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Documents of 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.

Part I - Organization of the CMI

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

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

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

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

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

PART VI - FINANCE

Article 21

Arrears of Contributions

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

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

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

Article 22

Financial Matters

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

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

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

PART VII - TRANSITIONAL PROVISIONS

Article 23

Entry into Force

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

Constitution

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

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

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

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

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

6ème PARTIE - FINANCES

Article 21

Retards dans le paiement de Cotisations

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

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

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

Article 22

Questions financières

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

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

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

7ème PARTIE - DISPOSITIONS TRANSITOIRES

Article 23

Entrée en vigueur

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

Part I - Organization of the CMI

Article 24
Election of Officers

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

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

Article 25
Lapse of Part VII

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

Constitution

Article 24**Elections des membres du Bureau**

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

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

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

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

RULES OF PROCEDURE*

Rule 1

Right of Presence

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

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

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

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

Rule 2

Right of Voice

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

Rule 3

Points of Order

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

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

Rules of Procedure

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

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

Rule 4

Voting

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

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

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

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

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

Rule 5

Amendments to Proposals

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

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

Part I - Organization of the CMI

Rule 6*Secretary and Minutes*

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

Rule 7*Amendment of these Rules*

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

Rule 8*Application and Prevailing Authority*

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

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

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

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Membership:

Physical Members: 180; Official Entities as Life Members: 22; Juridical Entity Members: 16; Correspondent Members: 15.

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Established: 1991

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- Mme Martine REMOND-GOUILLOU, Professeur de Droit, 19, rue Charles-V, 75004 Paris. Tel.: (1) 42.77.69.30 - Fax: (1) 42.77.55.44.
- M. Pierre-Marie RIVOALEN, c/o Vallourec Industries, 130 rue de Silly, 92100 Boulogne Billancourt.
- M. Pierre TARDIVEL, Direction Juridique SAMAP/AMAF, 5, rue des Colonnes, 75002 Paris.
- M. Bertrand THOUILIN, Total S.A./TMO/DAJA, Tour Total, Cedex 47. 92069 Paris la Défense. Tel.: (1) 41.35.39.78 - Fax: (1) 41.35.48.53.

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Membership:

Members: 271 - Corporate members: 30 - Corresponding members: 23

Part I - Organization of the CMI

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', Walter RICHTER

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GREECE

HELLINIKI ENOSSI NAFTIKOU DIKAIΟΥ

(Association Hellenique de Droit Maritime)

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

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Established: 1911

Officers:

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Part I - Organization of the CMI

HONG KONG

THE MARITIME LAW ASSOCIATION OF HONG KONG

c/o Ince & Co., Solicitors and Notary Public,
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Citibank Plaza, 3 Garden Road, Hong Kong
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Established: 1988

Members:

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ICELAND

HID ISLENSKA SJORETTARFELAG

(The Icelandic Maritime Law Association)

Domhusinu v/Laekjartorg
IS-150 Reykjavik, Iceland
Fax: (1) 562.2903

Established: 1982

Officers:

Chairman: Jon FINNBJORNSSON, Giljalandi 7, IS-108 Reykjavik

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THE MARITIME LAW ASSOCIATION OF INDIA

*Established: 1981*Officers:*President:* (vacant)*Vice-President:* G.A.SHAH, Advocate, Supreme Court of India, 101, Jor Bagh, New Delhi 110 003.*Executive Secretary and Treasurer:* R.A.SOMANATHAN.*Secretary General:* Dr. R.K.DIXIT, L-42, Kalkajec, New Delhi 110 019.Titulary Members:

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INDONESIA

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

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*Established: 1981*Board of Management:*President:* Mrs. Chandra Motik Yusuf DJEMAT. S.H., Chandra Motik Yusuf Djemat & Ass., c/o Jl. Yusuf Adiwinata 33, Jakarta 10350, Indonesia. Tel.: (21) 390.5755/323.340 - Fax: (21) 390.5772.*General Secretary:* Mrs. Rinie AMALUDDIN, S.H., c/o Chandra Motik Yusuf Djemat & Ass., Jl. Yusuf Adiwinata 33, Jakarta 10350, Indonesia. Tel.: (21) 390.5755/323.340 - Fax: (21) 390.5772.*General Treasurer:* Mrs. Masnah SARI. S.H., Notaris Masnah Sari, Jl. Jend. Sudirman 27.B, Bogor Jawa Barat, Indonesia. Tel.: (251) 311.204.*Chief Dept. for Maritime Law:* Mrs. Mariam WIDODO, S.H., Notaris Mariam Widodo JL., Cikampek. Jawa Barat, Indonesia.*Vice:* Mrs. Titiek PUJOKO, S.H., Vice Director at PT. Gatari Air Service, Bandar udara Halim Perdana Kusuma, Jakarta 13610, Indonesia. Tel.: (21) 809.2472.*Chief Dept. for Law of the Sea:* Mrs. Erika SIANIPAR, S.H., Secretariat of PT PELNI. Jl. Gajah Mada No.14, 2th Floor, Jakarta, Indonesia. Tel.: (21) 385.0723.*Vice:* Mrs. Soesi SUKMANA. S.H., PT. PELNI, Jl. Gajah Mada No.14, 2th floor, Jakarta, Indonesia. Tel.: (21) 385.4173.

