norway	(r)	1.XI.1994
Paraguay	(a)	22.XI.1967
Poland	(a)	16.VII.1976
Portugal	(r)	4.V.1957
Romania	(a)	28.XI.1995
Sarawak	(a)	28.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands	(a)	21.IX.1965
Spain	(r)	8.XII.1953
St. Kitts and Nevis	(a)	12.V.1965
St. Lucia	(a)	12.V.1965
St. Vincent and the Grenadines	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Sweden	(a)	30.IV.1993
Switzerland	(a)	28.V.1954
Syrian Arabic Republic	(a)	3.II.1972
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.IX.1965
United Kingdom of Great Britain and Northern Ireland	(r)	18.III.1959
United Kingdom (Overseas Territories)		
Gibraltar, Hong-Kong	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Anguilla, Caiman Islands, Montserrat, St. Helena	(a)	12.V.1965
Turks Isles and Caicos	(a)	21.IX.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and dependencies	(a)	17.X.1969
Zaire	(a)	17.VII.1967

*Limitation de responsabilité 1957**Limitation of liability 1957*

**Convention internationale
sur la
Limitation
de la responsabilité
des propriétaires
de navires de mer
et protocole de signature**

**International convention
relating to the
Limitation of the liability
of owners
of sea-going ships

and protocol of signature**

Bruxelles, le 10 octobre 1957
Entrée en vigueur: 31 mai 1968

Brussels, 10th October, 1957
Entered into force: 31 May, 1968

Algeria	(a)	18.VIII.1964
Australia (denunciation — 30.V.1990)	(r)	30.VII.1975
Bahamas	(a)	21.VIII.1964
Barbados	(a)	4.VIII.1965
Belgium (denunciation — 1.IX.1989)	(r)	31.VII.1975
Belize	(r)	31.VII.1975
Denmark (denunciation — 1.IV.1984)	(r)	1.III.1965
Dominican Republic	(a)	4.VIII.1965
Egypt (Arab Republic of) (denunciation — 8.V.1985)		
Fiji	(a)	21.VIII.1964
Finland (denunciation — 1.IV.1984)	(r)	19.VIII.1964
France (denunciation — 15.VII.1987)	(r)	7.VII.1959
Germany (denunciation — 1.IX.1986)	(r)	6.X.1972
Ghana	(a)	26.VII.1961
Grenada	(a)	4.VIII.1965
Guyana	(a)	25.III.1966
Iceland	(a)	16.X.1968
India	(r)	1.VI.1971
Iran	(r)	26.IV.1966
Israel	(r)	30.XI.1967
Japan (denunciation — 19.V.1983)	(r)	1.III.1976
Kiribati	(a)	21.VIII.1964
Lebanon	(a)	23.XII.1994
Madagascar	(a)	13.VII.1965
Mauritius	(a)	21.VIII.1964
Monaco	(a)	24.I.1977
Netherlands (denunciation — 1.IX.1989)	(r)	10.XII.1965

*Limitation de responsabilité 1957**Limitation of liability 1957*

Norway	(r)	1.III.1965
<i>(denunciation — 1.IV.1984)</i>		
Papua New Guinea	(a)	14.III.1980
Poland	(r)	1.XII.1972
Portugal	(r)	8.IV.1968
Seychelles	(a)	21.VIII.1964
Singapore	(a)	17.IV.1963
Solomon Islands	(a)	21.VIII.1964
St. Lucia	(a)	4.VIII.1965
St. Vincent and the Grenadines	(a)	4.VIII.1965
Spain	(r)	16.VII.1959
Sweden	(r)	4.VI.1964
<i>(denunciation — 1.IV.1984)</i>		
Switzerland	(r)	21.I.1966
Syrian Arab Republic	(a)	10.VII.1972
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.VIII.1964
United Arab Republic	(a)	7.IX.1965
United Kingdom	(r)	18.II.1959
Isle of Man	(a)	18.XI.1960
Bermuda, British Antarctic Territories,		
Falkland and Dependencies, Gibraltar,		
Hong Kong, British Virgin Islands	(a)	21.VIII.1964
Guernsey and Jersey	(a)	21.X.1964
Caiman Islands, Montserrat,		
Caicos and Turks Isles	(a)	4.VIII.1965
Vanuatu	(a)	8.XII.1966
Zaire	(a)	17.VII.1967

*Limitation Protocol 1979**Stowaways 1957*

Protocole portant modification de la convention internationale sur la Limitation de la responsabilité des propriétaires de navires de mer du 10 octobre 1957

Bruxelles le 21 décembre 1979
Entré en vigueur: 6 octobre 1984

Protocol to amend the international convention relating to the Limitation of the liability of owners of sea-going ships of 10 October 1957

Brussels, 21st December, 1979
Entered into force: 6 October, 1984

Australia	(r)	30.XI.1983
Belgium	(r)	7.IX.1983
Luxembourg	(a)	18.II.1991
Poland	(r)	6.VII.1984
Portugal	(r)	30.IV.1982
Spain	(r)	14.V.1982
Switzerland	(r)	20.I.1988
United Kingdom of Great Britain and Northern Ireland	(r)	2.III.1982
<i>(denunciation — 1.XII.1985)</i>		
<i>Isle of Man, Bermuda, Falkland and Dependencies, Gibraltar, Hong-Kong, British Virgin Islands, Guernsey and Jersey, Cayman Islands, Montserrat, Caicos and Turks Isles</i>		
<i>(denunciation — 1.XII.1985)</i>		

Convention internationale sur les Passagers Clandestins

Bruxelles, 10 octobre 1957
Pas encore en vigueur

International convention relating to Stowaways

Brussels, 10th October 1957
Not yet in force

Belgium	(r)	31.VII.1975
Denmark	(r)	16.XII.1963
Finland	(r)	2.II.1966
Italy	(r)	24.V.1963
Luxembourg	(a)	18.II.1991
Madagascar	(a)	13.VII.1965
Morocco	(a)	22.I.1959
Norway	(r)	24.V.1962
Peru	(r)	23.XI.1961
Sweden	(r)	27.VI.1962

*Carriage of passengers 1961**Nuclear ships 1962*

**Convention internationale
pour l'unification de certaines
règles en matière de
Transport de passagers
par mer
et protocole**

Bruxelles, 29 avril 1961
Entrée en vigueur: 4 juin 1965

Algeria
Cuba
France
(denunciation — 3.XII.1975)
Haïti
Iran
Madagascar
Morocco
Peru
Switzerland
Tunisia
United Arab Republic
Zaire

**International convention
for the unification of
certain rules relating to
Carriage of passengers
by sea
and protocol**

Brussels, 29th April 1961
Entered into force: 4 June, 1965

(a) 2.VII.1973
(a) 7.I.1963
(r) 4.III.1965
(a) 19.IV.1989
(a) 26.IV.1966
(a) 13.VII.1965
(r) 15.VII.1965
(a) 29.X.1964
(r) 21.I.1966
(a) 18.VII.1974
(r) 15.V.1964
(a) 17.VII.1967

**Convention internationale
relative à la responsabilité
des exploitants de
Navires nucléaires
et protocole additionnel**

Bruxelles, 25 mai 1962
Pas encore en vigueur

**International convention
relating to the liability
of operators of
Nuclear ships
and additional protocol**

Brussels, 25th May 1962
Not yet in force

Lebanon
Madagascar
Netherlands
Portugal
Suriname
Syrian Arab Republic
Zaire

(r) 3.VI.1975
(a) 13.VII.1965
(r) 20.III.1974
(r) 31.VII.1968
(r) 20.III.1974
(a) 1.VIII.1974
(a) 17.VII.1967

*Vesses under construction 1967**Liens and mortgages 1967*

**Convention internationale
pour l'unification de certaines
règles en matière de
Transport de bagages
de passagers par mer**

Bruxelles, 27 mai 1967
Pas en vigueur

Algeria
Cuba

**International Convention
for the unification of
certain rules relating to
Carriage of passengers'
luggage by sea**

Brussels, 27th May 1967
Not in force

(a) 2.VII.1973
(a) 15.II.1972

**Convention internationale relative à
l'inscription des droits relatifs aux**

Navires en construction

Bruxelles, 27 mai 1967
Pas encore en vigueur

Croatia
Greece
Norway
Sweden
Syrian Arab Republic

**International convention relating
to the registration of rights
in respect of
Vessels under construction**

Brussels, 27th May 1967
Not yet in force

(r) 3.V.1971
(r) 12.VII.1974
(r) 13.V.1975
(r) 13.XI.1975
(a) 1.XIII.1974

**Convention internationale
pour l'unification de
certaines règles relatives aux
Privilèges et hypothèques
maritimes**

Bruxelles, 27 mai 1967
Pas encore in vigueur

Denmark
Morocco
Norway
Sweden
Syrian Arab Republic

**International convention
for the unification of
certain rules relating to
Maritime liens and
mortgages**

Brussels, 27th May 1967
Not yet in force

(r) 23.VIII.1977
(a) 12.II.1987
(r) 13.V.1975
(r) 13.XI.1975
(a) 1.VIII.1974

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature

Editor's notes

This Status is based on advices from the International Maritime Organisation and reflects the situation as at 31st December, 1992. A number of reservations — not included in this booklet — have been made by certain contracting States to the IMO Conventions. Their text can be obtained from the C.M.I. Secretariat upon request.

