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**ANTWERP I**

**Documents for the Centenary Conference**



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 GENERALES

#### **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.

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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

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Une 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 admises 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

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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,

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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,

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- 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

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- 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 civi-

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sheet 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,

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le écoulée ainsi que les budgets de l'année en cours et de l'année suivante, et soumet 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;

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- 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:

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- 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:

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- (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.

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- (i) à l'Assemblée,
  - (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.

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*Organization of the CMI*

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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.

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*Constitution*

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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.

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*Organization of the CMI*

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**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.

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*Constitution*

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**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

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

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*Rules of Procedure*

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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.

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*Part I - Organization of the CMI*

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## 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.

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*Part I - Organization of the CMI*

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## MEMBER ASSOCIATIONS

## ASSOCIATIONS MEMBRES

### ARGENTINA

#### ASOCIACION ARGENTINA DE DERECHO MARITIMO

(Argentine Maritime Law Association)

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*Established: 1905*

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*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.

## AUSTRALIA AND NEW ZEALAND

### THE MARITIME LAW ASSOCIATION OF AUSTRALIA AND NEW ZEALAND

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#### Titulary Members:

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

## BELGIUM

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*Member Associations*


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Membership:

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## BRAZIL

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*Part I - Organization of the CMI*

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Membership:

Physical Members: 350; Official Entities as Life Members: 22; Juridical Entity Members: 20; Correspondent Members: 15.

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ASSOCIATION CANADIENNE DE DROIT MARITIME

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*Individual Members.*

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Gordon L. BISARO, Bisaro & Company, P.O.Box 11547, 2020 - 650 West Georgia St., Vancouver, B.C. V6B 4N7. Tel. (604) 681-3474 - Fax. (604) 681-5529.

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Jean GREGOIRE, Langlois Robert Gaudreau, Barristers & Solicitors, 801 Chemin Saint-Louis, Suite 160, Quebec City, Quebec G1S 1C1. - Tel: (418) 682-1212 - Fax: (418) 682-2272.

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) 570-7301 - Fax. (709) 722-9210.

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

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.

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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.

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*Part I - Organization of the CMI*


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### Membership

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

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### 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:

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

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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*

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*Member Associations*

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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.

*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.

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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.

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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.

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*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.

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Membership:

Group members: 161 - Individual members: 2200

*Part I - Organization of the CMI*

## 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

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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

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*Member Associations*

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**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.

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

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Membership:

Institutions: 59

Individual Members: 166

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(Danish Branch of Comité Maritime International)

c/o Gorrissen Federspiel Kierkegaard

12 H.C. Andersens Boulevard DK-1553 Copenhagen V, Denmark

Tel.: (45) 33.41.41.41 - Tlx: 15.598 GFJUS - Fax: (45) 33.41.41.33

*Established: 1899*

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Membership:

Approximately: 94

## ECUADOR

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(Ecuadorian Association of Maritime Studies and Law)

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P.O. Box 3548, Guayaquil, Ecuador

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Fax: (593-4) 322751/329611

*Established: 1988*

Officers:

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Dr.Pablo FARFAN, Elízalde 101 y Malecon (Asesoría Jurídica Digmer) - Tel.: 324254.

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

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## EGYPTIAN MARITIME SOCIETY

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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-BARUDY, Prof. of Commercial & Maritime Law, Alexandria University. - Tel.5876097.

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

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

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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, Boukily, Alexandria. - Tel. 865099.

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

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## FINLAND

SUOMEN MERIOIKEUSYHDISTYS  
FINLANDS SJORATTSFORENING

(Finnish Maritime Law Association)  
Abo Akademi University, Department of Law,  
Gezeliusgatan 2, 20500 Abo, Finland  
Tel.: 358.21-2654321 - Fax: 358.21-2654699

*Established: 1939*

Officers:

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*Vice-President:* Nils-Gustaf PALMGREN  
*Secretary:* Peter SANDHOLM

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Membership:

Private persons: 79 - Firms: 24.

## FRANCE

## ASSOCIATION FRANCAISE 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, Facult. 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.

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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 Adjoints:*

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  
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 CHAVANAC, Magistrat; Pierre DARDELET, SATA.

Membership:

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

## GERMANY

DEUTSCHER VEREIN FÜR INTERNATIONALES SEERECHT  
 (German Maritime Law Association)  
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*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

Members:

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

HELLINIKI ENOSSI NAFTIKOU DIKAIYOU  
 (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*

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Member Associations


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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:*

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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

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*Part I - Organization of the CMI*


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## NIGERIA

### NIGERIAN MARITIME LAW ASSOCIATION

c/o Secretariat  
 Att: Chief E.O.A. Idowu  
 330 Murtala Muhammed Way - P.O. Box 5552 - Lagos  
 Tel: 01-861735/01-861352

*Established: 1980*

#### Officers:

*President:* Honourable Justice M.B. Belgore, Chief Judge, Federal High Court, 24, Oyinkan Abayomi Drive. Lagos or 31, Cameron Road, Ikoyi, Lagos

*First Vice President:* Fola Sasegbon Esq., 6 Ijora Cause Way, Lagos

*Second Vice President:* L.N. Mbanefo Esq. (SAN), 230, Awolowo Road, Ikoyi, Lagos

*General Secretary:* Chief E.O.A. Idowu, Barrister. Solicitor. 330 Murtala Muhammed Way, Yaba, Lagos P.O. Box 5552. Marina, Lagos

*First Asst. Secretary:* Mrs. Funke Agbor. 38/40 Strachan Street, 5th Floor, P.O. Box 55285, Falomo, Lagos

*Second Asst. Secretary:* Akin Akinbote Esq., 7 Sunbo Jibowu Street. Ikoyi, Lagos

*Financial Secretary:* Alaba Okupe Esq., 18 Moore Road, Yaba, Lagos

*Treasurer:* Chief M.A. Ajomale, Boja Ajomale & Co., 4 Campbell Street. Lagos

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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, Kristinelundveien 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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- 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 Krefting Greve Lund, P.O. Box 413 Sentrum, N-0103 Oslo. Tel.: 7.22.42.18.10 - Fax: 47.22.42.35.57.
- Havar POULSSON, Assuranceforeningen 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

## 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:

*President:* Enrique DE ALBA

*Vice-President:* Ricardo ESKILDSEN

*Secretary:* Ms. Tatiana CALZADA

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*Part I - Organization of the CMI*


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*Assistant Secretary:* Cesar ESCOBAR  
*Assistant Treasurer:* Francisco MATA  
*Director:* Damaso DIAZ DUCASA

**Titulary Members:**

Dr. Woodrow de CASTRO, Dr. José 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 VELAUCHAGA, Professor of Law at the Law School of the Catholic University of Lima, Av. Arequipa n. 4015, Miraflores.

*Past Presidents:*

Dr. José María PAGADOR, José Gonzales No. 568 Of. 302, Miraflores, Lima.

Dr. Enrique MONCLOA DIEZ CANSECO, Alvarez Calderon n. 279, San Isidro, Lima.

*Honorary Members:* Dr. Roberto MAC LEAN, former Supreme Court Judge.

Vice Admiral Mario CASTRO DE MENDOZA, Grimaldo del Solar n. 410, Lima 18.

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**Membership:**

Company Members: 11 - Individual Members: 65.

*Member Associations***PHILIPPINES****MARITIME LAW ASSOCIATION OF THE PHILIPPINES  
(MARLAW)**

Del Rosario &amp; 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:*President:* Ruben T. DEL ROSARIO*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.*Vice-President:* Pedro L. LINSANGAN, Linsangan Law Office, 6th Fl., Antonino Bldg., T.M. Kalaw Street, Ermita Manila, Philippines - Tel.: (63)(2)594062 - Fax: (63)(2)521.8660.*Vice-President for Visayas:* Arturo Carlos O. ASTORGA Astorga Macamay Law Office, Room 310, Margarita Bldg., J.P. Rizal cor. Cardona Street, Makati, Metro Manila, Philippines - Tel.: (63)(2)874146 -

Fax: (63)(2)818.8998.

*Treasurer:* Aida E. LAYUG, Fourwinds Adjusters, Inc. Room 402, FHL Building, 102 Aguirre Street, Legaspi Village, Makati, Metro Manila, Philippines - Tel.: (63)(2)815.6380.*Secretary:* Jose T. BANDAY same address as the Association.*Trustees:* Antonio R. VELICARIA, Chairman, Raoul R. ANGANGCO, Benjamin T. BACORRO, Domingo G. CASTILLO, Felipe T. CUISON.**POLAND****POLSKIE STOWARZYSZENIE PRAWA MORSKIEGO**

z siedziba w Gdansk

(Polish Maritime Law Association, Gdansk)

Maritime Institute, Gdansk

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

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

*Established: 1934*Officers:*President:* Michal 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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*Part I - Organization of the CMI*

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*Vice-Presidents:*

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Zenon KNYPL, Dr.Iur, Judge of the Court of Appeal at Gdansk.

*Secretary General:* Janusz GASIOROWSKI, LL.M., Head of Maritime Law Department, Maritime Institute at Gdansk.

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**PORTUGAL**

**MINISTERIO DA DEFESA NACIONAL  
MARINHA COMISSÃO DE DIREITO MARITIMO  
INTERNACIONAL**

(Committee of International Maritime Law)

Praça do Comercio, 1188 Lisboa Codex

Fax: 342-4137

*Established: 1924*

Officers:

*President:* Dr. José Joaquim DE ALMEIDA BORGES.

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

*Secretary:* Dra. Ana Maria VIEIRA MALLEN.

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*Member Associations*

## 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*Officers:

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Dr. Ida I. BARINOVA, Deputy Head of the Legal Department, Department of Marine Transport, Ministry of Transport of the Russian Federation, Moscow.

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.

Mr. Stanislav G. POKROVSKY, Director-General, Private Law Firm - "Yurinflot". Moscow.

*Secretary General:* Mrs. Olga V. KULISTIKOVA, Head International Private. Russian & Foreign Maritime Law Department. "Soyuzmorniiiproekt", Moscow.

*Scientific Secretary:* Dr. Nelya D. KOROLEVA, Senior Scientific Fellow. International Legal Issues of Shipping Department, "Soyuzmorniiiproekt", Moscow.

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Titulary Members:

Mr. Andrei K. JOUDRO, former President of the Soviet Maritime Law Association.

## 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*

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*Part I - Organization of the CMI*

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Officers:

*President:* Ibrahima Khalil DIALLO  
*1st Vice-President:* Serigne Thiam DIOP  
*2nd Vice-President:* Aboubacar FALL  
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*2nd Assistant Secretary:* Oumar NDIAYE  
*Treasurer:* Ndeye Sanou DIOP  
*Assistant Treasurer:* Bara FALL

Membership:

Abdou BA, Ismala DIAKHATE, Babacar DIALLO, Abdou Amy DIENG, Madame Mame Diarra SOURANG.

Titulary Members:

Ibr.Khalil DIALLO, Aboubacar FALL.

SINGAPORE

THE MARITIME LAW ASSOCIATION OF SINGAPORE

50 Raffles Place  
 18-01 Shell Tower  
 SINGAPORE 048623  
 Tel.: 53.83.055 - Tlx: RS 21570 - Fax 53.83.066

*Established: 1992*

Officers:

*President:* Arul CHANDRAN.  
*Vice-President:* Vino RAMAYAH.  
*Secretary:* Loke VI MING  
*Treasurer:* Kenny CHOOI  
*Committee Members:* Govindarajalu ASOKAN, Haridass AJAIB, Scott THILLIGARAT-  
 NAM, P. SELVADURAI, Richard KUEK.  
*Auditors:* Kenny CHOOI  
 Ms. Yoga VYJAYANTHIMALA

*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. D.J. SHAW. Q.C.. P.O. Box 169, Durban 4000. Tel: (031) 301 0113/4. Fax: (031) 304 7170.

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

*Secretary/Treasurer:* Mr. J. SWART, P.O. Box 27, Cape Town 8000. - Tel (021) 408-6244. Fax: (021) 408-6545.

*Executive Committee:*

Professor H. STANILAND, Institute of Maritime Law, University of Natal. Private Bag X10, Dalbridge 4014 - Tel: (031) 260 2556/260 2994 - Fax: (031) 260 1456.

Mr. D. J. DICKINSON, P.O. Box 3483, Durban 4000. - Tel: (031) 302.7911/7160 - Fax: (031)304-8692/2527.

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*Part I - Organization of the CMI*


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Mr. B.R. GREENHALGH, P.O. Box 2010, Durban 4000. - Tel: (031) 301.8361/306-1194  
Fax: (031) 305 1732.

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

Mr. M.T. STEYN, Private Bag X10, Roggebaai, 8012, - Tel: (021) 418-6800 - Fax. (021) 418-6900.

Mr. R. FIELD, P.O. Box 2041, Cape Town, 8001. - Tel: (021) 419-9090 - Fax: (021) 419-4740.

## 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 COR-TABITARTE; Pedro SUAREZ SANCHEZ; José Francisco VIDAL COMAS.

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*President:* Prof. Rafael ILLESCAS ORTIZ, Pza. de Manolete, 4, 3º A, Madrid 28020 - Tel.: (1)6.24.95.07 - Fax: (1)6.24.98.77.

*Vice-presidents:*

Adv. José María ALCANTARA GONZALEZ. c/o Miguel Angel, 16, 5º, Madrid 28010, - Tel. 3.08.30.95 - Fax: 3.10.35.16.

Lic. Raúl GONZALEZ HEVIA, Avda. de América, 46, 28028 Madrid - Tel.: (1)7.26.76.99.

*Secretary:* Prof. José Luis GABALDON GARCIA, c/ El Espino 27, 28250 Torrelodones - Tel.: (1)6.30.41.68 - Fax: (1)6.24.95.89.

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*Vocales:*

Adv. Rodolfo A. GONZALEZ-LEBRERO y MARTINEZ, c/ Serrano, 91, 4º, 28006 Madrid - Tel. 5.63.47.40.

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*Member Associations*

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- Ing. Miguel PADRO BUSTILLO, c/ Condado de Treviño 27. 28033 Madrid - Tel. (1)3.02.57.60.  
 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).

Titulary Members:

José María ALCANTARA GONZALEZ, Eduardo ALBORS MENDEZ, Ignacio ARROYO MARTINEZ, Eduardo BAGES AGUSTI, Alvaro DELGADO GARZON, Luis DE SAN SIMON CORTABITARTE, Luis FIGAREDO PEREZ, Guillermo GIMENEZ DE LACUADRA, Jos. Luis GONI ETCHEVERS, Francisco GONI JIMENEZ, Raul GONZALEZ HEVIA, Rodolfo GONZALEZ LEBRERO, Juan Luis IGLESIAS PRADA, Gabriel JULIA ANDREU, Aurelio MENENDEZ MENENDEZ, Manuel OLIVENCIA RUIZ, Jose Luis RODRIGUEZ CARRION, Fernando RUIZ GALVEZ VILLAVARDE, Fernando SANCHEZ CALERO, Rodrigo URIA GONZALEZ.

Membership:

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:

*President:* Yaseen OMAR, Life Member of Bar Association of Sri Lanka, Colombo.  
*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.

*Part I - Organization of the CMI*

## 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.*Vice-Presidents:*

Lars BOMAN, Advocate, Advokatfirman Morssing &amp; Nycander, Box 3299, S-10366 Stockholm, - Tel: 46.08.23.79.50 - Fax: 46.08.21.80.21.

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.Members of the Board:

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PART II

**The Work of the CMI**

## **PREFACE**

*Part II of the Yearbook contains all the preparatory documents for the CMI Centenary Conference which will be held in Antwerp from 9th to 13th June 1997.*

*Such documents relate to all the subjects on the agenda of the Conference and consist of the following:*

### ***Off-Shore Craft and Structures***

- Report of the Chairman of the International Sub-Committee, Richard Shaw*
- Discussion Paper of the Canadian Maritime Law Association*
- Initial drafting suggestions and notes for an International Convention on Off-Shore Units, Artificial Islands and Related Structures used in the exploration for and exploitation of petroleum and seabed mineral resources, prepared by the Canadian Maritime Law Association*

### ***Towards a Maritime Liability Convention***

- Preliminary Report of the Chairman of the Panel, Patrick J.S. Griggs*

### ***EDI***

- Report of the CMI Working Party*

### ***Collision and Salvage***

- Preliminary Report of the Chairman of the Panel, R.E. Japikse*

### ***CMI Study of the Law of Wreck Removal***

- Preface*
- Draft Convention on Wreck Removal*
- Report of the Chairman of the International Sub-Committee, Bent Nielsen and Questionnaire*
- Background Paper submitted to IMO by the CMI*
- Comparative analysis of national laws relating to wreck removal*

***Maritime Liens and Mortgages - Arrest of Ships***

- *The Convention on Maritime Liens and Mortgages, 1993 - An analysis of its provisions, by Francesco Berlingieri*
- *Arrest of Ships - The travaux préparatoires of the draft articles adopted by the JIGE, by Francesco Berlingieri*

***Classification Societies***

- *Report of the Joint Working Group on a Study on Issues re Classification Societies, by Frank L. Wiswall, Jr.*
- *Annex A - Principles of Conduct for Classification Societies*
- *Annex B - Model Contract Clauses*

***Carriage of goods by sea***

- *Preface*
- *Report of the Chairman of the International Sub-Committee, Francesco Berlingieri*
- *Report of the Second Session of the International Sub-Committee*
- *Report of the Third Session of the International Sub-Committee*
- *Report of the Fourth Session of the International Sub-Committee*

## **REPORT OF THE INTERNATIONAL SUBCOMMITTEE ON OFFSHORE CRAFT AND STRUCTURES TO THE CMI AT ITS CENTENARY CONFERENCE**

### **ON THE NEED FOR AN INTERNATIONAL REGIME FOR OFFSHORE UNITS, ARTIFICIAL ISLANDS AND RELATED STRUCTURES USED IN THE EXPLORATION FOR AND EXPLOITATION OF SEABED RESOURCES**

#### **1.0 Introduction**

1.1 At the 35th International CMI Conference in Sydney, the plenary session adopted a revised version of the 1977 Rio Draft Convention on Offshore Mobile Craft, which became known as the Sydney Draft. The Conference resolved unanimously that "the CMI establish a working group for the further study and development, where appropriate, of an international convention on offshore units and related matters". A working group consisting of Professor Edgar Gold of Canada, Professor Hisashi Tanikawa of Japan and under the chairmanship of Mr. Richard Shaw of the United Kingdom was established.

1.2 There was a wide divergence of views at Sydney as to whether further work on a broader scope convention on offshore units and structures was desirable or indeed feasible. The Canadian MLA represented one end of the spectrum, being strongly in favour, while Norway, Denmark and Japan represented the other. These views have been well articulated in our working group by Professor Edgar Gold and Prof. Hisashi Tanikawa respectively.

1.3 The original mission to the working group was therefore to explore whether such a broadly based offshore convention would command sufficient support to justify further work by the CMI.

1.4 At the October 1995 meeting of the IMO Legal Committee the Sydney Draft was presented. Mr Shaw attended to support this document. It became quickly apparent that the Sydney Draft did not commend itself to the Legal Committee, which did however encourage the CMI to pursue its efforts in preparing a comprehensive draft treaty.

1.5 The December 1995 meeting of the CMI Executive Council

decided to appoint Nigel Frawley of Canada and Winston Rice of the United States as members of the Working Group and to establish an International Sub-Committee on this topic under the chairmanship of Richard Shaw.

1.6 A questionnaire sent out in April 1996 by the Working Group was designed to assess the degree of support among the national Maritime Law Associations to such a comprehensive convention, and the topics it should cover.

1.7 There have been a number of significant developments since Sydney 1994 which tended to point toward the need for further work on a comprehensive convention, including the following:

- a) the decision of the IMO Legal Committee in October 1995 to encourage further work by the CMI;
- b) the response of the MLA of Australia and New Zealand (Australian section) who were sceptical of the Canadian proposals at Sydney, but who have now, in light of the developments in the Asian region, adopted a position in favour;
- c) informal indications that the US industry, initially supportive of the Canadian ideas, but later somewhat restrained will finally take a stance in favour of a wider convention;
- d) the 'BRENT SPAR' incident, which has increased public awareness of the need for clearer rules regarding decommissioning;
- e) the decision of the E&P Forum ( the exploration and production industry's international coordination group) to invite the Chair to address their Insurance and Legal Committee on 3rd October, 1996. At that meeting the E & P Forum expressed the desire that it be kept informed of future work.
- f) a positive response received from a leading liability insurer of the offshore industry, to continuing work on a broader convention.

1.7 None of these is decisive in itself. There will continue to be serious reservations to a comprehensive convention from certain quarters. However, from the responses to the questionnaire, there appears to be a substantial body of opinion among national Maritime Law Associations in favour of a broadly cast offshore convention, if somewhat more limited in scope than the original Canadian proposal.

1.8 The International Sub-Committee held meetings in Toronto on January 18, 1996 and in New Orleans in March 11, 1997, which were attended by representatives of the United Kingdom, Canada, Denmark, Italy, and the United States.

## 2.0 General principles

2.1 The International Subcommittee has proceeded from the following basic principles:

- A. The expansion of offshore activities worldwide, particularly into areas of the world where there are no regional conventions, emphasises the need for a set of uniform and consistent rules of uniform application.
- B. Any offshore regime must reconcile potentially competing interests of states and interested parties. The interested states include the coastal state, the flag state, the states of domicile of operators and of offshore unit workers and the international and contiguous state ecosystems. The interested parties include the petroleum and offshore industries, investors, creditors, insurers and offshore unit workers.
- C. Proposed Offshore Regime provisions must be consistent with the principles and articles of the 1982 United Nations Convention on the Law of the Sea ('UNCLOS'), particularly those specifically relating to offshore development.
- D. Offshore Regime provisions should be consistent with other generally accepted international maritime law conventions, except where the liability and operating environments of the offshore industry are sui generis or so markedly different from the operation of mobile seagoing commercial vessels as to require distinct international rules.
- E. The principles of state sovereignty and autonomy of national economic development should be taken into account along with the principles of UNCLOS (particularly Article 56), international obligations of states to the environment, to their citizens and to nationals of other states, to safety and to the need for compensation for personal injury and property damage, and the need to provide an appropriate international legal environment for a diffuse international industry.
- F. Freely negotiated agreements made between owners and operators of offshore units and other interested parties including coastal states should be respected, subject to proper protection of the marine environment and relevant provisions of UNCLOS.
- G. Recognising the rapid commercial and technological evolution of the international offshore industry, an international offshore regime should be flexible enough to accommodate future commercial and technological developments and not set out detailed prescriptive rules, but rather focus on objectives and standards.

H. Coastal states shall not unreasonably expose neighbouring states to the risk of damage to their environment as a result of action or inaction with respect to offshore units.

2.2 The questionnaire suggested a wide range of topics for inclusion in the proposed convention. Those topics were discussed in the Canadian background paper reproduced in the 1995 CMI Yearbook Sydney II. The majority of respondent associations expressed support for a convention addressing a more restricted list of topics, although several associations acknowledged the need for a convention covering all of the subjects raised. The International Sub Committee recommends that any draft convention should cover only those topics for which there is substantial majority support.

2.3 Almost all of the national maritime law association responses are receptive to consideration of the subjects discussed in this Working Paper. As the viewpoints of national maritime law associations differ as to which other topics may usefully be included in an international regime, various components of a suggested international regime may require drafting to permit their adoption through a series of conventions or protocols.

2.4 Some national maritime law associations have commented that their countries' domestic regimes cover many of the matters to be considered for an international regime. It is the view of the Subcommittee that the principles set out in the best of those regimes can form the basis for a convention of worldwide application, thus encouraging uniformity of maritime law and development of international standards to facilitate development in parts of the world where domestic law may be inadequate or non-existent.

### **3. Responses from National Maritime Law Associations to the Questionnaire**

3.1 The text of the questionnaire is set out in the documents accompanying this report. Responses were received from the MLA's of Argentina, Australia, Canada, Denmark, Egypt, France, Germany, Indonesia, Italy, Japan, Netherlands, Norway, Philippines, South Africa, United Kingdom, and Venezuela. On 12th September 1996 Mexico filed a working paper at the IMO (LEG 74/12/3) which substantially answers many of the questions raised by the CMI working group. Informal indications have been received that the United States MLA is supportive of the work of the CMI on this subject in all

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*Off-shore Craft and Structures*

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respects, but no formal reply had been received at the time of going to press.

3.2 Also accompanying this report is a spreadsheet synthesis of the replies received. This is necessarily abbreviated, but gives an overall picture.

3.3 There follows a brief analysis of the replies received to each question.

1. Have you ratified the United Nations Convention of the Law of the Sea (“UNCLOS”)?

2. If not, is your government considering ratifying UNCLOS in the foreseeable future?

11 states of the 15 respondents had ratified and Canada and Denmark are considering ratification. The UK position is uncertain (due to the pending election) but the matter is under review. Venezuela is not considering ratification but it considers the UNCLOS provisions on preservation and exploitation of the marine environment as part of the applicable International Law of the Sea.

3. If you have not ratified UNCLOS, have you established an offshore resources zone similar in substance to the Exclusive Economic Zone (“EEZ”) provided for in UNCLOS?

14 states - Argentina, Australia, Canada, Denmark, Egypt, France, Germany, Indonesia, Italy, Japan, Norway, Philippines, UK and Venezuela - have an EEZ based on UNCLOS or on substantially similar principles. The Netherlands is preparing the necessary legislation.

4. Do you have existing offshore units working in your inland waters, territorial sea, or EEZ? If so, how many?

In all a total of 380 units were reported - see the spreadsheet for their distribution. This figure does not include the USA, which has a similar number, thus doubling the total.

5. Do you have existing offshore units working under the flag of your country? If so, how many?

A total of 107 units were reported as under the flag of respondent states. Many units are registered under free flag states such as Panama and Liberia who did not respond to the questionnaire. Again, US flag units are not included.

6. Do you have any legislation on activities on offshore units and

structures working in your inland waters, territorial sea, or EEZ? If so, please supply a list of the titles of such legislation [and, if possible, copies].

Most respondent states have such legislation in place. Only Egypt and Japan replied that they do not, although Egypt added that the general principles of contract and tort law apply.

7. Have you considered legislation to give effect to articles 194, 197, 208 and 235 of UNCLOS?

The replies to this question proved particularly revealing of the different approaches between respondent states. UNCLOS itself contains a number of obligations on states parties with respect to the protection of the offshore environment - see the Canadian Discussion Paper dated May 1996, and the article by Prof. J. Wonham "Some recent regulatory developments in IMO for which there are corresponding requirements in the United Nations Convention on the Law of the Sea" - in 'Marine Policy' Sept. 1996. To use Prof. Wonham's own words "One wonders whether all of the parties to the UNCLOS are aware of the need to legislate in these areas..." Of the responding states Australia, Canada, Japan, Netherlands, Philippines, and UK advised that legislation specifically referable to UNCLOS requirements has been passed or is planned. Many respondents such as Germany, Norway and Venezuela replied that their existing legislation already covered these requirements. It is however clear that most states, when becoming or contemplating becoming parties to UNCLOS, are reviewing their legislative provisions with a view to aligning them so far as possible with the relevant provisions of UNCLOS. To the extent that a comprehensive offshore convention would harmonise such activities it would certainly be helpful.

8. Are you part of an established regional agreement which includes environmental and other obligations relating to offshore craft, such as the 1976 Barcelona Convention and 1994 Protocol?

The majority of respondents are not party to such regional agreements. Netherlands and UK confirmed that they are parties to the 1983 Bonn Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil. It is believed that Denmark, Germany, and Norway are also parties, although their replies did not expressly refer to this agreement. Italy is a party to the 1976 Barcelona Convention on the prevention of pollution of the Mediterranean Sea. It is believed that Egypt is also a party. The other principal agreement of this type is the Kuwait Convention on prevention of pollution of the Gulf. No state party to this agreement responded to our questionnaire.

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*Off-shore Craft and Structures*

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9. Do you agree that a comprehensive International Convention on offshore activities and structures addressing all or any of the following topics would be useful?
- a. Ownership, including Financing and Mortgages.
  - b. Registration and Flag.
  - c. Maritime liens, and right of civil arrest.
  - d. Civil jurisdiction.
  - e. Penal jurisdiction, inc. seizure and forfeiture.
  - f. Liability for pollution
    - i. from on-board operations;
    - ii. from discharge from reservoirs and blowouts.
  - g. Liability for non-pollution risks.
  - h. Limitation of liability.
  - i. Financial responsibility for pollution and other damage.
  - j. Salvage.
  - k. Removal of decommissioned structures and wrecks.
  - l. Construction standards.
  - m. Safety of on-board operations and management standards.
  - n. Safety of navigation and collision.
  - o. Emergencies and search and rescue.
  - p. Pollution prevention and response.
  - q. Occupational health and safety, labour standards and worker compensation.
  - r. Other artificial islands.

The list of topics set out above was taken from the Canadian Background Paper presented at the 1994 Sydney Conference and published in the Sydney II Yearbook, and the Draft Convention (Sydney Offshore 25 IX - 94) which accompanied it.

Denmark, and Norway replied that a comprehensive offshore convention was undesirable, and did not expressly comment on any of the listed topics. Netherlands replied similarly, but indicated that there was a better chance to obtain consent on contents and wording of any such convention by starting with a less comprehensive convention limited to Ownership, Financing, Mortgages, Registration and Flag. Germany likewise favoured a limited framework, dealing only with topics c, f, g, h, i, j and n. Of particular interest was the German reply that since offshore units are not vessels for maritime shipping, they are not, according to German Law, entitled to fly the German Flag.

All other respondents, namely Argentina, Australia, Canada, Egypt, France, Italy, Japan, Mexico, Philippines, South Africa, U.K.

and Venezuela favoured work on a broadly based offshore convention, although the majority preferred a more limited scope than that suggested in the Canadian Paper. A fair impression can be gained from the "spreadsheet" annexed.

It will be for the Antwerp conference to decide where the line should be drawn, but it would appear that there is broad support for the inclusion of topics a to j. Item k - removal of redundant structures/-wrecks - may be the subject of a separate convention, currently the object of a CMI International Sub Committee under the chairmanship of Mr Bent Nielsen of Denmark, but there is clearly a high level of current interest in this topic, and it would be perhaps premature to exclude it from the list of topics.

Please indicate those topics which you consider:

- i. should be included in a comprehensive offshore convention
- ii. should not be included in such a convention;
- iii. any other topic which you consider should be included.

The answers to this question are included in those summarised above. No respondent put forward any other topic for consideration.

10. Would you encourage

- a. further work on such a convention by CMI?
- b. the IMO in developing such a convention?

12 states of the 16 respondents favour further work by CMI on this subject. Denmark and Norway stated that this would be a waste of CMI's time and resources. Japan questioned whether CMI has the necessary experts in public maritime law, and whether it is appropriate to spend a lot of money on a matter that most members of CMI are not so much interested in.

Likewise the majority favoured keeping IMO informed of CMI's work although Japan in particular questioned whether some of the listed topics (particularly q - occupational health and safety and workers' compensation) lie within the remit of the Legal Committee of IMO.

11. Does your Association have a sub-committee on Offshore Units and Structures or which deals with the matters referred to in this questionnaire? Please supply coordinates of the Chairman of such sub-committee or other person to whom enquiries of this nature should be addressed. 11 states have specific committees or working groups on Offshore Units. The contact persons with their phone and fax numbers are set out below:

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		PHONE	FAX
AUSTRALIA	Dr. M. White	0061732363155	0061732362311
CANADA	Mr. J. Joy	0017097227584	0017097229210
DENMARK	Mr. H. Christrup	004533414141	004533414133
EGYPT	Mr. H. Eldib	002034820111	002034821900
FRANCE	M. J. S. Rohart	0033146225173	0033147549078
ITALY	Prof. G. Boi	003910586441	003910594805
JAPAN	Prof. S. Ochiai	0081332650770	0081332650873
NETHERLANDS	Mr V. de Brauw	0031102240349	0031102240064
NORWAY	Mr.K-J Gombrii	004722430035	004722554720
PHILIPPINES	Mr. R. Del Rosario	006328101791	006328171740
U. K.	Mr. S. Fletcher	0044148331161	00441483567330

All these gentlemen, and many more, are invited to join the discussion of this subject during the afternoon session of the first day of the CMI Centenary Conference at Antwerp on 9th June 1997. It is hoped that a representative of the Offshore exploration and exploitation industry will join the members of the CMI working group on the panel.

RICHARD SHAW, Chairman





## CANADIAN MARITIME LAW ASSOCIATION

### DISCUSSION PAPER ON THE NEED FOR AN INTERNATIONAL CONVENTION ON OFFSHORE UNITS, ARTIFICIAL ISLANDS AND RELATED STRUCTURES USED IN THE EXPLORATION FOR AND EXPLOITATION OF PETROLEUM AND SEABED MINERAL RESOURCES

#### **A. Events leading up to 1994 Draft Convention on Offshore Mobile Craft ("The Sydney Draft")**

In 1977 the Comité Maritime International (CMI) proposed a Draft Convention on Offshore Mobile Craft ("the Rio Draft"). This Draft incorporated by reference various other international conventions applicable to ships. The Rio Draft was not further developed by the International Maritime Organization (IMO), as other issues were considered to be more urgent.

However, by the early 1990's a number of IMO member states had, once again, requested the CMI to re-examine this subject. This was due to a renewed interest in offshore energy development, a growing body of jurisprudence related to a number of accidents involving offshore oil rigs and related offshore structures, commercial legal problems related to offshore drilling units, a greater sensitivity to environmental and development issues and, last but not least, the increasing technical sophistication, great variety and considerable cost of offshore drilling units and structures. Accordingly, the CMI was asked to provide the IMO with a study and possible draft Convention on the subject. At the same time, it was agreed that the Rio Draft had been overtaken by events and that a new draft would be needed. The subject was placed on the Agenda for the CMI Conference in Sydney, Australia in October 1994, and after some modifications to the Rio Draft, the 1994 Sydney Draft was the result.

Concern was expressed at Sydney by the Canadian Maritime Law Association and several other national delegations of the need for further development. As a result, the Conference resolved unanimously that "the CMI establish a working group for the further study and development, where appropriate, of an international convention on Offshore Units and related matters". An International Working Group was thereafter established under the Chairmanship of Mr. Richard Shaw of England.

**B. International development since the 1977 Rio Draft***a) Development of International Legal Obligations*

- (i) World population growth and rising demand for petroleum and other natural resources will result in increasing exploitation of seabed areas. For example, world population of 5.6 billion in 1994 is projected to increase to between 7.8 billion and 12.5 billion in 2050. The index of production of petroleum and natural gas in less developed market economies has risen from 100 in 1980 to 244.1 in 1993 (Britannica Yearbook, 1995)
- (ii) As the blowout of the IXTOC 1 rig in the Gulf of Mexico and the demolition of Kuwaiti petroleum infrastructure during the 1991 Gulf War demonstrated, uncontrolled release of hydrocarbons pose a real risk of transboundary air and water pollution. The international community has evolved environmental and development principles which relate directly to offshore petroleum and mining activities. Both Principle 21 of the Declaration of the United Nations Conference on the Human Environment (1972) (herein "Stockholm Declaration") and Principle 2 of the Rio Declaration on Environment and Development (1992) (herein "Rio Declaration") reflect the present international consensus.

Principle 2 of the Rio Declaration provides:

"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

The obligation of States to pay compensation for damage caused by transboundary pollution has been reflected in customary international law since the Trail Smelter Arbitration between the United States and Canada.

Principle 22 of the Stockholm Declaration provides:

"States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction."

It is important to note that the Rio Declaration expressly reaffirmed the Stockholm Declaration with the intention to seek to build upon it.

Principle 22 of the Stockholm Declaration and Principles 12 and 13 of

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the Rio Declaration emphasize the international responsibility of States to develop effective international regimes to address transboundary pollution and liability and compensation for environmental damage both within and outside State jurisdiction.

The last sentence of Principle 12 provides:

“Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.”

The last sentence of Principle 13 provides:

“States shall also co-operate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.”

In its consideration of the United Nations Conference on the Environment and Economic Development, the IMO Environment Protection Committee also took heed of the Rio Declaration Principle 15:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

(iii) In addition to the Rio Declaration, Chapter 17 of the 1992 Report of the United Nations Conference on Environment and Development (UNCED) includes references to offshore development. Section 17.30 provides:

“States, acting individually, bilaterally, regionally or multilaterally and within the framework of IMO and other relevant international organizations, whether subregional, regional or global, as appropriate, should assess the need for additional measures to address degradation of the marine environment:

(c) From offshore oil and gas platforms, by assessing existing regulatory measures to address discharge, emissions and safety and the need for additional measures”

Chapter 17 also refers to the needs of addressing environmental impact assessment, contingency plans and human resource development.

As part of the follow up to the UNCED, the IMO's Maritime Environment Protection Committee considered in 1994 the issue of degradation of the environment from offshore oil and gas platforms. The Committee referred to the 1989 Kuwait Protocol as an example of a regional convention respecting offshore operations, UNCLOS provisions respecting offshore

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activities and the OPRC Convention. The Committee's conclusion that it

sees no compelling need at this time to develop further globally applicable environmental regulations in respect of the exploitation and exploration aspects of these activities

was adopted over the strong criticism of several national delegations. We doubt that this conclusion is justifiable for the reasons we shall discuss later in this paper.

- (iv) In April 1993, the International Labour Organization (ILO) sponsored a tripartite meeting on safety and related issues pertaining to work on offshore petroleum installations. The meeting brought together representatives of government regulators, employer and industry representatives, and labour representatives.

The meeting achieved a significant consensus on the conclusions of the need for the development of a uniform international regime for the operation of Offshore Units.

Among the conclusions were:

- i. The need to collect more accurate and comprehensive statistical data on accidents and workplace safety.
- ii. It would be advantageous to adopt the principle of self-regulation within a framework of goal-setting regulations and the use of safety management and systems developed through participation of workers' organizations and monitored or audited by regulatory authorities.
- iii. The nature of the work environment on Offshore Units necessitated operational regulatory standards distinct from those applicable to occupational health and safety in shored-based industries.
- iv. The governments were encouraged to endorse recommendations for design criteria and safety measures contained in the IMO Code for Construction and Equipment of Mobile Offshore Drilling Units, 1989 (IMO Construction Code).
- v. The ILO should prepare a code of practice or similar guidelines on safety and health management in offshore petroleum operations.
- vi. The ILO should coordinate its work in development of international standards with the work of the IMO.

b) *UNCLOS*

On November 16, 1994 the *United Nations Convention on the Law of the Sea, 1982* ("UNCLOS") came into force.

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- i) UNCLOS Articles 76 and 77 establish a regime for the regulation of coastal states of exploitation of seabed resources including a 200 mile exclusive economic zone and extension of continental shelf jurisdiction seaward onto the continental slope and margin up to 350 miles. UNCLOS Part IV establishes rules for the assertion of continental shelf jurisdiction by archipelagic states. Some of these states, such as Indonesia and the Philippines, have known offshore petroleum resources. Several states with broad continental shelves, such as Canada, presently are considering the extension of economic zones beyond 200 miles.
- ii) UNCLOS contains many provisions creating international obligations directly relevant to offshore petroleum and mineral development, including:

Article 56

where a Coastal States' rights of economic exploitation of their Exclusive Economic Zone must be exercised with regard to the rights of other States and UNCLOS.

Article 60

where a Coastal States' rights to construct and administer artificial islands are subject to requirements for giving warning of their presence, removal of abandoned structures for safety of navigation and protection of the marine environment.

Article 80

where Article 60 is extended to include Artificial Islands, installations and structures on the Continental Shelf.

Article 156

where UNCLOS States Parties must act consistently with their obligations as members of the International Sea-Bed Authority.

Article 194

where States shall take all means necessary to control pollution of the marine environment, including minimize discharges from installations used in offshore natural resource development to the fullest possible extent; and taking measures for accident prevention and emergency response, and the regulation of the design, construction, equipment, operation and crewing of them.

Article 197

where States shall co-operate globally and regionally in formulating international rules and standards for protection of the marine environment.

Article 208

where Coastal States shall adopt laws to control marine pollution from offshore units and seabed activities no less effective than in international rules and standards. States shall establish global and regional rules for this purpose.

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Article 214

where States shall implement and enforce international standards applicable to seabed activity.

Article 235

which provides as follows:

“1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.”

Article 237

where the UNCLOS pollution provisions are without prejudice to the specific obligations assumed by States in furtherance of general UNCLOS principles. Such specific obligations should be carried out consistently with general UNCLOS principles.

*c) Search and Rescue*

The 1979 Convention on Maritime Search and Rescue prescribes obligations on states to make such services available.

The October 1995 first meeting of the Intersessional Working Group on amendments to the 1979 SAR Convention considered whether fixed offshore installations should be covered by that Convention's regulatory requirements for search and rescue services. No consensus was reached. It should be noted that official inquiries into offshore installation accidents have raised the adequacy of SAR measures as a serious issue.

*d) General Commentary*

There is an intimate connection between maritime boundary delimitation and offshore petroleum and mineral development. For example, the Natuna Block D-Alpha area, for which the Indonesian government has signed a development agreement, has been described as being on the continental shelf of Indonesia but not in its 200 mile

economic zone (Soemadipradja, 1995). The promulgation of the IMO Construction Code shows that the maritime sector of the international community has seen a need to develop international standards in this area and, as we have seen, this Code was endorsed by the ILO 1993 Tripartite Meeting on Safety and Related Issues. 1989 IMO and 1991 Oslo Guidelines for removal and disposal of offshore platforms are other examples of international standards. Based on the foregoing, it is beyond argument that the activities and obligations of States in regulating the offshore industry are and will increasingly be subject to international law.

### **C. Development of multinational obligations**

The United Nations Environmental Programme (UNEP) has adopted the policy of clothing the general environmental objectives of UNCLOS by encouraging regional environmental conventions. While various maritime regions, such as the Baltic and Mediterranean, may experience environmental challenges specific to the area, calling for region specific solutions, the implementation of regional conventions has the drawback of lack of uniformity. On the other hand, offshore operations present similar functional challenges.

Of the various regional conventions, that which has the most developed set of standards for offshore development is the Kuwait Convention.

It is not clear from the 1994 proceedings of the IMO Marine Environment Protection Committee whether it was appreciated by all participants that the discussion of the Kuwait Protocol as a model for a regional convention addressing issues of offshore unit operation, may have obscured the fact that, as a whole, regional environmental conventions vary widely in their geographic scope, extent of application to the offshore industry and state of development.

For example, a protocol to the Barcelona Convention, 1976, specifically addressing exploration and exploitation of the Continental Shelf and seabed has only recently been finalized in October, 1994.

The Paris Commission established under the aegis of the 1974 Paris Convention for the Prevention of Marine Pollution from Land-Based Sources has adopted a technique of developing principles and calling for national action plans. The revised 1983 Bonn Agreement for Co-Operation in Dealing with Pollution of the North Sea deals generally with marine pollution and does not address Offshore Units specifically. The International Conferences on the Protection of the North Sea held at Bremen (1984), London (1987) and The Hague (1990) have expressed their work in the form of Ministerial Declarations. It has been commented that:

[T]he precise legal effect of [the INSC Conferences] is a little obscure...They are not agreements in the sense that, in themselves, they create binding obligations in international law. They do, however, at the Ministerial political level, record firm commitments to take action on the national level or through existing international institutions (Brown, 1992).

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While this form of co-ordination may be suited to the extensive integration of the states of the European Union, it may not be an appropriate model for a comprehensive or regional convention whose signatory states may hold more self-sufficient notions of sovereignty.

The *International Convention on Oil Pollution, Preparedness, Response and Co-operation, 1990* ("OPRC") deals specifically with Offshore Units. This Convention came into effect in May 1995.

The OPRC defines Offshore Units comprehensively to include both floating and fixed structures engaged in exploration, production or loading or unloading oil.

State parties to the OPRC must require Offshore Unit operators to report damages. Since the Convention's obligations to evaluate and respond to pollution incidents is triggered by a report to a State authority, the Convention applies to Offshore Units generally. Offshore Units, like ships, are required to have oil pollution emergency plans.

Significantly, the OPRC Diplomatic Conference, by Resolution 7, noting IMO's marine environment protection strategy, invited the IMO Secretary General, in co-operation with the oil industry among others, to develop a comprehensive training programme in oil pollution preparedness and response. This would include Offshore Units.

Pollution prevention and control is only one aspect, albeit an important one, of the interest of the international community in the safe and orderly development of the seabed.

Other aspects, such as crew safety, overlapping regulatory authority, construction standards, etc. have to be developed. These aspects will be discussed later in this paper.

#### **D. Operational developments and incidents**

##### *a) Commercial*

Recognition by UNCLOS of Coastal State jurisdiction over archipelagic areas and continental margins invites nations to expand jurisdiction, which leads to greater offshore activity and therefore a greater risk of pollution and accidents with transnational effects. This strengthens the need for regulation.

The last decade has seen significant geographic broadening of offshore development to areas such as the Timor Gap and South China Sea. The growth of East Asian economies will continue to drive regional demand for petroleum products. This has also resulted in a proliferation of domestic coastal state regulatory regimes. Inherent in this proliferation is the potential for conflict and increased transaction costs and administrative burdens.

The offshore petroleum workforce is becoming increasingly multinational, with different languages, cultural assumptions and different training. The experience of ship management in the last two decades has shown that effective use of a multinational workforce cannot

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be based on the assumption that there exists a shared experience of systems of operations. This has generated a need to explicitly specify operating methods, and management and safety standards.

*(b) Commissions of Inquiry*

The OCEAN RANGER and PIPER ALPHA disasters led to common Inquiry recommendations in areas such as:

- Regulatory structures
- Management and command
- Workplace safety committees
- Training
- Incident reporting
- Accident investigation
- Construction standards
- Evacuation and rescue
- Helicopter and standby vessel operations

Both Inquiry Commissioners, Justice Hickman and Lord Cullen, recommended that offshore industries should be regulated on the basis of goals and performance standards, rather than the imposition of detailed prescriptive rules. This principle was strongly endorsed by the 1993 ILO tripartite meeting with the important qualification that public regulatory systems had to develop expertise in monitoring and auditing compliance.

*(c) Industry Response*

Industry associations such as the Oil Industry International Exploration and Production Forum (E&P Forum) and the United States Offshore Operators' Association have worked for harmonization of standards and cooperated with international agencies. Some of these Associations have called into question the need for compulsory or international standards as distinct from voluntary and regional guidelines. This debate has been overtaken by the coming into effect of UNCLOS. Although this convention has not been ratified by some countries, it has been strongly contended that with the exception of the International Sea-Bed Authority, UNCLOS reflects an international consensus on the content of customary international law.

In 1974, a number of Offshore Unit Operators in Europe agreed to the OPOL voluntary pollution liability compensation scheme. Although the agreement can be extended to other countries, it currently applies only to offshore facilities within European Union Coastal State jurisdiction. Participating companies undertake to accept strict liability to persons for pollution damage and to government authorities for remedial measures, up to a maximum of \$60 Million per incident.

*(d) New Technology*

The technology of gravity based structures continues to evolve with the recent floating out of the HIBERNIA base. Such structures permit

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the expansion of development into areas further offshore. There is an increasing diversity of technology, including new types of floating and tethered production rigs, such as the LASMO operation near Sable Island, off the East Coast of Canada and FPOs deployed off Australia. There is an increased diversity of uses, such as recent proposals to adapt offshore petroleum rigs for private sector commercial space vehicle operations. This leads to a need for general international standards for safe operation of various offshore economic activities.

Demand for resources and technology is also driving the development of new economic uses for the seabed, such as recreation and aquaculture.

As UNCLOS has recognized development of the continental slope and margin, technology is developing for the development of resources in deeper waters. There is the potential for a regulatory gap between abyssal operations controlled by the UNCLOS Seabed Authority and offshore structure activities in extended continental margin exclusive economic zones, which UNCLOS contemplates are to be regulated by coastal states in accordance with expressed international objectives discussed above.

*e) The BRENT SPAR Incident*

Although the owners of this decommissioned floating storage facility had obtained regulatory clearance from the United Kingdom, as coastal state, for deepwater disposal, an international campaign by environmental activists forced the owner to abandon the approved plan by emphasizing the different perspective of other countries to the UK approved plan. The environmental non governmental organization later conceded that some estimates of the quantity of potentially deleterious substances on board, on which the initial opposition was based, may have been in error.

Had more explicit international standards been implemented, it would have been more difficult for environmental activists to exploit different national perspectives to challenge the disposal approval and in any event a disposal scheme would have had international legitimacy.

A politically charged atmosphere is not appropriate for making operational decisions. Had an international regulatory regime existed for the determination of standards and approvals, it is unlikely that political activists could have taken advantage of different national perspectives to influence the disposal decision.

Ironically, an international consensus began to emerge after the incident, as most member countries at the Oslo and Paris Commission meeting in 1995 agreed to a moratorium on the seabed disposal of decommissioned offshore installations, pending further development of international standards. Incident driven development of international standards is not the best approach.

## **E. The need for a comprehensive convention**

*a)* At its October 1995 meeting the Legal Committee of the IMO "encouraged the CMI to pursue its effort in preparing a comprehensive

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draft treaty". (Minutes). We consider that this can best be achieved, not by revising the Sydney Draft, but by adopting a new approach.

The Sydney Draft, in our view, is inadequate because:

- i) it attempts to impose basic principles of maritime law, designed for ships, on structures which are not ships;
- ii) it attempts to impose an unworkable distinction between operation of mobile offshore craft while in transit and while in drilling or production position, with the result that different legal regimes would apply to these two aspects of operation of the same craft;
- iii) it attempts to provide an artificial distinction between offshore craft that are 'mobile' and other types of Offshore Units;

Note: The distinctions in ii) and iii) are more due to the historical accident and fortuitous technological choices that some offshore craft were adapted from ships' hulls, or were designed to float, rather than due to a thorough functional analysis of how legal norms are to respond to a new industrial system. Instead of debating whether Offshore Units are 'ships', a more fruitful analysis would be what legal risks arise from the operation of Offshore Units generally, and how these risks should be managed and allocated.

- iv) it fails to provide a needed international regime for all offshore structures;
- v) it fails to adequately recognize and/or incorporate the various public and private international law conventions affecting maritime safety, offshore operations, the protection of the marine environment and sustainable development;
- vi) its incorporation of other conventions do not apply consistently or are ambiguous;
- vii) it does not appear to reflect any input from the international energy industry whose input to any international regime would be desirable;
- viii) it provides an insufficient base for achieving the necessary uniformity of law required for all aspects of offshore operations and activities.

The Sydney Draft, in our view, would result in a very narrow international instrument covering only a fraction of the problem, which would probably not satisfy the IMO, UNEP/UNCED, nor the international energy industry or environmentally-conscious Coastal States. On the other hand, as the global maritime and offshore energy community has not so far been presented with a viable option for a comprehensive international offshore regime, such an option must be explored.

b) An important question that must be posed in this discussion is whether there is a need for a comprehensive international convention at all? It is a reasonable question when the following factors are taken into consideration:

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- i) the offshore energy industry's offshore safety and environmental record is generally considered to be satisfactory;
- ii) many Coastal States have already in place acceptable regulatory regimes for offshore energy, exploration and exploitation;
- iii) the offshore industry has generally dealt with Coastal States on a direct bilateral, contractual basis;
- iv) offshore energy resources are generally limited to coastal areas within Coastal State jurisdiction;
- v) due to the high investments required, the offshore energy industry has been generally limited in the numbers of operators; and
- vi) the international petroleum industry has so far not seen a need for international "regulation".

However, the recent developments discussed above suggest the need for international solutions. Regulation by individual coastal states and agreements between offshore operators and individual states is not enough.

- c) Increasing diversity of potentially applicable liability and compensation regimes leads to:
  - ~ greater regulatory compliance costs
  - ~ difficulties in complying with occupational health and safety standards due to conflicting jurisdictions
  - ~ legal uncertainties in penal and civil jurisdiction with a range of national responses (eg. *Canadian Offshore Laws Application Act*)

d) *Coastal and Flag State Regulatory Jurisdiction Uncertainties*

As the report of the OCEAN RANGER inquiry analyzed, the proliferation of potentially applicable regulatory regimes increases costs of compliance and increases the risk of safety objectives being submerged in a welter of technical regulations and reporting requirements and the failure, as well as overlap, of operational monitoring efforts.

e) *Civil Jurisdiction*

- i) An important "jurisdictional" factor relates to the regulatory powers envisaged in the offshore regime under UNCLOS. Beyond the "national jurisdiction" the resources of the seabed are subject to the regulatory powers of the International Seabed Authority of the United Nations. However, even within coastal state exclusive economic zones, as discussed above, national jurisdiction is affected by internationally mandated objectives, including freedom of navigation and environmental protection.
- ii) With rigs and crews drawn from many flags and nationalities, the jurisprudence reveals difficult issues such as:
  - ~ The applicability of worker's domiciliary laws controlling employer's freedom of contract.

~ The applicability of Coastal State worker's compensation and tort legislation to offshore industries.

An example of these difficult legal dilemmas is the 1971 English case of Sayers v. International Drilling. The United Kingdom plaintiff contracted with a Dutch subsidiary of an American rig operator and suffered an accident onboard a rig off Nigeria. The employment contract attempted to confine rights of compensation to a company scheme. The English Courts had to grapple with difficult preliminary issues of whether this contracting out of statutory rights was lawful and by whose law.

Accidents on Offshore Units can lead also to the expense and uncertainty of multiple legal proceedings and forum non conveniens issues. An example of this is the 1985 U.S. decision of Ali v. Offshore Co.

The industrial activities carried out on Offshore Units and structures also attract possible application of general Coastal State or flag state laws respecting industrial occupational health and safety. Such general laws have been applied in unanticipated ways. For example, in its 1987 decision of Coltman v. Bibby Tankers, the English House of Lords determined that the hull of the bulk carrier "DERBYSHIRE" was 'equipment' within the meaning of the U.K. Employer's Liability (Defective Equipment) Act. An international convention providing for the application of occupational health and safety guidelines or standards developed specifically for the needs of Offshore Unit Operators and workers would provide greater guidance and certainty than unforeseen application of Coastal or Flag State laws enacted with land based industries in mind.

In recent litigation arising from collisions between offshore drilling units and ships, such as the 1982 U.S. decision of Chiazor v. Transworld Drilling and the 1990 U.S. decision of Cliffs-Neddrill v. Rich Duke, Courts have applied conflict of laws concepts differently than in cases involving collisions between ordinary vessels. The judicial discussions indicate that Offshore Units are a unique type of structure deserving of their own legal regime.

*f) Property Rights in Offshore Units and Financing*

Presently, there is no uniform international regime. The domestic law of some States may permit Offshore Units to be registered as ships, but the application of property rights in unregistered movables outside the Territorial Sea is legally uncertain. It is undesirable that unregistered or 'stateless' Offshore Units be permitted to operate without some juridical connection to a State and a regulatory system.

Even if an Offshore Unit is flagged as a ship, its operation in the Territorial Sea or the Economic Zone of another State may require additional and potentially conflicting standards for registration or recognition of ownership and secured interests or hypothecs by the law of the Coastal State.

Given the considerable cost of Offshore Units, and the risks inherent in their operation, there is a need for an international convention to provide for uniform choice of law rules in determining ownership and financing interests, for adequate and competent national administrations, and regulatory accountability of Offshore Unit owners.

Consideration could also be given to an international registry for Offshore Units and financing interests in Offshore Units, perhaps implemented initially on a voluntary basis.

*g) Penal Jurisdiction*

International law traditionally has classified grounds for assertion of nation state jurisdiction as:

- the place an offence is committed;
- the nationality of the perpetrator or the victim of the offence;
- the national interest affected (the protective principle); and
- the place of arrest of the offender (the universal principle) (Klotz, 1994)

Compared to ships, Offshore Units are unique in that a foreign flag entity with a multinational workforce may remain stationary within the Economic Zone or territorial waters of a nation for months or years - a sort of enclave without diplomatic immunity! This type of operation was not contemplated in in previous maritime conventions. For example, Article 1 of The 1952 International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation essentially restricts the ability of States to discipline officers of seagoing ships to the State of the flag. This policy choice may have been appropriate to continuously mobile cargo carrying ships, but it does not address the regulatory needs of Coastal States over Offshore Units and structures as recognized by UNCLOS.

In the context of offshore platforms, it may be useful to approach the analysis from the perspective of the type of offence as well as the state interest involved. Offences related to offshore operations can be classified as:

- i) Regulatory offences, such as contravention of operating or safety standards;
- ii) Personal Offences, such as assaults between Offshore Unit occupants and theft of personal belongings of offshore workers; and
- iii) Offences against public order, such as murder, piracy and terrorism.

Each category of offence raises distinct regulatory and public interest concerns.

Penal jurisdiction should reflect the realities of multinational workforces aboard Offshore Units and the interests of the Offshore Unit flag state, Coastal (licensing) State, and state of domicile of Offshore Unit Workers. The international community also has an interest in suppressing international crimes such as piracy and terrorism.

As seen in practically every system of domestic offshore licensing, Coastal States have an interest in regulatory compliance arising from

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external aspects of unit operation such as pollutant discharges. Both coastal and flag states have an interest in regulatory compliance arising from internal aspects such as construction and maintenance standards. As there is obvious overlap between such functional interests, regulatory conflict could be minimized by common international criteria for the exercise of jurisdiction.

Unlike regulatory offences, personal offences do not affect the safety of the Offshore Unit or its occupants as a whole. Nevertheless, effective enforcement of flag state criminal law may be difficult if an Offshore Unit is on the other side of the world. This may be justification for conferring joint penal jurisdiction to the Flag and Coastal State for personal offences and a stronger argument for granting such a joint penal jurisdiction over public order offences. Offshore Units may be as physically isolated as ships, and therefore the right conferred by maritime nations on ship's officers to maintain discipline could be applied to Offshore Unit onboard operating officers.

Although the State of domicile of Offshore Unit occupants has an interest in bringing its nationals to justice for offences against public order, it would appear that the traditional connecting factor of domicile is a sufficient basis for jurisdiction without an Offshore Convention needing to confer penal jurisdiction to domiciliary states over their nationals committing offences on Offshore Units.

Recognizing the practicalities of enforcement at a distance by conferring joint penal jurisdiction should not lead to the injustice of operators and, particularly, individuals on Offshore Units being punished twice for the same offence. A Convention should require that Flag and Coastal State Contracting Parties, as a condition of exercising joint jurisdiction, give effect to the defences of double jeopardy and impossibility of compliance. Double jeopardy includes the right not to be punished twice, albeit by different jurisdictions, for the same offence. Impossibility of compliance refers to the dilemma of complying with one state's regulatory requirements at the cost of necessarily contravening another state's standards.

The deliberate disabling or destruction of an Offshore Unit could have catastrophic consequences for those onboard or the ecology or even populations of coastal areas. A general Offshore Unit Convention should be consistent with the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988* (SUA 1988) and the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988* (SUA PROT 1988). These conventions may also require revision.

Given the increasing international incidence of refugee movements and economic migrants, this Convention could appropriately provide for the physical protection and repatriation of stowaways aboard Offshore Units. For example, refugees may choose to flee unstable shore areas in small boats to an Offshore Unit.

*h) Gaps in the Regulatory Regime*

The present patchwork of Coastal and Flag State regulation, voluntary industry initiatives and varying Regional Conventions leaves gaps in the international legal regime governing Offshore Units. Rigs have sunk in the high seas during transit and regulations have tended to lag behind technological developments and the discovery of new seabed areas for exploration and development. Such gaps could be closed by a comprehensive international convention.

Fundamental international principles and duties of Coastal States have already been expressed in the Stockholm and Rio Declarations, and UNCLOS. However, these general statements are not sufficiently detailed for general operating purposes. They have to be expanded upon within their agreed conceptual framework.

If no Offshore Unit convention is developed, Coastal States will justify unilateral regulatory initiatives on the basis that they are merely fulfilling international responsibilities set out in the environmental Declarations and UNCLOS. The result would be multiple and conflicting coastal regimes vying for international legitimacy. The benefits of uniformity would be lost.

Unlike international regulatory vacuum, international standards would avoid arbitrary or politically motivated initiatives by Coastal States.

For example, in its 1995 Annual Report, the Institute of London Underwriters commented on the uncertainties of liability exposure arising from disposal of Offshore Units and stated that the insurance market should be mindful of liability risks attached to ill conceived plans.

A comprehensive international convention on operation and liability aspects would alleviate risk of inconsistent national regulatory regimes, which would remove a hindrance to resolution of maritime boundary disputes.

*i) Promoting Commercial Development*

There are two final points which probably state the most critical reasons for an international regime in this area. An international convention would discourage diverse, unilateral national initiatives, especially those developed in reaction to an accident and in the politically charged atmosphere of its aftermath. Furthermore, a uniform, comprehensive international regime, by creating a suitable framework for secured financing and making risk management more predictable, could well assist better returns from existing assets and facilitate greater private and public investment in offshore petroleum and mineral resource development, as well as other forms of commercial and non commercial uses.

*j) Artificial Islands*

Clause 60(8) of UNCLOS mean that fixed structures and Artificial Islands cannot be regarded as part of state territory (unless located in the

Territorial Sea). Although this clause confers upon Coastal States exclusive jurisdiction over immigration and safety regulations, UNCLOS is silent on application of property rights in such structures. In the absence of an international convention covering such units, the legitimacy of assertion of general civil jurisdiction by Coastal States will remain doubtful. Also, the convention could provide also for a legal regime governing Artificial Islands and structures seaward of the Economic Zone.

## **F. Addressing the criticisms**

### *a) Minimum international standards become maximum ones.*

Concerns have been expressed that, in the interest of obtaining a negotiating consensus, any standards or rules prescribed by an international Offshore Units convention would be so vague as to effectively prevent Coastal State signatories from enforcing more stringent local standards upon Offshore Units of other flags. We consider these concerns may be misplaced.

In developing an international convention, the best of the Coastal State regulatory systems could be used as a guideline for an international system which would be uniform and predictable. States with good existing systems should have no difficulties in accepting such an international system. On the other hand, smaller states, especially in the developing world, would have the support of an internationally agreed set of rules when negotiating with operators and licensees. Operators and licensees would have the comfort of being able to plan and cost projects in a familiar legal context and not be exposed to political risks of Coastal States imposing arbitrary and unpredictable requirements. With an international convention, signatory parties would not be able to negotiate anything below the international standards.

Adoption of the principle of goal-oriented regulation could facilitate achievement of consensus and minimize the risk of watered-down rules. For example, if an international convention sets a general goal of Offshore Units being able to withstand weather in operating areas, Coastal States near polar regions could be free to prescribe special standards for operations in ice covered areas. If an Offshore Unit convention sets a general goal of injured Offshore Unit workers receiving disability compensation adequate for their maintenance in their domicile, developing country Coastal States would be free to prescribe compensation systems reflecting the standard of living purchase power of their locality, while workers from countries with higher costs of living would also receive adequate compensation.

### *b) Rigidity and Instant Obsolescence*

The 1993 ILO tripartite meeting has called for a solution in the form of goal-oriented regulation. A harmonized set of international standards

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would avoid the disadvantages and costs of proliferation of Coastal State standards and minimize double jeopardy and conflicts problems.

Further, the IMO has already developed the "tacit acceptance principle" which permits adjustments and revisions to be made to International Agreements. This has been successfully carried out with the MARPOL and SOLAS Conventions.

*c) The present system is sufficient.*

Any safety and environmental record can be improved. Work in offshore areas is inherently dangerous and can also cause serious pollution. That has already been shown in several serious offshore accidents. Accordingly, there is the potential of serious loss of life and catastrophic pollution. Here shipping provides a very good precedent. The establishment of an international safety system, providing a baseline for national regulation and requirements has worked well in the shipping industry for over a century. It is also needed in the offshore industry.

The 1992 UNCED Report emphasized that the principles embodied in the Rio Declaration and UNCLOS demand a proactive approach to their implementation.

Section 17.1 states:

This requires new approaches to marine and coastal area management and development at the national, subregional, regional and global levels, **approaches that are integrated in content and anticipatory in ambit...**

## **G. Comprehensive v. functional approach**

The choices are to set aside the Sydney Draft and prepare a Comprehensive Convention or to build upon the present text of the Sydney Draft and add other subjects for which an international consensus can be identified in an on-going process.

The negotiation of UNCLOS shows there are challenges to achieving international consensus on comprehensive treaties. The possibility may be considered of negotiating several conventions covering different aspects of the international legal environment for Offshore Units. Such an approach could address pressing needs for which rapid consensus is identified (such as harmonization of civil or penal regulatory conflict) and would avoid delaying needed reforms pending agreement on a comprehensive regime.

The disadvantage of a functional approach is that elements would not necessarily be integrated due to differing international consensus from time to time as protocols or new treaties covering additional aspects are negotiated. This would require harmonization of international law as well as Coastal State domestic law.

Possible elements for development of separate conventions or protocols could include:

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- ownership, registration and financing
- maritime liens and rights of arrest or seizure
- civil jurisdiction
- penal jurisdiction
- construction standards
- safety of on board operations and management standards
- pollution prevention and response
- safety of navigation and collision
- liability for pollution
  - onboard operations
  - discharges from reservoirs and blowouts
- liability for non-pollution risks
- limitation of liability and financial responsibility for pollution and non pollution risks
- salvage, wreck removal and decommissioning
- occupational health and safety, labour standards and worker compensation
- emergencies and search and rescue
- artificial islands

#### **H. Addressing needs of developing countries**

Many existing maritime conventions such as the 1986 UN Convention on Conditions for Registration of Ships and the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation have addressed the need of the international community to assist developing countries in the administration of international standards. This could be an aspect addressed by a comprehensive convention on Offshore Units.

Another aspect worthy of consideration is the considerable discrepancy of purchasing power of currencies in developing and mature industrial economies. This has significance both for the setting of employment and health standards and for the determining of limits of liability. One possibility is to link monetary standards or limitations to the purchasing power of currencies in applicable localities such as the domicile of Offshore Unit workers or the domicile of claimants against a limitation fund. This would militate against over or under-compensation.

#### **I. Competence of international organizations**

Another question to be raised is whether a more comprehensive offshore convention is within the competence of either the CMI or the IMO. It is conceded that within the strict terms of reference the CMI generally confines itself to the "uniformity of maritime law" and the IMO has generally concentrated on achieving "safer ships and cleaner seas" under its founding Convention. However, it is suggested that this should not be an impediment for either organization to study and develop the subject even outside its strictly "shipping" dimensions. As early as the beginning of 1986, the IMO

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asserted that it had competence to address the UNCLOS Article 60 requirement of removal of disused offshore platforms. The IMO Maritime Safety Committee then began its work and this resulted in the Guidelines and Standards for the removal of offshore platforms.

Given the all-embracing language of UNCLOS, in terms of maritime safety and the protection of the marine environment, and in the absence of any other inter-governmental or non-governmental organization interested or capable of fully addressing this subject, it appears to be quite clear that the IMO should follow its practice that it has the competence to deal with the subject and fill the legal vacuum. One should not simply assume that other inter-governmental organizations will act. If other international organizations such as UNEP, FAO or UNIDO, begin to approach the offshore industry from their particular perspectives, the industry could face a highly politicized environment rather than a professional technical organization such as the IMO. It is significant that Chapter 17.30 of the UNCED Report of the Rio Conference considered the IMO an appropriate vehicle for this purpose. The IMO also has considered pollution aspects of offshore operations through its issue of a 1993 report of the Joint Group of Experts on the Scientific Aspects of Marine Pollution.

As discussed in B(a)(iii) above, the 1993 ILO Tripartite Meeting urged the ILO to coordinate efforts with the IMO in advancing Offshore Unit operational safety.

The IMO has accepted its mandate under the OPRC Convention by including in its work plan the development of guidelines for the development of oil pollution emergency plans for Offshore Units, updating existing IMO manuals, developing model training courses and recommending means of improving involvement of the oil industry in the implementation of the OPRC Convention.

The IMO has developed a Global Programme for the Protection of the Marine Environment, which is intended to concentrate on activities of a catalytic nature to enhance environmental protection.

In addition, Article 59 of the IMO Convention permits its Assembly to ratify the assumption of international obligations conferred on other entities. It has been noted (Kasoulides, 1989), however:

In practice the IMO has extended its conventions and recommendations to cover the hazards generated by discharges from offshore platforms, mobile installations, safety zones around the installations, etc., in the absence of other international bodies taking the necessary action when these activities first began.

As a consultant to the IMO and due to its special expertise, the CMI should also assume responsibilities in development of the subject. With its access to private industrial sectors, such as insurance and the legal profession, the CMI is well suited to participate in this evolution. The Legal Committee of IMO recently has invited the CMI to continue its study of this topic.

The IMO already does get involved with fixed installations insofar as they might cause interference with the navigation of ships (enforcement of

safety zones, guidelines and standards for platform removal, shipping traffic separation schemes in the vicinity of fixed offshore installations, and where the equipment carried on a platform is identical to that used on ships e.g. lifesaving appliances). They have also had major involvement with the marine aspects of the design and operation of mobile offshore drilling units (the IMO Code for the Construction and Equipment of Offshore Drilling Units 1989) as well as adopting guidelines and standards in 1989 for the removal of offshore installations to ensure safety of navigation and the protection of the marine environment.

There may be a perceived administrative difficulty because the offshore subject would straddle the responsibilities of the Marine Environmental Pollution Committee and the Marine Safety Committee, but the IMO has demonstrated its administrative flexibility in the past and there is no reason why this should not continue.

#### **J. Operational activities covered**

a) There are a number of definitional problems related to offshore structures. The question of whether offshore mobile craft are ships or not has plagued discussions on the subject since the 1970's. It is strongly suggested that this is an unnecessary discussion which has and continues to obscure matters which are of greater importance. Although some of these "craft" have characteristics similar to ships, they are not designed as ships, they do not operate as ships and they should not be defined as ships. In other words, these structures or units, whether self-propelled, mobile, movable or fixed, deserve their own specific international regime. However, these lead to the further question of whether fixed structures, which essentially have the characteristics of an artificial island, should be included. They are excluded in the Sydney Draft. They could be the subject of a separate Treaty or simply be left to bilateral arrangements or agreements with the Coastal States involved. However, we would prefer that a comprehensive international regime on offshore structures include all types.

b) It is believed that the distinctions between mobile, towed, movable and fixed, etc. would only lead to eventual confusion. In fact, even the largest offshore structures, such as the Statfjord and Hibernia developments, were designed to be **moved** to their operating positions and will have to be **re-moved** once operations cease. In other words, whether drill-ship, jack-up rig, semi-submersible or "fixed" platform type, the common link of these units is that: they all operate in the offshore marine environment with its inherent dangers including icebergs; they generally operate in coastal waters of the Territorial Sea or the Exclusive Economic Zone, utilized for international navigation; they all are attached to the seabed in one way or another at some time; they all present a hazard to normal navigation; they all have essentially "international" characteristics in terms of owners, operators, contractors, charterers and crew, and; they all have the potential of having a negative

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effect on the marine environment. The continuing discussion of whether these units or structures are “ships” is, therefore, quite analogous to the early days of the aviation industry when many felt that the maritime regime could be fully adapted for aircraft. This did not work and, by 1944, aviation had its own comprehensive regime, although certain “maritime” principles were indeed adopted by the newer industry.

c) There is another jurisdictional factor. The 1994 Sydney Draft refers to Offshore Mobile Craft used in energy exploitation and development. This appears to exclude other structures and units, such as those used for accommodation, workshops, gas treatment, storage and other ancillary operations, etc. Obviously, other offshore structures and units used for aquaculture, the tourism industry, deep sea mining, scientific research, pipelines, etc. are also excluded. A comprehensive Convention could also include such structures. The various structures and their operational capabilities would have to be defined separately in any comprehensive global convention. Although this may be a difficult task, it is obtainable - especially with co-operation from the industries involved.

#### **K. Regulatory, civil and penal tribunals**

Another jurisdictional question relates to which legal tribunal would be competent to deal with an incident occurring in the offshore. Not every Coastal State has given its domestic Courts plenary jurisdiction over activities in the Economic Zone. Should such an incident be dealt with by a national court, which is normally charged with maritime jurisdiction, or should the responsibility be given to another Court or tribunal? It is here that the “maritime connection” can be of some use, as most Offshore Units may be subject to some or all of the following maritime law subject areas: arrest; bills of sale; classification; registry; collision; mortgages and liens; limitation of liability; marine pollution; safety of life at sea; salvage; tonnage; maritime labour. In other words, it is likely that any Court with maritime or admiralty jurisdiction might be best suited to also deal with cases and claims relating to offshore structures. For example, the Newfoundland Court of Appeal held recently in *Bow Valley Industries v. Saint John Shipbuilding*, that a products liability claim arising from a fire aboard an offshore petroleum platform was governed by the general Canadian maritime law. However, no strong preferences on this point are expressed here as this aspect must be developed in co-operation with the industries and governments concerned.

The critical issue is not which domestic Court has jurisdiction, but rather that signatory States accept a responsibility to clothe some domestic Court with sufficient functional and geographic jurisdiction over Offshore Units and their operation covered by a convention. Indeed, UNCLOS Article 235 requires States to develop substantive law in this area.

#### **L. The way ahead**

It is significant to note that apart from UNCLOS, the only non-regional international convention specifically addressing offshore exploration and

exploitation civil activities, the 1976 CLEE Convention, has not come into force. Although the E&P Forum was appointed technical advisor to the two conferences that led to CLEE's development, this convention was not placed within the jurisdiction of any competent international organization. Furthermore, CLEE failed to attract industry support because it breached the uniformity principle by allowing signatory states to opt for limited or unlimited liability.

It is desirable that the interested industries be involved in the early development of any international convention. All sectors of the offshore industry have to be involved in such consultations: oil and mining companies, offshore contractors, workers, technical and professional interests, as well as financial and legal support services.

### **M. Conclusion**

This Discussion Paper indicates the view of the Canadian Maritime Law Association that offshore operations require a comprehensive international regime for all types of offshore operations in all operating modes. In our view, the approach of the Sydney Draft only addresses a part of the problem and, accordingly, continues to provide insufficient legal uniformity and protection for the majority of offshore operations. It is believed that the CMI, working closely with the offshore industry, national governments and the IMO and other international organizations, possess the best expertise to produce a Comprehensive Convention and should offer to produce a more specific draft for the IMO at an early date. It is not an insurmountable challenge, and we hope we have demonstrated the need for one. In our submission, after the 1992 Rio Declaration and UNCLOS, there is no turning back from the reality that all States have global obligations to regulate offshore development in accordance with international law.

March 1996

CANADIAN MARITIME LAW ASSOCIATION

The Canadian Maritime Law Association welcomes information and comments which may be addressed to either of the Chairs of the CMLA Offshore Subcommittee:

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CANADIAN MARITIME LAW ASSOCIATION - FINAL DRAFT  
(AUGUST 31, 1994)  
INITIAL DRAFTING, SUGGESTIONS AND NOTES FOR AN INTERNATIONAL

**CONVENTION ON OFFSHORE UNITS,  
ARTIFICIAL ISLANDS AND RELATED STRUCTURES**

**USED IN THE EXPLORATION FOR  
AND EXPLOITATION OF PETROLEUM  
AND SEABED MINERAL RESOURCES**

WHEREAS the Contracting Parties to this Convention,

BELIEVE that maritime law should be universal for reasons of certainty and predictability, as well as for the facilitation of trade and for the avoidance of disputes and conflicts of laws;

AND are therefore anxious to establish Uniform Rules for the regulation and protection of those engaged in offshore activities and for the protection and preservation of the marine environment, shipping and Coastal States that are potentially affected by those offshore activities;

AND believe that this would be best achieved through a comprehensive Convention covering all offshore units and structures in all modes of operation, including permanent artificial islands,

AND realize that in order to achieve the foregoing, they must be conscious of the need for uniformity of standards of construction, the encouragement of prudent operation so as not to interfere with existing proprietary, shipping lane and fishing rights, and the establishment of uniform worker safety standards,

AND WHEREAS the *United Nations Convention on the Law of the Sea, 1982* has come into force (Note: November 1994) and the Contracting Parties herein respect its paramourncy and agree that the rights and liabilities provided in this Convention are made subject to it;

AND WHEREAS the Contracting Parties to this Convention,

Are conscious of the dangers of oil pollution posed by the exploration for, and exploitation of petroleum and sea bed mineral resources, and

Are convinced of the need to ensure that adequate compensation is available to persons who suffer damage caused by such pollution and

Are desirous of adopting Uniform Rules and procedures for determining questions of liability and providing adequate compensation in such cases,

HAVE AGREED AS FOLLOWS:

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ARTICLE I  
*Definitions*

**Note:** The following definitions are by no means precise nor is the list intended to be exhaustive. It is merely illustrative of what may be required in certain definitions to make some sense of what follows.

I.1 For the purposes of this Convention:

- (a) “Artificial Island” shall mean a permanent installation or structure of whatever nature that is rigidly affixed to the sea bed and used or intended for use in the exploration, exploitation, processing, transport or storage of crude oil, gas or natural gas liquids and mineral resources of the sea bed or its subsoil or in ancillary activities or related occupant accommodation.

**Note:** Consideration might be given to expanding the definition as per the notes in (e) below.

- (b) “Coastal State” shall mean the Contracting Party which exercises sovereign rights for the purpose of exploring for and exploiting the resources of the seabed and its subsoil in the area in or above which the Offshore Unit is situated.
- (c) “Floating Storage Unit” shall mean a floating craft without primary propulsion designed or used for the storage of petroleum or minerals produced from the seabed and operated in association with an Offshore Unit or Artificial Island (**Note:** self propelled tankers would be covered already by SOLAS and MARPOL).
- (d) “Licence” shall mean a licence, concession, permit or other authorization issued by a Coastal State.
- (e) “Licensee” shall include a holder of a licence or any person or corporation with a right to a licence.
- (f) “Offshore Unit” shall mean any structure of whatever nature while and when not permanently fixed into the sea bed which
- (i) is capable of moving or being moved while floating in or on water, whether or not attached to the sea bed during operations, and
  - (ii) is used or intended for use in the exploration, exploitation, processing, transport or storage of crude oil, gas or natural gas liquids and mineral resources of the sea bed or its subsoil or in ancillary activities;
  - (iii) is used or intended for use in the accommodation of personnel and equipment related to the activities described in (ii).

**Notes:**

- Consideration might be given to expanding the definition (and the title of the Convention) so as to include non-petroleum and non-mineral related structures e.g. floating fish and oyster farms, fixed platforms for radio stations, scientific exploration, underwater tourist activities.

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- Precise sub-definitions of Offshore Units in the mobile mode and the fixed mode will be necessary for reasons of insurance and pollution compensation regimes. The P & I Clubs and insurance industry should be consulted in achieving these important definitions as there is P & I cover available (up to \$500 Million U.S.) for mobile mode (with specific exclusion of Blow-Outs) and other insurance for fixed mode. The question of which policy responds to a particular incident is, of course, crucial. The definition of Offshore Units in the mobile mode should include a one-time positioning voyage for part or parts of an Artificial Island under construction or during removal.
- (g) “Offshore Unit Worker” shall mean any person employed or engaged in contractual activities in whatever capacity in the operation of an Offshore Unit.
  - (h) “Offshore Occupant” shall mean an Offshore Unit Worker or any natural person onboard an Offshore Unit for any purpose.
  - (i) “Operator” shall mean a duly authorized person who is in overall control of the activities at the Offshore Unit, whether Licensee or not.
  - (j) “Owner” shall include the owner, lessee and operator of an Offshore Unit or Artificial Island.
  - (k) “Petroleum” shall include oil, natural gas and other hydrocarbons.

**Note:** The following Articles are intended as a general discussion of subjects that would be appropriate for inclusion in a comprehensive Convention.

ARTICLE II

*Registration, Mortgages and Maritime Liens*

Registration

- II.1 Contracting Parties should be required to provide for the registration of ownership and mortgage interests in Offshore Units as ships, or in specialized Offshore Unit registries established for that purpose.
- II.2 No Contracting Party should permit the use in its territorial waters or economic zone of unregistered or ‘stateless’ Offshore Units. All Offshore Units should have a nationality.
- II.3 Proprietary rights in Offshore Units should be governed by this Convention and the law of the state where the unit is registered.
- II.4 Offshore Unit flag states should be required to have a competent and adequate maritime administration for the purpose of implementing international safety and pollution prevention standards (derived from Article 4 1986 *Ship Registration Convention*).

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II.5 Offshore Unit flag states should ensure that their registry systems permit the identification and regulatory accountability of Offshore Unit owners (derived from Article 6 *1986 Ship Registration Convention*).

### Liens

II.6 Assuming comprehensive pollution discharge liability and compensation regimes are in place for Offshore Units, the following maritime liens should be recognized as attaching to Offshore Units in whatever mode:

- loss of life or personal injury to Offshore Unit occupants or arising from operation of Offshore Units (e.g. supply ship crew injured by Offshore Unit crane operation)
- claims of Offshore Unit Workers for wages and social benefits
- salvage
- tortious or delictual physical loss  
(derived from Article 4 of *Maritime Liens and Mortgages Convention 1993*). Such liens could be subject to a general limitation of liability regime if adopted for Offshore Units.

### Mortgages

II.7 Contracting Parties should implement registries for mortgages or hypothecs of Offshore Units and this Convention provide for the relative priorities of liens upon and secured interests in Offshore Units and between registered secured interests.

### Creditors' Remedies

II.8 This Convention should provide that mortgagees, receivers or others exercising possessory or sale remedies against Offshore Units shall assume all or specified parts of the international safety and pollution prevention obligations of registered owners, depending on whether they continue to operate the unit as a going concern or move or decommission it as part of the realization process.

II.9 As the arrest of an Offshore Unit while positioned offshore may be impractical, this Convention should provide for alternate means of lien claimants and persons having in rem remedies of obtaining security for their claims, such as compulsory provision of bail up to the lesser amount of the claim or the unit's value, compulsory sale at the discretion of the Court, registration of lis pendens, or the suspension of registration of transactions concerning the unit pending determination of the claim.

### Consolidation of Information

II.10 An international registry or clearing house for Offshore Units should be established to facilitate searches and financing for information purposes only. Such a registry should include Offshore Units used both in territorial waters or coastal economic zones or on the high seas.

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Consideration could be given to this registry's initial establishment being voluntary or being the subject of a separate protocol.

### Technological Developments

II.11 As economic conditions and technological development lead to exploitation of the international sea bed under the High Seas, provision should be made for additional compulsory registration of Offshore Units and artificial structures, and property interests therein, used in the exploitation of international waters or sea bed with the International Seabed Authority under *United Nations Convention on the Law of the Sea, 1982*. This Convention's definitions of Offshore Unit and Artificial Island should permit automatic revision through IMO tacit amendments procedure to take into account development of new technology.

#### ARTICLE III

##### *Construction Standards*

- III.1 For Offshore Units intended to be used in a mobile mode, the Convention should incorporate the *IMO Code for Construction and Equipment of Mobile Offshore Drilling Units, 1989* which, in turn, incorporates elements of the *Loadline Convention, 1966*, or other published and generally accepted standards.
- III.2 Offshore Units should have in force at all times a valid Safety Certificate/Certificate of Fitness/Classification Society Certificate.
- III.3 Provision should be made for enforcement of construction standards and by whom.

#### ARTICLE IV

##### *Safety of Operation and Pollution Prevention*

### Financial Responsibility

- IV.1 Offshore Unit Flag States should ensure either that claimants have adequate recourse against registered Offshore Unit owners in respect of obligations arising from this Convention, such as lien rights, certificates of financial responsibility for pollutant discharges, the treatment of injured Offshore Unit Workers and the provision of social assistance in case of disability or death, or provide in their domestic law for the assumption by the state of such financial responsibilities. Flag States should be free to enter into bilateral and multilateral agreements for the sharing and/or administration of certain financial responsibilities (e.g. the Coastal State agree to provide for medical evacuation and the Flag State agree to provide for long term disability payments).
- IV.2 Offshore Unit Coastal States should ensure either that claimants have adequate recourse against registered Offshore Unit licensees in respect of obligations arising from this Convention, such as lien rights,

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certificates of financial responsibility for pollutant discharges, the treatment of injured Offshore Unit Workers and the provision of social assistance in case of disability or death, or provide in their domestic law for the assumption by the state of such financial responsibilities. Coastal States should be free to enter into bilateral and multilateral agreements for the sharing and/or administration of certain financial responsibilities (e.g. the Flag State agree to provide for medical evacuation and the Coastal State agree to provide for long term disability payments).

#### International Safety Management and Pollution Prevention Code

- IV.3 As a condition of Offshore Unit registration, flag states should require that owners establish, and submit to initial and periodic compliance audit of, an Offshore Unit International Safety Management and Pollution Prevention Code which should be developed. (This could be derived from the IMO ISM Code concept).
- IV.4 The above Code or this Convention should require that all Offshore Unit occupants, when operating in any mode, should be under the direction and authority of one responsible onboard chief operating officer. (recommendation of *OCEAN RANGER* inquiry)
- IV.5 Such a Code or this Convention should require that Offshore Unit operators and workers develop and practise emergency drills and develop and update safety contingency and salvage plans for all operating modes and that the efficacy of such drills and plans be independently audited (derived from the *NORONIC* and *OCEAN RANGER* inquiry recommendations and ISM Code). It is recognized that there is continuing international debate on the selection and credentials of such auditors.
- IV.6 Such a Code or this Convention should require that Offshore Unit flag states implement international standards for the training and certification of Offshore Unit officers and workers, especially in respect of safety aspects unique to Offshore Units. Particular attention should be paid to the qualifications of Offshore Unit onboard chief operating officers.

#### Occupational Health and Safety

- IV.7 This Convention should include or incorporate international standards for Offshore Unit occupational health and safety reflecting the distinct nature of Offshore Unit operations including:
- employment contracts
  - a comprehensible common language of command
  - hours of work and scheduled shore leave
  - victualling and accommodation
  - protective clothing and personal equipment
  - training and supervision
  - onboard medical resources

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- evacuation, treatment and repatriation
- joint management/labour safety committees
- rights of worker communication with regulatory authorities.

These could be adapted from the various ILO health and safety Conventions referred to in ILO 147.

#### Search and Rescue

- IV.8 Coastal States in whose waters Offshore Units operate should either require Offshore Unit operators to establish Search and Rescue systems adequate to the extent of Offshore Unit activities being carried on, or to implement and maintain such systems themselves according to international standards as a state responsibility.
- IV.9 This Convention should incorporate international standards for the construction and use of safety and evacuation systems such as redundancy of systems, firefighting, stability control, survival craft, distress communications and beacons, survival and helicopter rescue.

#### Support Craft

- IV.10 (a) Operators or Coastal States should be required to implement international safety standards in Offshore Unit operational activities of supply craft and standby safety and support vessels (standby distances, collision avoidance, use of cranes, rescue facilities, etc.).
- (b) Although we understand that many countries have adapted the *Chicago Convention 1944 Annex 6 Part III*, which regulates international scheduled passenger helicopter services, to Coastal State control of offshore helicopter operation, ICAO should be urged to study the need for specific international standards for the operation of helicopters in relation to Offshore Units, such as pilot training, visibility standards, flight planning, firefighting and evacuation, and search and rescue.

#### Accident Investigation

- IV.11 This Convention should provide for the compulsory reporting by the operator and investigation, when appropriate, by an independent authority, of Offshore Unit accidents such as death, serious personal injury, collisions, structural failures, fires and pollution discharges. Although usually such investigations are to be conducted by the Coastal State, the Offshore Unit flag state should have the right to designate observers to participate in such investigations and to have access to information gained. (Derived from ICAO Conventions and Article 94.7 *United Nations Convention on the Law of the Sea, 1982*).

#### OPRC 1990

- IV.12 A contracting party which is also a party to the International Convention on *Oil Pollution Preparedness, Response and Co-Operation, 1990*

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should apply the appropriate articles of such Convention to Offshore Units.

#### Delegation of Regulatory Powers

IV.13 An Offshore Unit flag or Coastal State delegating administrative responsibility for the implementation of any obligation of this Convention to non-state persons such as a non-governmental organization, industry, association, private contractor or classification society shall ensure that such delegates have sufficient expertise and financial resources to adequately discharge such obligations.

#### ARTICLE V

#### *Special Provisions for Offshore Units in the Mobile Mode*

#### **Note:**

Although this Article could refer to generally applicable rules regardless of what mode the Offshore Unit is in, and Article VI could contain those rules dictated by the special circumstances created by operations in the fixed or industrial mode, the prevailing view at this stage is that the *1977 Rio de Janeiro Draft Convention on Offshore Mobile Craft*, as up-dated for the 1994 CMI Assembly at Sydney, should not be simply incorporated into this Article. It is felt that the more appropriate course to achieve uniformity and certainty, and to avoid conflicts of laws, would be to restate, in this Article, those clauses in the referenced Conventions which are most applicable and acceptable to Offshore Units in the mobile mode. They are virtually vessels with restricted manoeuvrability when self-propelled and akin to any tug and tow situation when being towed or assisted to the drilling position.