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IRELAND

IRISH MARITIME LAW ASSOCIATION

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Established: 1963

Officers:

President: J. Niall McGOVERN, Barrister-at-Law, 23 Merlyn Park, Dublin 4. Tel./Fax: (1) 269.1782.

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Membership

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Representative members: 57

Member Associations

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

(Israel Maritime Law Association)

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*Established: 1968***Officers:***President:* P.G. NASCHITZ, Naschitz, Brandes & Co., 5 Tuval Street, Tel-Aviv 67897. Tel.: (3) 623.5000 - Fax: (3) 623.5005 - E-mail: pnaschitz@nblaw.com.*Vice-President:* G. GORDON, S. Friedman & Co., 31 Ha'atzmaut Road, Haifa. Tel.: (4) 670.701 - Fax: (4) 670.754.**Titulary Members:**

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Membership:

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(Italian Association of Maritime Law)

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

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

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Part I - Organization of the CMI

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Established: 1901

Officers:

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Member Associations

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Established: 1978

Officers:

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Vice-Presidents:

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

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

Dr. SOO-KIL Chang, Attorney at Law, Law Firm of Kin & Chang, Seoul.

Dr. KILJUN Park, Professor at Yonsei University, Seoul.

Directors:

Dr. LEE-SIK Chai, Professor at Korea University, Seoul.

Dr. JOON-SU Lee, Professor at Korea Maritime University, Pusan.

Membership:

The members shall be faculty members of university above the rank of part-time lecturer, lawyers in the bench, and university graduates who have been engaged in the maritime business and or relevant administrative field for more than three years with the admission approved by the board of directors.

Individual members: 135.

D.P.R. KOREA (PYONGYANG)**MARITIME LAW ASSOCIATION OF D.P.R. KOREA**

(Joson Maritime Law Association)

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Established: 1989

Officers:

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Vice-President: Mr. RA DONG HI, Engineer, Vice Minister of the Ministry of Marine Transportation.

Part I - Organization of the CMI

Secretary-General: Mr. PAK JONG IL, Captain, Director of Legal, Investigation Dep. of the Ministry of Marine Transportation.

Members of the Executive Committee:

Mr. KANG WAN GU, Associated Doctor, Dean of the Maritime University.

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

Mr. JON MYONG SON, Doctor, Professor of Kim Il Sung University.

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MALTA

MALTA MARITIME LAW ASSOCIATION

198, Old Bakery Street, Valletta - Malta

Tel.: (356) 241.232 - Fax: (356) 221.893

Established: 1994

Officers:

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Member Associations

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Secretary: Dr. Tonio FENECH, 198, Old Bakery Street, Valletta. Tel.: (356) 241.232/243.929/222.853 - Fax: (356) 221.893.

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MAURITANIE**ASSOCIACION MAURITANIEENNE DU DROIT MARITIME**

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Established: 1997

Officers:

Président: Maître Cheikhany JULES

Vice-Présidents: Didi OULD BIHE, Brahim OULD SIDI

Secrétaire Général: Abdel Kador KAMIL

Secrétaire au Trésor: Maître Moulaye El Ghaly OULD MOULAYE ELY

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Président de la Commission financière: Abdel Kader OULD MOHAMED

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Part I - Organization of the CMI

MEXICO**ASOCIACION MEXICANA DE DERECHO MARITIMO, A.C.**

(Mexican Maritime Law Association)

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*Established: 1961***Officers:***President:* Dr. Ignacio L. MELO Jr., General-Director of Asociacion Nacional de Agentes Navieros, A.C., Montes Urales 365, 11000 Mexico, D.F.*Vice-President:* Lic. Eduardo SOLARES Jr.*Secretary:* Miss Alexandra PRESSLER.*Treasurer:* Lic. Ernesto PEREZ REA.**Titulary Members:**

Dr. Ignacio L. MELO Jr.

MOROCCO**ASSOCIATION MAROCAINE DE DROIT MARITIME**

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**CMI Centenary Conference
ANTWERP
9-13 June 1997**

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CENTENARY CONFERENCE

OPENING SESSION

9 June 1997

OPENING OF THE CENTENARY CONFERENCE

SPEECH OF THE PRESIDENT OF THE CMI, PROF. ALLAN PHILIP

9 June 1997

Koninklijke Hoogheid
Dames en Heren Prominenten
Geachte Dames en Heren

Het CMI werd honderd jaar geleden
opgericht in Antwerpen

Met veel trots vieren wij ons
eeuwfeest in deze mooie Stad

Chers Amis
Dear Friends

We are to-day inaugurating the Centenary Conference of the Comité Maritime International. The CMI was formed in Belgium in the closing years of the nineteenth century. Now, in the closing years of the twentieth century we may look back on a century, which – although in some respects one of the worst for man-kind – permitted the CMI to make a considerable contribution towards fulfilment of its principal object, global uniformity of maritime law. When I talk of the CMI, I mean, of course, all the many members of the National Associations, lawyers, judges and academics, in four generations who have taken the burden upon themselves without remuneration to contribute their knowledge and work towards that goal.