The dates mentioned are the dates of the deposit of instruments.

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE

Notes de l'éditeur

Cet état est basé sur des informations reçues de l'Organisation Maritime Internationale et reflète la situation au 31 décembre 1992. Des réserves — ne figurant pas dans ce livre — ont été posées par certains Etats parties aux Conventions de l'OMI. Leur texte peut être obtenu sur demande au Secrétariat du C.M.I.

Les dates mentionnées sont les dates du dépôt des instruments.

CLC 1969

**International Convention on
Civil liability
for oil pollution damage
(CLC 1969)**

Done at Brussels, 29 November 1969
Entered into force: 19 June, 1975

**Convention Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les hydrocarbures
(CLC 1969)**

Signée à Bruxelles, le 29 novembre 1969
Entrée en vigueur: 19 juin 1975

Albania	(a)	6.IV.1994
Algeria	(a)	14.VI.1974
Australia	(r)	7.XI.1983
<i>(denunciation 22 June 1988)</i>		
Bahamas	(a)	22.VII.1976
Barbados	(a)	6.V.1994
Belgium	(r)	12.I.1977
Belize	(a)	2.IV.1991
Benin	(a)	1.XI.1985
Brazil	(r)	17.XII.1976
Brunei Darussalam	(a)	29.IX.1992
Cambodia	(a)	28.XI.1994
Cameroon	(r)	14.V.1984
Canada	(a)	24.I.1989
Chile	(a)	2.VIII.1977
China	(a)	30.I.1980
Colombia	(a)	26.III.1990
Côte d'Ivoire	(r)	21.VI.1973
Croatia	(r)	8.X.1991
Cyprus	(a)	19.VI.1989
Denmark	(a)	2.IV.1975
Djibouti	(a)	1.III.1990
Dominican Republic	(r)	2.IV.1975
Ecuador	(a)	23.XII.1976
Egypt	(a)	3.II.1989
Estonia	(a)	1.XII.1992
Fiji	(a)	15.VIII.1972
Finland	(r)	10.X.1980
France	(r)	17.III.1975
Gabon	(a)	21.I.1982
Gambia	(a)	1.XI.1991
Germany	(r)	20.V.1975
Georgia	(a)	19.IV.1994
Ghana	(r)	20.IV.1978
Greece	(a)	29.VI.1976
Guatemala	(a)	20.X.1982
Iceland	(r)	17.VII.1980
India	(a)	1.V.1987

CLC 1969

Indonesia	(r)	1.IX.1978
Ireland	(r)	19.XI.1992
Italy	(r)	27.II.1979
Japan	(a)	3.VI.1976
Kazakhstan	(a)	7.III.1994
Kenya	(a)	15.XII.1992
Korea (Rep.of)	(a)	18.XII.1978
Kuwait	(a)	2.IV.1981
Latvia	(a)	10.VII.1992
Lebanon	(a)	9.IV.1974
Liberia	(a)	25.IX.1972
Luxembourg	(a)	14.II.1991
Maldives	(a)	16.III.1981
Malta	(a)	27.IX.1991
Marshall Islands	(a)	24.I.1994
Mauritania	(a)	17.XI.1995
Mauritius	(a)	6.IV.1995
Mexico	(a)	13.V.1994
Monaco	(r)	21.VIII.1975
Morocco	(a)	11.IV.1974
Netherlands	(r)	9.IX.1975
New Zealand	(a)	27.IV.1976
Nigeria	(a)	7.V.1981
Norway	(a)	21.III.1975
Oman	(a)	24.I.1985
Panama	(r)	7.I.1976
Papua New Guinea	(a)	12.III.1980
Perù	(a)	24.II.1987
Poland	(r)	18.III.1976
Portugal	(r)	26.XI.1976
Qatar	(a)	2.VI.1988
Russian Federation	(a)	24.VI.1975
Saint Kitts and Nevis	(a)	14.IX.1994
Saudi Arabia	(a)	15.IV.1993
St.-Vincent and the Grenadines	(a)	19.VI.1989
Senegal	(a)	27.III.1972
Seychelles	(a)	12.IV.1988
Sierra Leone	(a)	13.VIII.1993
Singapore	(a)	16.IX.1981
Slovenia (succession)	(a)	25.VI.1991
South Africa	(a)	17.III.1976
Spain	(r)	8.XII.1975
Sri Lanka	(a)	12.IV.1983
Sweden	(r)	17.III.1975
Switzerland	(r)	15.XII.1987
Syrian Arab Republic	(a)	6.II.1975
Tonga	(a)	1.II.1996
Tunisia	(a)	4.V.1976
Tuvalu (succession)	(a)	1.X.1978

CLC 1969

United Arab Emirates	(a)	15.XII.1983
United Kingdom	(r)	17.III.1975
Vanuatu	(a)	2.II.1983
Venezuela	(a)	21.I.1992
Yemen	(a)	6.III.1979
Yugoslavia	(r)	18.VI.1976

The Convention applies provisionally to the following States:

Kiribati

Solomon Islands

The United Kingdom declared ratification to be effective also in respect of:

Anguilla	8.V.1984
Bailiwick of Jersey and Guernsey, Isle of Man	1.III.1976
Bermuda	1.III.1976
Belize	1.IV.1976
British Indian Ocean Territory	"
British Virgin Islands	"
Cayman Islands	"
Falkland Islands and Dependencies	"
Gibraltar	"
Gilbert Islands	"
Hong-Kong	"
Montserrat	"
Pitcairn	"
St.Helena and Dependencies	"
Seychelles	"
Solomon Islands	"
Turks and Caicos Islands	"
Tuvalu	"
United Kingdom Sovereign Base	"
Areas of Akrotiri and Dhekelia	"
in the Island of Cyprus	"

CLC Protocol 1976

**Protocol to the International
Convention on
Civil liability
for oil pollution damage**

(CLC PROT 1976)

Done at London,
19 November 1976

Entered into force: 8 April, 1981

**Protocole à la Convention
Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les
hydrocarbures
(CLC PROT 1976)**

Signé à Londres,
le 19 novembre 1976

Entré en vigueur: 8 avril 1981

Australia	(a)	7.XI.1983
<i>denunciation</i>		22 June 1988
Bahamas	(acc)	3.III.1980
Belgium	(a)	15.VI.1989
Belize	(a)	2.IV.1991
Brunei Darussalam	(a)	29.IX.1992
Cameroon	(a)	14.V.1984
Canada	(a)	24.I.1989
China	(a)	29.IX.1986
Colombia	(a)	26.III.1990
Cyprus	(a)	19.VI.1989
Denmark	(a)	3.VI.1981
Egypt	(a)	3.II.1989
Finland	(a)	8.I.1981
France	(A A)	7.XI.1980
Germany	(r)	28.VIII.1980
Greece	(a)	10.V.1989
Georgia	(a)	25.VIII.1995
India	(a)	1.V.1987
Ireland	(a)	19.XI.1992
Italy	(a)	3.VI.1983
Korea, Republic of	(a)	8.XII.1992
Kuwait	(a)	1.VII.1981
Liberia	(a)	17.II.1981
Luxemburg	(a)	14.II.1991
Maldives	(a)	14.VI.1981
Malta	(a)	27.IX.1991
Mauritania	(a)	17.XI.1995
Mexico	(a)	13.V.1994
Netherlands	(a)	3.VIII.1982
Norway	(a)	17.VII.1978
Oman	(a)	24.I.1985
Peru	(a)	24.II.1987
Poland	(a)	30.X.1985
Portugal	(a)	2.I.1986
Qatar	(a)	2.VI.1988

*CLC PROT 1976**CLC PROT 1984*

Russian Federation	(a)	2.XII.1988
Saudi Arabia	(a)	15.IV.1993
Singapore	(a)	15.XII.1981
Spain	(a)	22.X.1981
Sweden	(r)	7.VII.1978
Switzerland	(a)	15.XII.1987
United Arab Emirates	(a)	14.III.1984
United Kingdom (1)	(r)	31.I.1980
Vanuatu	(a)	13.I.1989
Venezuela	(a)	21.I.1992
Yemen	(a)	4.VI.1979

(1) The ratification by the United Kingdom was declared to be effective also in respect of: Anguilla, Bailiwick of Jersey, Bailiwick of Guernsey, Isle of Man, Belize has since become an independent state to which the Protocol applies provisionally, Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong-Kong, Montserrat, Pitcairn, Saint Helena and Dependencies, Turks and Caicos Islands, United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus.