#### ARTICLE VI

#### *Special Provisions for Offshore Units in Fixed Exploration and Exploitation Modes*

#### Provisions Respecting Collisions

VI.1 Provision should be made for due notice to be given of the presence of Offshore Units and permanent means for giving warning of their presence must be maintained.

(a) Offshore Units must not be positioned so as to interfere unjustifiably with shipping lanes, established fishing grounds, environmental conservation efforts and scientific research.

(b) The Coastal State should, where necessary, establish reasonable safety zones around Offshore Units (say, 500 metres) in which it may take appropriate measures to ensure the safety both of navigation and of the Offshore Units. The breadth of the safety zone should be determined by the Coastal State, taking into account applicable international standards. Due notice should be given of the extent of safety zones.

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- VI.2 All ships should respect these safety zones and should comply with generally accepted international standards regarding navigation in the vicinity of Offshore Units.
- VI.3 Provision should be made for a clear obligation to light Offshore Units at night or in restricted visibility and provision made for sound signals in restricted visibility, consistent with the Recommendations for the Marking of Offshore Structures dated October 26, 1965, as amended November 20, 1968 and Bulletin No. 46 January 1971 of the International Association of Lighthouse Authorities.
- VI.4 Offshore Units should be constructed in such a fashion as to enhance their ability to be effective radar targets and to be seen visually in periods of low visibility.
- VI.5 Recognizing that there is always the risk of divided fault in a ship collision with an Offshore Unit (e.g. lighting or fog horn failure, rig collapses onto standby vessel), provision should be made for apportionment of fault rules to apply.

#### Pollution

- VI.6 The guiding principle should be to establish rules for the protection of the marine environment and to provide an orderly means for compensating and reimbursing any person who sustains pollution damage and any public authority which incurs costs for taking remedial measures as a result of a discharge of oil from a blowout or the discharge of oil or hazardous or noxious substance from an Offshore Unit or its ancillary system.

**Note:** There should be an appropriate division of responsibility to be assigned between owner and licensee.

#### Offshore Unit Source Pollution

**Note:** Regard should be had to the 1977 Convention on *Civil Liability for Oil Pollution in Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources* (CLEE 1977), *Civil Liability Convention, 1969* (CLC 1969), the *Fund Convention, 1971* (FUND 1971), and the *CLC and FUND Protocols of 1992*.

#### VI.7

- (i) Definitions (applicable to blowout and Offshore Unit source pollution)  
The list of definitions in this sub-section should include:
- (1) "Hazardous and Noxious Substance". This definition should be consistent with the definition to be agreed in the *HNS Convention*.
  - (2) "Oil" means crude oil and natural gas liquids, including such materials when mixed with or present in other substances.
  - (3) "Pollution Damage". This definition should be consistent with the

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*CLC Convention* and *HNS Convention* and should, in addition, include losses resulting from death or personal injuries caused by the discharge of the pollutant.

(ii) Liability

(1) The registered owner should be strictly liable for any pollution damage emanating from the Offshore Unit, and the licensee should be strictly liable for any other pollution damage emanating from the seabed, except: (a) where they can prove that the damage resulted from an act of God or act of war or other hostilities; or (b) was wholly caused by a third party whose act or omission was done with intent to cause damage; or (c) was wholly caused by the negligence of any government or resulted from compliance with conditions imposed or instructions given by the government of the state which issued the licence, in which case the owner/licensee shall be exonerated wholly or partially from its obligations to the claimant.

(2) Where an Offshore Unit has more than one owner or licensee, provision should be made for them both to be jointly and severally liable.

(iii) Claims

(1) No claim for compensation for pollution damage should be made against the owner otherwise than in accordance with this Convention.

(2) No such claim should be made against the servants or agents of the owner.

(3) Where a claim has been lodged against an owner or a licensee, their right of recourse should be preserved.

(4) A claimant should be required to institute proceedings within three years after the incident giving rise to the pollution damage.

(iv) Jurisdiction

(1) Actions for compensation under this Convention should be brought only in the Courts of the Coastal State where pollution damage is suffered as a result of an incident.

(2) Each state party should ensure that its Courts possess the necessary jurisdiction to entertain actions for compensation.

(3) After the Limitation Fund has been constituted in the said Coastal State in accordance with section (v) below, those Courts should be exclusively competent to determine all matters relating to the apportionment and distribution of the Fund.

(4) Any judgment given by a Court with jurisdiction shall be recognized in any state party except:

i) where there are still rights of appeal or of review;

ii) where the judgment was obtained by fraud; or

iii) where the Defendant was not given reasonable notice and a fair opportunity to present its case.

(v) Limited liability

As this section deals with Offshore Unit source pollution, consideration should be given to the amount of the Limitation Fund being determined

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by the combined tonnage of the Offshore Unit engaged in production, including any associated Floating Storage Unit.

(1) If a tonnage limitation formula is adopted, the owner should be entitled to limit its liability to a fixed amount of X Special Drawing Rights per ton, as defined, unless it is proved that the pollution damage occurred as a result of an act or omission by the owner himself, done deliberately, or recklessly with actual knowledge that pollution damage would result.

**Note:** As Offshore Unit's risk exposure is not related to cargo carrying capacity, for Offshore Units, other than Floating Storage Units, it may be more appropriate to calculate the limitation fund on the basis of deadweight tonnage.

(2) Where in the case of any one installation more than one owner is liable, the aggregate liability of all of them in respect of any one incident should not exceed the highest amount that could be awarded against any of them.

(3) An owner seeking the benefit of limitation should be able to constitute a Fund for the total sum representing the limit of his liability with the Court of the Coastal State in which the action is brought. The Fund could be constituted either by depositing the sum or by producing a Bank guarantee or other guarantee, acceptable under the legislation of the state party where the Fund is constituted.

(4) The Fund should be distributed amongst the claimants in proportion to the amounts of their established claims.

(5) An owner who has taken preventive measures should have the same rights against the Fund in respect of them as any other claimant.

(6) Where the owner, after an incident, has constituted a Fund and is entitled to limit his liability:

- i) no person having a claim for pollution damage arising out of that incident should be entitled to exercise any rights against any other assets of the owner;
- ii) the Court of any state party should order the release of any property belonging to the owner which has been arrested in respect of the claim for pollution damage and should similarly release any bail or other security furnished to avoid such arrest.

(vi) Financial responsibility

(1) To cover his liability under this Convention the owner should be required to maintain insurance or other financial security in such an amount and of such type and on such terms as the Flag State shall specify, provided that that amount shall not be less than the amount of the Fund.

(2) Where the owner is a state party the owner should not be required to maintain insurance or other financial security to cover his liability.

(3) Consideration should be given to a special International Oil Pollution Claims Fund for pollution caused by Offshore Units and Artificial Islands.

(vii) Fishing Industry

With respect to future loss of income compensation for fishermen whose livelihood is affected or destroyed by the contamination resulting from pollution, existing International Oil Pollution Claims Fund procedures should be invoked. Articles 94 (7), 107 and 198 of the *United Nations Convention on the Law of the Sea*, 1982 should also be adopted. A procedure should be established to ensure that there is prompt payment of such claims i.e. either by the administrator of the Coastal States ship-source or Offshore Unit fund, or by the assessors appointed by their government.

VI.8 Blowouts or Uncontrolled Well Flow

Sections 6.6 and 6.7 with respect to Offshore Unit source pollution should apply to blowouts or uncontrolled well flow with the exception of limitation of liability. In this case, the amount of the limitation fund should be determined by risk potential, rather than tonnage because the size of reservoirs vary so much.

VI.9 Floating Storage Units

MARPOL 1973/1978 Annex 1 should be adapted for offshore Floating Storage Units.

VI.10 Non-Petroleum Pollution

All Offshore Units should be governed by provisions similar to MARPOL 1973/1978 Annexes 3, 4 and 5. Suitable provision for the safe storage and handling of all material onboard Offshore Units should be provided to minimize accidental discharge.

VI.11 Miscellaneous

Provision should be made for the reporting of pollution incidents and prevention of pollution by non-oil sources e.g. mineral, slag and other waste pollutants (c.f. 1969 *Intervention Convention* and 1972 *Oslo and London Dumping Conventions*.)

ARTICLE VII

*Salvage and Wreck Removal*

Salvage

VII.1 Operators should be obligated to ensure that there is a salvage system in place with sufficient resources and expertise to deal with discharges and accidents in fixed as well as mobile modes. Such a system could be set up by the Operator or Coastal State or contracted for, in compliance with international standards.

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VII.2 Salvors of Offshore Units should be entitled to claim for supplementary or special awards for efforts in mitigating pollution damage by criteria similar to the *1989 Salvage Convention*.

**Note:** Consideration should be given to either requiring compliance with the *1989 Salvage Convention* for both Offshore Units in the mobile mode and fixed mode or an Offshore Unit specific salvage regime. In the Fixed Mode, however, consideration should also be given to the principles set out in contingency plans and contracts with specialization blow out companies to ensure that the convention responds to the purposes and functions of Offshore Units.

Wreck Removal

VII.3 Operators should be obliged to remove wrecked, abandoned or disused Offshore Units on any continental shelf or in any exclusive economic zone. Except where non-removal or partial removal is consistent with guidelines and standards established in this Convention.

**Note:** Consideration should be given to the 1989 IMO Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone and the Oslo Commission's Guidelines for the Disposal of Offshore Installations at Sea which have developed the rules applicable to Offshore Units for wreck removal and supplemented by provisions which already exist in national legislation.

ARTICLE VIII

*Omnibus Clauses of General Application*

Coastal State's Jurisdiction

VIII.1 This Convention should be subject to Coastal States' rights under Article 56, 79, 87 and 208 of *United Nations Convention on the Law of the Sea, 1982* (e.g. economic regulation, licensing, royalties and accident investigation and pollution control). As well, there should be no interference with a Coastal State's right of jurisdiction and regulatory authority over pipelines, and private and public property.

Penal Jurisdiction

VIII.2 To understand Penal jurisdiction the following suggestions distinguish between:

- (i) Regulatory Offences, such as contravention of operating or safety standards;
- (ii) Personal Offences, such as assaults between Offshore Unit occupants and theft of personal belongings of offshore workers; and
- (iii) Offences against Public Order, such as murder, piracy and terrorism.

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- VIII.3 Penal jurisdiction should reflect the realities of multinational workforces aboard Offshore Units and the interests of the Offshore Unit Flag State, Coastal (licensing) State, and State of domicile of Offshore Unit Workers. The international community also has an interest in suppressing international crimes such as piracy and terrorism.
- VIII.4 The Convention should reflect the interest of the Coastal (licensing) State in Regulatory Offences arising from external aspects of unit operation such as pollutant discharges and the interest of the flag state in regulatory offences arising from internal aspects such as construction and maintenance standards. This could be done by conferring penal jurisdiction over regulatory offences to both the coastal and flag state.
- VIII.5 Unlike regulatory offences, personal offences do not affect the safety of the Offshore Unit or its occupants as a whole. Nevertheless, effective enforcement of Flag State criminal law may be difficult if an Offshore Unit is on the other side of the world. This may be justification for conferring joint penal jurisdiction to the Flag and Coastal State for personal offences and a stronger argument for granting such a joint penal jurisdiction over public order offences. Offshore Units may be as physically isolated as ships, and therefore the right conferred by maritime nations on ship's officers to maintain discipline should be applied to unit onboard operating officers.
- VIII.6 Although the State of domicile of Offshore Unit occupants has an interest in bringing its nationals to justice for offences against public order, the traditional connecting factor of domicile is a sufficient basis for jurisdiction without this Convention needing to confer penal jurisdiction to domiciliary states over their nationals committing offences on Offshore Units.
- VIII.7 Recognizing the practicalities of enforcement at a distance by conferring joint penal jurisdiction should not lead to the injustice of operators and, particularly, Offshore Unit occupants being punished twice for the same offence. Therefore, this Convention should require that Flag and Coastal State Contracting Parties, as a condition of exercising joint jurisdiction, give effect to the defences of double jeopardy and impossibility of compliance. Double jeopardy includes the right not to be punished twice, albeit by different jurisdictions, for the same offence. Impossibility of compliance refers to the dilemma of complying with one state's regulatory requirements at the cost of necessarily contravening another state's standards.
- VIII.8 This Convention should provide that the use or threat of use of force, to assume control of an Offshore Unit, or to plunder its contents or the personal effects of its occupants, constitutes piracy under international

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law. As the deliberate disabling or destruction of an Offshore Unit could have catastrophic consequences for those onboard or the ecology or even populations of coastal areas, it would be appropriate for this Convention to create an international offence of Offshore Unit terrorist activities. Regard should be had to the Convention for the *Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988* (SUA 1988) and the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988* (SUA PROT 1988).

VIII.9 Given the increasing international incidence of refugee movements and economic migrants, this Convention could appropriately provide for the physical protection and repatriation of stowaways aboard Offshore Units. Persons could flee an unstable shore in small boats to an Offshore Unit.

General Average

VIII.10 The only element of Offshore Unit operation analogous to carriage by sea is the use of Floating Storage Units where ownership of the unit and its mineral or petroleum contents may differ. Consideration may be given to applying the York-Antwerp Rules to the operation of Floating Storage Units. As General Average is a matter of contract it need not necessarily be covered in this Convention.

ARTICLE IX  
*Artificial Islands*

Introduction

**Note:** Regard should be had to Articles 56, 60, 80 and 208 of the *United Nations Convention on the Law of the Sea, 1982*.

IX.1 The concept of Artificial Islands is intended to cover structures like the Hibernia gravity based platform and the structure at Statfjord. We have made it the subject of its own Article as some of their features differ from Offshore Units. On the other hand, Artificial Islands should be treated as Offshore Units, in our view, during the period they or parts of them are being transported by sea to location or during their removal and return to shore.

IX.2 It may be that the CMI will wish the concept of Artificial Islands to be broadened to "Artificial Islands, installations and structures" so as to not only include Hibernia and Statfjord type structures, but also, perhaps, navigation beacons, undersea mining equipment and undersea recreational facilities, etc. These would call for different legal treatment so, for the time being at least, we are restricting our thoughts to the classical "Artificial Islands".

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Registration, Mortgages, Liens

IX.3 Subject to the provisions of *United Nations Convention on the Law of the Sea, 1982* that Artificial Islands not be used for maritime boundary delimitation, consideration should be given to the Coastal State's domestic laws providing for the registration of property rights in Artificial Islands, including ownership, mortgages or hypothecs in such structures, similarly to other immoveables.

Decommissioning and Removal

IX.4 There should be international standards which apply after Artificial Islands' economic usefulness has ceased, respecting decommissioning, dismantling or removal. When Artificial Islands are being removed it must be down to a sufficient depth so as to permit safe navigation for the very largest of ships over the site.

Navigation Warning

IX.5 There should also be provision for the assumption of navigation warning responsibilities by the Coastal State if the owner/operator becomes insolvent or otherwise fails to fulfil these responsibilities.

Omnibus

IX.6 The provisions of Articles 1.1, 4.1, 4.3, 4.5 - 4.12 and 6.1 - 6.5 and 6.6, 6.7 (i) - (iv) and (vi), 6.8 - 6.11, 7.1 - 7.3 and 8.1 - 8.9 hereof should apply, *mutatis mutandis*, to Article IX.

Limitation of Liability

IX.7 In view of potential liabilities arising from uncontrolled well flows from large reservoirs, the development of Artificial Islands may not be commercially viable without some provision for limitation of liability. It is helpful to note that P & I cover is available from some Clubs up to \$500 Million U.S. Of course, such cover excludes blowouts and owners of Artificial Islands would have to procure specialized cover from other insurers in, perhaps, similar amounts. Guidance can also be sought from domestic legislation dealing with nuclear installations liabilities.

Construction Standards

IX.8 Subject to Articles 56 (1) (b) and 60 (i) *United Nations Convention on the Law of the Sea, 1982*, Artificial Islands have to be designed to withstand the highest predicted weather and sea states over their economic life and adequate construction provision be made for occupational health and safety.

**EXPLANATORY NOTES**

1. The foregoing suggestions and notes for a comprehensive Convention should be read in conjunction with the CMLA's Background Paper on the subject dated September, 1994 for use at the CMI Assembly in Sydney, Australia.

2. Although we considered an explicit choice of law article we decided that it was unnecessary as the draft application of international standards is comprehensive.

3. Civil jurisdiction has not been addressed under a separate heading because we have dealt with this in the context of proprietary rights, liens, occupational health and safety, and pollution.

Draft ///August 31, 1994

## **TOWARDS A THIRD PARTY LIABILITY CONVENTION**

### **The Search for Uniformity**

During the first 100 years of the CMI's existence enormous strides have been made towards the ultimate goal of uniformity of private international maritime law in all its aspects. The approach has necessarily been piecemeal and has produced numerous international conventions, rules and codes. Many of these instruments have been the work of the CMI but, increasingly, various UN agencies have taken over responsibility for seeking uniformity. Very few aspects of the shipping trade have escaped analysis.

International conventions have only been introduced in areas where uniformity is likely to bring advantages and where the proposed changes to the law do not clash too violently with the domestic law of the countries involved in seeking uniformity. Where such clashes have occurred, national legislatures have often exercised rights of reservation in respect of the offending provisions. This has preserved the form of international uniformity but often at the expense of uniformity of substance.<sup>1</sup> History tells us that even though a convention or other instrument may be enthusiastically embraced by the delegates to an international diplomatic conference this does not guarantee that a sufficient number of states will subsequently ratify the instrument in order to meet the entry into force requirements. This may be because of perceived clashes with domestic law, unexpected hostility from national interests, lack of legislative time or general inertia.

Some areas of maritime law have proved to be more obvious candidates for uniformity than others. For example there were obvious

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<sup>(1)</sup> See "Limitation of Liability for Maritime Claims - the Search for International Uniformity", PJS Griggs LMCLQ

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advantages to establishing uniformity in the law relating to salvage. Most salvage services are rendered outside the jurisdiction of any maritime nation and are likely to involve salvors and salvaged property of different nationalities. Special rules in relation to salvage are unlikely to create problems within the domestic law of any country considering ratification of a salvage convention. This probably, explains why salvage was the first subject to be tackled by the CMI and why the 1910 Salvage Convention has been ratified or acceded to by no less than 78 states. Even the 1989 Salvage Convention has already been ratified or acceded to by 21 states.

By way of contrast the International Convention relating to Stowaways 1957, has only been ratified or acceded to by 10 states and has never entered into force. This may be because the problem of stowaways is not perceived as a major one or because most countries have their own (often tough) methods of dealing with stowaways.

Not all uniformity projects produce a convention. Thus when the CMI was considering the possibility of achieving uniformity on the problems of assessing damages in collision cases, it quickly became apparent that an international convention would contain provisions inconsistent with the domestic law of many countries relating to the assessment of damages in tort or delict cases. It was seen that these conflicts would deter states from ratifying a convention. For this reason it was decided to downgrade the exercise and simply produce a set of rules which would be available for adoption by the parties involved following a collision or which might be treated as a Model Law for any country which did not have a well developed maritime law of its own. These rules became known as the Lisbon Rules (1985). A background paper produced for the January 18th 1997 ICC/UNIDROIT Symposium in Rome highlights the fact that the international convention as the mechanism for unifying private international law "is not without its drawbacks". The report states:

"The inter governmental negotiations leading up to the adoption of an international convention are inevitably protracted and even when agreement has with difficulty been reached on a detailed text matters of special concern to one or more delegations may result in lengthy debate on the need for reservation clauses. But the adoption of the convention is only the beginning of the process. Few governments today will be prepared to consider embarking upon the procedure of ratification or accession until they have undertaken and been satisfied by the outcome of exhaustive consultation procedures with the interested national circles".

In addition, conventions, because of the time which they take to move from a good idea to a working convention, are often out of date by the time they come into force. A convention can be amended but the process of amendment is often as time consuming as the creation of the original instrument. Because of the extensive use of reservation clauses it has been found that different groups of states become parties to different versions of the same convention to the detriment of the goals of uniformity and commercial certainty. Perhaps the best example of this problem can be seen in the area of Carriage of Goods by Sea where liabilities may be subject to the Hague Rules, Hague/Visby Rules, the Hamburg Rules or any number of national and regional variations on the Hague/Hamburg theme. (At the IUMI Conference in Oslo in 1996 Gertfried Brunn reminded delegates that there were in existence no less than eight differing legal systems relating to the Carriage of Goods by Sea).

For these reasons the various agencies involved in the search for uniformity are increasingly looking towards the so-called "non-legislative" approach. This involves developing codes, model-laws and rules which will be judged on their merits and adopted by parties to commercial transactions because they make a genuine contribution to commercial certainty.

In this context it is perhaps significant that on each of the three subjects currently under discussion at the IMO Legal Committee (Wreck Removal, Bunker Pollution and Evidence of Financial Responsibility (previously Compulsory Insurance)) one of the main issues for consideration is the nature of the instrument which might be produced.

As I have already mentioned the approach to unification of maritime law has been piecemeal. When the CMI started its pioneering work in the field of unification its first target was unification of the law in relation to collisions between ships and maritime salvage. This produced the 1910 Collision Convention and the 1910 Salvage Convention.

I do not know why these two subjects were chosen but my guess is that, in the context of ship operations, collisions and salvage operations were comparatively frequent events and were both badly in need of unification because they were likely to involve a mix of nationalities and jurisdictions. In a sense the subject matters chosen for international conventions have, since those early days, been driven by events. Thus the 1969 Civil Liability for Oil Pollution Convention came into existence as a direct consequence of the "Torrey Canyon" incident which demonstrated that if innocent victims of an oil spill were to be properly compensated it was necessary to have an

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international agreement which imposed liability on the shipowner without proof of fault and also provided a means by which adequate compensation for the victims could be guaranteed. The Convention entered into force in 1975 and has since spawned Protocols in 1976 and 1984. This Convention was new in concept in four respects. Firstly, by Article (IV) the owner of a ship is liable for damage caused regardless of fault. Secondly, the Convention identifies pollution damage in respect of which compensation is payable. Thirdly the Convention provides that the shipowner may limit his liability, in respect of an incident, to a special oil pollution compensation fund calculated by reference to the ship's tonnage. Fourthly, and finally, the Convention imposes an obligation on the shipowner to maintain insurance or other financial security up to the amount of the limit of liability to cover his liability for pollution as defined in the Convention. The CLC Convention was the first of the all inclusive type of convention which dealt with liability, compensation, limitation and evidence of financial security.

As I mentioned earlier the process of unifying private international maritime law has been approached since the beginning of this century on a piecemeal basis. Anyone who has practised in the maritime law field will know that because of this piecemeal approach there is often a lack of consistency in the terminology used in different conventions to tackle the same basic issue. Perhaps the best example of this is the subtle differences between the definition of conduct barring the right to limit liability which appear in the 1957 and 1976 Limitation Conventions and in the Hague/Visby Rules, the Hamburg Rules and the Warsaw Convention on the Carriage of Passengers by Air. Additionally conventions may inadvertently overlap. For example the 1976 Limitation Convention provides by article 7 that in respect of claims for loss of life or personal injury to passengers the shipowner may limit to a global amount calculated by reference to the number of passengers which the vessel is certificated to carry. This provision appears to conflict with the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 which provides in article 7 that the shipowners liability to passengers in respect of death or personal injury is limited to 46,666 SDR per passenger - a per passenger versus a global fund. (This conflict is only partially resolved by Article 19 of the Athens Convention).

And so one could go on citing instances where conventions overlap or conflict. As more matters come to be the subject of separate conventions so the opportunities for conflict and overlap will be multiplied. I have already referred to three projects on the work programme for the Legal Committee of IMO. If each of these projects

were to produce a new convention these would be bound to produce conflicts and overlaps with existing conventions whatever care was taken in their drafting.

### **A Third Party Liability Convention**

For some time now there has been talk, but not much action, on ways of avoiding the sort of conflicts of which I have spoken. Would it be possible to denounce all of the existing private international law conventions and create a single comprehensive instrument which would offer a one stop shop for all the many parties likely to be involved in a maritime incident? In other words, a third party liability convention.

An appropriate starting point is to list those aspects of private<sup>2</sup> international maritime law which are already the subject of conventions or in respect of which conventions are being contemplated. Here is the list:

1. Collision
2. Salvage
3. Limitation of Liability
4. Carriage of Goods by Sea
5. Maritime liens and Mortgages
6. Civil Jurisdiction/Collisions
7. Immunity of State Owned Ships
8. Penal Jurisdiction/Collisions etc
9. Arrest
10. Stowaways
11. Nuclear Ships
12. Oil Pollution
13. Carriage of Passengers by Sea
14. HNS
15. Wreck Removal
16. Pollution from Bunkers
17. Evidence of Financial responsibility/Compulsory Insurance.
18. Offshore Mobile Craft

Bearing in mind that we are here talking about a possible third party liability convention, a number of these subjects can immediately be excluded as follows:

2. Salvage

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<sup>(2)</sup> Of the 18 Conventions listed, Nos. 6,7,8,9,10 and 15 have some element of public law.

5. Maritime Liens & Mortgages
6. Civil Jurisdiction/Collisions
7. Immunity of State Owned Ships
8. Penal Jurisdiction/Collisions etc.
9. Arrest
10. Stowaways

All the other subjects have some element of third party liability.

Any comprehensive third party liability convention would need to include all the four elements which I have previously identified. Firstly liability, secondly compensation, thirdly limitation of liability and fourthly evidence of financial responsibility. Some of the remaining 11 subjects in my list would not require all these four elements. Should they therefore be excluded from any comprehensive convention?

Of these 11 topics Limitation of Liability and Evidence of Financial Security are not, in a sense, separate items. They are in fact two of the four elements which I have suggested should be covered in any comprehensive convention. The aim of the Offshore Mobile Craft Convention is to extend existing Conventions to such craft and this can be achieved, if desired, by including such craft in the definition section.

We therefore have eight further topics which might be candidates for a comprehensive third party liability convention. Some of these, however, would not need the four elements to which I have referred. I propose to look at each of the eight topics remaining to see which of the four elements would be required in each instance.

### Liability

Liability in the context of nuclear ships, oil pollution, HNS, wreck removal and pollution from bunkers all require to be strict (with certain well understood limited exceptions). Liability in the context of the carriage of passengers by sea is not strict - the Athens Convention simply imposes on the shipowner a presumption that he was at fault if a maritime accident occurs in the course of a voyage. This might be characterised as "semi strict liability".

On the other hand strict liability has no place in the context of collisions or carriage of goods by sea. Traditionally parties involved in a collision case expect blame to be apportioned. Equally cargo owners expect to have to prove the shipowners liability though the degree of proof required will depend on which of the many liability regimes applies to the particular contract of carriage.

The first decision that we need to make, therefore, is whether this third party liability convention should exclude all claims arising from collisions and from carriage of goods by sea. If they are to remain in it would be necessary to devise a liability section which would apply strict liability in respect of certain types of claim but not in the case of collision claims or claims arising out of contracts for the carriage of goods by sea.

### Compensation

I am treating compensation as covering those provisions in a convention which identify what damages a claimant should be entitled to recover in the event of an incident. Looking at the eight items remaining in our provisional list we find two distinct groups. In the context of nuclear damage, oil pollution, HNS and pollution from bunkers it should be possible to find a common definition of "damage". Currently the most refined definition of damage appears in article 1 of the HNS Convention and this could perhaps be adapted to cover the consequences of a nuclear, oil or HNS incident.

It is however difficult to see how this definition of "damage" could be appropriate in the context of collision, carriage of goods or passengers by sea or wreck removal. This problem could be solved by extending the definition of damage.

### Limitation of Liability

This is also a difficult area for a comprehensive liability convention. As matters stand we have many limitation regimes. Collisions are covered by the 1924, 1957 or 1976 (with 1996 Protocol) Conventions and by national law. Carriage of goods claims are limited under the Hague, Hague/Visby or Hamburg Rules (quite apart from regional variations). Nuclear ships are covered by Article III of the Nuclear Ships Convention 1962. Oil pollution is covered by the limitation provisions contained in the Civil Liability Convention of 1969 (plus Protocols) and 1971 Fund Convention (plus Protocols). HNS claims are covered by their own specific limitation provisions contained article 9 of the 1996 HNS Convention and its Fund. Claims arising out of the carriage of passengers by sea are covered by the specific passenger limitation regime contained in article 7 of the Athens

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Convention 1974 and the passenger limitation provisions contained in the LLMC 76.

As far as wreck removal and bunker pollution are concerned it is contemplated that these claims would be subject to the normal limitation regimes for maritime claims contained in the 1924, 1957 and 1976 Limitation Conventions or national laws.

Clearly there is no realistic prospect of rationalising all these different limitation regimes and providing a single fund which would cover all types of claim. If a comprehensive third party liability convention is to be drafted it would be necessary to provide in the section of the convention which deals with limitation of liability for a fund specific to each type of claim. If the convention is truly comprehensive it should be possible to provide for a general limitation fund for maritime claims with supplements for particular special types of claim.

#### Evidence of Financial Responsibility/Compulsory Insurance

At the present time owners are required to maintain insurance or other financial security covering liability in respect of nuclear damage (Nuclear Ships Convention 1962 Article III) oil pollution (CLC 1969 Article VII and HNS (HNS Conventions 1996 Article 12). No evidence of financial security or insurance is required in the context of collisions, carriage of goods by sea or carriage of passengers by sea. The current draft Wreck Removal Convention and also the draft Bunker Pollution Convention both contemplate that shipowners would be required to show evidence of insurance or other financial security. We are again, therefore, faced with a situation where a number of the items in our shopping list are already subject to the need to provide evidence of financial security but a number are not. Is this a situation where the need to provide evidence of financial security should be extended to collision claims and claims arising out of the carriage of goods and passengers by sea? Most shipowners would regard it as anathema to be required to provide evidence of financial security in respect of such possible future cargo claims though they might be less resistant in relation to passenger claims.

I should remind you in this context, that the IMO Legal Committee is at this time looking at the possibility of agreeing a new international instrument requiring evidence of financial responsibility in respect of all types of commonly experienced maritime claims. In its submissions to IMO the CMI has suggested that the requirement to provide evidence of financial

responsibility should not be a free standing obligation but should be linked in all instances to an underlying liability regime. The CMI has urged the IMO to at least consider the possibility of a comprehensive third party liability convention instead of grafting a financial responsibility requirement onto existing conventions or creating a separate convention for this purpose.

A further significant issue in connection with the requirement to produce evidence of financial responsibility concerns the right of a claimant to proceed directly against the person providing financial security or insurance cover. The HNS Convention in article 12 gives the claimant the right to pursue his claim directly against the insurer or the person providing financial security in respect of the owners liability for damage. The same right of direct action also applies in relation to oil pollution claims (CLC article VII). A similar right of direct action does not appear to exist in relation to nuclear damage. This right of direct action may seem appropriate in the context of the innocent victims of marine disasters but would, I suggest, be wholly inappropriate in the context of collision cases and cases arising out of the carriage of goods by sea. On the other hand it may be thought that such a direct right of action might be appropriate in the context of claims from passengers involved, through no fault of their own, in a maritime accident.

## **Conclusion**

Is this a viable proposition? If so how comprehensive could the Convention be? I think that it could be very comprehensive. After this review the only further subject I would exclude is carriage of goods by sea because I feel that none of the four elements to which I have referred would fit with claims arising out of the carriage of goods by sea. Strict liability is not appropriate, compensation is not a controversial issue, rights of limitation are subject to a discreet regime and there seems to be no reason why a shipowner should be required to produce evidence of financial responsibility. On balance I think that collision should come within the comprehensive convention but only in relation to limitation of liability. The provisions relating to apportionment of blame in the 1910 Collision Convention can be preserved without problems arising.

I therefore end up with an extensive list of subjects which could be covered by a comprehensive liability convention as follows:

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*Towards a third party liability convention*

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1. Collisions (limitation only)
2. Nuclear ships
3. Oil Pollution
4. Carriage of Passengers by Sea
5. HNS
6. Wreck Removal
7. Pollution from Bunkers
8. Limitation of liability
9. Evidence of financial responsibility.

As to the structure of the convention I think that it should follow the structure of the CLC Convention. One issue concerns me. In relation to oil pollution claims the oil industry has its own separate Fund Convention which regulates the industry's obligation to contribute to oil pollution claims. That would continue to be the situation. There is no place within a comprehensive third party liability convention regulating obligations of shipowners to third parties for a section which regulates the relationships between those same third parties and the industry providers of compensation funds. However the HNS Fund is an integral part of the HNS Convention. To my mind if a comprehensive third party liability convention were to be produced it would be necessary to create a self standing HNS Fund Convention to match the 1971 Fund Convention in the context of oil pollution.

There is much to think about here. It has been suggested to me that the concept of limitation (which is by no means universally popular) would be much more vulnerable to attack if it was contained in a single instrument. There may, the argument goes, be safety in having a number of separate regimes all containing limitation provisions. On the other hand a single, widely accepted regime (without too many national reservations) seems to me to have considerable attractions and is certainly a worthwhile topic for debate at the Centenary Conference.

London, 2nd April 1997

P. J. S. GRIGGS

## **REPORT OF THE CMI WORKING PARTY ON EDI**

Since producing the 1990 CMI Rules for Electronic Bills of Lading, developments for this topic have been monitored for progress and problems.

A shipping downturn of the early 1990's set back the commercial development of electronic bills of lading, such that only limited usage of some of the EDI messages comprising an electronic bill of lading has been attempted, and only on the North Atlantic trades.

BIMCO made a strong effort to put together an EDI software package tailored to vessel operators lacking the resources of the large operators. This preliminary work done for BIMCO was later utilized to develop the BOLERO project, which might be brought into meaningful testing in the near future.

While these commercial developments have been taking place, further legal support for electronic bills of lading has been developing. The ICC, Paris, has incorporated specific provisions for electronic bills of lading in INCOTERMS 1990 and in the UCP 500 that permits the use of such electronic bills of lading in the place of paper bills of lading. ICC is currently reviewing the possibilities of developing a viable electronic alternative to existing international trade methods, in order to better meet the requirements of modern trading and transport practice (The ICC E-100 project).

UNCITRAL has been active in the general area of Electronic Data Interchange (EDI), and has gravitated into the broader area of Electronic Commerce (which includes EDI). UNCITRAL formed a Working Group on EDI (which is now known as the Working Group on Electronic Commerce) to develop Model Laws to provide general legal support for electronic messages. This effort produced the recently adopted UNCITRAL Model Law on Electronic Commerce.

The first fifteen articles of the Model Laws are general in nature to provide legal support for electronic commerce in those countries enacting the model laws. These model laws would be extremely helpful in providing the legal underpinning for the 1990 CMI Rules for

Electronic Bills of Lading, and the model laws are complementary to the 1990 CMI Rules for Electronic Bills of Lading.

After the general model rules were established UNCITRAL went a step further to develop specific articles for bills of lading. In a ground-breaking step the UNCITRAL Secretariat requested the formation of a joint working party with the CMI to create draft articles for EDI transport contracts and negotiability. The purpose was not to re-invent the 1990 CMI Rules but rather to determine what specific model laws could be created that states could enact which would provide the legal underpinnings for these.

The effort was successful far beyond the expectations of the participants. After further fine-tuning by the UNCITRAL Working Group in Vienna in early 1996, model laws were developing for contracts of carriage of goods that would provide a legal basis for negotiability, and were general enough to provide for any mode of transportation.

However, within the discussions of the joint working party and subsequently in the UNCITRAL Working Group it was readily apparent that the disuniformity of the treatment of bills of lading, waybills, etc., from country to country was a serious problem. As a result the UNCITRAL Working Group on Electronic Commerce proposed, and the Commission has approved, that future work be undertaken in transport law to harmonize the laws for the carriage of goods by sea, not only for bills of lading, but all issues that concern the carriage of goods by sea. Interested groups, such as the CMI, have been invited to provide input for a future UNCITRAL working group to consider (see Annex 2 of the Report of the Chairman of the International Sub-Committee on Uniformity of the Law of the Carriage of Goods by Sea, printed in this Yearbook).

The CMI Working Party on EDI has received the assignment from the Executive Council to identify the problem areas in the field of electronic commerce relating to questions of maritime and transportation law. In this context it will be necessary to safeguard that all messages and information used and exchanged in the course of a traditional performance of a contract for the carriage of goods by sea are identified and provided for in the EDI system used for the simulation of the paper transaction. It will be the task of this Group to safeguard that no uncertainty arises from the fact that those messages, notices or information are made on an electronic basis instead of traditional means. Further, the Group has to investigate possible problems arising from the fact that the electronic messages might not automatically provide for the full text of the terms of the contract of carriage (standard conditions) as it is now commonly reproduced on

the back of the transport document; this all the more relating to those terms which require a particular formality depending on the applicable law (e.g. arbitration clause or the endorsement of the document to a third party).

Where the Group considers that some provisions could or should be envisaged in order to safeguard the enforceability of such notices, it will suggest draft provisions and advise on its view regarding the format of the harmonizing instrument (Convention, Model Law, Standard Rules) in which such provisions should be embodied.

ALEXANDER VON ZIEGLER

## COLLISION AND SALVAGE

### PRELIMINARY REPORT OF THE CHAIRMAN OF THE PANEL

#### I. Salvage

1. The 1910 Brussels Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea was one of the first conventions which the CMI, soon after its foundation, promoted and, subsequently, did achieve to bring about: two conferences – one in Paris (1990) and the other in Hamburg (1902) – were organized by the CMI, resulting in a draft discussed at and a final version agreed by the diplomatic conference at Brussels. The Convention gathered a substantial adherence as in the end ratifications and accessions totalled up to well over 40 countries. Its principles served their unifying purposes for many decades until in the eighties a desire for a revision arose, mainly to have the regime address environmental aspects and concerns.

Again the CMI was instrumental in the preparation of what we now have: the 1989 London Convention on Salvage. Its history and CMI's efforts can be amply noted from a variety of publications, for instance:

- the 1981 CMI Montreal Report (CMI Conference Book 1981, I, page 34);
- (the late) E. Vincenzini, "International Salvage Law", as from page 97;
- G. Brice, "Maritime Law of Salvage" (1993), at various places (e.g. pages 14, 266, 282, 368 and many further pages dealing with specific topics or issues);
- the 1984 CMI Report to IMO (reproduced as Appendix 8 in Brice's Book).

The 1989 Convention has entered into force as from July 14th, 1996, and the number of ratifications or accessions is expected to keep increasing for some further period of time. Additionally, the Convention's impact and effect look widened, first by its part-incorporation into LOF 1990 and subsequently by the reference to it in LOF 1995 as well as through the latter's choice of law clause (lg), being English law which has incorporated the Convention.

2. As sufficient experience should meanwhile have been gained in applying the Convention, the CMI has placed it as a separate item on the Antwerp Centenary Conference Agenda with a view to investigating and discussing the workability and uniformity achievement of the Convention in practice. The contemplated sounding of views should, of course, include any negative aspects thought to have been encountered and how these could be answered or resolved.

Apart from this general approach it is also, *inter alia*, intended to ascertain the manner in which the Convention has been or is yet to be implemented nationally. In so far as National Associations have not already replied to the inquiry made on the point by the CMI Administrator through his faxed letter of February 26th, 1997, they are requested to provide the relevant information either at the panel discussion scheduled for Tuesday, June 10th, 1997 or otherwise (in writing) during the Antwerp Conference.

3. In two specific respects, unfortunately, shadows have already been cast over the Convention, one concerning a question of principle and the other a matter of efficacy. They are indicated hereunder and meant to be debated at the panel session. The CMI has set up a working group to consider both issues and its initial report (1996) is published in CMI News Letter 1996, nr. 1.

4. The first issue relates to the definition of "damage to the environment" in article 1 (d), where such damage has, in its geographic scope, been restricted to "coastal or inland waters or areas adjacent thereto". There may be uncertainty as to the lines between "adjacent areas" and waters beyond these areas, but generally one does recognize that article 1 (d) introduces a limited geographic scope whereby the latter waters fall outside the definition of "damage to the environment". Consequently, the provisions of "special compensation" (article 14) do not apply there and it is this result which has met with criticism. Apart from Greenpeace's "environment" inspired objections, the salvors would, rather than be encouraged in the sense of the Convention's preamble, tend to be hesitant to undertake salvage operations on the high seas failing the prospects of a special compensation; or they would first wish to negotiate a contract and cover the point, such course causing valuable time to be lost.

The geographic restriction seems to have been a deliberate one "to prevent the possibility of speculation and artificially inflated requests for damage based on assertions" about damage to the surroundings or natural resources on the high seas; cf. Vincenzini, page 127. This is likely also to be the view held by vessel interests (the owner being liable to pay the special compensation under article 14).

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*Collision and Salvage*

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5. The second issue relates to the meaning of “fair rate” in article 14-(3). Two questions of construction have been thrown up: (i) should (roughly) the “fair rate” reflect an element of profit and (ii) should it apply for the whole of the salvage operation’s period (i.e. not be limited to the time actually spent on avoiding or minimizing damage to the environment)? In the *Nagasaki Spirit*, the House of Lords have - broadly speaking - answered the first question negatively and the second positively (judgment not yet reported). The former decision clearly removes part of the incentives for salvors to embark on risky salvage operation in protection of the environment.

6. In connection with the “fair rate”, but also with the other elements of the “salvor’s expenses” defined in article 14-(3), an additional difficulty of a more practical nature has arisen regarding the extent of evidence requirements. The “special compensation” of articles 14-(1) and (2) is based on the “salvor’s expenses” and these embrace, under article 14-(3), a number of components; their headings - “out-of-pocket expenses reasonably incurred” and “a fair rate for equipment and personnel actually and reasonably used” - each include a variety of items. Every simple one of them is capable of dispute and will have to be proved. In practice that has developed into the engagement of professional accountants and the employment of other laborious means to establish the relevant figures, with much time being invested in a case and huge files piling up on either side (detailed investigations, statements, reports and other documentary material). All this tends to result in heavy costs which render salvage cases under article 14 alarmingly expensive. One wonders if, for such an undesirable consequence to be avoided, arbitrators and courts should have some freedom to decide figures in fairness. Like either of the two issues referred to at (4) and (5), the present practical point will also be addressed by one of the panellists and is so meant to invite comments from the attendants.

## **II. Collision**

1. The other early convention stimulated by the CMI (and still in force) is the 1910 Brussels Convention on Collisions. At the end of the previous century, the CMI took the initiative and, in the 1898-1904 period, it did effectively arrange for all the preparatory work, internationally, to be carried out so as to produce a draft for consideration by the ensuing diplomatic conferences. The Convention has attracted over 50 ratifications or accessions and this may well be said to account for a notable degree of uniformity. One might even believe that the uniforming echo of the Convention has spread to countries

outside its circle of State Parties: in the U.S.A. - not such a Party - the firm "divided damages"-rule (50/50) was in 1975 replaced by the "proportional fault"-rule, as to which change the Supreme Court argued inter alia: "Indeed, the United States is now virtually alone among the world's major maritime nations in not adhering to the (...1910 Brussels) Convention with its rule of proportional fault - a fact that encourages transoceanic forum shopping" (and that obviously was regarded as an undesirable consequence of a lack of uniformity), with elsewhere a further reference to the lessons of "worldwide experience"; vide *U.S. v. Reliable Transfer*, [1975] 2 Lloyd's Rep., p. 287, 289, 292.

2. At the Antwerp Centenary Conference, a book entitled "The Travaux Préparatoires of the International Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels, 23 September 1910" (and of the 1952 Arrest Convention), will be obtainable. It contains the Convention's full history, the compilation of all the material from CMI and Conference documentation having to that end been sorted out, bundled and composed by Prof. F. Berlingieri; the book's merits as well as the expected immense use are clearly stated and emphasized in a Foreword by CMI's President, Prof. A. Philip.

3. As far as it can be ascertained, no controversial issues or obstacles of significance in applying the Convention have to this date been voiced. However, at the Antwerp panel session comments as to practical experiences in its application will be welcome. The Book mentioned at (2) above could thereby be helpful already.

4. The future work programme of the IMO Legal Committee includes the draft Convention on Civil Jurisdiction, Choice of Law, Recognition and Enforcement of Judgment in matters of Collision at Sea. The draft was prepared at the 1977 CMI Rio de Janeiro Conference and will be placed on the CMI agenda for a possible updating (as for details vide CMI Documentation 1977, I-III). Here again the forthcoming panel discussion may serve to register suggestions.

### **III. General**

Finally, it be specifically observed that the panel discussions on the above topics at Antwerp are not only meant to have a retrospective character but are also and equally hoped to provide guidance for the future work of the CMI.

## CMI STUDY OF THE LAW ON WRECK REMOVAL

### PREFACE

*IMO's Legal Committee is presently engaged in the subject of Wreck Removal. The basis is a Draft International Convention on Wreck Removal prepared by the delegations of Germany, The Netherlands and the United Kingdom which is printed below. The task of the CMI Sub-Committee is to study the rules of Wreck Removal and to render assistance in connection with the work of the Legal Committee. The first step taken by the CMI in the Spring of 1996 was the circulation of the Chairman's preliminary report and questionnaire printed in CMI's News Letter 1-1996. Having received a number of replies to the questionnaire the International Sub-Committee met in June 1996, and the Chairman's report following this meeting has been printed below.*

*Two members of the Sub-Committee, Patricia Birnie and Jan de Boer, undertook to study certain international law aspects, and Mr. William Marsh of Ince & Co. undertook on behalf of the Sub-Committee to prepare a comparative analysis of the national legislation. Also these two papers are printed below.*

*These papers have also been submitted to the Legal Committee and have been circulated by the Secretariat of IMO.*

*At its October 1996 meeting of the Legal Committee decided to establish a Correspondence Group which should consider certain key questions, including the geographical scope of application of the Wreck Removal Convention as well as the relationship between this Convention and other conventions. A report by the Correspondence Group was prepared in February 1997 and will be tabled at the Legal Committee meeting to be held late in April 1997. The CMI's International Sub-Committee met on 29th January 1997 to consider the work of the Correspondence Group. The drafters on the Group's report attended that meeting and kindly wrote in their report that it "takes account of some of the very helpful suggestions which were made at that meeting".*

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*The Chairman of the Sub-Committee shall attend at the meeting in the Legal Committee and shall produce a paper to be distributed at the Antwerp meeting in which the position as it is after the meeting in the Legal Committee will be summarized. This paper, together with the papers printed below, will serve as the working papers for the panel discussion at the Conference in the afternoon of 10th June 1997.*

BENT NIELSEN

**DRAFT CONVENTION ON WRECK REMOVAL\***

The States Parties to the present Convention,

RECALLING that the United Nations Convention on the Law of the Sea 1982, particularly Article 221, and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969, as amended by the Protocol of 1973 thereto, provide for action by Coastal States on the high seas following a maritime casualty in order to protect their interests against pollution,

RECALLING ALSO that the International Convention on Salvage 1989 seeks to encourage the endeavours of salvors to prevent or minimize marine pollution,

RECALLING FURTHER that Article 8 of, and Protocol I to, the International Convention for the Prevention of Pollution from Ships 1973, as amended by the Protocol of 1978 thereto, require the reporting of actual or probable discharges of harmful substances,

CONSCIOUS of the need to ensure the safety of navigation by removing or making hazardous wrecks, and to establish where the financial responsibility for the making safe of such wrecks lies,

RECOGNIZING that the financial responsibility for preventive action taken to avoid a maritime casualty resulting in damage to the environment must also be established,

CONSIDERING that the codification of certain rules on wreck removal and related matters will enhance the uniformity and clarity of the relevant international law,

CONVINCED that under these circumstances measures of an exceptional character to protect such interests might be necessary beyond territorial waters and that these measures do not affect the principle of freedom of the high seas,

HAVE AGREED as follows:

ARTICLE I  
*Definitions*

For the purposes of this Convention:

1. "Ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, and fixed or floating platforms or mobile offshore drilling units

MARPOL  
2(4))

\* Annex to IMO document LEG 73/11 of 8 August 1995 - Consideration of a Draft Convention on Wreck Removal.

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- [when such platforms or units are not on location engaged in the exploration or exploitation of sea-bed mineral resources].<sup>1</sup>
- INTERVENTION II(1) 2. “Wreck” means a sunken or stranded ship<sup>2</sup>, or any part thereof, including anything that is or has been on board such a ship.
- “Casualty” means a collision of ships or any other incident of navigation, or other occurrence on board a ship or external to it resulting in, or which may reasonably be expected to result in, a wreck.<sup>3</sup>
- INTERVENTION II(4) 4. “Hazard” means any condition or threat of danger or impediment to surface navigation, to the marine environment, or to the coastline or related interests of one or more States.
5. “Related interests” means the interests of any State directly affected or threatened by the casualty, such as:
- (a) the health of the coastal population and the wellbeing of the area concerned, including conservation of living marine resources and of wildlife;
  - (b) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
  - (c) tourist attractions of the area concerned;
  - (d) harbour works, basins and navigable waterways; and
  - (e) offshore or underwater infrastructure of the type referred to in Article V, subparagraph (n), and other economic interests.
6. “Removal” means any form of prevention, mitigation or elimination of hazard proportionate to the hazard.
- CLC I(3) 7. “Shipowner” means the person or persons registered as the shipowner of the ship, or, in the absence of registration, the person or persons owning the ship, at the time of the casualty leading to a wreck. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “shipowner” shall mean such company.
8. Except as otherwise provided hereinafter, “the State whose interests are the most directly threatened by the [ship or] wreck” means the State from whose

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<sup>(1)</sup> This optional text, if adopted, would mean that the Convention would not apply to offshore platforms and drilling units when they were in use, but would apply only if they were involved in a maritime casualty while in transit to or from a drilling site, including transit to a disposal site.

<sup>(2)</sup> Wrecked aircraft can also constitute a hazard. Consideration could therefore be given to extending the scope of the Convention to cover such wrecks. This could create difficulties, however, especially in respect of owners’ duties and compulsory insurance.

<sup>(3)</sup> The definition of *casualty* could be used to extend the scope of the Convention to cover ships which have not yet become wrecks, but which, in the absence of intervention, would probably become wrecks. In order for the scope of the Convention to be extended in this manner, references to *ships* as well as to wrecks have been added to the relevant provisions of the Convention. However, square brackets are used in the phrase [*ship or*] wreck to indicate that a decision must be taken on whether or not the Convention should apply to ships after a casualty but before they become a wreck.

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*CMI Study of the law on wreck removal*


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territory the [ship or] wreck lies the least distant (where distance is measured from the limit of a State's territorial waters). This State may however agree with another State that the other State shall be considered to be the State whose interests are the most directly threatened by the [ship or] wreck for the purposes of the Convention.

9. "Territorial sea" means the territorial sea as defined in Section 2 of Part II of the United Nations Convention on the Law of the Sea 1982.
10. "Flag State" means a State whose flag a ship flies and is entitled to fly.
11. "Warship"<sup>4</sup> has the same meaning as in Article 29 of the United Nations Convention on the Law of the Sea 1982.
12. "Convention" means the International Convention on Wreck Removal 1997.
13. "Organization" means the International Maritime Organization.
14. "Secretary-General" means the Secretary-General of the Organization.

## ARTICLE II

*Application*

1. Except as otherwise provided hereinafter, the Convention shall apply to [ships and] wrecks located beyond the territorial sea of States Parties.
2. A State Party to the Convention may at any time declare, by means of a notification addressed to the Secretary-General, that [some or all of the provisions of] the Convention shall apply to [ships or] wrecks within waters over which it exercises sovereignty in accordance with Article 2 of the United Nations Convention on the Law of the Sea 1982. Such a declaration shall specify the areas to which the Convention is to be applied.
- LLMC  
18 (3) 3. A State Party which has made a declaration under paragraph 2 may withdraw it at any time by means of a notification addressed to the Secretary-General.

## ARTICLE III

*State-owned ships*

- SALVAGE  
4 (1) 1. The Convention shall not apply to warships or other non-commercial ships owned or operated by a State and entitled, at the time of the casualty, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.
- SALVAGE  
4 (2) 2. Where a State Party decides to apply the Convention to its warships or other ships as described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of its application.

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<sup>(4)</sup> The aim of this definition is to extend the application of the Convention to decommissioned warships. Article 29 of UNCLOS defines a warship as a ship belonging to the armed forces of a State and commanded and crewed by members of the armed forces; it does not, therefore, extend to decommissioned warships. Consideration should perhaps be given to whether a consequential amendment is required to Article III.

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## ARTICLE IV

*Reporting and locating [ships and] wrecks*

- OPRC  
4(1)
1. Each State Party shall require masters or other persons having charge of ships flying its flag and having knowledge of a casualty to report it without delay to the nearest coastal State in accordance with the requirements developed by the Organization and based on guidelines and general principles adopted by the Organization<sup>5</sup>.
  2. When a report of a casualty involving the shipowner's ship has been made under paragraph 1, the shipowner or his agents shall promptly, and certainly within 24 hours, make a report to the flag State, the competent authorities at the first point on the coast with which they can communicate or the Organization.
  3. States Parties to the Convention undertake to adopt in their national legislation sanctions for failure to give prompt notification in accordance with the Convention.
  4. Upon obtaining knowledge of a wreck or casualty a State Party shall use all practicable urgent means, including the good offices of States and organizations, to warn mariners and the coastal States concerned of the nature and location of the hazard.
  5. If a State Party has reasonable cause to believe that a hazard posed by a [ship or wreck] exists in the vicinity of its coastline, it shall take all reasonable steps to establish the precise location of the [ship or] wreck.

## ARTICLE V

*Determination of hazard*

When a [ship or]wreck beyond the territorial sea of States Parties has been reported or located in accordance with Article IV, the State whose interests are the most directly threatened by the [ship or] wreck shall be responsible for determining whether a hazard exists, taking into account the following criteria, as appropriate, without regard to the order in which they are presented below:

- (a) size, type and construction of the [ship or]wreck;
- (b) depth of the water over the [ship or] wreck;
- (c) tidal range and currents in the area;
- (d) particularly sensitive sea areas identified according to guidelines adopted by the Organization, or established in accordance with Article 211, paragraph 6, of the United Nations Convention on the Law of the Sea 1982;
- (e) proximity of shipping routes or established traffic lanes;

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<sup>(5)</sup> The current guidelines are contained in Assembly resolution A.648(16).

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- (f) traffic density and frequency;
- (g) type of traffic;
- (h) nature and quantity of the ship's cargo, the amount and types of oil (such as fuel oil and lubricating oil) on board the ship and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
- (i) vulnerability of port facilities;
- (j) prevailing meteorological and hydrographic conditions;
- (k) submarine topography of the area;
- (l) height of the wreck above or below the surface of the water at lowest astronomical tide;
- (m) acoustic and magnetic profiles of the wreck;
- (n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (o) any other circumstances that necessitate the removal of a [ship or] wreck.

## ARTICLE VI

*Marking of wrecks*

1. If a wreck is determined to constitute a hazard, that wreck shall be marked by the State whose interests are the most directly threatened by the wreck.
2. In marking the wreck, all practicable steps shall be taken to ensure that the markings conform with any internationally accepted system of buoyage in use in the area where the wreck is located.
3. The particular of any wreck marking shall be promulgated to mariners.

## ARTICLE VII

*Rights and obligations to remove hazardous [ships and] wrecks*

- [1. The shipowner shall undertake the removal of a ship determined to constitute a hazard following a casualty.]
2. The shipowner shall undertake the removal of a wreck determined to constitute a hazard. The shipowner, or another interested party, shall first provide the competent authority of the State whose interests are the most directly threatened by the wreck with the financial security required by Article XI and a salvage plan for the removal of the wreck.
3. The shipowner may contract with any salvor or other person to perform the operation on the shipowner's behalf. When such operations have been commenced by the shipowner or private salvors, the State whose interests are the most directly threatened by the [ship or] wreck shall intervene in such operations only to the extent necessary to ensure that the removal operations proceed as expeditiously as possible consistent with safety and environmental considerations.
4. The State whose interests are the most directly threatened by the [ship or] wreck may:

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- (a) taking into account the hazard determined under Article V, set a reasonable deadline within which the shipowner must undertake the removal of the [ship or]wreck;
  - (b) inform the shipowner in writing of the deadline it has set and that, if the shipowner does not undertake the removal of the [ship or] wreck within that deadline, that State can undertake the removal at the shipowner's expense; and
  - (c) when the hazard is particularly severe, inform the shipowner that it intends to intervene immediately.
5. If the shipowner does not undertake the removal of the [ship or] wreck within the deadline set under paragraph 4 and it has been determined to constitute a hazard in accordance with Article V, or the State whose interests are the most directly threatened by the [ship or]wreck considers that immediate action is required, that State may undertake the removal or marking of the [ship or] wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment and related interests.
  6. Without prejudice to Article VIII, a State which has undertaken the removal of a wreck in accordance with the provisions of this Article is empowered to sell any property so recovered in order to recover the costs of removal. Any surplus from the proceeds of sale shall be paid to the shipowner [and to any other persons entitled to it]. However, no payment shall be made to a shipowner having declared abandonment of the [ship or] wreck.
  7. The State is not liable for damage resulting from the removal of the wreck.
  8. Removal shall take place in accordance with guidelines adopted by the Organization.

## ARTICLE VIII

*Financial liability for locating marking and removing [ships and] wrecks*

- CLC  
III (2) 1. The shipowner shall pay compensation in respect of the costs of locating the [ship or] wreck under Article IV, of marking the wreck under Article VI, of removing the [ship or] wreck under Article VII, and of any technical advice and other services rendered; unless the shipowner proves that the casualty:
  - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
  - (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or
  - (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
2. The shipowner shall be entitled to limit liability in accordance with the applicable international convention [or, as appropriate, the applicable national law].
- CLC  
III (5) 3. Nothing in this Article shall prejudice any right of recourse against third parties.

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## ARTICLE IX

*Time-bar*

CLC  
VIII Rights of compensation under the Convention shall be extinguished unless an action is brought thereunder within three<sup>6</sup> years from the date when the hazard occurred.

## ARTICLE X

*Jurisdiction*

- CLC  
IX (1) 1. Actions for compensation under the Convention may only be brought in the courts of the State whose interests are most directly threatened by the [ship or] wreck.
- CLC  
IX (2) 2. Each State Party shall ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation.

## ARTICLE XI

*Evidence of financial security*<sup>7</sup>Alternative 1

- CLC  
VII(1) [1. The shipowner of a ship flying the flag of a State Party and of over [10/24]<sup>8</sup> metres in length shall be required to maintain insurance, or other financial security such as a bank guarantee, to cover liability under the Convention.
2. Without prejudice to the generality of Article II, paragraph 2, States Parties may apply the relevant provisions of the present article to waters under their jurisdiction.
- CLC  
VII(2) 3. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of the Convention shall be issued to each ship of over [10/24] metres in length. It shall be issued or certified by the appropriate authority of the flag State after determining that the requirements of paragraph 1 of this article have been complied with. This certificate shall be in the form of the annexed model and shall contain the following particulars:
- (a) identity of the ship and the flag State;
  - (b) name and principal place of business of shipowner;
  - (c) type of security;
  - (d) name and principal place of business of insurer or other person giving

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<sup>(6)</sup> CLC provides for a three-year time-bar. However, a two-year time-bar is traditional for salvage and collision claims, which are perhaps more analogous to wreck removal claims.

<sup>(7)</sup> The Committee will need to consider Article XI in connection with the wider deliberations on compulsory insurance which are due to begin in 1996.

<sup>(8)</sup> The requirement for compulsory insurance could perhaps instead be applied to any ship of 300 gross tons and above. (Article 15(2)(b) of the 1976 LLMC Convention allows States to regulate the limitation of liability of the owners of ships of less than 300 gross tons under national law).

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- security and, where appropriate, place of business where the insurance or security is established;
- (e) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.
- CLC VII(3) 4. The certificate shall be in the official language or languages of the issuing State. If the language used is neither English nor French, the text shall include a translation into one of these languages.
- CLC VII(4) 5. The certificate shall be carried on board the ship and a copy shall be held by the issuing authority.
- CLC VII(5) 6. A certificate of insurance or other financial security shall not satisfy the requirements of this Article if it may become invalid for reasons other than the expiry of the stated period of validity, before three months have elapsed from the date on which notice of its termination is given to the issuing authority, unless the certificate has been surrendered to that authority or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.
- CLC VII(6) 7. The flag State shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.
- CLC VII(7) 8. Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of the Convention and shall be regarded by other States Parties as having the same force as certificates issued and certified by them. A State Party may at any time request consultation with the flag State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by the Convention.
- CLC VII(8) 9. Any claim for liability arising under the Convention may be brought directly against the insurer or other person providing financial security for the shipowner's liability. However, the defendant may, even if the shipowner is not entitled to limit liability, invoke the limit of liability prescribed in Article VIII, paragraph 2. The defendant may further invoke the defences (other than the bankruptcy or winding up of the shipowner) which the shipowner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the casualty was caused by the wilful misconduct of the shipowner himself, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.
- CLC VII(10) 10. A State Party shall not permit any ship entitled to fly its flag for which a certificate is required under paragraph 1 to trade or operate unless a certificate has been issued under paragraph 3 or 12.
- CLC VII(11) 11. Subject to the provisions of this Article, each State Party shall ensure, under its national legislation, that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship, irrespective of flag, entering or leaving a port in its territory, or arriving at or leaving an offshore terminal in its territorial sea.

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- CLC  
VII(12)
12. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this Article relating thereto shall not be applicable to such ship which shall instead carry a certificate issued by the appropriate authority of the flag State stating that it is owned by that State and that its liability is covered within the limits prescribed in Article VIII, paragraph 2. Such a certificate shall follow as closely as practicable the model prescribed in paragraph 3 of this article.]

Alternative 2

[In accordance with the international rules and standards adopted through the Organization, the shipowner shall be required to maintain insurance, or other financial security such as a bank guarantee, to cover liability for damage under the Convention. Proof of insurance or other security shall be carried on board the ship.]

## ARTICLE XII

*Settlement of disputes*

Any dispute between States Parties shall be settled according to the provisions of Part XV of the United Nations Convention on the Law of the Sea 1982.

## ARTICLE XIII

*Signature, ratification, acceptance, approval and accession*

- SALVAGE  
ARTICLE 28
1. The Convention shall be open for signature at the Headquarters of the Organization from [...] to [...] and shall thereafter remain open for accession.
  2. States may express their consent to be bound by the Convention by:
    - (a) signature without reservation as to ratification, acceptance or approval; or
    - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
    - (c) accession.
  3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.

## ARTICLE XIV

*Entry into force*

- SALVAGE  
ARTICLE 29
1. The Convention shall enter into force [.....] months after the date on which not less than [.....] States have expressed their consent to be bound by it.
  2. For a State which expresses its consent to be bound by the Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.
  3. The Convention shall apply only to a wreck resulting from a casualty occurring after the date of entry into force of the Convention for the State whose interests are most directly threatened by that wreck.

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SALVAGE  
ARTICLE 31ARTICLE XV  
*Denunciation*

1. The Convention may be denounced by any State Party at any time after the expiry of one year from the date on which the Convention enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General.

SALVAGE  
ARTICLE 33ARTICLE XVI  
*Depositary*

1. The Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
  - (a) inform all States which have signed the Convention or acceded thereto, and all members of the Organization, of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
    - (ii) the date of entry into force of the Convention;
    - (iii) the deposit of any instrument of denunciation of the Convention together with the date on which it was received and the date on which the denunciation takes effect; and
    - (iv) any declaration made under the Convention; and
  - (b) transmit certified true copies of the Convention to all States which have signed the Convention or acceded thereto.
3. As soon as the Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

SALVAGE  
ARTICLE 34ARTICLE XVII  
*Languages*

The Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed the Convention.

## **CMI STUDY OF THE LAW ON WRECK REMOVAL\***

### **REPORT OF THE CHAIRMAN OF THE INTERNATIONAL SUB-COMMITTEE**

#### **1. Introduction**

The Executive Committee of Comité Maritime International (CMI) has resolved to appoint an International Sub-Committee (ISC) to study the rules of wreck removal and to render assistance in connection with the work of the Legal Committee of the IMO to prepare an international convention on wreck removal (WRC).

Bent Nielsen (Denmark) was appointed chairman of the ISC and directed to perform initial work in a small working group together with Patricia Birnie (United Kingdom) and Eric Japikse (Netherlands). A preliminary report and questionnaire were distributed by the CMI Secretariat in March 1996 (printed in CMI Newsletter No. 1-1996). Fifteen national associations have (so far) submitted replies to the questionnaire and the first meeting of the ISC has been held on 24 and 25 June 1996. At this meeting the ISC thoroughly considered the draft WRC which has been tabled at the Legal Committee of IMO as document LEG 73/11, Annex. The meeting had the benefit of the attendance of Jan de Boer (Netherlands) who has been much involved in the preparation of the draft WRC, Ivar Kleiven (Norway) kindly undertook the function as rapporteur, Patricia Birnie and Jan de Boer to make a study on certain international law aspects, Linda Howlett (United Kingdom) to look further into the difficult relationship between the WRC and CLC, HNS and (draft) Bunker Convention, and Charles Mawdsley (United Kingdom) to produce a position paper for the P&I Clubs.

The purpose of this report is to record the results of the work so far carried out. If the Legal Committee of IMO considers it would be useful, it is the plan to continue the work of the CMI and put the subject of wreck removal on the agenda of CMI's International Conference which will be held in Antwerp on 8-13 June 1997.

This report together with the questionnaire will be submitted to the Legal Committee of IMO, and it is hoped that this will be of some assistance at the Committee's next session in October 1996.

It has been felt important that this report be delivered to the secretariat of IMO before the deadline on 9 August 1996 for the production of "bulky documents" to the Legal Committee's October session. Time has therefore not permitted the required approval by the Executive Committee of the CMI. The

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\* Also IMO Document LEG 74/5/2.

report must therefore only be considered as a draft. The Executive Committee may wish to make even substantial changes. It is expected that the views of the Executive Committee if necessary may be made available at the October 1996 session of the Legal Committee of IMO as a "non-bulky document" would be enough for this purpose (what the writer certainly hopes).

It is hoped that a synopsis or collection of the replies to the CMI questionnaire may be made available at the Legal Committee's session as information document.

In the following the main comments to the draft WRC which so far have been identified are set out article for article.

### **Article I: Definitions**

#### I(1): Definitions of "Ship"

##### 1. Offshore Units

For offshore units which are on location there will almost invariably be licensing conditions or national legislation which will regulate the duties and obligations in case of a casualty or when the activity is discontinued. If therefore such offshore units were included, there would be overlapping regimes which seem undesirable.

This was a main reason that offshore units on location are excluded from the application of the Salvage Convention 1989 under Art. 3 of this Convention. It seems that for the same reason this exclusion shall also be made in the WRC. This conclusion is also supported by the fact that some offshore units in use on location would not have P&I insurance.

On the other hand it is felt very important to apply the Convention for offshore units not in use, e.g. when in transit to and from a drilling site.

The exclusion of offshore units in use on location would result if the square brackets in lines 4 and 5 of art. I(1) are deleted. However it is suggested that the wording of this sentence should be brought more in line with that of Art. 3 of the Salvage Convention and further clarified as follows:

*"except if when the casualty occurs such platforms or units are on location engaged in the exploration, exploitation or production of seabed mineral resources."*

It has also been noted that even though under the LLMC 1976 Art. 15.5.b. offshore units are excluded, the legislation in some countries, such as Norway, Netherlands and Denmark, does provide for limitation of liability with respect to offshore units.

##### 2. Small craft

The replies to the CMI questionnaire indicate that in no country the law of wreck removal excludes small craft, it therefore does not seem feasible further to consider such an exclusion from the definition of "ship" which, however, would of course not mean that one could not exclude small ships from the duty to provide the financial security proposed in the draft WRC Art. IX, Alternative 1.

##### 3. Aircraft

One should perhaps consider to include the wrecks of aircraft, the replies to

the questionnaire indicate some support of this, however a few replies point out certain hesitations resulting from the fact that the legal regime for aircraft is quite different from that of ships, and that this could result in problems, e.g. with respect to limitation and financial security.

## I(2) Definition of "Wreck"

### I. Pollution

The draft WRC provides that "wreck" shall include "anything that is or has been on board" a ship.

This gives rise to the possibility of a conflict between the WRC and the various liability regimes which have been agreed for certain cargoes (specifically oil and HNS) and are proposed for bunkers.

This potential problem stems from the definition of "removal" and "hazard" (in particular the environment component of that definition).

The definition of "hazards" provides for the application of the WRC to wrecks which pose or threaten to pose danger to the marine environment or to the coast line or related interests, and the definition of "removal" includes prevention, mitigation and elimination of hazards.

Under the 1992 CLC shipowners are liable for "pollution damage" caused by spills of persistent oil. In addition claims may be made for compensation for preventive measures. It should be noted that the 1992 CLC applies to spills of bunker oil from tankers in ballast.

A draft convention specifically on liability for damage caused by a ship's bunkers was submitted to the last session of the Legal Committee of IMO (LEG 73/12/1). It will be considered at the next session in October 1996. It would make shipowners liable for any "damage" caused by spills of persistent oil carried in the bunkers of all ships, except those falling within the scope of the 1992 CLC. "Damage" includes the costs of preventive measures.

The HNS Convention will make shipowners liable for "damage" (which is very broadly defined and includes loss or damage by contamination of the environment and the costs of preventive measures) caused by HNS cargoes. Therefore there is a considerable overlapping, but it should be kept in mind that this overlapping is not complete, e.g. the WRC does not regulate claims for pollution damage by private parties, while however the WRC does regulate the claim by public authorities for preventive measures and (it seems) clean-up and restoration.

One may feel that there could well exist such an overlapping as long as claimants could not claim more than one limitation fund and that the problem of potential double limitation may be addressed in a supplemental article in the WRC (even in the difficult cases where both pollution and the obstruction of a fairway mandates the removal).

It should however be pointed out that the CLC and the HNS Conventions (as the proposed Bunker Convention) contain much negotiated and carefully worded conditions for the rights of public authorities (and others) to claim compensation for pollution, e.g. the exclusion of claims for damage outside the borders of the exclusive economic zone or the restriction of claims for preventive measures to cases where there is a grave and imminent threat.

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The inclusion in the WRC of pollution is therefore likely to cause great controversy and seems to cause considerable risks for the WRC, in particular for its swift and wide international acceptance.

It may be wise to introduce certain restrictions with respect to cargo (and bunkers), e.g. one could exclude from the definition of "wreck" anything that is or has been on board, which is covered by any international convention governing liability for damage caused by such substances. This type of exclusion has been provided for in Art. 14 of the Athens Convention. A more radical approach would be to exclude all pollution by deleting the words "to the marine environment, or the coast line or related interests of one or more states" from the definition of "hazard" and let the definition of "wreck" remain as drafted.

One may also consider a modification of this approach where the pollution remained covered by the intervention rules of the WRC, not by its rules about compensation.

### 2. Cargo, etc., of ships which are not wrecks

The definition of "wreck" covers only cargo, etc., which is or has been on board a sunken or stranded ship.

If one decides to make the convention applicable to ships which may reasonably be expected to result in a wreck, i.e. delete the square brackets used in the phrase "[ship or] wreck", it seems obvious that a suitable amendment shall be made in Art. I,2. to include the cargo, etc., of such a ship, whether on board or not.

One may also consider whether cargo, etc., lost from a ship which is not itself a wreck or in danger, should be included. This however seems to be a more far reaching amendment which may require further analysis.

### 3. CMI questionnaire

The replies to the CMI questionnaire, item 2.8., indicate that there is much support that cargo and bunkers, whether or not on board a wreck, should be included - at least to the extent such goods constitute a danger or impediment to surface navigation.

## I(3) "Casualty"

### 1. Degree of Danger

This provision is modelled on the basis of the Intervention Convention, Art. II.1., and UNCLOS, Art. 221,2.

One may however need to consider the reason for excluding the word "stranding" appearing in said two Conventions after . . . "collision of vessels" and more importantly the substitution of the term of the draft WRC "reasonably be expected to result in" by the concept of "imminent threat" appearing in these two Conventions.

### 2. CMI

The ISC favours the alternative solution according to which the WRC is applicable also to ships which have not yet become wrecks. i.e. to delete the square brackets where the phrase "[ship or]" appears to cover a situation where a ship has created a hazard otherwise than in the consequence of its sinking or stranding.

*CMI Study of the law on wreck removal*1(4) and 1(5) “Hazard” and “Related Interests”

The ISC debated at some length the connection between Art. 1.4. and 1.5. with respect to the protected interests.

1. “Related interests”

It was noted that the term “related interests” in 1.4. only refers to the coast line, not to the marine environment.

2. Art. 1(5)(d) and (e)

Subsections (d) and (e) of 1.5. do not appear in the Intervention Convention 11.4. and it was questioned if subsection (e) related only to offshore and underwater infrastructure near the coast line. If this is not the case, some redrafting may be required to clarify this.

3. “Any state”

Further it was felt that it may be useful to clarify why the term “any state” in 1.5. has been chosen instead of the term “coastal state” in the Intervention Convention.

4. Permanent nuisance

The words “any condition or threat” indicate that “hazards” include also situations where the threat has materialized, e.g. where a wreck affects a tourist attraction or fishery activities. However the word “threatened” in the term “state whose interests are the most directly threatened by the wreck” in 1.8., as well as the word “hazard” itself in 1.4. may lead one to conclude that there are some limitations for the application of the WRC where the threat of danger has materialized and resulted into a permanent nuisance or damage. Possibly a redrafting should be made to clarify this.

5. State

Finally, the question has been raised what is meant when the WRC uses the words “state” or “states”, is it a state party to the WRC or any state? This seems to depend on the context in which the word is used. One may therefore perhaps clarify this wherever this term is used in the WRC.

6. CMI questionnaire

In the CMI questionnaire opinions have been sought if other hazards than the danger or impediment to surface navigation should be included. The replies indicate substantial support to include the dangers to the marine environment or to the coast line and related interests.

1(6) “Removal”1. “Proportionate”

The main point of this definition is that the prevention or elimination shall be “proportionate” to the hazard. However, the fact that a removal is “proportionate” to the hazard does not always mean that it is reasonable. It is therefore suggested to add the words “reasonable and” before proportionate.

2. CMI questionnaire

The CMI questionnaire invited opinions whether the WRC should contain an

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elaborate definition of what constitutes “removal”. The replies indicate that there is no unified view on this. Some point out that a more elaborate definition could create the risk of excluding some required action that at present would be difficult to imagine. No one proposes a very elaborate definition, however some feel that guidelines (without limitation) could be included. E.g. the Irish Maritime Law Association refers to recent Irish legislation on the subject using the term “raise and remove or otherwise render harmless the wreck”.

### 3. “Removal”?

One should perhaps consider if the use of the word “removal” might be misleading and should be substituted by “elimination” or another similar expression which suggests that actual removal of the wreck in many cases would not be required.

#### I(7) “Shipowner”

This definition which is adopted from CLC is linked to the idea of certification and channelling of liability, and it is doubtful whether it is directly applicable if Art. XI (evidence of financial security) is not adopted. It could be considered whether this provision should (alternatively) be broadened to include other possible liable persons.

The replies to the CMI questionnaire indicate a broad variety of solutions in national law, such as joint liability for the owner at the time of the casualty and any subsequent owners, in some countries a bareboat charterer would also be liable, others include the operator, some the operator, manager and charterer or the master, or the owner of cargo or other objects (with respect to removal hereof), or the person whose misconduct has caused the damage. On this background it may be very difficult to obtain any unification of law and one may therefore decide to maintain the definition and leave it to national law which others would be liable for wreck removal in addition to the registered owner at the time of casualty.

#### I(8) “The state whose interests are the most directly threatened by the [ship or] wreck”

As mentioned above there seems to be a need for clarification as to whether state means a contracting state and to consider to use a more appropriate word than “threatened”.

I(9-14) No comments at this stage.

## **Article II: Application**

### 1. Limits for geographical application?

The ISC decided that the international law problems needed to be studied further. Patricia Birnie (United Kingdom) and Jan de Boer (Netherlands) undertook to perform this study. It is expected that a paper on this can be ready and submitted to the secretariat of IMO in due time for the October 1996 session.

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The replies to the CMI questionnaire indicate that in most countries the authorities can under the present rules take any appropriate action outside their territorial sea in pollution cases. Some countries, e.g. Netherlands and Denmark, also take such steps outside their territorial waters if the wreck is a danger to surface navigation. This however seems to be restricted to waters where the authorities maintain marking of fairways or where there is seaborne traffic to and from ports in the country. Other countries, e.g. Germany, consider it impossible to take such steps and have faced difficult legal problems with the elimination of hazardous wrecks located beyond their territorial waters, and the refund of costs. A convention on wreck removal relating to the waters beyond the territorial waters is therefore felt necessary in these countries.

It is obvious that the very broad application to all waters outside territorial waters creates much controversy, thus the P&I representative on the ISC stated that the industry would resist such a wide scope.

## 2. Territorial waters

Another question to consider was if the national regimes for wreck removal within the territorial waters may have so many similarities that it may be possible to include these areas within the scope of the WRC.

The replies to the CMI questionnaire indicate that this may very well be the case. Since the majority of wreck removal cases will relate to wrecks within the territorial sea, it would be important to obtain widespread international unification of the rules governing such wrecks.

Some unification may be obtained as a result of the system introduced in the draft WRC under which a state party can decide that the convention is applicable to its territorial sea, however the unification would be much more complete, if the WRC by itself was applicable also to national waters, but permitted a state party to except such waters from its application.

The CMI is studying the voluminous documentation collected by the secretariat of IMO in 1974/75 about the existing national legislation as well as the new information obtained in the replies to the CMI questionnaire. It is hoped that a special paper on this subject can be produced in time for the October 1996 session of the Legal Committee.

## **Article III: State-owned ships**

It should be noted that decommissioned warships lost while under tow presently present rather serious wreck removal problems, however it is realized that such vessels clearly fall outside the definition of warships in Art. 29 of UNCLOS and are therefore not excluded under Art. III, 1.

## **Article IV: Reporting and locating [ships and] wrecks**

IV(1) It is realized that this provision is modelled at the basis of the OPRC Convention Art. 4. However, in the context of the WRC amendments may be required to make it clear that masters of all vessels flying the flag of a contracting state have this duty to report about a casualty, not only the masters of vessels involved in the casualty.

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It seems also appropriate to consider and to clarify if the "nearest coastal state" to which report shall be made, is a state party or any coastal state.

IV(2) 1. Duty to report

It is felt that the shipowners' obligation to report should not be conditional upon a report having been made under paragraph 1. rather the shipowner should have an independent duty immediately to report when he learns about the casualty.

2. "Agents"?

The term "The shipowner or his agents shall . . . report" is not clear with respect to which type of agents shall have this duty. It would hardly be appropriate to put such a duty on a usual port agent of the ship. It is believed that what is meant is a manager or operator of the ship. However, in view of the fact that penal sanctions are imposed for the failure to report, it seems important clearly to define who is the responsible party. This would hardly be achieved by referring e.g. to operator or manager, and perhaps therefore it would be preferable only to use the expression shipowner (being the registered owner). If one feels that this, in particular in cases of bareboat charter, is unsatisfactory, one could consider to include also the master of the ship.

3. Contents of report

Finally, one may consider to provide for certain basic points which shall be covered in the shipowner's report, e.g. details of the vessel, its cargo and bunkers, details of owners and their insurers, time and position of the occurrence, details of the occurrence and the vessel's condition, as well as any measures taken to save the ship or prevent damage emanating from the ship or its cargo.

## **Article V: Determination of hazard**

**Re. (d)**

There are many other particularly sensitive sea areas, including areas within the territorial sea, which it would be very natural to keep in mind when determining if a hazard exists. It is therefore suggested to add the following at the end of the paragraph:

*"or established under any other relevant international instrument."*

This point will be further considered together with other issues of international law by the CMI working group referred to above.

**Re. (o)**

It is realized that the list of the criteria to be taken into account must be open-ended and that this is made clear in clause (o) which says that regard shall also be taken to "any other circumstances that necessitate the removal".

However, the clause as presently worded says much more, i.e. that removal shall be necessary. This may cause confusion

Firstly, it seems to lead to circular reasoning. Secondly, it would be required

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to mark many wrecks which it is unnecessary to remove. Since it is a condition for marking that there is a "hazard", one should not make it a condition to determine what is a "hazard" that it necessitates removal.

One may therefore consider to delete the requirement of the necessity to remove from (o), e.g. to word the provision:

*"any other relevant circumstances."*

However, where the authority requires the wreck to be removed, it seems appropriate expressly to provide that this must be necessary. It is therefore suggested that art. VII dealing with removal should be redrafted to reflect this.

V(2) (Suggested new provision)

It seems obvious that the state which determines that a hazard exists should have a duty to inform the shipowner. Since this decision may have very serious consequences, it seems necessary that it is made in writing and perhaps also appropriate that the grounds for the decision should be stated.

It is therefore suggested to add a new art. V(2) of the following wording:

*"Having determined that a hazard exists, the state shall advise the shipowner in writing of its ruling, including if appropriate that the owner shall remove the wreck. The ruling shall state the grounds for the determination."*

**Article VI: Marking of wrecks**

No comments at this stage.

**Article VII: Rights and obligations to remove hazardous [ships and] wrecks**

VII(1): It is understood that this provision relates to a situation where the ship is in distress, but has not yet become a wreck. As mentioned it is felt that also such a situation shall be covered under the WRC, and therefore that the square brackets should be deleted as well as the square brackets in the term "[ship or]" where it appears in the draft.

It may be clarified that the shipowner shall receive a notice from the authority that his ship constitutes a hazard and that this hazard necessitates removal.

The paragraph could therefore be redrafted as follows:

*"On being notified that a ship has been determined to constitute a hazard which necessitates removal, the shipowner shall undertake this removal."*

VII(2): It is suggested that the first sentence of this paragraph should be reworded along the same lines as paragraph 1 as follows:

*"On being notified that the wreck has been determined to constitute a hazard which necessitates the removal, the shipowner shall undertake this removal."*

It is further suggested to delete the word "salvage" in the last line, since not all wreck removal operations have the nature of a salvage.

One may finally consider to add at the end of the paragraph:

*"The plan shall be approved by the authorities."*

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VII(3) One may consider to substitute “shall” in line 4 by “may”, the addition of “but” after “operations” in line 5 and “and effectively” after “expeditiously” in line 6.

VII, possible new paragraph (4):

Very often the effectiveness and success of a wreck removal operation will be much dependant upon co-operation of state parties, in particular port authorities in coastal states. For the same reasons the Salvage Convention 1989, Art. 11 contains a co-operation clause, at the basis of which it is proposed to consider drafting a co-operation clause to be inserted as a new art. VII(4) in the WRC. For easy reference the Salvage Convention Art. 11 is quoted:

***“Co-operation***

*A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.”*

VII(5): No comments at this stage.

VII(6): The replies to the CMI questionnaire show that the national rules about abandonment of ships differ to a considerable extent. It is therefore felt that the last sentence of paragraph (6) may lead to many discussions and that it is likely that one may eventually give up trying to obtain the very limited unification which would follow from this rule.

It is therefore suggested to delete this sentence, thereby leaving it to national legislation to decide what effect an abandonment shall have in such a case.

VII(7): The CMI questionnaire as well as the discussions in the ISC also revealed that the national rules and principles governing states liability for damage vary very much. In some countries there would be no liability, in others it is considered obvious that the state should have the same liability in such a case as a private enterprise. Also with respect to this rule it is therefore suggested to leave the matter to national law and delete this rule from the draft.

Possible new VII(7):

During the discussions in the ISC and indeed also in some replies to the CMI questionnaire it is suggested that the WRC should contain guidelines and rules with respect to recoverable costs of a state organized removal.

CMI has thoroughly studied a similar subject with respect to claims for pollution damage, and at its International Conference, 1993, adopted a set of guidelines on oil pollution (printed in CMI Yearbook 1994, Sydney II, p. 200 ff).

It is obvious that the computation of costs for oil pollution damage is often much more complicated than for wreck removal expenses, where there

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would normally not be claims for economic loss which has been dealt with in details in the oil pollution guidelines. Another difference is that there would often be plenty of time to plan a wreck removal, while combat of oil pollution is urgent.

However, the rules in Part III of the guidelines relating to preventive measures, clean-up and restoration may be of considerable application also with respect to the costs of a wreck removal.

A first provisional draft based upon these rules, but relating to wreck removal which could be adopted as guidelines in the WRC or in the convention itself, is the following:

*“Where the state undertakes the removal at the shipowner’s expense, the computation of the costs recoverable by the state shall be fixed i.a. based upon the following guidelines:*

*a. The cost of wreck removal is recoverable insofar as both the wreck removal measures themselves and the costs thereof were reasonable in the particular circumstances.*

*b. In general compensation is payable where the wreck removal measures taken or the equipment used were likely on the basis of an objective technical appraisal at the time any relevant decisions were taken, to be successful in avoiding or minimising pollution damage. Compensation is not to be refused by reason only that wreck removal measure proved ineffective or mobilized equipment proves not to be required. A claim should however be refused if the steps taken could not be justified on an objective technical appraisal, in the circumstances existing at the relevant time, of the likelihood of the measures succeeding, or of mobilized equipment being required.*

*c. Where a government agency or other public body takes an active operational role in wreck removal measures, compensation may be claimed for an appropriate proportion of normal salaries paid to their employees engaged in performing the measures during the time of such performance, and such a claim will not be rejected on the sole ground that the salaries concerned would have been payable by the claimant in any event.*

*d. Where any plant or equipment owned by any government agency or other public body is reasonably used for the purpose of wreck removal measures, the state party may claim reasonable charges for the period of the use, and any reasonable costs incurred to clean or repair the plant or equipment after its use; provided always that the aggregate of such charges and/or costs should not exceed the acquisition cost or value of the plant or equipment concerned.*

*e. Compensation paid in accordance with sub-paragraphs c. or d. is to be limited to expenses which relate closely to the period where the wreck removal measures were taken and is not to include remote overhead charges.*

*f. Where material or equipment is reasonably purchased for the purpose of a wreck removal measure by a government agency or other public body, compensation is payable for the cost of acquisition, but subject always to a deduction for the residual value of such equipment or material after completion of the measures.”*

**Article VIII: Financial liability for locating, marking and removing [ships and] wrecks**

VIII(1): No comments at this stage.

VIII(2): It is noted that this clause, as it is now drafted, does not provide any limitation of liability for wreck removal which does not exist by virtue of other rules.

It is felt that a deletion of the sentence within the square brackets would change this inasmuch as this would mean that a state party which had limitation rules in its national law, but was not a party to an international convention in this field, e.g. the USA, could not apply these national limitation rules. This would be highly controversial, and therefore it is suggested to keep this provision, i.e. delete the square brackets.

The replies to the CMI questionnaire as well as the discussion in the ISC indicate that further studies and considerations may be warranted with respect to the question whether the WRC should contain something more about the shipowner's right on limitation than the mere reference to existing limitation schemes.

This is particularly the case if it is decided to maintain the rules in the draft WRC, art. IX, about evidence of financial security, because at least the insurer or other guarantor must have some limit as it is very unlikely that insurers or guarantors would undertake an entirely unlimited obligation. It may also be found reasonable that the shipowners who shall carry the extra expense and burden of a system of financial security had the same rights of limitation as their guarantors.

On the other hand, however, it may be very difficult to obtain international acceptance that one should provide for any rules of limitation of shipowner's liability outside the LLMC, the CLC and the HNS conventions. A possible solution which will be of some assistance for those who favour to provide for positive rules of limitation, would perhaps be to include a rule in the WRC that a state party which is also a party of the LLMC 1976, shall not make use of the possibilities to reserve the right to exclude claims for wreck removal from limitation in Art. 18 in the LLMC 1976.

**Article IX:**

The replies to the CMI questionnaire indicate that the present position with respect to time-barring of owner's obligation to remove the wreck, alternatively to pay the costs for the removal, varies considerably. E.g. Sweden has a 2 year time-bar from the casualty while Ireland has probably no time-barring, even not under the general rule of limitation of time because a wreck may be considered as a continuing nuisance so that a new cause of action (for which a time-limit will run) would arise day by day. USA has pointed out that although there is no explicit time-limit, it is conceivable that an unreasonable delay in prosecuting the claim could bar recovery under the Doctrine of Laches. Supposedly, an unreasonable delay on the part of the authorities may have the same effect under similar rules in many other countries.

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The shipping industry no doubt has a rather strong need for clear rules on time-barring. It is difficult to live for many years with an unresolved potential liability. Further it should be noted that the P&I clubs normally only provide cover for the shipowner's wreck removal liabilities in 3 years after the casualty.