One hundred years is a long time in retrospect. Such an anniversary calls for taking stock of the past: What did we do and how did we do it? And for reflecting on the future in the light of the more recent developments and our expectations as to coming developments.

The foundation of the CMI at the end of the last century, as it is described in Frank Wiswall's little blue booklet you have all received, was part of a wave

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of internationalization during the last years of that century and the first years of the present century. A number of international – private and public – organizations were founded during that period, culminating with the two Hague Peace Conferences in 1899 and 1907. Internationalization at that time meant coverage of what was then regarded as the civilized world: Europe, Japan and the United States. As evidenced by the list of participants, a similar wave covering most of the globe is taking place to-day, the consequences of which are still difficult to determine at this moment. We have to find our place in that new design.

Looking back on the achievements of the CMI during its first century, it seems reasonable to say that the developments of private international maritime law during most of that period were dominated by the work of the CMI. The big milestones were the Collision and Salvage Conventions, the Hague Rules and York Antwerp Rules and the Limitation of Liability Conventions. In between we find smaller stones, such as the Convention on Maritime Liens and Mortgages, Arrest, Passengers and their Luggage, and the Rules for Sea Waybills, Electronic Bills of Lading and others. But the five dominate the picture and with all their shortcomings in the light of later developments may be said to have served their purpose and have gained the CMI its reputation.

The first three quarters of the century was a period where CMI had a virtual monopoly of the unification of maritime law. It was the time of the Brussels Conventions. Whenever the CMI had completed a new draft convention, it would hand it over to the Belgian Government, who would call a diplomatic conference to complete the work. To a large degree the governmental delegates to the diplomatic conference, although supplemented by government officials, would be the same as had worked on the draft convention as delegates of the national associations within the CMI. This was how I experienced it at the diplomatic conference in Brussels in 1957, my first encounter with the CMI.

The initiative and the choice of subject was with the CMI and nobody tried to encroach upon the area.

The big change came with the Torrey Canyon Disaster. Governments suddenly found that maritime law, in particular in relation to pollution, was not just something for and among shipowners or between shipowners and shippers. It might affect the environment and cost coastal states and populations a lot of money in clean up costs and have influence on tourism, fishing etc. IMO got a taste for working in maritime law generally and not only with safety matters. And other UN organizations, UNCTAD and UNCITRAL, followed suit. The last Brussels Conference became the first IMO Conference in the field and adopted the CLC Convention, which laid the ground for the work on liability and its limitations in the field of pollution during the remainder of the century.

In this new world the CMI had to find a new place and thanks to Francesco Berlingieri was able to do so.

Over the years since 1969 we realized and the UN organizations gradually

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came to realize that there was a reciprocal interest in a close cooperation for the development and unification of maritime law.

The UN organizations did not possess the expertise particularly in the private maritime law field that was needed in order to ensure the necessary modernization of the law, but the CMI had it and was willing to provide it. The result was, in particular, the revised Limitation of Liability Convention, the Salvage Convention, and the Maritime Liens and Mortgages Convention, hopefully soon to be followed by a new Arrest Convention. But at the same time preparatory work has been made and advice has been given to IMO, UNCTAD and UNCITRAL on a number of other subjects. At the same time the CMI has started working in other ways and using other methods on a number of other subjects. Let me just mention the recent version of the York-Antwerp Rules, the adoption in Paris of model rules on Sea Waybills and Electronic Bills of Lading, the rules we present here on Classification Societies, the Charter Party Lay Time Definitions and the work having been done on the Carriage of Goods by Sea since before the Paris Conference and still continuing.

Characteristic of much of this work is the different methods applied from the time of the Brussels Convention. First of all, much of it is done in the form of advice given to international organizations in the form of drafts, written reports and oral advice in meetings of the organizations or to observers of the organizations participating in our committee meetings.

Secondly, while some of the model rules are the result of work in CMI committees in accordance with our traditional working methods, others such as Laytime Definitions have been created in cooperation with other organizations and only reach normal channels in the CMI when considerable work has been done via such cooperation. That is also the method used in our work on the Classification Societies. Also the York-Antwerp Rules, 1994, which are a revision of earlier CMI editions, before they were finally adopted were thoroughly discussed in other organizations, UNCTAD, the Average Adjusters Association, IUMI.

Finally, we have recently on short notice been asked for advice by IMO on subjects such as wreck removal and liability for pollution by bunker oil, where provisional advice has had to be given to the IMO without time for proper consultation even of the Executive Council. It goes to show the need for our work but also the need for a thorough discussion of the ways and methods of work that we must follow in the future to ensure the proper and thorough preparation of the advice we give and the possibility of keeping the close relations to the national associations, which are both the justification for our existence and the source of the knowledge on which we base our good reputation and our possibility of giving advice.