**Protocol of 1984 to amend the
International Convention on**

**Civil liability for oil
pollution damage, 1969**

(CLC PROT 1984)

Done at London,
25 May 1984
Not yet in force.

**Protocole de 1984 portant
modification à la Convention
Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les
hydrocarbures, 1969**

(CLC PROT 1984)

Signé à Londres,
le 25 mai 1984
Pas encore en vigueur.

Australia	(a)	22.VI.1988
France	(r)	8.IX.1987
Germany	(r)	18.X.1988
Luxemburg	(a)	14.II.1991
Morocco	(r)	31.XII.1992
Peru	(a)	26.VIII.1987
St.-Vincent and the Grenadines	(a)	19.IV.1989
South Africa	(a)	31.I.1986
Venezuela	(a)	21.I.1992

CLC Protocol 1992

**Protocol of 1992 to amend the
International Convention on
Civil liability
for oil pollution damage,
1969****(CLC PROT 1992)**Done at London,
19 November 1992

Entry into force: 30 May 1996

**Protocole à la Convention
Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les
hydrocarbures
(CLC PROT 1992)**Signé à Londres,
le 19 novembre 1992

Entrée en vigueur: 30 May 1996

Australia	(a)	9.X.1995
Denmark	(r)	30.V.1995
Egypt	(a)	21.IV.1995
Finland	(a)	8.I.1981
France	(A)	29.IX.1994
Finland	(a)	24.XI.1995
Greece	(r)	9.X.1995
Germany	(r)	29.IX.1994
Japan	(a)	13.VIII.1994
Liberia	(a)	5.X.1995
Marshall Islands	(a)	16.X.1995
Mexico	(a)	13.V.1994
Norway	(r)	26.V.1995
Oman	(a)	8.VII.1994
Spain	(a)	6.VII.1995
Sweden	(r)	25.V.1995
United Kingdom	(a)	29.IX.1994

*Fund 1971**Fonds 1971*

**International Convention
on the
Establishment of
an International Fund
for compensation
for oil pollution damage**

(FUND 1971)

Done at Brussels, 18 December 1971
Entered into force: 16 October, 1978

**Convention Internationale
portant
Création d'un Fonds
International
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures**

(FONDS 1971)

Signée à Bruxelles, le 18 décembre 1971
Entrée en vigueur: 16 octobre 1978

Albania	(a)	6.IV.1994
Algeria	(r)	2.VI.1975
Australia	(a)	10.X.1994
Bahamas	(a)	22.VII.1976
Barbados	(a)	6.V.1994
Belgium	(r)	1.XII.1994
Benin	(a)	1.XI.1985
Brunei Darussalam	(a)	29.IX.1992
Cameroon	(a)	14.V.1984
Canada	(a)	24.I.1989
Côte d'Ivoire	(a)	5.X.1987
Croatia (1)	(r)	8.X.1991
Cyprus	(a)	26.VII.1989
Denmark	(a)	2.IV.1975
Djibouti	(a)	1.III.1990
Estonia	(a)	1.XII.1992
Fiji	(a)	4.III.1983
Finland	(r)	10.X.1980
France	(a)	11.V.1978
Gabon	(a)	21.I.1982
Gambia	(a)	1.XI.1991
Germany	(r)	30.XII.1976
Ghana	(r)	20.IV.1978
Greece	(a)	16.XII.1986
Iceland	(a)	17.VII.1980
India	(a)	10.VII.1990
Indonesia	(a)	1.IX.1978
Ireland	(r)	19.XI.1992
Italy	(a)	27.II.1979
Japan	(r)	7.VII.1976
Kenya	(a)	15.XII.1992

(1) On 11 August 1992 Croatia notified its succession to this Conventions as of the date of its independence (8.10.1991).

*Fund 1971**Fonds 1971*

Korea, Republic of	(a)	8.XII.1992
Kuwait	(a)	2.IV.1981
Liberia	(a)	25.IX.1972
Maldives	(a)	16.III.1981
Malta	(a)	27.IX.1991
Marshall Islands	(a)	30.XI.1994
Mauritania	(a)	17.XI.1995
Mexico	(a)	13.V.1994
Monaco	(a)	23.VIII.1979
Morocco	(r)	31.XII.1992
Netherlands	(AA)	3.VIII.1982
Nigeria	(a)	11.XI.1987
Norway	(r)	21.III.1975
Oman	(a)	10.V.1985
Papua New Guinea	(a)	12.III.1980
Poland	(r)	16.IX.1985
Portugal	(r)	11.IX.1985
Qatar	(a)	2.VI.1988
Russian Federation (2)	(a)	17.VI.1987
Saint Kitts and Nevis	(a)	14.IX.1994
Seychelles	(a)	12.IV.1988
Sierra Leone	(a)	13.VIII.1993
Slovenia (succession)	(a)	25.VI.1991
Spain	(a)	8.X.1981
Sri Lanka	(a)	12.IV.1983
Sweden	(r)	17.III.1975
Syrian Arab Republic	(a)	6.II.1975
Tonga	(a)	1.II.1996
Tunisia	(a)	4.V.1976
Tuvalu	(succession)	
United Arab Emirates	(a)	15.XII.1983
United Kingdom (3)	(r)	2.IV.1976
Yanuatū	(a)	13.I.1989
Venezuela	(a)	21.I.1992
Yugoslavia	(r)	16.III.1978

(2) As from 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

(3) The ratification by the United Kingdom was declared to be effective also in respect of:

- Anguilla: 1.IX.1984

- Bailiwick of Guernsey, Bailiwick of Jersey, Isle of Man, Belize (has since become the independent State of Belize), Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands and Dependencies (see communication of the London Embassy of the Argentine Republic at p. 185), Gibraltar, Gilbert Islands (has since become the independent State of Kiribati), Hong-Kong, Montserrat, Pitcairn Group, St. Helena and Dependencies, Seychelles (has since become the independent State of Seychelles), Solomon Islands (has since become the independent State of Solomon Islands), Turks and Caicos Islands, Tuvalu (has since become an independent State and a Contracting State to the Convention), United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus: 16.X.1978

*Fund Protocol 1976**Protocole Fonds 1976*

**Protocol to the International
Convention on the
Establishment
of an International Fund
for compensation
for oil pollution damage**

(FUND PROT 1976)

Done at London, 19 November 1976

Entered into force:

22 November 1994

**Protocole à la Convention
Internationale portant
Creation d'un Fonds
International
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures**

(FONDS PROT 1976)

Signé à Londres, le 19 novembre 1976

Entré en vigueur:

22 Novembre 1994

Albania	(a)	6.IV.1994
Australia	(a)	10.X.1994
Bahamas	(A)	3.III.1980
Barbados	(a)	6.V.1994
Belgium	(r)	1.XII.1994
Canada	(a)	21.II.1995
Cyprus	(a)	26.VII.1989
Denmark	(a)	3.VI.1981
Finland	(a)	8.I.1981
France	(a)	7.XI.1980
Germany	(r)	28.VIII.1980
Greece	(a)	9.X.1995
Iceland	(a)	24.III.1994
India	(a)	10.VII.1990
Ireland	(a)	19.XI.1992
Italy	(a)	21.IX.1983
Japan	(a)	24.VIII.1994
Liberia	(a)	17.II.1981
Malta	(a)	27.IX.1991
Marshall Islands	(a)	16.X.1995
Mexico	(a)	13.V.1994
Morocco	(a)	31.XII.1992
Netherlands	(a)	1.XI.1982
Norway	(a)	17.VII.1978
Poland	(a)	30.X.1985
Portugal	(a)	11.IX.1985

Number of Contracting States: 19 (representing approximately two thirds of the total quantity of contributing oil required for entry into force).