On the other hand it is pointed out that a state party (under the WRC) will know about the existence of a wreck immediately after the casualty. The state parties should therefore in all but a very limited number of extreme cases be able to analyse and decide if there is a hazard necessitating removal within a rather short period of time.

On this background it is felt that the WRC should provide for a short time limit commencing at the date of the casualty after which all obligations of the shipowner under the WRC are time-barred. This time-limit should be fixed in such a way that there will be reasonable time for the authorities to investigate and consider if the wreck is a hazard that necessitates removal, to issue an order for wreck removal to the shipowner, to let the shipowner have a reasonable time (as appropriate) to arrange and effect the removal, to let the authorities thereafter have reasonable time to arrange and effect the removal themselves, should the shipowner fail to undertake the removal and to process and lodge the claim for costs against the shipowner.

It is felt that 2 years from the date of the casualty should give ample time for this and it is pointed out that this would bring the WRC rule in line with other claims frequently arising out of a casualty for salvage and collision under the appropriate international conventions.

#### **Article X: Jurisdiction**

The jurisdiction issue is closely connected to the issue of financial security. If it should be decided not to provide for financial security in the WRC, there are strong arguments for allowing a state to sue a shipowner in other jurisdictions, e.g. his domicile and where the shipowner's assets (other ships) can be attached.

#### **Article XI: Evidence of financial security**

##### **Alternative 1:**

The proposal that shipowners shall be required to maintain financial security to cover liability under the WRC is no doubt controversial.

It is strongly opposed to by the P&I Clubs whose representative in the ISC, Charles Mawdsley, has summarized the Clubs' views as follows:

*I now set out the clubs' reviews on the proposal that there should be compulsory insurance for the liabilities on shipowners under the draft convention:*

1. *The clubs do not think that wreck removal is such a serious and special problem that it requires shipowners to carry compulsory insurance against which claims by third parties can be made. Why should governments, who will be the claimants in the case of most wreck removals, be in a better position than claimants in death or injury claims involving passengers or seamen?*

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2. *The draft wreck removal convention provides that the shipowner shall be entitled to limit his liability in accordance with the applicable international convention, which in most cases will be the Limitation Convention, although of course any state may exclude wreck removal claims from the list of claims subject to limitation. This possibility makes it even more complicated to implement a compulsory insurance scheme in respect of wreck removal. However, if the claims are subject to limitation the club sees no reason to put one type of claimant, namely local authorities, in a more favourable position than others by allowing them direct action against the insurer, particularly where all claims are subject to one fund and can be reduced pro rata to that fund. If the claims are not subject to limitation how can the clubs be expected to provide unlimited cover subject to direct action?*
3. *Wreck removal liabilities are covered by far more insurers than liability for oil pollution from tankers, which is the only other liability at the moment subject to compulsory insurance (the CLC). It will therefore be more difficult for governments to assess the strength of the various insurance companies covering wreck removal cover than it is for them to assess the strength of the insurance companies covering oil pollution from tankers.*
4. *The clubs are not convinced that this scheme could be adequately enforced. Ships which are wrecked will not necessarily have called at any port in the country affected and therefore may well turn out not to have compulsory insurances.*
5. *The whole issue of compulsory insurance for all third party claims is to be considered by the legal committee any way and it seems inappropriate for it to be considered separately in respect of wreck removal.*
6. *The clubs consider that the solution is for port state control to check that the ship has adequate cover by viewing the certificate of entry.*

These views have been supported by some members of the ISC, including the Norwegian members.

On the other hand, the replies to the CMI questionnaire do not show the same strong opposition from many national maritime law associations.

Thus the question "Should the convention in your opinion contain a rule about financial security" was replied to in the affirmative by the maritime law associations of Portugal, Canada, Germany, Argentina, Ireland, Italy, Sweden and Indonesia, while there was a rather strong opposition from the associations of United Kingdom, Denmark, Netherlands and Norway (in the ISC), others have not formed any opinion at this time. Among the supporters, some, e.g. Ireland, seem to favour Alternative 2, not Alternative 1.

It must be stressed that these replies only represent the initial views from these national associations, the subject is very likely to be much debated, in particular at the planned sessions dealing with wreck removal during the International Conference of the CMI in June 1997. It is not unusual within the CMI that after such further debates national associations change their position, and any conclusions one may draw from the replies to the questionnaire should therefore not necessarily be considered final.

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A few comments have been made with respect to the drafting of Alternative 1:

Art. X(1) The proposed minimum size is considered by many to be too low, many would prefer the alternative minimum size of 300 GT mentioned in Note 8 of the WRC, corresponding to that of the 1976 LLMC.

Art. XII(2) This clause which does not appear in the CLC is understood to mean that state parties are given the right to request that ships flying the flag of a non-party party must have evidence of financial security if they trafficcate the waters of a state party.

It is felt that a much more elaborate drafting would be necessary clearly to provide for this right and the conditions, under which it can be exercised.

**Alternative 2:**

This Alternative seems to be more acceptable to the P&I clubs, however it has been pointed out that the wording might be misunderstood, and that some redrafting is required.

In some of the replies to the CMI questionnaire it is emphasized that the majority of all ships do have P&I insurance which covers liability for wreck removal, and doubted if it is worthwhile to introduce the system of compulsory P&I insurance as proposed in Alternative 2.

**Article XII - XIV:**

No comments at this stage.

Copenhagen, 7 August 1996

BENT NIELSEN

Annex. Questionnaire (March 1996)

## **CMI STUDY OF THE LAW ON WRECK REMOVAL**

### **QUESTIONNAIRE (MARCH 1996)**

#### **Part I - Background information.**

In 1974/75 the Legal Committee of IMO (then IMCO) arranged to collect information about existing national legislation on wreck removal. As a result thereof, replies were received from the governments of Argentina, Australia, Belgium, Chile, Cyprus, Denmark, Finland, France, Greece, India, Iran, Italy, Japan, Liberia, Madagascar, the Netherlands, Norway, Poland, United Kingdom, USA, USSR and Yugoslavia. Together with this questionnaire a copy of the reply from that country is sent to the national associations in the countries from which such replies exist.

- 1.1 Is the law of wreck removal in your country still as indicated in this IMO survey?
- 1.2 If so, please state any supplemental general information or clarification you feel is required.
- 1.3 If not, please give a general short outline of the basic principles of the law of wreck removal in your country.
- 1.4 Have there been any legal decisions in your country relating to wreck removal which indicate any uncertainty or lack of clarity or understanding of which by themselves ought to be taken into account in connection with the CMI's study of the law of wreck removal?
- 1.5 Does the law of wreck removal in your country extend beyond removal of wrecks of ships, e.g., to off-shore units, cargo or bunkers on board or not on board and wrecks of aircraft?
- 1.6 Does the law of wreck removal in your country exclude small craft, and if so, what are the criteria?
- 1.7 Does the law of wreck removal in your country relate only to hazards with respect to danger or impediment of surface navigation or also to other hazards such as danger to marine environment, the coastline, human health, marine resources, fishery activities, tourist attractions, harbour works and underwater infrastructure?
- 1.8 If so, please state which other hazards are included.
- 1.9 Can the wreck removal authorities in your country order the removal of wrecks outside the territorial waters?
- 1.10 If so, in which waters (contiguous zones, exclusive economic zone, continental shelf or even outside such waters)?

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- 1.11 Are there in the law of wreck removal in your country specific definitions of what constitutes “removal”?
- 1.12 If so, please state the contents of such rules.
- 1.13 Is there in the law of wreck removal in your country or elsewhere in the legislation a time limit for the liability of the shipowner?
- 1.14 If so, please state which time period and the event from which it runs (e.g. the casualty or the decision that the wreck constitutes a hazard).
- 1.15 Who is liable as “shipowner” under the rules in your country, the owner at the time of the casualty or the owner when it is determined that the wreck constitutes a hazard or both?
- 1.16 Is under your country’s law someone other than the shipowner also made liable, and if so, who?
- 1.17 Does under the law in your country a formal declaration of abandonment by the shipowner relieve the shipowner from liability for wreck removal?
- 1.18 Would the shipowner under the law of your country still be considered the proprietor of the wreck salvaged by a state party, or is the owner the state party (even if the value of the salvaged wreck exceeds the costs incurred by the state party)?
- 1.19 Does the calculation of the costs which the state party incurs in the marking and possible removal of wrecks cause any problems in your country?
- 1.20 If so, please state the nature and seriousness of such problems.
- 1.21 Does your country have rules according to which, for permission to enter certain ports or waters, the shipowner must lodge security covering claims for wreck removal?
- 1.22 If so, please state the nature of such a system.
- 1.23 Do you have in your country public or private foundations which cover fully or partly the costs of wreck removal?
- 1.24 If so, please state the nature of such funding.
- 1.25 Are shipowners under your law entitled to limit their liability for wreck removal?
- 1.26 If so, please state the main rule of limitation (e.g. 1976 LLMC).

**Part 2 - Opinions**

- 2.1 Is there in your opinion a need for a convention on wreck removal solely relating to waters outside the territorial sea?
- 2.2 Do you consider the provisions of the draft convention to be in all respects consistent with the regimes laid down in the 1982 UN Convention on the Law of the Sea?

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- 2.3 How do you view the relationship of the draft convention to the forthcoming HNS Convention and the 1969 CLC, particularly with regard to the liabilities and their limitation (potentially, the draft also encompasses hazardous and polluting substances/oil cargoes: see the "wreck" definition in article I)?
- 2.4 Is the law of wreck removal in your country in general or on specific important points so different from the draft convention on wreck removal that you consider it unlikely that your country would accept the rules of the draft convention with respect to its territorial waters?
- 2.5 If so, please list which rules in the draft convention you consider particularly unacceptable?
- 2.6 What, if any, general amendments or additional provisions would in your opinion be required in the draft convention?
- 2.7 Should in your opinion off-shore units be included in the scope of application?
- 2.8 Should bunkers and/or cargo which are or have been on board in your opinion be included in the scope of application?
- 2.9 Should wrecks of aircraft be included?
- 2.10 Should there be a general exclusion of small craft?
- 2.11 Should in your opinion other hazards than the danger or impediment to surface navigation be included in the convention?
- 2.12 If so, what other dangers should be included?
- 2.13 Should in your opinion the convention include the territorial sea?
- 2.14 Should the convention in your opinion contain an elaborate definition of what constitutes "removal"?
- 2.15 If so, please state what elements such a definition should contain.
- 2.16 Should the convention in your opinion have provisions about abandonment and ownership to wrecks?
- 2.17 Should in your opinion the convention contain provisions relating to the calculation of the costs a state party can claim?
- 2.18 Should the convention in your opinion contain a rule about financial security?
- 2.19 Is there in your opinion any other suitable way by which the state party's claim for wreck removal should be secured?
- 2.20 If so, please state the details hereof.
- 2.21 Should the convention in your opinion have rules about specific insurance certificates to cover liability for the costs of wreck removal operations?
- 2.22 Should in your opinion claims for wreck removal costs be one of the types of claims covered by a wider requirement for shipowners to maintain insurance to cover general liabilities if such a regime relating to compulsory shipowner liability insurance is established?

## **BACKGROUND PAPER**

**SUBMITTED TO IMO  
BY THE COMITÉ MARITIME INTERNATIONAL**

### **Wreck removal: international legal issues**

During discussion within the CMI's International Sub-Committee on wreck removal at its meeting on 24-25 June 1996, of legal problems concerning this and related issues, it was agreed that a background paper should be submitted on the status of current international law relating to a coastal State's powers to intervene in such cases, in particular to remove wrecks which constitute a danger to navigation, to the marine environment or to its coastline and related interests, as well as the possibilities of requiring shipowners to pay the costs of removal of the wreck and the above threats.

### **Present status of the international law concerning removal of wrecks.**

No specific convention exists concerning removal of wrecks whether they are located in the territorial sea or beyond, nor does the United Nations Convention on the Law of the Sea (UNCLOS) which was concluded at Montego Bay in 1982 and which entered into force on 16 November 1994, specifically refer to wrecks. However, it does contain a number of relevant provisions conferring certain powers on coastal States, which enable such States to remove wrecks which contribute a serious threat to the safety of ships navigating in the territorial sea or to the marine environment therein, and specifically recognises in Part XII on Protection and Preservation of the Marine Environment, the obligation of all States to protect and preserve the marine environment from all sources of pollution (Articles 192 and 194).

Although not all States are party to UNCLOS, over 100 States have now ratified or acceded to it and, as it was negotiated on the basis of consent, it is now generally regarded as representing the customary international law on these aspects, and, as such, thus binding also on non-parties. However, UNCLOS does not define wreck and certain aspects of the relevant provisions are not without ambiguity. Moreover, the status of a coastal State's potential powers of intervention in relation to foreign vessels varies according to the jurisdictional zone in which a wreck is found, UNCLOS recognises,

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\* Also IMO Document LEG 74/5/2 Add. 1.

establishing some de novo, seven forms of jurisdictional zone: internal waters; territorial sea; contiguous zone; exclusive economic zone; continental shelf; archipelagic waters; and "the Area" (the seabed and ocean floor beyond national jurisdiction). In addition coastal States are given powers in international straits, akin to those in the territorial sea, to protect the marine environment and ensure safety of navigation for vessels in transit.

### **Wreck removal in internal waters**

The coastal State has fully sovereignty over such waters, without the necessity of recognising rights of innocent passage for foreign vessels and can thus intervene to remove wrecks for any purpose. UNCLOS does not define these waters as such; it merely indicates that the territorial sea lies beyond them; i.e. they lie landward of the baselines of the latter.

### **Wreck removal in the territorial sea (TS)**

UNCLOS (Article 2) recognises that a coastal States' sovereignty extends beyond its internal waters (or in the case of an archipelagic State, its archipelagic waters) to its territorial sea but provides that this can only be exercised subject to "the Convention and other rules of international law". Neither of these specifically refers to wrecks. However, Article 24, para. 1 of UNCLOS requires that "The Coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with the Convention" and the second paragraph provides that the coastal State must give appropriate publicity to any danger to navigation of which it has knowledge within its territorial sea. This accords with the ICJ's decision in the Corfu Channel Case that the coastal State should not knowingly create hazards to navigation therein. Under Article 25, para. 1, the coastal State may take steps, which are not specified, in its territorial sea to prevent passage which is not innocent. As under the 1958 Geneva Convention on the Territorial Sea, the coastal State exercises sovereignty over its territorial sea and thus has the right to remove wrecks therein and impose obligations on the shipowners. However, analysis of State practice, as evidenced in the national legislation of States exercising powers of wreck removal in this area, reveals many differences in States' interpretation of their powers.

**(i) Contiguous zone (CZ).** This is an area contiguous to the territorial sea which may not extend beyond 24 nautical miles from the TS baselines (Article 33). In it the coastal State can exercise the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations and pursue infringements thereof committed within its territory and territorial seas. There is no specific reference to wreck removal, though arguably sanitary law might cover gross pollution. However Article 303, covering archaeological and historical objects found at sea, lays down a duty on States to protect these as 'found and sea' and, for purposes of controlling traffic, allows the coastal State in applying Article 33 to presume that their

removal from the sea without its approval would constitute an infringement fully within that article. It does not extend this to wrecks as such, however, and includes several 'saving' provisions.

**(ii) Exclusive Economic Zone (EEZ).** Article 86 of the UNCLOS Part VII on the High Seas applies that Part only to those parts of the sea that are **not** included in the EEZ, (or in the territorial sea, internal waters or archipelagic waters). Part V of UNCLOS, creating the EEZ, in Article 56 accords the coastal State only jurisdictional, not sovereign rights for purposes of protecting the marine environment; "as provided for in the relevant provisions of this Convention" (i.e. Part XII) and article 58 states that "all States enjoy, subject to the relevant provisions of the Convention", the freedoms referred to in Article 87 (see below) which include, inter alia, navigation. Although specific provision is made in Article 60, para. 3, for removal of offshore installations which are abandoned, to ensure safety of navigation, taking into account any generally accepted international standards established by the competent international organizations (viz IMO) and having due regard to protection of the marine environment and the rights and duties of other States, and enables establishment of safety zones round them, no such provision is made concerning wrecks or their removal. Although Article 221 para. 1 in Part XII, asserts States' international legal rights to take measures "beyond the territorial sea", which presumably includes the CZ, EEZ and high seas, "following upon maritime casualties", it does not, in para. 2, in specific terms define a "maritime casualty" to include wrecks. However, para. 2 defines it in sufficiently broad terms, viz "a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo". This definition is similar to the definition of "maritime casualty", in the 1969 Intervention Convention (see below).

**(iii) The high seas.** In addition to the non application of Part VII to the EEZ according to Article 86, Article 87, para. 1, preserves freedom of the high seas for navigational purposes though subjecting its exercise to conditions laid down in both UNCLOS and other rules of international law and requires that they be exercised by all States "with due regard for the interests of other States" in exercising freedoms. No provision is made in Part VII for wreck removal, though Article 221 (in Part XII) allows States, following a maritime "casualty" to take and enforce "measures" to protect "their coastline or related interests", which specifically can include fishing, from pollution or threat thereof. The measures takeable are not, however, spelt out and the pollution threat, though not explicitly limited to oil pollution, must be of such seriousness that "it may reasonably be expected to result in major harmful consequences" (emphasis added). UNCLOS does not identify these and thus leaves the decision to the State concerned. Paragraph 2 of Article 221 which defines "maritime casualty" does not explicitly include wrecks. It avoids this issue by categorising a casualty as "a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a

vessel or cargo” (emphasis added). As this definition reflects that used in the IMO’s 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties and in the 1973 Protocol extending it to cases of Pollution Other than Oil and does not contain any new definition of wrecks, the specific application of these provisions to wrecks remains, in the absence of a new convention, unclear. However, as noted in the previous section, they are expressed in sufficiently broad terms to cover intervention by the coastal State in cases where the conditions laid down in UNCLOS Article 221, para. 1 and the Intervention Convention have been fulfilled.

**(iv) The Continental Shelf.** Article 56, para. 3 of UNCLOS subjects the exercise of the EEZ rights pertaining to the seabed and subsoil of the EEZ to the continental shelf regime set out in Part VI, which, as it, in Article 76, para. 1, defines the shelf not only in terms of the EEZ’s 200 n.m. limit but comprehends natural prolongation of a coastal State’s land territory to the outer edge of the continental margin, means that some States have continental shelf rights and obligations beyond the EEZ limit. No reference is made to the right of wreck removal in this outer area or even to removal of installations. However, Article 79, para. 2, requires the coastal State not to impede the laying or maintenance of cables and pipelines by other States, though para. 3 states that its consent is required on routeing these and it retains jurisdiction over the pipelines, etc., and installations and structures used in offshore operations.

**(v) The Deep Seabed.** This “Area”, according to Article 1 para. 1 (i) of UNCLOS, lies beyond the limits of national jurisdiction, viz the EEZ and continental shelf, and is declared in Part XI, Article 136 to be “the common heritage of mankind to be exploited only under the regime established by the UNCLOS (now subject to Agreement relating to Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, concluded on 29 July 1994). Removal of wrecks is not specifically placed under the remit of the International Seabed Authority but it should be noted that Article 149 provides that “all objects of an archaeological and historical nature found in the Area should be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin or the State of historical and archaeological origin” and that a draft convention on protection of such objects has been prepared by the International Law Association.

### **Obligations and Liabilities of Shipowners**

One of the important issues as regards wreck removal concerns the obligations and liability of the shipowner as regards the wreck removal itself as well as the liabilities for damage caused by the wreck. In these respects it is incumbent to consider the relevant liability and compensation conventions that have been concluded or are under negotiation in relation to the transport by sea and which channel liability to the shipowner.

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Specifically, both the 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC 1992) and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992) cover incidents or damage which have occurred in the exclusive economic or similar zones established in accordance with international law as outlined in this paper. Furthermore, expenses incurred for preventative (as defined) measures are also recoverable under these conventions even when no spillage of oil results from the incident, provided that there is a grave and imminent danger of damage.

The recently concluded International Convention on Liability and Compensation in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS 1996) goes even further in expanding the scope of its application and covers also non-environmental damage beyond exclusive economic zones. Such damage may also be caused by wrecks.

### **Notification of wrecks**

Article 211 of the Convention on the Law of the Sea dealing with vessel source pollution, requires the establishment, through the "competent international organization" (IMO) of international rules and standards to prevent pollution from this source. Paragraph 7 thereof provides that these should include those relating to prompt notification to coastal States whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges or probability of discharges. The existing international rules and standards in respect of incidents which involve discharges or the probability of discharges are those contained in the 1973 International Convention for the Prevention of Marine Pollution from Ships, as modified by the 1978 Protocol thereto (MARPOL 73/78), in particular its Article 8 and Protocol I.

Also of relevance are the guidelines on Reporting and Notification Developed by IMO to supplement the provision of MARPOL 73/78 and its Protocol. Moreover, the IMO International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, also provides for oil pollution reporting procedures. No such requirements, standards or procedures for reporting of wrecks currently exist, however, thus one of the main issues to be dealt with in the proposed convention on wreck removal is the giving of notification in respect of wrecks.

### **Conclusions**

**1. Wreck removal in the territorial sea:** although UNCLOS does not explicitly confer on coastal States in its articles on the territorial sea the right of wreck removal, as they have sovereignty over their internal waters and territorial sea and are required not to hamper innocent passage in the latter and can adopt laws regulating the safety and pollution prevention therein, and this represents a codification of customary international law, widely

evidenced by State practice, the coastal State has the right to remove wrecks in this area. States' practice in exercise of this right diverges, however.

**2. Wreck removal beyond the territorial sea:** here the legal position is less clear as the above survey coastal State and flag State rights in the variety of jurisdictional zones established by UNCLOS indicates. Although States have rights in International Law to protect their security and vital interests the scope of the principle concerned has not been clearly defined. Hence the provisions of the UNCLOS Article 221, and the Intervention Convention. In this area the coastal State has according to Article 221 of UNCLOS and the 1969 Intervention Convention the right to take measures to protect its coastline or related interests from pollution or the threat of pollution from a maritime casualty which may reasonably be expected to result in major harmful consequences. However, neither the UNCLOS provisions, as reflected in customary law, nor related conventions prohibit or clearly approve removal of wrecks from these areas for purposes of ensuring safety of navigation. There is no bar to conclusion of a convention on wreck removal in areas beyond the territorial sea to confer clearly on coastal States the right to undertake such removal, on relevant terms and conditions, for purposes of ensuring safety of navigation or protecting the marine environment generally, including coastlines and related interest. However, such a convention would have to be compatible with UNCLOS and its provisions concerning the various responsibilities of the States concerned. As new specific rights would in effect be created it would be desirable that any convention should attract wide consensus and for reasons outlined in the paper this may merit some attention, as not all States have predominantly coastal interests.

## COMPARATIVE ANALYSIS OF NATIONAL LAWS RELATING TO WRECK REMOVAL

### SUMMARY

**Executive Summary:** Comparative analysis of national laws relating to wreck removal

**Action to be taken:** Background document for reference during discussion

**Related documents:** LEG 74/5, LEG 5/1, LEG 5/2 and Add. 1, LEG 5/3

### (A) Introduction

1. This is a comparative analysis of the domestic legislation relating to wreck removal in a number of different States.
2. The aim of this analysis is to identify the major similarities and differences between the various laws with a view to assessing the feasibility of extending the scope of application of the proposed International Wreck Removal Convention to the territorial waters of the States party. The effect of thus extending the scope of application of the convention will be not only to unify national laws on the subject, but also to bring about consistency in the legal treatment of wrecks whether those wrecks are situated on the high seas or in the territorial waters of any State party.
3. This analysis is undertaken with reference to the comments on page 9 of Mr Bent Nielsen's preliminary report to the CMI of 8th August 1996. This reads, in material parts, as follows:

#### "Territorial waters

*Another question to consider was if the national regimes for wreck removal within the territorial waters may have so many similarities that it may be possible to include these areas within the scope of the WRC.*

*The replies to the CMI questionnaire indicate that this may very well be the case. Since the majority of wreck removal cases will relate to wrecks within the territorial sea, it would be important to obtain wide spread international unification of the rules governing such wrecks.*

*Some unification may be obtained as a result of the system introduced in the draft WRC under which a State party can decide that the convention is applicable to its territorial sea, however, the unification would be much more complete, if the WRC by itself was applicable also to national waters, but permitted a State party to except such waters from its application.*

*The CMI is studying the voluminous documentation collected by the secretariat of IMO in 1974/1975 about the existing national legislation as well as the new information obtained in replies to the CMI questionnaire. It is hoped that a special paper on this subject can be produced in time for the October 1996 session of the Committee”.*

## **(B) General**

1. The starting point for this analysis must be the terms of the proposed Wreck Removal Convention itself. The Convention is divided into 17 articles. Articles I-VII inclusive, set out the definition of a wreck (and hence the subject matter of the Convention), provisions for determining whether or not the wreck constitutes a hazard (and hence whether or not the wreck needs to be marked and/or removed) and then specific provisions relating to the marking and removal of the wreck and financial responsibility for such measures. Articles IX-XVII deal with more administrative matters, including in particular Article XI which sets out alternative regimes for the provision of financial security for the costs of wreck removal. Finally, it is contemplated that rights of compensation under the Convention will be time barred three years from the date when the hazard occurred.
2. Accordingly, the principle areas of relevance in national laws are domestic provisions relating to:
  - (i) The definition of wreck (and hence the subject matter of the domestic provisions relating to wreck removal);
  - (ii) Whether or not the wreck should first constitute a “hazard” before the wreck removal provisions come into play and, if so:
    - (a) who is responsible for determining whether the wreck constitutes a hazard, and
    - (b) to what the hazard should relate.
  - (iii) The marking of the wreck;
  - (iv) What constitutes wreck removal;
  - (v) With whom the initial responsibility for physically marking/removing the wreck lies;
  - (vi) In the event that such initial responsibility lies with any party commercially interested in the vessel (or whatever else has been “wrecked”), the powers and responsibilities of the State to effect the marking/removal itself, and the financial responsibility therefore.
  - (vii) In the event that financial responsibility lies with any party commercially interested in the wreck, the extent to which that party can cap such responsibility (either by way of limitation or abandonment).

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- (viii) Evidence of ability to meet any financial responsibilities relating to the wreck.
- (ix) Time limits.

3. The answers given by the various States to Part I of the questionnaire circulated by the CMI in March 1996 illustrate the approach taken by national laws to these issues. The response to the earlier survey carried out in 1974/75 serves to expand upon those issues in relation to those States who have not yet responded to the 1996 questionnaire.

4. This analysis has been undertaken in relation to the following countries: Austria, Chile, Cyprus, India, Madagascar, Italy, Iran, Trinidad & Tobago, UK, USA, Australia, Canada, France, Germany, Holland, Indonesia, Ireland, Japan, Norway, Portugal, Sweden, Belgium, Denmark, Finland, Liberia, USSR, Yugoslavia, Greece, Poland.

Of these, only Argentina, Italy, Norway, Holland, Japan, Denmark, France, Finland and the USA have provided information in relation to both the 1996 questionnaire and 1974/75 survey. The information available for Australia, Canada, Germany, Indonesia, Ireland, Portugal and Sweden is based solely upon responses to the 1996 questionnaire. The information available in relation to Austria, Chile, Cyprus, India, Madagascar, Iran, Belgium, Liberia, Greece, Poland and Trinidad & Tobago is based solely on responses to the 1974/75 survey (it is recognised that, as a result, the information in this analysis may not in relation to a number of countries, reflect the up-to-date position under the laws of these countries). The position of the UK is set out in the initial response to the 1974/75 survey, thereafter in the comments of Mr Michael Buckley of Messrs Waltons & Morse on behalf of the BMLA and a letter date 11th November 1996 from Mr Simon Coates on behalf of the Department of Transport. For obvious reasons reference has not been made to the laws of Yugoslavia or the former Soviet Union.

5. It should also be noted that no detailed analysis has been possible in relation to France, Chile and Madagascar. The documents provided by Chile and Madagascar in response to the 1974/75 questionnaire have not been translated into English although, so far as Chile is concerned, there is a brief resume of the applicable law. The documentation available for France is incomplete.

6. Finally, Austria has stated that it has no domestic legislation at all in relation to wreck removal.

### **(C) Overview**

1. It is apparent that the law relating to wreck removal in different countries has developed to differing degrees of sophistication. On the one hand the most

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up-to-date and comprehensive system of law appear to be that applicable in the USA. On the other hand the legislation in a number of countries - such as, Iran, Chile, Indonesia and Liberia - is very sketchy indeed<sup>1</sup>.

2. Similarly, the law in some countries - Sweden and Poland in particular - appears to be in a generally confused state because there is no identifiable body of law relating specifically to wreck removal. In these countries the applicable legal provisions must be identified from a number of different statutes enacted to serve a number of different purposes not necessarily aimed specifically at wreck removal. So far as Sweden is concerned, the Swedish Maritime Law Association recognises the need for a comprehensive legal regime relating to wreck removal. Australia has also pointed out that it is difficult to talk generally about the Australian law of wreck removal because of the federal nature of the legal system in Australia.

3. Subject to this, and subject to the inaccuracies/uncertainties which may have arisen from the language difficulties evidently encountered by some of the national associations who responded to the 1996 Questionnaire, it appears that the law in the various different countries follows more or less the same pattern. In each case it is, broadly, consistent with the regime in the proposed International Wreck Removal Convention. That is to say that, when there is a wreck<sup>2</sup>, and where that wreck constitutes a hazard<sup>3</sup>, the onus is upon the Owner of the wreck<sup>4</sup>, to remove it and, in the event of his failure to do so, the State authorities have power to intervene and undertake the removal themselves. The Owner remains liable for the wreck removal expenses and the State can generally reimburse itself by selling the salvaged property<sup>5</sup>.

4. Some countries, most notably Canada, Denmark, Norway, Finland and Sweden<sup>6</sup> distinguish formally between wrecks simpliciter and wrecks which constitute a potential source of pollution. There are separate statutes dealing with the separate types of wrecks, and the law relating to wrecks which constitute a potential source of pollution is generally more stringent than the law which relates to "non polluting" wrecks. This is also an approach which is mirrored by the legislation in the USA.

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<sup>(1)</sup> This is not an exhaustive list and these countries have been identified more by way of example. It is also acknowledged that in some cases the appearance of the domestic law as "sketchy" may be due more to the answers given to the 1996 Questionnaire rather than to the substantive content of the legislation itself.

<sup>(2)</sup> The definition of wreck is dealt with in Section D(1).

<sup>(3)</sup> It is not in fact necessary in all cases for the wreck to constitute a hazard before the wreck removal provisions come into play - see Section D(2).

<sup>(4)</sup> Or other person liable see Section D(5).

<sup>(5)</sup> Detailed provisions relating to each of the individual aspects - viz. removal, initial responsibility, State powers of intervention, financial responsibility etc. are dealt with in Section DI-9.

<sup>(6)</sup> Although the legislation in Sweden is somewhat piecemeal, it is nevertheless apparent that there is some bifurcation between polluting and non-polluting wrecks.

5. Although there are numerous differences between the various national laws in relation to specific aspects - for example the detailed definition of wreck, whether or not the wreck need to constitute a hazard before the removal provisions come into play and, if so, to what specifically the hazard needs to relate and the precise powers of the State to intervene and then to claim an indemnity for the costs of wreck removal, the only fundamental difference relates to the right or otherwise of the Owner<sup>4</sup> to limit liability for wreck removal expenses. Sweden, Norway, Finland, Holland, Germany and Denmark all apply the provisions of the 1976 Limitation Convention to wreck removal expenses. All the other countries (with the exception of Italy, Poland and Indonesia) appear to have made a more or less conscious policy decision to exclude any right of limitation<sup>7</sup>. In Poland and Indonesia the Owner may limit his liability to the value of the salvaged property and in Italy, although there is no express statutory right to limit liability, the Court in Italy has allowed limitation in at least one case.

#### **(D) (1) Definition of Wreck**

The wreck removal legislation of most countries extends beyond merely wrecks of ships (which are in most cases defined as vessels which are sunk, stranded or abandoned), and in no case is a specific distinction made in relation to small craft. The legislation in a number of countries is expressly extended to cover wrecks of objects other than ships. Those countries are:

- (i) **Argentina:** There is a general prohibition against the discharge of any object or substance into the water and channels of a port. The legislation also applies specifically to wrecks of aircraft.
- (ii) **Chile:** The legislation specifically extends to "*other wrecks*" (apart from sunken or stranded ships), although there is no detailed information as to what those "*other wrecks*" might be.
- (iii) **Cyprus:** The legislation extends to goods which have been cast off (apparently whether from ships or otherwise) or have fallen into the sea.
- (iv) **India:** The legislation extends to wrecks "*not being a vessel*". This, in principle, would seem to cover anything.
- (v) **Italy:** The legislation extends also to "*submerged materials*" (again, apparently, of any nature).
- (vi) **Iran:** The legislation includes cargoes.
- (vii) **Trinidad & Tobago:** The legislation applies to other things (but only provided they obstruct the harbour or its approaches).
- (viii) **United Kingdom:** The legislation applies only to vessels, but the

<sup>(7)</sup> Although some countries do allow the Owner to abandon the wreck to the State, thus capping liability to the value of the wreck (see Section D5).

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definition of vessel includes “*every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel*”.

- (ix) **United States of America:** Offshore installations are expressly included within the definition of vessel. The legislation extends to anything which obstructs or endangers navigation.
- (x) **Canada:** The legislation extends to any “*other things*” which constitutes an obstacle or obstruction to navigation. This includes expressly cargo, bunkers, aircraft and offshore installations.
- (xi) **Denmark:** Offshore platforms, aircraft, cargo and bunkers are expressly included in the law relating to pollution.
- (xii) **Germany:** Although some detail is lacking in the answers to the 1996 Questionnaire, the wreck removal legislation in Germany appears to extend to aircraft.
- (xiii) **Holland:** Again, the information provided is a little sketchy. However the legislation does expressly apply both to vessels and to “*any other object [which] is stranded or sunk*”.
- (xiv) **Ireland:** The legislation expressly excludes aircraft, but it does extend to include also offshore installations (whilst in transit only) and any article, thing or collection of things being or forming part of the tackle, equipment, cargo, stores, bunkers, oils or ballast of a wrecked vessel.
- (xv) **Japan:** The legislation extends to any submerged object and expressly includes aircraft and offshore facilities.
- (xvi) **Norway:** The legislation applies to all floating structures and the pollution legislation specifically applies to anything which poses a threat of pollution.
- (xvii) **Sweden:** Although the information is a little sketchy, it is clear that the legislation extends beyond just ships.
- (xviii) **Belgium:** The domestic wreck removal provisions extend to “*wrecks, remains of wrecks, craft or objects to sink*” (sic).
- (xix) **Finland:** The legislation applies to sunken vessels and any goods on board such vessels. The pollution legislation applies to any maritime casualty where there is a risk of water pollution and the waste legislation generally to anything which is abandoned which may be hazardous to health or the environment.
- (xx) **Liberia:** The legislation applies to dangerous wrecks, derelicts and other “*menaces to navigation*”.
- (xxi) **Greece:** Again, whilst the information may be incomplete, it appears that the legislation applies to any thing which either obstructs navigation or causes pollution.
- (xxii) **Poland:** The legislation applies to any property which is “*sunk or derelict [and which] hinders navigation or work in harbour*”.

**The following conclusions can be drawn**

1. In all countries the idea of a wreck is fairly uniform - i.e. something which has sunk, stranded or been abandoned.
2. It is only the legislation of Indonesia and Portugal which is limited to just wrecks of ships.
3. Although the legislation of Iran, the UK and Ireland extends to more than just ships, that extension is limited to things which have been on or are connected with ships or, in the case of Ireland, to offshore installations provided they are in the course of transit at the time.
4. The legislation of Canada, the USA, Trinidad & Tobago, Liberia and Poland defines wrecks in terms of things which obstruct or hinder navigation. This may be the same in many other countries also. However, the information available is insufficient to state this categorically.
5. The wreck removal legislation of Japan, Germany, Canada and Argentina applies to anything submerged or which hinders navigation. Wrecks of aircraft are also, presumably, included. This is also the case in Holland, USA, Trinidad & Tobago, Italy and Chile. Similarly the countries where the wreck removal law extends to any potential source of pollution or hazard to the environment will presumably also include aircraft. The countries in question are Sweden, Norway, Denmark, Finland and Greece.
6. So far as concerns offshore installations, these are specifically included in the ambit of the wreck removal legislation of the USA, Canada and Japan. The legislation in Ireland applies only to offshore installations where such installations are in the course of transit. The same conclusions as in relation to aircraft can be drawn in relation to offshore installations in those countries where the domestic legislation applies to anything submerged or which hinders navigation or which poses a threat of pollution.

**(D) (2) Hazard**

In relation to the question whether there is a need for a hazard to exist before the wreck removal provisions come into play and, if so, to what that hazard must relate and who is to be the judge of the existence or otherwise of a hazard, three different categories can be distinguished:

- (i) Countries where there is no requirement for a hazard of any type to exist before the wreck removal provisions come into play. These are Cyprus and Indonesia.
- (ii) Countries where a positive distinction is made between non-hazardous wrecks and hazardous wrecks and the precise scope of application of the wreck removal law depends upon whether or not the wreck constitutes a hazard. These countries are Argentina, Chile, India, Italy and Trinidad & Tobago.

The first point to note is that, although it is not stated expressly in the legislation of many countries, it seems implicit that the judge of whether or not a hazard exists in each case is the State, rather than the shipowner/creator of the hazard.

Turning first to category (iii) - i.e. those countries where a distinction is drawn between hazardous and non-hazardous wrecks - the pattern in each of these countries appears to be broadly similar. That is to say that there is an unconditional duty to remove all wrecks, but where the wreck constitutes an obstruction or danger to navigation or otherwise hinders navigation, the State can take a more pro-active role in the wreck removal operations. The point to note at this stage is that in each of the countries in category (iii), the "hazard" is specifically limited to a hazard to navigation.

Category (ii) is by far the largest category. This can be further subdivided into:

- (a) Those countries where the hazard is specifically limited to surface navigation, and
- (b) Those countries where the hazard extends beyond mere surface navigation.

Countries in the first sub-category are Japan, Portugal, Japan, Belgium, Liberia and Poland. The remaining countries all come within the second sub-category. The provisions of the wreck removal legislation of those countries are as follows:

- (i) **USA:** Although at first sight the wreck removal provisions appear to be limited to wrecks which constitute an obstruction to navigation, it is clear that other statutes (in particular the pollution legislation) extend to wrecks which endanger the environment, fishing activities, tourism etc.
- (ii) **Australia:** Although the details are a little sketchy, it is evident that the wreck removal provisions extend generally to wrecks which constitute a hazard to the safety of the area as a whole.
- (iii) **Canada:** Although the wreck removal provisions as such only come into play where a wreck constitutes a hazard to navigation, other pollution related statutes, come into force when the wreck poses a threat of waste/pollution. It appear that the threat of pollution can extend to almost anything.
- (iv) **Denmark:** Again, the law relating to wrecks of vessels as such applies only to wrecks which constitute a danger or substantial impediment to surface navigation but, as stated in Section D1, the pollution laws of Denmark extend to any wreck which constitutes a danger of pollution or a danger to human health, or threatens damage to nature of marine life or damage to recreational areas (Denmark has specifically pointed out that the scope of application of the pollution law in that country in fact extends beyond the ambit of the proposed Wreck Removal Convention).
- (v) **Germany:** The wreck removal provisions will come into play not only if

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the wreck constitutes a hazard to navigation, but also if it endangers human life or the safety of the environment.

- (vi) **Holland:** Although no specific definitions are given it is clear that the hazard can extend beyond a mere impediment to navigation and can include the items set out in Articles 1.4 and 1.5 of the proposed Wreck removal Convention.
- (vii) **Ireland:** The wreck removal provisions come into play where a wreck is likely to become (a) an obstruction or danger to navigation or lifeboats, or (b) a threat of harm to the marine environment or to related interests (which include human health, habitats of flora and fauna and aquatic activities (including fishing and tourist activities)).
- (viii) **Norway:** The Harbour Act in Norway is limited to wrecks which constitute a danger to surface navigation or port operations. However, the Pollution Act applies to anything (including wrecks) which constitutes a hazard to the marine environment, the coastline, human health and marine resources (and, probably, also tourism).
- (ix) **Sweden:** Although the point is unclear, it seems that the wreck removal legislation extends also to wrecks which at least constitute a threat to fishing activities.
- (x) **Greece:** The legislation expressly applies to wrecks which obstruct navigation or cause pollution.
- (xi) **United Kingdom:** The legislation applies to wrecks which are or are likely to become a danger or obstruction both to navigation or to lifeboats engaged in life boat service. There are also provisions in the legislation dealing with wrecks which pose a threat of pollution.
- (xii) **Finland:** The Decree on marking of fairways is limited to sunken vessels or goods on board such vessels which pose a danger or hazard to surface navigation. However, as with the other Scandinavian countries, there are separate statutes which deal with pollution. The Act on the Prevention of Pollution from ships applies to wrecks of vessels where there is a risk of water pollution, and the Waste Act applies in all cases when something has been abandoned in a manner which may cause a hazard to health or the environment.

**The following conclusions can be drawn**

- (1) In most countries the wreck must first constitute a hazard of some sort before the wreck removal provisions come into play.
- (2) In some of those countries the hazard is expressly limited to a hazard to surface navigation.
- (3) But in most countries the wreck removal legislation will come into play when the hazard constituted by the wreck extends beyond a mere hazard

to surface navigation. In most instances the extension of the wreck removal legislation is to cover pollution and other environmental issues.

**(D) (3) Marking**

It would be surprising if there is any country which has enacted domestic legislation relating to wreck removal which does not also include something relating to the marking of wrecks pending removal. However, the information available only reveals express provisions relating to marking in the laws of the UK, USA, Canada, Ireland, Belgium, Finland, Denmark and Japan.

**(D) (4) Definition of wreck removal**

On the information available there does not appear to be any specific definition of wreck removal in the domestic legislation of any country. However, the Argentinean legislation stipulates that wrecks should be "*drawn out, removed or demolished*", the UK legislation refers to wrecks being "*raised, removed, or destroyed*", similarly the US legislation talks in terms of "*removal or destruction*". The legislation in Ireland refers to wrecks being "*raised and removed or otherwise rendered harmless*" and the Indonesian legislation appears to define wreck removal as simply taking the wreck to the nearest shore.

**(D) (5) Initial responsibility for physically marking/removing the wreck and ultimate financial responsibility**

With the only exception (apparently) of Trinidad and Tobago (see below) the initial responsibility for removing a wreck lies with those commercially interested in the wreck (although there appear to be specific provisions in the laws of India, Iran, the USA, Belgium, Denmark and Norway which allow the State to intervene without notice in cases of emergency. In the UK the legislation deals primarily with the powers of the State authorities to effect wreck removal. However, the statutory framework is couched in terms of "powers" rather than duties and the preferred practice is for the shipowner or his insurers to arrange removal of the wreck in the first instance). The power of the State to intervene will be dealt with in the next section. This section therefore is limited solely to ascertaining who, precisely, is responsible for removing the wreck in the first instance and, in the event that the State intervenes to undertake the removal, who ultimately is financially responsible for the State's cost of such wreck removal.

Unfortunately, there is a certain lack of clarity in the information which has been provided in response to these questions. In particular, it is unclear who, precisely is meant by "*Owner*" in the legislation of many of the countries. So far as concerns ultimate financial responsibility for the costs of wreck removal in the event that the State intervenes, since in most countries the State has power to sell the wreck to recoup those expenses (see Section

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D6), the person who is *de facto* responsible is the person who would otherwise be entitled to the sale proceeds of the wreck.

In these circumstances, perhaps the most appropriate approach is simply to recite the relevant provisions of the various national laws:

- (1) **Argentina:** Responsibility for removing objects/substances which have fallen or have been thrown from ships lies with the “*Owners or agents*” of the ship. Responsibility to remove wrecks of ships lies with the registered Owner or operator.
- (2) **Chile:** Responsibility for removing any wreck is with the “*Owner*”.
- (3) **Cyprus:** Responsibility for removing the wreck is with the “*Owner or underwriter*”.
- (4) **India:** Responsibility for removing the wreck lies with the “*Owner*”.
- (5) **Italy:** With regard to vessels. the “*Owner*” (probably the registered Owner) is liable to remove the wreck. With regard to other goods and materials, it is the “*party interested*”.
- (6) **Iran:** Subject to the State’s power to intervene immediately in an emergency, initial responsibility is with the “*Owner*” There is no specific definition of “*Owner*”.
- (7) **Trinidad & Tobago:** Where the “*Owner, part Owner or agent of a vessel or part of a vessel*” is resident in Trinidad & Tobago, then he is the one who is initially responsible for removing the wreck. Otherwise responsibility lies with the State.
- (8) **United Kingdom:** The emphasis of the legislation in the UK is upon the statutory powers of the relevant public authorities to effect removal where a wreck constitutes a danger or obstacle to navigation or lifeboats (but see above for the position in practice when initial responsibility usually lies with the shipowner and/or his insurers).
- (9) **United States of America:** Subject to the State’s power to intervene immediately in an emergency, initial responsibility for wreck removal is with the “*Owner, lessee or operator*”.
- (10) **Australia:** The responsible person is the “*Owner or operator*”.
- (11) **Canada:** The responsible person is the “*Owner*” or “*person in charge of the ship*”.
- (12) **Denmark:** Initial responsibility lies with the “*Owner or other persons having a stake to the wreck*”.
- (13) **Germany:** Initial responsibility lies with the “*a responsible person*” - this is normally the ship, or Master being the person whose misconduct has caused the hazard.
- (14) **Holland:** The “*Owner*” of the wreck is responsible for initially removing it.

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- (15) **Indonesia:** The person responsible is the shipowner or the Master if he is on board the wreck, otherwise anyone who sees the wreck can remove it.
- (16) **Ireland:** The person responsible is the Owner, being either the person registered as Owner or the person who owns the vessel either directly or indirectly and includes any part-Owner, Charterer, manager or operator of the vessel.
- (17) **Japan:** The responsible party is the Owner, or joint Owner or bareboat Charterer.
- (18) **Norway:** The legislation is quite vague and, although liability to comply with a wreck removal notice rests with the "Owner", this might also include the operator or Charterer.
- (19) **Portugal:** The initial responsibility is with the "Owner".
- (20) **Sweden:** The initial responsibility lies with the Master, operator or registered Owner.
- (21) **Belgium:** The responsible party is the "Owner, Master or Skipper".
- (22) **Finland:** Responsibility is with the "Shipowner or the person in whose possession the ship or goods were at the time of the incident" (presumably therefore, this might also include the operator or charterer).
- (23) **Greece:** The responsible party is the "Owner".
- (24) **Poland:** Again, the responsible party is the "Owner".

So far as concerns ultimate financial responsibility for wreck removal expenses (in the event that the State intervenes to remove the wreck) it should be noted that in only four of the countries in relation to which the information is available, is it possible for the "Owner" to cap his total liability by abandoning the wreck to the State. These countries are Argentina, Indonesia, Japan and Portugal (see further Section D8). (Although in Germany the Owner has the right to abandon the wreck to the State, this does not exonerate him from liability for the costs of wreck removal).

**The following conclusions can be drawn**

- (i) A commonsense view appears to prevail in that the person(s) initially responsible for the wreck removal is, in most cases, the person(s) who is in a position actually to take the necessary steps to carry out the wreck removal - i.e. so far as wrecks of vessels are concerned, the Owners or operators of the vessel.
- (ii) Similarly, ultimate financial responsibility for the costs of wreck removal follow a commonsense course in that, since (as will be seen in Section D6) the State in most cases has power to recoup its wreck removal costs by selling the vessel, the person(s) who is ultimately responsible is the person(s) who will lose out from the sale of the wreck.

- (iii) In only four countries can financial responsibility for wreck removal costs be capped by abandoning the wreck to the State.

#### **(D) (6) State powers to intervene, reimbursement of expenses**

In all cases, the State can intervene to undertake the wreck removal operation itself. Two broad questions fall to be answered, (i) at what point can the State intervene? and (ii) what powers does the State have to recoup its wreck removal expenses?

##### **(1) At what point can the State intervene?**

In almost all cases the power of the State to intervene is limited to cases where the wreck constitutes a hazard. Similarly, in most cases the power of the State is exercisable only once the Owner has failed within a specified time limit to respond to a wreck removal notice, or in cases of emergency. The only notable exceptions to this general pattern are:

- (i) **Chile:** It appears that the maritime authority may take whatever steps it wishes at any time, although it may also simply leave it up to any Chilean citizen to remove the wreck.
- (ii) **India:** Where the wreck does not constitute a hazard of any sort, the State will still have power over the wreck if nobody claims it within a year.
- (iii) **Trinidad & Tobago:** It seems that the State's power only arises in circumstances where the Owner of the wreck is resident within Trinidad & Tobago.
- (iv) **United Kingdom:** The maritime authority may step in immediately where the wreck constitutes a hazard (as defined - see Section D2 above).

##### **(2) How can the State recoup its expenses of wreck removal?**

The different national laws appear to fall into two different categories, being (i) those cases where the State can sell the wreck by public auction to recoup its expenses (this category can be further sub-divided into those cases where property in the wreck actually passes to the State and those where it does not) and (ii) those cases where there is no express power of sale.

Almost all of the countries reviewed fall into the first category. However, the position is unclear in Australia, Finland, Liberia, Germany, Japan, Indonesia and Portugal (although in the last four of these countries, the Owner has an express right to abandon the wreck to the State and it is clear that, once there has been an abandonment, the State can sell the wreck).

In most cases where the State has power to sell the wreck, title does not pass to the State but remains vested in the Owners. On the information available, it seems that the only exceptions to this are Argentina and Italy (and, of course, those countries where the Owner has power to abandon the vessel to the State, together with Greece where

property in a wreck passes to the State if a wreck removal notice is not complied with for a year).

One significant aspect revealed by the responses to the 1974/75 Survey and the 1996 Questionnaire is that, whereas the laws of the majority of countries have express provisions for what is to happen both in the event that the sale proceeds are insufficient to reimburse the wreck removal expenses and in the event that there is an excess, a few countries - namely Cyprus, Trinidad & Tobago, Belgium, and Ireland have only provisions for what is to happen with any excess. The position is unclear and/or there is insufficient information available in relation to Chile, India, Iran, Australia, Canada, France, Poland, Holland (although in relation to Poland and Holland, it is implicit in the right to limit liability that the Owner remains liable (up to the extent of his limitation fund), for any excess wreck removal expenses).

So far as the other countries are concerned, the position, briefly, is as follows:

- (i) **Argentina:** The shipowner remains liable for any shortfall following the sale of the wreck.
- (ii) **Italy:** Similarly, the shipowner or, in the case of wrecks not a vessel, the "*interested party*" remains liable.
- (iii) **United States of America:** The Owner, lessee or operator remains liable for the balance.
- (iv) **Denmark:** The shipowner is liable for the balance subject to the right to limit that liable under the 1976 Convention.
- (v) **Germany:** The shipowner remains liable for all costs, even if he abandons the vessel to the State.

### **The following conclusions can be drawn**

- (1) In most cases the States' power to intervene is limited to cases where the wreck constitutes a hazard (which follows from the fact that, in most countries, the wreck removal legislation has no application at all unless the wreck constitutes a hazard in the first place).
- (2) Similarly, in most cases the Owner is first given an opportunity to effect the removal himself before the State intervenes.
- (3) In most cases the State has an express power to sell the vessel to recoup its costs of wreck removal although in most cases title to the wreck remains with the Owner and, subject to rights of abandonment or limitation available in some countries, the Owners remain liable to the State for any shortfall.

**(D) (7) Disputes relating to wreck removal expenses**

Questions 1.19 and 1.20 of the 1996 Questionnaire ask:

*“1.19 Does the calculation of costs which the State party incurs in the marking and possible removal of wrecks cause any problems in your country?”*

*1.20 If so, please state the nature and seriousness of such problems”.*

Of the 15 countries which provided answers to the Questionnaire, 8 simply answered these questions in the negative, in most cases because there is no precedent in relation specifically to wreck removal claims. The countries in question are Argentina, Italy, Denmark, France, Ireland, Japan, Sweden and Finland. The USA and Germany have preset tariffs of recoverable wreck removal expenses and so, presumably, the scope for argument in relation to those is limited.

In Canada, Holland and Norway there are express requirements that wreck removal expenses should be reasonable (or, in the case of Holland, steps taken and consequently the costs thereof should be *“reasonable, necessary, useful and effective”*). Clearly such a *“reasonableness”* test may give rise to disputes in practice.

Finally, Indonesia and Portugal have indicated that specific problems have arisen in the part. In Indonesia, problems are encountered when wreck removal expenses exceed the value of the wreck, and in Portugal there are difficulties associated with the outdated legislation.

**(D) (8) Shipowners' right to limit**

As indicated in the overview, a shipowner may only limit his liability under the legislation of Sweden, Norway, Finland, Holland, Germany, Denmark, Italy, Poland and Indonesia. The limitation rights in the first six of these countries are based on the 1976 Limitation Convention. The right to limit in Italy is based on Italian case law, and in Poland and Indonesia there is a right to limit to the salvaged value of the wreck.

Similarly, as set out in Section D5, ultimate financial responsibility can be capped by abandoning the wreck to the State in Argentina, Indonesia, Japan and Portugal.

**(D) (9) Financial security for wreck removal expenses**

On the information available it appears that the legislation of only Canada, Holland, Indonesia, Ireland, Portugal and Sweden have any specific provisions for security for wreck removal expenses to be posted by the shipowner as a precondition of entry into a port. The specific details of those provisions, however, are unclear. In Belgium the *“Owner, Master or Skipper”* is required to deposit security for wreck removal expenses before the State commences any wreck removal operations.

**(D) (10) Time limits**

The 1996 Questionnaire included the following two questions:

- “1.13 Is there in the law of wreck removal in your country or elsewhere in the legislation a time limit for the liability of the shipowner?”*
- 1.14 If so, please state which time period and the event from which it runs (e.g. the casualty or the decision that the wreck constitutes a hazard)”.*

Given the time limit provisions in the draft Wreck Removal Convention, it is understood that these enquiries are intended to address the question of when the shipowner may raise time bar as a defence to a claim brought by the State for reimbursement of wreck removal expenses. Of those countries who understood the questions in this way and answered them accordingly, only Canada, Sweden and Finland have provisions relating specifically to wreck removal. In Canada the time limit in relation to wrecks which represents a hazard to navigation is six years from the date of the casualty. In relation to other types of wrecks, the different State laws in Canada apply different time limits (between 2-3 years). In Sweden and Finland, the time limit is two years from the date of the casualty.

The remaining countries appear to fall into two broad categories:

- (i) Those countries where there is apparently no applicable time limit at all. These are Argentina, the USA, Germany, Japan and Norway.
- (ii) Those countries where the general time limit for civil or maritime claims normally applicable in that country applies. These are Italy, Denmark, Holland and Ireland.

# THE CONVENTION ON MARITIME LIENS AND MORTGAGES, 1993

## AN ANALYSIS OF ITS PROVISIONS IN THE LIGHT OF THE PREVIOUS CONVENTIONS AND OF THE TRAVAUX PRÉPARATOIRES

by Francesco Berlingieri

### I

#### THE HISTORY OF THE UNIFICATION OF THE LAW ON MARITIME LIENS AND MORTGAGES

1. The unification of the law on mortgages and hypothèques and on maritime liens was placed on the agenda of the CMI 1902 Hamburg Conference under the heading "Les conflits de loi en matière de propriété de navires, d'hypothèque et droits réels"<sup>(1)</sup> but was not discussed. A general discussion took place instead at the CMI 1904 Amsterdam Conference<sup>(2)</sup>, during which it was considered whether uniformity could be achieved on the law of property and registered charges and on that of preferential rights. The prevailing view was that the property and registered charges should be governed by national law whilst preferential rights (i.e. maritime liens) should be the subject of uniform rules. A debate took place as to the maritime liens which should be recognized, whereupon a committee was appointed to investigate these matters.

A first draft of a convention on maritime liens and mortgages was prepared by the committee<sup>(3)</sup>.

<sup>(1)</sup> CMI Bulletin No. 10, p. III

<sup>(2)</sup> CMI Bulletin No. 11, p. 185.

<sup>(3)</sup> CMI Bulletin No. 12, p. 4. It is worthwhile to reproduce the draft since it already contains the basic principles accepted by the conventions which were adopted in the course of this century:

*Avant-projet de traité sur les Hypothèques et Privilèges Maritimes.*

*Art. 1.*

*Les hypothèques, mortgages, gages sur navires régulièrement établis et rendus publics dans chacun des pays contractants, seront respectés dans tous les autres et y produiront le même effet que dans leur pays d'origine, sauf ce qui sera dit ci-après pour les privilèges.*

*Art. 2.*

*Les hypothèques maritimes et autres droits similaires sont primés par les privilèges.*

*Art. 3.*

*Sont privilégiés sur les navires:*

*1° Les créances du chef de frais de justice, taxes et impôts publics, des frais de garde et de conservation.*

*2° Les indemnités dues pour sauvetage, pilotage, remorquage et avarie commune pendant le dernier voyage.*

*3° Les gages du capitaine et de l'équipage, depuis le dernier engagement, mais avec, au plus, une durée de 12 mois.*

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That draft could not be examined during the 1904 Amsterdam Conference and was thus discussed during the subsequent CMI Conference, held in Venice in 1907, during which the number of maritime liens was reduced to the first four and contribution in general average was added to salvage<sup>(4)</sup>.

The draft approved by the CMI at Venice was submitted to the Diplomatic Conference held in Brussels from 28 September to 8 October 1909, when the lien in respect of claims for supplies to the ship was reinstated<sup>(5)</sup>. Minor changes were made during the subsequent Diplomatic Conference of 1910.

The draft approved by the 1910 Diplomatic Conference was again considered by the CMI during its 1921 Antwerp Conference<sup>(6)</sup> and then by the Brussels Diplomatic Conference in October 1922<sup>(7)</sup> and October 1923<sup>(8)</sup> when it was adopted with certain changes, the most relevant of which was the ranking of the lien for supplies before mortgages and hypothèques if the supplies are made prior to their registration and are registered within thirty days.

However certain objections were made to the lien for supplies and its registration. The Belgian Government convened a new Diplomatic Conference in April 1926 when a compromise was reached by reducing to six months the extinction period of maritime liens for supplies and abolishing the requirement of their registration<sup>(9)</sup>.

4° *Les créances du chef de dommages causés par abordage.*

5° *Les déboirs du capitaine, les avances lui faites pour les besoins du navire pendant le dernier voyage, le prêt à la grasse, les dommages-intérêts pour avaries et manquants, les créances pour réparations, fournitures, viçailles, équipement, main-d'œuvre, pour autant seulement que ces créances soient nées et exercées au port où le navire se trouve, au dans les ports du même pays où il fait escale pendant le même voyage.*

*Art. 4.*

*Le privilège accordé par l'article précédent ne subsiste que si la créance dont s'agit est justifiée dans les formes requises, soit par la loi du pays où elle est née, soit par la loi nationale du navire, et satisfait aux conditions imposées par l'une ou l'autre de ces lois pour le maintien du privilège.*

*Art. 5.*

*Dans le cas où le privilège n'est pas restreint aux créances nées pendant le dernier voyage, l'ordre des privilèges est en sens inverse de la date des voyages.*

*Pour un même voyage, le rang se règle conformément à l'énumération donnée par l'article 3. Les créances figurant à un même numéro dans cet article viennent au marc le franc.*

*Art. 6.*

*Le caractère privilégié de toute créance se prescrit par un an.*

*Les lois nationales règlent l'effet du transfert de la propriété du navire en ce qui concerne les privilèges et hypothèques.*

<sup>(4)</sup> CMI Bulletin No. 19, p. 12.

<sup>(5)</sup> Conférence Internationale de Droit Maritime, Troisième Session, Bruxelles 1909, p. 104.

<sup>(6)</sup> CMI Bulletin No. 47, p. 281.

<sup>(7)</sup> Conférence Internationale de Droit Maritime, Bruxelles 1922 - Document et Procès-Verbaux des Séances tenues du 17 au 26 Octobre 1922, p. 92, 172 and 235.

<sup>(8)</sup> In 1923 only the Sub-Committee appointed the previous year by the Conference held a number of sessions from 6 to 9 October. See Conférence Internationale de Droit Maritime - Réunion de la Sous-Commission, Bruxelles 1923, p. 95. The draft convention is published at p. 138.

<sup>(9)</sup> Conférence Internationale de Droit Maritime, Bruxelles 1926. The Report of the Chairman, Louis Franck, is published at p. 60.

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The 1926 Convention was not very successful. It was in fact ratified almost exclusively by civil law countries.

When it became apparent that the common law world would not accept the system adopted by the Convention, the Bureau Permanent of the CMI decided to consider the revision of the Convention and set up an International Sub-Committee under the chairmanship of Jan Asser. The International Sub-Committee prepared three subsequent drafts, called respectively, from the place where the meetings were held, the Oxford Draft<sup>(10)</sup>, the Portofino Draft<sup>(11)</sup> and the Antwerp Draft<sup>(12)</sup>.

The revision of the 1926 Convention was then placed on the Agenda of the 1965 New York Conference at which the Antwerp Draft, with certain amendments, was approved<sup>(13)</sup>.

A Diplomatic Conference was then convened by the Belgian Government in May, 1967 and one of the subjects on the agenda was the new draft convention on maritime liens and mortgages.

Several changes to the draft were made by the Diplomatic Conference, but the structure of the draft was not changed. The most important changes as respects the 1926 Convention were the following:

- (a) regulation of the conditions under which the change of flag of a mortgaged vessel is permissible;
- (b) reduction of the number of maritime liens;
- (c) abolition of the system of ranking of maritime liens per voyage;
- (d) abolition of the lien on freight and accessories of the vessel;
- (e) establishment of an extinction period not subject to suspension or interruption;
- (f) regulation of the forced sale.

Although the 1967 Convention met many of the requests that had been made by common law countries, nevertheless it was decidedly a failure. In fact only the Scandinavian States ratified it and enacted its provisions into their domestic laws, whilst no other State party to the 1926 Convention ratified it nor did so any common law country.

For this reason, when IMO and UNCTAD decided to place on their work programme the revision of the 1926 and of the 1967 Conventions, as well as of

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<sup>(10)</sup> All documents on the work of the International Sub-Committee are collected in the volume Comité Maritime International - Maritime Liens and Mortgages, Documents 1/15, New York. The first draft, subsequently called Oxford Draft, is published in Document 8 and was originally identified as Document HYPO-14.

<sup>(11)</sup> The Portofino Draft is published in Document 11 and was originally identified as Document HYPO-28.

<sup>(12)</sup> The Antwerp Draft is published in Document 15 and was originally identified as Document HYPO-50.

<sup>(13)</sup> CMI - Conférence de New York, 1965, p. 465. The draft convention approved by the Conference is published at p. 648.

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the 1952 Convention on Arrest of Ships, in 1983 the Assembly of the CMI resolved to place both subjects - maritime liens and mortgages and arrest of ships - on the agenda of its next Conference, scheduled to be held in Lisbon in the Autumn of 1985<sup>(14)</sup>.

The study on the revision of the two Conventions on Maritime Liens and Mortgages started with an investigation of the reasons why the 1926 Convention had not been ratified by common law countries, and the 1967 Convention had not even come into force, and a questionnaire was prepared by the Chairman of the International Sub-Committee<sup>(15)</sup>. From the replies it appeared that the 1926 Convention was considered unsatisfactory by the National Associations of the countries which had not ratified it, and obsolete by many Associations of the countries which had ratified it. It also appeared that the 1967 Convention was considered satisfactory, save minor changes, by a great majority of the National Associations<sup>(16)</sup>.

At its first meeting the International Sub-Committee agreed on the following basic principles<sup>(17)</sup>:

- a) long term financing is essential for the development of merchant marine;
- b) the security more readily available and less expensive is the vessel itself;
- c) the need for uniform rules is increasing, for ship financing is becoming more and more international;
- d) the essential features of a satisfactory security are:
  - i) the possibility of enforcement wherever the vessel may be found, and to this effect the security must be recognized in as many countries as possible through an international convention;
  - ii) the possibility of sale of the vessel at the market price, and to this effect it is necessary to offer the prospective buyer a valid title wherever the ship may go after the forced sale;
  - iii) the possibility of recovering the outstanding portion of the loan from the proceeds of the forced sale, and to this effect the claim of the lender must be granted the highest possible priority.

Although the changes as respects the 1967 Convention were not very many, the Sub-Committee deemed it convenient to prepare a new draft which was then submitted to the Lisbon Conference and approved by it with certain changes.

At the closing of the Lisbon Conference the observers for IMO and UNCTAD made a joint statement<sup>(18)</sup> in which they indicated that IMO and

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<sup>(14)</sup> CMI News Letter, September 1983, p. 4.

<sup>(15)</sup> Document MLM 1926-1967/1.

<sup>(16)</sup> Document MLM-1926-1967/27, Annex I and II.

<sup>(17)</sup> Lisbon I, p. 46.

<sup>(18)</sup> Lisbon II, p. 110.

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UNCTAD had decided to deal jointly with the subjects of maritime liens and mortgages and arrest of ships and so declared:

However the CMI can expect and hope that the texts prepared by the Conference, together with the background discussions and documents relating thereto, will be of relevance and use to the Secretariats and member Governments when these matters are considered in IMO and UNCTAD. In these discussions the expertise and experience of the CMI and the national maritime law associations will be extremely helpful. IMO and UNCTAD will therefore welcome, and be greatly assisted by, any contribution which the CMI may find it possible and appropriate to give to the Secretariats of IMO and UNCTAD and to the relevant inter-governmental bodies at the various stages of their work. In particular it would greatly assist IMO and UNCTAD if the CMI were able to make suggestions, or to authorize the President and other officials of the CMI to make suggestions whenever appropriate, both as regards the studies to be undertaken by the Secretariats of IMO and UNCTAD and also in relation to the procedure to be followed in considering these reports.

A joint working group, called Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Matters (hereafter JIGE) was established by the governing bodies of IMO and UNCTAD with the following mandate<sup>(19)</sup>:

Examine the subject of maritime liens and mortgages, including the possible consideration of:

- (a) the review of the maritime liens and mortgages conventions and related enforcement procedures, such as arrest;
- (b) the preparation of model laws or guidelines on maritime liens, mortgages and related enforcement procedures, such as arrest;
- (c) the feasibility of an international registry of maritime liens and mortgages.

The Diplomatic Conference was held in Geneva, from 19 April to 6 May 1993 and established the text of a new Convention, called "International Convention on Maritime Liens and Mortgages, 1993".

The CMI, following the invitation of the two Intergovernmental Organizations, participated to all the sessions of the JIGE<sup>(20)</sup> as well as to the Diplomatic Conference.

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<sup>(19)</sup> Final Report of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, 17 November 1989, Document JIGE (VI)/8, p. 1.

<sup>(20)</sup> The following documents have been issued by the IMO and UNCTAD Secretariats in connection with the six sessions of the JIGE:

1. A new approach to the international regime for maritime securities - Report by the UNCTAD Secretariat - Document TD/B/C.4/AC.8/2 of 15 October 1986 and IMO Document LEG/MLM/2.
2. Note by the Secretary General of IMO - IMO Document LEG/MLM/3 and UNCTAD Document TD/B/C.4/AC.8/3 of 13 November 1986.
3. Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and

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*In order to have a complete comprehension of the provisions of the 1993 Convention it is necessary to consider its precedents, commencing from the 1926 Maritime Liens and Mortgages Convention, through the travaux préparatoires of the 1967 Maritime Liens and Mortgages Convention, the travaux préparatoires of the Lisbon Draft and, finally, the work of the JIGE.*

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- Mortgages and Related Subjects on its first session - UNCTAD Document TD/B/C.4/AC.8/4 of 23 December 1986 and IMO Document LEG/MLM/4 of 26 February 1987.
4. Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and related subjects on its second session - UNCTAD Document TD/B/C.4/AC.8/7 of 15 July 1987 and IMO Document LEG/MLM/7.
  5. Note by the Secretariats of IMO and UNCTAD for the third session of the JIGE containing Draft Articles on Maritime Liens and Mortgages (hereafter "the first set of Draft Articles") - UNCTAD Document TD/B/C.4/AC.8/9 of 1 September 1987 and IMO Document LEG/MLM/9 of 16 October 1987.
  6. Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and related subjects on its third session - UNCTAD Document TD/B/C.4/AC.8/10 of 27 January 1988 and IMO Document LEG/MLM/10 of 14 March 1988.
  7. Note by the Secretariats of IMO and UNCTAD for the fourth session of the JIGE, containing Revised Draft Articles on Maritime Liens and Mortgages (hereafter "the second set of Draft Articles") - UNCTAD Document TD/B/C.4/AC.8/12 of 25 March 1988 and IMO Document LEG/MLM/12.
  8. Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects on its fourth session - UNCTAD Document TD/B/C.4/AC.8/15 of 4 August 1988 and IMO Document LEG/MLM/15 of 31 May 1988.
  9. Note by the IMO and UNCTAD Secretariats for the fifth session of the JIGE containing Revised Draft Articles on Maritime Liens and Mortgages (hereafter "the third set of Draft Articles") - UNCTAD Document TD/B/C.4/AC.8/17 of 5 September 1988 and IMO Document LEG/MLM/17.
  10. Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects on its fifth session - UNCTAD Document TD/B/C.4/AC.8/19 of 31 January 1989 and IMO Document LEG/MLM/19 of 5 April 1989.
  11. Note by the Secretariats of IMO and UNCTAD for the sixth session of the JIGE, containing Revised Draft Articles on Maritime Liens and Mortgages (hereafter "the fourth set of Draft Articles") - UNCTAD Document TD/B/C.4/AC.8/21 of 6 March 1989 and IMO Document LEG/MLM/21 of 1 March 1989.
  12. Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects on its sixth session - UNCTAD Document TD/B/C.4/AC.8/26 of 20 December 1989 and IMO Document LEG/MLM/26 of 6 November 1989.
  13. Final Report of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects - UNCTAD Document TD/B/C.4/AC.8/27 of 20 December 1989 and IMO Document LEG/MLM/27.
  14. Draft articles for a Convention on Maritime Liens and Mortgages - Document A/CONF.162/4 of 26 January 1993.

## Article 1

### *Recognition and enforcement of mortgages “hypothèques” and charges*

Mortgages, “hypothèques” and registrable charges of the same nature, which registrable charges of the same nature will be referred to hereinafter as “charges”, effected on seagoing vessels shall be recognized and enforceable in States Parties provided that:

- (a) such mortgages, “hypothèques” and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;
- (b) the register and any instruments required to be deposited with the registrar in accordance with the law of the State in which the vessel is registered are open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registrar; and
- (c) either the register of any instruments referred to in subparagraph (b) specifies at least the name and address of the person in whose favour the mortgage, “hypothèque” or charge has been effected or that it has been issued to bearer, the maximum amount secured, if that is a requirement of the law of the State of registration or if that amount is specified in the instrument creating the mortgage, “hypothèque” or charge, and the date and other particulars which, according to the law of the State of registration, determine the ranking in relation to other registered mortgages, “hypothèques” and charges.

#### The 1926 Convention

Article 1 of the 1926 Convention provided that mortgages, “hypothèques” and charges (gages) on vessels duly effected in accordance with the law of the contracting State to which the vessel belongs and registered in a public register at the port of the vessel’s registry shall be regarded as valid in all other contracting States.

#### The Travaux Préparatoires of the 1967 Convention

Article 1 of the Oxford Draft provided that mortgages and “hypothèques” shall be recognized as valid in all contracting States under three conditions: (i) that the mortgage or “hypothèque” has been regularly constituted and registered in compliance with the laws of the State where the vessel is registered; (ii) that the register in which the mortgage or “hypothèque” is registered is an official register open to public inspection; and, (iii) that the register indicates the identity of the holder of the mortgage or “hypothèque”, the amount secured and the date which, according to the law of the State of registration, determines the rank of the mortgage or “hypothèque” as respects

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other registered mortgages and “hypothèques”. Only the word “mortgage” was used in the English text and the word “hypothèque” was used in French text.

In the Portofino Draft the second and third conditions for the enforcement of mortgages and “hypothèques” were slightly modified. It was in fact required that in addition to the register, also the documents reference to which is made in the register be open to public inspection. As regards the minimum information required to be contained in the register, the identity of the holder of the mortgage or “hypothèque” was replaced by the name and address of such holder. In such draft both words were used in each text.

The only change made to these provisions in the Antwerp Draft consisted of the reference in subparagraph (c) to the case of mortgages and “hypothèques” being issued to bearer.

At the New York Conference a proposal was made by the French Delegation to expressly provide that only contractual mortgages and “hypothèques” are covered by the Convention. After the proposal was adopted, the Scandinavian Delegations submitted a joint proposal aiming at including in the scope of the Convention also judicial mortgages and “hypothèques” and such proposal, supported also by the French Delegation, was adopted<sup>(21)</sup>. However, when the text of the draft Convention was prepared by the Drafting Committee, no express reference to judicial mortgages and “hypothèques” was included. The Chairman of the Committee explained that great difficulties had been found in order to elaborate a suitable wording and that, therefore, no reference to such type of mortgages and “hypothèques” was included<sup>(22)</sup>. The opening sentence, therefore, remained that of the Antwerp Draft. Perhaps surprisingly, no objection was raised by the Conference and Article 1 was approved with only one abstention.

Subparagraph (b) of Article 1 provided that the register and any instrument referred to therein be open to public inspection and that extracts can be obtained. It was thought preferable to refer not as much to the instruments referred to in the register, but rather to the instruments that are required to be deposited under the law of the State of registration.

A consequential amendment was made to subparagraph (c). Whilst in fact in the Antwerp Draft it was provided that the information set out therein must be specified in the register, now, after that reference had been made in subparagraph (b) to “any instrument required to be deposited”, in subparagraph (c) an alternative was left between the information being set out in the register or in the above instruments.

The text approved at New York was adopted by the Diplomatic Conference.

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<sup>(21)</sup> CMI - Conférence de New York, p. 516.

<sup>(22)</sup> CMI - Conférence de New York, p. 623.

### The travaux préparatoires of the Lisbon Draft

The work of the CMI International Sub-Committee was summarized as follows in the report of the Chairman to the Lisbon Conference<sup>(23)</sup>:

11.\*\*\* For the avoidance of doubts a more general wording could be added after “mortgages and hypothèques”, viz. “registrable charges”. However, the insertion of these words only might lead to confusion, for in case maritime liens might be registrable, they would be included in the description of Article 1 as amended. In order to avoid this, reference should be made to the voluntary character of this type of security, as opposed to the statutory nature of liens. The purpose of the security may also be a qualifying element.

Thus the original text was amended by inserting the words “similar registrable charges”, which connote one of the characters of mortgages and “hypothèques”, followed by the indication that these charges are “effected”, i.e. are created voluntarily, “to secure payment of monies”, i.e. their nature is that of a security interest.

The debate and the decisions adopted at the Conference were summarized as follows in the Report of the CMI<sup>(24)</sup>:

There was general agreement on the advisability of inserting, after the words “mortgages and hypothèques”, other more general words which might enable States Parties to apply the provisions of the Convention also to charges described with other names, provided they correspond in their characteristics and scope to mortgages and hypothèques. It was also agreed that the possibility of registration was one of such characteristics, whilst a second one was the contractual nature of the charge, as opposed to the statutory nature of maritime liens, and that the purpose of the charge should be that of securing payment of monies.

However the word “similar” (registrable charges) suggested by the International Sub-Committee was considered too vague, for it may give rise to uncertainty of interpretation and to a different application in the various States Parties.

It was thus suggested to replace “similar” with “same” and such suggestion was adopted unanimously.

In order then to avoid a repetition throughout the convention of the characters of these charges, it was deemed proper to define them as “charges”.

The words “and registrable charges of the same nature, which registerable charges of the same nature will be referred to hereafter as “charges”, effected (on seagoing vessels) by their owners to secure payment of monies” were therefore added.

The Sub-Committee had suggested to delete the reference to the amount

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<sup>(23)</sup> Lisbon I, p. 60.

<sup>(24)</sup> Lisbon II, p. 90.

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secured by the mortgage or “hypothèque” as one of the basic information required as a condition for recognition and enforcement of mortgages and “hypothèques” in other States Parties for the reason that the amount secured is not indicated in open account mortgages and that the maximum amount which may be secured does not provide any information in respect of the amount of the indebtedness actually secured at the time of enforcement of the mortgage or “hypothèque”.

During the debate at the Conference it was clarified that the deletion of the words “the amount secured” did not in any way affect the domestic systems wherein the indication of that amount is required, but only compelled the States Parties to recognize and enforce foreign mortgages and “hypothèques” though the amount secured was not shown in the documents.

This point was accepted, but it was suggested that, in order to make even more clear that States Parties were free to provide other requirements in their domestic legislation, the words “at least” should be inserted before the list of basic information set out in the text of the Convention. On the contrary, the suggestion of one Delegation that the maximum amount which is secured by the mortgage or “hypothèque” be mentioned, was not supported by the other Delegations.

### The travaux préparatoires of the 1993 Convention

In the first set of Draft Articles prepared after the second session of the JIGE by the Chairman of the JIGE with the assistance of the IMO and UNCTAD Secretariats<sup>(25)</sup> the text adopted at Lisbon was left unaltered except that in paragraph (c) the reference to the amount secured as information required to be specified was reinserted in brackets.

At the third session of the JIGE the suggestion was made by several delegations to attempt to draft an article on definitions, but other delegations pointed out the difficulties involved in drafting such an article. A small informal working group was, however, established, at the suggestion of the Chairman, with a view to preparing suitable definitions<sup>(26)</sup>. The working group could not complete its task during that session nor did it do so during the following sessions and, therefore, the idea of inserting in the draft articles a set of definitions was abandoned.

The following changes to the text of article 1 were suggested and partly approved.

In the opening sentence the words “by their owners” were deleted so as to cover also judicial “hypothèques” and charges<sup>(27)</sup>. The words “effected on sea-going vessels” that preceded were placed in square brackets since they had been considered unnecessary by some delegations. For the same reason, also

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<sup>(25)</sup> Document No. 5 in note 20, *supra*.

<sup>(26)</sup> Document No. 6 in note 20, *supra*, p. 8, para. 3.

<sup>(27)</sup> Document No. 6 in note 20, *supra*, p. 8, para. 4.

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the words “to secure payment of monies” were placed in square brackets. In connection with this latter change, it must be emphasized that such words had been inserted by the CMI at a time when reference to other charges was made with the words “or similar charges” and, therefore, it had been felt necessary to identify the character of such charges by indicating their purpose. When the words “similar charges” were replaced by “registrable charges of the same nature” the indication of the purpose of the charges became unnecessary.

A proposal was made to restrict access to the register, which is the second condition for the recognition and enforcement of mortgages, “hypothèques” and charges, to persons with a legitimate interest in obtaining information therefrom. Such proposal was, however, opposed by a large number of delegations<sup>(28)</sup>.

The reference, amongst the particulars that must be specified in the register or in any instruments required to be deposited, to the maximum amount secured, which had been placed in square brackets in the previous edition of the draft articles, was completed by the words “if that is a requirement of the national law of the State of registration, or, otherwise, if that amount is specified in the instrument creating the charge”, and the square brackets were deleted<sup>(29)</sup>.

A proposal was made by the United Kingdom delegation to specify that the provisions of this article were without prejudice of any national requirement to register a charge also in a separate companies or other register, and this was mentioned in the draft articles under a new paragraph (d) which was placed in square brackets. The proposal was, however, subsequently withdrawn.

When the second set of Draft Articles, prepared after the third session<sup>(30)</sup>, was submitted to the fourth session of the JIGE further changes were considered and partly agreed<sup>(31)</sup>. In the chapeau the square brackets were still kept because no consensus could be arrived at on the need to mention that the mortgages, “hypothèques” and charges mentioned in this article are those effected on seagoing vessels, nor to state that their purpose was to secure payment of monies.

Subparagraph (a) was left unaltered and so was subparagraph (c).

At the fifth session of the JIGE, when the third set of Draft Articles<sup>(32)</sup> was considered, it was agreed to retain in the chapeau the words “effected on seagoing vessels” and, therefore, to delete the square brackets surrounding them, on the ground that they would make the scope of application of the convention clearer<sup>(33)</sup>. It was instead agreed to delete the words “to secure

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<sup>(28)</sup> Document No. 6 in note 20. supra. p. 9. para. 6.

<sup>(29)</sup> Document No. 6 in note 20. supra. p. 9. para. 8.

<sup>(30)</sup> Document No. 7 in note 20. supra.

<sup>(31)</sup> Document No. 8 in note 20. supra. p. 1-3. paras. 3-11.

<sup>(32)</sup> Document No. 9 in note 20. supra.

<sup>(33)</sup> Document No. 10 in note 20. supra. p. 8. paras. 3-5.

payment of monies” which were considered to be superfluous<sup>(34)</sup>. In order to bring the text of the opening paragraph in line with the corresponding provision of the 1948 Geneva Convention on the International Recognition of Rights in Aircraft, it was agreed to change the last part of such sentence reading “shall be enforceable” to “shall be recognized and enforceable in States Parties provided that:”<sup>(35)</sup>. In subparagraph (b) the words “subject to subparagraph (d)” that had been inserted in square brackets at the beginning of the sentence were deleted, owing to the deletion of subparagraph (d). The United Kingdom delegation had in fact reserved to reformulate that provision<sup>(36)</sup>.

No changes were made to the following three subparagraphs (a), (b) and (c).

Article 1 as amended and as appearing in the fourth set of Draft Articles, was left unaltered during the sixth session of the JIGE and was therefore submitted to the Diplomatic Conference<sup>(37)</sup>. Save for two very minor drafting changes, the text of this article was adopted by the Diplomatic Conference.

## Article 2

### *Ranking and effects of mortgages, “hypothèques” and charges*

**The ranking of registered mortgages, “hypothèques” or charges as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.**

### The 1926 Convention

No provision exists in the 1926 Convention on the ranking of mortgages and “hypothèques” inter se and on the law applicable to their enforcement.

### The Travaux Préparatoires of the 1967 Convention

In the Oxford Draft the ranking of mortgages or “hypothèques” inter se was regulated in the last paragraph (para. 4) of Article 3 after the provisions on the priority of maritime liens inter se and as respects mortgages and “hypothèques”. Article 3 (4) provided that the claims set out in sub-paragraph (vii) (i.e. mortgages and “hypothèques”) shall rank in accordance with the law

<sup>(34)</sup> Document No. 10 in note 20, supra, p. 8, paras. 6-7.

<sup>(35)</sup> Document No. 10 in note 20, supra, p. 9, para. 8.

<sup>(36)</sup> Document No. 10 in note 20, supra, p. 10, paras. 18-20.

<sup>(37)</sup> Document No. 14 in note 20, supra.

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of the State where the mortgages (or “hypothèques”) are registered.

In the Portofino Draft the ranking of mortgages or “hypothèques” inter se was placed in a separate article (Article 3) which provided that such ranking is governed by the law of the State of registration and such provision was reproduced without any change in the Antwerp Draft.

At the New York Conference two amendments were made to the text of the Antwerp Draft. First, it was deemed proper to state that also the effects of mortgages and “hypothèques” in regard to the third parties, except as otherwise provided in the Convention, are governed by the law of the State of registration. Secondly, following a proposal of the French delegation<sup>(38)</sup>, a new sentence was added in order to make clear that all matters relating to the procedure of enforcement are regulated by the law of the State where the enforcement takes place.

The text approved at New York was adopted by the Diplomatic Conference.

#### The travaux préparatoires of the Lisbon Draft

In the Report of the Chairman of the CMI International Sub-Committee to the Lisbon Conference the following statement is made<sup>(39)</sup>:

The question was raised whether the words “their effect in regard to third parties” might be construed so to refer also to other claimants, and in particular to holders of maritime liens. It was, however, agreed that by these words it is only meant to refer to the validity of mortgages and “hypothèques” as respects third parties, irrespective of all questions of priority.

No change was suggested to the text of the 1967 Convention at the Lisbon Conference.

#### The travaux préparatoires of the 1993 Convention

Equally, no change was suggested during the sessions of the JIGE and the text of the 1967 Convention was adopted by the 1993 Diplomatic Conference.

### Article 3

#### *Change of ownership or registration*

**1. With the exception of the cases provided for in articles 11 and 12, in all other cases that entail the deregistration of the vessel from the register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all registered**

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<sup>(38)</sup> CMI - Conférence de New York, p. 525.

<sup>(39)</sup> Lisbon I, p. 62.

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mortgages, “hypothèques” or charges are previously deleted or the written consent of all holders of such mortgages, “hypothèques” or charges is obtained. However, where the deregistration of the vessel is obligatory in accordance with the law of a State Party, otherwise than as a result of a voluntary sale, the holders of registered mortgages, “hypothèques” or charges shall be notified of the pending deregistration in order to enable such holders to take appropriate action to protect their interests; unless the holders consent, the deregistration shall not be implemented earlier than after a lapse of a reasonable period of time which shall be not less than three months after the relevant notification to such holders.

2. Without prejudice to article 12, paragraph 5, a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:

- (a) a certificate has been issued by the former State to the effect that the vessel has been deregistered; or
- (b) a certificate has been issued by the former State to the effect that the vessel will be deregistered with immediate effect, at such time as the new registration is effected. The date of deregistration shall be the date of the new registration of the vessel.

### The 1926 Convention

The change of ownership or registration is not regulated in the 1926 Convention.

### The Travaux Préparatoires of the 1967 Convention

The fundamental principles laid down in this article existed already in the Oxford Draft. Article 6 of such Draft provided in paragraph 1 that no contracting State shall permit deregistration of a mortgaged vessel unless with the prior consent of the holder of the mortgage or “hypothèque”. It then provided in paragraph 2 that no contracting State shall permit registration of a vessel previously registered in another State unless after presentation of a certificate issued by the former State to the effect that the vessel has been deregistered.

In the Portofino Draft an attempt was made to regulate also the change of registration without the prior deletion of registered charges by ensuring the re-registration of such charges in the new register. Article 2 provided in its paragraph 1 that, except in case of forced sale, deregistration of a vessel is not permitted unless with the consent of all holders of mortgages or “hypothèques”. It then regulated in paragraph 2 the procedure of deregistration by providing that when a vessel registered in a contracting State

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is mortgaged or hypothecated, it shall not be registrable in another contracting State unless against presentation of a certificate issued by the former State to the effect that the vessel will be deregistered on the day it will be registered in such other contracting State, provided such registration will occur within thirty days and that from the date of issuance of such certificate the register of the former State will be frozen; and by further providing that the certificate shall mention all mortgages or "hypothèques" registered on the vessel. The procedure was completed by paragraph 3 which stated that the vessel shall not be registered in the new contracting State unless all mortgages or "hypothèques" mentioned in the certificate are accepted for registration and their ranking is preserved.

The text of this provision was left practically unaltered in the Antwerp Draft and then in the draft approved by the New York Conference.

During the Diplomatic Conference the Scandinavian Delegations and those of the Federal Republic of Germany and of The Netherlands proposed to delete the second part of paragraph 2 and paragraph 3, that had been added in the Portofino Draft in order to regulate the re-registration of mortgages and "hypothèques" in the new register, and such proposal was adopted<sup>(40)</sup>.

The Travaux Préparatoires of the Lisbon Draft

In the Report of the Chairman of the International Sub-Committee to the Lisbon Conference the following statements are made<sup>(41)</sup>:

13. The possibility of ensuring the registration of the existing mortgages or hypothecs in the new register in case of change of nationality of the ship was again considered. A provision to this effect existed in the draft Convention approved by the New York Conference of the CMI. \*\*\*

A substantial majority of the members of the International Sub-Committee was of the view that re-registration of existing mortgages or hypothecs would give rise to many problems, for the requirements for the validity of a mortgage or hypothec may vary from country to country.

The debate during the Lisbon Conference was summarized as follows in the Report of the CMI<sup>(42)</sup>:

## Paragraph 1.

In order to make clear that the rule whereby States Parties cannot permit deregistration of a vessel without the written consent of all holders of registered mortgages or hypothèques does not apply in case of forced sale, the words "subject to the provisions of Article 11" had been inserted in the 1967 Convention at the beginning of paragraph 1 of this article. It was however felt more appropriate to provide affirmatively that the rule in Article 3 applies in the event of a voluntary sale of the vessel.

<sup>(40)</sup> Conférence Diplomatique de Droit Maritime, Douzième Session (1<sup>e</sup> Phase), Bruxelles 1967, p. 135-136.

<sup>(41)</sup> Lisbon I, p. 62.

<sup>(42)</sup> Lisbon II, p. 92.

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## Paragraph 2.