As you know, the traditional way of working is that we first set up a working group of a few members to make a feasibility study and usually to prepare a questionnaire to be circulated to national associations. We then call an international sub-committee to which all associations may send representatives to study the subject on the basis of the replies to the questionnaire and come up with a report and draft texts. When the work is finished, it will go to the Assembly or to a conference for adoption.

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This method may continue to be applied when we have the necessary time, either because as with the York-Antwerp Rules we ourselves decide the time frame, or those who ask for advice are in no hurry.

But even here new problems may arise when the result of our efforts is forwarded to e.g. IMO, as with the Maritime Liens and Mortgages and Arrest Conventions. The international organization, in this case a joint group of IMO and UNCTAD, asks for assistance to its work with our draft. We send an observer. He can report to us what he is doing. But he cannot ask for a mandate to everything he is going to say. In many situations he will have to act as best he can, and we have to rely on the fact that we have sent the best person there. We may try to give some general instructions but can undoubtedly not foresee everything.

This becomes even more evident in cases where we send observers to other organizations' study groups in relation to subjects they have taken up on their own, but which are of interest to us and the shipping community in general. We do that e.g. to some committees under UNIDROIT. We believe it is necessary for us to be represented in order to safeguard shipping interests because the work they do in other fields may have incidental effects on shipping.

Then there is the committees set up by us or other organizations, e.g. BIMCO, to co-operate on certain subjects. The work we have been engaged in for several years on Classification Societies is a case in point.

The output of such work is the result of efforts of several organizations to exert their influence. Even if distributed for comments and proposals to national associations we cannot expect that everything we in the CMI say will be accepted. But in any event, it is important to find the best way of exerting any influence we can.

The big questions thus are: How do we ensure that we keep open the flow of knowledge from the national associations in all these new situations? How do we best keep the national associations informed? How do we ensure that the advice we give and the work that is being done by our representatives in international organizations is in accordance with the view of the matter held by a large number of our national associations?

I do not expect a final solution to all of these problems at this Conference.

However, I would like to have a thorough and open discussion thereof here in Antwerp, which can be an inspiration for the Executive Council and which may lead to better ways of working and communicating in the future. If that were to prove possible, it would be a fine result of our Centenary Conference.

In that connection it is also worth mentioning that at the beginning of the year we asked the national associations to make suggestions with respect to our future work. Some suggestions have reached us, although not as many as we had hoped for and they have been looked at by the Executive Council.

It is the intention at the Plenary Session on Friday to have a discussion both of the working methods and of the subjects to be discussed in the future and to prepare that discussion in a small working group during the following days under the chairmanship of Patrick Griggs.

The organization of this Conference differs in many respects from what

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we have usually been doing at conferences. This is a result partially of the changes that take place in our way of working and partially of our wish to look at most of the fields in which we have been working in the past and see them in the perspective of history and future opportunities.

We are in the middle of work on a great many subjects. Those responsible for this work wish to present to you what they are doing and to hear views thereon from the participants. These sessions will have the character of seminars with introductions from the panels and discussion.

One subject, Classification Societies, is hopefully approaching the end of the work. The session on this subject will to some extent resemble the work usually done in the conferences.

Then there are two subjects that are very important but of a more long term character. That is the Uniformity of the Law of Carriage of Goods by Sea and Towards a Maritime Liability Convention. Here we hope to start a ball rolling into the next century, which could perhaps sometime then end up in a synthesis of the chaotic developments in these fields during the last thirty years. It is a grand vision, which could justify the work of the CMI in the years to come.

We shall not forget history. On the occasion of the Centenary the CMI is publishing four books, of which three are of a historic character.

Francesco Berlingieri has collected and systematized the preparatory works on the Hague and Hague-Visby Rules, and on the Collision and Arrest Conventions in two volumes, a remarkable and very useful job.

The books may be bought here.

Frank Wiswall has updated the history of the CMI in a very interesting little book, which you have all received.

And finally, in the autumn we shall publish a new and revised collection of private maritime law conventions, which you can order here. It will also appear as a CD Rom, also prepared by Frank Wiswall. The CD-ROM will also over some time come to contain relevant material from old books and news-letters.

I am sure that you will all be very interested in these publications, which underline the historic perspective of the Conference. I want to thank the authors and editors of the enormous amount of work invested therein.

May I conclude by thanking the Belgian Maritime Law Association through its president Mr. Roger Roland for organizing the Conference to celebrate our Centenary. The Belgian Association celebrated its centenary a year earlier than the CMI and was very instrumental in the foundation of the CMI. The first conference took place in Brussels in 1897, the second in Antwerp in 1898. Since then we have been back in Antwerp in 1921, in 1930, in 1947, and in 1972, and now again in 1997. Seven out of 36 conferences have been held in this country, six in this city. That is a remarkable achievement. We thank the Belgian Association, because once more it has been willing to undertake the hard work and the cost in time and money to prepare and hold such a conference. I know how much has been done to ensure that everything will be perfect and that we shall enjoy the week we shall spend here. Through President Roland we thank all those, who have been involved therein.