*Fund Protocol 1976**Protocole Fonds 1984*

Russian Federation	(a)	30.I.1989
Spain	(a)	5.IV.1982
Sweden	(r)	7.VII.1978
United Kingdom (2)	(r)	31.I.1980
Vanuatu	(a)	13.I.1989
Venezuela	(a)	21.I.1992

(1) As from 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

(2) The ratification by the United Kingdom was declared to be effective also in respect of: Anguilla, Bailiwick of Jersey, Bailiwick of Guernsey, Isle of Man, Belize (has since become the independent State of Belize), Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands Gibraltar, Hong-Kong, Montserrat, Pitcairn, St. Helena and Dependencies, Turks and Caicos Islands, United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus.

**Protocol of 1984 to amend
the International
Convention on the
Establishment of an
International
Fund for compensation
for oil pollution damage**

(FUND PROT 1984)

Done at London, 25 May 1984
Not yet in force.

**Protocole de 1984 modifiant
la Convention Internationale
de 1971 portant
Creation d'un Fonds
International
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures**

(FONDS PROT 1984)

Signé à Londres,
le 25 mai 1984
Pas encore entré en vigueur

France	(AA)	8.IX.1987
Germany	(r)	18.X.1988
Morocco	(r)	31.XII.1992
Venezuela	(a)	21.I.1992

*Fund Protocol 1992**Protocole Fonds 1992*

**Protocol of 1992 to amend
the International
Convention on the
Establishment of an
International
Fund for Compensation
for oil pollution damage**

(FUND PROT 1992)

Done at London,
27 November 1992
Entry into force: 30 May 1996

**Protocole de 1992 modifiant
la Convention Internationale
de 1971 portant
Creation d'un Fonds
International
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures
(FONDS PROT 1992)**

Signé à Londres,
le 27 novembre 1992
Entrée en vigueur: 30 May 1996

Australia	(a)	9.X.1995
Denmark	(r)	30.V.1995
Egypt	(a)	21.IV.1995
Finland	(a)	24.XI.1995
France	(A)	29.IX.1994
Greece	(r)	9.X.1995
Germany	(r)	29.IX.1994
Japan	(a)	13.VIII.1994
Liberia	(a)	5.X.1995
Marshall Islands	(a)	16.X.1995
Mexico	(a)	13.V.1994
Norway	(r)	26.V.1995
Oman	(a)	8.VII.1994
Spain	(a)	6.VII.1995
Sweden	(r)	25.V.1995
United Kingdom	(a)	29.IX.1994

*NUCLEAR 1971***Convention relating to Civil
Liability in the Field of****Maritime Carriage
of nuclear material
(NUCLEAR 1971)**

Done at Brussels,
17 December 1971
Entered into force: 15 July, 1975

**Convention relative à la
Responsabilité Civile dans
le Domaine du
Transport Maritime
de matières nucléaires
(NUCLEAR 1971)**

Signée à Bruxelles,
le 17 décembre 1971
Entrée en vigueur: 15 juillet 1975

Argentina	(a)	18.V.1981
Belgium	(r)	15.VI.1989
Denmark (1)	(r)	4.IX.1974
Finland	(A)	6.VI.1991
France	(r)	2.II.1973
Gabon	(a)	21.I.1982
Germany	(r)	1.X.1975
Italy	(r)	21.VII.1980
Liberia	(a)	17.II.1981
Netherlands	(a)	1.VIII.1991
Norway	(r)	16.IV.1975
Spain	(a)	21.V.1974
Sweden	(r)	22.XI.1974
Yemen	(a)	6.III.1979

(1) Shall not apply to the Faroe Islands.

Carriage of passengers and luggage - PAL 1974

**Athens Convention relating
to the Carriage
of passengers
and their luggage by sea
(PAL 1974)**

Done at Athens:
13 December 1974
Entered into force:
28 April 1987

**Convention d'Athènes
relative au Transport
par mer de passagers
et de leurs bagages
(PAL 1974)**

Signée à Athènes,
le 13 décembre 1974
Entrée en vigueur:
28 avril 1987

Argentina	(a)	26.V.1983
Bahamas	(a)	7.VI.1983
Belgium	(a)	15.VI.1989
Egypt	(a)	18.X.1991
Germany (1)	(a)	29.VII.1979
Greece	(A)	3.VII.1991
Liberia	(a)	17.II.1981
Luxemburg	(a)	14.II.1991
Jordan	(a)	3.X.1995
Malawi	(a)	9.III.1993
Poland	(r)	28.I.1987
Russian Federation (2)	(a)	27.IV.1983
Spain	(a)	8.X.1981
Switzerland	(r)	15.XII.1987
Tonga	(a)	15.II.1977
United Kingdom (3)	(r)	31.I.1980
Vanuatu	(a)	13.I.1989
Yemen	(a)	6.III.1979

(1) The Convention is in force only in the new five Federal States formerly constituting the German Democratic Republic: Brandenburg, Mecklenburg - Vorpommern, Sachsen, Sachsen - Anhalt and Thüringen.

(2) As of 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

(3) The United Kingdom declared ratification to be effective also in respect of: Bailiwick of Jersey, Bailiwick of Guernsey, Isle of Man, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, Saint Helena and Dependencies.

*PAL Protocol 1976**PAL Protocol 1990*

**Protocol to the
Athens Convention relating
to the Carriage
of Passengers
and their luggage by sea
(PAL PROT 1976)**

Done at London,
19 November, 1976
Entered into force: 10 April 1989

**Protocole à la
Convention d'Athènes
relative au Transport
par mer de passagers
et de leurs bagages
(PAL PROT 1976)**

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 10 avril 1989

Argentina	(a)	28.IV.1987
Bahamas	(a)	28.IV.1987
Belgium	(a)	15.VI.1989
Greece	(a)	3.VII.1991
Liberia	(a)	28.IV.1987
Luxemburg	(a)	14.II.1991
Poland	(a)	28.IV.1987
Russian Federation (1)	(a)	30.I.1989
Spain	(a)	28.IV.1987
Switzerland	(a)	15.XII.1987
United Kingdom (2)	(r)	28.IV.1987
Vanuatu	(a)	13.I.1989
Yemen	(a)	28.IV.1987

(1) As of 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

(2) The United Kingdom declared ratification to be effective also in respect of: Bailiwick of Jersey, Bailiwick of Guernsey, Isle of Man, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, Saint Helena and Dependencies.

**Protocol of 1990 to amend the
1974 Athens
Convention relating to the
Carriage of passengers
and their luggage by sea
(PAL PROT 1990)**

Done at London, 29 March 1990
Not yet in force:

**Protocole de 1990 modifiant
La Convention d'Athènes
de 1974 relative au
Transport par mer de
passagers et de leurs
bagages
(PAL PROT 1990)**

Fait à Londres, le 29 mars 1990
Pas encore en vigueur:

Egypt	(a)	18.X.1991
Spain	(a)	24.II.1993

Limitation of liability - LLMC 1976

**Convention on
Limitation of Liability
for maritime claims**

(LLMC 1976)

Done at London,
19 November 1976
Entered into force:
1 December, 1986

**Convention sur la
Limitation de la
Responsabilité en matière
de créances maritimes
(LLMC 1976)**

Signée à Londres,
le 19 novembre 1976
Entrée en vigueur:
1 décembre 1986

Australia	(a)	20.II.1991
Bahamas	(a)	7.VI.1983
Belgium	(a)	15.VI.1989
Benin	(a)	1.XI.1985
Croatia	(a)	2.III.1993
Denmark	(r)	30.V.1984
Egypt	(a)	30.III.1988
Finland	(r)	8.V.1984
France	(AA)	1.VII.1981
Georgia	(a)	20.II.1996
Germany	(r)	12.V.1987
Greece	(a)	3.VII.1991
Japan	(a)	4.VI.1982
Liberia	(a)	17.II.1981
Mexico	(a)	13.V.1994
Netherlands	(a)	15.V.1990
Norway	(r)	30.III.1984
Poland	(a)	28.IV.1986
Spain	(r)	13.XI.1981
Sweden	(r)	30.III.1984
Switzerland	(a)	15.XII.1987
United Kingdom	(r)	31.I.1980
Vanuatu	(a)	14.IX.1992
Yemen	(a)	6.III.1979

*Salvage 1989**Oil pollution preparedness 1990*

**International Convention on
Salvage, 1989
(SALVAGE 1989)**

Done at London: 28 April 1989
Not yet in force.

**Convention Internationale
de 1989 sur l'Assistance
(ASSISTANCE 1989)**

Signée à Londres le 28 avril 1989
Pas encore entrée en vigueur.