The 1967 Convention provides under (b), as one of the alternatives in which a vessel is eligible for registration in a State Party, that of a certificate issued by the State of former registration to the effect that the vessel will be deregistered on the day when the new registration is effected. It was felt that it would be difficult for the registrar of the former State to undertake to deregister the vessel on the day when the new registration is effected. In fact he may only do so when a document stating that the vessel has been registered in the new register is produced to him, and this is unlikely to happen on the day the new registration is effected. The U.S. Delegation pointed out that there are today cases in which a new registration of the vessel is effected without such vessel being deregistered from the former register. The example of vessels bareboat chartered and provisionally registered in the register of the State of which the charterer is a national was cited. The U.S. Delegation therefore proposed to provide for such a situation by adding in paragraph 2 a third alternative, reading as follows:

- c) in case of bare-boat charter, the former State and all holders of registered mortgages, "hypothèques" or charges have consented to such new registration.

The proposal, which had some support, was rejected (6 Delegations voted in favour, 20 against and 4 abstained).

At the Plenary Session this Article, as amended, was unanimously approved.

The travaux préparatoires of the 1993 Convention

The first set of Draft Articles prepared by the Chairman of the JIGE and the IMO and UNCTAD Secretariats<sup>(43)</sup> reproduced Article 3 of the Lisbon Draft.

During the third session of the JIGE the word "voluntary" was added in square brackets in the title of this article following the suggestion of some delegations, so to reflect the type of change dealt with in the article<sup>(44)</sup>.

In the light of the observations made by several delegations, reference was made in paragraph 1 to the situation where the voluntary change of ownership or registration entailed the deregistration of the vessel from the national register of a State Party, so to exclude from the application of this provision cases where the change of registration occurred within the same State<sup>(45)</sup>.

In paragraph 2 the words "without prejudice to article 11.3" were inserted in square brackets following the observation that it should be made clear that

<sup>(43)</sup> Document No. 5 in note 20, supra.

<sup>(44)</sup> Document No. 6 in note 20, supra, p. 10, para. 13.

<sup>(45)</sup> Document No. 6 in note 20, supra, p. 10, paras 11-12.

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the provisions of this paragraph did not apply in case of forced sale. The need for the deregistration taking place simultaneously with the registration was considered and met with the approval of several delegations. Various alternatives were considered and embodied in the new draft. First, the words “automatically” and “with immediate effect” were inserted in square brackets in (b). Secondly a new sentence was also added to such sub-paragraph reading: “The date of registration shall be the date of deregistration the vessel by the former State”<sup>(46)</sup>.

Since some reservations had been made in respect of the need for any such addition, both the above alternatives were mentioned in sub-paragraph 2, and that under (b) was placed in square brackets.

At the fourth session no further change was made in paragraph 1, wherein the words “or voluntary change of registration” were kept in square brackets. Objections were instead raised as to whether paragraph 2 should be maintained, on the ground that the question of the terms and conditions of registration were not within the scope of the draft convention and had been the subject of express regulation in the 1986 U.N. Convention on the Conditions for Registration of Ships. Other delegations were instead in favour of maintaining paragraph 2 since there was a practical need for the provision and, in view of this, the whole of this paragraph was temporarily placed in square brackets<sup>(47)</sup>. As regards the choice between the word “automatically” and the words “with immediate effect” in subparagraph (b) the latter was considered preferable and, therefore, the former was deleted together with the square brackets placed around the latter.

The text prepared after the fourth session was the following<sup>(48)</sup>:

*[Voluntary] change of ownership or registration*

*1. In the event that a voluntary change of ownership [or voluntary change of registration] entails the deregistration of the vessel from the national register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all mortgages, “hypothèques” or charges are previously deregistered or the written consent of all holders of such mortgages, “hypothèques” or charges is obtained.*

*[2. [Without prejudice to article 11.3] a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:*

*(a) a certificate has been issued by the former State to the effect that the vessel has been deregistered; or*

*(b) a certificate has been issued by the former State to the effect that the vessel will be deregistered with immediate effect at such time as the new registration is effected. The date of registration shall be the date of deregistration of the vessel by the former State. ]*

<sup>(46)</sup> Document No. 6 in note 20, supra, p. 10-12, paras. 15-26.

<sup>(47)</sup> Document No. 8 in note 20, supra, p. 4-5, paras. 15-18.

<sup>(48)</sup> Third set of Draft Articles, Document No. 9 in note 20, supra.

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Although proposals were made at the fifth session to change the previous text, in order, *inter alia*, to cover situations where change of registration is not of a voluntary character, none obtained a sufficient support and, therefore, the text remained unaltered<sup>(49)</sup>.

During the sixth session the square brackets around the word “voluntary” in the title and around the words “or voluntary change of registration” in paragraph 1 were deleted. Similarly, the square brackets around the whole of paragraph 2 were also deleted, a clear majority in favour of the maintenance of such paragraph having developed.

At the Diplomatic Conference several objections were raised on the text of the first paragraph. First, it was pointed out that the reference to the voluntary change of ownership or registration did not cover all cases other than those of forced sale and, therefore, it was suggested and agreed to refer to all cases that entail the deregistration of a vessel from the register of a State Party except those provided for in Articles 11 and 12. Secondly, it was again pointed out that there may be cases where the deregistration occurs for public law reasons, such as the conditions for the registration of the ship in the national register having ceased to exist, and that in such cases it is impossible to make deregistration subject to the deletion of all registered charges or the consent of the holders of such charges. It was therefore agreed that in cases where deregistration is obligatory in accordance with the law of the State Party in whose register the vessel is registered, otherwise than as a result of a voluntary sale, notice of the intended deregistration must be given to all holders of registered charges in order to enable them to take appropriate action to protect their interest and that deregistration may not be implemented earlier than after the lapse of a reasonable period which shall not be less than three months from the time when the notice is given.

#### **Article 4**

##### ***Maritime liens***

**1. Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:**

##### The 1926 Convention

The chapeau of the corresponding article of the 1926 Convention (Article 2) indicates the subject matter of the maritime liens (the vessel, freight and accessories) but does not identify the person against whom the claims could arise. Article 13, however, states that the provisions of the Convention apply to vessels managed by an operator who is not the owner or by the “principal charterer”<sup>(50)</sup>.

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<sup>(49)</sup> Document No. 10 in note 20, *supra*, p. 10-13, paras. 22-35.

<sup>(50)</sup> In the original French text the words “affrèteur principal” are used.

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The Travaux Préparatoires of the 1967 Convention

In the Oxford Draft a similar approach was adopted although the persons against whom the claims may arise were more precisely identified. Article 5 (which became Article 7 in the subsequent drafts) provided in fact in its paragraph 1 that the maritime liens accrue irrespective of whether the claims secured are against the owner, demise charterer or other charterer of the vessel. In the Portofino Draft reference was made, in addition, to the manager and operator. Moreover, probably because with respect to some of the maritime liens the words “claims against the owner” had been used, a definition of “owner” was added after the list of the maritime liens pursuant to which the word “owner” was deemed to include the demise or other charterer, manager or operator of the vessel<sup>(51)</sup>. No further change was made to these provisions, which were adopted by the Diplomatic Conference.

The Travaux Préparatoires of the Lisbon Draft

The CMI International Sub-Committee thought that it was necessary to identify in the chapeau the person or persons against whom the claims are enforceable in order that such claims be secured by a maritime lien, and thus the words “against the owner” were added after the words “the following claims”, the definition of “owner” at the end of para. 1 being left unaltered.

During the Lisbon Conference it was pointed out that the persons against whom the claims can arise were named twice in the 1967 Convention: first in the definition of “owner” in Article 4(1) and, secondly, in Article 7(1). It was consequently suggested to eliminate both the definition in Article 4(1) and the provision contained in Article 7(1) and to identify in the chapeau of Article 4(1) the persons against whom the claims may arise in order that they be secured by a maritime lien. Such proposal was approved, but, following a suggestion of the U.K. Delegation, the words “or other” preceding the word “charterer” were deleted. The consensus on the deletion of these words did not seem however to be based on an identical assessment of the consequences of such deletion. Whilst in fact it was the unanimous view that claims against voyage charterers would thereby be excluded, some uncertainty existed in respect of claims against time charterers, for it was thought that, at least in some cases, the time charterer may be described as operator of the vessel<sup>(52)</sup>.

The Travaux Préparatoires of the 1993 Convention

The chapeau was left unaltered by the JIGE and the text of the Lisbon draft was adopted by the Diplomatic Conference.

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<sup>(51)</sup> In the Third Report of the Chairman of the International Sub-Committee (Document HYPO-26, in CMI-Conférence de New York, p. 246) it is stated (at p. 250) as follows:

Enfin, la dernière phrase de l'Article 4(1) contient plutôt une clarification rendue nécessaire au regard de la dispositions d'ordre général de l'article 7(1) qui reproduit et étend quelque peu la règle prévue à l'Article 5 du Projet d'Oxford.

<sup>(52)</sup> Lisbon II, p. 94.

- (a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;**

#### The 1926 Convention

The wording of this lien in the 1926 Convention, wherein it followed the lien in respect of law costs and expenses incurred in order to preserve the vessel or to procure its sale, was the following:

- 2. claims arising out of the contract of engagement of the master, crew and other persons hired on board;*

#### The Travaux Préparatoires of the 1967 Convention

No significant change was suggested during the travaux préparatoires of the 1967 Convention in which this lien was so worded:

- (i) wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel;*

#### The Travaux Préparatoires of the Lisbon Draft

In the Report of the Chairman of the CMI International Sub-Committee to the Lisbon Conference the following statements are made<sup>(53)</sup>:

15. There is no doubt that this lien adversely affects the security of mortgages and hypothecs, but there is equally no doubt that it contributes to the safe and efficient operation of the ship. In fact the master and crew of a vessel who do not receive their salary may not be so willing to look after the efficient operation of their vessel and that might affect her safety. There are, of course, other reasons, of a social nature, which justify this lien.

The same remarks apply to the part of the social insurance contributions due by the master and crew and deducted by the owner but not paid and which, consequently, is claimed by the social insurance institution directly from the master and the crew. It has been pointed out that these contributions are already impliedly covered by the text adopted in 1967 and that such text has been so construed in the Scandinavian countries, who have ratified and given effect to the Convention. However, if there will be a revision of the 1967 Convention, this point may be worthy of clarification.

On the contrary there is no similar justification for an extension of the lien to the part (which normally is the major one) due by the owner to the

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<sup>(53)</sup> Lisbon I, p. 66.

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social insurance institution, also because generally the insurance cover remains in force even if contributions are not paid by the owner.

In the revised text of paragraph 1 (i) the social insurance contributions due by the master have been inserted in pointed brackets for further consideration by the Conference. Similarly the lien for social insurance contributions due by the owner to the social insurance institutions has been added at the end of the list, also in pointed brackets, for further consideration by the Conference.

The amended text of paragraph 1 (i) of Article 1, could therefore be the following:

Wages and other sums *including social insurance contributions <monies>*, due to the master, officers and other members of the vessel's complement in respect of their employment on board the vessel.

In the Summary of the Debates at the Lisbon Conference the following statements are made<sup>(54)</sup>:

The question whether a maritime lien should be granted to secure claims for social insurance contributions, which had already been discussed within the International Sub-Committee without a clear majority emerging from the discussion, was the object of a further debate. The issue was whether a maritime lien should be granted to all claims for social insurance contributions, whether the claimants were members of the crew or the insurers, or only to claims of the master and crew. The proposal to restrict the maritime lien to claims of the master and crew made by the U.K. Delegation was adopted with a large majority (26 votes in favour, 4 against and 1 abstention).

The wording suggested by the U.K. Delegation:

*wages and other sums, including social insurance contributions, due to the master and crew in respect of their employment on the vessel*

was considered unsatisfactory by the Drafting Group. It was, in fact, felt that the part of social insurance contributions included in the salary is not necessarily due to the master and crew, for it may be added to the salary and thus is never "due to the master and crew", but is paid for their account. The Drafting Group suggested the following alternative wording:

*wages and other sums due to the master...in respect of their employment, including social insurance contributions payable on their behalf.*

However it was pointed out during the subsequent reading of the draft that the new text resulted in a change of substance, for it would lead to the interpretation that the social insurance contribution payable on behalf of the master and crew might include the claims of the insurers (usually

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<sup>(54)</sup> Lisbon II, p. 96.

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Governmental Institutions) against the shipowner to the extent of the shipowner's obligation to withhold and pay such contribution to the insurers on behalf of the master and crew. The text proposed by the U.K. Delegation was consequently reinstated.

At the Plenary Session the text suggested by the Drafting Group was included in an amendment which was carried with 20 votes in favour, 8 against and 6 abstentions.

It was then pointed out that the reference to the master and crew was not satisfactory, because on board a ship there may be employed persons who are not part of the crew, such as, in a passenger vessel, waiters, maids, etc. It was suggested to replace "crew" by "other members of the vessel's complement" and this suggestion was accepted unanimously.

#### The Travaux Préparatoires of the 1993 Convention

At the second session of the JIGE the reference to social insurance contributions was opposed by some Delegations and thus in the first set of Draft Articles prepared by the Chairman and the Secretariats it was placed in square brackets<sup>(55)</sup>. The question was again discussed during the fifth session, when it was agreed, by a clear majority, that a maritime lien should be granted in respect of claims for social insurance contributions payable on behalf of the crew. It was also decided to extend the lien to claims for the cost of repatriation of the crew. The square brackets placed in the first set of Draft Articles were therefore deleted<sup>(56)</sup>. No further change was made in the sixth session and the text as amended following the decisions made at the preceding session was approved by the Diplomatic Conference.

#### **(b) Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;**

#### The 1926 Convention

Pursuant to Article 4 (4) of the 1926 Convention only the claims for indemnities for personal injury to passengers and crew are secured by a maritime lien.

#### The Travaux Préparatoires of the 1967 Convention

The scope of this lien was extended in the Oxford Draft to claims in respect of death of or personal injury to any person on board the vessel and any other person whether on shore or on the water caused by the vessel or by the act, neglect or default of any person for whom the owner or the carrier is responsible.

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<sup>(55)</sup> Document No. 4 in note 20, *supra*.

<sup>(56)</sup> Document No. 10 in note 20, *supra*, p. 14-16, paras. 45-55.

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It was subsequently considered unnecessary to mention separately persons on board and outside the vessel and thus in the Antwerp Draft reference was made to claims against the owner in respect of loss of life or personal injury to any person, the link with the vessel being ensured by the words “in direct connection with the operation of the vessel”<sup>(57)</sup>.

During the CMI New York Conference it was felt appropriate, in order to ensure that also claims in respect of loss of life or personal injury occurring ashore be included, that the words “whether on land or on water” should be added. The text with such addition was approved by the 1967 Diplomatic Conference.

#### The Travaux Préparatoires of the Lisbon Draft

The wording of the 1967 Convention was left unaltered in the Lisbon Draft.

#### The Travaux Préparatoires of the 1993 Convention

Although during the second session of the JIGE doubts were raised in respect of this lien<sup>(58)</sup>, which was the third on the list after those in respect of wages and of port, canal and other waterways dues and pilotage dues, in the first set of Draft Articles it was moved upwards so that it followed immediately after the lien for wages.

Both the ranking and the text were left unaltered during the subsequent sessions and were approved by the Diplomatic Conference.

### **(c) Claims for reward for the salvage of the vessel;**

#### The 1926 Convention

In the draft approved by the 1907 CMI Venice Conference a maritime lien was granted only in respect of claims for salvage remuneration. The lien was subsequently extended also to claims in respect of general average contribution and its ranking was at the third place, after the claims for wages.

#### The Travaux Préparatoires of the 1967 Convention

In the Portofino draft this lien was downgraded to the fifth place and was placed after the lien for loss of life and personal injury and before that for claims in tort for loss of or damage to property. In the Antwerp Draft claims for wreck removal were added and the ranking of the lien was again downgraded, becoming the last one in the list. The wording was left unaltered

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<sup>(57)</sup> Fourth report of the Chairman of the International Sub-Committee, Document HYPO-47, CMI-Conférence de New York, p. 347.

<sup>(58)</sup> Document No. 4 in note 20, *supra*, p. 8, para. 33.

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by the 1967 Diplomatic Conference, whilst the priority was changed by an express provision in Article 5, according to which all claims for salvage, wreck removal and general average take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

### The Travaux Préparatoires of the Lisbon Draft

The following statement is made in the Report of the Chairman of the CMI International Sub-Committee to the Lisbon Conference<sup>(59)</sup>:

The lien for salvage and general average, besides such services being useful also for the holder of a mortgage or hypothec, contributes to the safety of the ships, for it encourages salvors to render salvage services to ships in danger and it also encourages general average sacrifice or expenditure. Although this is not the case in respect of the lien for the costs of wreck removal, there seem to be two good reasons for granting this lien, viz. that it inures also to the benefit of the holder of a mortgage or hypothec and that if it were not provided, a right of retention would anyhow be granted in many countries and such right would be exercisable to the detriment of the holders of mortgages or hypothecs as well as of the holders of maritime liens.

The text adopted by the 1967 Diplomatic Conference was approved by the CMI Lisbon Conference.

### The Travaux Préparatoires of the 1993 Convention

During the second session of the JIGE objections were raised by several delegations with respect to the liens for wreck removal and contribution in general average and it was decided to move the lien for salvage upwards, before that for physical loss or damage, and to place the lien for wreck removal and contribution in general average in square brackets. The provision of the 1967 Convention and of the Lisbon Draft on the ranking of these liens was left unaltered. At the fifth session it was decided not to grant a lien for contribution in general average and wreck removal<sup>(60)</sup> and the reference to both such claims was deleted. When at the Diplomatic Conference the request was again made for a maritime lien to be granted in respect of wreck removal, it was agreed, as a compromise, to provide in Article 12(3) that States Parties are allowed to provide in their laws that in the event of forced sale of a stranded or sunken vessel following to its removal by a public authority in the interest of safe navigation or the protection of marine environment the costs of such removal

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<sup>(59)</sup> Lisbon I, p. 68.

<sup>(60)</sup> Document No. 10 in note 20, supra, p. 16-17, paras. 58-59 and 61-62.

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are paid first out of the proceeds of sale, before all other claims secured by a maritime lien. Therefore a special treatment was recognized to these claims. In fact, whilst a national maritime lien would rank after all Convention liens, the costs of wreck removal may be granted, on a national basis, the same status of the judicial and the maintenance costs.

The question whether also claims for the special compensation provided by Article 14 of the 1989 Salvage Convention should be secured by a maritime lien was debated at great length during the Diplomatic Conference. It was agreed by almost all Delegations that the wording used in the Draft Articles (“claims for salvage”) was not clear and should be amended either in order to include or to exclude special compensation. The observer for the CMI pointed out that if the decision would have been that of excluding special compensation, reference should be made in Article 4(1)(c) to claims for the salvage of the vessel or to claims for salvage reward, since “reward” was the expression used in Article 13 of the Salvage Convention. Finally, the majority was in favour of not including special compensation in Article 4(1)(c) and the two suggestions made by the CMI observer were combined both in Article 4(1)(c) and in Article 5(2) and (4).

#### **(d) Claims for port, canal and other waterways dues and pilotage dues;**

##### The 1926 Convention

These claims were mentioned in Article 2(1) together with law costs and expenses incurred to preserve the vessel or to procure its sale and this created some ambiguity with respect to the period to which they should refer. It could in fact be assumed that only the costs incurred after the arrival of the vessel to the port where it was arrested and sold were secured by a maritime lien.

##### The Travaux Préparatoires of the 1967 Convention

In the Oxford Draft claims in respect of port, canal and other similar dues were mentioned separately, after the costs in respect of wreck removal. This criterion was maintained in the Portofino and Antwerp Drafts, and pilotage dues were added. The text was approved by the 1965 New York Conference and by the 1967 Diplomatic Conference.

##### The Travaux Préparatoires of the Lisbon Draft

In the draft submitted to the Lisbon Conference this lien was maintained but was moved to the bottom of the list. The following statement is made in the Chairman’s Report<sup>(61)</sup>:

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<sup>(61)</sup> Lisbon I, p. 68.

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16. Also this lien affects the security of the holder of a mortgage or hypothec. Contrary to the lien for wages, it does not seem to substantially contribute to the safe and efficient operation of the ship. At least no more than it would a lien securing any type of service required for the operation of a ship. It was felt, however, that since the sums involved should not be great, it may be advisable to leave this lien undisturbed, for its deletion might adversely affect ratification of the convention, but that there was no justification for its high ranking and thus it was moved to the bottom of the list.

The low priority recommended by the International Sub-Committee did not, however, meet with the approval of the Conference and, therefore, the claims in question were again moved upwards and placed after the claims for wages, as in the 1967 Convention.

The Travaux Préparatoires of the 1993 Convention

Objections to the recognition of a maritime lien in respect of claims for port, canal and other waterway dues and pilotage dues were raised during the second and third session of the JIGE<sup>(62)</sup> and, consequently, in the first set of Draft Articles these claims were placed in square brackets at the end of the list<sup>(63)</sup> and then moved upwards in the second set of Draft Articles, always in square brackets, after salvage<sup>(64)</sup>.

During the fifth session, however, the view that a maritime lien should be granted to those claims prevailed, and the square brackets were deleted<sup>(65)</sup>. They were left in that position in the subsequent sets of Draft Articles and in the 1993 Convention.

**(e) Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.**

The 1926 Convention

Following a request of the United States Delegation, the draft Convention prepared by the 1921 CMI Antwerp Conference included a maritime lien in respect of claims for loss or damage to cargo and baggage, in addition to claims for damage caused by collision or other accident of navigation and of damage to ports, docks and navigable ways.

<sup>(62)</sup> Document No. 5 in note 20. supra. p. 10 and Document No. 6 in note 20, supra. p. 17. para. 51.

<sup>(63)</sup> Document No. 5 in note 20. supra. p. 7.

<sup>(64)</sup> Document No. 7 in note 20. supra. p. 7.

<sup>(65)</sup> Document No. 10 in note 20, supra. p.16-17. paras. 60-62.

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The Travaux Préparatoires of the 1967 Convention

From the outset the view prevailed that claims in respect of loss of or damage to the cargo carried on the vessel should not be secured by a maritime lien. In order to restrict the lien to tort claims reference was made in the Portofino Draft to claims in tort for loss of or damage to property not on board the vessel and then in the Oxford Draft to claims not based on contract in respect of loss or damage to property occurring in direct connection with the operation of the vessel. The two texts were merged at the New York Conference and in the draft adopted by the Conference reference was made to claims based on tort and not capable of being based on contract in order to avoid that a claim in respect of loss or damage to the cargo carried on board be brought in tort and thus be secured by a maritime lien. In addition, the words “whether on land or on water” were added in order to cover also damage caused on land. The text approved at New York was adopted by the 1967 Diplomatic Conference.

The Travaux Préparatoires of the Lisbon Draft

In the Chairman’s Report to the Lisbon Conference the following statements are made<sup>(66)</sup>:

18. In the 1967 Convention this lien had already been reduced to tort claims, on the ground that claimants who are in a contractual relationship with the owner can protect themselves by selecting an owner who is financially responsible, whilst tort claimants may not do this. However the wording adopted in 1967 may not ensure the total exclusion of claims arising out, or in connection with, a contract of carriage. In fact a claim against the actual carrier, with whom the shipper or receiver has no contractual relationship, would be brought in tort and would come under the description “claims...based on tort and not capable of being based on contract”. It was therefore deemed advisable to expressly exclude claims in respect of vessel’s cargo and passenger’s baggage. Notwithstanding that claims in respect of loss of or damage to property are all covered by insurance, and therefore do not adversely affect the security of the holder of a mortgage or hypothec (provided adequate provisions are inserted in the security instrument), the majority of the delegates deemed it convenient to reduce the extent of the lien to physical loss or damage, with the exclusion of economic loss. In this connection it was pointed out by the delegate of the British Association that the word “physical” was not sufficiently clear, for it might apply also to pollution damage, and it was suggested to replace it with “destruction” and this word has been inserted in pointed brackets after “physical loss”, when it has appeared that a large majority was against the extension of the lien to oil pollution damage. Some delegates went even further, and suggested to limit the lien to loss or damage caused by collision.

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<sup>(66)</sup> Lisbon I, p. 70.

The proposal of the International Sub-Committee was approved by the Conference and thus the following text was adopted:

- (iv) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.*

### The Travaux Préparatoires of the 1993 Convention

Although some reservations had been made during the third session of the JIGE on the wording adopted at Lisbon<sup>(67)</sup>, such reservations were subsequently withdrawn<sup>(68)</sup> and the square brackets placed around the text in the second set of Draft Articles were removed. The wording adopted by the Diplomatic Conference is the same as that approved at Lisbon.

**2. No maritime lien shall attach to a vessel to secure claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from:**

- (a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or**
- (b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.**

### The 1926 Convention

This provision obviously did not exist in the 1926 Convention.

### The Travaux Préparatoires of the 1967 Convention

The first reference to damage caused by radioactive properties of nuclear fuel or radioactive products or waste was made in the Antwerp Draft. Article 4(2) of such Draft provided that no maritime lien shall attach to the vessel in respect of claims for loss of life or personal injury and for loss of or damage to property so caused. This provision was accepted by the New York Conference and was then adopted by the Diplomatic Conference.

### The Travaux Préparatoires of the Lisbon Draft

No change was suggested by the International Sub-Committee but at the

<sup>(67)</sup> Document No. 6 in note 20, supra, p. 16, para. 49.

<sup>(68)</sup> Document No. 10 in note 20, supra, p. 17-18, paras. 65-79.

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Lisbon Conference the proposal was made and adopted without opposition to exclude also claims in respect of oil pollution.

### The Travaux Préparatoires of the 1993 Convention

During the third Session of the JIGE it was decided to define the notion of oil pollution by adding the words “within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, 1969 or of any amendments or protocol thereto which is in force” and these words were added in the second set of Draft Articles<sup>(69)</sup>. Then at the fifth session it was decided to replace the words “within the meaning” with the words “within the scope of application”<sup>(70)</sup>. The provision was reconsidered at the sixth session, when it was decided that neither of the above formulas was satisfactory and the words “for which compensation is payable to the claimant pursuant to...” were used instead<sup>(71)</sup>.

This wording was criticized at the Diplomatic Conference because it made reference to a specific convention, contrary to what had been done for nuclear damage and, in addition, because no mention was made to other types of damage which were expected to be the subject of international regulation, and in particular to damage caused by hazardous and noxious substances.

A general reference to international conventions or national laws was consequently deemed preferable, but such reference was qualified by the requirement that such conventions or national laws must provide (as the 1969 CLC and now the 1995 HNS Convention) for strict liability and compulsory insurance or other means of securing claims.

## Article 5

### *Priority of maritime liens*

**1. The maritime liens set out in article 4 shall take priority over registered mortgages, “hypothèques” and charges, and no other claim shall take priority over such maritime liens or over such mortgages, “hypothèques” or charges which comply with the requirements of article 1, except as provided in paragraphs 3 and 4 of article 12.**

### The 1926 Convention

Article 3 of the 1926 Convention provides that the mortgages, hypothèques or other charges rank immediately after the maritime liens listed in the Convention. It then provides that national laws may grant a lien in respect of other claims without modifying the ranking of claims secured by

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<sup>(69)</sup> Document No. 6 in note 20, supra, p. 7, para. 52.

<sup>(70)</sup> Document No. 10 in note 20, supra, p. 18, para. 71.

<sup>(71)</sup> Document No. 12 in note 20, supra, p. 6-7, paras. 22-29.

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mortgages, hypothèques or other charges or by the maritime liens having priority over them.

#### The Travaux Préparatoires of the 1967 Convention

The formulation of the provision on the priority between registered charges and Convention maritime liens was reversed in the Portofino Draft, Art. 5(1) of which provided that the Convention maritime liens take priority over mortgages and hypothèques. The provision on the ranking of national maritime liens was instead moved to Article 6.

No change was made in the Antwerp Draft. At the New York Conference it was deemed advisable to better clarify the principle that only the Convention maritime liens take priority over registered charges and no other claim takes priority over the Convention maritime liens by adding the words “and no other claim shall take priority over such maritime liens or over registered mortgages and hypothèques” and the provision, as amended, was adopted by the Diplomatic Conference.

#### The Travaux Préparatoires of the Lisbon Draft

The following statement is made in the Chairman’s Report to the Lisbon Conference<sup>(72)</sup>:

21.\*\*\* Paragraph 1 of this Article constitutes the heart of the Convention for it regulates the priority between mortgages or hypothecs and other claims. The approach adopted in the 1967 Convention, which does not differ from that adopted in the 1926 Convention, is to establish the priority of mortgages in the Convention itself. In such a manner the Contracting States are free to create other liens (or rights of retention) provided they do not take priority over mortgages and hypothecs. The provision of Article 5 paragraph 1 must be read in conjunction with that of Article 6 paragraph 1.

The draft was approved by the Conference.

#### The Travaux Préparatoires of the 1993 Convention

The reference to the provisions of Article 6 in respect of the exercise of the right of retention was maintained in all the subsequent sets of Draft Articles prepared after the sessions of the JIGE. Objections were raised, however, as respects the reference to rights of retention on the ground that the legal nature of such rights is fundamentally different from that of mortgages and hypothèques and of maritime liens<sup>(73)</sup>.

At the Diplomatic Conference, on the suggestion of the CMI observer, it was decided to move the provision relating to the exercise of a right of a

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<sup>(72)</sup> Lisbon I, p. 74.

<sup>(73)</sup> Document No. 8 in note 20, supra, p. 9-10, paras. 40.45 and Document No. 10 in note 20, supra, p. 18, para. 73.

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retention from Article 6 to Article 12 for the reason that the conflict between holders of maritime liens and of registered charges and the holders of rights of retention arises at the time of the sale and distribution of the proceeds of sale. In Article 12(4) it was provided that if at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of the Convention liens. Reference was therefore made in Article 5(1) to Article 12(3) and (4), Article 12(3) dealing with the forced sale of a stranded or sunken vessel.

**2. The maritime liens set out in article 4 shall rank in the order listed, provided however that maritime liens securing claims for reward for the salvage of the vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.**

**3. The maritime liens set out in each of subparagraphs (a), (b), (d) and (e) of paragraph 1 of article 4 shall rank *pari passu* as between themselves.**

**4. The maritime liens securing claims for reward for the salvage of the vessel shall rank in the inverse order of the time when the claims secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.**

### The 1926 Convention

The ranking of maritime liens *inter se* is based on the principles in force at that time in German law according to which maritime liens arisen during the same voyage rank in accordance with the nature of the claim but take priority over all liens arisen in a preceding voyage (Articles 5 and 6).

### The Travaux Préparatoires of the 1967 Convention

From the outset it was agreed to abolish the criterium of the ranking per voyage and that maritime liens should rank on the basis of the different nature of the claim. The claims were, therefore, listed in different categories in the order of priority and it was provided that in each category they rank *pari passu* except salvage claims which rank in the inverse order of their accrual. The provision adopted in the Oxford Draft and maintained in the Portofino Draft, wherein the claims for general average contribution were added to the claims for salvage, was amended in the Antwerp Draft so that the principle of priority in the inverse order of accrual, of Roman origin, was applied for claim for salvage and wreck removal also in relation to all other maritime liens. Article 5(2) of the Antwerp Draft in fact provided that the maritime liens set out in the preceding article shall rank in the order listed, except that maritime liens

securing claims for salvage and wreck removal shall have priority over all other maritime liens which have attached to the vessel prior to the time when the salvage or wreck removal operations were performed.

These principles and those relating to the ranking of maritime liens in the same category, were approved by the New York Conference and then adopted by the Diplomatic Conference.

#### The Travaux Préparatoires of the Lisbon Draft

The provisions of the 1967 Convention were left unaltered by the International Sub-Committee and then by the Lisbon Conference.

#### The Travaux Préparatoires of the 1993 Convention

The text of paras. 2, 3 and 4 of Article 5 was adopted by the JIGE except that all reference to general average and wreck removal was first placed in square brackets owing to the disagreement as to whether such claim should be secured by a maritime lien and then deleted in the final set of Draft Articles owing to the decision not to grant a maritime lien for the above claims<sup>(74)</sup>.

The text of the JIGE was adopted by the Diplomatic Conference.

### Article 6

#### *Other maritime liens*

**Each State Party may, under its law, grant other maritime liens on a vessel to secure claims, other than those referred to in article 4, against the owner, demise charterer, manager or operator of the vessel, provided that such liens:**

- (a) shall be subject to the provisions of articles 8, 10 and 12;
- (b) shall be extinguished:
  - (i) after a period of 6 months, from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or
  - (ii) at the end of a period of 60 days following a sale to a *bona fide* purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale;whichever period expires first; and
- (c) shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1.

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<sup>(74)</sup> Document No. 10 in note 20, supra, p. 18, para. 72.

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The 1926 Convention

The principle that States Parties can create other liens existed already in the 1926 Convention. Article 3 provides in the second paragraph that national laws may grant a lien in respect of claims other than those referred to in the Convention without modifying the order of priority established by the Convention. The nature of the national liens was not indicated, because the French original text qualifies the Convention liens simply as “*privilèges*” and the same word was used for the national liens. In the unofficial English translation instead the Convention liens are called “*maritime liens*” and the national liens simply “*liens*”.

The Travaux Préparatoires of the 1967 Convention

The freedom to create national liens was maintained in the three subsequent drafts prepared by the CMI International Sub-Committee<sup>(75)</sup> and in the draft approved by the New York Conference wherein reference was jointly made to liens and rights of retention<sup>(76)</sup>. No change to this provision was made by the Diplomatic Conference.

The Travaux Préparatoires of the Lisbon Draft

No change was suggested to Article 6(1) of the 1967 Convention, except the reference to charges, in addition to mortgages and “*hypothèques*”.

The Travaux Préparatoires of the 1993 Convention

During the third session of the JIGE the question was raised whether States parties should be permitted to grant any other liens or rights of retention to secure claims other than those specified in article 4, and whether paragraph 1 of this article should include a list of claims which could be secured by a lien. Some alternative wording was also suggested, wherein the type of liens States should be permitted to create was specified. Since, however, no consensus was reached, no mention was made of such formulations in the new draft<sup>(77)</sup>. The question was also raised whether the liens States should be permitted to create

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<sup>(75)</sup> The following comments are made in the Third Report of the Chairman of November 1964, Document HYPO-25, Conférence de New York, p. 250-251:

La Commission Internationale a décidé de maintenir le principe mentionné au 1<sup>er</sup> paragraphe de l'Article 4 du Projet d'Oxford, en permettant aux Pays Contractants de prévoir des privilèges dits “nationaux” garantissant des créances autres que celles énumérées à l'Article 4 du Projet de Portofino, à condition cependant que ces privilèges prennent rang après tous les privilèges maritimes et les hypothèques reconnus par la Convention. Dès lors ces privilèges “nationaux” ne jouiront pas de la reconnaissance internationale aux termes de la Convention.

Le rang de ces privilèges entre eux ou au regard des droits des créanciers ordinaires sera déterminé par la loi nationale du Pays, qui aura créé ces privilèges ou par le droit international privé du for. En tout cas ces privilèges “nationaux” ne donneront pas lieu à un droit de suite après le changement de propriété du navire.

<sup>(76)</sup> CMI - Conférence de New York, p. 648.

<sup>(77)</sup> Document No. 6 in note 20, supra, p. 20-23, paras. 66-81.

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may have the legal nature of maritime liens and, therefore, the word “maritime” in paragraph 1 was placed in square brackets.

At the fifth session the title of Article 6 was changed following the agreement to deal with rights of retention in a separate article<sup>(78)</sup>. The text of Article 6 was, therefore, restricted to that of its former paragraph 1. The proposal to identify the law governing national liens as well as that to list the liens that may be granted by States Parties were not supported by the majority of the delegations<sup>(79)</sup>.

The question whether the national liens permitted by the Convention may or may not have the nature of maritime liens was again discussed at the sixth session and in view of the conflicting opinions expressed by the Delegations the words “maritime liens or” were again placed in square brackets in the final text of the Draft Articles to be submitted to the Diplomatic Conference<sup>(80)</sup>.

The question was further debated at the Diplomatic Conference. The Scandinavian Delegations had put forward a proposal<sup>(81)</sup> wherein the national liens States are permitted to create must be against the owner, demise charterer, manager or operator of the vessel, must be subject to the Convention rules in respect of their extinction except that they shall be extinguished in case of voluntary sale and must rank after the Convention maritime liens and registered mortgages, “hypothèques” and other charges. This proposal formed the basis of all subsequent negotiations. Those who opposed to the possibility of creating national maritime liens withdrew their opposition. Those who favoured a complete freedom of the States in the regulation of national maritime liens accepted that such liens be subject to the Convention rules relating to the characteristics of maritime liens (Article 8), to assignment and subrogation (Article 10) and to the effects of forced sale (Article 12) but insisted on the preservation of national maritime liens after the voluntary sale of the vessel. The CMI observer suggested that as a compromise in such a case national maritime liens could be subject to a short extinction period, such as thirty days. Such proposal was accepted, conditionally to a shorter general extinction period and it was ultimately agreed that such general extinction period should be six months, whilst the extinction period in case of voluntary

<sup>(78)</sup> Document No. 10 in note 20, supra, p. 19, para. 81.

<sup>(79)</sup> Document No. 10 in note 20, supra, p. 22, para. 92.

<sup>(80)</sup> Document No. 12 in note 20, supra, p. 8-9, paras. 34-37.

<sup>(81)</sup> Document A/CONF.162/CRP.18 of 27 April 1993 - Proposal submitted by the delegations of Denmark, Finland, Norway and Sweden:

*Article 6*

Other liens

Each State Party may grant liens on vessels to secure claims other than those referred to in article 4 against the owner, demise charterer, manager or operator of the vessel, provided that such liens:

- (a) are subject to the same rules in respect of their extinction as set out in articles 8 and 11, provided, however, that they shall also be extinguished by a change of ownership other than as a result of a forced sale;
- (b) rank after the maritime liens set out in article 4 and also after registered mortgages, “hypothèques” or charges which comply with the provisions of article 1.

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sale should be sixty days<sup>(82)</sup> commencing on the date of registration of the sale. The wording adopted does not reproduce in full that of Article 9, since it does not state that the extinction period shall not be subject to suspension or interruption. This is due to the fact that whilst in the draft proposed by the Scandinavian Delegations it was provided that national liens would be subject in respect of their extinction to the same rules as the Convention liens, when specific provisions were adopted for their extinction, the provision of Article 8 (which became Article 9) para. 2 was not repeated. However, in view of the clear intention to make national maritime liens subject to an extinction period shorter than that applicable to Convention maritime liens, it is certain that the same principle must apply, for otherwise States Parties could, by allowing the extinction period to be interrupted for example by the commencement of judicial proceedings, allow long extensions unknown to holders of mortgages, "hypothèques" and other registrable charges. The provision that national maritime liens are extinguished unless the vessel has been arrested or seized, such arrest leading to a forced sale, indicates by itself that the arrest or seizure, provided it leads to a forced sale, is the only way to prevent the lapse of the extinction period.

<sup>(82)</sup> Here follow the two subsequent sets of changes to the original proposal, made during the meeting of the working group appointed by the Chairman:

## Article 6

Other maritime liens

Each State Party may grant *under national law other maritime liens* on vessels to secure claims other than those referred to in article 4 against the owner, demise charterer, manager or operator of the vessel, provided that such liens:

- (a) ~~are shall be~~ subject to the same rules ~~in respect of their extinction~~ as set out in articles 7, 8 and 11, provided, however, that they shall also be extinguished ~~by a change of ownership other than as a result of a forced sale~~ *by the earlier of Art. 8(1) or at the end of a period of 120 days following a bona fide sale of the vessel, such period measured from the date on which such sale is registered in accordance with the law of the State in which the vessel is registered; and*
- (b) shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1.

## Article 6

Other maritime liens

Each State Party may *under their national law* grant *other maritime liens* on a vessels to secure claims other than those referred to in article 4 against the owner, demise charterer, manager or operator of ~~the~~ *that* vessel, provided that such liens:

- (a) ~~are shall be~~ subject to the same rules in respect of their extinction ~~as set out in articles 8 and 11, provided, however, that they shall also be extinguished by a change of ownership other than as a result of a forced sale~~ *article 7 and 11;*
- (b) ~~shall be extinguished~~
- i) *after a period of 6 months, commencing as set out in article 8(2)(b), unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale, in which case the provisions of article 11 shall apply; or*
  - ii) *at the end of a period of 30 days following a bona fide sale of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale, whichever is the earlier;*
- ~~(b)(c)~~ *shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1.*

## Article 7

### *Rights of retention*

- 1. Each State Party may grant under its law a right of retention in respect of a vessel in the possession of either:**
  - (a) a shipbuilder, to secure claims for the building of the vessel; or**
  - (b) a shiprepairer, to secure claims for repair, including reconstruction of the vessel, effected during such possession.**
- 2. Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or shiprepairer, otherwise than in consequence of an arrest or seizure.**

### The 1926 Convention

No provision on rights of retention existed in the 1926 Convention.

### The Travaux Préparatoires of the 1967 Convention

The Oxford Draft provided generally that States may recognize a right of retention in respect of a vessel, provided such right of retention would not prejudice the enforcement of mortgages and "hypothèques" complying with the provisions of the Convention and of maritime liens. In the Antwerp Draft the text was amended by adding that the rights of retention should also not prejudice the delivery of the vessel to the purchaser in a forced sale.

The question whether rights of retention should be mentioned in a Convention on maritime liens and mortgages was debated at great length during the New York Conference, some Delegations, including those of the Greek and French Associations, strongly objecting to this<sup>(83)</sup>. It was however pointed out that for the sake of uniformity rights of retention ought to be regulated in the Convention, for otherwise in several countries they would be granted absolute priority, in the sense that the holder of a right of retention would be entitled to withhold the vessel until full payment of his claim notwithstanding the existence of mortgages or "hypothèques" and maritime liens. It was finally decided to regulate specifically, in addition to national maritime liens, the right of retention of the shiprepairer, such right of retention being, therefore, the only permissible. The draft approved by the New York Conference so provided in its Article 6(2):

- 2. In the event that a lien or right of retention is granted in respect of a vessel in the possession of a ship repairer to secure claims for repair of the vessel effected during such possession, such lien shall be postponed to all maritime liens set out in Article 4 but may be preferred to registered mortgages or "hypothèques" and such right of retention may be*

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<sup>(83)</sup> CMI - Conférence de New York, p. 502, 569.

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*exercisable against the vessel notwithstanding any registered mortgage or "hypothèque" on the vessel. Such lien or right of retention shall be extinguished when the vessel ceases to be in the possession of the repairer.*

At the Diplomatic Conference the permission to create rights of retention was extended, following a proposal of the U.K. Delegation, to shipbuilders<sup>(84)</sup>.

The Travaux Préparatoires of the Lisbon Draft

In the Chairman's Report to the Lisbon Conference the question of whether and to which extent rights of retention should be permissible was considered at some length. The comments made in such Report are reproduced below<sup>(85)</sup>:

22. Paragraph 1 of this Article sets out the general principle discussed above, viz. that Contracting States are free to create other liens and rights of retention, provided they do not prejudice the enforcement and the priority of the maritime liens listed in Article 4 paragraph 1 and of registered mortgages and hypothecs which comply with the requirements of Article 1.

Paragraph 2 sets out the exception to this rule, in that it permits Contracting States to create possessory liens or rights of retention as security for the claims of shipbuilders or shiprepairers and, if they so decide, to grant to such liens priority over mortgages and hypothecs or to permit the exercise of such rights of retention to the detriment of holders of mortgages and hypothecs.

The question whether this exception is justified has been again discussed by the International Sub-Committee and divergent views were expressed. In particular it was pointed out that normally the shipbuilder is the owner of the ship under construction and therefore it is not logical to contemplate the creation of a lien on, or a right of retention of, the ship which he owns. However, since the Convention does not create such lien or right of retention, but only permits Contracting States to do so, the problem is left to national laws and there may be some which provide - or permit - the passing of title in the ship under construction to the customer before delivery.

This provision, as that of Article 4 paragraph 1, must be examined in the light of the two criteria indicated previously, viz. whether and to which extent the possessory liens and rights of retention under discussion affect the security of holders of mortgages and hypothecs and whether they contribute to the safe and efficient operation of the ship.

23. The lien of the shipbuilder seems to be of little significance in both respects. If the ship under construction is owned by the shipbuilder, he

<sup>(84)</sup> Conférence Diplomatique, supra note 40, p. 129.

<sup>(85)</sup> Lisbon I, p. 74 and 76.

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himself must grant the security and therefore it is difficult to conceive that he may then exercise a lien or a right of retention on the ship against his own creditor. If title in the ship under construction has passed to the customer who then seeks financing on the basis of a security on the ship, it is equally difficult to conceive that the lender agrees to do this without obtaining the consent of the builder, thereby satisfying, in whole or in part, his credit for the price of the ship.

24. The lien of the shiprepairer requires greater consideration. In fact, normally the value of the vessel is increased by the repairs and therefore when such increase is equal to the cost of repairs the security of the holder of the mortgage or hypothec is not practically affected. On the other hand repairs normally contribute to the safe operation of the ship. There seem therefore to be sufficient reasons to justify the priority of this lien over, or the exercise of this right of retention against, mortgages or hypothecs.

It has been correctly pointed out that the language used in paragraph 2 of this Article is not proper where it states that the right of retention of the shiprepairer and of the shipbuilder may be "preferred" to registered mortgages and hypothecs. It is therefore suggested that the wording be changed by adding, after the aforesaid words, which should relate only to possessory liens, the words "or may be exercised against" in respect of rights of retention.

The amendment proposed by the International Sub-Committee was approved by the Lisbon Conference and express reference was made, in addition to claims for repair, to claims for reconstruction of the vessel. It was in fact thought that the word repair may not include conversion and reconstruction.

#### The Travaux Préparatoires of the 1993 Convention

As previously mentioned, during the fifth session of the JIGE it was decided to regulate rights of retention in a separate article and, therefore, paragraphs 2 and 3 of Article 6 were moved to Article 6 bis which became Article 7 at the Diplomatic Conference. Since, however, objections were still raised with respect to the provision regarding the exercise of the right of retention, which was qualified as a provision on the ranking between rights of an entirely different nature, the Chairman pointed out that, in reality the provision related to the question whether possession should be surrendered or not at the time of the sale and suggested, therefore, to move it to Article 12<sup>(86)</sup>. This proposal was accepted and, therefore, the first sentence of paragraph 2 was removed from this article.

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<sup>(86)</sup> Document A/CONF.162/4 of 26 January 1993, p. 11.

## Article 8

### *Characteristics of maritime liens*

**Subject to the provisions of article 12, the maritime liens follow the vessel, notwithstanding any change of ownership or of registration or of flag.**

#### The 1926 Convention

The fundamental rule, whereby the lien holder has a “droit de suite”, is laid down in Article 8 which provides that claims secured by a lien follow the vessel in whatever hands it may pass.

#### The Travaux Préparatoires of the 1967 Convention

It was deemed convenient to describe also the other particular feature of the maritime lien, consisting in the fact that the lien may arise also when the claim is against a person other than the registered owner, who is in a qualified relationship with the vessel. It was also deemed convenient to specify that the liens follow the vessel notwithstanding any change of ownership or of registration. These additions were already incorporated in the Oxford Draft and, with some drafting changes, were reproduced in the Portofino and Antwerp Drafts as well as in the draft approved by the New York Conference. Article 7, which was adopted by the Diplomatic Conference without changes, so provided:

- 1. The maritime liens set out in Article 4 arise whether the claims secured by such liens are against the owner or against the demise or other charterer, manager or operator of the vessel.*
- 2. Subject to the provisions of Article 11, the maritime liens securing the claims set out in Article 4 follow the vessel notwithstanding any change of ownership or of registration.*

#### The Travaux Préparatoires of the Lisbon Draft

No change was suggested by the International Sub-Committee, but at the Lisbon Conference the proposal was made by the U.S. Delegation to strike out paragraph 1 in consideration of the statement now made in the chapeau of Article 4 that the claims against the owner, demise charterer, manager or operator of the vessel are secured by the maritime liens set out thereafter. The first of the two characteristics of maritime liens set out in Article 7 of the 1967 Convention had, therefore, already been mentioned in Article 4(1) with the exclusion, however, of claims against time and voyage charterers.

The Conference also decided to replace the reference to Article 11, regulating the forced sale, to an express reference to forced sale with the words “except in the case of a forced sale”.

### The Travaux Préparatoires of the 1993 Convention

During the second session of the JIGE the suggestion was made to revert to the language of the draft prepared by the CMI International Sub-Committee<sup>(87)</sup> and, therefore, in the first set of Draft Articles the words “except in the case of a forced sale” were placed in square brackets and the words “subject to the provisions of article 11” were inserted, also in square brackets, at the beginning of the sentence<sup>(88)</sup>.

The reference to the change of flag was also added in the draft. Both phrases placed in square brackets were subsequently deleted<sup>(89)</sup> and did not appear in the set of Draft Articles prepared after the fourth session<sup>(90)</sup> but then the words “subject to the provisions of article 11” were reinstated in the final text submitted to the Diplomatic Conference<sup>(91)</sup>. The only change made at the Conference was that of the number of the article, since after the placement of the provisions on rights of retention in a separate article (article 7), the article dealing with forced sale became article 12.

## Article 9

### *Extinction of maritime liens by lapse of time*

- 1. The maritime liens set out in article 4 shall be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale.**
- 2. The one-year period referred to in paragraph 1 shall commence:**
  - (a) with respect to the maritime lien set out in article 4, paragraph 1(a), upon the claimant’s discharge from the vessel;**
  - (b) with respect to the maritime liens set out in article 4, paragraph 1(b) to (e), when the claims secured thereby arise; and shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the arrest or seizure of the vessel is not permitted by law.**

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<sup>(87)</sup> Document No. 4 in note 20, supra, p. 12, para. 56.

<sup>(88)</sup> Document No. 5 in note 20, supra, p. 15.

<sup>(89)</sup> The wording of Article 8 (at that time Article 7) was discussed during the third session (see document No. 6 in note 20, supra, p. 23-24, paras. 82-86) and the fourth session (see document No. 8 in note 20, supra, p. 13-14, paras. 61-65).

<sup>(90)</sup> Document No. 9 in note 20, supra, p. 7.

<sup>(91)</sup> Document No. 14 in note 20, supra, p. 5.

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### The 1926 Convention

Article 9 of the 1926 Convention provides for a general extinction period of one year and for a special extinction period of six months in respect of the maritime lien for supplies. It then regulates the commencement of the extinction period and grants States the right to extend it in cases where it has not been possible to arrest the vessel.

### The Travaux Préparatoires of the 1967 Convention

The following changes as respects the provisions of the 1926 Convention were suggested:

- (a) the general period of extinction should be two years;
- (b) the commencement of the period should be linked to the claim;
- (c) the period of extinction should not be subject to extensions or interruptions and only an arrest leading to the forced sale can prevent the extinction, except special cases in which an arrest is prevented (requisition or bankruptcy).

At the New York Conference the extinction period was reduced to one year and the specific reference to the cases in which the arrest is prevented was deleted and replaced by the words “the lienor is legally prevented to arrest the vessel”<sup>(92)</sup>.

During the Diplomatic Conference some opposition was raised to the provision whereby the period of extinction is not subject to suspension or interruption and, as a compromise, it was suggested to bring the extinction period back to two years. Such suggestion, however, was not accepted and the text approved in New York was adopted<sup>(93)</sup>.

### The Travaux Préparatoires of the Lisbon Draft

The following statements are made in the Report of the Chairman of the International Sub-Committee to the Lisbon Conference<sup>(94)</sup>:

27. The period of extinction of maritime liens was discussed at some length by the Sub-Committee. The suggestion was made by a few delegates that the period should be extended from one to two years, but in the end it was decided unanimously that a period of extinction longer than one year would adversely affect the holders of mortgages and hypothecs, for the maritime liens which might arise in a two year period without the knowledge of the holder of a mortgage or hypothec might be too many.

The manner whereby the extinction of maritime liens can be prevented was even more thoroughly discussed.

It was, in fact, suggested by some delegates that the commencement of

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<sup>(92)</sup> CMI - Conférence de New York p. 579.

<sup>(93)</sup> Conférence Diplomatique, supra note 40, p. 151.

<sup>(94)</sup> Lisbon I, p. 80-84.

judicial or arbitration proceedings should suffice and in support of this proposal it was pointed out that it may sometimes be difficult or expensive to arrest a vessel, particularly when security is required by the court as a condition precedent to the arrest, and that might prevent small claimants, such as crew members, from protecting their rights.

If, however, commencement of judicial proceedings could prevent the running of the one year extinction period, the holders of mortgages and hypothecs would have no knowledge of this and consequently maritime liens unknown to them might add up thus eroding the security of the mortgage or of the hypothec. One of the usual covenants of a mortgage or hypothec is, in fact, the obligation of the debtor to satisfy any claim secured by a maritime lien and the right of the holder of the security to enforce it if this obligation is breached. But the default of the debtor may not come to the knowledge of the mortgagee for a very long time if judicial proceedings would suffice to prevent the extinction of maritime liens.

For these reasons it was finally agreed to leave the provision of Article 8 paragraph 2 unaltered, save the addition of the words "or seized", in order to avoid that, owing to the definition of "arrest" as a security measure in the 1952 Arrest Convention, the attachment of a vessel with a view to realizing its forced sale might be deemed to be irrelevant for the purpose of avoiding the extinction of maritime liens.

28. The provision whereby the arrest (or seizure) should lead to the forced sale was also discussed. It was agreed that such a provision was necessary, for if the arrest is lifted the holders of mortgages or hypothecs may not become aware of it whilst the maritime lien might, if the requirement that the arrest (or seizure) should lead to the forced sale of the vessel did not exist, continue indefinitely. The fact that the arrest which does not lead to a forced sale does not prevent the extinction of the maritime lien is not prejudicial to the holder of such lien, for he will release the vessel from arrest only against satisfactory security, such as a bank guarantee or a letter of undertaking of a P. & I. Club. In such a case the claimant does not need a maritime lien anymore, since he can obtain settlement from the guarantor.

The arrest of the vessel by one claimant, provided it leads to the forced sale of the vessel, benefits all other claimants, and thus prevents the extinction of all maritime liens existing on the vessel at the time the arrest is effected. It is thought that the wording of Article 8 paragraph 1 makes this point sufficiently clear.\*\*\*

29. An amendment is on the contrary suggested in Article 8 paragraph 2, for the words "legally prevented" did not seem sufficiently clear. It was pointed out that in some countries a claimant may not arrest a vessel which is already under arrest, and the words "legally prevented" may not cover such a situation; if so, the claimant would be prejudiced, for the arrest may continue until after the lapse of one year from the date when his claim arose and thus he would be unable to prevent the extinction of his lien, when such arrest does not lead to the forced sale.

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The International Sub-Committee agreed that the words “the arrest or seizure of the vessel is not permitted by law” may overcome any doubt and make clear that the time does not run if the claimant may not arrest the vessel, when it is already under arrest.

No change to this provision was made by the Conference.

### The Travaux Préparatoires of the 1993 Convention

In the first set of Draft Articles prepared after the second session of the JIGE the words “or seized” and “or seizure” appearing in Article 8(1) of the Lisbon Draft were placed in square brackets and as an alternative to the words “the arrest or seizure is not permitted by law” in para. 2 the words “the lienor is legally prevented from arresting the vessel” were suggested<sup>(95)</sup>.

During the third session an alternative text was proposed by some Delegations wherein specific cases of extinction of maritime liens, in addition to lapse of time, were indicated, such cases being payment of the claim, execution by the lienor of a discharge and arrest<sup>(96)</sup>. Such alternative text, which was included in the second set of Draft Articles<sup>(97)</sup>, was however opposed at the subsequent session by the majority of the Delegations<sup>(98)</sup>.

The observer of the CMI explained that a distinction should be made between extinction of maritime liens occurring irrespectively of the extinction of the claims secured thereby and extinction of maritime liens due to the extinction of the claims. Whilst the former should be governed by the convention, the latter should, as is done both under the 1926 and the 1967 Conventions, be left to national law. He also drew the attention to the difficulties which could arise if the various circumstances which would extinguish maritime liens were specifically enumerated. For example it was not clear whether the giving of a guarantee would in all legal systems result in the extinction of the maritime lien<sup>(99)</sup>.

Alternative A, corresponding to the original text of article 8, was, therefore, retained and alternative B was deleted. The suggestion was, however, made to indicate in the title the cause of extinction dealt with in this article and the words “by passage - or lapse - of time” were inserted in square brackets.

During the fifth session attention was drawn to the fact that in para. 1 reference was only made to the Convention maritime liens and the question was raised whether the one year extinction period ought not to apply also to national maritime liens<sup>(100)</sup>. No clear solution to the problem, however,

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<sup>(95)</sup> Document No. 5 in note 20, supra. p. 16.

<sup>(96)</sup> Document No. 6 in note 20, supra. p. 24, paras. 87-90.

<sup>(97)</sup> Document No. 7 in note 20, supra. p. 11.

<sup>(98)</sup> The reasons of the opposition are set out in Document No. 8 in note 20, supra. p. 14 and 15, paras. 67-69.

<sup>(99)</sup> Document No. 8 in note 20, supra. p. 15, para. 68.

<sup>(100)</sup> Document No. 10 in note 20, supra. p. 23, para. 103.

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emerged at that time. A solution instead was found at the Diplomatic Conference, a six months extinction period having been provided with respect to national maritime liens in Article 6.

During the Diplomatic Conference it was pointed out that the rule whereby the extinction period commences when the claim arose is not fair in respect of the lien for wages, since it is difficult for the members of the vessel's complement to enforce their claim for unpaid wages when they are still on board the vessel and it was, therefore, provided that the extinction period in such case commences upon the claimant's discharge from the vessel.

### Article 10

#### *Assignment and subrogation*

- 1. The assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien.**
- 2. Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the vessel under an insurance contract.**

#### The 1926 Convention

No provision on the effect of assignment and subrogation existed in the 1926 Convention.

#### The Travaux Préparatoires of the 1967 Convention

In the Oxford Draft it was provided (Article 10) that the assignment of a claim secured by a maritime lien entails the transfer of such lien. In the Portofino Draft the rule was extended to the case of subrogation and the rule, as amended, was repeated in the Antwerp Draft, then approved by the New York Conference and adopted by the Diplomatic Conference.

#### The Travaux Préparatoires of the Lisbon Draft

No amendment was suggested to this provision by the International Sub-Committee nor by the Lisbon Conference. The text of Article 9 of the Lisbon Draft is, therefore, the same as that of Article 9 of the 1967 Convention.

#### The Travaux Préparatoires of the 1993 Convention

This provision was never discussed during the sessions of the JIGE and the text of Article 9 of the Lisbon Draft was reproduced in all sets of the Draft Articles and was adopted by the Diplomatic Conference.

During the Conference, however, it was suggested that it would be advisable to state expressly in the Convention that the lien does not extend to the insurance indemnities, as is done in the 1926 Convention (Article 4) and,

therefore, a second paragraph setting out such rule was added in Article 10, even though it would have been preferable to place this provision in a separate article.

## Article 11

### *Notice of forced sale*

1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:
  - (a) the authority in charge of the register in the State of registration;
  - (b) all holders of registered mortgages, “hypothèques” or charges which have not been issued to bearer;
  - (c) all holders of registered mortgages, “hypothèques” or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and
  - (d) the registered owner of the vessel.
2. Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:
  - (a) the time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or
  - (b) if the time and place of the forced sale cannot be determined with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.

If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known but, in any event, not less than seven days prior to the forced sale.

3. The notice specified in paragraph 2 of this article shall be in writing and either given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.

### The 1926 Convention

Forced sale is not regulated in the 1926 Convention.

### The Travaux Préparatoires of the 1967 Convention

Since the beginning of the work for the revision of the 1926 Convention it was agreed that the effects of a forced sale on maritime liens and mortgages and “hypothèques” should be the subject of express regulation in order to ensure uniformity and to create certainty as to the purchaser of a vessel in a forced sale obtaining a clean title. It was also felt that it should also be stated that the proceeds of the sale must be distributed in accordance with the provisions of the Convention.

These rules were already set out in the Oxford Draft (Article 7) in which the extinction was made subject to the notice of the sale being given in advance to the Registrar of the register in which the vessel is registered. Two separate provisions were instead included in the Portofino Draft. The first (Article 10) provided for the duty of the authority conducting the sale to give at least 30 days notice of the time and place of the sale to all known holders of registered mortgages and “hypothèques” and of maritime liens and that for such purpose the said authority should endeavour to obtain their addresses from the registrar and from the owner of the vessel. The second regulated the effects of the forced sale in a much more detailed manner.

The New York Conference felt that the provision whereby the authority conducting the sale should endeavour to obtain the addresses of the holders of mortgages and “hypothèques” and of maritime liens placed a duty difficult to fulfil and consequently that part of Article 10 was deleted<sup>(101)</sup>. This question was considered again during the Diplomatic Conference and it was pointed out that the duty to give notice of the sale should be extended to all cases in which notice of the claim is given to the authority conducting the sale and, in addition, to the Registrar of the register in which the vessel is registered, who may endorse the notice in the register<sup>(102)</sup>. These suggestions were approved and Article 10 was amended accordingly.

### The Travaux Préparatoires of the Lisbon Draft

No change to Article 10 of the 1967 Convention was suggested by the International Sub-Committee and the text of such Article was accepted by the Lisbon Conference.

### The Travaux Préparatoires of the 1993 Convention

In the course of the third session of the JIGE it was decided that the notice to the Registrar should be mentioned first and that the word “Registrar” should

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<sup>(101)</sup> CMI - Conférence de New York, p. 588.

<sup>(102)</sup> CMI - Conférence de New York, p. 655.

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be replaced by the words "authority in charge with the register" since in many countries such authority is named differently<sup>(103)</sup>.

Article 10 of the second set of the Draft Articles, prepared after the third session, was again discussed during the fourth session. Some delegations objected to the provision of a fixed thirty days advance notice of the date and place of the forced sale stating that that was too long a period and suggested that greater flexibility would be preferable and that this result could be achieved by providing that reasonable notice of the date and place of forced sale be given<sup>(104)</sup>. The observer of the CMI drew the attention of the delegates that article 10 should be read in conjunction with article 11 and that in order to protect the holders of mortgages, "hypothèques" and charges which are extinguished by the forced sale, a minimum fixed notice period must be set out in article 10<sup>(105)</sup>. The majority of the delegations supported the original text, but agreed that in certain circumstances the notice period could be less than thirty days and that reference should be made to additional manners of giving notice of the forced sale prescribed by national laws<sup>(106)</sup>. It was agreed that consideration should be given to a possible new formulation of the provision, which for the time being was left unchanged.

The requirement of a minimum thirty-day notice period was again the subject of criticism during the fifth session by some delegations who suggested that as an alternative to such notice period it should be provided that the sale may be effected if all holders have consented to the sale or the notice provided was considered reasonable by the authority conducting the sale. Objections were raised, however, against leaving to the States Parties so wide a discretionary power and no change was made to the text of Article 10 in this respect<sup>(107)</sup>.

Furthermore, it was suggested and agreed that it should be expressly provided that the notice must be in writing and may be given by receipted post or by any electronic means or other appropriate means which provide confirmation of receipt<sup>(108)</sup>. It was also suggested that it should be provided that any person entitled to receive notice may waive such notice but since no consensus was reached in this respect, this provision was placed in square brackets.

The requirement of a minimum thirty days notice was not discussed any further during the sixth session of the JIGE. It was however pointed out that it is not always possible to indicate in advance the precise date and place where the forced sale will be conducted and it was therefore suggested to provide, alternatively, that the authority conducting the sale may supply such particulars

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<sup>(103)</sup> Document No. 6 in note 20, supra, p. 25, paras. 93-94.

<sup>(104)</sup> Document No. 8 in note 20, supra, p. 16-17, paras. 76-80.

<sup>(105)</sup> Document No. 8 in note 20, supra, p. 19, paras. 91-92.

<sup>(106)</sup> Document No. 8 in note 20, supra, p. 19-20, paras. 93-95.

<sup>(107)</sup> Document No. 10 in note 20, supra, p. 26-28, paras. 126-135.

<sup>(108)</sup> Document No. 10 in note 20, supra, p. 25-26, paras. 120-125.

concerning the sale or the proceedings leading thereto as the State where the sale takes place shall determine are sufficient to protect the interests of persons entitled to notice<sup>(109)</sup>. Since objections were raised against such provisions, it was placed in square brackets.

At the Diplomatic Conference there was added to the list of the persons to whom notice of the sale must be given the registered owner of the vessel, for he also is obviously interested to know where and when the sale will take place.

The question whether an alternative should be provided to the actual indication in the notice of the time and place of the sale was further debated and it was agreed that the notice should contain at least the approximate time and anticipated place of the sale as well as such particulars concerning the sale as the authority conducting the proceedings shall determine is sufficient to protect the interest of the persons entitled to notice. It was deemed, however, convenient to require that, in any event, notice of the actual time and place of the sale be given at least seven days prior to the sale.

## Article 12

### *Effects of forced sale*

**1. In the event of the forced sale of the vessel in a State Party, all registered mortgages, “hypothèques” or charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided that:**

- (a) at the time of the sale, the vessel is in the area of the jurisdiction of such State; and**
- (b) the sale has been effected in accordance with the law of the said State and the provisions of article 11 and this article.**

### The 1926 Convention

As previously stated, the 1926 Convention does not regulate the forced sale and its effects on mortgages and “hypothèques” and on maritime liens.

### The Travaux Préparatoires of the 1967 Convention

The Oxford Draft already laid down two fundamental principles: first, that following the forced sale, mortgages and “hypothèques” as well as maritime liens cease to attach to the vessel and, secondly, that the proceeds of the sale must be distributed in accordance with the provisions of the Convention. The Portofino Draft which, as previously stated, regulated in a separate article the obligation to give notice of the forced sale, also dealt in separate paragraphs with the extinction of the mortgages, “hypothèques” and maritime liens and with the distribution of the proceeds of sale. Paragraph 1 of

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<sup>(109)</sup> Document No. 12 in note 20, supra, p. 16-19, paras. 81-83.

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Article 11, dealing with the extinction, provided that all mortgages, “hypothèques” and maritime liens shall cease to attach to the vessel under two conditions: first that at the time of the sale the vessel is in the jurisdiction of the State in which the sale is conducted, and, secondly, that the sale is effected in accordance with the law of such State and with the provisions of the Convention, thereby meaning the provisions on the notice of sale. No change was made to this paragraph in the Antwerp Draft nor in the draft approved by the New York Conference.

During the Diplomatic Conference at the request of the Scandinavian Delegations it was provided that the extinction of the mortgages or “hypothèques” and of the maritime liens would not occur with respect to those assumed by the purchaser. Since the U.S. Delegation had expressed the concern that the rule on the extinction of maritime liens might be construed to apply also to charter parties, a sentence was added, following the request of the U.S. Delegation, stating that no charter party or contract for the use of the vessel shall be deemed a lien or an encumbrance for the purposes of this Article.

#### The Travaux Préparatoires of the Lisbon Draft

The following statements are made in the Report of the Chairman of the International Sub-Committee to the Lisbon Conference<sup>(110)</sup>:

23. Paragraph 1 of this Article states that, as a consequence of the forced sale, all encumbrances cease to attach to the vessel provided the vessel is, at the time of the sale, in the jurisdiction of the Contracting State where the sale is effected and the sale has been effected in accordance with the law of such State and the provisions of the Convention, i.e. those set out in Article 10 and in paragraph 2 of Article 11. This provision is of great importance, for the recognition of the effects of the forced sale in all Contracting States substantially improves the prospects of sale of the vessel, and this is to the advantage of the creditors amongst whom the proceeds of the sale must be distributed.

It is important to stress that the forced sale is relevant in respect of all charges existing on the vessel, be they covered by the Convention or by national law.

The International Sub-Committee decided to recommend the deletion of the last sentence of this paragraph wherein it is stated that no charterparty or contract for the use of the vessel shall be deemed to be a lien or encumbrance for the purpose of Article 11. This provision was inserted following the request of the United States delegation, apparently because it was deemed necessary to clarify that the rule whereby all “other encumbrances” cease to attach to the vessel did not imply that an existing charterparty is not binding on the purchaser. The International Sub-Committee found that the need for such clarification does not seem to

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<sup>(110)</sup> Lisbon I, p. 86.

exist anywhere, and that the provision is not only unnecessary, but also confusing.

The deletion of the last sentence, suggested by the International Sub-Committee, was approved by the Conference.

#### The Travaux Préparatoires of the 1993 Convention

The need for this provision was considered and confirmed during the fourth session of the JIGE. The discussion is summarized as follows in the Report<sup>(111)</sup>:

99. One delegation questioned the desirability of the text as currently drafted. The delegation felt that the article attempted to regulate matters of procedure which were not really within the ambit of the draft convention. Reference was made, in this connection, to the precedent in the 1926 Convention.

100. The observer of the CMI indicated that the 1967 Conference had departed from the 1926 Convention because of the desire to ensure that, in the case of a forced sale, the mortgagee would recover as fully as possible the sums due to him. It had been felt that this could best be achieved by ensuring that the purchaser obtained a vessel which he could freely transfer to another register.

101. Several delegations, while noting the doubts expressed in respect of the wide scope of article 11, felt that, in the light of the explanations given by the observer of the CMI and some of the decisions taken by the Group in respect of the contents of other articles of the draft convention, the basic text would constitute the most satisfactory solution to the problem of regulating forced sales.

At the third session of the JIGE wide support was expressed for the requirement that the vessel at the time of the sale should be in the jurisdiction of the State in which the sale takes place. Some delegations instead suggested to delete sub-paragraph 1(b) whereby it was required that the sale be effected in accordance with the law of the State conducting the sale, but the majority felt that the provision was useful, in that it stated clearly what otherwise should be inferred<sup>(112)</sup>.

At the fourth session it was suggested that the words "in the jurisdiction" be replaced either by the words "in the area of the jurisdiction" or by the words "in the territory" and in the fifth session the first alternative was adopted<sup>(113)</sup>. The text was not changed at the sixth session and was adopted by the Diplomatic Conference.

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<sup>(111)</sup> Document No. 8 in note 20, supra, p. 21, paras. 99-101.

<sup>(112)</sup> Document No. 6 in note 20, supra, p. 26, paras. 100-101.

<sup>(113)</sup> Document No. 8 in note 20, supra, para. 104 and Document No. 19 in note 20, supra, p. 28, para. 139.

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**2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, inter alia, the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1 (a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants, the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.**

### The 1926 Convention

In Article 2(1) of the 1926 Convention a maritime lien was granted, with priority over all other liens, to law costs due to the State, and expenses incurred in the common interest of the creditors in order to preserve the vessel or to procure its sale and the distribution of the proceeds of sale.

### The Travaux Préparatoires of the 1967 Convention

In the Oxford Draft a maritime lien was granted with priority over all other liens, to costs arising in connection with the arrest and subsequent sale of the vessel and then it was stated that the proceeds of the forced sale must be distributed in accordance with the provisions of the Convention. At the subsequent meeting of the International Sub-Committee it was decided that the lien in respect of the costs arising in connection of the arrest and the subsequent sale of the vessel was not in a strict sense a lien but was merely a rule regarding the costs that should be deducted from the proceeds of the sale prior to their distribution. The lien was therefore cancelled in the Portofino Draft and a second paragraph was added to the new Article 11 stating that the costs awarded by the Court and arising out of the arrest and subsequent sale of the vessel and the distribution of the proceeds shall be first paid out of such proceeds and that the balance shall be distributed among the holders of registered mortgages or “hypothèques” and of maritime liens in accordance with the provisions of the Convention. The only change made in the Antwerp Draft was the statement that the distribution of the balance of the proceeds of the sale among the holders of mortgages or “hypothèques” and of maritime liens must only be made to the extent necessary to satisfy their claims, thereby implying that the balance, if any, must be distributed among the other claimants or paid to the owner.

This provision was approved by the New York Conference and then adopted by the Diplomatic Conference without any change.

### The Travaux Préparatoires of the Lisbon Draft

The provision of the 1967 Convention was left unaltered by the

International Sub-Committee and then by the Conference, except for the reference to charges, in addition to mortgages and “hypothèques”.

### The Travaux Préparatoires of the 1993 Convention

In the second set of Draft Articles, prepared by the IMO and UNCTAD Secretariats<sup>(114)</sup> the costs of the upkeep of the vessel after the arrest and the costs of repatriation of the crew were added in square brackets. The addition of the costs incurred for the upkeep of the vessel was approved at the fourth session, whilst no consensus was reached in respect of the reference to the costs of repatriation of the crew. It was in fact pointed out by some delegations that reference to such costs might be construed as a recognition of the duty of the owner to pay them, whilst the purpose of the Convention was only to regulate their preferential status, on the assumption that the right of reimbursement existed under the applicable national law. It was, therefore, suggested that the priority of such costs would be better dealt with in article 4 paragraph 1(a)<sup>(115)</sup>.

At the sixth session it was pointed out that the reference to the costs of repatriation of the crew was necessary with respect to the crew members who continued to stay on board during the proceedings leading to the forced sale and the brackets were removed in the final draft<sup>(116)</sup>.

During the Diplomatic Conference it was pointed out that the costs to be paid first out of the proceeds of sale should include not only the upkeep of the vessel, but also of the crew, viz. its maintenance. It was also pointed out that it was not the cost of repatriation of the crew that should be mentioned, but generally all wages and other sums payable to the crew after the arrest or seizure of the vessel and it was therefore agreed that reference should be made to wages and other sums that are secured by a maritime lien under Article 4(1)(a). Finally, it was agreed to state expressly that, after satisfaction of all claimants, the residue of proceeds, if any, must be paid to the owner and that it must be freely transferable. It is not clear why these words were added, since there is then in paragraph 6 a general provision on the free transferability of the proceeds of a forced sale<sup>(117)</sup>.

### **3. A State Party may provide in its law that, in the event of the forced sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the vessel.**

<sup>(114)</sup> Document No. 7 in note 20. *supra*, p. 13.

<sup>(115)</sup> Document No. 8 in note 20. *supra*, p. 22, paras. 106-111.

<sup>(116)</sup> Document No. 12 in note 20. *supra*, p. 21, para. 90.

<sup>(117)</sup> The proposal to add these words was made by the Greek Delegation in Document A/CONF.162/CRP.5 of 21 April 1993, at p. 3.

### The 1926 Convention

The cost of wreck removal was not mentioned in the 1926 Convention.

### The Travaux Préparatoires of the 1967 Convention

A maritime lien was granted in the Oxford Draft in respect of the cost for removing the wreck and such lien ranked immediately after that for costs arising out of the arrest and sale of the vessel. This lien became first in the Portofino Draft after the costs in respect of the arrest and sale of the vessel had become predeductible, but was downgraded in the Antwerp Draft, coming after the lien in respect of tort claims for loss of or damage to property. It was then mentioned together with salvage in the draft approved by the New York Conference and then in the 1967 Convention.

### The Travaux Préparatoires of the Lisbon Draft

No change was suggested to the provision of the 1967 Convention by the International Sub-Committee nor by the Lisbon Conference.

### The Travaux Préparatoires of the 1993 Convention

At the second session of the JIGE some delegations suggested that the maritime lien in respect of claims relating to wreck removal be abolished<sup>(118)</sup> and in the first set of Draft Articles it was consequently placed in square brackets<sup>(119)</sup>. The lien for the costs of wreck removal remained in square brackets until it was ultimately deleted by the JIGE during the fifth session<sup>(120)</sup> and thus did not appear in the final draft submitted to the Diplomatic Conference, although some Delegations had requested that it should be maintained. The main reason for the deletion was that since a wreck is not a vessel anymore, it is not conceivable that a maritime lien be granted on it. During the Diplomatic Conference the delegation of the Netherlands made the proposal that States Parties be permitted to provide in their national laws that the costs of removal of a wreck be paid out of the proceeds of sale before all other claims secured by a maritime lien on the vessel. The delegate from the Netherlands explained that the purpose of the provision was to compensate Governments for costs incurred for the removal of wrecks that constituted a danger to navigation. In view of this the proposal was accepted, provided it be limited to cases of removal by a public authority when such removal takes place in the interest of safe navigation or the protection of the marine environment. These costs will, therefore, have the same treatment of the costs mentioned in paragraph 2 and, more precisely, of those that may conceivably arise also in respect of a wreck, viz. costs and expenses arising out of the arrest or seizure and subsequent sale, including the costs for the upkeep of the vessel.

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<sup>(118)</sup> Document No. 4 in note 20, supra, p. 8, para. 34.

<sup>(119)</sup> Document No. 5 in note 20, supra, p. 7.

<sup>(120)</sup> Document No. 10 in note 20, supra, p. 17, paras. 63-64.

**4. If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4.**

It has been previously stated that the proposal of the Chairman to move to Article 12 the first sentence of Article 6 *bis* of the Draft Articles submitted by the JIGE had been accepted by the Conference. The Chairman suggested that it should be provided that the shipbuilder or shiprepairer, if granted a right of retention by the applicable national law, should, in case of a forced sale of the vessel, surrender possession of the vessel to the purchaser but should be entitled to obtain satisfaction out of the proceeds of sale after the satisfaction of holders of Convention maritime liens. The draft he had prepared was accepted by the Conference and became paragraph 4 of Article 12.

**5. When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1(a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.**

#### The Travaux Préparatoires of the 1967 Convention

When the provision of the Oxford Draft on deregistration and re-registration was reconsidered at the subsequent meeting of the International Sub-Committee it was realized that the change of registration, generally regulated with respect to the voluntary sale, should be the subject of ad hoc provisions with respect to the forced sale in order that the prospective buyer, particularly where he intends to register the vessel under a different flag, be given the certainty that the vessel, after the forced sale, will be deregistered from the register in which it was registered and that a certificate of deregistration be made available by the registrar. It was thought that provisions to this effect would also benefit the claimants, for by giving certainty to the prospective buyers of obtaining a good title to the vessel they would encourage

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bids and thereby ensure that the sale takes place at a price as near as possible to the market price. These principles were adopted in an additional paragraph of Article 11 of the Portofino Draft, the obligation of the registrar to delete the vessel from the register and to issue a certificate of deletion being made conditional, however, to the mortgages or “hypothèques” and the maritime liens having ceased to attach to the vessel and the proceeds of the sale having been distributed in accordance with the previous paragraph of Article 11. This provision was reproduced without change in the Antwerp Draft.

During the New York Conference, however, it was pointed out that it was not advisable to make the delivery of the certificate of deregistration conditional to the distribution of the proceeds of sale as provided in the Antwerp Draft, and that it should be sufficient, for that purpose, that the price of the sale be deposited with the competent authority. Paragraph 3 was, therefore, completely reworded so to provide, in the place of a direct obligation of the registrar to deliver a certificate of deregistration, two subsequent phases. First, the issuance by the Court having jurisdiction, provided the conditions set out in paragraph 1 having been complied with, of a certificate that the vessel is sold free of all mortgages and other encumbrances, and that the proceeds of sale have been deposited; secondly, the issuance by the registrar of the Court of a certificate of deregistration.

This provision was adopted by the Diplomatic Conference.

#### The Travaux Préparatoires of the Lisbon Draft

The following statements are made in the Report of the Chairman of the International Sub-Committee to the Lisbon Conference<sup>(121)</sup>:

35. Paragraph 3 of this Article requires the registrar to delete all registered mortgages or hypothecs and to register the vessel in the name of the purchaser or to issue a certificate of deregistration as the case may be, when a certificate issued by the court which has effected the sale is produced to him. Such certificate must state that the vessel is sold free of all mortgages, hypothecs (or similar charges) and of all liens and other encumbrances, provided that the requirements set out in paragraph 1, subparagraphs a) and b) have been complied with, and that the proceeds of such forced sale have been distributed in compliance with paragraph 2 of this Article.

This does not mean that the proceeds of the sale must be distributed among all holders of priority rights, but among all those who have joined the proceedings for the forced sale and have asked to participate to the distribution, always provided that timely notice has been given to all those who were known to the court, in accordance with Article 10.

The International Sub-Committee discussed whether the registrar is always bound to issue a certificate of deregistration when the buyer cannot, or does not want to, keep the vessel under its original flag, even if

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<sup>(121)</sup> Lisbon I, p. 88.

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under the law of that State deregistration is subject to Governmental authorization. It was the opinion of some delegates that the present provision imposes an absolute obligation, and that this should be so, for otherwise the prospective buyer could have no certainty that the vessel will be deregistered. It was the view of some others that public policy reasons always prevail. The Conference should consider whether or not the wording of the 1967 Convention is satisfactory.

36. A further clarification which may be worth mentioning, albeit it does not seem to require any change in the text, is that the proviso in the centre of the paragraph (provided the requirements set out in paragraph 1, subparagraphs a) and b) have been complied with) is not meant to be part of the certificate, but is a condition for the statement that the vessel is sold free of all charges. In other words the court may issue a certificate to that effect only if the aforesaid requirements have been complied with. If any of them, i.e. if either the vessel was not in the jurisdiction of the court at the time of the sale or if the sale was not effected in accordance with the law of the State where the sale is effected and the provisions of the Convention, the statement that the vessel is sold free of all charges may not be made, even if the certificate may still be issued with the statement that the proceeds of the sale have been distributed in accordance with paragraph 2 of this Article or have been deposited.

But if the certificate is incomplete the registrar has not the duty, under the Convention, to register the vessel in the name of the purchaser or to issue a certificate of deregistration.

### The Travaux Préparatoires of the 1993 Convention

During the third session of the JIGE the request was made by some delegations to add in the proviso of the then paragraph 3 of Article 11, after the compliance with the requirements set out in paragraphs 1(a) and (b), the further requirements that the proceeds of the forced sale have been deposited with the competent authority and that they are actually available and freely transferable<sup>(122)</sup> and these words were added in square brackets in Article 11(3) of the second set of Draft Articles<sup>(123)</sup>. Although it had been pointed out by the observer of the ICC that this requirement might lead to delays in the issuance of the certificate by the authority conducting the sale<sup>(124)</sup>, the majority supported the addition and the brackets were removed. Objections were again raised at the sixth session of the JIGE and the suggestion was made that the requirement of the actual availability and free transferability of the proceeds of sale be made an obligation of States Parties and be placed in a separate paragraph<sup>(125)</sup>.

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<sup>(122)</sup> Document No. 6 in note 20, *supra*, p. 27, para. 106.

<sup>(123)</sup> Document No. 7 in note 20, *supra*, p. 14.

<sup>(124)</sup> Document No. 8 in note 20, *supra*, p. 24-25, para. 118.

<sup>(125)</sup> The proposal and the reasons given have been summarized as follows in the Report on the sixth session (Document No. 12, in note 20, *supra*, p. 20, paras. 84-85):

**6. States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.**

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As previously stated, the provision whereby the proceeds of the sale must be actually available and freely transferable was added during the fifth session of the JIGE, as a third condition for the mortgages, “hypothèques” or charges and the maritime liens ceasing to attach to the vessel. It was however pointed out at the sixth session that a prospective buyer would not probably be able to ascertain if such condition is met and, therefore, could not be certain to obtain a certificate of deregistration of the vessel. This remark was found correct and it was consequently decided to make the actual availability of the proceeds and their availability an obligation of the State Parties and to place it in a separate paragraph of Article 11, which then became Article 12, and this change was approved by the Diplomatic Conference.

**Article 13**

*Scope of application*

- 1. Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party, provided that the latter’s vessels are subject to the jurisdiction of the State Party.**
- 2. Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned or operated by a State and used only on Government non-commercial service.**

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84. The Sessional Group considered a proposal submitted by the United States, contained in document JIGE(VI)/4. In introducing its proposal, the delegation of the United States explained that the requirement of paragraph (e) of the basic text that the proceeds of a forced sale be “actually available and freely transferable”, while intended to protect the interests of mortgagees and other creditors might, in fact, produce the opposite result. In particular, the delegation believed that this requirement might effectively eliminate the common practice of credit bidding which enables mortgagees to protect their investment by using mortgage indebtedness to purchase the vessel and undertaking to pay all expenses and other claims ranking above the mortgage. This practice did not actually involve the deposit of “proceeds” as contemplated in the basic text. Alternatively, the delegation expressed its willingness to accept the inclusion of the following text which was proposed by another delegation, as paragraph 4:

“A State Party shall ensure that the proceeds of the forced sale are actually available and freely transferable”.

85. One delegation suggested that the proposed paragraph 4 should be redrafted to read as follows:

“States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable”.

This text met the approval of most delegations and the Sessional Group agreed to incorporate it in the text of the draft convention, as paragraph 4 of article 11.

### The 1926 Convention

Article 14 of the 1926 Convention provides that the Convention applies only when the vessel to which the claim relates belongs to (i.e. flies the flag of) a Contracting State.

### The Travaux Préparatoires of the 1967 Convention

The CMI International Sub-Committee decided that in order to ensure uniformity the Convention should apply in all cases, irrespective of whether the vessel flies the flag of a State Party or not and a provision to this effect was included in the Oxford Draft. Such provision was left unaltered in the Portofino and Antwerp Drafts and was accepted by the New York Conference.

At the Diplomatic Conference it was agreed to exclude from the scope of application of the Convention ships owned or operated by a State and appropriated to a public non-commercial service and a provision so stating was added in Article 12.

### The Travaux Préparatoires of the Lisbon Draft

The provision of the 1967 Convention was left unaltered by the International Sub-Committee and by the Lisbon Conference.

### The Travaux Préparatoires of the 1993 Convention

Only minor drafting changes were made by the JIGE, and the text adopted by the Diplomatic Conference does not differ in its substance from that of the 1967 Convention.

## Article 14

### *Communication between States Parties*

**For the purpose of articles 3, 11 and 12, the competent authorities of the States Parties shall be authorized to correspond directly between themselves.**

### The Travaux Préparatoires of the 1967 Convention

This article was added by the Diplomatic Conference following a proposal of several delegations. The following explanations were given to the Conference by the Delegate of the Netherlands<sup>(126)</sup>:

I am pleased to introduce to the Plenary Session the text of a new Article,

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<sup>(126)</sup> Conférence Diplomatique, supra note 40, p. 174.

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the purpose of which is to give the competent authorities of the Contracting States the opportunity to correspond directly between themselves on matters in connection with the application of articles 3, 10 and 11 of the Convention. The reason for our asking you to consider the inclusion of such an article in this Convention is mainly, if not solely, to speed up as much as possible the exchange of information and the transmittal of certificates, whenever desired or required; or, to put it more plainly, to open the possibility of such an exchange without having recourse to diplomatic channels.

It seems unnecessary to underline that, once a transfer of the flag of a vessel has been decided upon, everybody involved in the transaction, particularly when existing mortgages are to be transferred, should be notified with the shortest possible delay.

An article as proposed has also been inserted in the recent Geneva Convention concerning the registration of inland vessels and in the Fisheries Policies Convention signed in London in 1966. Apparently the introduction of a simplified way of exchanging information between officials of various countries was found useful and the experience gathered proves that such a system can work satisfactorily.

#### The Travaux Préparatoires of the Lisbon Draft

This provision was left unaltered by the International Sub-Committee and by the Lisbon Conference.

#### The Travaux Préparatoires of the 1993 Convention

No comments were made in respect of this article during the sessions of the JIGE and during the Diplomatic Conference.

### Article 15

#### *Conflict of conventions*

**Nothing in this Convention shall affect the application of any international convention providing for limitation of liability or of national legislation giving effect thereto.**

#### The Travaux Préparatoires of the 1967 Convention

The possibility of a conflict between the Maritime Liens and Mortgages Convention and the 1957 Limitation Convention was considered by the International Sub-Committee. Such conflict would exist because the Limitation Convention provided that after the constitution of the fund no claimant against the fund is entitled to exercise any right against any other assets of the owner (Article 2.4) and that in each portion of the fund the distribution among the claimants must be made in proportion to the amounts of their established claims (Article 3.2), thereby excluding the operation of maritime liens. The Oxford Draft so provided in its Article 11:

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*No maritime or other lien securing a claim in respect of which the owner of the vessel concerned may limit his liability shall be enforceable after the setting up of the limitation fund.*

This provision, however, was not included in the subsequent drafts, nor in the draft approved by the New York Conference.

At the Diplomatic Conference a proposal was made by the Delegation of the Federal Republic of Germany to insert a reservation allowing States Parties to apply the 1957 Limitation Convention. The following explanations were given, in support of such proposal<sup>(127)</sup>:

We have proposed that this second paragraph be inserted in the protocol, in order to prevent collision between our Convention on liens which we are preparing here and the Brussels Convention of 1957 on liability of shipowners. In our opinion the member States of the 1957 Convention need such a rule - such a reservation, at least - in this form proposed because otherwise they could not ratify our Convention without running the risk of bringing their Courts into a situation where they must violate one of the two Conventions.