I have the great pleasure to declare The 36th and Centenary Conference opened. After lunch meetings will begin about 2.30.

**SPEECH OF THE PRESIDENT OF THE
BELGIAN MARITIME LAW ASSOCIATION,
MR. ROGER ROLAND**

Onze scheepvaartkringen – reders, assuradeuren, handelaars, juristen en noem maar op – lijden aan een typisch nationale kwaal : ijdelheid. Om de waarheid recht te doen wens ik ook hulde te brengen aan de vele andere landen – Italië, Frankrijk, Engeland ... – die een belangrijke rol hebben gespeeld bij de verwezenlijking van een fundamentele doelstelling: het eenvormig maken van het zeerecht, het tot stand brengen van een internationale scheepvaartwetgeving. Ik denk aan de Courcy, aan Mancini, aan parlementaire initiatieven in Italië en Nederland, aan de National Association for Social Science. Wat we vandaag vieren, is inderdaad de geboorte van die grootse gedachte.

Aan het einde van de negentiende eeuw was België beziel met een mateloos, haast imperialistisch dynamisme. Het was de tijd van de industriële revolutie. Nooit was onze invloed op het wereldgebeuren zo groot geweest. Het was ook de bloeitijd van onze scheepvaart, onze vloot, onze veelgeprezen scheepsbouw. Via Antwerpen werden stukgoederen en grondstoffen doorgevoerd.

Dat de zeewet ook onze politici niet onverschillig liet, baart dus geen bewondering. Vaak kwam de regering uit eigen beweging met voorstellen voor de dag en bij elk particulier initiatief werd de overheid betrokken. Uit de parlementaire geschiedenis van de wetten van 1879 en 1908 blijkt hoe grondig en nauwgezet prominente staatslieden over de ingediende wetsontwerpen debatteerden. Ze hadden verrassend veel belangstelling voor het zeerecht en een bijster scherp inzicht in de problematiek.

Op deze gloriëdag is ijdelheid dus niet uit den boze. Toegegeven, ook elders groeide het verlangen naar eenvormigheid. Maar België was de stuwkracht. Ons land mag de bakermat van het internationale zeerecht worden genoemd.

Precies daarom heeft het Internationaal Maritiem Comité – twee jaar geleden, in Sidney – voor zijn eeuwfeest de havenstad Antwerpen uitverkoren.

Graag zou ik nu onze buitenlandse gasten verwelkomen in de officiële talen van het comité, m.n. het Frans en het Engels.⁽¹⁾

⁽¹⁾ Mr. Roland has kindly provided the following English translation of the part of his speech in the Dutch language:

Our Maritime circles, Shipowners, Underwriters, wholesale traders, lawyers and others – you name them – are all addicted to a typical national failing: vanity. In order no longer to hide the truth, I wish to make other countries such as Italy, France, the United Kingdom and the Netherlands, parties to putting the great plan into gear: I am thinking of de Courcy, of Mancini, of parliamentary initiatives in Italy and in the Netherlands, of the Association for Social Science, amongst many others: the unification

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I have now very briefly given free rein in the Dutch language to the pride we all feel, Belgians, Flemish, Walloons and, even more so, we citizens of Antwerp, at the thought of the glorious time when the Belgian Maritime Law Association was created and when the Comité International was born, also of our major role in the latter.

I was however careful to pay homage to Italy, to France and to the Netherlands whose outstanding lawyers conceived, as did Louis Franck, Beernaerts, Lejeune and others in Belgium, what was then a revolutionary and, indeed, a positively utopian idea: creating a single maritime law, valid for all and cleansed of all form whatsoever of particularism, this ballast which had become too cumbersome due to the technical evolution, amongst others of steam navigation thanks to which distance faded away and world economy expanded. The idea was generous, as is anything that brings men close together; it belonged to the universality that arose from the ideas of 1789. It promoted economic growth but also had an obvious philosophical content in a world divided by nationalism and by too narrow a conception of the State's sovereignty.

What was Belgium's part in maritime law's unification?

May I be allowed to invoke the Antwerp 1885 Congress, the Maritime Law Conference of 1898, the Brussels Diplomatic Conference that sat until 1969 and gave rise to very many international conventions, all of which were most carefully prepared by the C.M.I.? It is noteworthy that these conventions contrived to uphold the various interests concerned, to reconcile opposing points of view, to attain a judicious balance between the latter. That is why these conventions stood the test of time better than any other. Who will be surprised that such is the case?

Reading their preparatory papers, one seems to hear the flights of oratory of famous Belgian lawyers such as Louis Franck, Jean Van Rijn and many others whose voices joined those of Berlingieri, Léopold Dor, Grandmaison and Normal Hill, all of whom rival in learning and eloquence.

of maritime law, the achievement, if possible, of an international Shipping legislation. It is in fact the birth of these ideas that we are celebrating today.

At the end of the previous century, the end of the eighteen hundreds of course, Belgium should a major, in fact an imperialistic, dynamism. It was the time of our industrial explosion, the pinnacle of our effulgence in the world. It was also the time of the golden age of our shipping, of our fleet, of our esteemed shipyards. General cargo and ore moved in transit via Antwerp. The Shipping law, as a consequence, was at the core of our politicians' interest. The government took many initiatives in this connection, the authorities were involved whenever a private initiative took place.