Denmark	(r)	30.V.1995
Egypt	(a)	14.III.1991
Georgia	(a)	25.VIII.1995
India	(a)	18.X.1995
Italy	(r)	14.VII.1995
Jordan	(a)	3.X.1995
Marshall Islands	(a)	16.X.1995
Mexico	(r)	10.X.1991
Nigeria	(r)	11.X.1990
Oman	(a)	14.X.1991
Saudi Arabia	(a)	16.XII.1991
Switzerland	(r)	12.III.1993
United States	(r)	27.III.1992

**International Convention on
Oil pollution preparedness,
response and co-operation
1990**

Done at London 30
November 1990
Not yet in force.

**Convention Internationale de
1990 sur la Preparation, la
lutte et la cooperation en
matière de pollution par les
hydrocarbures**

Signée à Londres le 30
novembre 1990
Pas encore en vigueur.

Argentina	(r)	13.VII.1994
Australia	(a)	6.VII.1992
Canada	(a)	7.III.1994
Egypt	(r)	29.VI.1992
Finland	(AA)	21.VI.1993
France	(AA)	21.VII.1993
Germany	(r)	15.II.1995
Greece	(r)	7.III.1995
Iceland	(r)	6.XI.1992
Mexico	(a)	13.V.1994
Netherlands	(r)	1.XII.1994
Nigeria	(a)	25.V.1993

*Oil pollution preparedness 1990**Oil pollution preparedness 1990*

Norway	(r)	8.III.1994
Pakistan	(a)	21.VII.1993
Senegal	(r)	24.III.1994
Seychelles	(a)	26.VI.1992
Spain	(r)	12.I.1994
Sweden	(r)	30.III.1992
United States	(r)	27.III.1992
Venezuela	(r)	12.XII.1994

**STATUS OF THE RATIFICATIONS OF
AND ACCESSIONS TO UNITED NATIONS
CONVENTIONS IN THE FIELD OF
PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS
AUX CONVENTIONS DES NATIONS UNIES
EN MATIERE DE DROIT MARITIME PRIVE**

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature

Notes de l'éditeur/Editor's notes:

- Les dates mentionnées sont les dates du dépôt des instruments.
- The dates mentioned are the dates of the deposit of instruments.

*Code of conduct 1974**Code de conduite 1974*

**United Nations Convention on a
Code of Conduct
for liner conferences**

Geneva, 6 April, 1974
Entered into force: 6 October 1983

**Convention des Nations Unies sur
un
Code de Conduite
des conférences
maritimes**

Genève, 6 avril 1974
Entrée en vigueur: 6 octobre 1983

Algeria	(r)	12.XII.1986
Aruba	(a)	1.I.1986
Bangladesh	(a)	24.VII.1975
Barbados	(a)	29.X.1980
Belgium	(r)	30.IX.1987
Belarus	(A)	28.VI.1979
Benin	(a)	27.X.1975
Bulgaria	(a)	12.VII.1979
Burkina Faso	(a)	30.III.1989
Cameroon	(a)	15.VI.1976
Cape Verde	(a)	13.I.1978
Central African Republic	(a)	13.V.1977
Chile	(S)	25.VI.1975
China	(a)	23.IX.1980
Congo	(a)	26.VII.1982
Costa Rica	(r)	27.X.1978
Croatia	(r)	8.X.1991
Cuba	(a)	23.VII.1976
Czech Republic	(AA)	4.VI.1979
Denmark (except Greenland and the Faroe Islands)	(a)	28.VI.1985
Egypt	(a)	25.I.1979
Ethiopia	(r)	1.IX.1978
Finland	(a)	31.XII.1985
France	(AA)	4.X.1985
Gabon	(r)	5.VI.1978
Gambia	(S)	30.VI.1975
Germany	(r)	6.IV.1983
Ghana	(r)	24.VI.1975
Gibraltar	(a)	28.VI.1985
Guatemala	(r)	3.III.1976
Guinea	(a)	19.VIII.1980
Guyana	(a)	7.I.1980
Honduras	(a)	12.VI.1979
Hong Kong	(a)	28.VI.1985
India	(r)	14.II.1978
Indonesia	(r)	11.I.1977
Iraq	(a)	25.X.1978

*Code of conduct 1974**Code de conduite 1974*

Italy	(a)	30.V.1989
Ivory Coast	(r)	17.II.1977
Jamaica	(a)	20.VII.1982
Jordan	(a)	17.III.1980
Kenya	(a)	27.II.1978
Korea (Rep. of)	(a)	11.V.1979
Kuwait	(a)	31.III.1986
Lebanon	(a)	30.IV.1982
Madagascar	(a)	23.XII.1977
Malaysia	(a)	27.VIII.1982
Mali	(a)	15.III.1978
Mauritania	(a)	21.III.1988
Mauritius	(a)	16.IX.1980
Mexico	(a)	6.V.1976
Morocco	(a)	11.II.1980
Mozambique	(a)	21.IX.1990
Netherlands (for the Kingdom in Europe only)	(a)	6.IV.1983
Niger	(r)	13.I.1976
Nigeria	(a)	10.IX.1975
Norway	(a)	28.VI.1985
Pakistan	(S)	27.VI.1975
Peru	(a)	21.XI.1978
Philippines	(r)	2.III.1976
Portugal	(a)	13.VI.1990
Romania	(a)	7.I.1982
Russian Federation	(A)	28.VI.1979
Saudi Arabia	(a)	24.V.1985
Senegal	(r)	20.V.1977
Sierra Leone	(a)	9.VII.1979
Slovakia	(AA)	4.VI.1979
Slovenia	(AA)	4.VI.1979
Somalia	(a)	14.XI.1988
Spain	(a)	3.II.1994
Sri Lanka	(S)	30.VI.1975
Sudan	(a)	16.III.1978
Sweden	(a)	28.VI.1985
Togo	(r)	12.I.1978
Trinidad and Tobago	(a)	3.VIII.1983
Tunisia	(a)	15.III.1979
Ukraine	(A)	26.VI.1979
United Kingdom	(a)	28.VI.1985
United Republic of Tanzania	(a)	3.XI.1975
Uruguay	(a)	9.VII.1979
Venezuela	(S)	30.VI.1975
Yugoslavia	(r)	7.VII.1980
Zaire	(a)	25.VII.1977
Zambia	(a)	8.IV.1988

*Hamburg Rules 1978**Règles de Hambourg 1978*

**United Nations Convention
on the
Carriage of goods by sea**

**Hamburg, 31 March, 1978
"HAMBURG RULES"**

Entry into force:
1 November 1992

**Convention des Nations
Unies sur le
Transport de marchandises
par mer**

**Hambourg 31 mars 1978
"REGLES DE HAMBOURG"**

Entrée en vigueur:
1 novembre 1992

Austria	(r)	29.VII.1993
Barbados	(a)	2.II.1981
Botswana	(a)	16.II.1988
Burkina Faso	(a)	14.VIII.1989
Cameroon	(a)	21.X.1993
Chile	(r)	9.VII.1982
Egypt	(r)	23.IV.1979
Guinea	(r)	23.I.1991
Hungary	(r)	5.VII.1984
Kenya	(a)	31.VII.1989
Lebanon	(a)	4.IV.1983
Lesotho	(a)	26.X.1989
Malawi	(r)	18.III.1991
Morocco	(a)	12.VI.1981
Nigeria	(a)	7.XI.1988
Romania	(a)	7.I.1982
Senegal	(r)	17.III.1986
Sierra Leone	(r)	7.X.1988
Tanzania (United Rep. of)	(a)	24.VII.1979
Tunisia	(a)	15.IX.1980
Uganda	(a)	6.VII.1979
Zambia	(a)	7.X.1991

*Multimodal transport 1980**UNCLOS 1982*

**United Nations Convention
on the
International multimodal
transport of goods**

Geneva, 24 May, 1980,
Not yet in force.

**Convention des Nations
Unies sur le
Transport multimodal
international de
marchandises**

Genève 24 mai 1980
Pas encore en vigueur.