Perhaps you will allow me to give a short example. Suppose a ship flying the flag of a contracting State (party) only to the liability Convention of 1957 is charged by a lien due to a lienor of a contracting State (party) only to our Convention on liens came to a forced sale in a member State of both Conventions, the Courts of this latter State would come into an insoluble conflict if there was not a rule or at least the possibility of a reservation like the proposed one. The Courts are on one hand bound to hold the ship free from liens after having constituted the funds, whereas on the other hand they might not deny the maintenance of the liens in relation to the lienor's State. Therefore we must solve this problem anyway and we can, dealing at the moment only with the present Convention, solve it, as far as we can see, only in the proposed way.

Such proposal was adopted by the Conference and a second paragraph was added to Article 14.

### The Travaux Préparatoires of the Lisbon Draft

The International Sub-Committee did not change the structure of the provision, but suggested that, in view of the adoption of the 1976 Limitation Convention, either reference be made to such Convention or reference be generally made to any international convention relating to the global limitation of liability of owners of sea-going ships<sup>(128)</sup>. The Lisbon Conference, however, decided that rather than a reservation, a rule should be adopted to the effect that the Convention does not affect the application of an international convention

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<sup>(127)</sup> Conférence Diplomatique. supra note 40. p. 181.

<sup>(128)</sup> Lisbon I. p. 94.

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providing for limitation of liability or of national legislation giving effect thereto.

The Travaux Préparatoires of the 1993 Convention

This provision was only once considered during the sessions of the JIGE<sup>(129)</sup>, but it was accepted without modifications and was then adopted by the Diplomatic Conference.

**Article 16**

*Temporary change of flag*

**If a seagoing vessel registered in one State is permitted to fly temporarily the flag of another State, the following shall apply:**

The Travaux Préparatoires of the Lisbon Draft

The practice of the so called “bareboat charter registration” was just developing at the time of the CMI Lisbon Conference. Attention to the possible impact of such practice on the draft convention was drawn by the U.S. Delegation during the Lisbon Conference in connection with Article 3(2) of the draft but the proposal to add a provision in such Article to the effect that in case of a bareboat charter the new registration of the vessel should be subject to the consent of all holders of registered mortgages, “hypothèques” and charges was not adopted<sup>(130)</sup>.

The Travaux Préparatoires of the 1993 Convention

After the problem of the possible impact of bareboat charter registration was raised during the third session of the JIGE in connection with Article 1(a)<sup>(131)</sup>, a working paper was prepared by the Chairman at the request of a number of Delegations<sup>(132)</sup>. The working paper, having discussed the question of bareboat registration and article 11(5) of the 1986 Registration Convention, put forward a draft article which proposed to extend the protection given to holders of registered mortgages, “hypothèques” and charges by Article 3 in case of deregistration of the ship also to the case of suspension of registration<sup>(133)</sup>. The working paper and the proposed draft article were discussed at some length during the session and different views emerged in respect of the interpretation of article 11(5) of the 1986 Registration Convention<sup>(134)</sup> and then it was decided to consider the subject at the next

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<sup>(129)</sup> Document No. 12 in note 20, supra, p. 24, para. 105.

<sup>(130)</sup> Lisbon II, p. 92 and 94.

<sup>(131)</sup> Document No. 6 in note 20, supra, p. 9, para. 9.

<sup>(132)</sup> Document JIGE(III)/WP/3.

<sup>(133)</sup> The text of the draft article is also reproduced in Document No. 6 in note 20, supra, p. 11, para. 20.

<sup>(134)</sup> Document No. 6 in note 20, supra, p. 11-14, paras. 21-33.

session on the basis of a study to be prepared by the Secretariats of IMO and UNCTAD on the existing practices of States regarding bareboat charter registration.

After such study had been prepared by the Secretariats<sup>(135)</sup>, the problem of bareboat charter registration was further considered during the fourth session of the JIGE, when two additional proposals were made<sup>(136)</sup>. It was then decided that an informal Working Group be appointed with the task to prepare a unified text. The Working Group, which was chaired by the CMI observer, submitted a report<sup>(137)</sup> wherein two new provisions were suggested and certain changes were proposed to the relevant provisions of the Draft Articles. At the fifth session the majority of the delegations suggested that all proposals regarding different aspects of temporary change of flag should be grouped in one separate article and in the light of these discussions the Chairman of the Sessional Group proposed the text of such new article<sup>(138)</sup> which formed the basis of the subsequent discussions in the course of that session and of the subsequent session.

**(a) For the purposes of this article, references in this Convention to the “State in which the vessel is registered” or to the “State of registration” shall be deemed to be references to the State in which the vessel was registered immediately prior to the change of flag, and references to “the authority in charge of the register” shall be deemed to be references to the authority in charge of the register in that State.**

This was originally the “Rule of interpretation” proposed by the Working Group appointed during the fourth session. Only drafting changes were made to the text which was subsequently adopted by the Diplomatic Conference.

**(b) The law of the State of registration shall be determinative for the purpose of recognition of registered mortgages, “hypothèques” and charges.**

The original proposal, made during the fourth session of the JIGE, was so drafted:

*Where a vessel registered in the register of ships of one State is, due to a bareboat charter, registered in another State as well, the register referred to first will be decisive for the purposes of this Convention.*

The purpose of this provision was so explained<sup>(139)</sup>:

<sup>(135)</sup> Document No. 7 in note 20, *supra*, p. 15-38.

<sup>(136)</sup> Document No. 8 in note 20, *supra*, p. 28-31, paras. 133-143.

<sup>(137)</sup> Document No. 8 in note 20, *supra*, p. 33-35.

<sup>(138)</sup> Document No. 10 in note 20, *supra*, p. 35, para. 185.

<sup>(139)</sup> Document No. 8 in note 20, *supra*, p. 29, para. 136.

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The delegation which proposed the first of these two texts stated that its national legislation contained provisions regarding bareboat chartering-in and bareboat chartering-out and, upon satisfaction of certain specified conditions, the vessel would be allowed to fly the flag of the charterer's State while ownership rights and property rights remained in the shipowner's State. It noted that some States also required registration of encumbrances and property rights in the charterer's State. In the view of this delegation, such a practice would prejudice the security of the mortgagee and consequently would have negative effects on ship financing. It, therefore, stated that for the purposes of the draft convention the decisive register should be the register of the shipowner's State.

During the fifth session a different wording was proposed, in which instead of a general reference to the Convention, the application of the law of the State of permanent registration was related to the recognition and enforcement of registrable charges<sup>(140)</sup> and this text was used as a basis for the preparation by the Chairman of the new article.

**(c) The State of registration shall require a cross-reference entry in its register specifying the State whose flag the vessel is permitted to fly temporarily; likewise, the State whose flag the vessel is permitted to fly temporarily shall require that the authority in charge of the vessel's record specifies by a cross-reference in the record the State of registration.**

The cross reference required in this paragraph was initially suggested by the Working Group<sup>(141)</sup> and became paragraph 3 of the text of the new article 15 prepared by the Chairman<sup>(142)</sup>. The purpose of the provision is to enable any person consulting the register of either the State of permanent registration or the State of temporary registration to identify the other register.

**(d) No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless all registered mortgages, "hypothèques" or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, "hypothèques" or charges has been obtained.**

The draft article 3 bis prepared by the Chairman in the course of the third session of the JIGE<sup>(143)</sup> was based on Article 3 and thus provided that a State Party shall not permit suspension of registration without the written consent of

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<sup>(140)</sup> Document No. 10 in note 20. *supra*. p. 33. para. 173.

<sup>(141)</sup> Document No. 8 in note 20. *supra*. p. 35.

<sup>(142)</sup> Document No. 10 in note 20, *supra*. p. 35. para. 185(3).

<sup>(143)</sup> Document No. 6 in note 20. *supra*. p. 11. para. 20.

all holders of registered mortgages, “hypothèques” and charges and that a vessel registered in a State Party shall not be eligible for temporary registration in another State Party unless a certificate has been issued by the former State that either the registration has been suspended or that it will be suspended when the temporary registration has been effected.

This draft was practically left unaltered in the subsequent draft of a separate article wherein all provisions on bareboat charter registration were grouped together<sup>(144)</sup>. In the course of the fifth session, however, some delegations proposed to delete the second part of the provision since they considered it dealt with the question of registration of vessels and was outside the scope of the Convention. Although this remark did not take into account the fact that a corresponding provision existed in Article 3, from the Report on the fifth session<sup>(145)</sup> it appears that the deletion was accepted and in the fourth set of Draft Articles prepared for the sixth session only the first part of this provision was reproduced. This provision was not amended any further and was adopted by the Diplomatic Conference.

The deletion of the second part of the original provision suggested by the Chairman is unfortunate, for there is now an unbalance between the rules applicable to the definitive deregistration of a vessel from the register of a State Party and its registration in the register of another State Party, regulated by Article 3, and the temporary change of flag, in respect of which there is no obligation for the State in whose register a vessel is temporarily registered, to make such registration conditional to the actual suspension of the flag the vessel was previously flying.

Article 3(2) could perhaps be applied by analogy to this case, for its purpose is to avoid that a vessel has a dual nationality and this would also be the case if a vessel were permitted to fly temporarily the flag of one State without a corresponding permission being granted by the State of permanent registration.

**(e) The notice referred to in article 11 shall be given also to the competent authority in charge of the vessel’s record in the State whose flag the vessel is permitted to fly temporarily.**

**(f) Upon production of the certificate of deregistration referred to in article 12 paragraph 5, the competent authority in charge of the vessel’s record in the State whose flag the vessel is permitted to fly temporarily shall, at the request of the purchaser, issue a certificate to the effect that the right to fly the flag of that State is revoked.**

When the provisions of the Draft Articles were considered in order to identify those in respect of which bareboat charter registration may be relevant,

<sup>(144)</sup> Document No. 10 in note 20, *supra*, p. 35, para. 185.

<sup>(145)</sup> Document No. 10 in note 20, *supra*, p. 36, para. 196.

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it was immediately realized that that was the case for the provisions relating to the forced sale of a vessel.

Thus in the third set of Draft Articles amongst the additions that would be required in case it would be decided to deal with bareboat charter registration, an addition was suggested to Article 10 (now Article 11) to the effect that the notice of the forced sale should be given also to the competent authority of the State whose flag the vessel is flying temporarily<sup>(146)</sup>. Similarly, an additional paragraph was suggested in respect of Article 11 (now Article 12) to the effect that a certificate must be issued by the competent authority of the State whose flag the vessel is flying temporarily to the effect that the right to fly the flag of that State is revoked. The only material change which was made to these provisions has been the replacement of the word "register" with the word "record" with a view to avoiding any possible inference that dual registration was impliedly permitted<sup>(147)</sup>.

**(g) Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to fly temporarily their flag or national vessels to fly temporarily a foreign flag.**

The addition of this provision was suggested during the fifth session of the JIGE. It was explained that its purpose was to make the Convention acceptable to those States who do not permit temporary change of flag. The proposal was accepted without objections.

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<sup>(146)</sup> Document No. 9 in note 20, supra, p. 14, note 4.

<sup>(147)</sup> Document No. 10 in note 20, supra, p. 34. paras. 183-184.

## ARREST OF SHIPS

### THE TRAVAUX PRÉPARATOIRES OF THE DRAFT ARTICLES ADOPTED BY THE JOINT INTERGOVERNMENTAL GROUP OF EXPERTS ON MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS.

by Francesco Berlingieri

#### INTRODUCTION

The decision to consider the revision of the 1952 Arrest Convention was taken by the CMI following a resolution of IMO<sup>(1)</sup> and UNCTAD<sup>(2)</sup> to place on their working programme the revision of the 1926 and 1967 Maritime Liens and Mortgages Conventions and of the 1952 Arrest Convention. The CMI International Sub-Committee appointed by the CMI Executive Council in respect of this latter Convention, under the chairmanship of Prof. Allan Philip, considered, *inter alia*, the additions that ought to be made to the list of maritime claims, the problem of whether a ship can be arrested in respect of claims against persons other than the owner of the ship, and whether the arrest should in all circumstances create jurisdiction. In view of the quality and quantity of changes that were being discussed, the International Sub-Committee decided that it would have been difficult to carry out the revision by means of a protocol and, therefore, prepared the draft of a new Convention for consideration by the forthcoming CMI Lisbon Conference in 1985<sup>(3)</sup>. The draft was considered by the Conference and, as amended by it, was approved with 23 votes in favour, three against and seven abstentions<sup>(4)</sup>.

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<sup>(1)</sup> Resolution A.405 (x) of the Assembly of IMO at its tenth session. A more detailed account of IMO's involvement with maritime liens and mortgages and related subjects was given in the report entitled "Consideration of Work in respect of Maritime Liens and Mortgages and related Subjects: Preliminary report by the Secretariat" (Document LEG/52/5/Add. 1, dated 8 August 1984) which was submitted to the Legal Committee of IMO at its fiftysecond session in September 1984.

<sup>(2)</sup> Pursuant to resolution 49 (x) of the Committee on Shipping at its tenth session, the following three subjects were included in the work programme of the Working Group on International Shipping Legislation, namely:

- (i) maritime liens and mortgages;
- (ii) registration of rights in respect of vessels under construction; and
- (iii) arrest of vessels or other sanctions, as appropriate.

A more detailed account on the background to the UNCTAD's involvement with maritime liens and mortgages and related subject was given in the report entitled "Preliminary Analysis of possible reforms in the existing international regime of maritime liens and mortgages" (Document TD/B/C.4/ISL/48 dated 24 July 1984) which was submitted to the Working Group at its tenth session in September 1984.

<sup>(3)</sup> Report of the CMI on the Draft Revision of the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships, 1952, in Lisbon II, p. 126.

<sup>(4)</sup> Report of the CMI, *supra* note 3, p. 126.

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The draft<sup>(5)</sup>, reference to which will later be made as the Lisbon Draft, was then submitted by the President of the CMI, together with the draft of the revised 1967 Maritime Liens and Mortgages Convention, to IMO and UNCTAD.

A Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects (JIGE) was established pursuant to a recommendation of the Legal Committee of IMO, endorsed by the Council of IMO at its fifty-sixth session and pursuant to resolution (XI) of the Working Group on International Shipping Legislation of UNCTAD, endorsed by the Trade and Development Board of UNCTAD at its thirty-second session with the following terms of reference:

*Examine the subject of maritime liens and mortgages, including the possible consideration of:*

- (a) The review of the maritime liens and mortgages conventions and related enforcement procedures, such as arrest;*
- (b) The preparation of model laws or guidelines on maritime liens, mortgages and related enforcement procedures, such as arrest.*
- (c) The feasibility of an international registry of maritime liens and mortgages.*

After the approval, at its sixth session held in London from 25 to 29 September 1989, of the Draft Articles for a Convention on Maritime Liens and Mortgages<sup>(6)</sup>, the IMO-UNCTAD Joint Intergovernmental Group of Experts, on the basis of a Note prepared by the Secretariats of UNCTAD and IMO<sup>(7)</sup> adopted the following recommendation<sup>(8)</sup>:

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<sup>(5)</sup> Draft Revision of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships. 1952. Lisbon II, p. 42.

<sup>(6)</sup> Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects on its Sixth Session (IMO Document LEG/MLM/26 and UNCTAD Document TD/B/C.4/AC.8/26).

<sup>(7)</sup> Consideration of Future Work on Other Aspects of the Terms of Reference of the Joint Intergovernmental Group of Experts - Note by the Secretariats of UNCTAD and IMO (UNCTAD Document TD/B/C.4/AC.8/13 and IMO Document LEG/MLM/13). At paragraph 4 the following statement is made:

With regard to the question of enforcement procedure, most representatives were of the view that the 1952 Convention Relating to Arrest of Seagoing Ships was successful, considering that it had been ratified by over 60 States. It was suggested that any decision to align the terminology of this Convention with that of any new convention on maritime liens and mortgages should only be made after determining the course of action concerning the latter convention. Note was taken of the concern expressed regarding the possibility of extending the provisions of arrest to State-owned vessels engaged in commercial service. It was also suggested that arrest of seagoing ships should be covered by a separate convention. It was pointed out, in this context, that arrest was not merely confined to maritime rights and it should, therefore, not be dealt with merely as an annex to another subject. One representative emphasized the importance of arrest as an enforcement mechanism and stated that this tool should not be restricted to maritime liens above the mortgage.

<sup>(8)</sup> UNCTAD Document TD/B/C.4/AC.8/27 and IMO Document LEG/MLM/27.

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*With regard to arrest, the Joint Group recommends that consideration of any further work be postponed until after the adoption of the final text of the Convention on Maritime Liens and Mortgages by a diplomatic conference.*

In May 1993 the United Nations/IMO Conference, having adopted the new Convention on Maritime Liens and Mortgages on the basis of the draft prepared by the JIGE, approved a resolution in which it recommended that "the relevant bodies of UNCTAD and IMO, in the light of the outcome of the Conference, reconvene the Joint Intergovernmental Group with a view to examining the possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952".

Following such resolution, a note was prepared by the UNCTAD and IMO Secretariats in consultation with the CMI<sup>(9)</sup>, wherein some of the changes to the Arrest Convention on Maritime Liens and Mortgages were highlighted. It was stated in the note that the JIGE should take a decision on the scope of the revision of the 1952 Arrest Convention, which might be confined to drafting amendments consequential upon the adoption of the 1993 MLM Convention, or consist of a thorough revision of the Arrest Convention.

The seventh session of JIGE (the first to deal with the arrest of ships) was held in Geneva, from 5th to 9th December 1994 under the chairmanship of Mr. George Ivanov. JIGE decided to take as a basis of its work the Draft of a new Arrest Convention approved by the Lisbon Conference of the CMI and discussed most of the articles of the Draft, amongst which particular attention was paid to Article 1 - Definitions, Article 3 - Exercise of right of arrest and Article 5 - Right of rearrest and multiple arrest. On the basis of the outcome of such discussion, "Draft Articles for a Convention on Arrest of Ships" (subsequently referred to as "Draft Articles") were prepared by the IMO and UNCTAD Secretariats<sup>(10)</sup> for consideration at the eighth session, which was agreed would take place in London on 9th and 10th October 1995. At the eighth session the need for a new convention and the adoption of an open ended list of maritime claims were questioned by some delegations. After some discussion, the JIGE decided to use the Draft Articles as a basis for its deliberations, and that the outcome of the work would be embodied in a new convention, rather than a protocol. The discussion then focused, in particular, on Article 3 which replaces Article 3 paragraph 4 of the 1952 Convention.

The ninth session of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects was held in Geneva from 2nd to 6th December 1996. Mr. Ivanov, the former Chairman of the JIGE, having retired, Mr. Karl-Johan Gombrii was elected as Chairman and conducted the debates with ability and competence. The JIGE reviewed the

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<sup>(9)</sup> UNCTAD Document TD/B/CN.4/GE/2/2 of 9 August 1994.

<sup>(10)</sup> IMO Document LEG/MLM/32 of 15 June 1995 and UNCTAD Document TD/B/CN.4/GE/2/5. Consideration of the Possible Review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952.

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Draft Articles and, at the end of the session, adopted the following recommendation<sup>(11)</sup>:

*The Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects recommends to the International Maritime Organization (IMO) Council and to the Trade and Development Board of UNCTAD that they consider favourably, on the basis of the useful work done so far, proposing to the General Assembly of the United Nations the convening of a diplomatic conference to consider and adopt a convention on certain rules relating to the arrest of sea-going ships on the basis of the draft articles prepared by the Group of Experts.*

Here follows the text of the Draft Articles<sup>(12)</sup> and a summary of the travaux préparatoires.

### Article 1

#### *Definitions*

**(1) "Maritime claim" means any [claim concerning or arising out of the ownership, construction, possession, management, operation or trading of any ship, or concerning or arising out of a mortgage or an "hypothèque" or a registrable charge of the same nature on any ship, such as any] claim in respect of:**

In the Report of the CMI on the Lisbon Draft<sup>(13)</sup> the following comments are made:

13. Article 1 paragraph (1) corresponds to the same paragraph in the 1952 Convention.

In the same way as in the 1952 Convention, in the new Convention the concept of maritime claim is decisive in describing the situation in which arrest of a ship may be made. The 1952 Convention contained an exhaustive list of maritime claims. The National Associations desired an extension of this list to include a number of claims such as claims for insurance premiums, stevedoring services, brokerage fees, etc.

14. Some associations proposed the replacement of the list by a general clause covering all claims in connection with the ownership, operation and management of a ship. The principal argument was the risk that new developments might cause an exhaustive list to become out of date in the same way as had happened to the 1952 Convention. It is difficult to revise Conventions.

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<sup>(11)</sup> Annex I to the Report of the Joint UNCTAD / IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects on its ninth session. UNCTAD Document TD/B/44/3 of 6 February 1997 and IMO Document LEG / MLM:42.

<sup>(12)</sup> The UNCTAD and IMO document containing the Draft Articles has not yet been finalized.

<sup>(13)</sup> Lisbon II, p. 126 and 128.

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*Part II - The Work of the CMI*

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Others argued that a general clause would give rise to different interpretations and, therefore, not ensure uniformity of interpretation. It was also argued by some delegations that the opportunities for arrest should not be extensive. A general clause would extend too much the area where arrest could be made.

15. Various possibilities were discussed: 1. The retention of an exhaustive list as in the 1952 Convention. 2. A general clause only. 3. A general clause followed by a non-exhaustive list.

16. The possibility mentioned as n. 3 was proposed in order to ensure a maximum degree of uniformity of interpretation and was thought of as a compromise between the two other possibilities.

17. The Lisbon Conference adopted the compromise solution. Originally, the general clause contained at the end the words: "including but not restricted to:" as an introduction to the list. This was thought to make the definition very open-ended and, on the suggestion of the British Association, these words were replaced by the words: "such as", which were thought to be somewhat more restrictive in that they would limit maritime claims to those within the categories exemplified in the list of claims.

The solution adopted by the CMI at Lisbon was approved during the seventh session of JIGE by a large majority of the Delegations. The only amendment which was made to the general clause (or "chapeau") has been the addition of the word "registrable" prior to "charge of the same nature"<sup>(14)</sup>.

At the eighth session of JIGE an informal Working Group was convened to consider issues relating to the definition of "maritime claims". Some Delegations objected to the replacement of the closed list by an open-ended list, but the large majority of the Delegations confirmed their preference for the open list and the retention of the words "such as" at the end of the "chapeau"<sup>(15)</sup>. The reference to the salvage operations was also questioned, in view of salvage being then expressly mentioned in the list of maritime claims under (c). The Working Group in its Report recommended, following a remark made during the session, to repeat, for the avoidance of doubts, the words "concerning or arising out of" before "mortgage or hypothèque" and to delete the words "or out of salvage operations relating to any ship".

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<sup>(14)</sup> Report on the Work of the Sessional Group of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects on its Seventh Session. UNCTAD Document TD/B/CN.4/GE.2/3 and IMO document LEG/MLM/30 dated 8 December 1994. Revised Draft Articles for a Convention on Arrest of Ships. UNCTAD Document TD/B/CN.4/GE.2/5 of 15 June 1995.

<sup>(15)</sup> Report of the Chairman of the Informal Working Group on Article 1, Annex II to the Report of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects at its Eighth Session. Annex 1 to the Report of the Joint Intergovernmental Group of Expert. Document JIGE (VIII) 7 of 8 November 1995. IMO Document LEG/MLM/37 and UNCTAD Document TD/B/CN.4/GE.2/10, paragraphs 11 and 12 at p. 7. A report on the seventh session was also published in issue No. 4/1994 of the CMI News Letter at p. 12.

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At the ninth session the alternative between an exhaustive list and an open-ended list was again discussed and since opinions were divided, the general definition of "maritime claim" contained in the chapeau was placed in square brackets.

**(a) loss or damage caused by the operation of the ship;**

The text of the corresponding provision of the Lisbon Draft, which reproduced that of the 1952 Convention, was amended by the IMO and UNCTAD Secretariats pursuant to the decision adopted at the seventh session, to bring the wording of the Draft Articles in line with the 1993 Convention on Maritime Liens and Mortgages. However, at the eighth session of JIGE it was correctly pointed out that the words "other than loss of or damage to cargo, containers and passenger's effect carried on the ship" should be deleted since these claims, though not secured by a maritime lien under the 1993 MLM Convention, were maritime claims and were then expressly mentioned in subparagraph (h). One delegation then suggested the deletion of the word "physical" (loss or damage) in order to widen the types of claims falling under this subparagraph and to include economic loss and such suggestion was accepted<sup>(16)</sup>.

**(b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;**

The word "direct" in the sentence "in direct connection" did not appear in the 1952 Convention and in the Lisbon Draft. It was added in order to use the same language as in the 1993 MLM convention (Article 4(1)(b)). Some delegations, however, requested its deletion in order to widen the scope of this maritime claim. Attention must be drawn to the fact that a more strict connection between the occurrence and the operation of the ship was also considered necessary in the 1976 Limitation Convention (article 2(1)(a)). A coordination between the three conventions appears to be advisable.

**(c) salvage operations or any salvage agreement;**

Reference to "salvage operations" instead of "salvage" as in the 1952 Convention is due to the fact that this is the terminology used in the 1989 Salvage Convention. Reference to "salvage agreement" is due to the fact that salvage agreements may give rise to claims which are not based on salvage operations actually performed<sup>(17)</sup>.

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<sup>(16)</sup> Report on the Work of the Sessional Group, *supra* note 15, paras. 2-4.

<sup>(17)</sup> *The "Hassel"* [1959] 2 Lloyd's Rep. 82. See also *The "Unique Mariner"* [1978] 1 Lloyd's Rep. 438.

- (d) the removal or attempted removal of a threat of damage including damage to the environment or of preventive measures or similar operations, whether or not arising under any international convention, or any enactment or agreement, or losses incurred, or likely to be incurred, by third parties;**

The text of the Lisbon Draft was the following:

- (d) Liability to pay compensation or other remuneration in respect of the removal or attempted removal of a threat of damage, or of preventive measures or similar operations, whether or not arising under any international convention, or any enactment or agreement.*

Two additions have been made. First, an express reference to "damage to the environment"; secondly, a reference to losses incurred, or likely to be incurred, by third parties since it was thought that such losses were not covered by the original text.

- (e) costs or expenses relating to the raising, removal, recovery or destruction of the wreck of the ship or its cargo;**

Also this subparagraph, as the previous one, was added at Lisbon in consideration of the fact that in the Draft Revision of the Maritime Liens and Mortgages Convention a maritime lien was provided (Article 4(1)(v)) in respect of wreck removal. It was felt advisable to mention expressly the cargo laden in a sunken ship, for cargo may be removed irrespective of the removal of the ship or not and whether it is still inside the ship or not. In the 1993 MLM Convention wreck removal is not included in the list of maritime liens anymore but, to the extent that the removal is effected by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal are paid out of the proceeds of sale before all other claims secured by a maritime lien on the vessel (Article 12 para. 4). It is seems, however, reasonable, to qualify all costs of removal as a maritime claim, irrespective of their priority in the distribution of the proceeds of sale. The text of the Lisbon Draft was left unaltered.

- (f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;**

This subparagraph corresponds to subparagraph (d) of the 1952 Convention. The only change made at Lisbon is that the charter party is not referred to as the type of contract, but as the document of the contract. The words "agreement ... whether by charter party or otherwise" have in fact been replaced by "agreement ... whether contained in a charterparty or otherwise" and this text has not been changed.

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With respect to the provision of the 1952 Convention the view has been expressed<sup>(18)</sup> that the word "hire" in the context of this subparagraph probably covers only bareboat charters, for time charters are covered by the subsequent subparagraph (e). This view seems to be correct also with respect to the present wording. Subparagraph (f) therefore covers any agreement relating to the use of a ship the purpose of which is not the carriage of goods, for any agreement relating to the carriage of goods is covered by the subsequent subparagraph (g).

**(g) any agreement relating to the carriage of goods or passengers in the ship whether contained in a charter party or otherwise;**

The same change as in the preceding subparagraph has been made in this subparagraph. Moreover, the reference to the agreements relating to the carriage of passengers has been added. The words "or otherwise" include, for the carriage of goods, bills of lading and sea waybills and, for the carriage of passengers, tickets or similar documents issued to the individual passenger.

The claims covered by this subparagraph are claims in respect of breach of contract, but probably do not include claims for loss of or damage to cargo or luggage which are covered by the subsequent subparagraph (h), nor loss of life of or personal injury to passengers, which are covered by subparagraph (b).

**(h) loss of or damage to or in connection with goods (including luggage) carried in the ship;**

The wording of this subparagraph differs slightly from that of the corresponding provision of the 1952 Convention (subparagraph f). The words "loss or damage to goods" have been replaced by "loss of or damage to or in connection with goods". The loss in connection with goods may consist, for example, in economic loss and damage for delay. The word "baggage" has been replaced by "luggage" and, therefore, the question that has been raised in connection with the meaning of "baggage"<sup>(19)</sup> is overcome.

**i) general average;**

In the 1952 Convention this subparagraph (lettered (i)), which has been left unaltered, was preceded by a subparagraph (h) wherein reference was made to claims in respect of bottomry, which has been deleted in the Lisbon Draft for bottomry has not been used since a long time.

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<sup>(18)</sup> Berlingieri, *Arrest of Ships*, Second edition, London 1996, p. 46.

<sup>(19)</sup> Berlingieri, *Arrest of Ships*, *supra* note 18, p. 50.

**(k) pilotage;**

Pilotage was already mentioned in the 1952 Convention under subparagraph (j).

**(l) goods, materials, provisions, bunkers, equipment (including containers) or services supplied to the ship for its operation or maintenance;**

This is the text adopted at Lisbon. The addition, made at Lisbon, of the words "provisions, bunkers, equipment (including containers) or services" to the words "goods or materials" expands considerably the scope of this subparagraph so to include all supplies and services rendered to a ship in connection with its operation or its maintenance. The wording of this provision is such as to exclude the nature of maritime claim in respect of the supply of containers to a shipowner for use on any ship operated by him <sup>(20)</sup>.

**(m) building, repairing, converting or equipping the ship;**

The text corresponds to that adopted at Lisbon, save that the word "building" has replaced the word "construction" for it is the word normally used.

The changes made at Lisbon as respects the corresponding provision of the 1952 Convention (subparagraph (l)) were the addition of the reference to the conversion of a ship and the deletion of the reference to "dock charges and dues". The addition may be related to the reference in the Lisbon Draft Revision of the MLM Convention to the right of retention of a ship "to secure claims for repair, including reconstruction" which was left unaltered in the 1993 MLM Convention. It is, however, not clear why the word "converting" is used, rather than "reconstruction".

**(n) port, canal, and other waterway dues and charges;**

In the Lisbon Draft, the reference to "dock charges", which are mentioned in the 1952 Convention after "construction, repair or equipment of any ship", was added after "port, canal and other waterway dues" in respect of which the draft MLM Convention granted a maritime lien.

When it was decided to use in the Draft Articles the same wording used in the 1993 MLM Convention in respect of maritime liens, the complete text of Article 4(1)(d) of such Convention was adopted, including the reference to pilotage dues. It was then realized that pilotage dues were mentioned twice

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<sup>(20)</sup> *The "River Rima"* (H.L.) [1988]2 Lloyd's Rep. 193. See also Berlingieri, *Arrest of Ships*, *supra* note 18, p. 51 and 52.

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and, therefore, reference to them was deleted and the word "and charges" were added by the Working Group on Article 1. It is not clear why the word "dock" was not reinstated. The consequence is that the "charges" are now referred to ports, canals and other waterways. It may however be considered that dock charges are included in port charges.

**(o) Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;**

The wording of the corresponding subparagraph of the 1952 Convention (subparagraph (m)) was amended at Lisbon in order to bring it in line (although not completely) with the wording of the Draft Revision of the MLM Convention (Article 4 para. 1 (i)). At the seventh session of the JIGE the text adopted at Lisbon was amended so to reproduce verbatim the provision of the 1993 MLM Convention.

The wording adopted in the Lisbon Draft of the MLM Convention and in the 1993 MLM Convention with respect to social insurance contributions was the effect of the decision to exclude a maritime lien for claims of the insurers<sup>(21)</sup>. It seems, however, that there is no reason to exclude the right of arrest in respect of such claims. And this is the more so now that claims for insurance premiums are included in the list of maritime claims and that the list is open ended.

**(p) master's disbursements and disbursements made by shippers, demise charterers, other charterers or agents on behalf of the ship or its owners;**

This wording is almost the same as that of the 1952 Convention, which had been considered as lacking of precision by the CMI International Sub-Committee. The wording adopted at Lisbon was the following:

*(p) disbursements made in respect of the ship, by or on behalf of the master, owner, bareboat or other charterer or agent:*

<sup>(21)</sup> The following statement is made in the Report of the CMI on the Draft Revision of the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967, Lisbon II, 80 at p. 96:

The question whether a maritime lien should be granted to secure claims for social insurance contributions, which had already been discussed within the International Sub-Committee without a clear majority emerging from the discussion, was the object of a further debate. The issue was whether a maritime lien should be granted to all claims for social insurance contributions, whether the claimants were members of the crew or the insurers, or only to claims of the master and crew. The proposal to restrict the maritime lien to claims of the master and crew made by the U.K. Delegation was adopted with a large majority (26 votes in favour, 4 against and 1 abstention).

It is not clear why the 1952 wording was preferred by the Working Group on Article 1 and it is felt that this is a considerable step backward. First, the master's disbursements do not differ from those made by others; secondly, it is not correct to speak of disbursements made "on behalf of the ship" and the words "in respect of the ship" appear to be by far more precise; thirdly, it is difficult to conceive disbursements made by shippers "on behalf of the ship".

**(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;**

This subparagraph has been added at Lisbon and fills in a gap of the 1952 Convention, for claims for insurance premiums (and mutual insurance calls) are clearly maritime claims<sup>(22)</sup>. The text adopted at Lisbon was left unaltered by JIGE.

Since the insurance premiums covered by this subparagraph are those paid "by or on behalf of the shipowner or demise charterer", premiums paid by brokers or mortgagees on behalf of the shipowner are included, whilst premiums paid by mortgagees in respect of the mortgagee's interest insurance are not included.

The reference to premiums payable by or on behalf of the demise charterer raises the problem whether the arrest of a ship in respect of such claim is permitted in any case or only when the condition required by Article 3 para. 3 is met, namely if under the law of the State where the arrest is demanded a judgment in respect of that claim can be enforced against the ship by judicial or forced sale of that ship. The fact that in Article 3 para. 3 reference is made only to the previous paragraphs of Article 3 and that the claim against the demise charterer is expressly mentioned in Article 1 para. 1 may raise doubts in that respect. It is thought that an express reference to Article 3 para. 3 should be made in Article 1 para. 1 (q).

**(r) any commission, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;**

Also this subparagraph has been added at Lisbon, for, as in respect of insurance premiums, claims for commissions, brokerages and agency fees are clearly maritime claims. Commissions and brokerages may be due in relation to insurance contracts, contracts for the use or hire of a ship, contracts of carriage of cargo or passengers, towage contracts, salvage contracts, shipbuilding and ship repair contracts, contracts for the supply of materials, provisions, bunkers, equipment or services. This list is almost certainly not exhaustive.

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<sup>(22)</sup> Berlingieri, *Arrest of Ships*, *supra* note 18, p. 39.

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Also in this subparagraph, for the reasons stated with respect to the preceding subparagraph, reference ought to be made to Article 3 para. 3 with respect to claims against the demise charterer.

**(s) any dispute as to ownership or possession of the ship;**

The unsatisfactory wording of subparagraph (o) of the 1952 Convention, wherein reference was made to disputes as to the title or ownership of the ship, thus repeating twice the same concept, whilst reference to disputes as to possession was only made in the subsequent subparagraph, was cured at Lisbon by deleting the reference to disputes as to title and adding those as to possession. The wording of the Lisbon Draft was not changed.

**(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;**

The reference to disputes as to possession, which existed in the corresponding provision of the 1952 Convention (subparagraph (p)), was correctly deleted at Lisbon and the text was not changed by JIGE. However the description of the disputes between co-owners of a ship is not complete, for there may also be other disputes such as those relating to the sale or the mortgage of the ship<sup>(23)</sup>.

**(u) a registered mortgage or a registered "hypothèque" or a registrable charge of the same nature on the ship;**

The wording was been changed at Lisbon, as respects that of the corresponding provision of the 1952 Convention (subparagraph q) in order to follow the 1993 MLM Convention but then the JIGE added before "mortgage" and "hypothèque" the word "registered". The addition had the purpose of limiting the qualification of mortgages and "hypothèques" as maritime claims to the mortgages and "hypothèques" actually registered. Since, however, under

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<sup>(23)</sup> The co-owners may not agree on the right of one of them to mortgage his share in the ship or on the mortgage of the whole of the ship. These matters are specifically regulated in certain jurisdictions. For example, in Italy Article 263 of the Codice de'la Navigazione (CN) provides that a co-owner may not hypothecate his share in the ship without the consent of the majority of the co-owners and Article 262 CN provides that the resolution to hypothecate the whole ship must be approved by a majority holding 16 shares (carati) out of 24, i.e. by a two thirds majority. In France each co-owner may hypothecate his share (Article 24 of Décret No. 68-845 of 24 September 1968), but the whole ship may be hypothecated by the manager with the consent of the co-owners who represent 75% of the value of the ship (Article 25 of Décret No. 68-845). In Argentina a ship in co-ownership may be hypothecated as security for debts incurred in the common interest by a resolution of a two-thirds majority (Article 500 of Ley de Navegación).

all conventions on maritime liens and mortgages the recognition of foreign mortgages and "hypothèques" is limited to those that are registered, the addition decided by the JIGE does not seem necessary. Moreover, it creates confusion, for the mortgages and "hypothèques" must be registered, whilst this requirement does not exist for other charges, which must only be "registrable".

**(v) any dispute arising out of a contract for the sale of the ship.**

This subparagraph has been added at Lisbon in order to expressly include claims that are clearly of a maritime nature<sup>(24)</sup> and has not been amended by JIGE.

**(2) "Arrest" means any detention, or restriction on removal of a ship as a conservatory measure by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment, arbitral award or other enforceable instrument.**

The definition adopted at Lisbon was the following:

*(2) "Arrest" means any detention, or restriction on removal, of a ship by order of a court to secure a maritime claim when at the time of such detention or restriction that ship is physically within the jurisdiction of the State where the order has been made.*

*"Arrest" includes "attachment" or other conservatory measures, but does not include measures taken in execution or satisfaction of an enforceable judgment or arbitral award.*

Several criticisms were made to this text. It was pointed out, inter alia, that the requirement of the vessel being in the jurisdiction of the court should not be part of the definition and that, in any event, it must suffice that the vessel is in the jurisdiction when the arrest is made and not when the order is issued. It was also suggested to revert to the definition of the 1952 Convention:

*2. "Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.*

The text adopted by the JIGE was prepared by the Chairman following consultations with several delegations. It was however decided that, in view of its paramount importance, this definition should require further consideration.

**(3) "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.**

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<sup>(24)</sup> Berlingieri. Arrest of Ships, *supra* note 18, p. 42 and 43.

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**(4) "Claimant" means any person asserting a maritime claim.**

**(5) "Court" means any competent judicial authority of a State.**

The definitions of "person" is not significantly different from that of the 1952 Convention and from that of the Lisbon Draft.

The definition of "claimant" is the same as in the Lisbon Draft and differs from that in the 1952 Convention in that the words "a person who alleges..." were replaced by "any person asserting...".

The definition of "Court" was adopted at Lisbon and left unaltered.

## **Article 2**

### *Powers of arrest*

**(1) A ship may be arrested or released from arrest only by or under the authority of a Court of the Contracting State in which the arrest is made.**

Article 2(1) of the Lisbon Draft provided that a ship may be arrested or released from arrest only by or under the authority of a Court of the State in which the arrest is demanded or has been effected.

It was suggested that the reference to the court of the State in which the arrest is demanded may, in the context of this provision, be misleading, for it can imply that a court other than that of the State where the arrest is made may have jurisdiction to grant an order of arrest.

It was also suggested that it should be stated, as in the corresponding provision of the 1957 Convention, that the court referred to must be a court of a Contracting State.

**(2) A ship may be only be arrested in respect of a maritime claim but in respect of no other claim.**

In the conflict between the civil law approach, according to which the arrest, as a conservative measure, should be permissible in respect of any claim, and the common law approach, according to which the arrest, as a means to found admiralty jurisdiction, should be permissible only in respect of specific claims of a maritime nature, the latter view prevailed and this provision was adopted at the CMI Conference of 1949<sup>(25)</sup> and was included in Article 2 of the 1952 Convention and in a separate paragraph at Lisbon. No change was made by the JIGE.

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<sup>(25)</sup> Berlingieri, *Arrest of Ships*, *supra* note 18, p. 39.

**[(3) A ship may be arrested even though it is ready to sail or is sailing.]**

The origin of this provision is related to the rule, existing in many civil law countries, whereby a ship ready to sail is not subject to arrest<sup>(26)</sup>. The reason of this old rule, codified in Article 215 of the French Code de Commerce, was the need not to adversely affect the voyage of the ship, even though a ship could subsequently be arrested or seized in the course of the voyage as security for debts arisen during the voyage<sup>(27)</sup>.

In the French text of the 1952 Convention the words used were the same used in art. 215 of the French Code de Commerce: "prêt à faire voile" and were translated in English with "ready to sail". At Lisbon it was thought that the provision whereby a ship may be arrested even if ready to sail might imply that no arrest is permissible after the ship is sailing or has sailed out of her berth and, therefore, the words "or is sailing" were added. These words, however, are not clear, because they may be interpreted to refer to the time when the ship is unmooring and leaving the berth or to any time thereafter, when the ship, after having left the berth (and the port) is in the course of navigation. The text adopted at Lisbon was the subject of a considerable debate during the eighth and ninth sessions of the JIGE. The following is the summary of the debate at the ninth session published in the official Report<sup>(28)</sup>:

32. The Sessional Group considered the proposal of the observer for the International Chamber of Shipping (ICS) to delete the words "or is sailing" from this paragraph.

33. Some delegations suggested that the arrest of a ship already sailing would be difficult to implement and could also pose safety problems. In response, other delegations mentioned cases where the return of a ship already sailing could be secured, especially in the case of ships which were still within large port areas.

34. A discussion was held on the implications, if any, of this paragraph bearing in mind provisions of the 1982 United Nations Convention on the Law of the Sea (the LOS Convention). In this regard reference was made to article 28, paragraph 3, of this Convention, which recognized the right of the coastal State, in accordance with its law, to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea after leaving internal waters.

35. In this context a reference was made to the right of hot pursuit by the coastal State. It was noted that article 111 of the LOS Convention allowed the exercise of this right when the coastal State had good reason to believe

<sup>(26)</sup> Berlingieri, Arrest of Ships, *supra* note 18, p. 84.

<sup>(27)</sup> Ripert, *Droit Maritime*, third edition, Paris 1955, Vol. 1, p. 798.

<sup>(28)</sup> Report on the Work of the Joint UNCTAD/IMO Intergovernmental Group of Expert, *supra* note 11, p. 13 and 14.

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that a foreign ship had violated the laws and regulations of that State. It was submitted that this matter of public law did not relate to the scope of implementation of a prospective arrest convention.

36. Bearing in mind the reasons for the inclusion of the possibility to arrest a ship even if it was already sailing, consideration was given to the effect of the possible suppression of the words "or is sailing" from the draft. In the opinion of some delegations, the coastal State would in any case retain the possibility of arresting a ship which was leaving or had left port as long as it was within its jurisdiction. It was suggested that clear terms be included in the convention indicating that arrest could be effected only in respect of ships within the jurisdiction of the coastal State. While some delegations preferred to keep the text of Article 2 (3) as presently drafted, other delegations favoured either deleting or placing the paragraph in brackets.

37. In the view of other delegations, deletion could be interpreted as imposing a limitation on the power of the State to arrest a foreign ship. Such a restriction could in fact result in the impossibility of making arrests in many cases where the claim had not been properly substantiated due to lack of time but was nevertheless legitimate. Reference was also made to the difference between the physical intervention and the legal effects of an arrest, which in many cases was the source of confusion regarding the extent to which a State could enforce jurisdiction in this regard.

38. The Group decided that the text of this paragraph should be placed within brackets.

Perhaps a solution to the problems that have been raised could be to adopt a rule that would avoid the possible implication that after sailing a ship may not be arrested such as, for example: "This provision does not affect the rules of other international conventions or of national laws relating to the arrest of a ship in the course of navigation". If such a provision were added, the words "or is sailing" could remain, because they would only refer to the time when the vessel is unmooring and sailing out of the berth.

**(4) A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is made is to be adjudicated in a State other than the State where the arrest is made, or is to be arbitrated, or is to be adjudicated subject to the law of another State.**

This provision did not exist in the 1952 Convention even though the possibility of an arrest by order of a Court that has no jurisdiction on the merits is implied in Article 7(2) which regulates the case when the Court within whose jurisdiction the ship was arrested has not jurisdiction on the merits. The

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CMI International Sub-Committee deemed, however, that it would be convenient to have a positive rule in this respect and the text submitted to the Lisbon Conference was approved. The only change made by the JIGE was the deletion of the reference to a choice of law clause.

**(5) Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was made or applied for.**

This provision is based on the second paragraph of Article 6 of the 1952 Convention and was moved by the CMI International Sub-Committee to Article 2 in order to assemble together all rules governing the power of arrest. The wording of this provision was discussed during the eighth and ninth sessions of the JIGE. The following is summary of the debate during the ninth session is taken from the official Report <sup>(29)</sup>:

40. The Sessional Group discussed the proposal submitted by the United Kingdom (JIGE(IX)/3, paragraph 16) to refer only to the law of the State in which the arrest was made, thus deleting reference to the law of the State where the arrest was demanded.

41. Some delegations noted that, while a similar proposal had been adopted by the Group in paragraph 1, a distinction should be made in relation to paragraph 5, which covered a different situation. Reference to an application for arrest was in this case important, since it was related to the procedural aspects of the *lex fori*, and cases where arrest was applied for and not granted must also be borne in mind.

42. The Group considered that the language used in the 1952 Convention should be preferred. Accordingly, the Group agreed to replace the words "is demanded or has been effected" by "was made or applied for".

### Article 3

#### *Exercise of right of arrest*

- (1) Arrest is permissible of any ship in respect of which a maritime claim is asserted if:**
- (a) the claim against the owner, demise charterer, manager or operator of the ship is secured by a maritime lien and is within any of the following categories:**
- (i) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;**

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<sup>(29)</sup> Report on the Work of the Joint UNCTAD / IMO Intergovernmental Group of Experts, *supra* note 11, p. 14.

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- (ii) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
  - (iii) reward for the salvage of the ship;
  - (iv) port, canal, and other waterway dues and pilotage dues;
  - (v) physical loss or damage (based on tort) caused by the operation of the ship other than loss of or damage to cargo, containers and passengers' effects carried on the ship; or
- (b) [the claim against the owner, demise charterer, manager or operator of the vessel is secured by a maritime lien, other than those referred to in paragraph (a), recognized under the law of the State where the arrest is requested;] or
- (c) the claim is based upon a mortgage or an "hypothèque" or a registrable charge of the same nature; or
- (d) the claim is related to ownership or possession of the ship; or
- (e) the claim is not covered by (a), (b), (c) or (d) above and if:
- (i) the person who owned the ship at the time when the maritime claim arose is personally liable for the claim and is owner of the ship when the arrest is effected [, or
  - (ii) the demise charterer of the ship is personally liable for the claim and is demise charterer or owner of the ship when the arrest is effected].
- (2) .....
- (3) Notwithstanding the provisions of paragraphs (1) and (2) of this article, the arrest of a ship which is not owned by the person allegedly liable for the claim shall be permissible only if, under the law of the State where the arrest is demanded, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

The provision of Article 3(4) of the 1952 Convention, whereby the arrest of a bareboat chartered ship is permissible in respect of claims against the charterer and, even more, the additional provision whereby the former provision applies "to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship" have given rise to conflicting interpretations<sup>(30)</sup>. In order to find an acceptable solution the Lisbon Conference decided that a claim may be brought against a person who is not the owner of the ship if it is secured by a maritime lien recognized by the future new MLM Convention or is based on a mortgage, a "hypothèque" or registrable charge, or relates to ownership or possession of the

<sup>(30)</sup> Berlingieri. Arrest of Ships. *supra* note 18, p. 75.

ship or is against the bareboat charterer; provided, however, that under the law of the State where the arrest is demanded the claim can be enforced against that ship.

At the eighth session of JIGE the U.S. Delegation proposed the replacement of the list of the MLM Convention liens with a general reference to maritime liens, thereby extending the right of arrest of a ship not owned by the person against whom the claim has arisen to all claims secured by maritime liens granted by the law applicable by the Court competent for the arrest.

A compromise proposal had been put forward by the Chairman of the Informal Group appointed by the JIGE, consisting of the maintenance of the 1993 MLM Convention liens and of the replacement of a general reference to maritime liens by a reference to the maritime liens granted by the law of the State where the arrest is requested, pursuant to Article 6 of the MLM Convention. Such solution would have first limited the claims in respect of which the arrest would be permissible to claims against the owner, the demise charterer, manager or operator of the ship, as provided in Article 4(1) of the 1993 MLM Convention. Secondly, it would have made the permissible liens subject to the provisions of Articles 8, 10 and 12 of the 1993 MLM Convention and, thirdly, would have made them subject to the short extinction periods set out in Article 6 of the 1993 MLM Convention.

Already at the eighth session, the U.S. Delegation had amended its original proposal to the effect of making express reference to the maritime liens recognized by the law of the State in which the arrest is applied for, thereby including in the rules applicable also the choice of law rules of that State.

Prior to the ninth session the U.S. Delegation had further amended its proposal, in order to incorporate verbatim the 1993 MLM Convention liens prior to the reference to the national liens.

The following summary of the discussions held at the ninth session of the JIGE is taken from the official Report <sup>(31)</sup>:

51. The delegation of the United States of America explained that the proposal was based on the present text of alternative 3 and the proposal submitted by it during the eighth session of the Joint Group. Although it continued to favour the text of alternative 2, it recognized that alternative 2 gave rise to serious concerns on the part of several delegations. The present proposal was therefore made to facilitate reaching a compromise solution. The proposal introduced the following changes to alternative 3: (a) the word "granted" was changed to "recognized" so as to allow the national Court concerned to authorize an arrest of a vessel if, on the basis of a choice of law analysis, the Court recognized the claim being asserted even if its national law did not grant such a lien; (b) the reference to the 1993 MLM Convention was deleted so that the present draft revision of the Arrest Convention could stand alone without direct linkage to that Convention; (c) it incorporated a number of drafting amendments

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<sup>(31)</sup> Report on the Work of the Joint UNCTAD / IMO Intergovernmental Group of Experts, *supra* note 11, p. 16 and 17.

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proposed by some delegations after the eighth session of the Joint Group. In Article 3(1)(b), the words "other than those referred to in sub-paragraph (a)", were included. In summary, the proposal clearly set out maritime liens recognized under Article 4 of the MLM Convention and provided a means of enforcing maritime liens other than those recognized in Article 4 of the Convention, but no State was required to enforce maritime liens arising under Article 3(1)(b). The matter was left to the national law of the Court considering the case.

52. Most delegations considered that, although the proposal of the United States of America had some drawbacks, it provided a good basis for a compromise.

53. Some delegations which had favoured alternative 3 or alternative 1 were prepared to accept the proposal subject to certain amendments, as it was understood that the proposal was in line with the compromise adopted under article 6 of the 1993 MLM Convention. It was pointed out that, while it was essential to keep the two Conventions separate, it was also important to ensure conformity between them. It was questioned whether the omission of any reference in paragraph (b) to the words in the chapeau of article 6 of the MLM Convention was intentional. In the view of some delegations, under article 6, only claims against "the owner, demise charterer, manager or operator of the vessel" could be secured by a national maritime lien. According to their view, the deletion of any express reference to that article without incorporating the substance of its chapeau would clearly widen the scope of this Convention by also including claims against time and voyage charterers as a basis for arrest. The delegation of the United States of America confirmed that it preferred to keep the present wording of the proposal and to include claims against time and voyage charterers.

54. One delegation proposed including in paragraph (b) the words "claims against the owner, demise charterer, manager or operator of the vessel" in order to ensure that paragraph (b) would be in line with the compromise regarding Article 6 of the MLM Convention. This delegation added that this would be a requirement for the approval of the proposal of the United States of America. It was further suggested that the same words, which were also included in the chapeau of Article 4 of the MLM Convention, should be added in sub-paragraph (a) of the proposal. These proposals were supported by most delegations.

55. Some delegations questioned the use of the word "registered" in sub-paragraph (b). Others proposed using the term "registered" also in reference to "hypothèque" and charges of the same nature. One delegation suggested using in sub-paragraph (c) the words "a mortgage or an "hypothèque" or a registrable charge in the same nature" from Article 1(1). Another delegation proposed using in paragraph 1(a)(v) the same wording as in Article 4(1)(c) of the MLM Convention.

56. Some delegations preferred using the word "granted" rather than

"recognized" in sub-paragraph (b). It was pointed out that the proposal could otherwise lead to increased forum shopping and would not promote harmonization of law.

57. Some delegations questioned the necessity for retaining sub-paragraphs 1(d)(ii) and 2(b) of Article 3. These delegations preferred the approach of the 1952 Convention and proposed preventing arrest for claims not secured by maritime liens for which demise charterers and time charterers were personally liable. These delegations therefore proposed deleting these subparagraphs.

65. In view of the above, the Sessional Group decided to take the proposal of the delegation of the United States of America as a basis and make the following amendments:

- (i) To include in sub-paragraph (a) the words "claims against the owner, demise charterer, manager or operator of the vessel" from the chapeau of Article 4 of the MLM Convention;
- (ii) To place sub-paragraph (b) in brackets, with the addition of similar words from the chapeau of Article 6 of the MLM Convention;
- (iii) To use in sub-paragraph (c) the words "a mortgage or an "hypothèque" or registrable charge of the same nature" from Article 1(1); it should also be considered whether the term "registrable" was the correct term to use in this context;
- (iv) To place sub-paragraph (d)(ii) and paragraph 2(b) of the JIGE text in brackets;
- (v) To introduce the concept of claims based on tort from Article 4 of the MLM Convention in paragraph 1(a)(v) by including in parentheses the words "based on tort" after "physical loss or damage".

If the text of paragraph (b) were adopted as it is presently worded, the consequence would be that a ship would be subject to arrest in a State Party if the claim is against the demise charterer, manager or operator and is secured by a maritime lien recognized by the *lex fori*. The right of arrest would, therefore, exist beyond the limits within which national maritime liens are permitted under the 1993 MLM Convention, article 6 of which provides that such liens shall be subject to the provisions of article 8, 10 and 12 and shall be extinguished after a period of 6 months or at the end of a period of 60 days following a sale to a bona fide purchaser.

The proposal made by the Chairman of the Informal Group at the eighth session, referred to above, seems, therefore, still to be the most reasonable solution.

**(2) Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is personally liable for the maritime claim and who was, when the claim arose:**

**(a) owner of the ship in respect of which the maritime claim arose [; or**

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**(b) demise charterer, time charterer or voyage charterer of that ship].****This provision does not apply to claims in respect of ownership or possession of a ship.**

The following statements are made in the CMI Report on the Lisbon Draft <sup>(32)</sup>:

58. Paragraph (2) of Article 3 provides for a rule practically identical to the situation under the 1952 Convention. Sisterships belonging to the owner may be arrested if the owner is liable for the claim. Any ships belonging to the bareboat, time or voyage charterer may be arrested if that charterer is liable for the claim. However, such ships may not be arrested if the claim is for the ownership or possession of a ship. Then only that ship may be arrested. This is also in conformity with the 1952 Convention. A proposal was made that this restriction should be deleted, but it was upheld by the Conference.

59. The relevant time with respect to ownership of the sistership is the time when the arrest is effected.

60. There is no limitation on the number of ships that may be arrested other than that when sufficient security has been obtained to cover the whole of the claim no more ships may be arrested.

The text of the Lisbon Draft was not amended by the JIGE but sub-paragraph (b) was placed in square brackets since its necessity was questioned by some delegations. The purpose of this sub-paragraph was to enable the arrest of a ship owned by the person against whom the maritime claim has arisen when the arrest of the ship in respect of which the claim has arisen may not be arrested since it is not owned by such person. This extension of the right of arrest seems to be reasonable even if, of course, this is not a case of arrest of a "sistership" in a strict sense.

#### Article 4

##### *Release from arrest*

**(1) A ship which has been arrested shall be released when sufficient security has been furnished in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1(1)(s) and (t). In such cases, the court may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.**

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<sup>(32)</sup> Lisbon II, p. 142, paras. 58-60.

**(2) In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof [, not exceeding the value of the ship].**

**(3) Any request for the ship to be released upon security being provided shall not be construed as an acknowledgment of liability nor as a waiver of any defence or any right to limit liability.**

**(5) Where pursuant to paragraph (1) of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.**

In the Lisbon Draft the provision of the 1952 Convention whereby the release of the ship against security is not permissible in case the arrest is made in respect of a dispute relating to ownership and possession had been deleted. It has now been reinstated following a proposal of the Japanese delegation<sup>(33)</sup>.

The provision, added in the Lisbon Draft, whereby the amount of the security may not exceed the value of the ship was criticized by the U.K. Delegation, who pointed out that it may be in conflict with the applicable limitation convention (which, pursuant to Article 8(6), takes precedence over the new Arrest Convention), since the limitation may often exceed the value of the ship. This remark is very likely based on the provision of Article 13(2) of the 1976 Convention, whereby after the limitation fund has been constituted, any ship belonging to a person on behalf of whom the fund has been constituted which has been arrested for a claim which may be raised against the fund may (or shall, in certain cases) be released. Following this remark the words "not exceeding the value of the ship" have been placed in square brackets.

The reason given for the deletion of these words seems, however, to be misconceived. In fact, there is no connection at all between the reason why a ship should be released from arrest when security is given for an amount equal to the value of the ship and the reason why the ship may not be arrested after the limitation fund has been established.

In the former case, the ship is arrested as security for the claim of the arrestor and in case the security is enforced, the amount the arrestor may obtain cannot exceed the value of the ship. It follows that the owner of the ship should be entitled to replace the ship with another security of equal value.

In the case of the establishment of the limitation fund, the release of the ship is not the consequence of the provision of security for the claim of the arrestor, but rather the consequence of the claimants being prevented to enforce their claims on assets of their debtor other than the limitation fund. If the owner of the ship has obtained the release of the ship by providing security, whatever is its amount, he may still be subject to the actions of other claimants in respect of claims arising on the same occasion and, in order to prevent

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<sup>(33)</sup> Report on the Work of the Sessional Group, *supra* note 28, p. 12, para. 64.

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individual actions against his ships and his other assets, he must commence limitation proceedings and constitute a limitation fund. Only after the fund will have been constituted, the security may be released in the circumstances set out in Article 11 of the Limitation Convention.

The security for the release of the ship from arrest and the limitation fund are therefore, entirely separate and relate to different interests.

- (4) (a) If a ship has been arrested in a non-party State and is not released although security has been given in a State Party, that security shall be ordered released on application to the Court in the State Party [save in exceptional cases where it would be unjust to do so].**
- (b) If in a non-party State the ship is released upon satisfactory security being provided, any security given in a State Party shall be ordered released to the extent that the total amount of security given in the two States exceeds:**
- (i) the claim for which the ship has been arrested [, or**
- (ii) the value of the ship,**
- whichever is the lower].**
- Such release shall, however, not be ordered unless the security given in the non-party State will actually be available to the claimant and will be freely transferable.**

The following statements are made in the Report on the Lisbon Draft <sup>(34)</sup>:

65. When a ship has been arrested, Article 5 prevents its re-arrest in a Contracting State. No such assurance exists against rearrest in a non-contracting State. Paragraph (4), therefore, provides for the release of security already given in a Contracting State if the ship is arrested in a non-contracting State or released there only after security has been given. An exception is made where it would be unjust to release the security, such as when the security in the non-contracting State is not available to the claimant. The provisions on exceptions are based upon similar provisions in the Convention on global limitation. However, the need in individual cases to protect the claimant may not always be the same in the Arrest Convention since the claimant can avoid release in the Contracting State by himself releasing the security in the non-contracting State.

The exception at the end of sub-paragraph (a) gave rise to some objections. The following summary of the discussions is taken from the official Report on the ninth session <sup>(35)</sup>:

<sup>(34)</sup> Lisbon II, p. 144, para. 65.

<sup>(35)</sup> Report on the Work of the Joint UNCTAD/IMO Intergovernmental Group of Expert, *supra* note 11, p. 20

73. The Group noted the views of two delegations according to which the expressions "in respect of the same claim" should be incorporated in subparagraphs (a) and (b) after the first reference to the security given in a State Party.

74. The Group considered whether the phrase "save in exceptional circumstances where it would be unjust to do so" should be deleted from subparagraph (a). Some delegations favoured this deletion, bearing in mind the imprecise meaning of the word "unjust" and the unlikelihood of application of this proviso.

75. Other delegations, while accepting that the wording was defective, were of the opinion that the proviso was needed in order to address any possible case where decisions taken within the jurisdiction of a non-party could affect the implementation by a State Party of the basic provisions of the convention regarding the release of security.

76. The Group decided that the phrase should be kept within square brackets.

## Article 5

### *Right of rearrest and multiple arrest*

**(1) Where in any State a ship has already been arrested and released or security in respect of that ship has already been given to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:**

- (a) the nature or amount of the security already obtained in respect of the same claim is inadequate, provided that the aggregate amount of security may not exceed the value of the ship; or**
- (b) the person who has already given the security is not, or is unlikely to be, able to fulfil some or all of his obligations [; or**
- (c) the ship arrested or the security previously given was released either:**
  - (i) upon the application or with the consent of the claimant acting on reasonable grounds, or**
  - (ii) because the claimant could not by taking reasonable steps prevent the release].**

**(2) Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:**

- (a) the nature or amount of the security already obtained in respect of the same claim is inadequate; or**
- (b) the provisions of paragraph (1) (b) or (c) of this article are applicable.**

**(3) "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.**

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The exceptions to the general rule whereby the rearrest of a ship in respect of the same maritime claim is not permitted, which in Article 3 para. 3 of the 1952 Convention consisted in the bail or other security that had been given to release the ship or to avoid the arrest having been released or in the existence of "other good cause for maintaining the arrest", were considered inadequate by the CMI International Sub-Committee and then by the CMI Conference. It was, in fact, deemed convenient to set out specifically in which cases a ship can be rearrested or another ship may be arrested for the same maritime claim. Furthermore, it was deemed convenient to expressly refer the exceptions also to the case of a second arrest being requested, but not yet granted.

The provision adopted by the CMI at Lisbon is divided into two parts, the first dealing with the rearrest of the ship in respect of which security has been given to avoid the arrest and the second dealing with the arrest of other ships.

The first part, contained in para. 1, sets out the following three exceptions to the general rule prohibiting rearrest or arrest:

(a) *Inadequacy of the nature or amount of the already obtained security.*

The amount of the security is inadequate where it is lower than the amount of the claim. It is not required that the amount of the claim has increased after the arrest, for example, because the damages suffered by the claimant have proved to be higher than originally expected; this exception applies even if the amount has not increased after the first arrest or the time when security was given to avoid the arrest and the security has been knowingly accepted as being lower than the amount of the claim. The nature of the security is inadequate, for example, when the period of its validity is not long enough to permit the enforcement of a judgment or award or when the security provides that payment shall be made pursuant to the judgment of a Court which is not the Court having jurisdiction to decide upon the merits of the case. The rule requires that the aggregate amount of the security should not exceed the value of the ship. This is in compliance with the general rule set out in Article 4, para. 2 but since this provision has now been placed in square brackets, also the corresponding provision of Article 5(1)(a) should have been placed in square brackets. This requirement, however, should operate in case the nature, as opposed to the amount, of the security is inadequate, in which event, however, the first security should be released.

(b) *Inability of the person who has given the security to fulfil his obligations.*

It suffices that that person is unlikely to meet his obligations. The inability may consist, for example, in the insufficient financial means or in foreign currency restrictions.

(c) *Release of the arrested ship or of the security previously given.*

Two different situations are considered. The first is that the release occurs upon the application or with the consent of the claimant. In this case, however, a further condition is required, namely that the claimant has acted on reasonable grounds and the burden of proof rests on him. Such condition would materialize if, for example, the owner is unable to

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provide immediately security and a delay in the sailing of the ship may cause relevant damages to the owner such as the loss of a cancelling date, or if the owner or a third party has undertaken to provide security and the claimant having acted on reasonable grounds has released the ship in the expectation that the security will actually be provided. The assessment of the existence of reasonable grounds may probably differ according to whether the release has occurred upon the application of the claimant or upon the application of the owner and with the consent of the claimant. The second situation considered in subparagraph (c) is that of the claimant being unable to prevent the release by taking reasonable steps. This would, for example, be the case if the ship is ordered released because it creates a danger for the safety of the port or if the berth at which the ship is moored is required for commercial reasons and no other berth is available. This would, instead, not be the case if the claimant does not commence proceedings on the merits within the prescribed time limit, if he does not provide security for damages as ordered by the Court, or if he does not pay the cost of custody of the vessel as ordered by the Court.

The second part of the provision contained in para. 2, sets out the following two exceptions to the rule that no other ship may be arrested in respect of the same maritime claim:

- (a) *Inadequacy of the nature or amount of the security.* The amount of the security may also be inadequate because the amount of the claim exceeds the value of the ship that has first been arrested. The nature of the security may be inadequate for the same reasons considered in respect of the rearrest of the arrested ship.
- (b) The same situations mentioned in subparagraphs (b) and (c) of paragraph 1 occur.

Article 5(3) then clarifies that the notion of release does not include any unlawful release or escape from arrest.

When at the seventh session of the JIGE it was decided that the Lisbon Draft should be taken as a basis of the review by the JIGE of the 1952 Convention, Article 5 of the Lisbon Draft on rearrest and multiple arrest was accepted by the majority of the Delegations. An alternative provision was, however, proposed by the Delegations of the United States, Liberia and Republic of Korea and submitted to (but not considered by) the eighth session. Such alternative provision differs from that of the Lisbon Draft in that the rearrest of a ship is permitted only if there has been fraud or material misrepresentation in connection with the release or the posting of the security. These are cases so unlikely to occur that in practice the proposal has the practical effect of prohibiting the rearrest of a ship, thus restricting considerably the rule laid down, albeit in very generic terms, in Article 3 para. 3 of the 1952 Convention. However, as already indicated, there are several situations in which it is reasonable to authorize the rearrest or the arrest of a ship. In addition, it appears rather difficult to understand why a ship cannot be

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rearrested, whilst another ship may be arrested in respect of the same claim when the nature or the amount of the security already obtained is inadequate, namely for the most relevant of the reasons for which a ship may be rearrested.

At the ninth session the JIGE decided to maintain the text of the Lisbon Draft but alternative (c) of paragraph (1) was placed in square brackets since some delegations considered the provision to be ambiguous, for example in its use of terms such as "taking reasonable steps" which could give rise to varying interpretation<sup>(36)</sup>.

This objection does not seem to have any merit for the reasons previously stated.

### Article 6

#### *Protection of owners and demise charterers or arrested ships*

**(1) The court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:**

- (a) the arrest having been wrongful [or unjustified]; or**
- (b) excessive security having been demanded and obtained.**

**(2) The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:**

- (a) the arrest having been wrongful [or unjustified], or**
- (b) excessive security having been demanded and obtained.**

**(3) The liability, if any, of the claimant in accordance with paragraph (2) of this article shall be determined by application of the law of the State where the arrest was effected.**

**(4) If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph (2) of this article may be stayed pending that decision.**

<sup>(36)</sup> Report on the Work of the Joint UNCTAD/IMO Intergovernmental Group of Expert . supra note 11, para. 79, p. 20.

**(5) Where pursuant to paragraph (1) of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.**

The question whether uniform rules should be provided in respect of the obligation of the arrestor to provide security and of his liability in case of wrongful arrest was once more<sup>(37)</sup> debated by the CMI International Sub-Committee and by the Lisbon Conference.

It was found, however, that the reasons that had previously prevented the incorporation in the 1952 Convention of any rule in that respect still existed. It was, therefore, decided not to regulate the substantive aspects of the matter, but to provide specifically the power of the Court to impose security and the jurisdiction of the Court in respect of the assessment of liability for wrongful arrest. The first aspect is regulated in para. 1 of Article 6.

The Court, reference to which is made in this paragraph, is that to which the arrest is demanded. The person in favour of whom the security may be imposed is called in this provision the "defendant". This term presupposes the existence - or the future commencement - of proceedings on the merits of the case between the arrestor and the person liable for the maritime claim in respect of which the arrest is demanded or the ship has been arrested. However, this may not always be the case. In fact, even if under Article 7 of the Lisbon Draft and of the Draft Articles, the Courts of the State in which the arrest has been effected or security given to prevent arrest normally have jurisdiction on the merits of the case, such Courts may refuse to exercise such jurisdiction or the parties may have agreed or may agree to submit the dispute to a Court of another State or to arbitration. In such event, the Courts of the State where the arrest has been effected still have jurisdiction pursuant to Article 6 para. 2 to determine the extent of liability of the claimant. In such a case the person who has suffered a loss as a consequence of the arrest would become the claimant, rather than the defendant. The reason why the term "defendant" has been used is that the person suffering a loss may not always be the owner, but also the bareboat charterer. In fact, Article 3 permits the arrest of a ship in respect of a claim secured by one of the maritime liens recognized by the 1993 MLM Convention (and may be in respect of a claim secured by a national lien), by a mortgage or "hypothèque" and, also, in respect of a claim against the demise charterer, whether or not it is secured by a maritime lien, provided the charterer is still the demise charterer when the arrest is effected and under the law of the State where the arrest is demanded a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship. This is why Article 6 is entitled "Protection of owners and demise charterers of arrested ships". The right to claim damages seems, therefore, to be limited to the owner and to the demise charterer of the ship. There is,

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<sup>(37)</sup> See Berlingieri, *Arrest of Ships*, *supra* note 18, p. 131.

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however, a situation in which a maritime claim may be enforced against the ship when the person against whom the claim has arisen is neither the owner nor the demise charterer of the ship. This situation occurs when the owner of the ship consents that a mortgage or a "hypothèque" be registered on the ship as security for a debt of a third party. It is believed that also in such case the owner, albeit not the debtor, is entitled to claim damages for wrongful arrest.

The damages may be claimed, according to Article 6 para. 1, not only when the arrest has been wrongful, but also when it has been unjustified or when excessive security has been demanded and obtained. An arrest is unjustified when, for example, the claimant has already obtained security.

The loss that may be suffered also when excessive security has been demanded and obtained normally will consist in the cost of the increased security. A loss may, however, be suffered when an excessive security has been demanded but has not been obtained, and, consequently, the ship has remained under arrest. In such case, the loss may be much greater. Such situation may perhaps be qualified as wrongful arrest, because even if the arrest was justified, the amount in respect of which the arrest was demanded was excessive.

The jurisdiction of the Courts of the State in which an arrest has been effected is established by para. 2 of Article 6.

The use of the plural is in this case appropriate since this is a rule on jurisdiction, the purpose of which is, therefore, to identify the State the judicial authorities of which can exercise jurisdiction. The competent court within that jurisdiction is then identified on the basis of the domestic rules of procedure.

The cases in which the Courts of the State in which the arrest has been effected have jurisdiction to determine the extent of the liability of the arrestor, expressly mentioned in this paragraph, are the same as those in which security may be demanded in accordance with the previous paragraph. However, whilst security may be demanded only in such cases, i.e. for any loss that may be incurred in consequence of the arrest having been wrongful or unjustified or of excessive security having been demanded and obtained, the jurisdiction is recognized generally in respect of the liability of the arrestor, as it appears from the words "including but not restricted to such loss or damage" that precede the reference to the above cases. The problem to which this difference in the wording of the two paragraphs may give rise to is that pursuant to para. 1 the claimant may be entitled to restrict the guarantee to the cases set out therein, so that should then liability be established for loss or damage incurred in consequences of other causes, the guarantee would not be enforceable. It would perhaps be preferable to use in para. 1 the same wording as in para. 2.

The jurisdiction in respect of the liability of the claimant is restricted to the cases where an arrest has been effected, and, therefore, does not cover the case of excessive security having been demanded and obtained in order to prevent arrest. This instead is the case in respect of the jurisdiction on the merits of the case, which, pursuant to Article 7 para. 1, is granted to the Courts of the State "in which an arrest has been effected or security given to prevent arrest or obtain the release of the ship".

The text of the Lisbon Draft has been adopted by the JIGE without any

change, except that the words "or unjustified" in paragraphs 1(a) and 2(a) have been placed in square brackets.

The debate on this point is summarized as follows in the official Report <sup>(38)</sup>:

85. The Group considered a proposal made by the United Kingdom (document JIGE(IX)/3, paras. 25 and 26) to delete reference to "unjustified" arrest from paragraphs 1(a) and 2(a). It was suggested that, with the exception of wrongful arrest, a claimant should not be penalized for having arrested a ship, even if the action failed on its merits. This proposal was opposed by several delegations. In their view, the deletions suggested would result in narrowing the possibilities of defence of the defendant, who would be compelled to prove the existence of bad faith on the part of the claimant to obtain compensation for loss resulting from the arrest. In connection with the argument that reference to unjustified arrest might conflict with national law, it was noted that such conflicts could be avoided by the operation of paragraph 3 of this article, according to which the liability of the claimant would be determined by the application of the law of the State where the arrest was effected.

86. It was noted that, while in article 7(1) reference was made to the jurisdiction on the merits of the case in connection not only with effected arrests but also with security given to prevent arrest, reference to this last case had not been included in article 6 paragraph (2). In this regard, it was suggested that reference in this paragraph to "security given to prevent arrest" and "obtain the release of the ship" could be included.

87. The Sessional Group agreed to retain the text of Article 6 as presently drafted, but leave the word "unjustified" in paragraphs 1(a) and 2(a) in brackets.

## Article 7

### *Jurisdiction on the merits of the case*

**(1) The Courts of the State in which an arrest has been effected or security given to prevent arrest or obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the Parties validly agree or have agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.**

**(2) Notwithstanding the provisions of paragraph (1) of this article, the Courts of the State in which an arrest has been made, or security given to prevent arrest or obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal**

<sup>(38)</sup> Report on the Work of the Joint UNCTAD/IMO Intergovernmental Group of Experts . supra note 11. p. 22.

**is permitted by the law of that State and a Court of another State accepts jurisdiction.**

The rule that had been adopted by the CMI 1937 Paris Conference, whereby the Courts of the State in which the arrest is made always have jurisdiction on the merits, was subsequently opposed by the French Association and such opposition generated the hybrid compromise embodied in Article 7 para. 1 of the 1952 Convention.

At the CMI Lisbon Conference it was agreed to revert to the formula adopted in Paris and to establish, as a general rule, that the Courts of the State in which an arrest has been effected or security given shall have jurisdiction to determine the case upon its merits.

The jurisdiction is extended to the situation where prior to the arrest security has been given to prevent the arrest. In this case the link is based on the fact that the security is given in that State, which is normally - but not in all cases - the State in whose jurisdiction the ship is at the time of the threat of arrest and of the giving of the security. The security, however, may be given in another State, e.g. in the State where the claimant or the owner of the ship is domiciled, in which event pursuant to Article 7 para. 1 the Courts of such State would have jurisdiction.

Two exceptions are made to the general rule that the Courts of the State where the arrest is made or security given have jurisdiction on the merits.

The first is where the parties have agreed or agree to submit the dispute to a Court of another State or to arbitration; provided, however, that the agreement is valid and that the Court chosen by the parties accepts jurisdiction. The condition of the validity of the agreement applies both to the choice of another Court and to arbitration. The condition of the acceptance (of jurisdiction) applies only in the first case, whilst no parallel condition is mentioned in respect of arbitration. It is theoretically possible that the arbitrators do not accept the appointment, and, in this event, unless the parties agree to replace them, the condition of acceptance of jurisdiction should, by analogy, apply.

The second exception is where the Courts of the State in which the arrest is made or security given refuse to exercise jurisdiction. This exception, however, operates under two conditions: that the refusal is permitted by the law of the State, e.g. for reasons of *forum non conveniens* where such doctrine prevails, and that a Court of another State accepts jurisdiction.

The text of the Lisbon Draft has been adopted by the JIGE without any change.

**(3) In cases where a Court of the State where an arrest has been made or security given to prevent arrest or obtain the release of the ship:**

- (a) does not have jurisdiction to determine the case upon its merits; or**

- (b) has refused to exercise jurisdiction in accordance with the provisions of paragraph (2) of this article, such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.**
- (4) If proceedings are not brought within the period of time ordered in accordance with paragraph (3) of this article then the ship arrested or the security given shall, upon request, be ordered released.**

The provisions of the 1952 Convention relating to the fixing of a period of time within which the parties must bring proceedings on the merits before a Court having jurisdiction or before an arbitral tribunal have been maintained in the Lisbon Draft, but have been assembled in one paragraph (para. 3 of Article 7). The Court may fix the period of time on its own initiative, but must do so if one of the parties so requests. In the 1952 Convention instead the Court has the obligation to do so, even if no request is made by the parties, in case another Court has jurisdiction, whilst may do so in case of arbitration.

In case of failure to bring proceedings on the merits or to commence arbitration within the prescribed time limit the Court must, on request, release the ship or the security.

- (5) If proceedings are brought within the period of time ordered in accordance with paragraph (3) of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of any such order, then unless such proceedings do not satisfy general requirements in respect of due process of law, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security given in order to prevent its arrest or obtain its release.**
- (6) Nothing contained in the provisions of paragraph (5) of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was made or security given to prevent its arrest or obtain its release.**

It was agreed at the Lisbon Conference that when the judgment on the merits is given by a Court of a State other than that in the jurisdiction of which the ship has been arrested or the security given, there is a need for a provision on the recognition and enforcement in such State of the judgment on the merits, failing which, unless there exists an multilateral or bilateral convention, the claimant does not obtain satisfaction<sup>(39)</sup>.

<sup>(39)</sup> The following statement is made in the Report of the CMI (*supra* note 3) at p. 148, para. 76:

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The provision approved by the Lisbon Conference was adopted by the JIGE with the additional reference to arbitral proceedings.

The recognition and enforcement of the foreign judgment or of the arbitral award in the State in which the ship has been arrested or the security given is subject to three conditions.

The first is that the judgment must be “final” (the words used in the French text are “*décision définitive*”). In the 1952 Convention reference was only made to “judgment” (the word used in the French text was “*condamnation*”) and, therefore, it was deemed advisable to specify that the recognition and enforcement should be obtainable only with respect to a final decision. It is, however, open to doubt whether the expressions “final judgment” and “*décision définitive*” may ensure a uniform interpretation of this provision. In fact, they may mean that the judgment is not subject to further appeal but, also, that it is final in the sense that it is not an interim judgment which must then be followed by a final one. In order to avoid uncertainty, in the CLC 1969 reference is made to a judgment “which is enforceable in the State of origin where it is no longer subject to ordinary forms of review” (Article 10-1). In the 1968 EEC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters the requirement for the recognition and enforcement is only that the judgment is enforceable in the State where it has been given (Article 31).

The second condition is that the proceedings must have been brought within the period of time ordered by the Court of the State in which the arrest has been made or the security given, in case such order was made. Reference to proceedings “before a competent Court” is made only with respect to such latter case, but of course it should apply also to the case of a period of time having been ordered. The subsequent reference to “any final decision resulting therefrom” covers judgments and arbitral awards.

The third condition is that the proceedings brought before another Court (or an arbitral tribunal) must satisfy “general requirements in respect of due process of law”. The reference to “general requirements” seems to indicate that States Parties are bound to establish requirements in respect of due process of law that do not go beyond those which are generally accepted.

Paragraph 6 was added at Lisbon with a view to avoiding that this provision may impliedly restrict the effects of the recognition and enforcement of a judgment or an arbitral award to its enforcement on the arrested ship or on the security given in order to obtain the release of the ship. If by “final judgment” it is meant a judgment not subject to further appeal, the provision of this paragraph would, for example, operate with respect to States parties to the 1968 EEC Convention on Jurisdiction and the Enforcement of

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In countries where foreign judgments are not recognized, or recognised only under certain conditions, there is a need for a rule on recognition and enforcement of foreign judgments in cases where arrest has been made or security given but the case is determined on its merits in another country. Without a provision of this nature arrest seems meaningless. Enforcement under the provision of paragraph (5) is, however, limited to the ship or security. The judgment may, of course, be enforced on other assets of the debtor if other rules of the *forum arresti* so provide, cf. paragraph (6).

Judgments referred to above, whose Article 31 only requires that a judgment be enforceable in the State where it has been issued.

## Article 8

### *Application*

(1) This Convention shall apply to any seagoing ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

(2) The Convention shall not apply to ships owned or operated by a State and used only on Government non-commercial service.

(3) Nothing in this Convention shall be construed as creating a maritime lien.

(4) This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

(5) This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

(6) Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

(7) Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person who has his habitual residence or principal place of business in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

#### A. The general rule.

The two distinct provisions of the 1952 Convention governing the application of the Convention to ships flying the flag of Contracting States and to ships flying the flag of non-Contracting States (Article 8 paragraphs 1 and 2), which have given rise to conflicting interpretation, have been replaced in the Lisbon Draft by a provision according to which the Convention shall apply to any seagoing ship, whether or not flying the flag of a State Party. Thus all ships flying the flag of non-party States will be subject to the new Convention. This provision was adopted by the JIGE. Although this was implied, it was added that the rule applies within the jurisdiction of States Parties.

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**B. Exceptions to the general rule.**

- a. *Arrest of a ship within the jurisdiction of the flag State by a person having his habitual residence or principal place of business in that State.*

The provision of Article 8 paragraph 4 of the 1952 Convention has been reproduced in paragraph 7 of the Lisbon Draft and the following paragraph 5 whereby the person who has acquired a claim by subrogation or assignment is deemed to have the same habitual residence or principal place of business of the original claimant has been merged into the previous one. Also this provision was adopted by the JIGE.

- b. *State-owned ships.*

When, during the CMI 1951 Naples Conference, the proposal was made to include in the Convention a rule excluding from the scope of the Convention State-owned ships used on Government non-commercial service, a strong opposition thereto was made by some Delegations. The reason of such opposition was that at that time the 1926 Brussels Convention on Immunity of State-owned ship had not yet been ratified by several maritime countries, including the United Kingdom. Subsequently, the principle that private maritime law conventions should not apply to State-owned ships used on Government non-commercial was generally accepted, whilst all proposals of a wider exemption in respect of State-owned ships were rejected.

A provision on immunity of State-owned ships has thus been inserted in Article 8 para. 2 of the Lisbon Draft and now in the Draft Articles.

- c. *Ships detained or prevented from sailing by public authorities.*

Whilst the provision on the scope of application was removed from Article 2 of the draft 1952 Convention, that relating to the power of public authorities to prevent or detain a ship was left in Article 2 as it was thought that it constituted an exception to the rule whereby ships could only be arrested in respect of maritime claims. At Lisbon it was, however, deemed more appropriate to move also that provision to the article - Article 8 - wherein the scope of application of the Convention was regulated.

In fact the provision contained in that article is also a provision on the scope of application of the Convention. The effect of such provision is not only that of permitting public authorities to arrest or detain a ship in situations where no maritime claim is involved, but, also, to exclude in respect of any such action, the application of all other provisions of the Convention.

The decision made at Lisbon has, therefore, been correct.

The provision under consideration is now placed in para. 4 of Article 8 and therein reference is made, in addition to domestic laws or regulations, also to international conventions. The power to detain a ship, in particular for safety reasons, arises in fact out of several conventions, such as the SOLAS Convention, the Load Line Convention and the 1969 CLC.

Also this provision has been reproduced without any change in the Draft Articles.

d. *Ships in respect of which the limitation of liability is invoked.*

The arrest of a ship in respect of which limitation of liability is invoked is the subject of specific rules in the CLC 1969 and in the 1976 Limitation Convention. Article 6 of the CLC 1969 provides that after the constitution of the limitation fund and provided the owner is entitled to limit his liability, no person having a claim for pollution damage shall be entitled to exercise any right against any other assets of the owner in respect of such claim. It provides further that the Court of any Contracting State shall order the release of any ship belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of the incident as a consequence of which the fund has been constituted, and shall similarly release any bail or other security furnished to avoid the arrest. Article 13 of the Limitation Convention differs from Article 6 of the CLC 1969 only in that the Court has a discretionary power to order the release of the ship from arrest or the release of the security, save when the limitation fund has been constituted in one of the places listed in such article.

There could, therefore, be a conflict between those Conventions and the Arrest Convention, according to which a ship cannot be arrested only if sufficient security in respect of the particular claim has been given, the limit of the security being the value of the ship, and the ship must be released from arrest against a security the nature and amount whereof are determined by the court, always not in excess of the value of the ship.

A provision aiming at avoiding a conflict between conventions was, therefore, advisable.

Also this provision has been adopted by the JIGE.

e. *Ships owned by a person subject to bankruptcy or similar proceedings.*

A conflict similar to that between conventions providing for limitation of liability and the Arrest Convention may arise in case the owner is adjudicated bankrupt or put into forced liquidation or made subject to similar proceedings. In fact, in such cases, normally individual actions against the assets of the owner are prohibited.

A provision in this respect has been included in Article 8 of the Lisbon Draft and now in the Draft Articles.

Although reference is made generally to the powers of any State or Court, such State or Court must be that in whose jurisdiction the ship is arrested. In fact, this provision cannot imply the recognition in a State Party of orders issued in other State Parties.

C. No maritime lien.

The provision of paragraph 3 originates from Article 9 of the 1952 Convention but is simpler and clearer. The only question that may be asked is whether it is appropriately placed. In fact it is not a provision on the application of the Convention.

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*Arrest of Ships*

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**Article 9*****Reservations***

**A State may, when signing, ratifying, accepting or acceding to this Convention, reserve the right to refrain from applying the Convention to ships not flying the flag of a State Party.**

This article corresponds to article 8(3) of the 1952 Convention but clarifies that in order not to apply the Convention to ships not flying the flag of a State Party a reservation is required.

## JOINT WORKING GROUP ON A STUDY OF ISSUES RE CLASSIFICATION SOCIETIES

LONDON, 10 MARCH 1997

### 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. 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 co-operative 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. It is 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 co-operation with the industry. It is 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 judgement 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*.”<sup>1</sup>

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

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<sup>(1)</sup> [1995] 2 Ll. Rep. 299, 311 (H.L.E.), *per* Lord Steyn [*Emphasis supplied*].

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*Classification Societies*

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interest — the necessary result being a deterioration in maritime and environmental safety. Since this concern revolves around maritime private litigation of civil liability, CMI was felt to be particularly well equipped to organise a study of the issues and to assist in formulating recommendations. CMI has provided organisational and secretariat services for the Group.

The CSJWG has held thirteen working sessions over nearly a five-year period. The individuals contributing to this effort have brought to bear a wide variety of relevant experience, largely gained in work with the international organisations 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 London, 21 October 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 organised as a privately-owned corporation, or is established and/or owned by a Government and organised 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 however 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 possibility which should be re-examined at such time as a substantial revision of the Convention is next considered by the International Maritime Organization. It is the strong consensus of the Group that the Classification Societies should be afforded protection under an international convention on Limitation of Liability. To provide at least a partial answer for the present to these concerns, the CSJWG has produced a set of model contractual clauses (see **Annex B** to this Report, dated London, 10 March 1997) 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 contractual 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 appropriate national legislation as well as embodying the suggested 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 recognise 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 some limitation of the civil liability of the Classification Societies, a number of alternatives were considered. Foremost among these was

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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 accepted by the Societies as 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, which the Societies have always held not to be and never to have been the purpose of classification. It is not the size of 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 final consensus of the Group forms an acceptable 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 a clause which bases limitation of liability upon either a multiple of the fee charged or a stated amount — whichever is greater — but does not cap the limitation amount by a stated figure.

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

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On behalf of the International Chamber of Commerce ( **ICC** ) —

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On behalf of the International Association of Dry Cargo Shipowners  
( **INTERCARGO** ) —

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On behalf of the Oil Companies International Marine Forum  
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<sup>(2)</sup> (Attended a single Session of the CSJWG)

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

## 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 Organisations, 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 authorisation of Organisations acting on behalf of the Administration, as established by the International Maritime Organization (IMO).<sup>1</sup>
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,<sup>2</sup> 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.<sup>3</sup> 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 judgement.

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<sup>(1)</sup> See, e.g., Res. A.789(19) of November 1995.

<sup>(2)</sup> "Shipowner" for the purposes of these Principles of Conduct shall mean the individual or juridical person in a contractual relationship with the Classification Society.

<sup>(3)</sup> "Ship" for the purposes of these Principles of Conduct shall include any type of vessel or other unit which is classed with or otherwise surveyed or certificated by the Classification Society.