The preparatory papers for our laws of 1878 and 1908 reveal the accuracy, interest and profound knowledge of affairs with which the political leaders of that period discussed the various bills. Allow us therefore to be vain on this glorious day. The unification of maritime law's ideal grew at the same pace as in other countries. Let us however admit that Belgium was the cradle of international law, was the driving force, gave the impulsion.

Besides, this was spontaneously admitted at the C.M.I.'s General Assembly in Sydney in 1995. As a matter of fact, the decision was taken there that Antwerp was the obvious place to celebrate the C.M.I.'s Centenary on account of this glorious past.

May I now be authorised to welcome our foreign guests in English and in French, the official C.M.I. languages.

I am also reminded of Albert Lilar, an exceptionally skilful and incomparable adroit Chairman, who was also a real virtuoso in always obtaining unanimity on his name; unmovable, he remained the Chairman until he passed away. Things have changed since 1969. The C.M.I.'s seat, which until then was situated in Europe, moved on as a result of political evolution and of increased globalisation, a turning which President Francesco Berlingieri brilliantly negotiated with a racing driver's touch. Thanks to him, the C.M.I. remained a highly regarded counsellor in the world establishment. Chairman Allan Philip will declare the XXXVIth Conference open; it will not decide the C.M.I.'s survival but its future. I hope with all my heart that this new Antwerp Congress will also be the dawn of another hundred years, which will all bear the stamp of its constructive action.

En langue française, quelques propos nostalgiques. J'ai devant moi la brochure éditée par le CMI. Une photo de 1897 nous montre la rade d'Anvers, telle qu'elle était encore, inchangée, à l'issue de la deuxième guerre mondiale. Badauds anversoises et touristes déambulaient sur la promenade qui surplombait les quais, pour assister au chargement et déchargement des navires: sacs, caisses, ballots, portés à dos d'homme, et amenés sur des chariots plats tirés par de robustes chevaux, dits chevaux de "nation", ce dernier terme désignant le manutentionnaire à quai, dans le langage de notre port. C'est là aussi, qu'à bord des malles congolaises, l'on voyait s'embarquer de nombreux passagers, et parmi eux, en rangs serrés, bonnes soeurs et missionnaires.

Aux abords des quais, hangars et entrepôts s'imbriquaient dans la ville habitée et abritaient des marchandises en grande nombre, venues de tous les coins du monde ou en partance pour d'autres horizons, à l'aune de ce temps-là, encore lointains. Les quais sentaient bon les cordages et le cambouis. Y foisonnaient également cafés en grande nombre, bouges et autres lieux de plaisir, décor idéal pour romans et films d'atmosphère.

Autre photo: 1997. Vue du port tel que nous le connaissons aujourd'hui, s'étendant quasi jusqu'à la frontière hollandaise, navires performants mais sans grâce, champs de conteneurs à perte de vue, pétrochimie, port industriel, paysage surréel, étendue infinie des bassins, gigantisme des écluses et des ouvrages d'art, absence de toute habitation, nulle présence de l'homme. Le port est cette fois séparé de la ville.

Cette comparaison de l'ancien et du nouveau porte à réfléchir. Elle est à l'image de notre temps.

Souhaitons ardemment que le CMI, sur le plan de la législation maritime, trouve des solutions adaptées aux nécessités de l'heure. Nous pensons, quant à nous, qu'il y a lieu de se serrer les coudes, de se méfier plus que jamais des intérêts particuliers, de rechercher des solutions harmonieuses. L'Association Belge du Droit Maritime s'engage à y contribuer car c'est à ce prix seulement que le CMI fera oeuvre utile. Dans ce combat qu'il livre, celui d'une unification durable et toujours plus poussée du droit maritime, elle entend être un soldat vaillant, même intrépide.

Au nom de l'Association que j'ai le privilège de représenter, je remercie tous ceux qui sont ici ce jour venus si nombreux, je salue en eux les cinq continents, la planète entière. Merci de l'honneur qu'ils nous font. Je souhaite

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que leur séjour en Belgique soit à la fois studieux et joyeux et qu'à leur retour, à défaut d'une pierre scintillante sortie des mains de nos lapidaires, d'un bijou né de la magie créatrice de nos joailliers, ils emporteront chez eux cet objet cent fois plus précieux, inaltérable: une amitié nouvelle, la nôtre, celle dont nous leur faisons l'offrande.

In the name of the Association it is my privilege to preside, I thank all those who have come here today in such numbers and, in them, I greet the five Continents, the whole planet. I hope that their stay in Belgium shall be both studious and merry and that, when they return home, failing scintillating stones out of the hands of our lapidaries, failing also jewels born out of our jewellers' creative magic, they will take home something far more precious and unalterable : a new friendship, our friendship which is our offering to them.