Chile	(r)	7.IV.1982
Malawi	(a)	2.II.1984
Mexico	(r)	11.II.1982
Morocco	(r)	21.I.1993
Rwanda	(a)	15.IX.1987
Senegal	(r)	25.X.1984
Zambia	(a)	7.X.1991

**United Nations Convention
on the Law of the Sea
(UNCLOS 1982)**

Montego Bay 10 December 1982
Entered into force:
16 November 1994

**Convention des Nations
Unies sur les Droit de la Mer**

Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

Angola	5.XII.1990
Antigua and Barbuda	2.II.1989
Argentina	1.XII.1995
Australia	5.X.1994
Austria	14.VII.1995
Bahamas	29.VII.1983
Bahrain	30.V.1985
Barbados	12.X.1993
Belize	13.VIII.1983
Bolivia	28.IV.1995
Bosnia and Herzegovina	12.I.1994
Botswana	2.V.1990
Brazil	22.XII.1988
Cameroon	19.XII.1985
Cape Verde	10.VIII.1987
Comoros	21.VI.1994
Cook Islands	15.II.1995

UNCLOS 1982

UNCLOS 1982

Costa Rica	21.IX.1992
Croatia	5.IV.1995
Cyprus	12.XII.1988
Cuba	12.XII.1988
Djibouti	8.X.1991
Dominica	24.X.1991
Egypt	26.VIII.1983
Fiji	10.XII.1982
Gambia	22.V.1984
Germany	14.X.1994
Ghana	7.VI.1983
Greece	21.VII.1995
Grenada	25.IV.1991
Guinea	6.IX.1985
Guinea-Bissau	24.VIII.1986
Guyana	16.XI.1993
Honduras	5.X.1993
Iceland	21.VI.1985
India	29.VI.1995
Indonesia	3.II.1986
Iraq	30.VII.1985
Italy	13.I.1995
Ivory Coast	26.III.1984
Jamaica	21.III.1983
Jordan	27.II.1995
Kenya	2.III.1989
Korea	
<i>(Republic of)</i>	29.I.1996
Kuwait	2.V.1986
Lebanon	5.I.1995
Macedonia	19.8.1994
Mali	16.VII.1985
Malta	20.V.1993
Marshall Islands	9.VIII.1991
Mauritius	4.XI.1994
Mexico	18.III.1983
Micronesia	29.VI.1991
Namibia, United Nations Council for	18.VI.1983
Nauru	23.I.1996
Nigeria	14.VIII.1986
Oman	17.VIII.1989
Paraguay	26.IX.1986
Philippines	8.V.1984
Samoa	14.VIII.1995
St. Lucia	27.III.1985
St. Kitts and Nevis	7.I.1993

*UNCLOS 1982**UNCLOS 1982*

St. Vincent and the Genedines	1.X.1993
Sao Tomé and Principe	3.XI.1987
Senegal	25.X.1984
Seychelles	16.IX.1991
Sierra Leone	12.XII.1994
Singapore	17.XI.1994
Slovenia	16.VI.1995
Sri Lanka	19.7.1994
Somalia	24.VII.1989
Sudan	23.I.1985
Tanzania	30.IX.1985
Togo	16.IV.1985
Tonga	2.VIII.1995
Trinidad and Tobago	25.IV.1986
Tunisia	24.IV.1985
Uganda	9.XI.1990
Uruguay	10.XII.1992
Viet Nam	25.VII.1994
Yemen, Democratic Republic of	21.VII.1987
Yugoslavia	5.V.1986
Zaire	17.II.1989
Zambia	7.III.1983
Zimbabwe	24.II.1993

*Registration of ships 1986**Immatriculation des navires 1986***United Nations Convention
on Conditions for
Registration of ships**

Geneva, 7 February, 1986
Not yet in force.

Egypt
Ghana
Haiti
Hungary
Iraq
Ivory Coast
Libyan Arab Jamahiriya
Mexico
Oman

**Convention des Nations
Unies sur les Conditions d'
Immatriculation des navires**

Genève, 7 février 1986
Pas encore entrée en vigueur.

(r)	9.I.1992
(a)	29.VIII.1990
(a)	17.V.1989
(a)	23.I.1989
(a)	1.II.1989
(r)	28.X.1987
(r)	28.II.1989
(r)	21.I.1988
(a)	18.X.1990

**United Nations Convention on
the Liability of operators of
transport terminals in
the international trade**

Done at Vienna 19 April 1991
Not yet in force.

**Convention des Nations Unies
sur la Responsabilité des
exploitants de terminaux
transport dans le commerce
international**

Signée à Vienne 19 avril 1991
Pas encore entrée en vigueur.

**STATUS OF THE RATIFICATIONS OF
AND ACCESSIONS TO UNIDROIT CONVENTIONS
IN THE FIELD OF PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS
AUX CONVENTIONS D'UNIDROIT EN MATIERE
DE DROIT MARITIME PRIVE**

**Unidroit Convention on
International financial
leasing 1988**

Done at Ottawa 28 May 1988

Not yet in force.

**Convention de Unidroit sur
le Creditbail international
1988**

Signée à Ottawa 28 mai 1988

Pas encore en vigueur.

CONFERENCES

OF THE COMITE MARITIME INTERNATIONAL

I. BRUSSELS - 1897

President: Mr. Auguste BEERNAERT.

Subjects: Organization of the International Maritime Committee - Collision-
- Shipowners' Liability.

II. ANTWERP - 1898

President: Mr. Auguste BEERNAERT.

Subjects: Liability of Owners of sea-going vessels.

III. LONDON - 1899

President: Sir Walter PHILLIMORE.

Subjects: Collisions in which both ships are to blame - Shipowners' liability.

IV. PARIS - 1900

President: Mr. LYON-CAEN.

Subjects: Assistance, salvage and duty to tender assistance - Jurisdiction in
collision matters.

V. HAMBURG - 1902

President: Dr. Friedrich SIEVEKING.

Subjects: International Code on Collision and Salvage at Sea - Jurisdiction
in collision matters - Conflict of laws as to owner-ship of vessels.

VI. AMSTERDAM - 1904

President: Mr. E.N. RAHUSEN.

Subjects: Conflicts of law in the matter of Mortgages and Liens on ships.
- Jurisdiction in collision matters - Limitation of Shipowners' Liability.

VII. LIVERPOOL - 1905

President: Sir William R. KENNEDY.

Subjects: Limitation of Shipowners' Liability - Conflict of Laws as to Ma-
ritime Mortgages and Liens - Brussels Diplomatic Conference.

CONFERENCES

DU COMITE MARITIME INTERNATIONAL

I. BRUXELLES - 1897

Président: Mr. Auguste BEERNAERT.

Sujets: Organisation du Comité Maritime International - Abordage - Responsabilité des propriétaires de navires de mer.

II. ANVERS - 1898

Président: Mr. Auguste BEERNAERT.

Sujets: Responsabilité des propriétaires de navires de mer.

III. LONDRES - 1899

Président: Sir Walter PHILLIMORE.

Sujets: Abordages dans lesquels les deux navires sont fautifs - Responsabilité des propriétaires de navires.

IV. PARIS - 1900

Président: Mr. LYON-CAEN

Sujets: Assistance, sauvetage et l'obligation de prêter assistance - Compétence en matière d'abordage.

V. HAMBURG - 1902

Président: Dr. Friedrich SIEVEKING.

Sujets: Code international pour l'abordage et le sauvetage en mer - Compétence en matière d'abordage. - Conflits de lois concernant la propriété des navires - Privilèges et hypothèques sur navires.

VI. AMSTERDAM - 1904

Président: Mr. E.N. RAHUSEN.

Sujets: Conflits de lois en matières de privilèges et hypothèques sur navires. - Compétence en matière d'abordage - Limitation de la responsabilité des propriétaires de navires.

VII. LIVERPOOL - 1905

Président: Sir William R. KENNEDY.

Sujets: Limitation de la responsabilité des propriétaires de navires - Conflits de lois en matière de privilèges et hypothèques - Conférence Diplomatique de Bruxelles.

Conferences of the Comité Maritime International

VIII. VENICE - 1907

President: Mr. Alberto MARGHERI.

Subjects: Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Conflict of law as to Freight.

IX. BREMEN - 1909

President: Dr. Friedrich SIEVEKING.

Subjects: Conflict of laws as to Freight - Compensation in respect of personal injuries - Publication of Maritime Mortgages and Liens.

X. PARIS - 1911

President: Mr. Paul GOVARE.

Subjects: Limitation of Shipowners' Liability in the event of loss of life or personal injury - Freight.

XI. COPENHAGEN - 1913

President: Dr. J.H. KOCH.

Subjects: London declaration 1909 - Safety of Navigation - International Code of Affreightment - Insurance of enemy property.

XII. ANTWERP - 1921

President: Mr. Louis FRANCK.

Subjects: International Conventions relating to Collision and Salvage at sea.
- Limitation of Shipowners' Liability - Maritime Mortgages and Liens
- Code of Affreightment - Exonerating clauses.

XIII. LONDON - 1922

President: Sir Henry DUKE.