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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 approval 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;
  - (d) To utilise suitably qualified persons in the performance of its services;
  - (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 approval, surveys or other engineering services, education of such technical staff by means of successful completion in a recognised institution<sup>4</sup> of a course of relevant technical studies; and either
  - (i) successful completion of a programme of technical training;<sup>5</sup> or
  - (ii) sufficient and documented prior employment experience at an appropriate technical level and relevant to their authorised 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 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 authorised in writing by the owner or other person in an equivalent contractual relationship with the Society or when directed to do so by judicial or administrative process; and
  - (iii) to the flag or other national Administration having the necessary legal authority.

<sup>(4)</sup> 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.

<sup>(5)</sup> "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, FS13/17. 23 March 1995, Annex 5, p.8.

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*Classification Societies*

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(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.

**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 Organisations, 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,<sup>1</sup> 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 21 October 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 1 attached.<sup>2</sup>
  - (b) [*Administration*] shall be given the opportunity to verify that the quality system and performance of [*Classification Society*] continues

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<sup>(1)</sup> 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.

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to comply with the requirements specified in Annex I attached. In this regard [*Administration*] may utilise appropriate audit methods, including recognition of audits performed on [*Classification Society*] by an independent body of auditors effectively representing the interests of [*Administration*], such as the IACS QSCS auditors. The Principles of Conduct for Classification Societies referred to in the Introduction above shall be the standard <sup>3</sup> for measurement of performance by [*Classification Society*].

- (c) [*Classification Society*] shall report to [*Administration*], in accordance with the procedures agreed between them, the information specified in Annex II <sup>4</sup> concerning surveys and certification performed by [*Classification Society*] on behalf of [*Administration*], and shall promptly notify [*Administration*] 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 [*Administration*], 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 defences (including but not limited to any immunity from or limitation of liability) as would be available to [*Administration's*] own personnel if they had themselves performed the work and/or certification in question.<sup>5</sup>

**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

<sup>(2)</sup> 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.

<sup>(3)</sup> 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.

<sup>(4)</sup> It is intended that Annex II should contain the detailed reporting requirements to be agreed between the Government and the Classification Society.

<sup>(5)</sup> References to applicable provisions of national law should be added following the text of the clause. (Amendment of national law may need to be pursued in some States.)

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*Part II - The Work of the CMI*

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the classification of a ship<sup>6</sup> to the shipowner,<sup>7</sup> 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.

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 [*Classification 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

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<sup>(6)</sup> "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.

<sup>(7)</sup> "Shipowner" for the purposes of these Principles of Conduct shall mean the individual or juridical person in a contractual relationship with the Classification Society.

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*Classification Societies*

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- 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 fulfil 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 [*Classification Society*].<sup>8</sup>
7. [*Classification Society*] shall be liable only for claims arising out of the performance of services pursuant to these Rules if such claims arise out of an act or omission:
- (a) attributed to [*Classification Society*] or its employees, agents or other persons acting on behalf of [*Classification Society*], when such act or omission violates the standard of reasonable care;<sup>9</sup> or
- (b) by any employee of [*Classification Society*] unless acting outside the terms or scope of his employment; or
- (c) by any agent or other person acting on behalf of [*Classification Society*], unless such act or omission exceeds the authority granted by [*Classification Society*] to such agent or such other person.
8. Without prejudice to clause 7 above, in respect of any claim arising out of the performance of services pursuant to these Rules, [*Classification Society*] shall not be liable for any indirect losses.
9. Any liability of [*Classification Society*] for a claim arising out of the performance of a service pursuant to these Rules shall be subject to limitation as follows:
- (a) The limit of liability of [*Classification Society*] in respect of a single claim shall be the amount of the fee for the service giving rise to the liability multiplied by 10 or 3,000,000 units of account, whichever is the greater amount.
- (b) When more than one service has given rise to liability, the service for which the highest fee was charged shall be the service upon which calculation of the limit of liability is based.

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<sup>(8)</sup> 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.

<sup>(9)</sup> Different standards or terms may be substituted in accordance with applicable national law.

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*Part II - The Work of the CMI*

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- (c) The unit of account referred to above is the Special Drawing Right (“SDR”) as defined by the International Monetary Fund. The SDR shall be converted into the national currency of the State of the claimant’s nationality on the date when the fee for the service giving rise to liability was charged or the date of the occurrence of the incident, whichever is earlier.
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].<sup>10</sup>
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],<sup>11</sup> which shall have exclusive jurisdiction to hear and determine any such dispute.

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<sup>(10)</sup> This will normally be the State of domicile or situs of the Society.

<sup>(11)</sup> 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 THE CARRIAGE OF GOODS BY SEA

### PREFACE

*In the 1995 CMI Yearbook there have been published the Questionnaire for the Member National Associations (p. 109), the Replies to the Questionnaire (p. 115), a Synoptical Table of the most significant changes suggested by the National Associations to both the Hague-Visby Rules and the Hamburg Rules (p. 179) and the Report of the First Session of the International Sub-Committee (p. 229).*

*The following additional documents on the work of the International Sub-Committee are now published in this Yearbook:*

*Report of the Chairman of the International Sub-Committee*

- Annex 1: Report on consideration of certain issues relating to the carriage of goods by sea.*
- Annex 2: Extract from the Report of UNCITRAL on the Work of its Twenty-Ninth Session.*
- Annex 3: Draft Questionnaire.*

*Report of the Second Session of the International Sub-Committee.*

*Report of the Third Session of the International Sub-Committee.*

*Report of the Fourth Session of the International Sub-Committee.*

## **REPORT OF THE CHAIRMAN OF THE INTERNATIONAL SUB-COMMITTEE**

It is suggested by the International Sub-Committee that an attempt should be made to identify the issues that a uniform law of the carriage of goods by sea should regulate and then find out what would be the most satisfactory solution in respect of each such issue or, if reasonable doubts exist, which alternative solutions may be considered in respect of any such issue.

It has always been considered that the core of the law on carriage of goods by sea is the liability of the carrier for loss of or damage to the goods and all attempts have been directed to reach uniformity in this area of the law of transport. The concern that the present variety of legal regimes might increase has induced the CMI to review the existing conventions and, after having identified the major issues, to try find the best possible rules in respect of each of them.

Some results have been achieved during the four sessions of the International Sub-Committee, as it appears from the attached report (Annex 1). It is thought, however, that an attempt should be made to consider the law of the carriage of goods by sea in all its aspects in order to avoid fragmentation and omissions of coverage.

There are at present areas which are covered by separate sets of rules of differing legal nature and areas that are covered only marginally or are not covered at all. It therefore seems appropriate to consider, in addition to the area covered by the Hague-Visby Rules and the Hamburg Rules, multimodal transport, sea waybills and EDI. Furthermore, a fresh look should be given to the relationship between carriage of goods and sale of goods and to the bankability of transport documents.

A general overview of all these problems may assist also in finding an optimum regime in respect of the issues covered by the Hague-Visby and Hamburg Rules.

The existence of considerable gaps in the present legal regime has been recently noted by UNCITRAL (Report of the United Nations Commission on International Trade Law on the work of its twenty-ninth session, 28 May-14 June 1996 – Document A/51/17, paragraphs 210-215) (Annex 2).

Although the suggested issues were not included by UNCITRAL

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in its agenda, it was decided that information should be gathered and that assistance should be sought from international organizations representing the commercial sectors involved in the carriage of goods by sea, amongst which is the CMI.

It is thought that the CMI should offer its cooperation to UNCITRAL and that the areas which are worthy of investigation include the following:

- (1) Relationship between carriage of goods by sea and multimodal transport.
- (2) Transport documents.
- (3) Bankability of transport documents.
- (4) Relationship between contract of carriage and contract of sale of goods (whether and to which extent one may affect the other).
- (5) Contracts ancillary to the contract of carriage such as forwarding contracts and contracts with terminal operators.

If the Executive Council will decide to widen the terms of reference of the International Sub-Committee so to include the subjects indicated above and other related subjects, the initial approach could be the preparation of a series of questionnaires along the lines of the specimen draft of some of such questionnaires annexed hereto (Annex 3).

FRANCESCO BERLINGIERI

## ANNEX 1

**REPORT ON CONSIDERATION OF CERTAIN ISSUES  
RELATING TO THE CARRIAGE OF GOODS BY SEA**

On the basis of the existing international Conventions the following issues have been identified:

1. Definitions
2. Scope of application
3. Interpretation
4. Period of application
5. Identity of the carrier
6. Liability of the carrier
7. Liability of the performing carrier and through carriage
8. Deviation
9. Delay
10. Limitation of liability
11. Loss of right to limit
12. Transport documents and evidentiary value
13. Liability of the shipper
14. Dangerous cargo
15. Letters of guarantee
16. Notice of loss and time bar
17. Choice of law
18. Jurisdiction
19. Arbitration

**1. Definitions**

(a) "Carrier".

A definition of "carrier" is required. The definition contained in Article 1(1) of the Hamburg Rules is considered satisfactory. It could be considered whether it might be preferable to define the "Contracting carrier", rather than the "Carrier".

(b) "Actual (or Performing) carrier".

A definition is required. As to the question whether the term to be used should be "actual carrier" or "performing carrier", there is a preference in favour of the first. Attention is drawn to the fact that in the 1974 Athens Convention the term used is "Performing carrier" and in the French text "Transporteur substitué", and that whilst the term "Actual carrier" is used in the Hamburg Rules, in the French text the term "Transporteur substitué" is still used.

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- (c) "Shipper".  
A definition of "shipper" is also required particularly if the uniform rules regulate the liability of the shipper towards the carrier. The definition adopted in the Hamburg Rules is considered satisfactory. It could, however, be replaced by two separate definitions, one of the "contracting shipper" and one of the "actual shipper".
- (d) "Consignee".  
A definition of "consignee" does not appear to be required.
- (e) "Contract of carriage by sea".  
The definition in the Hague-Visby Rules is not a definition in a strict sense, but rather a provision on the scope of application and is too restricted since it refers to bills of lading only. The definition in the Hamburg Rules is therefore better, since no reference is made therein to the documents evidencing the contract. Charter parties should continue to be excluded.
- (f) "Goods".  
The Hague-Visby Rules exclude deck cargo and live animals. The Hamburg Rules include them both. They regulate carriage on deck in Article 9 and provide a special liability regime for live animals. Deck cargo should not be excluded from the definition of goods and special rules should be provided for it. On the contrary, live animals should continue to be excluded, unless it is possible to provide special rules for such carriage which are clear and capable of application with respect to all kinds of animals. Otherwise, it is preferable to allow freedom of contract. A rule such as that adopted in Article 5(5) of the Hamburg Rules, which exonerates the carrier from liability for loss, damage or delay in delivery resulting from any special risks inherent to that kind of carriage, practically leaves all matters relating to the carrier's liability unsolved and may have only the effect of preventing the parties to freely regulate their respective obligations.
- (g) "Carriage of Goods".  
This definition, which exists only in the Hague-Visby Rules, has the purpose of establishing the period of application of the Rules. It is, therefore, deemed preferable to regulate this matter in a separate provision, as is done in the Hamburg Rules.
- (h) "Ship".  
It is thought that this definition, which, as the previous one, exists only in the Hague-Visby Rules, is superfluous.
- (i) "Bill of lading".  
A definition of all documents issued in connection with the carriage of goods by sea (including, therefore, bills of lading, seawaybills, electronic bills of lading, etc.) is required.

## **2. Scope of application**

The uniform rules should apply both to outbound and inbound cargo. The provisions in Article 2(1) and (2) of the Hamburg Rules are considered satisfactory. It may be considered whether the situation of the loss of a ship and cargo en route to an optional port of discharge should be expressly regulated.

## **3. Interpretation**

The principle by which Article 3 of the Hamburg Rules is inspired complies with the modern trend of the jurisprudence.

## **4. Period of responsibility – Period of application**

The expression "period of responsibility" is used in the heading of Article 4 of the Hamburg Rules, whilst the expression "period of application" has been currently used in connection with the definition of "carriage of goods" in Article 1 (e) of the Hague Rules. The former expression would be correct only if the uniform rules were to apply to the whole period during which the carrier is in charge of the goods whilst if this is not the case, the latter expression would be more correct.

The application of the uniform rules only from port to port, as under Article 4 of the Hamburg Rules, is probably unrealistic. The uniform rules should in any event apply also to the period during which the goods are in the custody of the carrier in terminals or inland depots and are carried from or to such terminals or depots to the port for loading on or after discharge from the ocean vessel.

## **5. Identity of the carrier**

The definition of "carrier" in the Hague-Visby Rules and in the Hamburg Rules does not assist in the identification of the carrier in case his name is not properly indicated in the transport document. Nor can the provision in Article 15(1) (c) of the Hamburg Rules, whereby the name and principal place of business of the carrier must be indicated in the bill of lading, be of any practical assistance, for no sanction is provided for the case where this rule is not complied with. Shippers and consignees must be enabled to sue the person responsible for the carriage. At present, they have no assistance in the existing Conventions and may sue the wrong person, with the risk, *inter alia*, of the time bar elapsing prior to the carrier being identified.

In order to give to the consignee a reasonable protection it was suggested by some delegates that it could be provided that whenever the relevant transport document does not clearly indicate the name of the carrier, the registered owner of the vessel must be presumed to be the carrier unless he proves that someone else is the carrier and that, in such event, the time bar should not run for the period from the commencement of proceedings until the identification of the carrier by the owner.

## 6. Liability of the carrier

The difference between the Hague-Visby Rules and the Hamburg Rules may be summarized as follows:

- (i) The Hague-Visby Rules set out the paramount obligations of the carrier, whilst the Hamburg Rules have no provisions in this respect.
- (ii) The Hague-Visby Rules do not state expressly when the carrier is liable in respect of loss of or damage to the goods, but do so by implication, whilst the Hamburg Rules contain a general provision on the liability of the carrier.
- (iii) The Hague-Visby Rules may be considered as stating that the liability of the carrier is based on fault, whilst the Hamburg Rules do not, and this made it necessary to add the "Common Understanding".
- (iv) The Hague-Visby Rules set out in detail the situation where the carrier is not – or is presumed not to be – liable, whilst the Hamburg Rules provide generally 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 and only provides a reversal of the burden of proof in case of loss or damage caused by fire.
- (v) The Hague-Visby Rules exonerate the carrier from liability in respect of fault in navigation and management, whilst the Hamburg Rules do not.

The following observations are made in regard to each of the above issues:

(i) Duties of the carrier.

The provisions of Article 3(1) and (2) of the Hague-Visby Rules are of great assistance to courts and to lawyers, as well as to carriers and shippers, because they provide a very useful guideline of what is requested of a diligent carrier, and their abolition would not only deprive all such persons of such important guideline, but might also – and this would be very dangerous – be construed as an intentional change of the liability regime that has been known and applied for over sixty years. These provisions should, therefore, be maintained.

It may be considered whether the duty to exercise reasonable diligence to make the ship seaworthy should become a continuous obligation.

(ii) Express provision on the liability of the carrier.

Even if the lack of such express provision in the Hague-Visby Rules has never created any problem of interpretation, it is thought that this would add clarity.

(iii) Basis of liability.

It must be considered whether the basis of the liability of the carrier should be clearly stated.

(iv) Excepted perils.

The so-called "excepted perils", even if unnecessary in certain legal systems,

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are clearly useful in others. Like the provisions on the duties of the carrier, they have served a useful purpose for over sixty years and, subject to modernization and some drafting changes, they should be maintained.

It must be considered whether the excepted perils have the effect of exonerating the carrier from liability or merely that of reversing the burden of proof.

(v) Exonerations from liability.

Whilst maintenance of the exoneration for fault in navigation has received strong support, doubts were expressed by several delegates as to whether the exoneration for errors in the management of the ship should be maintained.

### **7. Liability of the actual (or performing) carrier and through carriage**

The liability of the actual (or performing) carrier should be the same as that of the contracting carrier, except that it should be limited to the part of the carriage performed by him.

The provision in Article 11 of the Hamburg Rules, whereby the carrier may limit his liability to the transport actually performed by him only if the on-carrier is specifically named, does not take the reality of trade into account. In fact the carrier, when receiving the goods, quite often does not know the name of the on-carrier. It should therefore suffice that the carrier indicates in the document of transport the port of transshipment where the goods will be taken over by another carrier; provided, however, he informs the consignee, when requested, about the name and the address of the principal place of business of the on-carrier. The running of the time bar period should be suspended for the period from the commencement of proceedings against the carrier or the request for information until the time when such information is provided.

### **8. Deviation**

Since in certain jurisdictions it is uncertain whether the uniform rules apply in case of unreasonable deviation, it would be appropriate to expressly provide that this is the case.

### **9. Delay**

A provision on delay is necessary. As to when delay may be deemed to have occurred, when the parties have not agreed on the time of delivery, the criterion of a reasonable time adopted in Art. 5(2) of the Hamburg Rules seems to be too vague.

As regards the limit of liability, it is thought that the limit should be the same as for loss or damage and not a special limit based on freight. The provision of Art. 5(3) of the Hamburg Rules is unacceptable.

### **10. Limits of liability**

The question whether the shipping unit should be adopted must be further considered, as should the amounts of the limits and the method of their adjustment.

### **11. Loss of right to limit**

In this respect the provisions of the Hague-Visby Rules (Article 4(5)(e)) and of the Hamburg Rules (Article 8(1)) are almost identical. However the wording of this latter provision is considered to be preferable, because it makes clear that the knowledge that the loss, damage or delay would probably result relates to the loss, damage or delay that has occurred.

### **12. Transport documents and evidentiary value**

It is thought that where the carrier and the shipper agree that a document other than a bill of lading is to be issued, such agreement must be binding on the parties, and the shipper may not thereafter be entitled to demand a bill of lading. Article 14(1) of the Hamburg Rules is not clear in this respect, particularly if it is considered in conjunction with Article 23(1).

As regards the contents of the bill of lading, the information set out in Article 15(1) of the Hamburg Rules is considered acceptable, subject to the following:

- (a) The address of the carrier should include the street address of the principal place of business and the postal address; also communications addresses should be made available.
- (b) The name and flag of the ship should be set forth in the bill of lading.

The evidentiary value of the transport documents should be examined.

### **13. Liability of the shipper**

If a provision on the liability of the shipper is considered necessary, a provision in similar terms to Articles 3(5) and 4(3) of the Hague-Visby Rules and to Articles 12 and 17(1) of the Hamburg Rules is satisfactory.

### **14. Dangerous cargo**

A provision in similar terms of Article 13 of the Hamburg Rules, is considered satisfactory, provided that it also stated therein that the right of the carrier to an indemnity from the shipper shall not limit his liability to any person other than the shipper.

### **15. Letters of guarantee**

Letters of guarantee enabling clean bills of lading should definitely be discouraged. It may therefore be preferable not to include any provision in this respect.

### **16. Notice of loss and time bar**

#### **A. Notice of loss**

If the loss or damage is apparent, the notice should be given before or at the time of delivery. If it is not apparent, the notice should be given within a very short period of time after delivery, in order to enable the carrier to make immediately the necessary investigations. Three days appears to be a reasonable time limit. In this respect the notice period should begin to run from the time at which the consignee has a reasonable opportunity to inspect the goods.

A provision may be added on the loss resulting from delay in delivery and, in this respect, it must be considered that such type of loss may not become known immediately. Article 19(5) of the Hamburg Rules provides for a 60 days time limit from the date when the goods should have been delivered but, contrary to the provisions in respect of notice of loss or damage, in this case the lapse of the time limit extinguishes the claim.

#### **B. Time bar / prescription**

The legal nature of the "time bar" differs in the various jurisdictions (see in this respect "Time Bars", II ed. LLP 1993, p. 1-10). In some jurisdictions it may affect the right, in others the action; in some jurisdictions it is a substantive remedy, in others it is a procedural remedy.

The provisions of Article 20 of the Hamburg Rules are considered satisfactory, except that a time limit of one year from delivery is adequate.

As respects the extension of the time limit in the recourse action by one carrier against another it is considered appropriate that such extension be governed by the Convention. A ninety days period is considered reasonable and it should commence upon the date of settlement or of entry of a judgment not subject to further appeal; provided, however, that notice of the claim is given in writing to the person from whom the indemnity is sought within a short period of time to be established following the one years time limit.

### **17. Choice of law**

It is thought that no provision should be made in this respect.

### **18. Jurisdiction**

It is thought that a provision on jurisdiction is needed. Such provision may be based on Article 21 of the Hamburg Rules except that:

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- (i) the second sentence of para. 2(a) must be deleted, since it is in conflict with Article 7(1) of the 1952 Arrest Convention;
- (ii) para. 2(b) must be entirely deleted, since also these matters are governed by the Arrest Convention;
- (iii) para. 4 must be deleted because the matters dealt with therein should be left to national law.

Attention is drawn to the understanding that "plaintiff" and "defendant" in Article 21(1) can only be read as including both the carrier and the consignee.

### **19. Arbitration**

It may be considered whether a provision on arbitration is useful or even possible. If such a provision seems to be appropriate, then it must be considered whether:

- (i) it should be based on Article 22 of the Hamburg Rules without any substantive change, or
- (ii) with the deletion of para. 3, or
- (iii) with both the deletion of para. 3 and the addition of a provision requiring the agreement in writing of the consignee to the arbitration clause.

## ANNEX 2

**REPORT OF THE UNITED NATIONS COMMISSION  
ON INTERNATIONAL TRADE LAW  
ON THE WORK OF ITS TWENTY-NINTH SESSION  
28 MAY-14 JUNE 1996\***

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III. DRAFT UNCITRAL MODEL LAW ON LEGAL ASPECTS OF  
ELECTRONIC DATA INTERCHANGE (EDI) AND RELATED MEANS  
OF COMMUNICATION.

.....

G. Future work

1. Future work on issues of transport law

210. It was proposed that the Commission should include in its work programme a review of current practices and laws in the area of the international carriage of goods by sea, with a view to establishing the need for uniform rules in the areas where no such rules existed and with a view to achieving greater uniformity of laws than has so far been achieved. In making the suggestion, reference was made to the preliminary discussion that had taken place at the thirtieth session (1996) of the Working Group on Electronic Data Interchange about possible future work on issues of transport law other than those concerning EDI (A/CN.9/421, paras. 104-108). It was said that existing national laws and international conventions left significant gaps regarding issues such as the functioning of the bills of lading and seaway bills, the relation of those transport documents to the rights and obligations between the seller and the buyer of the goods and to the legal position of the entities that provided financing to a party to the contract of carriage. Some States had provisions on those issues, but the fact that those provisions were disparate and that many States lacked them constituted an obstacle to the free flow of goods and increased the cost of transactions. The growing use of electronic means of communication in the carriage of goods further aggravated the consequences of those fragmentary and disparate laws and also created the need for uniform provisions addressing the issues particular to the use of new technologies.

211. It was suggested that the Secretariat should be requested to solicit views and suggestions on those difficulties not only from Governments but in particular from the relevant intergovernmental and non-governmental organizations representing the various interests in the international carriage of goods by sea. It

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\* This extract from the Report of the United Nations Commission on International Trade Law on the work of its twenty-ninth session 28 May-14 June 1996 is published with the kind permission of the UNCITRAL Secretariat.

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was also suggested that obtaining the views of the commercial sectors involved would be very important. An analysis of those views and suggestions would enable the Secretariat to present, at a future session, a report that would allow the Commission to take an informed decision as to the desirable course of action. It was said that such information-gathering exercise by the Secretariat should encompass a broad range of issues in the carriage of goods by sea and in related areas such as terminal operations and multimodal carriage.

212. Several reservations were expressed with regard to the suggestion. One was that the issues to be covered were numerous and complex, which would strain the limited resources of the Secretariat. Engaging for that purpose the resources of the Secretariat and the time of the Commission or a working group would delay work on other topics that were, or were about to be put, on the agenda of the Commission. Those topics, it was said, should be given priority relative to the suggested work on transport law.

213. Furthermore, the continued coexistence of different treaties governing the liability in the carriage of goods by sea and the slow process of adherence to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) made it unlikely that adding a new treaty to the existing ones would lead to greater harmony of laws. Indeed, the danger existed that the disharmony of laws would increase.

214. In addition, it was said that any work that would include the reconsideration of the liability regime was likely to discourage States from adhering to the Hamburg Rules, which would be an unfortunate result. It was stressed that, if any investigation was to be carried out, it should not cover the liability regime, since the Hamburg Rules, elaborated by the United Nations, had already provided modern solutions. It was, however, stated in reply that the review of the liability regime was not the main objective of the suggested work: rather, what was necessary was to provide modern solutions to the issues that were not or were not adequately dealt with in treaties.

215. In view of the differing views, the Commission did not include the consideration of the suggested issues on its agenda at present. Nevertheless, it decided that the Secretariat should be the focal point for gathering information, ideas and opinions as to the problems that arose in practice and possible solutions to those problems. Such information-gathering should be broadly based and should include, in addition to Governments, the international organizations representing the commercial sectors involved in the carriage of goods by sea, such as the Comité Maritime International (CMI), the International Chamber of Commerce (ICC), the International Union of Marine Insurers (IUMI), the International Federation of Freight Forwarders Associations (FIATA), the International Chamber of Shipping (ICS) and the International Association of Ports and Harbours (IAPH). An analysis of such information should be prepared for a future session of the Commission by the Secretariat when its resources so permitted without adversely affecting the work on current items of its work programme. On the basis of that analysis the Commission would be able to decide on the nature and scope of any future work that might usefully be undertaken by it.

## ANNEX 3

## DRAFT QUESTIONNAIRE

## PART I – TRANSPORT DOCUMENTS

## A. Bills of Lading

1. What is the legal nature of the bill of lading?
2. What is the legal nature of a received for shipment bill of lading?
3. What is the legal nature of a bill of lading issued to the name of the consignee (called "straight bill of lading" in the U.S. Federal Bills of Lading Act, 1916)?
4. Can the parties create other documents having the same legal nature of the bill of lading, or is a statute necessary for this purpose?
5. Please state how the bill of lading may be transferred from one person to another when:
  - (i) it is issued to order;
  - (ii) it is issued to the order of a specified person; and
  - (iii) it is issued to the name of a specified person.
6. Can the carrier invoke against an endorsee in good faith of the bill of lading facts or covenants which are not evidenced in the bill of lading?
7. Can he invoke the terms of the charterparty if the charterparty is not incorporated in the bill of lading?
8. How must such incorporation be made in order to be effective vis-à-vis an endorsee of the bill of lading?
9. Should the seller be entitled to exercise the right of stoppage in *transitu* and, if so, under what conditions?
10. Must the bill of lading be surrendered to the carrier in order to obtain delivery of the goods?
11. Who is entitled to the delivery of the goods when a (negotiable) bill of lading has been issued?
12. Who is entitled to sue the carrier for damages when a (negotiable) bill of lading has been issued?
  - a. Is he the person who has surrendered the bill of lading to the carrier?
  - b. If such person has acted as agent for an undisclosed principal, has the principal a right of action against the carrier?
  - c. Has the owner of the goods who is neither the person who has surrendered the bill of lading nor the principal of such person, the right to sue the carrier?
  - d. Is it necessary that a person other than that who has surrendered the bill of lading obtains an assignment from such person in order to sue the carrier?
13. Can the carrier redeliver the goods covered by a bill of lading without the presentation of the bill of lading?
14. If he does so, is he liable vis-à-vis the holder of the bill of lading?

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15. Can he invoke the package/kilo limitation and the one-year time bar?
16. Are the provisions of the Hague-Visby Rules and/or of the Hamburg Rules on the evidentiary value of bills of lading satisfactory? If not, what changes would you suggest?
17. Should letters of indemnity be permitted, and, if so, how should liability thereunder be regulated?
18. Are special rules required for containers?
19. Are the provisions of the Hague-Visby Rules and/or of the Hamburg Rules on the contents of the bill of lading satisfactory? If not, what changes would you suggest?
20. Is a negotiable document still required by modern trade?
21. If so, what should its functions be?
22. Do you think that the present system is adequate to the realities of modern trade?
23. Do you think it should be changed?

### **B. Sea Waybills**

1. Is a sea waybill transferable?
2. Can the parties provide that it is transferable?
3. Do you think that the uniform rules should provide or permit its transferability?
4. If so, how can a sea waybill be made transferable and how can it be transferred (See Question (A)(5) above)?
5. Can the carrier invoke against the consignee facts or covenants which are not evidenced in the sea waybill:
  - (i) if the sea waybill is transferable; and
  - (ii) if the sea waybill is not transferable?
6. Can the carrier invoke the terms of the charterparty if the charterparty is not incorporated:
  - (i) if the sea waybill is transferable; and
  - (ii) if the sea waybill is not transferable?
7. How must such incorporation be made in order to be effective vis-à-vis the consignee:
  - (i) if the sea waybill is transferable; and
  - (ii) if the sea waybill is not transferable?
8. Must the sea waybill be tendered to the carrier in order to obtain delivery of the goods:
  - (i) if the sea waybill is transferable, and
  - (ii) if the sea waybill is not transferable?
9. Who is entitled to the delivery of the goods:
  - (i) if the sea waybill is transferable; and
  - (ii) if the sea waybill is not transferable?
10. Who is entitled to sue the carrier for damages when a transferable sea waybill has been issued?

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- (a) is he the person who has surrendered the sea waybill to the carrier?
  - (b) if such person has acted as agent for an undisclosed principal, has the principal the right of action against the carrier?
  - (c) has the owner of the goods who is neither the person who has surrendered the sea waybill nor the principal of such person the right to sue the carrier?
  - (d) Is it necessary that a person other than that who has surrendered the sea waybill obtains an assignment from such person in order to sue the carrier?
- 11. Who is entitled to sue the carrier for damages when a non-transferable sea waybill has been issued?
    - (a) is he the person named in the sea waybill?
    - (b) can that person assign his rights to others and, if so, how?
    - (c) who can give instructions to the carrier to change the destination of the goods?
  - 12. If a transferable sea waybill has been issued, can the carrier redeliver the goods without the presentation of the sea waybill?
  - 13. If he does so, is he liable vis-à-vis the holder of the sea waybill?
  - 14. Can the carrier in such a case invoke the package/kilo limitation and the one-year time bar?
  - 15. Should the provisions of the Hague-Visby Rules or of the Hamburg Rules on the evidentiary value of the bill of lading apply to sea waybills?
  - 16. Should the provisions of the Hague-Visby Rules or of the Hamburg Rules on the contents of the bill of lading apply to sea waybills?
  - 17. If the sea waybill is transferable, must it be surrendered in order to obtain delivery of the goods?

**PART II – MULTIMODAL TRANSPORT**

- 1. Do you think that multimodal transport, when one leg of the transport is by sea, should be covered by the uniform rules applicable to the carriage by sea?
- 2. If so, do you think it is possible and advisable to have a unique liability regime throughout the multimodal transport?
- 3. Do you think that this may be achieved without violating any of the existing conventions applicable to the individual modes of transport?
- 4. Should such unique liability regime be restricted to containerized cargo and, in particular to FCL containers?
- 5. If so, could such regime be voluntarily applied to the transport of other cargo?
- 6. Should the liability of the carrier be strict?\*

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\* For the purposes of this questionnaire by "strict liability" it is meant a system of liability whereby the carrier is liable even if he is not at fault, but that he can exonerate himself from liability if he proves that the loss or damage has arisen out of:

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7. Should there be express provisions on the identity of the MTO?
8. If a unique liability regime is not thought possible, what rules should be provided with respect to the liability of the MTO?

### III – TERMINAL OPERATORS

1. Do you think that the liability regime of terminal operators should be regulated under the same set of uniform rules applicable to carriage of goods by sea and multimodal transport?
2. If so, should there be a separate liability regime or should the rules on multimodal transport apply?

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- (i) latent defects of the goods;
  - (ii) fault of the shipper;
  - (iii) war;
  - (iv) a natural event of an exceptional character.

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

### REPORT OF THE SECOND SESSION

LONDON, 15TH AND 16TH MARCH, 1996

The meeting was convened at the Cavalry and GThe meeting was called to order by the Chairman, Professor Berlingieri, on Friday 15 March 1996 at 9:40 a.m. in the Dome Room of the offices of Messrs. Richards Butler, 15 St. Botolph Street, London. A list of the participants is attached as Annex A.

Prof. Berlingieri briefly summarized the comments received from Member National Associations following issuance of the Report of the First Session. A final decision on how the work should proceed was for the Executive Council, but as to those National Member Associations (NMAs) which had expressed a view:

- The United Kingdom, the Netherlands and Japan favoured a continuance of the Hague-Visby regime without change;
- Norway and the other Scandinavian NMAs, together with the United States, Korea and a few others favoured a "mixed regime", with elements of Hague-Visby and Hamburg as well as new provisions; this view was opposed for differing reasons by the Netherlands and by Canada;
- Spain favoured the Hamburg regime.

He then gave a distillation from the Report of the First Session of the views which were expressed at the end of November, 1995. The basic question now was whether the IS-C should set forth final recommendations for the future, or simply leave this to the U.N. organizations? In this case, the group should confine itself to setting forth principles, and would prepare a draft of these principles in form suitable for adoption into an instrument, for the consideration of these organizations.

Dr. Philip (President, CMI) reminded the group that there was a broad consensus prior to beginning this work that *something* had to be done to stem the growing disunification, and that the CMI must take a leading role in this. UNCITRAL had been consulted, and had acquiesced in CMI's activity. The purpose of the present task was therefore to provide preparatory material upon which UNCITRAL could base future work on carriage of goods by sea. The International Sub-Committee (IS-C) should take into account the conflicts between Hague-Visby and Hamburg which need to be resolved, and the consensus is that a protocol of amendment – of one or both conventions – is a useful way to accomplish this, then that should be the format of the group's work product.

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Mr. Alcantara (Spain) pointed out that the present exercise was not a seminar, and some NMAs do not know if they can make recommendations to their governments; should there not first be a policy decision within the CMI?

Prof. Berlingieri stated that the job of the IS-C was to produce a concrete product, and not another inconclusive 'Paris Report'.

Mr. Larsen (BIMCO) questioned whether the Comité should be doing this work now, before a consensus has emerged in favour of a new convention. Should not CMI wait until a consensus develops?

Mr. McNulty (Ireland) noted that a sizeable list of States which are parties to Hague-Visby had indicated 'approval' of Hamburg in a list published about 3 years ago; unless one could now show a growing ground-swell of support for Hamburg, his Association favoured a protocol to amend Hague-Visby.

Mr. Rasmussen (Denmark) stated that Scandinavia did not intend to pass over to Hamburg, and such a possibility became even more remote with the passage of time. The CMI must act now to do something to avert further fragmentation – it is the only logical organization to do this work. The question is only whether progress can be made toward a compromise; the present situation is not tolerable, and it is the proper role of the Comité to lead the maritime community out of this conflict.

Mr. Kleiven (Norway) noted that in his country, as elsewhere, there were two factions: one being pro-Hague-Visby and the other being pro-Hamburg. The whole industry needed the help and guidance of the CMI to emerge from the present situation.

Mr. Hooper (USA) explained that the U.S. Government could not accept any change in the Carriage of Goods by Sea Act (COGSA) which would maintain the defense of error in navigation. Help and guidance from the CMI was needed as to what solutions should be adopted.

Prof. Guo (China) stated that his Association also believed the CMI must take action. The Chinese position is that a new convention should be formulated, deriving some provisions from Hamburg.

Mr. Larsen (BIMCO) stated that the shipping industry had lived with different regimes applicable to carriage of goods by sea (COGSA) for many years. Was the disuniformity really as great as it appeared? BIMCO felt that this was not the case, because bills of lading and, increasingly, charterparties almost universally incorporate Hague-Visby. If the industry were demanding a new regime, that would be one thing; but there is no indication from the industry that a new regime is necessary. BIMCO thought that the Comité's efforts should be directed toward promotion of Hague-Visby, and it advises that the CMI should otherwise go slowly and wait for the industry to speak.

Dr. Philip (President, CMI) pointed out that the decision to do work on this subject had been firmly taken in October 1994 in Sydney; the only issue on the table is not whether, but how the work should now proceed. The 'political' decision has been taken, and the Executive Council has asked this expert IS-C to do the work. Prof. Fujita (Japan) stated that the vast majority of his Association agreed completely with what had been stated by Prof. Philip.

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Mr. Roland (Belgium) felt that another report on the pro's and con's of Hague-Visby and Hamburg would be wholly superfluous, as the relative problems and advantages are well known. We do not need another report with mere recommendations, but a specific draft instrument which gives form to the solutions proposed. Answering a question posed by Prof. Bonassies (France) whether there was any possibility that there could be another Brussels Conference, he believed that this was possible – the Belgian Association would certainly try to arrange it if requested by the CMI.

Prof. Bonassies (France) supported the Belgian approach. He noted that while France had technically ratified Hamburg, the requisite implementing legislation had never been enacted. Now both shippers and shipowners were prepared to accept a 'middle-of-the-road' compromise.

Mr. Beare (U.K.) strongly supported the Belgian approach. The need was for a concrete document, even if it is uncertain whether Hague-Visby could be amended.

Dr. von Ziegler (Switzerland) felt that the CMI must prepare now for the future; it is clear that Hamburg is blocked and will never become the prevailing regime in its present form, and it is equally clear that amendment of Hague-Visby is a highly unlikely possibility. The Comité must lead in breaking the deadlock and the only apparent mechanism for this is a new convention. We must draft concrete provisions based upon broad consultation with all of the sectors of the industry.

Prof. Berlingieri, summing up, stated that the clear view of the majority was in favour of continuing the work and of drafting some concrete provisions. Before that, however, the issues must be clarified. He suggested that the work at this meeting should be based upon the Chairman's paper highlighting the problems raised at the first meeting. This was supported by Prof. Bonassies (France).

Mr. Alcantara (Spain) drew attention to § 15 of the letter of his Association, which had been circulated to all participants. He suggested that the IS-C should first discuss these general issues re 'updating' of the regime of COGBS.

Dr. Wiswall (Rapporteur) remarked that a number of the issues pointed to in §15 of the letter of the Spanish Association were totally irrelevant to the task at hand and that the maritime safety issues, in particular, lay outside the competence of the CMI. He felt it would be a better use of time to try to clarify the issues which had already arisen at the First Session. Mr. Rasmussen (Denmark) felt that the Sub-Committee should not discuss maritime safety, manning of ships and other issues which were clearly outside the scope of its mandate. Mr. Hooper (U.S.A.) supported this view and urged that work be commenced on the Chairman's list of issues. Dr. von Ziegler (Switzerland) stated that we must stick to the basic principle of work that two commercial parties are negotiating a COGBS, and not engage in further general discussion. Prof. Berlingieri proposed to begin work forthwith on the list of issues. There was no objection.

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**DEFINITIONS***(a) "Carrier" and "actual carrier":*

Prof. Bonassies (France) felt that the Hamburg definition of "carrier" was much better than the Hague-Visby definition.

Prof. Berlingieri suggested to focus first upon the carrier in the context of the geographical scope of application – neither Hamburg nor Hague-Visby covers COG on land. Should the scope of the COGBS regime be extended to cover land carriage?

Prof. Sturley (U.S.A.) noted that even if the IS-C went no further than Hamburg, land carriage within the port was covered.

Dr. Philip (President, CMI) felt that we should base solutions upon the broadest possible scope which can be agreed. If there is no agreement on the geographical scope now, we should postpone the discussion of these definitions.

Mr. Rasmussen (Denmark) was not in favour of extending the scope of coverage beyond the port or terminal; the regime of COGBS is a uni-modal regime.

Mr. Hooper (U.S.A.) stated that even within the port or terminal we must define who is and is not a "carrier"; *e.g.*, a stevedore. He pointed out that the U.S. domestic proposal to amend COGSA does have a multi-modal aspect.

Prof. Bonassies (France) believed that these questions were dealt with by the Vienna Convention on Port and Terminal Operators.

Mr. Koronka (U.K.) felt that it was artificial to restrict the scope of a modern COGBS regime to the port; coverage should run beyond the port to any place where the carrier has custody.

Dr. von Ziegler (Switzerland) pointed out that there can be only one carrier at a given instant, and wondered why it was necessary to have an "actual carrier" which, in effect, becomes only an additional defendant. Prof. Bonassies (France) agreed.

Mr. Roland (Belgium) believed that the only question which should arise was who has the contract with the shipper. Mr. Hooper (U.S.A.) stated that the problem arose in Himalaya Clause litigation; it was necessary to resolve that problem.

Prof. Berlingieri asked whether it could be agreed that the "carrier" was the person who entered into a contract of COGBS. Mr. Roland (Belgium) felt that the "carrier" should only be the entity named in the bill of lading. Prof. Berlingieri stated that this was a separate problem – that of the *identity* of the carrier.

Ms. Howlett (ICS) said that ICS was happy with the Hague-Visby definition.

Mr. Rasmussen (Denmark) favoured the Hamburg definition, *i.e.*, the contracting carrier. Mr. Koronka (U.K.), Mr. Alcantara (Spain) and Mr. Roland (Belgium) likewise favoured Hamburg, as did Prof. Bonassies (France), who also observed that there is no effective definition of "carrier" in Hague-Visby.

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Prof Berlingieri stated that, as none of the delegates of the NMAs was opposed, the consensus favoured adoption of the Hamburg definition of "carrier". He then posed the question whether a definition of "actual carrier" was needed.

Mr. Rasmussen (Denmark) felt that such a definition was necessary in order for liability rules to function. The actual carrier could be a bareboat charterer, whereas the contracting carrier could be a time charterer. The Hamburg definition was not perfect, but it led in the right direction.

Dr. von Ziegler (Switzerland) noted that this definition had been taken from the Warsaw convention dealing with carriage by air, and accordingly should be very carefully examined before applying it to COGBS.

Mr. Alcantara (Spain) stated that one could not ignore the reality of the actual or performing carrier; but this implied also the need for the Hamburg provisions on liability.

Prof. Guo (China) stated that the Hamburg definition served a wider need.

Mr. Hooper (U.S.A.) favoured a definition of the performing carrier, which should be broad enough to include those who provide collateral services such as, *e.g.*, a watchman retained by the stevedore. Mr. Roland (Belgium) and Prof. Bonassies (France) stated that these other persons were protected by Article 5(7) of Hamburg, and that there was no need to include them in a definition clause.

Mr. Rasmussen (Denmark) queried the effect of a narrow definition of "carrier" upon Hamburg-type joint and several liability – could this type of liability survive a narrow definition?

Prof. Berlingieri felt that this problem was really that of identity of the carrier, which would be taken up when looking at Hamburg Article 15. However Mr. Roland (Belgium) believed that if this problem were not solved in the definition clause it would result in too much ambiguity. Prof. Berlingieri then asked if it could be agreed to have a definition of "actual carrier", but to postpone the drafting until a later stage. This was agreed without objection.

*(b) "Shipper":*

Mr. Alcantara (Spain) felt that it was not right that any COGBS regime should ignore the shipper, especially given that there might be an 'actual' as well as a 'contractual' shipper. He believed that the Hamburg definition was both sufficient and appropriate. This view was supported by Prof. Guo (China) and Prof. Bonassies (France).

Prof. Sturley (U.S.A.) pointed out that if liability is to be imposed upon the shipper, it becomes necessary that "shipper" be defined.

Mr. Rasmussen (Denmark) doubted that a satisfactory definition was possible; the Hamburg definition was a compromise reached only under extreme pressure and after much discussion.

Dr. von Ziegler (Switzerland) believed that the definition of "shipper" would have to be much more specific than that of Hamburg, because the Hamburg definition did not solve the basic problems.

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Mr. Solvang (Norway) felt that there could be a need to distinguish the actual shipper, and that a definition was therefore advisable. Prof. Sturley (U.S.A.) pointed out that unless a precise definition was set forth, the courts would enlarge the definition by case law. Prof. Bonassies (France) agreed, and felt that the "actual shipper" must be included in the definition in order to extent the protection of the convention to those who would otherwise be subject to general tort liability.

Mr. McNulty (Ireland) was not enthusiastic about becoming involved in these distinctions; he felt that unless there were a real commercial problem the IS-C should not try to devise a remedy.

Mr. Alcantara (Spain) stated that the definition was needed in order to solve the dangerous cargo liability problem. Dr. von Ziegler (Switzerland) agreed; there were real problems which required this definition as a solution.

(c) *"Consignee"*:

Prof. Berlingieri raised the problem of containers. If no-one claims a container at the port of delivery, what recourse does the carrier have? Does he have legal standing to sell perishable goods? Can he recover against the shipper? In other words, was a definition of "consignee" also needed?

Mr. Alcantara (Spain) emphatically supported the adoption of a definition of "consignee" to solve the very real problem described by Prof. Berlingieri. Mr. Roland (Belgium) agreed that there should be a definition of "consignee" but doubted that this would solve any problems.

Mr. Japikse (Netherlands) did not agree that there should be such a definition, as this might raise conflicts with national law. There can be no consignee unless a bill of lading is presented.

Mr. Alcantara (Spain) pointed out that one must have the means of knowing whether a consignee is the holder of a bill of lading or is a named consignee. Mr. Koronka (U.K.) stated that this question was one of identification rather than definition. The bill of lading must be specific, and must name the consignee.

Prof. Bonassies (France) felt that there should be a definition of "consignee" because Hamburg used the term but did not define it. Mr. Solvang (Norway) supported this view.

Mr. Koronka (U.K.) believed it would be dangerous to have such a definition. This view was supported by Mr. McNulty (Ireland), Mr. Rasmussen (Denmark) and Dr. von Ziegler (Switzerland).

Prof. Berlingieri stated that there was as yet no consensus in favour of a definition of "consignee".

(d) *"Contract of carriage"*:

Mr. Rasmussen (Denmark) believed that there was broad agreement that waybills should be covered under a new regime. It therefore seemed best to adopt the Hamburg definition of "contract of carriage" even though this would exclude charter parties.

Mr. Koronka (U.K.) felt that a new regime must cover *all* contracts of

carriage, no matter what the form. Mr. Hooper (U.S.A.) agreed; the Hamburg definition was adequate to cover both waybills and electronic data interchange (EDI), as U.S. law presently does. Prof. Fujita (Japan) also agreed.

Prof. Berlingieri noted that one problem with the Hamburg definition was that charter parties were not covered.

Mr. Rasmussen (Denmark) stated that while this seemed odd at first impression, there was actually no contradiction. The bill of lading was a unilateral contract of adhesion which requires a convention for the protection of shippers and other non-carrier parties, whereas charter parties are contracts negotiated and concluded between presumed commercial equals who can protect themselves.

Dr. von Ziegler (Switzerland) felt that the parties to contracts of carriage want to know whether they are free to contract or not. We as lawyers also needed to know the answer, which only the convention on COGBS could provide.

Mr. Alcantara (Spain) believed that the Hamburg definition did cover charter parties; in any case it was necessary to do so.

Mr. Roland (Belgium) saw no fundamental difference between Hague-Visby and Hamburg in this respect; the result under either is that charter parties are excluded.

Prof. Guo (China) preferred the Hamburg definition. The new regime should, however, apply to time charterers.

Prof. Berlingieri pointed out that the Hague-Visby definition is document-based, whereas the Hamburg definition refers first to the contract, and then only to the documents which give expression to the contract. The Hague-Visby definition left too much out, though the Hamburg definition was not perfect.

Mr. Larsen (BIMCO) stated that shipowners preferred that the same regime should govern both bills of lading and charter parties, which was why owners incorporated Hague-Visby into their charter party forms.

Dr. Wiswall (Rapporteur) queried whether, at the end of this discussion, the regime of COGBS under consideration should or should not apply to charter parties. Unanimously, the IS-C agreed that charter parties should not be covered under an international regime.

Mr. Alcantara (Spain) disagreed with the question, which he felt was too simple. The NMAs should debate the issue of charter party coverage, and it should not be decided by the IS-C. Prof. Berlingieri and Dr. Philip (President, CMI) both made it clear that no decisions were taken by the IS-C; all issues would go back to the NMAs for debate. The report of this Session of the IS-C would, however, reflect the view of the majority of the participants. Dr. Philip also pointed out that there has been some sentiment expressed in favour of equating voyage charters with bills of lading under a revised regime of COGBS.

(The Sub-Committee then stood in recess for the lunch hour.)

Ms. Howlett (ICS) sought clarification whether both waybills and EDI would be covered under the IS-C's proposal. Prof. Berlingieri answered yes, that all contracts for COGBS would be covered except charter parties. There was no objection to this statement.

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*(e) "Cargo":*

Prof. Berlingieri noted that the consensus at the First Session was to include deck cargo, but exclude live animals. He asked whether an explanation for the exclusion of live animals should be included in the IS-C's Final Report.

Mr. Alcantara (Spain) felt that live animals should be included, as they were undeniably cargo. Prof. Guo (China) and Mr. Kleiven (Norway) supported this view.

Prof. Bonassies (France) noted that live animals were included in French law, but that any exculpatory clauses were allowed.

Mr. Rasmussen (Denmark) believed that live animals should *not* be included because, as opposed to other cargo, they required intensive special handling and detailed instructions from the shipper as to their care. Mr. Hooper (U.S.A.) supported this view; the parties should be free to contract when live animals were shipped. Likewise Mr. McNulty (Ireland) pointed out that live animals are a special problem as cargo because they are mobile, conscious, have independent will and require as much care as human passengers; he strongly opposed their inclusion. This view was also supported by Mr. Japikse (Netherlands), Mr. Beare (U.K.), Prof. Fujita (Japan), Mr. James (Australia/New Zealand) and Dr. von Ziegler (Switzerland).

Prof. Berlingieri stated that there was an obvious split on this issue; however, if live animals were to be included, all were agreed that special rules would be required. There was also a special limitation problem with live animals, because neither the package nor the kilo limit appeared to be applicable. It was agreed that the issue of live animals would be given further consideration at the next session of the IS-C.

*(f) "Package":*

Prof. Berlingieri noted that there had been no consensus at the previous Session whether "package" should be defined – and that there was no definition either in Hague-Visby or Hamburg.

Prof. Sturley (U.S.A.) favoured elimination of the package criterion, leaving weight as the sole measure for limitation of liability. It might not be possible to agree on a definition of "package", and in any case his Association opposed having a definition.

Prof. Bonassies (France) pointed out that the U.S. Courts have been pondering the question 'what is a package' for many years.

Prof. Berlingieri explained that originally a "package" was well understood to be a unit of the size and weight which could be carried on the shoulders of one man.

Mr. Alcantara (Spain) wondered whether there should be a definition specifically including containers.

Prof. Berlingieri noted that containers were included under Hamburg if they were "supplied by the shipper"; the carrier's own containers were therefore excluded. He then asked whether there would be objection to

extending the description and enumeration in the bill of lading; there was no objection. Prof. Berlingieri stated that the consensus favoured *no* definition of "package".

(g) *"Ship"*:

Prof. Bonassies (France) pointed out that Hamburg renders the ship liable, but does not mention the word "ship". Prof. Berlingieri stated that the brief discussion which followed the observation of Prof. Bonassies showed that there was no desire to have a definition of "ship".

(h) *"Carriage of goods" / duties of the carrier*:

Prof. Berlingieri stated that what this definition really signified in Hamburg was the period of application of the Convention.

Mr. Japikse (Netherlands) doubted that the period should be extended. The question 'what constitutes delivery' was vexatious, whereas one could readily determine when loading and discharge begin and end.

Mr. Rasmussen (Denmark) supported the Hamburg approach, as opposed to the "tackle to tackle" period of Hague-Visby, which had caused real problems. He thought that the period of custody by the carrier was a reasonable approach, and that it might be possible to go even some way beyond the Hamburg definition. This was supported by Mr. Koronka (U.K.) and Mr. Alcantara (Spain) on grounds that the delivery terminal might lie outside the limits of the port.

Mr. Hooper (U.S.A.) felt that the whole period of carriage described in the bill of lading should be covered.

Dr. Wiswall (Rapporteur) wondered about the open-ended problem arising whenever a consignee or other person failed to claim the goods; he felt that a termination of the carrier's responsibility should be provided in such circumstances. Prof. Berlingieri asked what should be done about containers which were taken outside the port to be stacked.

Mr. Rasmussen (Denmark) felt that a new concept must be developed, as the terms 'port' and 'terminal' were becoming outmoded. Mr. Alcantara (Spain) supported this view.

Dr. von Ziegler (Switzerland) felt that the period of coverage should be the period of the carrier's custody, regardless of location.

Prof. Berlingieri observed that the problem with the 'tackle to tackle' definition was that one could not always determine when damage to cargo was done, especially with containerized cargo.

Mr. Rasmussen (Denmark) did not favour the period of custody as the sole criterion, but suggested a combination of custody and geographical location. Mr. Koronka (U.K.) supported this view, and remarked that a revised COGBS regime should not attempt to cover multimodal transport.

Prof. Berlingieri believed that the problem was primarily that of containerized cargo. He suggested that the group needed more examples of how cargo is dealt with in the present day.

Prof. Sturley (U.S.A.) posed the case of a carrier delivering goods in the

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carrier's own container, 500 km beyond the port. Should this case be covered? Mr. Koronka (U.K.) felt that the loading of the container on a chassis for road transport constituted an change of mode, and such delivery should therefore not be covered by the COGBS regime.

Mr. Alcantara (Spain) pointed out that the bill of lading must name the ports of loading and destination – one could not get away from that. There will necessarily be a difference between discharge and delivery.

Prof. Berlingieri and Dr. Philip (President, CMI) stated that information was needed from the NMAs on how cargo is handled; this part of the discussion would therefore be suspended, and a very brief questionnaire would be circulated on cargo handling methods.

Prof. Berlingieri stated that this left the issue whether the concept embodied in Hamburg Article 4(2) was sufficient, or whether a new concept was necessary, as suggested by Denmark and Spain.

Mr. Solvang (Norway) favoured, on balance, Hamburg 4(2).

Mr. Roland (Belgium) did not care for the concept of the place where the goods are received as the termination of custody. This was too remote.

Mr. Alcantara (Spain) suggested the period from issuance of the bill of lading until its presentation. Prof. Berlingieri pointed out that the carrier may take custody before issuance and part with custody before presentation; and under Hamburg, it appeared that the carrier might not be liable even though he still had custody. Mr. Alcantara agreed that the problem of 'unwilling custody' was relevant in such case.

Prof. Berlingieri stated that a request would be added to the questionnaire to provide actual examples of such problems.

(i) *"Due diligence" / duties of the carrier:*

Prof. Bonassies (France) was strongly in favour of retaining the provisions of Hague-Visby in this respect, though he might also agree to a continuous obligation of due diligence on the part of the carrier throughout the voyage. Prof. Guo (China) supported this position.

Mr. McNulty (Ireland) believed that an extension of the obligation of due diligence to cover the entire voyage would be an impossible burden for the carrier to bear. The COGBS regime should set out a description of the carrier's specific duties. This position was supported by Mr. James (Australia/New Zealand), Mr. Hooper (U.S.A.), Prof. Park (Korea), Prof. Fujita (Japan), Mr. Kleiven (Norway), Mr. Rasmussen (Denmark), Mr. Japikse (Netherlands), Dr. von Ziegler (Switzerland), Ms. Howlett (ICS) and Mr. Larsen (BIMCO).

Mr. Alcantara (Spain) wanted a simple obligation upon the carrier to carry the goods safely throughout the whole period of coverage until delivery; he would, however, keep the description of the carrier's duties. Mr. Roland (Belgium) supported this position.

Prof. Berlingieri believed that it would be a practical impossibility to maintain the same level of diligence during the voyage as before the voyage. There was, of course, a general duty to cargo which runs for the course of the

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entire voyage. This position was supported by Dr. Philip (President, CMI), Mr. Koronka (U.K.), and Prof. Bonassies (France).

Prof. Berlingieri saw a clear majority in agreement with retaining the present obligation under Hague-Visby.

### *LIABILITY and LIMITATION*

#### *(a) Exonerations:*

Prof. Bonassies (France) stated that he could support deletion of the defense of errors in navigation and in management, but would retain the fire defense. This position was supported by Mr. Hooper (U.S.A.) and Mr. Roland (Belgium).

Mr. McNulty (Ireland) would retain the error in navigation defense, but delete error in management and fire.

Mr. James (Australia/New Zealand) would delete the error in management defense but keep the fire defense: he was neutral on the error in navigation defense.

Mr. Kleiven (Norway) would delete the error in management defense, but retain the defenses of fire and error in navigation.

Mr. Alcantara (Spain) would delete the defenses of error in navigation and management, and might agree to substitute the fire defense by *force majeure*.

Prof. Guo (China) would retain the Hague-Visby list of defenses as at present. This position was supported by Mr. Beare (U.K.), Prof. Park (Korea), Prof. Fujita (Japan), Mr. Rasmussen (Denmark), Mr. Japikse (Netherlands), Dr. von Ziegler (Switzerland), Mr. De Puy (Panama), Mr. Larsen (BIMCO) and Ms. Howlett (ICS).

Prof. Bonassies (France) thought that one way to overcome the problem with the error in navigation defense was the original U.S. Harter Act solution, *i.e.*, that the defense is applicable only after the ship has cast off on the voyage.

Mr. Beare (U.K.) felt that the only practicable solution was to keep Hague-Visby as it is with respect to these three defenses.

#### *(b) Format and expression in Hague-Visby and Hamburg*

Prof. Berlingieri pointed out that Article 4(2) of Hague-Visby contained the 'catalog' of defenses, whereas Article 5 of Hamburg contains a much shorter description.

Dr. von Ziegler (Switzerland) preferred the catalog approach, which was much easier to work with. He pointed out that Hamburg originally contained a catalog, and that this was only substituted by the present provision very late in the drafting stage of the Conference. He would especially keep the provision contained in the Hague-Visby Protocol of Signature.

Mr. Japikse (Netherlands) believed the catalog was necessary; in his view the Hamburg provision was too vague.

Mr. Roland (Belgium) preferred the provision of Article 5(1) of

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Hamburg because the carrier's duty was plain – and he must prove non-responsibility for damage.

Mr. Rasmussen (Denmark) preferred the Hague-Visby catalog. The Hamburg wording was so sloppy that it had necessitated the infamous "common understanding" at the end of the Conference because it was unclear what was meant. While much of the Hague-Visby catalog was relatively unimportant, he preferred to keep the whole for the guidance of commercial parties.

Mr. Alcantara (Spain) liked the Hamburg Article 5 approach of 'reasonableness', as this was more in accord with Spanish law.

Mr. Kleiven (Norway) had no strong feelings regarding the catalog; it was considered unnecessary and thus did not appear in the new Scandinavian legislation, but he would have no objection to its use in a revised COGBS regime.

Prof. Fujita (Japan) would maintain the catalog; it was very useful and rested upon a foundation of legal precedent. This view was supported by Prof. Park (Korea) and Mr. McNulty (Ireland).

Mr. Koronka (U.K.) favoured retaining the Hague-Visby catalog for stability of a commercially acceptable regime; Hamburg Article 5 introduced uncertainty, required re-allocation of risk, and increased costs. This position was supported by Mr. Hooper (U.S.A.), Prof. Guo (China), Mr. James (Australia/New Zealand), Mr. De Puy (Panama), Ms. Howlett (ICS) and Mr. Larsen (BIMCO).

Prof. Bonassies (France) stated that he would prefer a catalog; Hamburg Article 5 was too vague and if it entered into widespread force would lead to litigation. However, it should also be possible to shorten the catalog by combining and merging some exceptions. He, too, would take care to retain the Hague-Visby Protocol of Signature provision allowing the consignee to prove his case.

Prof. Berlingieri stated that there was a very clear majority in favour of retaining the catalog approach with regard to exceptions.

*(c) Deviation:*

Prof. Sturley (U.S.A.) believed that a rule on deviation was badly needed; this was a serious problem in U.S. law.

Dr. von Ziegler (Switzerland) preferred that the current Hague-Visby provision be deleted, and that reasonable deviation be moved into the catalog as an exception.

Prof. Bonassies (France) felt that an exception for deviation was really not needed; he pointed out that the only deviation cases which had arisen were those under the U.S. COGSA.

Mr. Alcantara (Spain) did not care to have a rule on deviation, except for purposes of salvage.

Mr. Rasmussen (Denmark) felt that deviation was not a part of modern liner carriage, and did not belong in a modern COGBS regime.

Mr. Kleiven (Norway) believed that the provision on deviation was both archaic and confusing, and served no real purpose.

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Prof. Fujita (Japan) stated that if it proved necessary to retain any provision on deviation, it then should be moved into the catalog.

Mr. Roland (Belgium) did not care to have any provision on deviation.

Prof. Park (Korea) would retain the Hague-Visby deviation clause.

Mr. Beare (U.K.) would delete the provision on deviation for U.K. purposes, but he appreciated the U.S. need for such a provision. In his view, the real question was whether the contract of carriage could survive the breach caused by a material deviation.

Prof. Berlingieri noted that it is the general CMI philosophy that in order to promote uniformity a provision would be accepted to help a particular State if acceptance would do no violence to the overall regime. Here the problem existed *only* in the U.S.A.; the view of the great majority was that no provision on deviation is necessary.

*(d) Limitation of liability:*

Mr. Koronka (U.K.) noted that cumulative inflation since 1968 has been an average of 378% in Europe, or a loss of 80% of value.

Mr. Rasmussen (Denmark) believed that the real question was: 'how often do the present limits prove insufficient to meet the claim?'

Prof. Berlingieri wondered what cumulative increases there had been in the average values of cargo.

(At this point the IS-C adjourned for the evening. It was reconvened on Saturday, 16 March 1996 at 9:05 a.m.)

Dr. Philip (President, CMI) observed that the present discussion could take a very long time if delegates began to discuss limitation figures. In his view the IS-C should not attempt to state figures now, as these will become outmoded by the time a new regime of COGSA is adopted; it would be better to indicate instead the factors which should be taken into account regarding limitation of liability. It might be possible to propose that limitation figures be indexed for inflation.

Prof. Berlingieri asked whether the time had now come to abandon package-based limitation. Is it really needed any longer? What about limitation based upon weight *only*? Were we ready to move to one basis for limitation?

Prof. Sturley (U.S.A.) cited the example of electronics shipped in small packages as illustrative of the need to abandon package-based limitation in favour of weight only. Unfortunately, the cargo interests have thus far opposed making this transition. With regard to indexing for inflation, he referred to the work done by UNCITRAL in the early 1980's which was considered by the IMO Legal Committee in preparing for the 1984 Diplomatic Conference.

Dr. Wiswall (Rapporteur), having been in the Chair of the Legal Committee during that period, recalled that the peculiar political circumstances surrounding the work on the subjects for the 1984 Conference operated to suppress any serious interest in the indexing of limitation figures to account for inflation. The idea was generally well received, but not

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extensively debated because it would not have been possible, politically, to apply it to the 1984 instruments.

Mr. McNulty (Ireland) favoured retention of the present Hague-Visby two-basis limitation formula, but using the Hamburg limits plus an automatic indexing for inflation.

Mr. Rasmussen (Denmark) also favoured retention of the present Hague-Visby two-basis limitation formula *without* automatic indexing, but with a mechanism for rapid amendment of the limits.

Mr. Hooper (U.S.A.) favoured a periodic adjustment of the limits, but not an automatic adjustment by indexing for inflation.

Dr. Philip (President, CMI) personally agreed with an expedited review mechanism as opposed to an automatic indexing; inflation seldom followed an even path of progression, and indexing could have unintended consequences.

Dr. von Ziegler (Switzerland) believed that the limit of liability should be high, uniform and predictable, perhaps in accordance with a formula which could be applied by the judge in a given case. As to the question of basis, he could accept a deletion of "package" but felt it essential that "shipping unit" should be defined, as in Hamburg.

Mr. Koronka (U.K.) favoured the two-basis limitation formula, but with an expedited procedure for periodic review and amendment of the limits. This position was supported by Prof. Fujita (Japan) and Prof. Bonassies (France).

Prof. Guo (China) favoured the present Hague-Visby two-basis formula, which had caused no real problems. This view was supported by Mr. Solvang (Norway).

Mr. Alcantara (Spain) favoured the Hamburg limits and formula, with an expedited procedure for periodic review and amendment of the limits.

Prof. Berlingieri found that there was a consensus in favour of the two-basis formula together with an expedited procedure for periodic review and amendment of the limits of liability. The IS-C would examine this issue again following the outcome of the May 1996 Diplomatic Conference on Limitation of Liability.

*(e) "Loss or damage":*

Prof. Berlingieri pointed out that the word "loss" does not appear in the particular provision in Hague-Visby. Prof. Bonassies (France) believed that this had been a drafting error. One might therefore favour the Hamburg wording, which was taken from the Warsaw Convention where "damage" is defined to cover all types of loss. The words which Hamburg uses are "loss, damage or delay". Following a very brief exchange, it was unanimously agreed that the Hamburg wording should be used.

*(f) Loss of the right to limitation:*

Mr. Alcantara (Spain) felt that the Hamburg provision was too mild; unless a duty of the carrier to keep the vessel seaworthy throughout the voyage is added, the system will remain unbalanced. He believed that the Hamburg test at present rendered the limits virtually unbreakable.

Mr. Solvang (Norway) favoured the existing Hamburg test, which had been adopted into the new Scandinavian law.

Prof. Bonassies (France) stated that it was very easy for the courts to find a "reckless" misconduct, and that this had already been done by courts in France and Germany. The Hamburg limits were by no means unbreakable.

Prof. Berlingieri put the question, and there was a very substantial majority in favour of the Hamburg limitation test.

*(g) 'Contents of the bill of lading; identity of the carrier:*

Prof. Berlingieri felt that identity posed a very significant problem.

Mr. Rasmussen (Denmark) believed that identification set out in the bill of lading should not determine who is liable, or else there is an adverse impact upon the forum selection clause. In his view the "carrier" should be the contracting carrier, but a plaintiff should have the option to sue the performing carrier under joint and several liability. Identity clauses should be deprived of any significance.

Prof. Berlingieri posed the case of an absent or invalid identity clause, with a semi-legible rubber stamp on the bill giving the only indication of identity, and the 'stamper' located in a remote place; all that the shipper really knows is the vessel and the flag. How can he find the time / voyage / bareboat charterer who is liable?

Mr. Rasmussen (Denmark) responded that the solution is to permit the shipper to sue the shipowner under joint and several liability; the shipowner must be presumed to know his charterer. This view was supported by Mr. Koronka (U.K.).

Mr. Larsen (BIMCO) pointed out that the UCP 500 Rules require the actual carrier to sign the bill of lading, as the bank of presentment will not otherwise honour the bill. He supported the view that identity clauses should be dropped altogether.

Mr. Alcantara (Spain) stated that identity clauses had been held invalid by the Spanish Courts.

Mr. Hooper (U.S.A.) explained that in U.S. law the shipper is encouraged to find the weakest link in the chain via the Himalaya Clause; he was strongly of the view that the Hague-Visby protections should be extended to *all* carriers.

Mr. Kleiven (Norway) stated that the Scandinavian States had no problems because of the joint and several liability provisions.

Prof. Bonassies (France) observed that identity clauses were never valid in France; a bareboat charterer has the same liability as the shipowner.

Dr. von Ziegler (Switzerland) felt that it was only fair that the bill of lading should identify the responsible party. Dr. Wiswall (Rapporteur) added that in order to accomplish this, the bill of lading should identify a real 'deep pocket' having not only joint and several liability but also a right of recourse.

Mr. Beare (U.K.) believed that the best solution at the end of the day was arrest of the ship *in rem*.

Mr. McNulty (Ireland) saw the problem arising primarily in the common

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practice of the charterer to issue bills of lading as the agent of the shipowner. This problem must be addressed.

Mr. Solvang (Norway) felt that the concept/question "who is the actual carrier?" must also be considered.

Mr. Alcantara (Spain) pointed out that it was impossible to totally avoid judgement-proof defendants; absolute enforcement was therefore out of the question.

Prof. Berlingieri stated that the majority view was that identity clauses should be abolished or held invalid as a basis of liability, and that the contracting carrier should be liable under joint and several liability with the performing carrier. The IS-C must later work out these improvements.

Dr. von Ziegler (Switzerland) believed that the IS-C should insist that the contracting carrier be properly identified in the bill of lading, as required by Article 15 of Hamburg. Prof. Berlingieri concurred, and added that not only should the name be set forth, but also the address of the carrier's principal place of business.

Mr. Alcantara (Spain) felt that suit should not be forced against the registered shipowner, who may not be either the contracting or the performing carrier.

Dr. Philip (President, CMI) pointed out that the registered shipowner is the person who knows the identity of the charterer, and the charter party contains provisions which protect the shipowner in such circumstances.

Prof. Berlingieri stated that all participants agreed that the IS-C must work to clarify this responsibility.

*(h) Other contents of the bill of lading:*

Mr. Solvang (Norway) observed that it really did not matter how extensive the contents of the bill of lading were, since the contents are not determinative under Article 15 of Hamburg.

Prof. Berlingieri pointed out that under Article 23 of Hamburg the obligation to issue the bill of lading cannot be contracted out. Hague-Visby absolutely requires issuance by the carrier.

Mr. Rasmussen (Denmark) observed that, under Hamburg, a bill of lading need only be issued if requested by the shipper; this meant that it was essential to fashion a regime which covered waybills in an acceptable manner. He stated that, in the North Sea traffic of the present day, no bills of lading were issued, but only sea waybills; Mr. Koronka (U.K.) disagreed with this statement.

Prof. Bonassies (France) noted that Hamburg can be construed to allow *any* acceptable form of shipping document. A sea waybill and a bill of lading might be identical in form except for the words "Bill of Lading", and yet not enjoy the same status.

Mr. Koronka (U.K.) saw no objection if the parties were to agree to another form of shipping document, but the carrier must not have a completely unilateral choice. This view was supported by Mr. McNulty (Ireland).

Prof. Berlingieri stated that all participants concurred that another form of shipping document might be used if both parties were in agreement.

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*(i) Evidentiary value:*

Prof. Bonassies (France) could accept that "shipper's load and count" be permitted to be endorsed on the bill, but in any such case the burden of proof should be reversed and lie upon the carrier. This position was supported by Mr. Alcantara (Spain).

Dr. von Ziegler (Switzerland) thought a reversal of the burden would defeat the purpose of the endorsement, since it was used in cases of concealed packages when the carrier was unable to verify the actual contents. Mr. Koronka (U.K.) added that such endorsement should be allowed *only* in case the carrier could not verify the actual cargo.

Prof. Sturley (U.S.A.) stated that carriers must have the option to use the "shipper's load and count" endorsement in any case where they cannot, as a practical matter, verify the contents of a container or package or the condition of the goods. Prof. Guo (China) supported this position.

Prof. Berlingieri wished to focus upon the burden of proof in such cases. What about common problems of verification, such as determination of the quantity of liquid cargo by ullaging?

Prof. Sturley (U.S.A.) responded that the draft U.S. amendments to COGSA put the burden upon the carrier to prove that he could not *reasonably* verify the cargo; the carrier would not, for example, be expected to open a sealed container. Dr. von Ziegler (Switzerland) added that a carrier would not reasonably be obliged to X-ray containers, either.

Mr. Koronka (U.K.) was concerned that nothing be done to encourage fraud. He felt that it was proper in such cases that the burden of proof should lie upon the carrier. Mr. Alcantara (Spain) supported this view.

Prof. Berlingieri stated that a consensus existed that the burden in such cases should lie upon the carrier to prove that he could not reasonably verify the cargo.

Mr. Rasmussen (Denmark) wished to return to the matter of sea waybills, which were treated differently under Hague-Visby and Hamburg. They should be given more status under a revised COGSA regime, which should give effect to estoppel as in the CMI Rules on Sea Waybills. Dr. von Ziegler (Switzerland) and Prof. Bonassies (France) supported this position.

Mr. Hooper (U.S.A.) was wary of applying estoppel in all cases; if the carrier has not been given a proper description of the goods, he should be allowed to prove this.

Mr. Koronka (U.K.) believed that anything which is done must be readily adaptable to EDI, especially as the sea waybill was a transition to EDI.

Prof. Berlingieri pointed out that there could be no estoppel in a case of fraud. In principle, all documents should be given equal status. This he saw to be the consensus except for the Spanish view that sea waybills run only between equal partners and that the Hamburg regime is best for all documents other than a bill of lading. It was also the consensus that estoppel should apply and that there should be a two-tier system of value.

*(j) Dangerous cargo:*

Prof. Berlingieri noted that the Hamburg provision on dangerous cargo

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was more detailed than that in Hague-Visby, but that the substance was similar.

Prof. Bonassies (France) believed that the Hamburg provision was actually much better, because its wording was taken from the International Maritime Dangerous Goods Code (IMDGC).

Mr. Alcantara (Spain) favoured Article 13 of Hamburg. He thought that the proposed HNS Convention would not apply to contractual relationships, but only to cases of tort, and therefore need not be considered in this context.

Prof. Berlingieri felt that we should await the outcome of the HNS Conference before considering HNS as such.

Mr. McNulty (Ireland) preferred the Hamburg provision, with some 'tightening up' of loose wording.

Mr. Rasmussen (Denmark) observed that this was really a matter of drafting, and that it was not necessary to make a choice between Hague-Visby and Hamburg, because substance was not involved. Prof. Berlingieri stated that all participants appeared to agree with this position.

*(k) Notice of loss or damage:*

Prof. Berlingieri noted that the burden of proof is always upon the receiver to give notice of loss or damage. The consignee might, however, sue without giving notice.

Prof. Bonassies (France) observed that if notice of damage were given, a presumption arose that the damage occurred during the carriage, and that claims have failed where no notice of damage was given. In his view such notice must be required to set out the details of the damage. Prof. Sturley (U.S.) stated that U.S. law was to the same effect.

Prof. Berlingieri felt that pre-printed forms of notice were not effective.

Mr. Alcantara (Spain) felt that the 60-day notice period in Hamburg was fair and was preferable to Hague-Visby. Prof. Bonassies (France) pointed out that the 60-day notice in Hamburg was applicable only to delay.

Mr. McNulty (Ireland) favoured the 15-day notice period in Hamburg over the 3-day period in Hague-Visby, but thought that the 15-day period should be applicable to delay as well as to damage. The 3-day period was too short, as the consignee could give notice only after receiving the cargo.

Mr. Hooper (U.S.A.) believed that uniformity was the primary goal, and for this reason the 3-day notice in Hague-Visby was preferable in cases where damage was apparent upon delivery; the only effect of this, after all, was to create a rebuttable presumption. This view was supported by Mr. Koronka (U.K.) and Mr. Rasmussen (Denmark), who added that a shorter period provided greater certainty, whereas Hamburg provided no certainty.

Dr. von Ziegler (Switzerland) felt that if damage was apparent at the time of delivery, *immediate* notice should be required; otherwise notice should be required within 3 working days following delivery. The problem with a longer period was that much damage to cargo could occur in the terminal between 3 and 15 days following delivery.

Prof. Guo (China) favoured the Hamburg notice provision.

Prof. Berlingieri stated that the clear majority felt that the 15-day period

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gave rise to uncertainty; however, he thought that more comment was needed regarding the commencement of the period. Prof. Sturley (U.S.A.) agreed that this must be settled; the risk arising when the goods are in the custody of the port must be assigned to one party or the other, and could not be left in limbo.

Mr. Rasmussen (Denmark) pointed out that the problem only arises under Article 4 of Hamburg where the goods are 'delivered' to the port authority; under Hague-Visby there was no particular reference to delivery to a port authority.

Mr. Hooper (U.S.A.) felt that the period should begin whenever the consignee *could have had* access to the goods. Prof. Berlingieri objected that this might be as much as a month after discharge, but Mr. Rasmussen (Denmark) believed this was only a problem under Hamburg because Hague-Visby speaks of delivery to a consignee. Both Prof. Berlingieri and Prof. Bonassies (France) observed that discharge or handing over of cargo did not constitute delivery.

Prof. Sturley (U.S.A.) stated that the weight of authority seemed to be that the 3-day period under Hague-Visby began to run when the goods were delivered to the port authority; Hamburg at least made an attempt to solve the commencement problem. The real need was for a clear and predictable period, and the actual length of the period was less important.

Prof. Berlingieri stated that the majority favoured a 3-day notice period, as under Hague-Visby. However, he felt that the issue of notice where the damage was apparent had not yet been resolved; should notice be required immediately as under Hague-Visby, or a day later as under Hamburg?

Dr. von Ziegler (Switzerland) and Mr. Rasmussen (Denmark) favoured an immediate notice requirement, allowing a delay of no more than one day during working days.

Prof. Berlingieri felt that he sensed a general agreement, and that without objection the consensus would be that notice should be concurrent with delivery where loss or damage is apparent.

Mr. Alcantara (Spain) disagreed with the general conclusion on a 3-day period; this was not enough time to obtain a joint cargo survey.

Dr. Philip (President, CMI) felt strongly that the period should be 3 working days; there must be a sufficient incentive for the consignee to make an inspection of the goods as soon as possible after discharge. Prof. Berlingieri added that a joint survey was never a prerequisite to notice, but was carried out for insurance purposes.

### *TIME BAR*

Prof. Berlingieri noted that there had been a large number of NMAs during preparation of the 1924 Convention who were in favour of a 2-year period for time bar, but a slight majority had favoured the 1-year rule for the sake of greater certainty.

Mr. Rasmussen (Denmark) believed that the time had come to adopt a 1-year rule; with modern communications, 1 year was a fully sufficient time

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period. This position was supported by Prof. Sturley (U.S.A.) and Mr. Koronka (U.K.), who added that this rule would expedite claims and thus save costs.

Prof. Guo (China) favoured a 1-year rule, but with the Hamburg wording.

Mr. Alcantara (Spain) felt that there was a multimodal problem: the regime should facilitate recourse actions, and therefore the time bar period should not be too short; in his view 1 year was not enough for multimodal claims.

Prof. Berlingieri pointed out that the parties by agreement might extend the time bar period under both Hague-Visby and Hamburg. Mr. McNulty (Ireland) stated that this was precisely why he favoured a 1-year rule; some parties routinely sought an extension whenever the end of the time bar period approached, and all that the 2-year time bar accomplished was to delay the request for extension a year longer than necessary.

### *GEOGRAPHICAL SCOPE*

Prof. Berlingieri noted that the original draft of Hamburg contained the same scope as Hague-Visby, but was later changed. He asked for all delegations to give a quick indication of their position on geographical scope; there was a total consensus in favour of the Hamburg scope, with both inbound and outbound coverage.

### *CHOICE OF LAW*

Mr. Rasmussen (Denmark) questioned whether it was really desirable to have a choice of law provision. Prof. Berlingieri observed that the purpose of uniform rules is not to leave open other possible choices of law.

Dr. Philip (President, CMI) stated that under a mandatory regime such as COGSA the convention must be the first law to be applied; only to the extent the convention was inapplicable could there be a choice of law under the rules of the forum State. It was necessary to settle the issue in the terms of the convention, and there should be no provision which made possible a choice of any other law.

Mr. Alcantara (Spain) favoured Hamburg because it unified the law; therefore it must prevail over domestic law.

Mr. Solvang (Norway) felt strongly that the regime should not enable a choice of any other law; the alternative would permit the domestic law of States parties to expand the regime.

Mr. Rasmussen (Denmark) thought that the choice was really between national laws as to *implementation* of the regime, not a choice allowing the application of extra-conventional national law on the issues of substance. One must leave it up to the States parties to apply the regime under their own national systems.

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Prof. Berlingieri pointed out that the problem was hardly theoretical; there could and did occur conflicts between different States' enacted versions of Hague-Visby.

Prof. Sturley (U.S.A.) did not believe there was anything which the IS-C could do about this aspect of the problem; it must be left to the courts.

Prof. Berlingieri stated that the consensus on this point was in favour of the Hague-Visby provision.

### *LETTERS OF GUARANTEE*

Prof. Guo (China) stated that the COGBS regime should not encourage letters of guarantee, but they should be regulated by national law.

Mr. Rasmussen (Denmark) stated that the Scandinavian countries could accept the Hamburg provision on letters of guarantee.

Mr. Alcantara (Spain) felt that there should be no mention of letters of guarantee in the COGBS regime.

Prof. Bonassies (France) favoured the Hamburg provision.

Dr. von Ziegler (Switzerland) believed that falsification of documents should not be permitted, let alone facilitated; the COGBS regime should outlaw letters of guarantee.

Mr. Rasmussen (Denmark) would not ban letters of guarantee; sometimes, in a 'grey area', they could have utility. Mr. Solvang (Norway) supported this view and favoured the Hamburg provision.

Mr. Koronka (U.K.) found Article 17 of Hamburg to be objectionable because it created *new* 'grey areas'; the Hamburg provision was not acceptable. This position was supported by Prof. Fujita (Japan).

Prof. Berlingieri thought that there should be no attempt in the COGBS regime to regulate letters of guarantee, but that this should be left to national law; nothing should be done to encourage the use of letters of guarantee. This view was supported by Mr. McNulty (Ireland), Prof. Sturley (U.S.A.) and Prof. Park (Korea).

Prof. Berlingieri stated that it was clear that the majority favoured no mention of letters of guarantee in the COGBS regime, leaving the matter to national law.

### *JURISDICTION*

Prof. Sturley (U.S.A.) believed that in cases having an American nexus, claimants should be able to sue in the U.S.: it was therefore necessary to regulate arbitration clauses as these related to choice of forum. The claimant's choice of forum for proceedings should not be frustrated by an arbitration clause, but could be restricted to either a place agreed and stated in the bill of lading or, alternatively, the principal place of business of the carrier. He would therefore accept the Hamburg provision. This view was supported by Prof. Bonassies (France).

Mr. Rasmussen (Denmark) stated that the jurisdiction clause in the new

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Scandinavian law applied only to inter-Scandinavian trade. The Scandinavian States might therefore be prepared to accept a jurisdiction clause in the COGBS regime. He felt that Article 3(8) of Hague-Visby was acceptable.

Mr. Alcantara (Spain) felt that Hamburg Article 21 was acceptable, subject only to what was provided in the new Arrest Convention.

Prof. Bonassies (France) observed that the consignee had no motive to choose an unfavourable forum. He asked why a non-party State would refuse to apply the COGBS convention.

Dr. von Ziegler (Switzerland) believed that the jurisdiction clause should provide predictability, and that the choice of forum should therefore be limited to States parties. This position was supported by Dr. Philip (President, CMI), who added his view that it was a lapse in drafting that Hamburg did not contain a State party restriction clause; the probability of that lapse is demonstrated by the Hamburg requirement that the Convention be applied in arbitrations.

#### ARBITRATION

Mr. McNulty (Ireland) did not favour the Hamburg Article 22 provision on arbitration; he would prefer no mention of arbitration whatever.

Mr. Koronka (U.K.) had no objection to Hamburg Article 22.

Dr. Philip (President, CMI) stated that there should be no restriction imposed upon the *place* of arbitration; Hamburg was unacceptable in this respect. The parties should be completely free to choose the arbitration *situs*. He would, however, retain Article 22(4) on application of the Convention. This view was supported by Mr. Alcantara (Spain), who added that Hamburg Article 22 was inconsistent and he would strike all of the paragraphs except (1), (4) and (6).

Mr. Solvang (Norway) believed there should be an adjustment made to Hamburg Article 22(4), but that application of the regime should be made mandatory.

Prof. Sturley (U.S.A.) thought that the arbitration clause should permit a choice of place of arbitration, because the law on appeals of arbitral decisions differs between States, *e.g.*, London and New York. Hamburg Article 22(4) puts the cart before the horse as to application of the Convention, because it is impossible to apply this Article 22(4) unless a decision has first been reached that the Convention as a whole applies.

Prof. Berlingieri observed that some delegations wanted only Hamburg Article 22 (1) and (4); others wanted *all* of Article 22; still others wanted no arbitration provision whatever. He suggested that each delegation should send to himself or to Dr. Wiswall (via the CMI Administrator Baron Delwaide) a short written note of its position on this issue.

#### CONCLUSIONS

Prof. Berlingieri announced that he and the Rapporteur would prepare a brief summary report for the forthcoming CMI Executive Council and Assembly meetings. The goal of the IS-C is to attempt to prepare a study,

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embodying concrete draft proposals on all of the issues of concern; the study will eventually be presented by the Comité to the relevant U.N. agencies, together with an offer of continued CMI cooperation in the development of a practicable and commercially realistic regime of COGBS.

The Report of this Session together with an outline of the format of the study mentioned above will be circulated to all NMAs by mid-June, for comments to be returned in time for consideration prior to the next meeting of the IS-C, which has been agreed to be held in London on Friday 27 and Saturday 28 September, 1996, at a location to be announced.

With this, the meeting was adjourned at 1:15 p.m.

FRANCESCO BERLINGIERI, Chairman  
FRANK L. WISWALL, Rapporteur

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**FINAL LIST OF PARTICIPANTS****OFFICERS:**

<i>Chairman</i>	Prof. Avv. Francesco Berlingieri, Hon. President, CMI
<i>Rapporteur</i>	Dr. Frank Wiswall, Executive Councillor, CMI
<i>Ex-Officio</i>	Prof. Dr. Allan Philip, President, CMI

**REPRESENTATIVES:**

<i>Australia &amp; New Zealand</i>	Drew James
<i>Belgium</i>	Roger Roland
<i>China</i>	Prof. Guo Chun Feng
<i>Denmark</i>	Uffe Lind Rasmussen
<i>France</i>	Prof. Pierre Bonassies
<i>Ireland</i>	Dermot McNulty
<i>Japan</i>	Prof. Tomotaka Fujita
<i>Korea</i>	Prof. Kiljun Park
<i>Netherlands</i>	R. Eric Japikse
<i>Norway</i>	Ivar Kleiven & Trond Solvang
<i>Panama</i>	Carlos De Puy
<i>Spain</i>	José Alcantara
<i>Switzerland</i>	Alexander von Ziegler
<i>U.K.</i>	Stuart Beare & Paul Koronka
<i>U.S.A.</i>	Chester Hooper & Prof. Michael Sturley

**OBSERVERS:**

<b>BIMCO:</b>	Søren Larsen, Head of Division, Legal Affairs
<b>ICS:</b>	Linda Howlett, Legal Adviser
<b>UNCITRAL:</b>	Jernej Sekolec, Senior Legal Officer
<b>UNCTAD:</b>	Dr. Mahin Faghfour, Legal Officer

## **INTERNATIONAL SUB-COMMITTEE ON UNIFORMITY OF THE LAW CARRIAGE OF GOODS BY SEA**

### **REPORT OF THE THIRD SESSION**

LONDON, 27TH AND 28TH SEPTEMBER, 1996

The Sub-Committee met in the Dome Room of the offices of Messrs. Richards Butler, 15 St. Botolph Street, London. The meeting was called to order by the Chairman, Professor Berlingieri, on Friday 27 September 1996 at 9:30 a.m. Representatives of fourteen National Member Associations and six International Organizations were present. A list of the participants is attached as Annex A.

Prof. Berlingieri suggested that the International Sub-Committee (IS-C) first consider the Report of the Second Session held in March 1996.

Mr. Larsen (BIMCO) wished to state at the outset that BIMCO was still concerned that a new liability regime, if not *widely* accepted, will constitute a further disunification of the law of carriage of goods by sea (COGSA). He supported the position of IUMI in favour of the Hague-Visby regime, as set forth in the IUMI paper of 26 March 1996.

Prof. Wetterstein (Finland) stated that the Scandinavian countries would not approve any system which afforded fewer rights to cargo owners than the present Scandinavian system.

Mr. Beare (U.K.) inquired whether any comments had been received from National Member Associations (NMAs) prior to the meeting. Dr. Wiswall read out two faxes received: (1) from Canada requesting a correction to the statement in the draft Report of the Second Session that Canada favoured the Hamburg Rules, and wishing to make clear that there was no consensus in Canada and that at the present law is based upon Hague-Visby but periodic reviews will be held in order to determine whether the Hamburg Rules should be adopted; and (2) from the Netherlands, suggesting that a more forceful statement be made of the views of NMAs favouring the Hague-Visby regime in opposition to the Hamburg Rules.

Mr. Alcantara (Spain) stated that Spain continued to favour the Hamburg Rules. He asked whether a paper from Prof. William Tetley had been received and circulated; neither Prof. Berlingieri nor Dr. Wiswall had seen this paper, which had been faxed c/o Messrs Richards, Butler. The paper was located and appeared to represent the view of one individual Titulary Member of the CMI rather than that of Canada; Prof. Berlingieri stated that such comments would be noted and copies made available to those desiring them, but the purpose of the meeting was to obtain the views of the NMAs and Observers. [Prof. Tetley's paper comments on a number of specific points raised in the draft

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Report to the Executive Council of 5 June 1996, but its main thrust is that whatever is ultimately proposed should take the form of an amendment to either Hague-Visby or the Hamburg convention – preferably the latter – rather than be embodied in a new draft instrument which would in his view increase disuniformity.] [It was noted that the Netherlands paper did not favour the elaboration of concrete texts by the IS-C because this could be seen to 'commit' the Comité to support such positions.]