**SPEECH OF MR. WILLEM DE RUITER,
HEAD OF UNIT IN THE MARITIME DIRECTORATE
OF THE EUROPEAN COMMISSION**

Your Royal Highness, Excellencies, Ladies and Gentlemen,

I am pleased to celebrate with you the centenary of the Comité Maritime International and to have the opportunity to speak to you on behalf of Mr. Kinnock who, unfortunately, could not be here today.

Since the beginning of this century, your Committee has played a crucial role in the elaboration of the most important conventions in private maritime international law. Progress made in this field has been huge. My speaking time would not be long enough to present all the conventions prepared or initiated by the CMI and I will not try to do so. The work done by the CMI will, without any doubt, be discussed in depth during the coming days. Let me just point out that one of the most famous conventions, the Brussels Convention of 25 August 1924 on liability, better known under the name of "the Hague Rules", was prepared, more than 70 years ago, by this Committee and the convention is still widely applied.

I would like to seize the opportunity of this introductory speech to present you the Community approach to maritime transport and maritime law.

As you well know, the shipping sector is vital for Europe. 90% of the exchanges between the Community and the rest of the world are made by maritime transport and 35% of the goods carried within the Community are carried by sea. Despite this importance, the EC Regulatory framework in the maritime transport field is very recent. We celebrated last year the tenth anniversary of our first package of Regulations on shipping. Before 1986, the EC shipping Regulatory framework was almost non-existent.

Anniversaries are a suitable time to appraise a situation. I therefore would like to appraise our last 10 years of shipping policy.

In this period the Community has contributed to create, for the benefit of each operator, an increasingly open shipping market. Both internally, by creating a single market in the shipping sector, and externally by securing free access and fair competitive conditions throughout the global market. In addition, since 1989, we have started to tackle the problem of the lack of competitiveness of European fleets with respect to vessels flying third countries flags and especially flags of convenience. This will be my second point.

On the issue of market access, the Regulation on cabotage, dealing with domestic trades, was adopted by the Council on 7 December 1992. It gives vessels flying the flag of a Member State the right to operate between two ports of another Member State. Southern States which were, due to their traditionally protected cabotage markets, rather reticent to an immediate opening of their domestic markets, were granted transitional periods for

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certain trades which will expire in 1999. Greece – because of its particular interests in island cabotage – has been granted an additional temporary exemption until 2004. Only at that time, the freedom to provide maritime transport services within the EC, and therefore the single market, will be completely established. The principle of freedom to provide services has also been applied to trades between Member States and between Member States and third countries on the basis of a Regulation of 1986. This Regulation requires, on the one hand, that Member States having concluded bilateral agreements with third countries containing cargo-sharing provisions, amend these agreements in order to allow nationals from other Member States to benefit in the same way as national carrier from the cargo shares reserved to this Member State. Despite the fact that this Regulation was adopted a long time ago, this process of adaptation has not yet been completed and the Commission is actively monitoring and pursuing the phasing out of the bilaterals. Obviously the Regulation prohibits Member States from concluding new cargo-sharing arrangements with third countries.

This issue of market access at a world level has recently been referred to by the Commission in its Communication to the Council on External maritime relations. The Communication adopted in March of this year, proposes positive measures to favour the dialogue on market access at the Community level with third countries and international organizations. It also proposes actions to address problems arising from restrictive or discriminatory measures taken by certain third countries and actions to fight against unfair market behaviour. These proposals will complete the existing legislative framework put in place by the Regulations of 1986. In particular it is proposed that in the future the Community shall negotiate and conclude maritime agreements on market access with important trading partners like China, India and others. First requests for negotiating mandates for China and India have been submitted to the Council and will be discussed at its next session on 18 June. However, since this is a highly sensitive issue final decision making may require more time.

Links between shipping companies also play an important role as regards the possibility for a shipowner to operate on a given market. The role of the Commission in this area is to ensure that alliances between shipping companies, that is to say agreements such as conferences, consortia or mergers, do not endanger competition and do not exclude other operators from operating on a given market. However, due to the special characteristics of the shipping sector, and in order to bring stability to the shipping markets, the Commission decided that certain agreements between shipping companies would be exempted from the prohibition of entering into restrictive agreements as laid down in the Treaty. Therefore, the Community designed two legal instruments, first a Council Regulation of 1986 on conferences and second a Commission Regulation of 1995 on consortia. These exempt these types of agreements of the application of normal competition rules provided that certain criteria are met. I need not to say more on this, because these Regulations are very well known in the world of maritime layers.

I would like therefore to switch to another big issue that the Community had to tackle, namely the problem of the lack of competitiveness of European

fleets with respect to vessels flying third countries flags and especially flags of convenience. The figures speak for themselves. In 1970, 32% of the world tonnage sailed under the flags of EC Member States; by 1995 this share had decreased to 14% and is still decreasing. Consequently, our main task has been to develop a common policy in cooperation with the Member States, to counter this trend in order to preserve EC employment on board of a high quality and safe Community fleet.