Subjects: Immunity of State-owned ships - Maritime Mortgage and Liens.
- Exonerating clauses in Bills of lading.

XIV. GOTHENBURG - 1923

President: Mr. Efiel LÖFGREN.

Subjects: Compulsory insurance of passengers - Immunity of State owned ships - International Code of Affreightment - International Convention on Bills of Lading.

XV. GENOA - 1925

President: Dr. Francesco BERLINGIERI.

Subjects: Compulsory Insurance of passengers - Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

XVI. AMSTERDAM - 1927

President: Mr. B.C.J. LODER.

Subjects: Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

Conférences du Comité Maritime International

VIII. VENISE - 1907

Président: Mr. Alberto MARGHERI.*Sujets:* Limitation de la responsabilité des propriétaires de navires - Privilèges et hypothèques maritimes - Conflits de lois relatifs au fret.

IX. BREME - 1909

Président: Dr. Friedrich SIEVEKING.*Sujets:* Conflits de lois relatifs au fret - Indemnisation concernant des lésions corporelles - Publications des privilèges et hypothèques maritimes.

X. PARIS - 1911

Président: Mr. Paul GOVARE.*Sujets:* Limitation de la responsabilité des propriétaires de navires en cas de perte de vie ou de lésions corporelles - Fret.

XI. COPENHAGUE - 1913

Président: Dr. J.H.KOCH.*Sujets:* Déclaration de Londres 1909 - Sécurité de la navigation - Code international de l'affrètement - Assurance de propriétés ennemies.

XII. ANVERS - 1921

Président: Mr. Louis FRANCK.*Sujets:* Convention internationale concernant l'abordage et la sauvetage en mer - Limitation de la responsabilité des propriétaires de navires de mer - Privilèges et hypothèques maritimes - Code de l'affrètement - Clauses d'exonération dans les connaissements.

XIII. LONDRES - 1922

Président: Sir Henry DUKE.*Sujets:* Immunité des navires d'Etat - Privilèges et hypothèques maritimes - Clauses d'exonération dans les connaissements.

XIV. GOTHEMBOURG - 1923

Président: Mr. Efiel LÖFGREN.*Sujets:* Assurance obligatoire des passagers - Immunité des navires d'Etat. - Code international de l'affrètement - Convention internationale des connaissements.

XV. GENES - 1925

Président: Dr. Francesco BERLINGIERI.*Sujets:* Assurance obligatoire des passagers - Immunité des navires d'Etat. - Code international de l'affrètement - Privilèges et hypothèques maritimes.

XVI. AMSTERDAM - 1927

Président: Mr. B.C.J. LODER.*Sujets:* Assurance obligatoire des passagers - Lettres de garantie - Ratification des Conventions de Bruxelles.

Conferences of the Comité Maritime International

XVII. ANTWERP - 1930

President: Mr. Louis FRANCK.

Subjects: Ratification of the Brussels Conventions - Compulsory insurance of passengers - Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933

President: Mr. Edvin ALTEN.

Subjects: Ratification of the Brussels Conventions - Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners' Liability.

XIX. PARIS - 1937

President: Mr. Georges RIPERT.

Subjects: Ratification of the Brussels Conventions - Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP - 1947

President: Mr. Albert LILAR.

Subjects: Ratification of the Brussels Conventions, more especially of the Convention on Immunity of State-owned ships - Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills of Lading - Examination of the three draft conventions adopted at the Paris Conference 1937 - Assistance and Salvage of and by Aircraft at sea - York and Antwerp Rules; rate of interest.

XXI. AMSTERDAM - 1948

President: Prof. J. OFFERHAUS

Subjects: Ratification of the Brussels International Convention - Revision of the York-Antwerp Rules 1924 - Limitation of Shipowners' Liability (Gold Clauses) - Combined Through Bills of Lading - Revision of the draft Convention on arrest of ships - Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES - 1951

President: Mr. Amedeo GIANNINI.

Subjects: Brussels International Conventions - Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses) - Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at Sea.

Conférences du Comité Maritime International

XVII. ANVERS - 1930

Président: Mr. Louis FRANCK.

Sujets: Ratification des Conventions de Bruxelles - Assurance obligatoire des passagers - Compétence et sanctions pénales en matière d'abordage en mer.

XVIII. OSLO - 1933

Président: Mr. Edvin ALTEN.

Sujets: Ratification des Conventions de Bruxelles - Compétence civile et pénale en matière d'abordage en mer - Saisie conservatoire de navires - Limitation de la responsabilité des propriétaires de navires.

XIX. PARIS - 1937

Président: Mr. Georges RIPERT.

Sujets: Ratification des Conventions de Bruxelles - Compétence civile et pénale en matière d'abordage en mer - Saisie conservatoire de navires - Commentaires sur les Conventions de Bruxelles - Assistance et Sauvetage et par avions en mer.

XX. ANVERS - 1947

Président: Mr. Albert LILAR.

Sujets: Ratification des Conventions de Bruxelles, plus spécialement de la Convention relative à l'immunité des navires d'Etat - Révision de la Convention sur la limitation de la responsabilité des propriétaires de navires et de la Convention sur les connaissements - Examen des trois projets de convention adoptés à la Conférence de Paris de 1936 - Assistance et sauvetage de et par avions en mer - Règles d'York et d'Anvers; taux d'intérêt.

XXI. AMSTERDAM - 1948

Président: Prof. J. OFFERHAUS.

Sujets: Ratification des Conventions internationales de Bruxelles - Révision des règles d'York et d'Anvers 1924 - Limitation de la responsabilité des propriétaires de navires (clause or) - Connaissements directs combinés - Révision du projet de convention relatif à la saisie conservatoire de navires - Projet de création d'une cour internationale pour la navigation par mer et par air.

XXII. NAPLES - 1951

Président: Mr. Amedeo GIANNINI.

Sujets: Conventions internationales de Bruxelles - Projet de Convention concernant la saisie conservatoire de navires - Limitation de la responsabilité des propriétaires de navires de mer - Connaissements (Révision de la clause-or) - Responsabilité des transporteurs par mer à l'égard des passagers - Compétence pénale en matière d'abordage en mer.

Conferences of the Comité Maritime International

XXIII. MADRID - 1955

President: Mr. Albert LILAR.

Subjects: Limitation of Shipowners' Liability - Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

XXIV. RIJEKA - 1959

President: Mr. Albert LILAR

Subjects: Liability of operators of nuclear ships - Revision of Article X of the International Convention for the Unification of certain Rules of law relating to Bills of Lading - Letters of Indemnity and Marginal clauses. Revision of Article XIV of the International Convention for the Unification of certain rules of Law relating to assistance and salvage at sea - International Statute of Ships in Foreign ports - Registry of operations of ships.

XXV. ATHENS - 1962

President: Mr. Albert LILAR

Subjects: Damages in Matters of Collision - Letters of Indemnity - International Statute of Ships in Foreign Ports - Registry of Ships - Coordination of the Convention of Limitation and on Mortgages - Demurrage and Despatch Money - Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963

President: Mr. Albert LILAR

Subjects: Bills of Lading - Passenger Luggage - Ships under construction.

XXVII. NEW YORK - 1965

President: Mr. Albert LILAR

Subjects: Revision of the Convention on Maritime Liens and Mortgages.

XXVIII. TOKYO - 1969

President: Mr. Albert LILAR

Subjects: "Torrey Canyon" - Combined Transports - Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP - 1972

President: Mr. Albert LILAR

Subjects: Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG - 1974

President: Mr. Albert LILAR

Subjects: Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

Conférences du Comité Maritime International

XXIII. MADRID - 1955

Président: Mr. Albert LILAR

Sujets: Limitation de la responsabilité des propriétaires de navires - Responsabilité des transporteurs par mer à l'égard des passagers - Passagers clandestins - Clauses marginales et lettres de garantie.

XXIV. RIJEKA - 1959

Président: Mr. Albert LILAR

Sujets: Responsabilité des exploitants de navires nucléaires - Révision de l'article X de la Convention internationale pour l'unification de certaines règles de droit en matière de connaissements - Lettres de garantie et clauses marginales - Révision de l'article XIV de la Convention internationale pour l'unification de certaines règles de droit relatives à l'assistance et au sauvetage en mer - Statut international des navires dans des ports étrangers - Enregistrement des exploitants de navires.

XXV. ATHENES - 1962

Président: Mr. Albert LILAR

Sujets: Domages et intérêts en matière d'abordage - Lettres de garantie - Statut international des navires dans des ports étrangers - Enregistrement des navires - Coordination des conventions sur la limitation et les hypothèques - Surestaries et primes de célérité - Responsabilité des transporteurs des bagages.