Prof. Berlingieri stressed that all that the IS-C was doing at this stage was to prepare a report for the Executive Council of the Comité; it would be for the Executive Council to determine what the course of future work should be. He proposed that discussion should now go forward based upon the draft Report of 5 June 1996, beginning at pp. 2-3 with the list of subjects.

## 1. DEFINITIONS

[Numbering in accordance with the Specimen Report, 5.6.96]

### (a/b) "Carrier" and "Actual Carrier"

Prof. Sturley (U.S.A.) felt that both "contracting carrier and "performing carrier" should be defined, as the concepts were too confusing if amalgamated in the single word "carrier".

Mr. Rasmussen (Denmark) was of the view that "carrier" could only refer to the contracting carrier, and that this should be stipulated. The qualification "of goods" should be added to avoid confusion.

Mr. Chandler (U.S.A.) noted that the problem of definition arose frequently with space-charter arrangements on container ships; a differentiation was needed between the contracting and the performing carrier.

Prof. Wetterstein (Finland) agreed. He suggested that "actual carrier" be defined as "any person to whom the contracting carrier entrusts the actual carriage".

Mr. Alcantara (Spain) suggested that the IS-C should work on the basis of the Hamburg definitions, so that an actual text can be produced.

Mr. Beare (U.K.) felt that it was important to ensure that any definition of "performing carrier" or "operator" did not work to impair cargo's ability to maintain an action *in rem*.

Prof. Berlingieri believed that there must be a means provided whereby a claimant may know whom to proceed against. In this respect, is the Hamburg definition sufficient?

Prof. Hu (China) was agreeable to the Hamburg definition, and preferred the term "actual" rather than "performing" carrier.

Mr. Hooper and Mr. Chandler (U.S.A.) strongly favoured the addition of the word "contracting" in the definition of "carrier". The real problem was the multiplicity of parties now involved in ocean carriage.

Dr. von Ziegler (Switzerland) felt that the Hamburg definition was adequate, as there was no possibility that "carrier" could mean other than the contracting carrier.

Mr. Solvang (Norway) agreed that the Hamburg definition of "carrier" was adequate, but as to "performing" carrier he also agreed with those who felt that the number of parties now required an expanded definition.

Mr. Beare (U.K.) saw the need as being that of such other parties to bring themselves under the umbrella of global limitation, but felt that this was wholly a consideration of the Limitation Convention and should not be a concern of the IS-C whose task was strictly the law governing COGSA.

Prof. Berlingieri noted that the problem of the identity of the carrier was a different issue, which remained open. Consideration should be restricted to the question of "carrier" and "actual carrier", and whether the qualifying word "contracting" should be added before the former.

Prof. Zhu (China) felt that it could be dangerous in effect to limit the definition of "carrier" solely to the contracting carrier. He did not favour addition of the qualifying word.

Mr. Rasmussen (Denmark) proposed to add the qualifying words "of goods" to the definition. This was generally agreed. In his view the expression "performing carrier" should be replaced by "actual carrier". This was supported by Mr. Beck Friis (Sweden).

Dr. von Ziegler (Switzerland) believed that there was an obvious need to define the actual or performing carrier, but should not the "operator" – for example a bareboat charterer – also be a part of the definition?

Prof. Bonassies (France) believed that the current definition agreed by the IS-C gave more protection to the shipper than did Hamburg. Nothing should now be added which would further restrict *in rem* actions.

Mr. Koronka (U.K.) supported a definition of "operator". He did not care for the Hamburg definition; in the case of a transshipment, which vessel is referred to?

Mr. Alcantara (Spain) felt that defining "operator" was a real problem, because an "operator" may or may not be a contracting carrier.

Prof. Sturley (U.S.A.) noted that the performing carrier might not be a single person, but several persons. He wondered what the term "actual" really meant.

Mr. Chandler (U.S.A.) stressed the need for a definition which comprehended *all* carriers, so that the shipper could proceed against any of the parties to a given carriage.

Prof. Wetterstein (Finland) asked what were the liability consequences of such definitions? In the Scandinavian law there were none, as the parties are jointly and severally liable.

Prof. Berlingieri stated his view that the shipper should have the ability to act against any carrier involved. To him, it seemed essential that the "actual" carrier should be the one in control of the ship.

Prof. Sturley (U.S.A.) believed that an "actual" carrier should be one who performs a part of the contract of carriage. Prof. Berlingieri asked whether this definition would include stevedores; Prof. Sturley affirmed that it would. Prof. Bonassies (France) felt that this illustrated the problem; it really was necessary to have a separate regime to cover other persons involved in the carriage, such as the Vienna Convention regarding Stevedores and Terminal Operators.

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Prof. Berlingieri asked for an informal indication of views as to whether the Hamburg definition of "carrier" was satisfactory; the Hamburg definition was held to be satisfactory by a 2:1 ratio among those delegations and observers expressing a view.

(c) *"Shipper"*

Prof. Berlingieri asked for views as to whether the term "shipper" should be defined and, if so, whether the Hamburg definition was sufficient.

Prof. Wetterstein (Finland) observed that in the Scandinavian law the terms "contracting shipper" and "actual shipper" were defined.

Mr. Chandler (U.S.A.) pointed out that the proposed U.S. COGSA expanded the Hamburg definition of "shipper"; he desired a more comprehensive definition than that found in Hamburg. Mr. Solvang (Norway) and Dr. von Ziegler (Switzerland) likewise favoured a more comprehensive definition.

Prof. Hu (China) preferred the Scandinavian definition of both "contracting" and "actual" shipper.

Mr. Koronka (U.K.) felt that it would not be possible to reach a decision on this until other issues were resolved.

Prof. Berlingieri stated that it appeared from the discussion that most delegations preferred the Scandinavian approach – breaking the Hamburg definition into two definitions.

(d) *"Delivery" and "consignee"*

Mr. Chandler, Mr. Hooper and Prof. Sturley (U.S.A.) felt that the present definition was too complex: the question should be decided by national law. If an attempt was made to define "consignee", the issue of negotiability might become involved. There was no need for such a definition.

Dr. von Ziegler (Switzerland) believed that the naming of the consignee in the bill of lading, the responsibility of the consignee for payment of freight and other involvement of the consignee all point to the need for a definition.

Mr. Chandler (U.S.A.) felt that in order for there to be uniformity in the handling of bills of lading – especially with regard to negotiability (noting a conflict between U.S. and Japanese law) – rules must be developed; and in this context it was better to deal with "consignee".

Following an informal indication of views, Prof. Berlingieri stated that the substantial majority of delegations and Observers present saw no need to include a definition of "consignee".

(e) *"Contract of carriage"*

Prof. Berlingieri asked whether it was still advisable to leave charter parties out of the regime of COGBS.

Mr. Koronka (U.K.) wondered which trades would be included and which would be excluded if charter parties were covered? There should be complete freedom to contract with regard to charter parties. Mr. Rasmussen (Denmark) wished to continue to exempt charter parties, and this was the

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clear consensus within the IS-C. Prof Hu (China) also agreed, but desired to ensure that bill of lading issues arising under charter party clauses should be dealt with by reference to the convention.

Mr. Chandler (U.S.A.) observed that the question 'what is a bill of lading' is important, especially when dealing with electronic bills of lading; should the electronic bill of lading be a contract of carriage under the convention? Prof. Berlingieri and Dr. Wiswall asked that this issue be deferred until the discussion of documents of title, especially electronic documents.

(f) *"Goods" / "Deck cargo"*

Prof. Berlingieri asked whether "deck cargo" should be included in the definition of "goods".

Mr. Rasmussen (Denmark) believed that deck cargo should be included, but that live animals should be specifically excluded.

Prof. Hu (China) would include live animals, subject to special rules. Mr. Kleiven (Norway) supported this view.

Prof. Wetterstein (Finland) would include deck cargo in the definition.

Dr. Wiswall pointed out that a very clear majority of those commenting at the Second Session of the IS-C wished to include deck cargo, but to exclude live animals. There appeared to be broad support for the same view at the present session.

(i) *"Bill of lading"*

Prof. Wetterstein (Finland) noted that the Scandinavian law defined "bill of lading" and "seawaybill", and also contemplated carriage *without* documents.

Mr. Chandler and Mr. Hooper (U.S.A.) would prefer to deal with the issue of documents in the definition of "contract of carriage", and to have no separate definition of "bill of lading" or of other transport documents. Mr. Koronka (U.K.) supported this view.

Mr. Rasmussen (Denmark) did not see how a convention could refer to the bill of lading and yet contain no definition of the term. Mr. Koronka (U.K.) pointed out that this was the present case with Hague-Visby; only Hamburg contained the definition.

Prof. Wetterstein (Finland) felt strongly that there was now a need for clarification of terms, and that there should be definitions of the documents. He pointed out that the Scandinavian law used the term "bill of lading" as part of the definition of "transport document".

Prof. Hu (China) noted that the definition of "bill of lading" had proven very useful both in the Hamburg Rules and the China Maritime Code; he favoured the addition of definitions of "seawaybill" and "electronic bill of lading".

Prof. Berlingieri stated his personal preference for the definition of transport documents, but felt that it was necessary either to do this or to broaden the definition of "contract of carriage" to include such documents.

Prof. Bonassies (France) believed that what was needed was a definition

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of "transport document" which was supplementary to the definition of "contract of carriage".

Prof. Wetterstein (Finland) observed that it was also necessary to cover carriage without *any* documents.

Mr. Alcantara (Spain) felt that "writing" should be defined as in Hamburg. Prof. Berlingieri expressed doubt that this was in actuality a definition. Prof. Zhu (China) stressed the need to ensure that a fax message constituted a writing, and favoured a definition to this effect. Prof. Bonassies (France) pointed out that the term "writing" is used only in the context of arbitration and notice of loss.

Dr. von Ziegler (Switzerland) cautioned that any definition adopted must not conflict with the New York Convention on Arbitration.

(It was generally agreed at this point that further consideration should be deferred until more substantive work had been done.)

## 2. *SCOPE OF APPLICATION*

Prof. Berlingieri noted that the previous conclusion of the IS-C was that the scope must include both inbound and outbound carriage, as in the Hamburg Rules.

Mr. Hooper and Prof. Sturley (U.S.A.) observed that the proposed revision of the U.S. COGSA covered all multimodal shipments, both in terms of geographical area and period of carriage. A legitimate question in regard to para. 1(c) under this heading in the Specimen Report was what the result would be if a ship went down en route to an optional port. Prof. Berlingieri thought that the case would be covered unless the goods were discharged in a non-party State; however, this issue should be flagged for future consideration.

## 3. *PRINCIPLE OF INTERPRETATION*

Mr. Alcantara (Spain) favoured Hamburg Art. 3. This was supported by Prof. Wetterstein (Finland), who noted that the provision had been taken from the Vienna Convention on the Law of Treaties, 1969.

(It was agreed to keep the wording of Hamburg Art. 3.)

## 4. *PERIOD OF APPLICATION*

Prof. Berlingieri queried whether the limits of Hamburg were appropriate.

Mr. Chandler and Prof. Sturley (U.S.A.) observed that the political boundary of a port may be more restricted than the geographical port area. Artificial and arbitrary boundaries are unreasonably restrictive, and the Hamburg limits required adjustment. Where these rules for COGSA no longer

apply, the matter should be left for determination by national law or international convention.

Mr. Koronka (U.K.) would likewise abandon the port area concept. The rules should apply to the whole period during which the carrier has the goods in his charge.

Mr. Rasmussen (Denmark) believed that the Hamburg provision is not adequate and that one cannot limit application to the port area; there must be a custody-based concept of application.

Dr. Wiswall asked what reasonable alternative there could be to application during the period of custody.

Mr. Chandler (U.S.A.) stated that, in practice, most carriers extend the Hague-Visby Rules to cover the whole period of their responsibility.

Prof. Zhu (China) felt that unified rules should apply (a) only to sea transport and (b) during the whole period of the carrier's custody, regardless of the geographical area. There might have to be a difference in scope as between general and containerized cargo. He would also prefer "period of responsibility" rather than "period of application".

Mr. Solvang (Norway) thought that, for the sake of simplicity, it was better on the whole to keep to the port area concept.

Mr. Alcantara (Spain) believed that the rules should apply to sea transport and the period in which the carrier has charge of the goods from loading through delivery to the consignee. In his view the port area limitation was totally unrealistic.

Dr. von Ziegler (Switzerland) was of the opinion that if the primary purpose of the transport was a pre-carriage, the rules of sea transport should not apply.

Dr. Wiswall postulated the situation in which an ocean carrier picks up its own container 50 Km inland from the port for loading on its own particular ship. Where should the limiting line of application be drawn?

Mr. Hooper and Mr. Chandler (U.S.A.) reiterated that in actual practice most carriers give complete protection to cargo for the whole period of their custody, regardless of the area or mode of transport. The best guide to application was to 'follow the bill of lading.'

Mr. Rasmussen (Denmark) asked how one would then avoid conflict with other transport regimes? It was the avoidance of such conflict that was the justification for the port area limitation.

Mr. Koronka (U.K.) pointed out the practical problem that at present one had transport port-to-port, multimodal, and on a through bill of lading. In multimodal transport, the sea carriage ended when the goods were handed over to the carrier in the next mode; the contracting carrier need not be, e.g., a carrier subject to the CMR Convention. In a through bill carriage, delivery to the road carrier constitutes delivery to the consignee's representative. These were the present realities.

Prof. Wetterstein (Finland) observed that if a sea carrier does carry by road, application of the road rules is required. This was why the port area limitation was still needed.

Mr. Rasmussen (Denmark) asked how it would be possible for a State

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party to reconcile the conflict in conventions without the port area limitation. The Sub-Committee therefore had to confine itself wholly to sea transport.

Prof. Sturley (U.S.A.) asked where one would draw the line beyond the ship's rail and before final delivery to the consignee.

Prof. Berlingieri felt that to focus upon cases where carriage beyond the port is absolutely necessary to the sea carriage might provide the answer. Mr. Chandler (U.S.A.) agreed, but preferred 'incidental' to 'absolutely necessary.' Prof. Berlingieri suggested the formulation: "When the movement to or from a place outside the port is necessary for the COGBS".

Mr. Kleiven (Norway) thought the Hamburg Rules were satisfactory because they contemplate the same situation.

Prof. Berlingieri proposed that the issue of a separate and definite statement of the principle be deferred, but asked whether the IS-C agreed to the principle which he had stated. No disagreement was voiced. As to the phrase "period of responsibility" he doubted that this could avoid conflict with other conventions. Prof. Wetterstein (Finland) agreed that "responsibility" was a broader term than "application". Mr. Alcantara (Spain) warned that the IS-C must be very careful when departing from the wording of existing conventions. Prof. Berlingieri thought there was considerable doubt whether the expression "period of responsibility" was suitable, and this view was supported by the delegations of Switzerland, France, the U.K. and the U.S.A. Prof. Bonassies (France) pointed out that in Hamburg these words appear only in the heading of the relevant Article, and not in the text.

##### 5. *IDENTITY OF THE CARRIER*

Mr. Chandler (U.S.A.) felt strongly that it was necessary to conform to the ICC's "UCP 500 terminology.

Prof. Wetterstein (Finland) submitted that the problem was solved by holding the contracting carrier and the actual carrier to be jointly and severally liable.

Mr. Koronka (U.K.) held that the contracting carrier should be required to be clearly identified, but that if there were an actual carrier then it, too, would be clearly identified. The contracting carrier always had complete responsibility, but an actual carrier should be jointly and severally liable. This view was supported by Mr. Rasmussen (Denmark), who also doubted that the Scandinavian law covered the issue "Who is the Carrier?" It might not be a wholly reliable solution to pass liability on to the actual carrier.

Prof. Sturley and Mr. Chandler (U.S.A.) thought that cargo should always be able to proceed against the contracting or the actual carrier. In liner services to America, it was required that the identity of the carrier be filed with the FMC.

Prof. Berlingieri felt that the solution must be a presumption, and that the most reasonable presumption was that the registered shipowner was the carrier.

Mr. Koronka (U.K.) observed that the question whom the shipper contracted with for the carriage was a matter of fact.

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Prof. Bonassies (France) noted that French courts, dealing with bills of lading including an 'identity of carrier' clause which holds the shipowner to be the carrier regardless of what is recited in the bill of lading, have held this invalid.

Prof. Zhu (China) pointed out that under the UCP 500 terms a bank will not accept the bill of lading unless the carrier's name and address appears; this should be required in all bills of lading. If a shipper accepts a deficient bill of lading he should bear any loss; if no name appears, the performing carrier would be ultimately liable, if he can be found.

Mr. Koronka (U.K.) supported both previous speakers. The question was, how far should the rules go in channelling liability to the actual carrier? There is a limit, and shippers should be held responsible if they accept a deficient bill of lading.

Mr. Chandler (U.S.A.) thought that provision should be made for a penalty against the contracting carrier if he is not named in the bill of lading.

Mr. McNulty (Ireland) remarked that it is only the cargo interests who try to find the contracting carrier when time to bring suit is expiring, and the time charterer is not usually helpful.

Mr. Alcantara (Spain) believed that performance should be delegated to a named carrier if the contracting carrier does not agree to be named. If no carrier is named then the registered shipowner should be held responsible.

Dr. von Ziegler (Switzerland) agreed. Resort to the registered shipowner when there is a deficient bill of lading is a practical solution which will work in practice.

Mr. Beck Friis (Sweden) wondered how there could really be a valid contract of carriage when one of the parties was 'absent' from the bill of lading.

Prof. Wetterstein (Finland) noted that there was of course an insurance market to fill the lacunae. Dr. von Ziegler (Switzerland) responded that insurers cannot deal satisfactorily with the matter unless the insured parties are properly identified.

Mr. Rasmussen (Denmark) found the concept of recourse to the *registered* shipowner a novel one; at present only "the shipowner" is spoken of.

Dr. Wiswall stated that in principle it was unacceptable that there should be an endless loop; the rules must provide an end to the circle. Where shall it end?

Mr. Koronka (U.K.) thought that the shipper must be partly responsible in the case of a deficient bill of lading, then the person performing the actual carriage. Several delegates then queried how that person was to be found.

Mr. Alcantara (Spain) felt that the name of the shipowner appearing in the register book was the only answer.

Prof. Berlingieri noted that in Italian law it is the registered shipowner who is presumed to employ the master.

Mr. Chandler (U.S.A.) observed that in shipments of steel from the Baltic area there are four levels of charterers; in such situations the only answer may be to deem the registered shipowner to be the contracting carrier.

Mr. Beare (U.K.) believed that the basic problem was that many agents signing bills of lading do not have a perfect knowledge of whom they represent. One would not wish to further disadvantage shippers.

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Mr. Alcantara (Spain) pointed out that a bill of lading deficient in one or more respects might still remain a valid document.

Mr. Chandler (U.S.A.) thought that if the contracting carrier were not identified in the bill of lading, the shipper should be presumed liable.

Prof. Berlingieri wondered why the shipowner should be in such a protected position, when it was he who was making money from the carriage, either as freight or as charter hire.

Mr. Beare (U.K.) agreed. The 'flip side' of the coin of global limitation of liability is the responsibility of the shipowner. Dr. Wiswall supported this observation, recalling the deliberations of the IMO Legal Committee over liability in preparation of the HNS Convention.

Prof. Sturley (U.S.A.) believed that the shipowner was already a clearly liable party. Mr. McNulty (Ireland) wondered why, if that were so, it should be necessary to arrest a ship in order to discover the identity of the carrier. Mr. Alcantara (Spain) observed that in many case of deficient bills of lading it was in reality impossible to identify the actual carrier.

Prof. Berlingieri summarized the alternatives as follows:

1. The contracting carrier is directly responsible if named in the bill of lading; or
2. If no contracting carrier is named in the bill of lading, the contracting carrier should be:
  - (a) rebuttably presumed to be the registered shipowner; or
  - (b) rebuttably presumed to be the shipper; or
  - (c) the shipper because he accepted a deficient bill of lading and/or neglected to identify the carrier; or
3. If no contracting carrier is named in the bill of lading, the bill of lading should be held invalid.

Mr. Solvang (Norway) thought that if the bill of lading were absolutely invalidated the bank would be placed in an invidious position.

Mr. Rasmussen (Denmark) felt that invalidation of the bill of lading was too draconian a solution; a number of different parties will have relied upon the bill of lading.

Mr. Chandler (U.S.A.) pointed out that if the bill of lading were invalidated, this might prejudice recourse against the shipowner.

Prof. Bonassies (France) agreed, and proposed that the shipowner should be presumed liable in accordance with the following provision:

“If neither the carrier nor the performing carrier is clearly identified in the transport document, the owner of the ship shall be deemed to be the contracting carrier unless he proves that he has lawfully entrusted the entire operation of the ship to another person”.

Prof. Berlingieri then solicited an informal indicative vote on the various alternatives when no carrier is named in the bill of lading:

- (a) a presumption that the registered shipowner is the contracting carrier, unless the shipowner proves that another person performed the carriage – *7 in favour*;

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- (b) a presumption that the shipper is the contracting carrier – 2 *in favour*;
- (c) the solution under the Scandinavian law, i.e., that the shipowner is responsible – 6 *in favour*;
- (d) the bill of lading to be rendered non-negotiable – *none in favour*.

[*Note:* It was agreed that with respect to either of the rebuttable presumptions there was a need to provide a 'tolling' of the time limitation so that claims would not become unfairly time-barred.]

## 6. LIABILITY/DUTIES OF THE CARRIER

[Hague-Visby Article 3 (1 & 2) / Hamburg Article 5(1)]

Prof. Berlingieri asked whether the duty of due diligence to maintain seaworthiness should be discharged at the outset of the voyage or remain a continuous one throughout the voyage.

Mr. Rasmussen (Denmark) felt that errors in navigation and management should remain valid defenses, but that this did not conflict with the shipowner's continuous duty to maintain the ship in a seaworthy state, which was the duty under the Scandinavian law. If those employed in the service of the ship commit errors which compromise seaworthiness and result in damage to cargo, the shipowner should not be liable to the extent that these were errors in navigation and/or management. If the shipowner has notice of an unseaworthy condition during the voyage and fails to take any action to bring the ship into a seaworthy state he will be liable for resulting damage to cargo. The two doctrines are not incompatible.

Prof. Wetterstein (Finland) stated that a majority of his NMA favoured elimination of the error in management and navigation defenses. He affirmed that the duty of seaworthiness under the Scandinavian law runs throughout the voyage.

Following a brief discussion, Prof. Berlingieri stated that the clear majority favoured the retention of Hague-Visby Article 3 (1&2) as the applicable rule, but solicited an informal indicative vote on particular subordinate issues:

- (a) As to the duty to exercise due diligence to maintain seaworthiness: to run throughout the voyage – 6 *in favour*; to be discharged at the outset of the voyage – 7 *in favour*.
- (b) As to the error in management defense: to retain the defense – 8 *in favour*; to eliminate the defense – 7 *in favour*.
- (c) As to the error in navigation defense: to retain the defense – 10 *in favour*; to eliminate the defense – 4 *in favour*.

Mr. Hooper (U.S.A.) stated that his delegation would be willing to give up the error in navigation and management defenses in return for an equalized burden of proof.

Prof. Berlingieri asked for views as to the "catalog of exceptions".

Mr. Chandler and Mr. Hooper (U.S.A.) favoured keeping the catalog

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because it is a unique and uniform feature of international maritime law. The proposed version of the U.S. COGSA retains the catalog with an equalized burden of proof.

Mr. Alcantara (Spain) thought that the catalog should be eliminated in favour of the Hamburg approach. Prof. Wetterstein (Finland) supported this view, noting that the Finnish courts had encountered difficulties in applying the catalog.

Dr. von Ziegler (Switzerland) preferred to retain the catalog because it established a truly international vocabulary; the need was for concrete international rules. This view was supported by Prof. Bonassies (France) and Mr. Rasmussen (Denmark), who felt that the rules should be as specific as possible.

Prof. Sturley (U.S.A.) observed that a great deal of international jurisprudence had been developed under the catalog; if it were eliminated, the courts could invent much less desirable and less uniform solutions.

Prof. Zhu (China) favoured retaining the catalog, even though the Chinese Maritime Code had changed the list somewhat.

Mr. Solvang (Norway) thought the catalog could be eliminated if it were truly superfluous.

Prof. Bonassies (France) thought that the catalog of excepted perils was particularly useful; if the carrier proves that damage was caused by an excepted peril he is exonerated from liability.

Prof. Berlingieri requested an informal indicative vote:

To keep the "catalog" approach (including the option of a reversed burden of proof) – *13 in favour*; to eliminate the "catalog" – *3 in favour*.

[The Sub-Committee rose at 5:35 p.m. and reconvened at 9:30 a.m. on Saturday 28 September]

*DEFINITIONS (Revisited)*

Prof. Berlingieri wished to understand why there were preferences for "actual carrier" as opposed to "performing carrier".

Prof. Zhu (China) and Dr. Brunn (IUMI) pointed out that the word "actual" was used in the Hamburg Rules.

Prof. Berlingieri noted that the Athens Convention used the word "performing", but that in the French texts of both Athens and Hamburg the expression used was "transporteur substitué".

Prof. Wetterstein (Finland) thought that "actual" should be used in order to avoid conflict in multimodal situations.

Dr. von Ziegler (Switzerland) pointed out that the use of the word "actual" originated in the Warsaw Convention on aviation transport; in his view "performing" was the better term.

Prof. Berlingieri requested an informal indicative vote:

For the word "actual" – *5 in favour*;

For the word "performing" – *5 in favour*.

## 7. *LIABILITY OF THE ACTUAL / PERFORMING CARRIER*

Prof. Sturley (U.S.A.) favoured joint and several liability of the contracting carrier and the actual/performing carrier.

[A discussion ensued over the difference in English between "responsibility" and "liability". (It was noted that the term in French for both was "responsabilité".) It was agreed that this was entirely a drafting matter, and that the performing carrier is liable only for that portion of the carriage.]

Prof. Zhu (China) stated that the Chinese Maritime Code had adopted the provision of Hamburg Article 10(2), but the absence of defenses and exceptions and limits has caused difficulties.

Mr. Rasmussen (Denmark) noted that the Scandinavian law placed the application of all such provisions upon the performing carrier; could he invoke the bill of lading defenses? Hamburg says "all the provisions of this Convention", and this is better because it is more general; it must be made clear that *all* of the provisions apply to the performing carrier, with joint and several liability of the contracting carrier and the performing carrier.

Prof. Sturley (U.S.A.) agreed that contractual provisions in the bill of lading should not extend to the performing carrier, but that all of the provisions of the rules should apply to the performing carrier.

Prof. Zhu (China) was concerned that the ambiguity of Hamburg Article 10(2) still remained.

Prof. Berlingieri suggested that the phrase used in the relevant subtitle of the U.S. COGSA – all "rights and obligations" – might be suitable, thought it was not a part of the text of the U.S. law.

Prof. Wetterstein (Finland) noted that under Hamburg and the Scandinavian law, the performing carrier is bound by contractual provisions only if he so agrees in writing.

Prof. Berlingieri stated that, in the absence of objection, he would consider it agreed that all provisions of the rules – rights, liabilities and responsibilities – should apply to the performing carrier; and that it would also stand agreed that the contracting carrier and the performing carrier should be jointly and severally liable. [There being no objections, it was so agreed by consensus.]

Prof. Wetterstein (Finland) noted also that under the Scandinavian law, the contracting carrier and the performing carrier may agree in writing to exclude the contracting carrier from joint and several liability. Prof. Berlingieri noted that in Italian jurisprudence, the contracting carrier may exclude himself from liability for any part of the carriage which he does not perform.

### *General Discussion of Hamburg Articles 10 and 11*

Prof. Berlingieri stated his continuing opposition to liability of the contracting carrier for the *transshipped* portion of the carriage, because the contracting carrier in very many cases has no means of knowing who the performing carrier will be. Article 11 should be broadened to permit relief of

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the contracting carrier cases of transshipment. Mr. Rasmussen (Denmark) supported this view.

Mr. Solvang (Norway) queried whether the contracting carrier should be exempted from Article 11 liability for the whole transport?

Prof. Berlingieri and Prof. Sturley (U.S.A.) believed that the contracting carrier was obliged to disclose to the shipper whether there was to be a transshipment or a second carrier, but was not compelled to *identify* the performing carrier.

Prof. Zhu (China) observed that Article 11 was an exemption from Article 10. It would be wrong to allow the contracting carrier to be excluded from liability without having to identify the performing carrier, because this might leave the shipper without recourse. Prof. Wetterstein (Finland) supported this view.

Mr. Rasmussen (Denmark) noted that the contracting carrier had a duty to assist the shipper in identifying the performing carrier; if the contracting carrier does not name the performing carrier in the bill of lading or does not assist the shipper in identifying the performing carrier he should be liable for the transshipped portion of the carriage. In actual fact, the contracting carrier usually produces the second carrier's bill of lading.

Prof. Berlingieri stated that the principle at issue was that the contracting carrier need not name the performing carrier in the bill of lading, but will remain liable unless he subsequently discloses the identity of the performing carrier to the shipper. An informal indicative vote was taken:

For the principle stated above – 9 *in favour*;

For the status quo under Hamburg – 4 *in favour*.

[*Note:* It was agreed that there was a need to provide a 'tolling' of the time limitation during the period when the performing carrier remained unidentified so that claims would not become unfairly time-barred.]

## 8. *DEVIATION*

Prof. Hu (China) favoured retention of the provision on deviation; on the whole, this would work to minimize litigation.

Dr. von Ziegler (Switzerland) would delete Article 4(4) on deviation, but add deviation as a listed exception.

Prof. Fujita (Japan) found the concept of deviation unnecessary under Japanese law, but his delegation was willing to live with the provision if other States needed it.

Mr. Chandler (U.S.A.) pointed out that if the provision on deviation were eliminated, the carrier would in effect become the insurer of cargo. This would be favoured by cargo interests.

Mr. Rasmussen (Denmark) and Prof. Wetterstein (Finland) stated that the Scandinavian States did not need the provision on deviation and would favour deleting it, even though it is part of the new Scandinavian law. They supported the Swiss suggestion to make deviation an exception.

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Prof. Sturley (U.S.A.) pointed out that the problem in U.S. jurisprudence was the consequence of unreasonable deviation, viz., breach of limitation. Prof. Bonassies (France) thought that, as a domestic matter, this could be dealt with in §13 of the proposed revision of COGSA.

Prof. Berlingieri queried whether the present text was actually harmful to any delegation.

Mr. Koronka (U.K.) the issue should be clarified in the provisions on the right to limit liability; then the present provision on deviation could be deleted. Prof. Sturley (U.S.A.) agreed that this was the best solution, because reasonable geographic deviation was not the problem.

Prof. Berlingieri observed that in civil law there was no concept of deviation as such, but only of acts which constitute a breach of contract.

Mr. Alcantara (Spain) felt that Hamburg Article 8 was less onerous than Hague-Visby in respect of deviation.

Prof. Wetterstein (Finland) felt that at present the prevailing law favoured the carrier because of higher limits of liability, and that this balance should not be upset.

Mr. Chandler (U.S.A.) believed the overriding need was for a provision which would have *uniform* interpretation; at present there were too many variations.

Prof. Berlingieri asked whether, subject to the loss of the right to limit and provisions on delay, there should be a provision that if deviation were held *unreasonable*, the convention would nevertheless apply. Such a provision might read:

"Any breach of the carrier's obligation, including unreasonable deviation, shall be governed by the provisions of this convention [including the right to limit liability]."

#### 9. DELAY [*Hamburg Article 5(2)*]

[At the outset, there was unanimous agreement that there should be a provision on delay.]

Mr. Alcantara (Spain) thought Hamburg generally satisfactory, except for the second part of Art. 5(2), which was too flexible and vague.

Mr. Chandler (U.S.A.) agreed, and also did not care for the limitation effect of Hamburg, which could result in a lower recovery than under Hague-Visby.

Prof. Zhu (China) noted that the Chinese Maritime Code had adopted the first part of Hamburg 5(2), but only where the parties have agreed in advance upon a delivery date. There was the problem of repeated delays for repairs – some old vessels had delivered five months late. He felt that the economic damage resulting from delay should be compensated without limitation.

Dr. Brunn (IUMI) felt that a provision was needed which covered the safe arrival of the ship and cargo. The Master must be relieved of the pressure to meet a schedule at all costs.

Prof. Hu (China) stated that it was the difficulty of ascertaining what is

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reasonable which led to the second part of Hamburg Art. 5(2) being dropped from the Chinese Maritime Code. For this reason, if no delivery date is specified, no delay is deemed to have occurred.

Mr. Rasmussen (Denmark) observed that the custom elsewhere is not to specify delivery dates, and felt it necessary to include the second part of Art. 5(2). He did not care for the 60-day rule in Art. 5(3), which was an absolute and *non*-rebuttable presumption, and likewise did not favour freight-based limitation.

Prof. Berlingieri saw the following as the chief problems to be addressed:

- (a) the "reasonableness" of the "diligent" carrier;
- (b) the 60-day or other period in Art. 5(3); and
- (c) limitation of liability in cases of financial loss.

Prof. Bonassies (France) felt that it must be accepted that physical loss (damage) and financial loss (delay) should be treated equally; Article 5(3) of Hamburg was therefore unacceptable. Mr. Beare (U.K.) supported this view; he found the problem analogous to the sale of goods.

Dr. von Ziegler (Switzerland) doubted whether it was possible to draft a satisfactory provision on delay; there were too many variables.

Mr. Alcantara (Spain) felt that it was impossible to simply ignore this area. There is an obligation to deliver the goods in a timely manner, and so there must be a clear provision on delay.

Prof. Zhu (China) thought that the best provisions on delay were found in the ICC/UNCTAD Rules on Multimodal Transport Documents; these should be looked to as models.

Mr. Rasmussen (Denmark) observed that the ICC/UNCTAD Rules were based on Hague-Visby and had nothing to do with Hamburg. He did not think that the ICC/UNCTAD approach could add anything to Hague-Visby, and that the need was to go beyond what Hague-Visby provides. On the other hand, Scandinavian States, having adopted Hamburg Article 5 (2&3) are not prepared to denigrate the provisions.

Prof. Berlingieri stated that there appeared to be agreement that there should be a satisfactory provision on delay; that Hamburg Art. 5(2) was not satisfactory and that the Hamburg effect on limitation of liability for delay was unsatisfactory. He solicited an informal indicative vote on the Article 5(3) provision:

As to the adoption of this provision in new rules – 2 *in favour* and 13 *opposed*.

Mr. Beare (U.K.) saw the 60-day rule as not in actuality being a rule on delay, but a rule on presumptive loss of the goods. The period is not really relevant, because the concept is highly objectionable. He could not accept this in principle without considerable further study. Prof. Wetterstein (Finland) supported this view.

Mr. Alcantara (Spain) felt that if there were a provision on delay, there must necessarily be a period of time after which the goods are deemed to be lost. Mr. Rasmussen (Denmark) did not agree; he felt that the two concepts

were independent of each other, and that more study and research were needed before a conclusion could be reached.

Prof. Berlingieri stated that it was agreed that the time limit matter will be returned to at a future session.

### *Limitation of Liability/Delay*

Dr. von Ziegler (Switzerland) queried why there should be a separate limit for delay; this issue must be dealt with in due course.

Mr. Hooper (U.S.A.) pointed out that foreseeability was a factor in delay, but not in damage of the goods. Prof. Wetterstein (Finland) did not wish to see issues of foreseeability, proximity and similar problems dealt with by the rules; the Scandinavian solution was one limitation for both delay and damage.

## *10 LIMITS OF LIABILITY*

Mr. Beare (U.K.) The matter of limits has to be left for the diplomatic conference, as is customary. The limits will ultimately depend upon the right to limit, and vice-versa.

[Following a brief discussion, it was agreed to pass over the amount of the limits until other important issues are decided.]

Prof. Fujita (Japan) felt strongly that any tacit amendment procedure for increasing the limits should not be open-ended, but should be subject to a cap on the amount of the increase. [It was agreed that this issue would also be deferred for future consideration.]

## *11. LOSS OF THE RIGHT TO LIMIT*

Prof. Berlingieri asked whether there was agreement that the Hamburg wording was preferable.

Prof. Wetterstein (Finland) noted that the Scandinavian law adopted Hamburg Art. 8(1) and used the same wording as in the HNS Convention and the 1996 Protocol to the London Limitation Convention.

Mr. Alcantara (Spain) observed that the solution in Hamburg was a 'package deal' which in this respect favoured the carrier. Mr. Rasmussen (Denmark) agreed that the Hamburg solution was a 'package deal', but pointed out that the provision was common to all modern conventions dealing with limitation.

Prof. Berlingieri asked what the views were concerning the shipping unit.

Mr. Chandler (U.S.A.) thought the Hamburg provision so offensive to shippers that they would fight against U.S. ratification if it were adopted. This issue, as to the shipping unit, must remain on the table for negotiation. [It was

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agreed that the Sub-Committee would set aside the matter of the shipping unit for future consideration.]

## 12. *TRANSPORT DOCUMENTS AND EVIDENTIARY VALUE*

Mr. Solvang (Norway) found the Hamburg list satisfactory. Dr. von Ziegler (Switzerland) agreed, subject to the amendment to the list previously proposed.

\* In the course of a general discussion, the following were agreed:

(a) The address of the carrier should include the street address of the principal place of business and the postal address; also communications addresses if available.

(b) The name and flag of the ship should be set forth in the bill of lading.

(c) The word "negotiable" should be deleted from the bill of lading.

Mr. Chandler (U.S.A.) stressed that the list should be checked against the UCP 500 terms.

Mr. Rasmussen (Denmark) felt that there was a need for the system to promote the use of seawaybills; if a shipper has accepted a seawaybill, he should not then be allowed to demand a bill of lading. Prof. Wetterstein (Finland) supported this view, and pointed out that the North Sea trade was now conducted virtually entirely on seawaybills; there must not be an unlimited right to receive a negotiable bill of lading.

## *FINAL MATTERS*

It was agreed that Prof. Berlingieri would quickly circulate a list of the issues not considered at this session; comments on these points should be returned by 15 November by fax directly to Prof. Berlingieri at +39-10-589-674.

The draft report will be circulated by the end of October by the CMI Administrator, Baron Delwaide, to all members of the Sub-Committee. Comments on the draft report should be returned by 15 November by fax directly to Dr. Wiswall at +1-207-326-9178.

The next (4th) Session of the Sub-Committee will be held in London on either Thursday 30 and Friday 31 January 1997, or Thursday 27 and Friday 28 February 1997, as decided by the Executive Council at its meeting on 23 November. NMAs will be notified accordingly of the dates and venue.

With this, the meeting was adjourned at 1:10 p.m.

FRANCESCO BERLINGIERI, Chairman  
FRANK L. WISWALL, Rapporteur

**FINAL LIST OF PARTICIPANTS****OFFICERS**

<i>Chairman</i>	Prof. Avv. Francesco Berlingieri, Hon. President, CMI
<i>Rapporteur</i>	Dr. Frank Wiswall, Executive Councillor, CMI

**REPRESENTATIVES**

<i>China</i>	Prof. ZHU Zengjie, Prof. HU Zhengliang and Prof. GUO Chun Feng
<i>Denmark</i>	Uffe Lind Rasmussen
<i>Finland</i>	Prof. Peter Wetterstein
<i>France</i>	Prof. Pierre Bonassies
<i>Germany</i>	Prof. Marian Paschke
<i>Ireland</i>	Dermot McNulty
<i>Japan</i>	Prof. Tomotaka Fujita
<i>Korea</i>	Prof. Kiljun Park
<i>Norway</i>	Ivar Kleiven and Trond Solvang
<i>Spain</i>	José Alcantara
<i>Sweden</i>	Lave Beck Friis
<i>Switzerland</i>	Alexander von Ziegler
<i>U.K.</i>	Stuart Beare & Paul Koronka
<i>U.S.A.</i>	Chester Hooper, George Chandler and Prof. Michael Sturley

**OBSERVERS**

BIMCO	Søren Larsen, Head of Division, Legal Affairs
<i>European Shippers Council</i>	Martin Richards
ICS	Chris Horrocks, Secretary General
IGP&I	Lloyd Watkins, Executive Officer and Secretary
IUMI	Dr. Gerfried Brunn
UNCTAD	Dr. Mahin Faghfour, Legal Officer

## **INTERNATIONAL SUB-COMMITTEE ON UNIFORMITY OF THE LAW CARRIAGE OF GOODS BY SEA**

### **REPORT OF THE FOURTH SESSION**

LONDON, 27TH AND 28TH FEBRUARY, 1997

The Sub-Committee met in the Dome Room of the offices of Messrs. Richards Butler, 15 St. Botolph Street, London. The meeting was called to order by the Chairman, Professor Berlingieri, on Friday 27 February 1997 at 9:35 a.m. Representatives of sixteen National Member Associations and five International Organisations were present. A list of the participants is attached as Annex A.

The Chairman distributed an excerpt (pp. 49 - 50) from the Report of the 29th Session of the United Nations Commission on International Trade Law (UNCITRAL) held in New York in May 1996, and asked delegations to be prepared on 28 February to consider the implications of paragraphs 210 and 215 of this Report. Meanwhile, he suggested that the International Sub-Committee (IS-C) continue the discussion underway at the conclusion of the Third Session in October of 1996. References are to the list of topics in the draft "Specimen Report" of the Sub-Committee to the International Conference of the CMI to be held in Antwerp in June 1997.

### 13. Liability of the Shipper

Prof. Berlingieri (Chairman) posed the questions whether the solution of the Hamburg Rules was satisfactory, and whether such a provision was even advisable.

Mr. Alcantara (Spain) recalled the proposal of the delegation of China at the previous Session that the liability of the shipper should be dealt with in context, in appropriate sections. He questioned whether it was useful to have a general provision on the shipper's liability.

Mr. Beare (UK) observed that the law of carriage of goods by sea (COGBS) has long survived without such a provision: his association would leave the issue to be determined by national law, though no particularly strong feelings were held.

Prof. Berlingieri (Chairman) posed three alternatives: (1) that there be no stated rule; (2) that there be a rule cast in general terms; and (3) that there be a rule which spells out specific liability, for example liability for the misdescription of dangerous goods.

Prof. Wetterstein (Finland) felt that a rule was needed. He pointed out

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that the Scandinavian law has decided that liability should fall in some cases upon the contractual shipper and in others upon the actual shipper.

Mr. Chandler (USA) agreed. The law on the point is in many respects internationally uniform by reason of applicable conventions such as the Dangerous Goods Convention and the requirements placed upon shippers under the International Maritime Dangerous Goods Code (IMDGC).

Mr. Roland (Belgium) agreed that there should be a specific rule with regard to dangerous goods. He felt that the rule also should limit the liability of the shipper, which would help to resolve problems of insurance.

Mr. Beck Friis (Sweden) favoured a rule in general terms.

Prof. Berlingieri (Chairman) stated that while it appeared that the Sub-Committee favoured having a provision, it was not yet clear whether the provision should be general or specific, whether the person liable should be the contractual or actual shipper, or whether the provision should limit the shipper's liability.

Mr. Alcantara (Spain) thought the root of the problem was that the conventions do not set out the specific performance obligations of the shipper.

Prof. Berlingieri (Chairman) pointed out that in this respect Hague-Visby and Hamburg were substantively identical; there were two provisions in Hague-Visby (Articles 3(5) and 4(6)) and one in Hamburg (Article 12).

Prof. Wetterstein (Finland) felt that it was necessary to introduce the concepts of both the contractual and the actual shipper. Mr. Chandler (USA) asked how one would differentiate between them: was the difference only a matter of agency? Prof. Wetterstein observed that a contractual carrier need not be an agent.

Dr. von Ziegler (Switzerland) asked how one would define the actual shipper; was this the person who delivered the goods?

Prof. Sturley (USA) thought the difficulty arose because the applicable rule had not yet been decided. Was the basis of the shipper's liability to be fault? When the basis was known, a definition could be formulated. Mr. Chandler (USA) added that there was reluctance to come to grips with such definitions where so many different shipment possibilities existed; care must be taken not to create any new liabilities in the course of setting out new definitions.

Prof. Berlingieri (Chairman) observed that both the present conventions base liability on fault. The real problems arose in the context of F.O.B. sales where the seller of goods was also the shipper, and most frequently involved voyage charterparties. One example might be leakage of a pre-packed chemical, causing damage to other cargo. Should the shipper be liable for defective packaging?

Mr. Alcantara (Spain) felt that all provisions on shipper liability should be collected into a single article.

Prof. Wetterstein (Finland) pointed out that there might be two kinds of shippers involved in the same shipment; a clarification of responsibilities was needed. Mr. Solvang (Norway) agreed.

Mr. Hooper (USA) felt that there were too many complications to be able to formulate a satisfactory definition of shipper. The facts of a particular case

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should determine who is the shipper, and flexibility in making this determination should be preserved. Dr. von Ziegler (Switzerland) thought that while 'flexibility' was generally a problem for the civil law, a degree of such flexibility could be tolerated in the context of carriage of goods.

Prof. Sturley (USA) did not care to have any such provision unless liability was to be determined on a basis other than fault. Mr. Beck-Friis (Sweden), while supporting the content of the Scandinavian legislation, nevertheless agreed that it was not yet time to take this step internationally.

Mr. Hooper (USA) felt that there should be a provision specifically for carriage of dangerous goods (citing Article 5(6) of Hague-Visby), requiring the shipper to indemnify the carrier in case of damage caused by cargo.

Prof. Berlingieri (Chairman) stated that a clear majority favoured the *status quo* as to the issue of identity of the shipper. He then asked for views concerning limitation of the shipper's liability.

Prof. Wetterstein (Finland) did not see the need for a provision on limitation of the shipper's liability, unless the shipper was also the carrier – in which case liability was already limited.

Prof. Sturley (USA) observed that limitation of the carrier's liability had a moderating influence on the price charged by the carrier to transport the goods, which was one of the intentional advantages; he doubted whether a limitation of the shipper's liability could produce a similar cost-of-carriage benefit and therefore be justified in a transport regime.

Mr. Roland (Belgium) thought that if a shipper may be bankrupted because of the unavailability or insufficiency of insurance, then the shipper should have the benefit of limitation. He had no specific suggestion, however, as to the basis for such limitation.

Mr. Solvang (Norway) believed that limitation of the shipper's liability would be a complete novelty in transport conventions, and that nothing of the sort had ever been contemplated previously. Mr. Rasmussen (Denmark) agreed; he could not envisage a basis for limitation of the shipper's liability. Mr. Beare (UK) likewise agreed.

Prof. Berlingieri (Chairman) concluded that experience was the usual indicator of the need for change, and in respect of this issue it seemed evident that experience had not pointed in the direction of limitation of the shipper's liability. He had not detected sufficient support either for limitation of the shipper's liability or for a definition of the actual vs. contractual shipper.

#### 14. Special Rules re Dangerous Cargo

Prof. Berlingieri (Chairman) asked whether the provisions of Hague-Visby (Article 4(6)) and Hamburg (Article 13) were adequate. The unanimous view was that the present provisions were adequate.

#### 15. Letters of Guarantee

Prof. Berlingieri (Chairman) queried whether there should be a provision that actively discouraged the use of letters of guarantee.

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Mr. Chandler (USA) believed there should be a provision discouraging letters of indemnity, which were conducive to fraud.

Dr. von Ziegler (Switzerland) disagreed. Hamburg Article 17 already rendered letters of guarantee invalid as against third parties, and he felt this was sufficient for the purpose.

Prof. Wetterstein (Finland) observed that there were certain situations where the use of a letter of guarantee should be *encouraged*.

Mr. Beare (UK) did not favour a provision discouraging letters of guarantee, which would run far beyond the scope of COGSA and appeared to intrude into the realm of general trade law. Mr. Kleiven (Norway) agreed.

Mr. Rasmussen (Denmark) did not agree with the previous speakers. The bill of lading was a negotiable instrument, and in his view a provision discouraging letters of guarantee would be entirely appropriate in the context.

Prof. Fujita (Japan) felt that if there were to be any provision on letters of guarantee it should *not* be the provision found in Hamburg Article 17(3).

Mr. Roland (Belgium) did not wish to see any provision: the matter of use of letters of guarantee should be left to the discretion of the parties.

Mr. Alcantara (Spain) pointed out that if the use of letters of guarantee were regulated, that implied approval of their use in some cases. He was not in favour of any provision in international law, and felt that this matter must be dealt with by national law.

Prof. Jiang (China) would ideally have no provision at all on letters of guarantee, but because such letters must sometimes be accepted, he could live with the provision in Hamburg Article 17(3).

Prof. Berlingieri (Chairman) asked for an informal indication of views whether there should be a provision on letters of guarantee; five delegations were in favour, and eight were opposed. Prof. Berlingieri (Chairman) observed that the majority opposed any provision but that among those who favoured a provision one delegation desired a prohibition and others favoured regulation of letters of guarantee.

Mr. Japikse (Netherlands) wished to state his view that a letter of guarantee was a private contract, and that regulation should not be interposed. Dr. von Ziegler (Switzerland) supported this view. Prof. Wetterstein (Finland) disagreed; there was a need to regulate letters of guarantee so as to discourage their use for fraudulent purposes.

Prof. Berlingieri (Chairman) noted that the CMI had grappled with the matter of letters of guarantee for forty years without resolution. In his view the provision of Hamburg 17(3) would never be applied, because it was the shipper, not the carrier, who had the incentive to defraud the consignee.

Mr. Beare (UK) was of the view that a provision regulating letters of guarantee could interfere with national criminal law.

Mr. Roland (Belgium) felt that Article 16 of Hamburg was contradictory to Article 17(3). Third parties were also disadvantaged by letters of guarantee.

Mr. Solvang (Norway) believed that the problems encountered in oil carriage charterparties illustrated the need for a regulatory provision.

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### 16.1. Notice of Loss or Damage

Prof. Berlingieri (Chairman) reminded the Sub-Committee of its previous view that where damage was not readily apparent there should be a three-day limitation on giving notice, and that where damage was apparent there should be a one-day limit.

Mr. Chandler and Prof. Sturley (USA) supported the three-day limitation, without qualification.

Mr. Alcantara (Spain) believed that three days was too arbitrary a period. He favoured three *working* days because – especially when dealing with containerised cargo – three running days would frequently not be enough time.

Prof. Wetterstein (Finland) preferred the unqualified three-day limitation, which reflected Scandinavian law. Dr. von Ziegler (Switzerland) likewise supported the three-day limitation.

Prof. Berlingieri (Chairman) noted that the burden of proof of loss lay upon the receiver of the goods regardless of notice; the purpose of notice was to make it easier for the carrier to arrange an early inspection in order to determine more accurately when the damage had occurred.

Prof. Sturley (USA) queried whether there should be a difference in standard according to the packaging of the goods. He personally did not think so, but felt there was a real need to define “delivery” in this context. Mr. Roland (Belgium) agreed; the crucial question was where and when the damage occurred.

Prof. Jiang (China) thought that special consideration should be given to containerised cargo. The Chinese Maritime Code allowed a fifteen-day period for notice in the case of containerised cargo, because it was usual for the consignee not to see the goods within three days.

Prof. Wetterstein (Finland) did not see why containerised cargo should be treated differently; the matter of loss or damage would be resolved according to the contents of the transport document rather than the packaging, where damage to the container was not readily apparent.

Prof. Berlingieri (Chairman) stated that the majority favoured the “running-three-day rule” on notice of loss or damage.

### 16.2. Time Bar

Prof. Berlingieri (Chairman) noted that the issue to be resolved was whether the time limitation should be one or two years.

Mr. Chandler (USA) stated that his delegation favoured a one-year time limit, not less. Mr. Rasmussen (Denmark) concurred; a two-year rule would benefit only the lawyers, not the parties. Dr. von Ziegler (Switzerland) and Prof. Wetterstein (Finland) agreed; the one-year rule was preferable.

Mr. Alcantara (Spain) stated that he favoured a two-year limitation period.

Prof. Berlingieri (Chairman) noted that the clear majority of speakers favoured a one-year time limit. The remaining question was whether the

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ninety-day period for recourse and indemnity actions should run from the end of the one-year limitation period.

Prof. Sturley and Mr. Chandler (USA) favoured beginning the 90-day period upon either settlement of the claim or entry of judgement. Notice to third parties should be given when suit is commenced. Dr. von Ziegler (Switzerland) supported this position.

Mr. Roland (Belgium) observed that stevedores are not subject to either of the present conventions. Should a recourse action by the carrier against a stevedore be subject to the 90-day rule?

Mr. Japikse (Netherlands) pointed out that the contract between a carrier and a stevedore was not a contract for COGSA but an independent contract not falling under the conventions.

Prof. Wetterstein (Finland) noted that Scandinavian law provided a period of one year from the date of payment of the claim or the commencement of suit.

Mr. Fernandes (Canada) felt that a period of 90 days was insufficient, but that a period of one year *plus* 90 days was too long.

Mr. Beare (UK) observed that the time period under Hague-Visby should run from the date of payment or the date of commencement of suit, whichever was earlier. A period of one year plus 90 days was not acceptable.

Prof. Berlingieri (Chairman) believed that the nub of the problem was whether the sub-carrier should be covered; if so, notice should be given *within* one year.

Mr. Chandler (USA) thought that the problem in reality was the 'midnight claim' lodged against the carrier on the last possible day of the limitation period. When this occurs – as it frequently does – how would it be possible for the carrier to give timely notice to a sub-carrier.

Prof. Berlingieri (Chairman) posed the question whether, with regard to this issue, the present Hague-Visby / Hamburg system was satisfactory.

Prof. Bonassies (France) felt that there should be a *double* limit, *viz.* one year for the carrier to be sued, and ninety days thereafter for the sub-carrier to be given notice.

Prof. Sturley (USA) observed that his delegation's proposal went beyond the minimum required by Hague-Visby and Hamburg, but emphasised that these were minima. The carrier should be required to give notice to third parties whenever he grants an extension of time to the shipper.

Mr. Alcantara (Spain) believed that a single event should be chosen as the date of commencement; with no alternatives, otherwise there would be no uniformity of application. Prof. Sturley (USA) observed that there was no such uniformity at present.

Prof. Berlingieri (Chairman) asked whether a maximum and uniform time limit should be specified.

Mr. Alcantara (Spain) thought that the matter of recourse actions should be left wholly to national law. This position was supported by Mr. Fernandes (Canada) and Mr. Japikse (Netherlands).

Prof. Berlingieri (Chairman) called for an informal indication of views, and thereafter noted that a majority of delegations favoured adoption of a uniform rule.

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Mr. Koronka (UK) emphasised that the provision should relate to notice, and not to time bar.

Prof. Sturley (USA) agreed, but felt strongly that there must be enough flexibility to take care of the problem presented by last-day commencement of suit against the carrier.

Prof. Berlingieri (Chairman) queried what was a reasonable period. Was 90 days too short for both commencement of a suit and notice to third parties?

Prof. Sturley (USA) thought that if the time period applied to suit, then 90 days was too short; if for notice, then 90 days is a sufficient period. His delegation's proposal was that the 90-day period for notice should run from settlement or entry of a final (non-appealable) judgement, and that there should then be a further limitation period of 90 days for an aggrieved third party to sue.

Prof. Berlingieri (Chairman) suggested that it might be better for the 90-day period for notice to run from service of process rather than final judgement.

Mr. Alcantara (Spain) felt that the discussion was now attempting to extend the regime of COGBS to cover other areas of law.

Dr. Wiswall (Rapporteur) asked what would be the result if the litigation took place in State A, but the recourse action had to take place in State B, where the plaintiff was already time-barred under national law? It would seem that the matter of time bar for third parties would have to be the subject of a rule in the convention in order to solve this problem.

Prof. Wetterstein (Finland) believed that the person having a recourse claim must be guaranteed an opportunity to bring that claim. The period of limitation was less important.

Prof. Berlingieri (Chairman) contrasted the relevant provisions of Hague-Visby and Hamburg; the latter identifies the carrier ("... the person held liable ...") as the person entitled to bring a recourse action.

Mr. Solvang (Norway) observed that the right of recourse may arise under the sales contract, wholly independent of the contract of carriage.

Mr. Roland (Belgium) felt that there must at least be a clear provision, which would not present ambiguities to the court.

Mr. Alcantara (Spain) observed that what is contemplated by both Hague-Visby and Hamburg is an action by the shipper against the carrier and a recourse action by the carrier against either the contractual or the actual carrier, as the case may be, both actions being subject to the one-year rule.

Prof. Berlingieri (Chairman) stated that the prevailing view appeared to be that the existing provisions are adequate in scope for the present. The consensus was to leave these issues as they were for the time being.

## 17. Choice of Law

Prof. Berlingieri (Chairman) noted that there was no choice of law provision in the present conventions. Should there be a provision to the effect that the rules of the convention pre-empt national law? Would such a provision be useful?

Mr. Rasmussen (Denmark) believed that a State Party to the convention on COGBS should not be allowed to assert choice of law rules which would produce a result inconsistent with the convention. However, it should be permissible to allow a choice of law enabling a selection among the laws of States that vary in their interpretation of the convention.

Prof. Wetterstein (Finland) felt that there was an obligation to minimise inconsistent interpretation and implementation of the convention, and in doing so to ensure that only the courts of States Parties apply the rules of the convention.

Prof. Berlingieri (Chairman) observed that the difficulty arises because of disagreement whether a State Party's national choice of law rules prevail over the rules of the convention.

Mr. Rasmussen (Denmark) stated that the domestic choice of law in a State Party must not be allowed to enable deviation from the *scope* of the convention.

Dr. von Ziegler (Switzerland) noted that there are opportunities in the Protocol to the Hague Convention for a State Party to apply its domestic choice of law rules *before* applying the convention on COGBS. The answer was to have provisions similar to those of the Warsaw Protocol, which preempt national rules on conflict of laws.

Prof. Sturley (USA) observed that the rules of the convention should take priority over national rules *if* the court decides that the convention is applicable.

Prof. Berlingieri (Chairman) stated his view that the uniform rules of the convention must take priority over domestic rules of conflict of laws.

Mr. Rasmussen (Denmark) noted that the standard practice in Danish bills of lading was to refer to English law.

Mr. Roland (Belgium) felt that the problem only arose in the courts of non-Party States, especially where those States are bound by the provisions of a convention on conflict of laws.

Prof. Fujita (Japan) preferred no provision. The status quo produced an acceptable result in the vast majority of cases.

Prof. Bonassies (France) observed that, as with the matter of Letters of Guarantee, there was no uniformity in Europe with regard to choice of law rules.

Prof. Berlingieri (Chairman) in summary stated that there was unfortunately no broadly acceptable solution at present. It was agreed to leave the subject of choice of law without any provision at present, and to return to it at a much later stage to see whether there might be a clearer picture when other issues had been settled.

## 18. Jurisdiction

Prof. Berlingieri (Chairman), recalling Hamburg Article 21, queried whether there should be a provision on jurisdiction. The immediate consensus of the Sub-Committee was that there should be such a provision. The Chairman suggested that comments should be based upon Article 21, and

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no attempt should be made at this stage to draft a provision on jurisdiction.

Dr. von Ziegler (Switzerland) thought that the parties should be able to choose the court of any State Party as an appropriate forum.

Mr. Rasmussen (Denmark) felt that the possibilities for suit should be restricted to "reasonable" fora. He could accept the provision set forth in the Specimen Report prepared by the Chairman and circulated prior to the meeting. Mr. Solvang (Norway) stated that he could also generally support the provision in the Specimen Report.

Prof. Wetterstein (Finland) believed that when a dispute arose the parties should be free to agree on any convenient forum provided it was in a State Party. Mr. Beare (UK) supported this view. Prof. Wetterstein further believed that if an agreed forum had been stated in the bill of lading, then that choice should prevail; it was otherwise for the claimant to make a unilateral choice of forum. This view was supported by Mr. Solvang (Norway) and Prof. Sturley (USA). It was observed that the Scandinavian law does place some restrictions upon choice of forum.

Mr. Roland (Belgium) thought that an unlimited choice of forum by the claimant would make a mockery of the principle of Hamburg Article 21.

Prof. Berlingieri (Chairman) observed in conclusion that it seemed clear that Article 21 did not offer much protection to the receiver of the goods. An Article 21(1) plaintiff might be either the carrier or a consignee, and the consignee was not even a party to the bill of lading.

## 19. Arbitration

Prof. Sturley (USA) felt that there should be restrictions upon choice of fora for arbitration which were at least as stringent as those upon jurisdiction for litigation.

Mr. Alcantara (Spain) thought that, as arbitration was a matter for private agreement between the parties, it should be *less* regulated than jurisdiction for litigation.

Prof. Berlingieri (Chairman) observed that arbitration clauses were uncommon in liner bills of lading, but were nearly universal in bills of lading under charterparties. The problem was the use of arbitration clauses to subvert jurisdiction clauses.

Dr. von Ziegler (Switzerland) noted that designation of the place of arbitration, without more, also designated the law of the forum as the applicable law; but the arbitrators could then decide to sit elsewhere, carrying the law of the forum with them.

Prof. Wetterstein (Finland) wondered whether there should be a provision on enforcement of arbitral awards.

Mr. Sekolec (UNCITRAL) observed that the 1958 New York Convention on Enforcement of Arbitral Awards may be refined in and co-exist with other conventions, such as Hamburg.

Mr. Beare (UK) considered the place of arbitration to be a central point and cautioned against doing anything that might sever portions of arbitration

clauses, which are held to be private commercial agreements between equals. He thought that the use of arbitration clauses to oust jurisdiction clauses was more apparent than real.

Mr. Chandler and Prof. Sturley (USA) disagreed. In their view the arbitration clauses in liner bills of lading posed a very real problem. While arbitration must not be put at a disadvantage, the concern was the rule prohibiting jurisdiction clauses. Hamburg was not entirely pro-cargo in that regard, because it restricted cargo's right to sue anywhere it might obtain jurisdiction. In this respect Articles 21 and 22 of Hamburg struck a balance.

Mr. Roland (Belgium) felt that to have any arbitration provision would necessarily infringe upon the freedom of the parties to contract. If there were to be a provision arbitration clauses would become commonplace in liner bills of lading, to the probable disadvantage of receivers; these would certainly not be "clauses freely accepted" by the parties. What would be preferable would be a provision *prohibiting* arbitration.

At this point the Sub-Committee stood in recess for the day, and reconvened at 9:30 a.m. on Friday 28 February.

Prof. Berlingieri (Chairman) summarised the three alternatives before the Sub-Committee:

1. To have no provision, with complete freedom of contract for the parties regarding arbitration;
2. To have a provision prohibiting arbitration; or
3. To have a provision regulating arbitration.

On an informal indication of views seven delegations favoured having no provision on arbitration, no delegations favoured prohibition of arbitration, and eight delegations favoured a provision regulating arbitration.

Prof. Wetterstein (Finland) would retain Hamburg Article 22(2). A mechanism was needed to ensure application of the convention to arbitrations. At the same time, the freedom of the parties to choose the place of arbitration should not be restricted; while it is true that this would result in varying interpretations of the convention in national law, this is an acceptable price to pay for ensuring its application. In his view, this would avoid a conflict with Article V(1)(d) of the New York Convention.

Mr. Rasmussen (Denmark) would delete Hamburg Article 22(3). Tramp bills of lading customarily incorporate the standard BIMCO charterparty arbitration terms, and any restriction would bring about chaos. The Scandinavian law applied Hamburg Article 22 only to the liner trade. Prof. Wetterstein (Finland) disagreed slightly, to the extent that it was open to a holder-in-due-course to invoke all provisions of a bill of lading.

Mr. Sekolec (UNCITRAL) pointed out that Article V(1)(d) of the New York Convention referred to the law of the country where the arbitration took place, which in the case of a State Party would also include the law of a convention which restricted or regulated arbitration. Prof. Wetterstein (Finland) disagreed: the freedom of the parties appeared to him paramount under Article V(1).

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Prof. Fujita (Japan) thought it might be a necessary evil to regulate arbitration.

Mr. Alcantara (Spain) took the view that so long as the agreement to arbitrate was in writing, the parties should be completely free to regulate the arbitration themselves.

Mr. Roland (Belgium) believed that the whole purpose of the exercise was to protect the holder-in-due-course of the bill of lading. If, *e.g.*, a bulk grain cargo were divided at delivery and multiple bills of lading were issued, the consignee of a small portion of the cargo should not be forced into arbitration; the costs of arbitration for the holder-in-due-course would be prohibitive, and the only allowable enforcement of an arbitration clause should be when the consignee has signed the charterparty.

Prof. Jiang (China) thought that if the parties chose to arbitrate they should be completely free to set the terms, without regulation or restriction of the Hamburg type. To have an arbitration provision in a shipping convention would be functionally meaningless if forced a choice between several specified places.

Mr. Chandler (USA) did not agree. The challenge was to make the provisions of the convention as broadly applicable as possible.

Prof. Berlingieri (Chairman) observed that there seemed to be agreement that a provision was needed to enforce the application of the rules of the convention to arbitrations; the crucial point was whether to delete the restriction on choice of the place for arbitration.

Prof. Sturley (USA) felt that what was most important was the prevention of avoidance of the jurisdiction clause by slipping out the back door of arbitration. Permitting arbitration in several places was unacceptable to his delegation, though they did not have the same reservation with regard to jurisdictions for litigation. He could agree to arbitration only in the place of shipment or of delivery, at the claimant's choice. He further believed that there was no utility in a provision forcing application of the convention, because such a provision could only be enforced if the convention had already been applied.

Mr. Solvang (Norway) did not think that any provisions placing restrictions on arbitration were practical. He agreed with the view expressed by Prof. Wetterstein that the only result of such provisions would be to encourage arbitrations outside the terms of the convention.

Mr. Rasmussen (Denmark) saw no need to regulate arbitrations arising under charter parties, but a real need to regulate the arbitrations pursuant to bills of lading.

Dr. von Ziegler (Switzerland) thought that to enable a choice of several different places would simply produce chaos. The parties should be restricted to a choice of a single place or the option proposed by the US delegation.

Mr. Alcantara (Spain) felt that the single provision should be one mandating application of the uniform rules; if the convention were applicable, that provision would be enforceable.

Mr. Chandler (USA) thought it important that the "tail" of charterparty considerations should not be allowed to "wag the dog" of the liner trade which

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these rules were designed for. There could always be a provision such as that in Hamburg Article 22(2) exempting charterparty arbitration clauses from the application of the convention; at present six or seven countries overrode such arbitration provisions under national law, and the New York Convention was silent on the point. Hamburg Article 22 contains the basis for a solution and the approach was acceptable in principle. Mr. Fernandes (Canada) agreed that the provision of Article 22 should be retained. Prof. Bonassies (France) agreed with the previous speakers, and stated that a French Court would not enforce an arbitration clause unless the consignee had agreed to it prior to delivery.

Mr. Rasmussen (Denmark) felt it especially important that provisions intended to promote uniformity not be based upon unusually hard cases, but instead be fashioned to ensure the broadest possible application of the convention.

Prof. Sturley (USA) asked whether the Sub-Committee would agree to a prohibition of arbitration clauses in liner bills of lading. Mr. Rasmussen (Denmark) thought this would be too draconian a solution.

Mr. Roland (Belgium) felt that the infringement of private rights was the problem. The chief difficulty was the very high cost of arbitration, which were entirely out of proportion to the amount in contention for small consignees. Only the parties to the contract of affreightment should be able to be compelled to arbitrate; he favoured provisions supporting arbitration only to that extent, maintaining the right of the non-party consignee to ignore an arbitration clause to which it had not agreed.

Mr. Larsen (BIMCO) stated that his organization had recently reviewed all matters regarding arbitration clauses, and was sure that the consignee would be aware of an arbitration clause prior to the delivery of the goods. He felt that the parties to liner bills of lading should be left free to negotiate any provisions on arbitration.

Mr. Chandler (USA) observed that tramp bills of lading were usually issued on steel shipments, and that these bills of lading customarily contained arbitration clauses. This situation was quite distinct from that in the liner trade.

Mr. Alcantara (Spain) and Prof. Bonassies (France) felt that it must be left open to a consignee to accept an arbitration agreement after delivery of the goods.

Prof. Berlingieri (Chairman) summarised the four alternatives and called for an informal indication of views, as follows:

1. The restatement of Hamburg Article 22 in full, subject only to drafting – four delegations in favour;
2. The deletion of paragraph (3) of Hamburg Article 22 – six delegations in favour;
3. The deletion of paragraph (3) of Hamburg Article 22, but with the added requirement that in order to compel arbitration the consignee must have agreed in writing to the arbitration clause either before or after delivery – seven delegations in favour; and
4. To have no provision whatever on arbitration – four delegations in favour.

## Reversion to Earlier Subjects

### 1. Definitions - "Delivery"

Mr. Roland (Belgium) asked what constituted "delivery" of the goods. He thought it important that this should be made clear.

Prof. Berlingieri (Chairman) commented that "delivery" was important because it commences the period running to time bar of claims. Hamburg Article 4(2) contains rules on delivery (actual or constructive), but were they satisfactory? Physical handing over of the goods to the consignee was certainly "delivery", but is much less common now than in the past. Constructive delivery in the port was often a troublesome matter.

Prof. Sturley (USA) thought the present situation gave rise to much confusion, and that the substance of "delivery" was really less important than establishment of certainty as to when delivery took place.

Prof. Berlingieri (Chairman) noted that the Italian rule was delivery upon the "actual possibility of the consignee to control the goods", *i.e.*, when the consignee receives notice that the goods are available for inspection. He observed that the period of responsibility of the carrier and the calculation of time bar were actually different matters, and that it might not be wise to use the term "delivery" in connection with both.

Prof. Wetterstein (Finland) felt that the issue of "delivery" was one of drafting; there was no disagreement over substance.

Dr. Von Ziegler (Switzerland) noted that the period of notice was in any event a legal fiction, but he thought that both periods – of responsibility of the carrier and for notice of damage from the consignee to the carrier – should be determinable at the same moment.

Mr. Alcantara (Spain) observed that to try to apply a rule made in 1924 to constantly changing circumstances was difficult. The role of agents in delivery should be looked at; the only certain moment is the physical removal of the goods from the custody of the agent.

Prof. Berlingieri (Chairman) voiced his concern that the 'notion of delivery' could be a barrier to uniformity. Delivery could not take place until the consignee had the right to dispose of the goods. In his view some other concept was necessary.

Dr. von Ziegler (Switzerland) felt that the root of the problem was the theory of bailment in carriage; care must be taken not to upset other rules of law.

Mr. Hooper (USA) thought the word "delivery" should not be used, and that different concepts should be considered. Possibly there should be two different starting points for notice to and from the consignee.

Mr. Rasmussen (Denmark) felt that two different starting points would likely cause difficulty. What of the situation where the consignee was dilatory in picking up the goods? He agreed with other speakers that the period for notice from the consignee to the carrier should begin to run when the consignee is given notice that the goods are at his disposal. Mr. Hooper (USA) agreed there was a need to ensure that the carrier would not be disadvantaged when the consignee was slow to take charge of the goods.

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Prof. Wetterstein (Finland) observed that the Scandinavian law described the period of the carrier's responsibility in terms similar to the Hamburg Rules. The consignee might not have a right to control the goods until after handing over by the carrier to the port authority. He felt that the three-day period must begin to run when the consignee first acquires the right of control – perhaps upon a 'handing over' as in Hamburg – otherwise the period might run out before the port authority released the goods.

Prof. Berlingieri (Chairman) pointed out that the issue was Hamburg Articles 4(2)(b)(iii) versus 19(1).

Mr. Roland (Belgium) stated that he had thought at one time that Hague-Visby and Hamburg were similar with respect to this issue, but was no longer of that opinion. Where Hamburg Article 4(1) and (2) states that delivery may take place when the goods are in the custody of the port authority, that constituted a carrier defence in most cases. However, the port authority is not the agent of the consignee, but is rather an intermediate party in the carriage. This provision must be modified. It was also a problem that Hamburg allowed the carrier to exclude by contract the periods before and after carriage; it would be necessary to modify the bill of lading to enable this.

Mr. Rasmussen (Denmark) thought that the chief problem in this area was that the consignee could indefinitely prolong the three-day period by not picking up the goods. This problem had to be dealt with.

Prof. Bonassies (France) felt that the Sub-Committee was already in agreement that the period should begin to run as soon as the consignee has the opportunity to *appropriately* inspect the goods. Dr. von Ziegler (Switzerland) was sympathetic to this qualification, but observed that an invitation to inspect the goods could be tendered long before the consignee acquired the right of control over them.

Mr. Alcantara (Spain) and Prof. Sturley (USA) believed that the consignee should be able to waive formal notice of availability or an actual handing over whenever invited to inspect the goods. However, for non-apparent damage, the consignee had no adequate opportunity to inspect the goods until their physical removal from the port.

Mr. Japikse (Netherlands) noted that Hague-Visby did not pose these problems because the time period began to run from the removal of the goods.

Prof. Sturley (USA) thought that the provision of Hague-Visby on non-apparent damage was inconsistent with the provision on apparent damage.

Mr. Roland (Belgium) observed that a document inviting the consignee to inspect the goods did not exist in present practice.

Prof. Wetterstein (Finland) thought it very important to remember that the three-day rule had only to do with the burden of proof, and was not a time bar for claims.

Prof. Berlingieri (Chairman) stated that the Sub-Committee seemed to be agreed that the crucial moment was when the consignee was put in a position to inspect the goods. The practice of the particular port was of course very relevant, but the question whether the consignee was in a position to inspect the goods was one of fact and not of law.

Prof. Sturley (USA) stated that his delegation could entertain some

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flexibility as to the three-day rule, but none with regard to the one-year rule, where absolute certainty was necessary.

Mr. Rasmussen (Denmark) agreed with the US that it was necessary to have absolute certainty as to the running of the one-year period. He did not care for the date of the arrival of the ship, because a tackle-to-tackle regime was no longer in consideration. He felt that the one-year period should run from delivery of the goods, and the three-day period should run from the moment when the consignee has a reasonable opportunity to inspect the goods.

Mr. Roland (Belgium) found no problems associated with Hamburg Article 20, but saw a need to overhaul Hague-Visby Article 4(1) without use of the word “delivery”.

Prof. Berlingieri (Chairman) stated in summary that the period of responsibility of the carrier may well not coincide with the period of applicability of the rules of the convention. It seemed apparent that the principle of Hague-Visby Article 4(1) was in need of further consideration.

The Chairman further stated that as all of the points of the draft Summary Report pending from the Sub-Committee’s Third Session had now been discussed, attention would be turned to an important development.

### **Consideration of the Report of UNCITRAL on its 29 th Session, June 1996**

Prof. Berlingieri (Chairman) noted that copies of the pages of the Report dealing with the item “Future work on issues of transport law” and containing paragraphs 210 (p. 49) and 215 (p. 50) [attached hereto as Annex B] had been distributed to the participants on the previous day, and he assumed that all had read this material. He called attention in particular to paragraph 215, which stated that the UNCITRAL Secretariat would seek input from a number of named organisations and specifically the CMI. Of course no decision had yet been taken by UNCITRAL, but the Executive Council of the CMI at its most recent meeting in November of 1966 had considered the implications and the President and the Chairman had recently paid a visit to the Secretary and staff of UNCITRAL in Vienna to discuss how the CMI might facilitate UNCITRAL’s gathering of relevant information and ideas. The Sub-Committee had already considered some of the issues of multimodalism in the context of the geographical scope of application, and also bankability of transport documents in the context of the bill of lading; however there were many other areas which would need to be investigated in order to provide input to UNCITRAL. He asked to have the views of the Sub-Committee on this very significant development, which posed both an opportunity and a challenge to the CMI.

Mr. Hooper (USA) stated that his delegation believed that study of these matters by the CMI was an excellent idea. He noted that the proposed legislation to reform the US COGSA was intended only as a stop-gap measure

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pending the adoption of a modern and comprehensive international convention covering COGBS.

Mr. Rasmussen (Denmark) felt that the main issue was the scope of a new comprehensive regime – for example, should the carrier be connected with the sale of goods transaction? He did not think carriers would be enthusiastic about such a connection, but it might very well be possible to conduct examination of the issues involved along a unimodal line and come at a later stage to multimodal considerations.

Mr. Kleiven (Norway) observed that his country had already adopted parts of the CMR (European Rail) Convention into its domestic law of sea transport.

Prof. Wetterstein (Finland) stated that his delegation's reaction was very positive. There were many problems in these areas of the law which required urgent attention and harmonisation, and he entirely approved of an enlargement of the scope of the Sub-Committee's study.

Mr. Chandler (USA) pointed out that no attempt could be made to override the provisions of any non-maritime convention such as CMR; but it was nevertheless extremely important to harmonise to the extent possible up to the interface with other modes of transport and other related areas of law – one very pertinent example was the present non-uniformity in negotiability of bills of lading.

Mr. Solvang (Norway) thought the proposal very topical indeed. He noted that the University of Southampton had already been retained by the European Commission to examine some of the same issues with the goal of establishing a uniform system within the EU.

Mr. Larsen (BIMCO) felt that even the future of the bill of lading should be examined; if such issues were to be studied, BIMCO would be much more receptive to the exercise.

Mr. Alcantara (Spain) hoped that the interface between port and carrier would be an area to be closely studied. Mr. Chandler (USA) understood that this was contemplated by UNCITRAL, and that the stevedores and terminal operators should be involved in the discussions.

Dr. von Ziegler (Switzerland) noted that the study on EDI already underway would provide valuable input as well.

Mr. Larsen (BIMCO) queried the status of the CMI Uniform Rules on Seawaybills under a broader international convention. Prof. Berlingieri (Chairman) responded that if work along the suggested lines were to proceed, it would be necessary to revisit the rules for seawaybills, bills of lading and EDI, all in the context of a broader convention.

Dr. Wiswall (Rapporteur) observed that the work of several international organisations co-ordinated by the CMI in the Joint Working Group on a Study of Issues re Classification Societies offered a model for the necessary co-ordination of work on these issues by the various concerned NGOs.

Mr. Sekolec (UNCITRAL) welcomed the co-operative tenor of the discussion and the input of the Sub-Committee. He pointed out that the concerned NGOs were on an essentially equal footing with Governments where debate was concerned. He was encouraged by the initiative of the CMI with regard to the future study of these issues.

## Other Issues

Prof. Berlingieri (Chairman) noted that a draft questionnaire had been prepared for consideration at the Antwerp Centenary Conference, with the intention that the answers should reflect current national law. Also the matter of organising further study of the related issues would be considered at Antwerp; he suggested that a comprehensive list of subjects should be presented, and pared down as thought necessary.

Prof. Fujita (Japan) asked what would become of the subjects mentioned at earlier sessions of the Sub-Committee but never reverted to. Prof. Berlingieri (Chairman) responded that these would be omitted from the Sub-Committee's Report to the Executive Council.

Dr. Wiswall (Rapporteur) explained that the format of the Antwerp Conference would differ from those of the past and would more closely resemble a symposium, open to participation by all those in attendance.

Prof. Berlingieri (Chairman) noted that the 1996 *CMI Yearbook* would contain the "ANTWERP I" pre-Conference documents, including the Reports of the Third and Fourth Sessions of the Sub-Committee, the Report of the Sub-Committee to the Executive Council, and all attachments including the extract from the UNCITRAL Report and the Questionnaire to be considered at the Conference.

## Final Points

On behalf of the entire Sub-Committee and the Executive Council of the CMI, the Chairman expressed gratitude to Messrs. Richards Butler for making the Dome Room available for the meetings on COGBS, and for their warm hospitality. The Sub-Committee applauded in approval of these sentiments.

The draft report will be circulated in April by the CMI Administrator, Baron Delwaide, to all members of the Sub-Committee. Because of the shortness of time, the draft version will appear in "ANTWERP I". Comments on the draft report should be returned by 15 May by fax directly to Dr. Wiswall at +1-207-326-9178 so that corrections may be circulated at the Conference.

The Executive Council will give consideration to the scheduling of further meetings of the Sub-Committee in light of the recommendations of the Conference and the decision of the Assembly. Participants and NMAs will be notified accordingly of the dates and venue of a future meeting.

With this, the Fourth Session of the Sub-Committee was adjourned at 3:50 p.m.

FRANCESCO BERLINGIERI, Chairman  
FRANK L. WISWALL, Rapporteur

## FINAL LIST OF PARTICIPANTS

### OFFICERS

<i>Chairman</i>	Prof. Avv. Francesco Berlingieri, Hon. President, CMI
<i>Rapporteur</i>	Dr. Frank Wiswall, Executive Councillor, CMI

### REPRESENTATIVES

<i>Belgium</i>	Roger Roland
<i>Canada</i>	Rui Fernandes
<i>China</i>	Jiang Zheng Xiong
<i>Denmark</i>	Uffe Lind Rasmussen
<i>Finland</i>	Peter Wetterstein
<i>France</i>	Pierre Bonassies
<i>Japan</i>	Tomotaka Fujita
<i>Korea</i>	Kiljun Park
<i>Netherlands</i>	Eric Japikse and Frank Smeele
<i>Norway</i>	Ivar Kleiven and Trond Solvang
<i>Spain:</i>	José Alcantara
<i>South Africa</i>	Michael Soltynski
<i>Sweden</i>	Lave Beck Friis
<i>Switzerland</i>	Alexander von Ziegler
<i>U.K.</i>	Stuart Beare and Paul Koronka
<i>U.S.A.</i>	Chester Hooper, George Chandler and Michael Sturley

### OBSERVERS

BIMCO	Søren Larsen, Head of Division, Legal Affairs
FIATA	Kay Pysden, Legal Adviser
ICS	Linda Howlett, Legal Adviser
IGP&I	Sara Burgess
UNCITRAL	Jernej Sekolec, Senior Legal Officer

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) - 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) 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)

**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)*

<b>Angola</b>	(a)	20.VII.1914
<b>Antigua and Barbuda</b>	(a)	1.II.1913
<b>Argentina</b>	(a)	28.II.1922
<b>Australia</b>	(a)	9.IX.1930
<b>Norfolk Island</b>	(a)	1.II.1913
<b>Austria</b>	(r)	1.II.1913
<b>Barbados</b>	(a)	1.II.1913
<b>Belgium</b>	(r)	1.II.1913
<b>Brazil</b>	(r)	31.XII.1913
<b>Canada</b>	(a)	25.IX.1914
<b>Cape Verde</b>	(a)	20.VII.1914
<b>China</b>	(a)	28.VIII.1994
<b>Cyprus</b>	(a)	1.II.1913
<b>Croatia</b>	(a)	8.X.1991
<b>Denmark</b>	(r)	18.VI.1913
<i>(denunciation 1 September 1995)</i>		
<b>Dominican Republic</b>	(a)	1.II.1913
<b>Egypt</b>	(a)	29.XI.1943
<b>Estonia</b>	(a)	15.V.1929
<b>Fiji</b>	(a)	1.II.1913
<b>Finland</b>	(a)	17.VII.1923
<b>France</b>	(r)	1.II.1913
<b>Gambia</b>	(a)	1.II.1913
<b>Germany</b>	(r)	1.II.1913
<b>Ghana</b>	(a)	1.II.1913
<b>Goa</b>	(a)	20.VII.1914
<b>Greece</b>	(r)	29.IX.1913
<b>Grenada</b>	(a)	1.II.1913
<b>Guinea-Bissau</b>	(a)	20.VII.1914
<b>Guyana</b>	(a)	1.II.1913
<b>Haiti</b>	(a)	18.VIII.1951
<b>Hungary</b>	(r)	1.II.1913
<b>India</b>	(a)	1.II.1913
<b>Iran</b>	(a)	26.IV.1966
<b>Ireland</b>	(r)	1.II.1913
<b>Italy</b>	(r)	2.VI.1913
<b>Jamaica</b>	(a)	1.II.1913
<b>Japan</b>	(r)	12.I.1914

*Abordage 1910**Collision 1910*

<b>Kenya</b>	<b>(a)</b>	1.II.1913
<b>Kiribati</b>	<b>(a)</b>	1.II.1913
<b>Latvia</b>	<b>(a)</b>	2.VIII.1932
<b>Luxembourg</b>	<b>(a)</b>	22.IV.1991
<b>Libyan Arab Jamahiriya</b>	<b>(a)</b>	9.XI.1934
<b>Macao</b>	<b>(a)</b>	20.VII.1914
<b>Madagascar</b>	<b>(r)</b>	1.II.1913
<b>Malaysia</b>	<b>(a)</b>	1.II.1913
<b>Malta</b>	<b>(a)</b>	1.II.1913
<b>Mauritius</b>	<b>(a)</b>	1.II.1913
<b>Mexico</b>	<b>(r)</b>	1.II.1913
<b>Mozambique</b>	<b>(a)</b>	20.VII.1914
<b>Netherlands</b>	<b>(r)</b>	1.II.1913
<b>Newfoundland</b>	<b>(a)</b>	11.III.1914
<b>New Zealand</b>	<b>(a)</b>	19.V.1913
<b>Nicaragua</b>	<b>(r)</b>	18.VII.1913
<b>Nigeria</b>	<b>(a)</b>	1.II.1913
<b>Norway</b>	<b>(r)</b>	12.XI.1913
<b>Papua New Guinea</b>	<b>(a)</b>	1.II.1913
<b>Paraguay</b>	<b>(a)</b>	22.XI.1967
<b>Poland</b>	<b>(a)</b>	2.VI.1922
<b>Portugal</b>	<b>(r)</b>	25.XII.1913
<b>Romania</b>	<b>(r)</b>	1.II.1913
<b>Russian Federation</b>	<b>(r)</b>	10.VII.1936
<b>Saint Kitts and Nevis</b>	<b>(a)</b>	1.II.1913
<b>Saint Lucia</b>	<b>(a)</b>	3.III.1913
<b>Saint Vincent and the Grenadines</b>	<b>(a)</b>	1.II.1913
<b>Solomon Islands</b>	<b>(a)</b>	1.II.1913
<b>Sao Tome and Principe</b>	<b>(a)</b>	20.VII.1914
<b>Seychelles</b>	<b>(a)</b>	1.II.1913
<b>Sierra Leone</b>	<b>(a)</b>	1.II.1913
<b>Singapore</b>	<b>(a)</b>	1.II.1913
<b>Slovenia</b>	<b>(a)</b>	16.XI.1993
<b>Somalia</b>	<b>(a)</b>	1.II.1913
<b>Spain</b>	<b>(a)</b>	17.XI.1923
<b>Sri-Lanka</b>	<b>(a)</b>	1.II.1913
<b>Sweden</b>	<b>(r)</b>	12.XI.1913
<i>(denunciation 19 December 1995)</i>		
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Timor</b>	<b>(a)</b>	20.VII.1914
<b>Tonga</b>	<b>(a)</b>	13.VI.1978
<b>Trinidad and Tobago</b>	<b>(a)</b>	1.II.1913
<b>Turkey</b>	<b>(a)</b>	4.VII.1913
<b>Tuvalu</b>	<b>(a)</b>	1.II.1913

<b>United Kingdom</b>	(r)	1.II.1913
<b>Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, Hong Kong, Falkland Islands and Dependencies, Cayman Islands, British Virgin Islands, Montserrat, Caicos &amp; Turks Islands. Saint Helena, Wei-Hai-Wei</b>	(a)	1.II.1913
<b>Uruguay</b>	(a)	21.VII.1915
<b>Zaire</b>	(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  
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)*

<b>Algeria</b>	<b>(a)</b>	13.IV.1964
<b>Angola</b>	<b>(a)</b>	20.VII.1914
<b>Antigua and Barbuda</b>	<b>(a)</b>	1.II.1913
<b>Argentina</b>	<b>(a)</b>	28.II.1922
<b>Australia</b>	<b>(a)</b>	9.IX.1930
<b>Norfolk Island</b>	<b>(a)</b>	1.II.1913
<b>Austria</b>	<b>(r)</b>	1.II.1913
<b>Bahamas</b>	<b>(a)</b>	1.II.1913
<b>Barbados</b>	<b>(a)</b>	1.II.1913
<b>Belgium</b>	<b>(r)</b>	1.II.1913
<b>Belize</b>	<b>(a)</b>	1.II.1913
<b>Brazil</b>	<b>(r)</b>	31.XII.1913
<b>Canada</b>	<b>(a)</b>	25.IX.1914
<i>(denunciation 22.XI.1994)</i>		
<b>Cape Verde</b>	<b>(a)</b>	20.VII.1914
<b>Cyprus</b>	<b>(a)</b>	1.II.1913
<b>Croatia</b>	<b>(a)</b>	8.X.1991
<b>Denmark</b>	<b>(r)</b>	18.VI.1913
<b>Dominican Republic</b>	<b>(a)</b>	23.VII.1958
<b>Egypt</b>	<b>(a)</b>	19.XI.1943
<b>Fiji</b>	<b>(a)</b>	1.II.1913
<b>Finland</b>	<b>(a)</b>	17.VII.1923
<b>France</b>	<b>(r)</b>	1.II.1913
<b>Gambia</b>	<b>(a)</b>	1.II.1913
<b>Germany</b>	<b>(r)</b>	1.II.1913
<b>Ghana</b>	<b>(a)</b>	1.II.1913
<b>Goa</b>	<b>(a)</b>	20.VII.1914
<b>Greece</b>	<b>(r)</b>	15.X.1913
<b>Grenada</b>	<b>(a)</b>	1.II.1913
<b>Guinea-Bissau</b>	<b>(a)</b>	20.VII.1914
<b>Guyana</b>	<b>(a)</b>	1.II.1913
<b>Haiti</b>	<b>(a)</b>	18.VIII.1951
<b>Hungary</b>	<b>(r)</b>	1.II.1913
<b>India</b>	<b>(a)</b>	1.II.1913
<b>Iran</b>	<b>(a)</b>	26.IV.1966

<b>Ireland</b>	<b>(r)</b>	1.II.1913
<b>Italy</b>	<b>(r)</b>	2.VI.1913
<b>Jamaica</b>	<b>(a)</b>	1.II.1913
<b>Japan</b>	<b>(r)</b>	12.I.1914
<b>Kenya</b>	<b>(a)</b>	1.II.1913
<b>Kiribati</b>	<b>(a)</b>	1.II.1913
<b>Latvia</b>	<b>(a)</b>	2.VIII.1932
<b>Luxembourg</b>	<b>(a)</b>	22.IV.1991
<b>Macao</b>	<b>(a)</b>	20.VII.1914
<b>Malaysia</b>	<b>(a)</b>	1.II.1913
<b>Malta</b>	<b>(a)</b>	1.II.1913
<b>Madagascar</b>	<b>(r)</b>	1.II.1913
<b>Mauritius</b>	<b>(a)</b>	1.II.1913
<b>Mexico</b>	<b>(r)</b>	1.II.1913
<b>Mozambique</b>	<b>(a)</b>	20.VII.1914
<b>Netherlands</b>	<b>(r)</b>	1.II.1913
<b>Newfoundland</b>	<b>(a)</b>	12.XI.1913
<b>New Zealand</b>	<b>(a)</b>	19.V.1913
<b>Nigeria</b>	<b>(a)</b>	1.II.1913
<b>Norway</b>	<b>(r)</b>	12.XI.1913
<i>(denunciation 9.XII.1996)</i>		
<b>Oman</b>	<b>(a)</b>	21.VIII.1975
<b>Papua - New Guinea</b>	<b>(a)</b>	1.II.1913
<b>Paraguay</b>	<b>(a)</b>	22.XI.1967
<b>Poland</b>	<b>(a)</b>	15.X.1921
<b>Portugal</b>	<b>(r)</b>	25.VII.1913
<b>Romania</b>	<b>(r)</b>	1.II.1913
<b>Russian Federation</b>	<b>(a)</b>	10.VII.1936
<b>Saint Kitts and Nevis</b>	<b>(a)</b>	1.II.1913
<b>Saint Lucia</b>	<b>(a)</b>	3.III.1913
<b>Saint Vincent and the Grenadines</b>	<b>(a)</b>	1.II.1913
<b>Solomon Islands</b>	<b>(a)</b>	1.II.1913
<b>Sao Tomé and Príncipe</b>	<b>(a)</b>	20.VII.1914
<b>Seychelles</b>	<b>(a)</b>	1.II.1913
<b>Sierra Leone</b>	<b>(a)</b>	1.II.1913
<b>Singapore</b>	<b>(a)</b>	1.II.1913
<b>Slovenia</b>	<b>(a)</b>	13.X.1993
<b>Somalia</b>	<b>(a)</b>	1.II.1913
<b>Spain</b>	<b>(a)</b>	17.XI.1923
<b>Sri Lanka</b>	<b>(a)</b>	1.II.1913
<b>Sweden</b>	<b>(r)</b>	12.XI.1913
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Syrian Arab Republic</b>	<b>(a)</b>	1.VIII.1974
<b>Timor</b>	<b>(a)</b>	20.VII.1914
<b>Tonga</b>	<b>(a)</b>	13.VI.1978
<b>Trinidad and Tobago</b>	<b>(a)</b>	1.II.1913
<b>Turkey</b>	<b>(a)</b>	4.VII.1955

*Assistance et sauvetage 1910**Assistance and salvage 1910*

<b>Tuvalu</b>	<b>(a)</b>	1.II.1913
<b>United Kingdom (1)</b>	<b>(r)</b>	1.II.1913
<b>Anguilla, Bermuda, Gibraltar, Hong Kong, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks &amp; Caicos Islands, Saint Helena</b>	<b>(a)</b>	1.II.1913
<i>(denunciation 12.XII.1994 effective also for</i>	<b>(r)</b>	1.II.1913
<i>Falkland Islands, Montserrat, South</i>	<b>(a)</b>	21.VII.1915
<i>Georgia and South Sandwich Islands)</i>	<b>(a)</b>	17.VII.1967
<b>United States of America</b>		
<b>Uruguay</b>		
<b>Zaire</b>		

(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 a Bruxelles, le 23 septembre 1910**

Bruxelles, 27 mai 1967

Entré en vigueur: 15 août 1977

**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**

Brussels, 27th May, 1967

Entered into force: 15 August 1977

<b>Austria</b>	<b>(r)</b>	4.IV.1974
<b>Belgium</b>	<b>(r)</b>	11.IV.1973
<b>Brazil</b>	<b>(r)</b>	8.XI.1982
<b>Croatia</b>	<b>(r)</b>	8.X.1991
<b>Egypt</b>	<b>(r)</b>	15.VII.1977
<b>Jersey, Guernsey &amp; Isle of Man</b>	<b>(a)</b>	22.VI.1977
<b>Papua New Guinea</b>	<b>(a)</b>	14.X.1980
<b>Slovenia</b>	<b>(a)</b>	13.X.1993
<b>Syrian Arab Republic</b>	<b>(a)</b>	1.VIII.1974
<b>United Kingdom</b>	<b>(r)</b>	9.IX.1974

**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)*

<b>Belgium</b>	<b>(r)</b>	2.VI.1930
<b>Brazil</b>	<b>(r)</b>	28.IV.1931
<b>Denmark</b>	<b>(r)</b>	2.VI.1930
<i>(denunciation - 30.VI.1983)</i>		
<b>Dominican Republic</b>	<b>(a)</b>	23.VII.1958
<b>Finland</b>	<b>(a)</b>	12.VII.1934
<i>(denunciation - 30.VI.1983)</i>		
<b>France</b>	<b>(r)</b>	23.VIII.1935
<i>(denunciation - 26.X.1976)</i>		
<b>Hungary</b>	<b>(r)</b>	2.VI.1930
<b>Madagascar</b>	<b>(r)</b>	12.VIII.1935
<b>Monaco</b>	<b>(r)</b>	15.V.1931
<i>(denunciation - 24.I.1977)</i>		
<b>Norway</b>	<b>(r)</b>	10.X.1933
<i>(denunciation - 30.VI.1963)</i>		
<b>Poland</b>	<b>(r)</b>	26.X.1936
<b>Portugal</b>	<b>(r)</b>	2.VI.1930
<b>Spain</b>	<b>(r)</b>	2.VI.1930
<b>Sweden</b>	<b>(r)</b>	1.VII.1938
<i>(denunciation - 30.VI.1963)</i>		
<b>Turkey</b>	<b>(a)</b>	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"**

Bruxelles, le 25 août 1924  
Entrée en vigueur: 2 juin 1931

**International convention for  
the unification of certain  
rules of law relating to  
Bills of lading  
and protocol of signature  
"Hague Rules 1924"**

Brussels, 25 August 1924  
Entered into force: 2 June 1931

*(Translation)*

<b>Algeria</b>	<b>(a)</b>	13.IV.1964
<b>Angola</b>	<b>(a)</b>	2.II.1952
<b>Antigua and Barbuda</b>	<b>(a)</b>	2.XII.1930
<b>Argentina</b>	<b>(a)</b>	19.IV.1961
<b>Australia</b>	<b>(a)</b>	4.VII.1955
<b>Norfolk</b>	<b>(a)</b>	4.VII.1955
<b>Bahamas</b>	<b>(a)</b>	2.XII.1930
<b>Barbados</b>	<b>(a)</b>	2.XII.1930
<b>Belgium</b>	<b>(r)</b>	2.VI.1930
<b>Belize</b>	<b>(a)</b>	2.XI.1930
<b>Bolivia</b>	<b>(a)</b>	28.V.1982
<b>Cameroon</b>	<b>(a)</b>	2.XII.1930
<b>Cape Verde</b>	<b>(a)</b>	2.II.1952
<b>Cyprus</b>	<b>(a)</b>	2.XII.1930
<b>Croatia</b>	<b>(r)</b>	8.X.1991
<b>Cuba</b>	<b>(a)</b>	25.VII.1977
<b>Denmark</b>	<b>(a)</b>	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
<b>Dominican Republic</b>	<b>(a)</b>	2.XII.1930
<b>Ecuador</b>	<b>(a)</b>	23.III.1977
<b>Egypt (1)</b>	<b>(a)</b>	29.XI.1943
<b>Fiji</b>	<b>(a)</b>	2.XII.1930
<b>Finland</b>	<b>(a)</b>	1.VII.1939
<i>(denunciation – 1.III.1984)</i>		

(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).

<b>France</b>	<b>(r)</b>	4.I.1937
<b>Gambia</b>	<b>(a)</b>	2.XII.1930
<b>Germany</b>	<b>(r)</b>	1.VII.1939
<b>Ghana</b>	<b>(a)</b>	2.XII.1930
<b>Goa</b>	<b>(a)</b>	2.II.1952
<b>Greece</b>	<b>(a)</b>	23.III.1993
<b>Grenada</b>	<b>(a)</b>	2.XII.1930
<b>Guyana</b>	<b>(a)</b>	2.XII.1930
<b>Guinea-Bissau</b>	<b>(a)</b>	2.II.1952
<b>Hungary</b>	<b>(r)</b>	2.VI.1930
<b>Iran</b>	<b>(a)</b>	26.IV.1966
<b>Ireland</b>	<b>(a)</b>	30.I.1962
<b>Israel</b>	<b>(a)</b>	5.IX.1959
<b>Italy</b>	<b>(r)</b>	7.X.1938
<i>(denunciation – 22.XI.1984)</i>		
<b>Ivory Coast</b>	<b>(a)</b>	15.XII.1961
<b>Jamaica</b>	<b>(a)</b>	2.XII.1930
<b>Japan</b>	<b>(r)</b>	1.VII.1957
<i>(denunciation – 1.VI.1992)</i>		
<b>Kenya</b>	<b>(a)</b>	2.XII.1930
<b>Kiribati</b>	<b>(a)</b>	2.XII.1930
<b>Kuwait</b>	<b>(a)</b>	25.VII.1969
<b>Lebanon</b>	<b>(a)</b>	19.VII.1975
<b>Malaysia</b>	<b>(a)</b>	2.XII.1930
<b>Madagascar</b>	<b>(a)</b>	13.VII.1965
<b>Mauritius</b>	<b>(a)</b>	24.VIII.1970
<b>Monaco</b>	<b>(a)</b>	15.V.1931
<b>Mozambique</b>	<b>(a)</b>	2.II.1952
<b>Nauru</b>	<b>(a)</b>	4.VII.1955
<b>Netherlands</b>	<b>(a)</b>	18.VIII.1956
<i>(denunciation – 26.IV.1982)</i>		
<b>Nigeria</b>	<b>(a)</b>	2.XII.1930
<b>Norway</b>	<b>(a)</b>	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
<b>Papua New Guinea</b>	<b>(a)</b>	4.VII.1955
<b>Paraguay</b>	<b>(a)</b>	22.XI.1967
<b>Peru</b>	<b>(a)</b>	29.X.1964
<b>Poland</b>	<b>(r)</b>	4.VIII.1937
<b>Portugal</b>	<b>(a)</b>	24.XII.1931
<b>Macao</b>	<b>(a)</b>	2.II.1952
<b>Romania</b>	<b>(r)</b>	4.VIII.1937
<b>Sao Tomé and Principe</b>	<b>(a)</b>	2.II.1952
<b>Sarawak</b>	<b>(a)</b>	3.XI.1931
<b>Senegal</b>	<b>(a)</b>	14.II.1978
<b>Seychelles</b>	<b>(a)</b>	2.XII.1930
<b>Sierra-Leone</b>	<b>(a)</b>	2.XII.1930

*Règles de La Haye 1924**Hague Rules 1924*

<b>Singapore</b>	<b>(a)</b>	2.XII.1930
<b>Slovenia</b>	<b>(a)</b>	25.VI.1991*
<b>Solomon Islands</b>	<b>(a)</b>	2.XII.1930
<b>Somalia</b>	<b>(a)</b>	2.XII.1930
<b>Spain</b>	<b>(r)</b>	2.VI.1930
<b>Sri-Lanka</b>	<b>(a)</b>	2.XII.1930
<b>St. Kitts and Nevis</b>	<b>(a)</b>	2.XII.1930
<b>St. Lucia</b>	<b>(a)</b>	2.XII.1930
<b>St. Vincent and the Grenadines</b>	<b>(a)</b>	2.XII.1930
<b>Sweden</b>	<b>(a)</b>	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Syrian Arab Republic</b>	<b>(a)</b>	1.VIII.1974
<b>Tanzania (United Republic of)</b>	<b>(a)</b>	3.XII.1962
<b>Timor</b>	<b>(a)</b>	2.II.1952
<b>Tonga</b>	<b>(a)</b>	2.XII.1930
<b>Trinidad and Tobago</b>	<b>(a)</b>	2.XII.1930
<b>Turkey</b>	<b>(a)</b>	4.VII.1955
<b>Tuvalu</b>	<b>(a)</b>	2.XII.1930
<b>United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)</b>	<b>(r)</b>	2.VI.1930
<i>(denunciation – 13.VI.1977)</i>		
<b>Gibraltar</b>	<b>(a)</b>	2.XII.1930
<i>(denunciation – 22.IX.1977)</i>		
<b>Bermuda, Hong Kong, Falkland Islands and dependencies, Turks &amp; Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.</b>		
<i>(denunciation 20.X.1983)</i>		
<b>Anguilla</b>	<b>(a)</b>	2.XII.1930
<b>Ascension, Saint Helène and Dependencies</b>	<b>(a)</b>	3.XI.1931
<b>United States of America</b>	<b>(r)</b>	29.VI.1937
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

\* Slovenia succeeded to Yugoslavia as of the date of independence of Slovenia on 25th June 1991.

**Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissance, signée a 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 Brussels on 25 August 1924**  
**Visby Rules**

Brussels, 23rd February 1968  
 Entered into force: 23 June, 1977

<b>Belgium</b>	(r)	6.IX.1978
<b>Denmark</b>	(r)	20.XI.1975
<b>Ecuador</b>	(a)	23.III.1977
<b>Egypt</b>	(r)	31.I.1983
<b>Finland</b>	(r)	1.XII.1984
<b>France</b>	(r)	10.VII.1977
<b>Greece</b>	(a)	23.III.1993
<b>Italy</b>	(r)	22.VIII.1985
<b>Lebanon</b>	(a)	19.VII.1975
<b>Netherlands</b>	(r)	26.IV.1982
<b>Norway</b>	(r)	19.III.1974
<b>Poland</b>	(r)	12.II.1980
<b>Singapore</b>	(a)	25.IV.1972
<b>Sri-Lanka</b>	(a)	21.X.1981
<b>Sweden</b>	(r)	9.XII.1974
<b>Switzerland</b>	(r)	11.XII.1975
<b>Syrian Arab Republic</b>	(a)	1.VIII.1974
<b>Tonga</b>	(a)	13.VI.1978
<b>United Kingdom of Great Britain</b>	(r)	1.X.1976
<b>Bermuda, Hong-Kong</b>	(a)	1.XI.1980
<b>Gibraltar</b>	(a)	22.IX.1977
<b>Isle of Man</b>	(a)	1.X.1976
<b>British Antarctic Territories, Caimans, Caicos &amp; Turks Islands, Falklands Islands &amp; Dependencies, Montserrat, Virgin Islands (extension)</b>	(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**

Bruxelles, le 21 décembre 1979  
Entrée en vigueur: 14 février 1984

**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**

Brussels, 21st December, 1979  
Entered into force: 14 February, 1984

<b>Australia</b>	<b>(a)</b>	16.VII.1993
<b>Belgium</b>	<b>(r)</b>	7.IX.1983
<b>Denmark</b>	<b>(a)</b>	3.XI.1983
<b>Finland</b>	<b>(r)</b>	1.XII.1984
<b>France</b>	<b>(r)</b>	18.XI.1986
<b>Georgia</b>	<b>(a)</b>	20.II.1996
<b>Greece</b>	<b>(a)</b>	23.III.1993
<b>Italy</b>	<b>(r)</b>	22.VIII.1985
<b>Japan</b>	<b>(r)</b>	1.III.1993
<b>Mexico</b>	<b>(a)</b>	20.V.1994
<b>Netherlands</b>	<b>(r)</b>	18.II.1986
<b>New Zealand</b>	<b>(a)</b>	20.XII.1994
<b>Norway</b>	<b>(r)</b>	1.XII.1983
<b>Poland</b>	<b>(r)</b>	6.VII.1984
<b>Spain</b>	<b>(r)</b>	6.I.1982
<b>Sweden</b>	<b>(r)</b>	14.XI.1983
<b>Switzerland</b>	<b>(r)</b>	20.I.1988
<b>United Kingdom of Great-Britain and Northern Ireland</b>	<b>(r)</b>	2.III.1982
<b>Bermuda, British Antarctic Territories, Virgin Islands, Caimans, Falkland Islands &amp; Dependencies, Gibraltar, Hong-Kong, Isle of Man, Montserrat, Caicos &amp; Turks Island (extension)</b>	<b>(a)</b>	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)*

<b>Algeria</b>	<b>(a)</b>	13.IV.1964
<b>Argentina</b>	<b>(a)</b>	19.IV.1961
<b>Belgium</b>	<b>(r)</b>	2.VI.1930
<b>Brazil</b>	<b>(r)</b>	28.IV.1931
<b>Cuba</b>	<b>(a)</b>	21.XI.1983
<b>Denmark</b>	<b>(r)</b>	2.VI.1930
<i>(denunciation – 1.III.1965)</i>		
<b>Estonia</b>	<b>(r)</b>	2.VI.1930
<b>Finland</b>	<b>(a)</b>	12.VII.1934
<i>(denunciation – 1.III.1965)</i>		
<b>France</b>	<b>(r)</b>	23.VIII.1935
<b>Haiti</b>	<b>(a)</b>	19.III.1965
<b>Hungary</b>	<b>(r)</b>	2.VI.1930
<b>Iran</b>	<b>(a)</b>	8.IX.1966
<b>Italy</b>	<b>(r)</b>	7.XII.1949
<b>Lebanon</b>	<b>(a)</b>	18.III.1969
<b>Luxembourg</b>	<b>(a)</b>	18.II.1991
<b>Madagascar</b>	<b>(r)</b>	23.VIII.1935
<b>Monaco</b>	<b>(a)</b>	15.V.1931
<b>Norway</b>	<b>(r)</b>	10.X.1933
<i>(denunciation – 1.III.1965)</i>		
<b>Poland</b>	<b>(r)</b>	26.X.1936
<b>Portugal</b>	<b>(a)</b>	24.XII.1931
<b>Romania</b>	<b>(r)</b>	4.VIII.1937
<b>Spain</b>	<b>(r)</b>	2.VI.1930
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Sweden</b>	<b>(r)</b>	1.VII.1938
<i>(denunciation – 1.III.1965)</i>		
<b>Syrian Arab Republic</b>	<b>(a)</b>	14.II.1951
<b>Turkey</b>	<b>(a)</b>	4.VII.1955
<b>Uruguay</b>	<b>(a)</b>	15.IX.1970
<b>Zaire</b>	<b>(a)</b>	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)*

<b>Argentina</b>	<b>(a)</b>	19.IV.1961
<b>Belgium</b>	<b>(r)</b>	8.I.1936
<b>Brazil</b>	<b>(r)</b>	8.I.1936
<b>Chile</b>	<b>(r)</b>	8.I.1936
<b>Cyprus</b>	<b>(a)</b>	19.VII.1988
<b>Denmark</b>	<b>(r)</b>	16.XI.1950
<b>Estonia</b>	<b>(r)</b>	8.I.1936
<b>France</b>	<b>(r)</b>	27.VII.1955
<b>Germany</b>	<b>(r)</b>	27.VI.1936
<b>Greece</b>	<b>(a)</b>	19.V.1951
<b>Hungary</b>	<b>(r)</b>	8.I.1936
<b>Italy</b>	<b>(r)</b>	27.I.1937
<b>Luxembourg</b>	<b>(a)</b>	18.II.1991
<b>Libyan Arab Jamahiriya</b>	<b>(r)</b>	27.I.1937
<b>Madagascar</b>	<b>(r)</b>	27.I.1955
<b>Netherlands</b>	<b>(r)</b>	8.VII.1936
<b>Curaçao, Dutch Indies</b>		
<b>Norway</b>	<b>(r)</b>	25.IV.1939
<b>Poland</b>	<b>(r)</b>	16.VII.1976
<b>Portugal</b>	<b>(r)</b>	27.VI.1938
<b>Romania</b>	<b>(r)</b>	4.VIII.1937
<i>(denunciation – 21.IX.1959)</i>		
<b>Somalia</b>	<b>(r)</b>	27.I.1937
<b>Sweden</b>	<b>(r)</b>	1.VII.1938
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Suriname</b>	<b>(r)</b>	8.VII.1936
<b>Syrian Arab Republic</b>	<b>(a)</b>	17.II.1960
<b>Turkey</b>	<b>(a)</b>	4.VII.1955
<b>United Arab Republic</b>	<b>(a)</b>	17.II.1960
<b>United Kingdom</b>	<b>(r)</b>	3.VII.1979
<b>United Kingdom for Jersey, Guernsey     and Island of Man</b>	<b>(a)</b>	19.V.1988
<b>Uruguay</b>	<b>(a)</b>	15.IX.1970
<b>Zaire</b>	<b>(a)</b>	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

<b>Algeria</b>	(a)	18.VIII.1964
<b>Antigua and Barbuda</b>	(a)	12.V.1965
<b>Argentina</b>	(a)	19.IV.1961
<b>Bahamas</b>	(a)	12.V.1965
<b>Belgium</b>	(r)	10.IV.1961
<b>Belize</b>	(a)	21.IX.1965
<b>Benin</b>	(a)	23.IV.1958
<b>Burkina Fasa</b>	(a)	23.IV.1958
<b>Cameroon</b>	(a)	23.IV.1958
<b>Central African Republic</b>	(a)	23.IV.1958
<b>Comoros</b>	(a)	23.IV.1958
<b>Congo</b>	(a)	23.IV.1958
<b>Costa Rica</b>	(a)	13.VII.1955
<b>Cote d'Ivoire</b>	(a)	23.IV.1958
<b>Croatia</b>	(r)	8.X.1991
<b>Cyprus</b>	(a)	17.III.1994
<b>Djibouti</b>	(a)	23.IV.1958
<b>Dominican Republic</b>	(a)	12.V.1965
<b>Egypt</b>	(r)	24.VIII.1955
<b>Fiji</b>	(a)	10.X.1974
<b>France</b>	(r)	25.V.1957
<b>Overseas Territories</b>	(a)	23.IV.1958
<b>Gabon</b>	(a)	23.IV.1958
<b>Germany</b>	(r)	6.X.1972
<b>Greece</b>	(r)	15.III.1965
<b>Grenada</b>	(a)	12.V.1965
<b>Guinea</b>	(a)	23.IV.1958
<b>Guyana</b>	(a)	29.III.1963
<b>Haute Volta</b>	(a)	23.IV.1958
<b>Holy Seat</b>	(r)	10.VIII.1956
<b>Ireland</b>	(a)	17.X.1989
<b>Italy</b>	(r)	9.XI.1979
<b>Khmere Republic</b>	(a)	12.XI.1959
<b>Kiribati</b>	(a)	21.IX.1965
<b>Luxembourg</b>	(a)	18.II.1991
<b>Madagascar</b>	(a)	23.IV.1958
<b>Mauritania</b>	(a)	23.IV.1958

*Compétence civile 1952**Civil jurisdiction 1952*

<b>Mauritius</b>	(a)	29.III.1963
<b>Morocco</b>	(a)	11.VII.1990
<b>Niger</b>	(a)	23.IV.1958
<b>Nigeria</b>	(a)	7.XI.1963
<b>North Borneo</b>	(a)	29.III.1963
<b>Paraguay</b>	(a)	22.XI.1967
<b>Poland</b>	(a)	14.III.1986
<b>Portugal</b>	(r)	4.V.1957
<b>Romania</b>	(a)	28.XI.1995
<b>Sarawak</b>	(a)	29.VIII.1962
<b>Senegal</b>	(a)	23.IV.1958
<b>Seychelles</b>	(a)	29.III.1963
<b>Slovenia</b>	(a)	13.X.1993
<b>Solomon Islands</b>	(a)	21.IX.1965
<b>Spain</b>	(r)	8.XII.1953
<b>St. Kitts and Nevis</b>	(a)	12.V.1965
<b>St. Lucia</b>	(a)	12.V.1965
<b>St. Vincent and the Grenadines</b>	(a)	12.V.1965
<b>Sudan</b>	(a)	23.IV.1958
<b>Switzerland</b>	(a)	28.V.1954
<b>Syrian Arab Republic</b>	(a)	1.VIII.1974
<b>Tchad</b>	(a)	23.IV.1958
<b>Togo</b>	(a)	23.IV.1958
<b>Tonga</b>	(a)	13.VI.1978
<b>Tuvalu</b>	(a)	21.IX.1965
<b>United Kingdom of Great Britain and</b>		
<b>Northern Ireland</b>	(r)	18.III.1959
<b>Gibraltar, Hong-Kong</b>	(a)	29.III.1963
<b>British Virgin Islands</b>	(a)	29.V.1963
<b>Bermuda</b>	(a)	30.V.1963
<b>Caiman Islands, Montserrat</b>	(a)	12.V.1965
<b>Anguilla, St. Helena</b>	(a)	12.V.1965
<b>Turks Isles and Caicos</b>	(a)	21.IX.1965
<b>Guernsey</b>	(a)	8.XII.1966
<b>Falkland Islands and Dependencies</b>	(a)	17.X.1969
<b>Zaire</b>	(a)	17.VII.1967

**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

<b>Antigua and Barbuda</b>	(a)	12.V.1965
<b>Argentina</b>	(a)	19.IV.1961
<b>Bahamas</b>	(a)	12.V.1965
<b>Belgium</b>	(r)	10.IV.1961
<b>Belize</b>	(a)	21.IX.1965
<b>Benin</b>	(a)	23.IV.1958
<b>Burkina Faso</b>	(a)	23.IV.1958
<b>Burman Union</b>	(a)	8.VII.1953
<b>Cameroon</b>	(a)	23.IV.1958
<b>Central African Republic</b>	(a)	23.IV.1958
<b>Comoros</b>	(a)	23.IV.1958
<b>Congo</b>	(a)	23.IV.1958
<b>Costa Rica</b>	(a)	13.VII.1955
<b>Croatia</b>	(r)	8.X.1991
<b>Cyprus</b>	(a)	17.III.1994
<b>Djibouti</b>	(a)	23.IV.1958
<b>Dominican Republic</b>	(a)	12.V.1965
<b>Egypt</b>	(r)	24.VIII.1955
<b>Fiji</b>	(a)	29.III.1963
<b>France</b>	(r)	20.V.1955
<b>Overseas Territories</b>	(a)	23.IV.1958
<b>Gabon</b>	(a)	23.IV.1958
<b>Germany</b>	(r)	6.X.1972
<b>Greece</b>	(r)	15.III.1965
<b>Grenada</b>	(a)	12.V.1965
<b>Guyana</b>	(a)	19.III.1963
<b>Guinea</b>	(a)	23.IV.1958
<b>Haiti</b>	(a)	17.IX.1954
<b>Haute-Volta</b>	(a)	23.IV.1958
<b>Holy Seat</b>	(r)	10.VIII.1956
<b>Italy</b>	(r)	9.XI.1979
<b>Ivory Coast</b>	(a)	23.IV.1958
<b>Khmere Republic</b>	(a)	12.XI.1956
<b>Kiribati</b>	(a)	21.IX.1965

*Compétence pénale 1952**Penal jurisdiction 1952*

<b>Lebanon</b>	(r)	19.VII.1975
<b>Luxembourg</b>	(a)	18.II.1991
<b>Madagascar</b>	(a)	23.IV.1958
<b>Mauritania</b>	(a)	23.IV.1958
<b>Mauritius</b>	(a)	29.III.1963
<b>Morocco</b>	(a)	11.VII.1990
<b>Netherlands</b>	(r)	
<b>Kingdom in Europe, West Indies and</b>		
<b>Aruba</b>	(r)	25.VI.1971
<b>Niger</b>	(a)	23.IV.1958
<b>Nigeria</b>	(a)	7.XI.1963
<b>North Borneo</b>	(a)	29.III.1963
<b>Paraguay</b>	(a)	22.XI.1967
<b>Portugal</b>	(r)	4.V.1957
<b>Romania</b>	(a)	28.XI.1995
<b>Sarawak</b>	(a)	28.VIII.1962
<b>Senegal</b>	(a)	23.IV.1958
<b>Seychelles</b>	(a)	29.III.1963
<b>Slovenia</b>	(a)	13.X.1993
<b>Solomon Islands</b>	(a)	21.IX.1965
<b>Spain</b>	(r)	8.XII.1953
<b>St. Kitts and Nevis</b>	(a)	12.V.1965
<b>St. Lucia</b>	(a)	12.V.1965
<b>St. Vincent and the Grenadines</b>	(a)	12.V.1965
<b>Sudan</b>	(a)	23.IV.1958
<b>Suriname</b>	(r)	25.VI.1971
<b>Switzerland</b>	(a)	28.V.1954
<b>Syrian Arab Republic</b>	(a)	10.VII.1972
<b>Tchad</b>	(a)	23.IV.1958
<b>Togo</b>	(a)	23.IV.1958
<b>Tonga</b>	(a)	13.VI.1978
<b>Tuvalu</b>	(a)	21.IX.1965
<b>United Kingdom of Great Britain and</b>		
<b>Northern Ireland</b>	(r)	18.III.1959
<b>Gibraltar, Hong-Kong</b>	(a)	29.III.1963
<b>British Virgin Islands</b>	(a)	29.V.1963
<b>Bermuda</b>	(a)	30.V.1963
<b>Anguilla, Caiman Islands, Montserrat,</b>		
<b>St. Helena</b>	(a)	12.V.1965
<b>Turks Islands and Caicos</b>	(a)	21.IX.1965
<b>Guernsey</b>	(a)	8.XII.1966
<b>Falkland Islands and dependencies</b>	(a)	17.X.1969
<b>Viet Nam</b>	(a)	26.XI.1955
<b>Zaire</b>	(a)	17.VII.1967

**Convention internationale pour  
l'unification de certaines  
règles sur la  
Saisie conservatoire  
des navires de mer**

Bruxelles, 10 mai 1952  
Entrée en vigueur: 24 février 1956

**International convention for the  
unification of certain rules  
relating to  
Arrest of sea-going ships**

Brussels, 10th May, 1952  
Entered into force: 24 February, 1956

<b>Algeria</b>	(a)	18.VIII.1964
<b>Antigua and Barbuda</b>	(a)	12.V.1965
<b>Bahamas</b>	(a)	12.V.1965
<b>Belgium</b>	(r)	10.IV.1961
<b>Belize</b>	(a)	21.IX.1965
<b>Benin</b>	(a)	23.IV.1958
<b>Burkina Faso</b>	(a)	23.IV.1958
<b>Cameroon</b>	(a)	23.IV.1958
<b>Central African Republic</b>	(a)	23.IV.1958
<b>Comoros</b>	(a)	23.IV.1958
<b>Congo</b>	(a)	23.IV.1958
<b>Costa Rica</b>	(a)	13.VII.1955
<b>Croatia</b>	(r)	8.X.1991
<b>Cuba</b>	(a)	21.XI.1983
<b>Denmark</b>	(r)	2.V.1989
<b>Djibouti</b>	(a)	23.IV.1958
<b>Dominican Republic</b>	(a)	12.V.1965
<b>Egypt</b>	(r)	24.VIII.1955
<b>Fiji</b>	(a)	29.III.1963
<b>Finland</b>	(r)	21.XII.1995
<b>France</b>	(r)	25.V.1957
<b>Overseas Territories</b>	(a)	23.IV.1958
<b>Gabon</b>	(a)	23.IV.1958
<b>Germany</b>	(r)	6.X.1972
<b>Greece</b>	(r)	27.II.1967
<b>Grenada</b>	(a)	12.V.1965
<b>Guyana</b>	(a)	29.III.1963
<b>Guinea</b>	(a)	12.XII.1994
<b>Haiti</b>	(a)	4.XI.1954
<b>Haute-Volta</b>	(a)	23.IV.1958
<b>Holy Seat</b>	(r)	10.VIII.1956
<b>Ireland</b>	(a)	17.X.1989
<b>Italy</b>	(r)	9.XI.1979
<b>Ivory Coast</b>	(a)	23.IV.1958
<b>Khmere Republic</b>	(a)	12.XI.1956
<b>Kiribati</b>	(a)	21.IX.1965
<b>Latvia</b>	(a)	17.V.1993
<b>Luxembourg</b>	(a)	18.II.1991

*Saisie des navires 1952**Arrest of ships 1952*

<b>Madagascar</b>	<b>(a)</b>	23.IV.1958
<b>Marocco</b>	<b>(a)</b>	11.VII.1990
<b>Mauritania</b>	<b>(a)</b>	23.IV.1958
<b>Mauritius</b>	<b>(a)</b>	29.III.1963
<b>Netherlands</b>	<b>(r)</b>	20.I.1983
<b>Niger</b>	<b>(a)</b>	23.IV.1958
<b>Nigeria</b>	<b>(a)</b>	7.XI.1963
<b>North Borneo</b>	<b>(a)</b>	29.III.1963
<b>Norway</b>	<b>(r)</b>	1.XI.1994
<b>Paraguay</b>	<b>(a)</b>	22.XI.1967
<b>Poland</b>	<b>(a)</b>	16.VII.1976
<b>Portugal</b>	<b>(r)</b>	4.V.1957
<b>Romania</b>	<b>(a)</b>	28.XI.1995
<b>Sarawak</b>	<b>(a)</b>	28.VIII.1962
<b>Senegal</b>	<b>(a)</b>	23.IV.1958
<b>Seychelles</b>	<b>(a)</b>	29.III.1963
<b>Slovenia</b>	<b>(a)</b>	13.X.1993
<b>Solomon Islands</b>	<b>(a)</b>	21.IX.1965
<b>Spain</b>	<b>(r)</b>	8.XII.1953
<b>St. Kitts and Nevis</b>	<b>(a)</b>	12.V.1965
<b>St. Lucia</b>	<b>(a)</b>	12.V.1965
<b>St. Vincent and the Grenadines</b>	<b>(a)</b>	12.V.1965
<b>Sudan</b>	<b>(a)</b>	23.IV.1958
<b>Sweden</b>	<b>(a)</b>	30.IV.1993
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Syrian Arabic Republic</b>	<b>(a)</b>	3.II.1972
<b>Tchad</b>	<b>(a)</b>	23.IV.1958
<b>Togo</b>	<b>(a)</b>	23.IV.1958
<b>Tonga</b>	<b>(a)</b>	13.VI.1978
<b>Tuvalu</b>	<b>(a)</b>	21.IX.1965
<b>United Kingdom of Great Britain and Northern Ireland</b>	<b>(r)</b>	18.III.1959
<b>United Kingdom (Overseas Territories)</b>		
<b>Gibraltar, Hong-Kong</b>	<b>(a)</b>	29.III.1963
<b>British Vigin Islands</b>	<b>(a)</b>	29.V.1963
<b>Bermuda</b>	<b>(a)</b>	30.V.1963
<b>Anguilla, Caiman Islands,     Montserrat, St. Helena</b>	<b>(a)</b>	12.V.1965
<b>Turks Isles and Caicos</b>	<b>(a)</b>	21.IX.1965
<b>Guernsey</b>	<b>(a)</b>	8.XII.1966
<b>Falkland Islands and dependencies</b>	<b>(a)</b>	17.X.1969
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

**Convention internationale  
sur la  
Limitation  
de la responsabilité  
des propriétaires  
de navires de mer  
et protocole de signature**

Bruxelles, le 10 octobre 1957  
Entrée en vigueur: 31 mai 1968

**International convention  
relating to the  
Limitation  
of the liability  
of owners  
of sea-going ships  
and protocol of signature**

Brussels, 10th October, 1957  
Entered into force: 31 May, 1968

<b>Algeria</b>	(a)	18.VIII.1964
<b>Australia</b> ( <i>denunciation – 30.V.1990</i> )	(r)	30.VII.1975
<b>Bahamas</b>	(a)	21.VIII.1964
<b>Barbados</b>	(a)	4.VIII.1965
<b>Belgium</b> ( <i>denunciation – 1.IX.1989</i> )	(r)	31.VII.1975
<b>Belize</b>	(r)	31.VII.1975
<b>Denmark</b> ( <i>denunciation – 1.IV.1984</i> )	(r)	1.III.1965
<b>Dominican Republic</b>	(a)	4.VIII.1965
<b>Egypt (Arab Republic of)</b> ( <i>denunciation – 8.V.1985</i> )		
<b>Fiji</b>	(a)	21.VIII.1964
<b>Finland</b> ( <i>denunciation – 1.IV.1984</i> )	(r)	19.VIII.1964
<b>France</b> ( <i>denunciation – 15.VII.1987</i> )	(r)	7.VII.1959
<b>Germany</b> ( <i>denunciation – 1.IX.1986</i> )	(r)	6.X.1972
<b>Ghana</b>	(a)	26.VII.1961
<b>Grenada</b>	(a)	4.VIII.1965
<b>Guyana</b>	(a)	25.III.1966
<b>Iceland</b>	(a)	16.X.1968
<b>India</b>	(r)	1.VI.1971
<b>Iran</b>	(r)	26.IV.1966
<b>Israel</b>	(r)	30.XI.1967
<b>Japan</b> ( <i>denunciation – 19.V.1983</i> )	(r)	1.III.1976
<b>Kiribati</b>	(a)	21.VIII.1964
<b>Lebanon</b>	(a)	23.XII.1994
<b>Madagascar</b>	(a)	13.VII.1965
<b>Mauritius</b>	(a)	21.VIII.1964
<b>Monaco</b>	(a)	24.I.1977
<b>Netherlands</b> ( <i>denunciation – 1.IX.1989</i> )	(r)	10.XII.1965

*Limitation de responsabilité 1957**Limitation of liability 1957*

<b>Norway</b> <i>(denunciation – 1.IV.1984)</i>	<b>(r)</b>	1.III.1965
<b>Papua New Guinea</b>	<b>(a)</b>	14.III.1980
<b>Poland</b>	<b>(r)</b>	1.XII.1972
<b>Portugal</b>	<b>(r)</b>	8.IV.1968
<b>Seychelles</b>	<b>(a)</b>	21.VIII.1964
<b>Singapore</b>	<b>(a)</b>	17.IV.1963
<b>Solomon Islands</b>	<b>(a)</b>	21.VIII.1964
<b>St. Lucia</b>	<b>(a)</b>	4.VIII.1965
<b>St. Vincent and the Grenadines</b>	<b>(a)</b>	4.VIII.1965
<b>Spain</b>	<b>(r)</b>	16.VII.1959
<b>Sweden</b> <i>(denunciation – 1.IV.1984)</i>	<b>(r)</b>	4.VI.1964
<b>Switzerland</b>	<b>(r)</b>	21.I.1966
<b>Syrian Arab Republic</b>	<b>(a)</b>	10.VII.1972
<b>Tonga</b>	<b>(a)</b>	13.VI.1978
<b>Tuvalu</b>	<b>(a)</b>	21.VIII.1964
<b>United Arab Republic</b>	<b>(a)</b>	7.IX.1965
<b>United Kingdom</b>	<b>(r)</b>	18.II.1959
<b>Isle of Man</b>	<b>(a)</b>	18.XI.1960
<b>Bermuda, British Antarctic Territories,     Falkland and Dependencies, Gibraltar,     Hong Kong, British Virgin Islands</b>	<b>(a)</b>	21.VIII.1964
<b>Guernsey and Jersey</b>	<b>(a)</b>	21.X.1964
<b>Caiman Islands, Montserrat,     Caicos and Turks Isles</b>	<b>(a)</b>	4.VIII.1965
<b>Vanuatu</b>	<b>(a)</b>	8.XII.1966
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

**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

**Australia**  
**Belgium**  
**Luxembourg**  
**Poland**  
**Portugal**  
**Spain**  
**Switzerland**  
**United Kingdom of Great Britain and Northern Ireland**

*(denunciation – 1.XII.1985)*

*Isle of Man, Bermuda, Falkland and Dependencies, Gibraltar, Hong-Kong, British Virgin Islands, Guernsey and Jersey, Cayman Islands, Montserrat, Caicos and Turks Isles*

*(denunciation – 1.XII.1985)*

**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

**(r)** 30.XI.1983  
**(r)** 7.IX.1983  
**(a)** 18.II.1991  
**(r)** 6.VII.1984  
**(r)** 30.IV.1982  
**(r)** 14.V.1982  
**(r)** 20.I.1988  
**(r)** 2.III.1982

**Convention internationale sur les Passagers Clandestins**

Bruxelles, 10 octobre 1957  
Pas encore en vigueur

**Belgium**  
**Denmark**  
**Finland**  
**Italy**  
**Luxembourg**  
**Madagascar**  
**Morocco**  
**Norway**  
**Peru**  
**Sweden**

**International convention relating to Stowaways**

Brussels, 10th October 1957  
Not yet in force

**(r)** 31.VII.1975  
**(r)** 16.XII.1963  
**(r)** 2.II.1966  
**(r)** 24.V.1963  
**(a)** 18.II.1991  
**(a)** 13.VII.1965  
**(a)** 22.I.1959  
**(r)** 24.V.1962  
**(r)** 23.XI.1961  
**(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

<b>Algeria</b>	<b>(a)</b>	2.VII.1973
<b>Cuba</b>	<b>(a)</b>	7.I.1963
<b>France</b>	<b>(r)</b>	4.III.1965
<i>(denunciation – 3.XII.1975)</i>		
<b>Haïti</b>	<b>(a)</b>	19.IV.1989
<b>Iran</b>	<b>(a)</b>	26.IV.1966
<b>Madagascar</b>	<b>(a)</b>	13.VII.1965
<b>Morocco</b>	<b>(r)</b>	15.VII.1965
<b>Peru</b>	<b>(a)</b>	29.X.1964
<b>Switzerland</b>	<b>(r)</b>	21.I.1966
<b>Tunisia</b>	<b>(a)</b>	18.VII.1974
<b>United Arab Republic</b>	<b>(r)</b>	15.V.1964
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

**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

**Convention internationale  
relative à la responsabilité  
des exploitants de  
Navires nucléaires  
et protocole additionnel**

Bruxelles, 25 mai 1962  
Pas encore en vigueur

<b>Lebanon</b>	<b>(r)</b>	3.VI.1975
<b>Madagascar</b>	<b>(a)</b>	13.VII.1965
<b>Netherlands</b>	<b>(r)</b>	20.III.1974
<b>Portugal</b>	<b>(r)</b>	31.VII.1968
<b>Suriname</b>	<b>(r)</b>	20.III.1974
<b>Syrian Arab Republic</b>	<b>(a)</b>	1.VIII.1974
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

**International convention  
relating to the liability  
of operators of  
Nuclear ships  
and additional protocol**

Brussels, 25th May 1962  
Not yet in force

**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 en 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 recues 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.

**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 a Bruxelles, le 29 novembre 1969  
Entrée en vigueur: 19 juin 1975

<b>Albania</b>	(a)	6.IV.1994
<b>Algeria</b>	(a)	14.VI.1974
<b>Australia</b>	(r)	7.XI.1983
<i>(denunciation 22 June 1988)</i>		
<b>Bahamas</b>	(a)	22.VII.1976
<b>Barbados</b>	(a)	6.V.1994
<b>Bahrain</b>	(a)	3.V.1996
<b>Belgium</b>	(r)	12.I.1977
<b>Belize</b>	(a)	2.IV.1991
<b>Benin</b>	(a)	1.XI.1985
<b>Brazil</b>	(r)	17.XII.1976
<b>Brunei Darussalam</b>	(a)	29.IX.1992
<b>Cambodia</b>	(a)	28.XI.1994
<b>Cameroon</b>	(r)	14.V.1984
<b>Canada</b>	(a)	24.I.1989
<b>Chile</b>	(a)	2.VIII.1977
<b>China</b>	(a)	30.I.1980
<b>Colombia</b>	(a)	26.III.1990
<b>Côte d'Ivoire</b>	(r)	21.VI.1973
<b>Croatia</b>	(r)	8.X.1991
<b>Cyprus</b>	(a)	19.VI.1989
<b>Denmark</b>	(a)	2.IV.1975
<b>Djibouti</b>	(a)	1.III.1990
<b>Dominican Republic</b>	(r)	2.IV.1975
<b>Ecuador</b>	(a)	23.XII.1976
<b>Equatorial Guinea</b>	(a)	24.IV.1996
<b>Egypt</b>	(a)	3.II.1989
<b>Estonia</b>	(a)	1.XII.1992
<b>Fiji</b>	(a)	15.VIII.1972
<b>Finland</b>	(r)	10.X.1980
<b>France</b>	(r)	17.III.1975
<b>Gabon</b>	(a)	21.I.1982
<b>Gambia</b>	(a)	1.XI.1991
<b>Germany</b>	(r)	20.V.1975
<b>Georgia</b>	(a)	19.IV.1994
<b>Ghana</b>	(r)	20.IV.1978
<b>Greece</b>	(a)	29.VI.1976
<b>Guatemala</b>	(a)	20.X.1982

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*CLC 1969*

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<b>Iceland</b>	<b>(r)</b>	17.VII.1980
<b>India</b>	<b>(a)</b>	1.V.1987
<b>Indonesia</b>	<b>(r)</b>	1.IX.1978
<b>Ireland</b>	<b>(r)</b>	19.XI.1992
<b>Italy</b>	<b>(r)</b>	27.II.1979
<b>Japan</b>	<b>(a)</b>	3.VI.1976
<b>Kazakhstan</b>	<b>(a)</b>	7.III.1994
<b>Kenya</b>	<b>(a)</b>	15.XII.1992
<b>Korea (Rep.of)</b>	<b>(a)</b>	18.XII.1978
<b>Kuwait</b>	<b>(a)</b>	2.IV.1981
<b>Latvia</b>	<b>(a)</b>	10.VII.1992
<b>Lebanon</b>	<b>(a)</b>	9.IV.1974
<b>Liberia</b>	<b>(a)</b>	25.IX.1972
<b>Luxembourg</b>	<b>(a)</b>	14.II.1991
<b>Maldives</b>	<b>(a)</b>	16.III.1981
<b>Malta</b>	<b>(a)</b>	27.IX.1991
<b>Marshall Islands</b>	<b>(a)</b>	24.I.1994
<b>Mauritania</b>	<b>(a)</b>	17.XI.1995
<b>Mauritius</b>	<b>(a)</b>	6.IV.1995
<b>Mexico</b>	<b>(a)</b>	13.V.1994
<b>Monaco</b>	<b>(r)</b>	21.VIII.1975
<b>Morocco</b>	<b>(a)</b>	11.IV.1974
<b>Netherlands</b>	<b>(r)</b>	9.IX.1975
<b>New Zealand</b>	<b>(a)</b>	27.IV.1976
<b>Nicaragua</b>	<b>(a)</b>	4.VI.1996
<b>Nigeria</b>	<b>(a)</b>	7.V.1981
<b>Norway</b>	<b>(a)</b>	21.III.1975
<b>Oman</b>	<b>(a)</b>	24.I.1985
<b>Panama</b>	<b>(r)</b>	7.I.1976
<b>Papua New Guinea</b>	<b>(a)</b>	12.III.1980
<b>Peru</b>	<b>(a)</b>	24.II.1987
<b>Poland</b>	<b>(r)</b>	18.III.1976
<b>Portugal</b>	<b>(r)</b>	26.XI.1976
<b>Qatar</b>	<b>(a)</b>	2.VI.1988
<b>Russian Federation</b>	<b>(a)</b>	24.VI.1975
<b>Saint Kitts and Nevis</b>	<b>(a)</b>	14.IX.1994
<b>Saudi Arabia</b>	<b>(a)</b>	15.IV.1993
<b>St.-Vincent and the Grenadines</b>	<b>(a)</b>	19.VI.1989
<b>Senegal</b>	<b>(a)</b>	27.III.1972
<b>Seychelles</b>	<b>(a)</b>	12.IV.1988
<b>Sierra Leone</b>	<b>(a)</b>	13.VIII.1993
<b>Singapore</b>	<b>(a)</b>	16.IX.1981
<b>Slovenia (succession)</b>	<b>(a)</b>	25.VI.1991
<b>South Africa</b>	<b>(a)</b>	17.III.1976
<b>Spain</b>	<b>(r)</b>	8.XII.1975
<b>Sri Lanka</b>	<b>(a)</b>	12.IV.1983
<b>Sweden</b>	<b>(r)</b>	17.III.1975

<b>Switzerland</b>	<b>(r)</b>	15.XII.1987
<b>Syrian Arab Republic</b>	<b>(a)</b>	6.II.1975
<b>Tonga</b>	<b>(a)</b>	1.II.1996
<b>Tunisia</b>	<b>(a)</b>	4.V.1976
<b>Tuvalu (succession)</b>	<b>(a)</b>	1.X.1978
<b>United Arab Emirates</b>	<b>(a)</b>	15.XII.1983
<b>United Kingdom</b>	<b>(r)</b>	17.III.1975
<b>Vanuatu</b>	<b>(a)</b>	2.II.1983
<b>Venezuela</b>	<b>(a)</b>	21.I.1992
<b>Yemen</b>	<b>(a)</b>	6.III.1979
<b>Yugoslavia</b>	<b>(r)</b>	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:

<b>Anguilla</b>	8.V.1984
<b>Bailiwick of Jersey and Guernsey, Isle of Man</b>	1.III.1976
<b>Bermuda</b>	1.III.1976
<b>Belize</b>	1.IV.1976
<b>British Indian Ocean Territory</b>	1.IV.1976
<b>British Virgin Islands</b>	1.IV.1976
<b>Cayman Islands</b>	1.IV.1976
<b>Falkland Islands and Dependencies</b>	1.IV.1976
<b>Gibraltar</b>	1.IV.1976
<b>Gilbert Islands</b>	1.IV.1976
<b>Hong-Kong</b>	1.IV.1976
<b>Montserrat</b>	1.IV.1976
<b>Pitcairn</b>	1.IV.1976
<b>St. Helena and Dependencies</b>	1.IV.1976
<b>Seychelles</b>	1.IV.1976
<b>Solomon Islands</b>	1.IV.1976
<b>Turks and Caicos Islands</b>	1.IV.1976
<b>Tuvalu</b>	1.IV.1976
<b>United Kingdom Sovereign Base</b>	1.IV.1976
<b>Areas of Akrotiri and Dhekelia</b>	1.IV.1976
<b>in the Island of Cyprus</b>	1.IV.1976

*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

<b>Australia</b> <i>(denunciation 22 June 1988)</i>	<b>(a)</b>	7.XI.1983
<b>Bahamas</b>	<b>(acc)</b>	3.III.1980
<b>Bahrain</b>	<b>(a)</b>	3.V.1996
<b>Belgium</b>	<b>(a)</b>	15.VI.1989
<b>Belize</b>	<b>(a)</b>	2.IV.1991
<b>Brunei Darussalam</b>	<b>(a)</b>	29.IX.1992
<b>Cameroon</b>	<b>(a)</b>	14.V.1984
<b>Canada</b>	<b>(a)</b>	24.I.1989
<b>China</b>	<b>(a)</b>	29.IX.1986
<b>Colombia</b>	<b>(a)</b>	26.III.1990
<b>Cyprus</b>	<b>(a)</b>	19.VI.1989
<b>Denmark</b>	<b>(a)</b>	3.VI.1981
<b>Egypt</b>	<b>(a)</b>	3.II.1989
<b>Finland</b>	<b>(a)</b>	8.I.1981
<b>France</b>	<b>(AA)</b>	7.XI.1980
<b>Germany</b>	<b>(r)</b>	28.VIII.1980
<b>Greece</b>	<b>(a)</b>	10.V.1989
<b>Georgia</b>	<b>(a)</b>	25.VIII.1995
<b>India</b>	<b>(a)</b>	1.V.1987
<b>Ireland</b>	<b>(a)</b>	19.XI.1992
<b>Italy</b>	<b>(a)</b>	3.VI.1983
<b>Korea, Republic of</b>	<b>(a)</b>	8.XII.1992
<b>Kuwait</b>	<b>(a)</b>	1.VII.1981
<b>Liberia</b>	<b>(a)</b>	17.II.1981
<b>Luxemburg</b>	<b>(a)</b>	14.II.1991
<b>Maldives</b>	<b>(a)</b>	14.VI.1981
<b>Malta</b>	<b>(a)</b>	27.IX.1991
<b>Mauritania</b>	<b>(a)</b>	17.XI.1995
<b>Mexico</b>	<b>(a)</b>	13.V.1994
<b>Netherlands</b>	<b>(a)</b>	3.VIII.1982
<b>Nicaragua</b>	<b>(a)</b>	4.VI.1996
<b>Norway</b>	<b>(a)</b>	17.VII.1978
<b>Oman</b>	<b>(a)</b>	24.I.1985
<b>Peru</b>	<b>(a)</b>	24.II.1987
<b>Poland</b>	<b>(a)</b>	30.X.1985

CLC PROT 1976

CLC PROT 1984

<b>Portugal</b>	(a)	2.I.1986
<b>Qatar</b>	(a)	2.VI.1988
<b>Russian Federation</b>	(a)	2.XII.1988
<b>Saudi Arabia</b>	(a)	15.IV.1993
<b>Singapore</b>	(a)	15.XII.1981
<b>Spain</b>	(a)	22.X.1981
<b>Sweden</b>	(r)	7.VII.1978
<b>Switzerland</b>	(a)	15.XII.1987
<b>United Arab Emirates</b>	(a)	14.III.1984
<b>United Kingdom (1)</b>	(r)	31.I.1980
<b>Vanuatu</b>	(a)	13.I.1989
<b>Venezuela</b>	(a)	21.I.1992
<b>Yemen</b>	(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.

<b>Australia</b>	(a)	22.VI.1988
<b>France</b>	(r)	8.IX.1987
<b>Germany</b>	(r)	18.X.1988
<b>Luxemburg</b>	(a)	14.II.1991
<b>Morocco</b>	(r)	31.XII.1992
<b>Peru</b>	(a)	26.VIII.1987
<b>St.-Vincent and the Grenadines</b>	(a)	19.IV.1989
<b>South Africa</b>	(a)	31.I.1986
<b>Venezuela</b>	(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

**Australia**  
**Bahrain**  
**Denmark**  
**Egypt**  
**Finland**  
**France**  
**Finland**  
**Greece**  
**Germany**  
**Japan**  
**Liberia**  
**Marshall Islands**  
**Mexico**  
**Norway**  
**Oman**  
**Spain**  
**Sweden**  
**Switzerland**  
**United Kingdom**

**Protocole à la Convention  
Internationale sur la  
Responsabilité civile pour  
les dommages dus à la  
pollution par les  
hydrocarbures, 1969****(CLC PROT 1992)**

Signé à Londres,  
le 19 novembre 1992  
Entrée en vigueur: 30 May 1996

<b>(a)</b>	9.X.1995
<b>(a)</b>	3.V.1996
<b>(r)</b>	30.V.1995
<b>(a)</b>	21.IV.1995
<b>(a)</b>	8.I.1981
<b>(A)</b>	29.IX.1994
<b>(a)</b>	24.XI.1995
<b>(r)</b>	9.X.1995
<b>(r)</b>	29.IX.1994
<b>(a)</b>	13.VIII.1994
<b>(a)</b>	5.X.1995
<b>(a)</b>	16.X.1995
<b>(a)</b>	13.V.1994
<b>(r)</b>	26.V.1995
<b>(a)</b>	8.VII.1994
<b>(a)</b>	6.VII.1995
<b>(r)</b>	25.V.1995
<b>(a)</b>	4.VII.1996
<b>(a)</b>	29.IX.1994

**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

<b>Albania</b>	<b>(a)</b>	6.IV.1994
<b>Algeria</b>	<b>(r)</b>	2.VI.1975
<b>Australia</b>	<b>(a)</b>	10.X.1994
<b>Bahamas</b>	<b>(a)</b>	22.VII.1976
<b>Bahrain</b>	<b>(a)</b>	3.V.1996
<b>Barbados</b>	<b>(a)</b>	6.V.1994
<b>Belgium</b>	<b>(r)</b>	1.XII.1994
<b>Benin</b>	<b>(a)</b>	1.XI.1985
<b>Brunei Darussalam</b>	<b>(a)</b>	29.IX.1992
<b>Cameroon</b>	<b>(a)</b>	14.V.1984
<b>Canada</b>	<b>(a)</b>	24.I.1989
<b>Cote d'Ivoire</b>	<b>(a)</b>	5.X.1987
<b>Croatia (1)</b>	<b>(r)</b>	8.X.1991
<b>Cyprus</b>	<b>(a)</b>	26.VII.1989
<b>Denmark</b>	<b>(a)</b>	2.IV.1975
<b>Djibouti</b>	<b>(a)</b>	1.III.1990
<b>Estonia</b>	<b>(a)</b>	1.XII.1992
<b>Fiji</b>	<b>(a)</b>	4.III.1983
<b>Finland</b>	<b>(r)</b>	10.X.1980
<b>France</b>	<b>(a)</b>	11.V.1978
<b>Gabon</b>	<b>(a)</b>	21.I.1982
<b>Gambia</b>	<b>(a)</b>	1.XI.1991
<b>Germany</b>	<b>(r)</b>	30.XII.1976
<b>Ghana</b>	<b>(r)</b>	20.IV.1978
<b>Greece</b>	<b>(a)</b>	16.XII.1986
<b>Iceland</b>	<b>(a)</b>	17.VII.1980
<b>India</b>	<b>(a)</b>	10.VII.1990
<b>Indonesia</b>	<b>(a)</b>	1.IX.1978
<b>Ireland</b>	<b>(r)</b>	19.XI.1992
<b>Italy</b>	<b>(a)</b>	27.II.1979
<b>Japan</b>	<b>(r)</b>	7.VII.1976
<b>Kenya</b>	<b>(a)</b>	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*

<b>Korea, Republic of</b>	(a)	8.XII.1992
<b>Kuwait</b>	(a)	2.IV.1981
<b>Liberia</b>	(a)	25.IX.1972
<b>Maldives</b>	(a)	16.III.1981
<b>Malta</b>	(a)	27.IX.1991
<b>Marshall Islands</b>	(a)	30.XI.1994
<b>Mauritania</b>	(a)	17.XI.1995
<b>Mexico</b>	(a)	13.V.1994
<b>Monaco</b>	(a)	23.VIII.1979
<b>Morocco</b>	(r)	31.XII.1992
<b>Netherlands</b>	(A A)	3.VIII.1982
<b>Nigeria</b>	(a)	11.XI.1987
<b>Norway</b>	(r)	21.III.1975
<b>Oman</b>	(a)	10.V.1985
<b>Papua New Guinea</b>	(a)	12.III.1980
<b>Poland</b>	(r)	16.IX.1985
<b>Portugal</b>	(r)	11.IX.1985
<b>Qatar</b>	(a)	2.VI.1988
<b>Russian Federation (2)</b>	(a)	17.VI.1987
<b>Saint Kitts and Nevis</b>	(a)	14.IX.1994
<b>Seychelles</b>	(a)	12.IV.1988
<b>Sierra Leone</b>	(a)	13.VIII.1993
<b>Slovenia (succession)</b>	(a)	25.VI.1991
<b>Spain</b>	(a)	8.X.1981
<b>Sri Lanka</b>	(a)	12.IV.1983
<b>Sweden</b>	(r)	17.III.1975
<b>Switzerland</b>	(r)	4.VII.1996
<b>Syrian Arab Republic</b>	(a)	6. II.1975
<b>Tonga</b>	(a)	1.II.1996
<b>Tunisia</b>	(a)	4.V.1976
<b>Tuvalu</b>	(succession)	
<b>United Arab Emirates</b>	(a)	15.XII.1983
<b>United Kingdom (3)</b>	(r)	2.IV.1976
<b>Yanuatu</b>	(a)	13.I.1989
<b>Venezuela</b>	(a)	21.I.1992
<b>Yugoslavia</b>	(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

**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 a Londres, le 19 novembre 1976  
Entré en vigueur:  
22 Novembre 1994

<b>Albania</b>	<b>(a)</b>	6.IV.1994
<b>Australia</b>	<b>(a)</b>	10.X.1994
<b>Bahamas</b>	<b>(A)</b>	3.III.1980
<b>Bahrain</b>	<b>(a)</b>	3.V.1996
<b>Barbados</b>	<b>(a)</b>	6.V.1994
<b>Belgium</b>	<b>(r)</b>	1.XII.1994
<b>Canada</b>	<b>(a)</b>	21.II.1995
<b>Cyprus</b>	<b>(a)</b>	26.VII.1989
<b>Denmark</b>	<b>(a)</b>	3.VI.1981
<b>Finland</b>	<b>(a)</b>	8.I.1981
<b>France</b>	<b>(a)</b>	7.XI.1980
<b>Germany</b>	<b>(r)</b>	28.VIII.1980
<b>Greece</b>	<b>(a)</b>	9.X.1995
<b>Iceland</b>	<b>(a)</b>	24.III.1994
<b>India</b>	<b>(a)</b>	10.VII.1990
<b>Ireland</b>	<b>(a)</b>	19.XI.1992
<b>Italy</b>	<b>(a)</b>	21.IX.1983
<b>Japan</b>	<b>(a)</b>	24.VIII.1994
<b>Liberia</b>	<b>(a)</b>	17.II.1981
<b>Malta</b>	<b>(a)</b>	27.IX.1991
<b>Marshall Islands</b>	<b>(a)</b>	16.X.1995
<b>Mexico</b>	<b>(a)</b>	13.V.1994
<b>Morocco</b>	<b>(a)</b>	31.XII.1992
<b>Netherlands</b>	<b>(a)</b>	1.XI.1982
<b>Nor way</b>	<b>(a)</b>	17.VII.1978
<b>Poland</b>	<b>(a)</b>	30.X.1985
<b>Portugal</b>	<b>(a)</b>	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*

<b>Russian Federation</b>	<b>(a)</b>	30.I.1989
<b>Spain</b>	<b>(a)</b>	5.IV.1982
<b>Sweden</b>	<b>(r)</b>	7.VII.1978
<b>United Kingdom (2)</b>	<b>(r)</b>	31.I.1980
<b>Vanuatu</b>	<b>(a)</b>	13.I.1989
<b>Venezuela</b>	<b>(a)</b>	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 a Londres, le 25 mai 1984  
Pas encore entré en vigueur.

<b>France</b>	<b>(AA)</b>	8.IX.1987
<b>Germany</b>	<b>(r)</b>	18.X.1988
<b>Morocco</b>	<b>(r)</b>	31.XII.1992
<b>Venezuela</b>	<b>(a)</b>	21.I.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,  
25 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 a Londres,  
le 27 novembre 1992  
Entrée en vigueur: 30 may 1996

<b>Australia</b>	<b>(a)</b>	9.X.1995
<b>Bahrain</b>	<b>(a)</b>	3.V.1996
<b>Denmark</b>	<b>(r)</b>	30.V.1995
<b>Egypt</b>	<b>(a)</b>	21.IV.1995
<b>Finland</b>	<b>(a)</b>	24.XI.1995
<b>France</b>	<b>(A)</b>	29.IX.1994
<b>Greece</b>	<b>(r)</b>	9.X.1995
<b>Germany</b>	<b>(r)</b>	29.IX.1994
<b>Japan</b>	<b>(a)</b>	13.VIII.1994
<b>Liberia</b>	<b>(a)</b>	5.X.1995
<b>Marshall Islands</b>	<b>(a)</b>	16.X.1995
<b>Mexico</b>	<b>(a)</b>	13.V.1994
<b>Norway</b>	<b>(r)</b>	26.V.1995
<b>Oman</b>	<b>(a)</b>	8.VII.1994
<b>Spain</b>	<b>(a)</b>	6.VII.1995
<b>Sweden</b>	<b>(r)</b>	25.V.1995
<b>Switzerland</b>	<b>(a)</b>	4.VII.1996
<b>United Kingdom</b>	<b>(a)</b>	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 9 la  
Responsabilité Civile dans  
le Domaine du  
Transport Maritime  
de matières nucléaires  
(NUCLEAR 1971)**

Signée a Bruxelles,  
le 17 décembre 1971  
Entrée en vigueur: 15 juillet 1975

<b>Argentina</b>	<b>(a)</b>	18.V.1981
<b>Belgium</b>	<b>(r)</b>	15.VI.1989
<b>Denmark (1)</b>	<b>(r)</b>	4.IX.1974
<b>Finland</b>	<b>(A)</b>	6.VI.1991
<b>France</b>	<b>(r)</b>	2.II.1973
<b>Gabon</b>	<b>(a)</b>	21.I.1982
<b>Germany</b>	<b>(r)</b>	1.X.1975
<b>Italy</b>	<b>(r)</b>	21.VII.1980
<b>Liberia</b>	<b>(a)</b>	17.II.1981
<b>Netherlands</b>	<b>(a)</b>	1.VIII.1991
<b>Norway</b>	<b>(r)</b>	16.IV.1975
<b>Spain</b>	<b>(a)</b>	21.V.1974
<b>Sweden</b>	<b>(r)</b>	22.XI.1974
<b>Yemen</b>	<b>(a)</b>	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

<b>Argentina</b>	(a)	26.V.1983
<b>Bahamas</b>	(a)	7.VI.1983
<b>Belgium</b>	(a)	15.VI.1989
<b>Egypt</b>	(a)	18.X.1991
<b>Equatorial Guinea</b>	(a)	24.IV.1996
<b>Germany (1)</b>	(a)	29.VII.1979
<b>Greece</b>	(A)	3.VII.1991
<b>Liberia</b>	(a)	17.II.1981
<b>Luxemburg</b>	(a)	14.II.1991
<b>Jordan</b>	(a)	3.X.1995
<b>Malawi</b>	(a)	9.III.1993
<b>Poland</b>	(r)	28.I.1987
<b>Russian Federation (2)</b>	(a)	27.IV.1983
<b>Spain</b>	(a)	8.X.1981
<b>Switzerland</b>	(r)	15.XII.1987
<b>Tonga</b>	(a)	15.II.1977
<b>United Kingdom (3)</b>	(r)	31.I.1980
<b>Vanuatu</b>	(a)	13.I.1989
<b>Yemen</b>	(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

<b>Argentina</b>	<b>(a)</b>	28.IV.1987
<b>Bahamas</b>	<b>(a)</b>	28.IV.1987
<b>Belgium</b>	<b>(a)</b>	15.VI.1989
<b>Greece</b>	<b>(a)</b>	3.VII.1991
<b>Liberia</b>	<b>(a)</b>	28.IV.1987
<b>Luxemburg</b>	<b>(a)</b>	14.II.1991
<b>Poland</b>	<b>(a)</b>	28.IV.1987
<b>Russian Federation (1)</b>	<b>(a)</b>	30.I.1989
<b>Spain</b>	<b>(a)</b>	28.IV.1987
<b>Switzerland</b>	<b>(a)</b>	15.XII.1987
<b>United Kingdom (2)</b>	<b>(r)</b>	28.IV.1987
<b>Vanuatu</b>	<b>(a)</b>	13.I.1989
<b>Yemen</b>	<b>(a)</b>	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

<b>Egypt</b>	<b>(a)</b>	18.X.1991
<b>Spain</b>	<b>(a)</b>	24.II.1993

**Convention on  
Limitation of Liability  
for maritime claims**

(LLMC 1976)

Done at London, 19 November 1976  
Entered into force: 1 December, 1986

**Australia**  
**Bahamas**  
**Belgium**  
**Benin**  
**Croatia**  
**Denmark**  
**Egypt**  
**Equatorial Guinea**  
**Finland**  
**France**  
**Georgia**  
**Germany**  
**Greece**  
**Japan**  
**Liberia**  
**Mexico**  
**Netherlands**  
**Norway**  
**Poland**  
**Spain**  
**Sweden**  
**Switzerland**  
**United Kingdom**  
**Vanuatu**  
**Yemen**

**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

(a) 20.II.1991  
(a) 7.VI.1983  
(a) 15.VI.1989  
(a) 1.XI.1985  
(a) 2.III.1993  
(r) 30.V.1984  
(a) 30.III.1988  
(a) 24.IV.1996  
(r) 8.V.1984  
(AA) 1.VII.1981  
(a) 20.II.1996  
(r) 12.V.1987  
(a) 3.VII.1991  
(a) 4.VI.1982  
(a) 17.II.1981  
(a) 13.V.1994  
(a) 15.V.1990  
(r) 30.III.1984  
(a) 28.IV.1986  
(r) 13.XI.1981  
(r) 30.III.1984  
(a) 15.XII.1987  
(r) 31.I.1980  
(a) 14.IX.1992  
(a) 6.III.1979

**Protocol of 1996 to amend  
the convention on  
Limitation of Liability  
for maritime claims, 1976**

(LLMC PROT 1996)

Done at London, 3 May 1996  
Not yet in force

**Protocole de 1996 modifiant  
la convention de 1976 sur la  
Limitation de la  
Responsabilité en matière  
de créances maritimes**

(LLMC PROT 1996)

Signée à Londres le 3 mai 1996  
Pas encore en vigueur

*Salvage 1989**Oil pollution preparedness 1990*

**International Convention on  
Salvage, 1989  
(SALVAGE 1989)**

Done at London: 28 April 1989  
Entered into force: 14 July 1996

**Convention Internationale de  
1989 sur l'Assistance  
(ASSISTANCE 1989)**

Signée a Londres le 28 avril 1989  
Entrée en vigueur: 14 juillet 1996

<b>Canada</b>	<b>(r)</b>	14.XI.1994
<b>China</b>	<b>(a)</b>	30.III.1994
<b>Denmark</b>	<b>(r)</b>	30.V.1995
<b>Egypt</b>	<b>(a)</b>	14.III.1991
<b>Georgia</b>	<b>(a)</b>	25.VIII.1995
<b>Greece</b>	<b>(a)</b>	3.VI.1996
<b>India</b>	<b>(a)</b>	18.X.1995
<b>Iran (Islamic Republic of)</b>	<b>(a)</b>	1.VIII.1994
<b>Ireland</b>	<b>(r)</b>	6.VI.1995
<b>Italy</b>	<b>(r)</b>	14.VII.1995
<b>Jordan</b>	<b>(a)</b>	3.X.1995
<b>Marshall Islands</b>	<b>(a)</b>	16.X.1995
<b>Mexico</b>	<b>(r)</b>	10.X.1991
<b>Nigeria</b>	<b>(r)</b>	11.X.1990
<b>Oman</b>	<b>(a)</b>	14.X.1991
<b>Saudi Arabia</b>	<b>(a)</b>	16.XII.1991
<b>Sweden</b>	<b>(r)</b>	19.XII.1995
<b>Switzerland</b>	<b>(r)</b>	12.III.1993
<b>United Arab Emirates</b>	<b>(a)</b>	4.X.1993
<b>United Kingdom (1)</b>	<b>(r)</b>	29.IX.1994
<b>United States</b>	<b>(r)</b>	27.III.1992

(1) Its ratification to be effective in respect of: The Bailiwick of Jersey, The Isle of Man, Falkland Islands, Montserrat, South Georgia and the South Sandwich Islands

**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 a Londres le 30 novembre 1990  
Pas encore en vigueur.

<b>Argentina</b>	<b>(r)</b>	13.VII.1994
<b>Australia</b>	<b>(a)</b>	6.VII.1992
<b>Canada</b>	<b>(a)</b>	7.III.1994

<b>Egypt</b>	<b>(r)</b>	29.VI.1992
<b>Finland</b>	<b>(AA)</b>	21.VI.1993
<b>France</b>	<b>(AA)</b>	21.VII.1993
<b>Germany</b>	<b>(r)</b>	15.II.1995
<b>Greece</b>	<b>(r)</b>	7.III.1995
<b>Iceland</b>	<b>(r)</b>	6.XI.1992
<b>Mexico</b>	<b>(a)</b>	13.V.1994
<b>Netherlands</b>	<b>(r)</b>	1.XII.1994
<b>Nigeria</b>	<b>(a)</b>	25.V.1993
<b>Norway</b>	<b>(r)</b>	8.III.1994
<b>Pakistan</b>	<b>(a)</b>	21.VII.1993
<b>Senegal</b>	<b>(r)</b>	24. III.1994
<b>Seychelles</b>	<b>(a)</b>	26.VI.1992
<b>Spain</b>	<b>(r)</b>	12.I.1994
<b>Sweden</b>	<b>(r)</b>	30.III.1992
<b>United States</b>	<b>(r)</b>	27.III.1992
<b>Venezuela</b>	<b>(r)</b>	12.XII.1994

**International Convention on  
Liability and Compensation  
for damage in connection  
with the carriage of hazardous  
and noxious substances by  
sea, 1996**

**(HNS 1996)**

Done at London, 3 May 1996  
Not yet in force.

**Convention Internationale de 1996  
sur la responsabilité  
et l'indemnisation pour les  
dommages liés au transport  
par mer de substances nocives  
et potentiellement dangereuses**

**(HNS 1996)**

Signée a Londres le 3 mai 1996  
Pas encore en vigueur.

**STATUS OF THE RATIFICATIONS OF  
AND ACCESSIONS TO UNITED NATIONS  
AND UNITED NATIONS/IMO CONVENTIONS  
IN THE FIELD OF PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS  
AUX CONVENTIONS DES NATIONS UNIES ET  
AUX CONVENTIONS DES NATIONS UNIES/OMI  
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

<b>Algeria</b>	(r)	12.XII.1986
<b>Aruba</b>	(a)	1.I.1986
<b>Bangladesh</b>	(a)	24.VII.1975
<b>Barbados</b>	(a)	29.X.1980
<b>Belgium</b>	(r)	30.IX.1987
<b>Belarus</b>	(A)	28.VI.1979
<b>Benin</b>	(a)	27.X.1975
<b>Bulgaria</b>	(a)	12.VII.1979
<b>Burkina Faso</b>	(a)	30.III.1989
<b>Cameroon</b>	(a)	15.VI.1976
<b>Cape Verde</b>	(a)	13.I.1978
<b>Central African Republic</b>	(a)	13.V.1977
<b>Chile</b>	(S)	25.VI.1975
<b>China</b>	(a)	23.IX.1980
<b>Congo</b>	(a)	26.VII.1982
<b>Costa Rica</b>	(r)	27.X.1978
<b>Croatia</b>	(r)	8.X.1991
<b>Cuba</b>	(a)	23.VII.1976
<b>Czech Republic</b>	(AA)	4.VI.1979
<b>Denmark (except Greenland and the Faroe Islands)</b>	(a)	28.VI.1985
<b>Egypt</b>	(a)	25.I.1979
<b>Ethiopia</b>	(r)	1.IX.1978
<b>Finland</b>	(a)	31.XII.1985
<b>France</b>	(AA)	4.X.1985
<b>Gabon</b>	(r)	5.VI.1978
<b>Gambia</b>	(S)	30.VI.1975
<b>Germany</b>	(r)	6.IV.1983
<b>Ghana</b>	(r)	24.VI.1975
<b>Gibraltar</b>	(a)	28.VI.1985
<b>Guatemala</b>	(r)	3.III.1976
<b>Guinea</b>	(a)	19.VIII.1980
<b>Guyana</b>	(a)	7.I.1980
<b>Honduras</b>	(a)	12.VI.1979
<b>Hong Kong</b>	(a)	28.VI.1985
<b>India</b>	(r)	14.II.1978
<b>Indonesia</b>	(r)	11.I.1977
<b>Iraq</b>	(a)	25.X.1978

*Code of conduct 1974**Code de conduite 1974*

<b>Italy</b>	<b>(a)</b>	30.V.1989
<b>Ivory Coast</b>	<b>(r)</b>	17.II.1977
<b>Jamaica</b>	<b>(a)</b>	20.VII.1982
<b>Jordan</b>	<b>(a)</b>	17.III.1980
<b>Kenya</b>	<b>(a)</b>	27.II.1978
<b>Korea (Rep. of)</b>	<b>(a)</b>	11.V.1979
<b>Kuwait</b>	<b>(a)</b>	31.III.1986
<b>Lebanon</b>	<b>(a)</b>	30.IV.1982
<b>Madagascar</b>	<b>(a)</b>	23.XII.1977
<b>Malaysia</b>	<b>(a)</b>	27.VIII.1982
<b>Mali</b>	<b>(a)</b>	15.III.1978
<b>Mauritania</b>	<b>(a)</b>	21.III.1988
<b>Mauritius</b>	<b>(a)</b>	16.IX.1980
<b>Mexico</b>	<b>(a)</b>	6.V.1976
<b>Morocco</b>	<b>(a)</b>	11.II.1980
<b>Mozambique</b>	<b>(a)</b>	21.IX.1990
<b>Netherlands (for the Kingdom in Europe only)</b>	<b>(a)</b>	6.IV.1983
<b>Niger</b>	<b>(r)</b>	13.I.1976
<b>Nigeria</b>	<b>(a)</b>	10.IX.1975
<b>Norway</b>	<b>(a)</b>	28.VI.1985
<b>Pakistan</b>	<b>(S)</b>	27.VI.1975
<b>Peru</b>	<b>(a)</b>	21.XI.1978
<b>Philippines</b>	<b>(r)</b>	2.III.1976
<b>Portugal</b>	<b>(a)</b>	13.VI.1990
<b>Romania</b>	<b>(a)</b>	7.I.1982
<b>Russian Federation</b>	<b>(A)</b>	28.VI.1979
<b>Saudi Arabia</b>	<b>(a)</b>	24.V.1985
<b>Senegal</b>	<b>(r)</b>	20.V.1977
<b>Sierra Leone</b>	<b>(a)</b>	9.VII.1979
<b>Slovakia</b>	<b>(AA)</b>	4.VI.1979
<b>Slovenia</b>	<b>(AA)</b>	4.VI.1979
<b>Somalia</b>	<b>(a)</b>	14.XI.1988
<b>Spain</b>	<b>(a)</b>	3.II.1994
<b>Sri Lanka</b>	<b>(S)</b>	30.VI.1975
<b>Sudan</b>	<b>(a)</b>	16.III.1978
<b>Sweden</b>	<b>(a)</b>	28.VI.1985
<b>Togo</b>	<b>(r)</b>	12.I.1978
<b>Trinidad and Tobago</b>	<b>(a)</b>	3.III.1983
<b>Tunisia</b>	<b>(a)</b>	15.III.1979
<b>Ukraine</b>	<b>(A)</b>	26.VI.1979
<b>United Kingdom</b>	<b>(a)</b>	28.VI.1985
<b>United Republic of Tanzania</b>	<b>(a)</b>	3.XI.1975
<b>Uruguay</b>	<b>(a)</b>	9.VII.1979
<b>Venezuela</b>	<b>(S)</b>	30.VI.1975
<b>Yugoslavia</b>	<b>(r)</b>	7.VII.1980
<b>Zaire</b>	<b>(a)</b>	25.VII.1977
<b>Zambia</b>	<b>(a)</b>	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**

**Hamburg 31 mars 1978  
"REGLES DE HAMBOURG"**

Entrée en vigueur:  
1 novembre 1992

<b>Austria</b>	<b>(r)</b>	29.VII.1993
<b>Barbados</b>	<b>(a)</b>	2.II.1981
<b>Botswana</b>	<b>(a)</b>	16.II.1988
<b>Burkina Faso</b>	<b>(a)</b>	14.VIII.1989
<b>Cameroon</b>	<b>(a)</b>	21.X.1993
<b>Chile</b>	<b>(r)</b>	9.VII.1982
<b>Czech Republic</b>	<b>(r)</b>	23.VI.1995
<b>Egypt</b>	<b>(r)</b>	23.IV.1979
<b>Gambia</b>	<b>(r)</b>	7.II.1996
<b>Georgia</b>	<b>(a)</b>	21.III.1996
<b>Guinea</b>	<b>(r)</b>	23.I.1991
<b>Hungary</b>	<b>(r)</b>	5.VII.1984
<b>Kenya</b>	<b>(a)</b>	31.VII.1989
<b>Lebanon</b>	<b>(a)</b>	4.IV.1983
<b>Lesotho</b>	<b>(a)</b>	26.X.1989
<b>Malawi</b>	<b>(r)</b>	18.III.1991
<b>Morocco</b>	<b>(a)</b>	12.VI.1981
<b>Nigeria</b>	<b>(a)</b>	7.XI.1988
<b>Romania</b>	<b>(a)</b>	7.I.1982
<b>Senegal</b>	<b>(r)</b>	17.III.1986
<b>Sierra Leone</b>	<b>(r)</b>	7.X.1988
<b>Tanzania (United Rep. of)</b>	<b>(a)</b>	24.VII.1979
<b>Tunisia</b>	<b>(a)</b>	15.IX.1980
<b>Uganda</b>	<b>(a)</b>	6.VII.1979
<b>Zambia</b>	<b>(a)</b>	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.

**Chile**  
**Malawi**  
**Mexico**  
**Morocco**  
**Rwanda**  
**Senegal**  
**Zambia**

(r) 7.IV.1982  
(a) 2.II.1984  
(r) 11.II.1982  
(r) 21.I.1993  
(a) 15.IX.1987  
(r) 25.X.1984  
(a) 7.X.1991

**Convention des Nations Unies  
sur le  
Transport multimodal  
international de  
marchandises**

Genève 24 mai 1980  
Pas encore en vigueur.

**United Nations Convention  
on the Law of the Sea  
(UNCLOS 1982)**

Montego Bay 10 December 1982  
Entered into force:  
16 November 1994

**Angola**  
**Antigua and Barbuda**  
**Argentina**  
**Australia**  
**Austria**  
**Bahamas**  
**Bahrain**  
**Barbados**  
**Belize**  
**Bolivia**  
**Bosnia and Herzegovina**  
**Botswana**  
**Brazil**  
**Cameroon**  
**Cape Verde**  
**Comoros**  
**Cook Islands**

**Convention des Nations  
Unies sur le Droit de la Mer**

Montego Bay 10 decembre 1982  
Entrée en vigueur:  
16 Novembre 1994

5.XII.1990  
2.II.1989  
1.XII.1995  
5.X.1994  
14.VII.1995  
29.VII.1983  
30.V.1985  
12.X.1993  
13.VIII.1983  
28.IV.1995  
12.I.1994  
2.V.1990  
22.XII.1988  
19.XII.1985  
10.VIII.1987  
21.VI.1994  
15.II.1995

<b>Costa Rica</b>	21.IX.1992
<b>Croatia</b>	5.IV.1995
<b>Cyprus</b>	12.XII.1988
<b>Cuba</b>	12.XII.1988
<b>Djibouti</b>	8.X.1991
<b>Dominica</b>	24.X.1991
<b>Egypt</b>	26.VIII.1983
<b>Fiji</b>	10.XII.1982
<b>Gambia</b>	22.V.1984
<b>Germany</b>	14.X.1994
<b>Ghana</b>	7.VI.1983
<b>Greece</b>	21.VII.1995
<b>Grenada</b>	25.IV.1991
<b>Guinea</b>	6.IX.1985
<b>Guinea-Bissau</b>	24.VIII.1986
<b>Guyana</b>	16.XI.1993
<b>Honduras</b>	5.X.1993
<b>Iceland</b>	21.VI.1985
<b>India</b>	29.VI.1995
<b>Indonesia</b>	3.II.1986
<b>Iraq</b>	30.VII.1985
<b>Italy</b>	13.I.1995
<b>Ivory Coast</b>	26. III.1984
<b>Jamaica</b>	21.III.1983
<b>Jordan</b>	27.11.1995
<b>Kenya</b>	2.III.1989
<b>Korea</b> <i>(Republic of)</i>	29.I.1996
<b>Kuwait</b>	2.V.1986
<b>Lebanon</b>	5.I.1995
<b>Macedonia</b>	19.8.1994
<b>Mali</b>	16.VII.1985
<b>Malta</b>	20.V.1993
<b>Marshall Islands</b>	9.VIII.1991
<b>Mauritius</b>	4.XI.1994
<b>Mexico</b>	18.III.1983
<b>Micronesia</b>	29.VI.1991
<b>Namibia, United Nations Council for</b>	18.VI.1983
<b>Nauru</b>	23.I.1996
<b>Nigeria</b>	14.VIII.1986
<b>Oman</b>	17.VIII.1989
<b>Paraguay</b>	26.IX.1986
<b>Philippines</b>	8.V.1984
<b>Samoa</b>	14.VIII.1995
<b>St. Lucia</b>	27. III.1985
<b>St. Kitts and Nevis</b>	7.I.1993

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*UNCLOS 1982**UNCLOS 1982*

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<b>St. Vincent and the Grenadines</b>	1.X.1993
<b>Sao Tomé and Príncipe</b>	3.XI.1987
<b>Senegal</b>	25.X.1984
<b>Seychelles</b>	16.IX.1991
<b>Sierra Leone</b>	12.XII.1994
<b>Singapore</b>	17.XI.1994
<b>Slovenia</b>	16.VI.1995
<b>Sri Lanka</b>	19.VII.1994
<b>Somalia</b>	24.VII.1989
<b>Sudan</b>	23.I.1985
<b>Tanzania</b>	30.IX.1985
<b>Togo</b>	16.IV.1985
<b>Tonga</b>	2.VIII.1995
<b>Trinidad and Tobago</b>	25.IV.1986
<b>Tunisia</b>	24.IV.1985
<b>Uganda</b>	9.XI.1990
<b>Uruguay</b>	10.XII.1992
<b>Viet Nam</b>	25.VII.1994
<b>Yemen, Democratic Republic of</b>	21.VII.1987
<b>Yugoslavia</b>	5.V.1986
<b>Zaire</b>	17.II.1989
<b>Zambia</b>	7.III.1983
<b>Zimbabwe</b>	24.II.1993

**United Nations Convention  
on Conditions for  
Registration of ships**

Geneva, 7 February, 1986  
Not yet in force.

<b>Egypt</b>	(r)	9.I.1992
<b>Ghana</b>	(a)	29.VIII.1990
<b>Haiti</b>	(a)	17.V.1989
<b>Hungary</b>	(a)	23.I.1989
<b>Iraq</b>	(a)	1.II.1989
<b>Ivory Coast</b>	(r)	28.X.1987
<b>Libyan Arab Jamahiriya</b>	(r)	28.II.1989
<b>Mexico</b>	(r)	21.I.1988
<b>Oman</b>	(a)	18.X.1990

**Convention des Nations  
Unies sur les Conditions d'  
Immatriculation des navires**

Genève, 7 février 1986  
Pas encore entrée en vigueur.

**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.

**Georgia**

**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.

(a) 21.III.1996

**International Convention on  
Maritime liens and  
mortgages, 1993**

Done at Geneva,  
6 May 1993  
Not yet in force.

**Convention Internationale de  
1993 su les Privilèges  
et hypothèques maritimes**

Signée à Genève  
le 6 mai 1993  
Pas encore 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  
Maritime Mortgages and Liens - Brussels Diplomatic Conference.

**CONFÉRENCES****DU COMITÉ 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  
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## IX. BREMEN - 1909

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## XII. ANTWERP - 1921

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## XVI. AMSTERDAM - 1927

*President:* Mr. B.C.J. LODER.*Subjects:* Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

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## VIII. VENISE - 1907

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## X. PARIS - 1911

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## XI. COPENHAGUE - 1913

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## XIX. PARIS - 1937

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## XXII. NAPLES - 1951

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## XVIII. OSLO - 1933

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## XXI. AMSTERDAM - 1948

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## XXVIII. TOKYO - 1969

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## XXX. HAMBURG - 1974

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## XXVI. STOCKHOLM - 1963

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## XXVII. NEW YORK - 1965

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## XXIX. ANVERS - 1972

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## XXX. HAMBOURG - 1974

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## XXXII MONTREAL - 1981

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## XXXIII. LISBON- 1985

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## XXXIV. PARIS - 1990

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