XXVI. STOCKHOLM - 1963

Président: Mr. Albert LILAR

Sujets: Connaissements - Bagages des passagers - Navires en construction.

XXVII. NEW YORK - 1965

Président: Mr. Albert LILAR

Sujets: Révision de la Convention sur les Privilèges et Hypothèques maritimes.

XXVIII. TOKYO - 1969

Président: Mr. Albert LILAR

Sujets: "Torrey Canyon" - Transport combiné - Coordination des Conventions relatives au transport par mer de passagers et de leurs bagages.

XXIX. ANVERS - 1972

Président: Mr. Albert LILAR.

Sujets: Révision des Statuts du Comité Maritime International.

XXX. HAMBOURG - 1974

Président: Mr. Albert LILAR

Sujets: Révisions des Règles de York/Anvers 1950 - Limitation de la responsabilité des propriétaires de navires de mer - Les Règles de La Haye.

Conferences of the Comité Maritime International

XXXI. RIO DE JANEIRO - 1977

President: Prof. Francesco BERLINGIERI*Subjects:* Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII. MONTREAL - 1981

President: Prof. Francesco BERLINGIERI*Subjects:* Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of harardous and noxious substances by sea.

XXXIII. LISBON - 1985

President: Prof. Francesco BERLINGIERI*Subjects:* Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

XXXIV. PARIS - 1990

President: Prof. Francesco BERLINGIERI*Subjects:* Uniformity of the Law of Carriage of Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading - Revision of 'Rule VI of the York-Antwerp Rules 1974.

XXXV. SYDNEY - 1994

President: Prof. Allan PHILIP*Subjects:* Review of the Law of General Average and York - Antwerp Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - *Special Sessions:* Third Party Liability - Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

Conférences du Comité Maritime International

XXXI. RIO DE JANEIRO - 1977

Président: Prof. Francesco BERLINGIERI

Sujets: Projet de Convention concernant la compétence, la loi applicable, la reconnaissance et l'exécution de jugements en matière d'abordages en mer. Projet de Convention sur les Engines Mobiles "Off-Shore".

XXXII. MONTREAL - 1981

Président: Prof. Francesco BERLINGIERI

Sujets: Convention pour l'unification de certaines règles en matière d'assistance et de sauvetage maritime - Transport par mer de substances nocives ou dangereuses.

XXXIII. LISBONNE - 1985

Président: Prof. Francesco BERLINGIERI

Sujets: Convention sur les Hypothèques et privilèges maritimes - Convention sur la Saisie des Navires.

XXXIV. PARIS - 1990

Président: Prof. Francesco BERLINGIERI

Sujets: Uniformisation de la Loi sur le transport de marchandises par mer dans les années 1990 - Règles Uniformes du CMI relatives aux Lettres de transport maritime - Règles du CMI relatives aux connaissements électroniques - Révision de la Règle VI des Règles de York et d'Anvers 1974.

XXXV. SYDNEY - 1994

Président: Prof. Allan PHILIP

Sujets: Révision de la loi sur l'Avarie Commune et des Règles de York et d'Anvers 1974 (amendées en 1990) - Projet de Convention sur les Engines Mobiles d'Exploitation des Fonds Marins - *Session Spéciales:* Responsabilité Civile - Sociétés de Classification - Assurances Maritimes: *Is the doctrine of Utmost Good Faith out of date?*

*Table of contents***TABLE OF CONTENTS****PART I - Organization of the CMI**

	Page No.
Constitution	6
Rules of Procedure	24
Officers - Executive Council	27
Member Associations	28
Temporary Members	68
Titulary Members	69

PART II - The Work of the CMI

Joint Working Group on a Study of Issues Re Classification Societies	
Report	95
Annex A - Principles of Conduct for Classification Societies	100
Annex B - Model Contractual Clauses	103
Uniformity of the Law of the Carriage of Goods by Sea	
I - Questionnaire for the Member National Associations	109
II - Replies to the Questionnaire	115
III - Hague-Visby/Hamburg Rules - Synoptical Table	179
International Sub-Committee on the Carriage of Goods by Sea - Report of the First Session	229
Maritime Agents - Synopsis of the Replies to the Questionnaire	245

PART III - Status of Ratifications

Status of the ratifications of and accessions to the Brussels international maritime law conventions:	
- Editor's notes	380
- Collision between vessels, 23rd September 1910	382
- Assistance and salvage at sea, 23rd September 1910	385
- Assistance and salvage at sea, Protocol of 27th May 1967	387

Table of contents

- Limitation of liability of owners of sea-going vessels, 25th August 1924	388
- Bills of Lading, 25th August 1924 (Hague Rules)	389
- Bills of lading, Protocol of 23rd February 1968 (Visby Rules)	392
- Bills of lading, Protocol of 21st December 1979 (S.D.R. Protocol)	393
- Maritime liens and mortgages, 10th April 1926	394
- Immunity of State-owned ships, 10th April 1926 and additional Protocol 24th May 1934	395
- Civil jurisdiction in matters of collision, 10th May 1952	396
- Penal jurisdiction in matters of collision or other incidents of navigation, 10th May 1952	398
- Arrest of sea-going ships, 10th May 1952	400
- Limitation of the liability of owners of sea-going ships, 10th October 1957	402
- Limitation of the liability of owners of sea-going ships, Protocol of 21st December 1979 (S.D.R. Protocol)	404
- Stowaways, 10th October 1957	404
- Carriage of passengers by sea, 29th April 1961	405
- Nuclear ships, 25th May 1962	405
- Carriage of passengers' luggage by sea, 27th May 1967	406
- Vessels under construction, 27th May 1967	406
- Maritime liens and mortgages, 27th May 1967	406
Status of the ratifications of and accessions to the IMO conventions, in the field of private maritime law:	
- International convention on civil liability for oil pollution damage (CLC 1969)	408
- Protocol of 1976 to the international convention on civil liability for oil pollution damage (CLC Prot 1976)	411
- Protocol of 1984 to amend the international convention on civil liability for oil pollution damage, 1969 (CLC Prot 1984)	412
- Protocol of 1992 to amend the international convention on civil liability for oil pollution damage, 1969 (CLC Prot 1992)	413
- International convention on the establishment of an international fund for compensation for oil pollution damage (Fund 1971)	414
- Protocol to the international convention on the establishment of an international fund for compensation for oil pollution damage, 1971 (Fund Prot 1976)	416

Table of contents

- Protocol of 1984 to the international convention on the establishment of an international fund for compensation for oil pollution damage, 1971 (Fund Protocol 1984)	417
- Protocol of 1992 to amend the international convention on the establishment of an international fund for compensation for oil pollution damage, 1971 (Fund Prot 1992)	418
- Convention relating to civil liability in the field of maritime carriage of nuclear material (Nuclear 1971)	419
- Athens convention relating to the carriage of passengers and their luggage by sea (PAL 1974)	420
- Protocol of 1976 to amend the 1974 Athens convention relating to the carriage of passengers and their luggage by sea (PAL Prot 1976)	421
- Protocol of 1990 to amend the 1974 Athens convention relating to the carriage of passengers and their luggage by sea (PAL Prot 1990)	421
- Convention on limitation of liability for maritime claims (LLMC 1976)	422
- International convention on salvage (Salvage 1989)	423
- International convention on oil pollution preparedness, response and co-operation, 1990	423
 Status of the ratifications of and accessions to United Nations conventions in the field of maritime law (UNCITRAL/UNCTAD):	
- The United Nations convention on a code of conduct for liner conferences, 6 April, 1974 - (Liner Confer 1974)	426
- The United Nations convention on the carriage of goods by sea, 31 March 1978 - The "Hamburg Rules 1978"	428
- The United Nations convention on international multimodal transport of goods, 24 May 1980 (Multimodal 1980)	429
- The United Nations Convention on the law of the sea, 10 December 1982	429
- The United Nations convention on conditions of registration of ships, 7 February 1986 (Registration ships 1986)	432
- The United Nations convention on the liability of operators of transport terminals in the international trade, 1991	432
 Status of the ratifications and accessions to UNIDROIT conventions in the field of private maritime law:	
- UNIDROIT convention on international financial leasing, 1988	433
Conferences of the Comité Maritime International	434

Published by CMI Headquarters: c/o Baron Leo Delwaide,
Markgravestraat 9, B-2000 Antwerpen, Belgium

PRINTED IN ITALY
TYPE - GENOVA
JUNE, 1996