Flagging out is primarily due to the higher fiscal and social costs of EC registers compared to other registers. The Commission, therefore, agreed that in applying Article 92 of the Treaty dealing with State aids, support measures could be granted to the shipping sector in order to diminish the cost gap faced by EC shipowners compared to their competitors. It nevertheless adopted rules to ensure that competitive distortions resulting from such aid would be kept to a minimum. A revised version of these rules, the 'State aid guideline' was adopted on 6 May this year by the Commission. They will be published in the coming weeks. These guidelines, authorize Member States to apply up to zero rates of taxation and social charges for seafarers as well as a reduced level of corporate taxation of shipping activities. In other words, the rules allow Member States to grant their shipowners the same privileged fiscal treatment they can obtain in other places of the world, like Panama, Liberia, Cyprus or elsewhere. If a Member State makes maximum use of this fiscal facility it is not allowed to grant any other form of aid, since such accumulation of aid would certainly distort competition. This new approach to State aid has been favourably received by the European Shipowners and by the International Unions of seafarers.

Flagging out is a process with further reaching consequences than initially thought. It starts with simple tax evasion, soon followed by gradual replacement of EC seafarers by cheap labour. Finally it may happen in certain cases that the complete shipping management is delocated to places outside the EC. The end result is a serious erosion of maritime know how in the Community and loss of employment at all levels.

As far as safety is concerned, our approach has been to have the existing international rules respected (the ones from the IMO) rather than to adopt new standards. We have therefore focused our action on controls, these being applicable not only to vessels flying EC flags but also to vessels flying third countries flags – which is a way of protecting EC shipowners against substandard vessels operating at lower costs. The main legal instrument serving this purpose is the Directive on Port State control which entered into force on 1 July 1996. It imposes to the national authorities of the EU the obligation to inspect at least 25% of all ships entering their ports, whatever their flag may be. The main target are the most potentially dangerous ships, that is to say ageing bulk carriers and oil tankers. In accordance with the provisions of the Directive, ships with significant shortcoming shall be detained until all defects have been remedied.

Before concluding on these topics and coming to the issue of liability, I would like to say a few words on our maritime policy for the future. The community has done a lot in the last few years, but a lot remains to be done.

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The Commission published in March last year a Communication entitled 'Towards a New Maritime Strategy' also known as "the Kinnock paper" which has been welcomed by the Council, the European Parliament and the industry. This Communication presents ways to deal with the challenges and opportunities for the future. The aim of the document is to help to guide and focus the discussions on developing a coherent EC maritime policy in a global market. On safety, it proposes the continuation of the same line of action, that is to say to enforce existing standards, but also to foster quality shipping rather than merely penalizing bad shipping. It also proposes, among other measures, that a legal instrument be drafted to lay down minimum rules applicable to all Member States' shipping registers.

On external relations, the Strategy paper proposes to continue to strive for free access and fair competition. Finally, on the crucial issue of competitiveness, the paper proposes to target the efforts on training and employment. Indeed the average age of Community seafarers is now over forty and the recruitment rate is insufficient which will, if not remedied, endanger our know how position. The survival of many maritime colleges and training institutes in the Community is at stake.

I would like to come to the issue of European Policy as regards private international law, and the issue of liability.

As I said during my introductory statement, the Community has so far not brought in legislation on this topic. These issues have been satisfactorily handled by other international organizations and by the private sector. We have of course been following with much interest work done in this field since the late 1980s, and especially the entry into force in 1992 of the UN convention on the carriage of goods by sea, the so-called Hamburg Rules.

At the request of the European Shippers' Council, the Commission in November 1992 held a hearing with representatives from UNCTAD, shippers, shipowners and freight forwarders on the possible impact of the Hamburg Rules on maritime transport. In short, the object of the Hamburg Rules was to strike a fairer balance between carriers and shippers in the allocation of risks, rights and obligations with regards to liability. As you know, they were broadly accepted by shippers but at the same time rejected by shipowners who wanted to maintain the more favourable traditional system based on the Hague/Visby Rules. The conclusion of this hearing was that there was a need for more clarification in order to assess the value of the arguments raised by each party. Further meetings have been held, studies were made, but the bottom line was that the Commission decided not to take any further action in this field at that stage.

The issue of liability is now again on our agenda, but this time the perspective is different. The Commission's task force on intermodality, reported last year that one of the stumbling blocks to the development of intermodal transport in the Union was that liability was still based on modal approaches. The Communication on intermodality and intermodal freight transport which was adopted by the Commission on 29 May 1997, addressed this particular issue⁽¹⁾. In the Commission's view, liability rules should ideally not be mode-specific and should not distinguish between national and

Part II - The Work of the CMI

international transport. The Commission has called for a working group of experts to examine the possibility of creating an intermodal liability concept. We will support initiatives in that direction and will try to bring relevant operators, users and insurance companies together. Depending on the results obtained during this preliminary phase, the Commission is to take further action in this field.

This could give us the opportunity to collaborate again more intensively with organizations like CMI, UNCTAD and others.

I would like before concluding to reiterate my congratulations to the CMI for the work it has done to the great benefit of the world shipping sector. I wish that its activities will continue as successfully during the next coming century as they have in the past.

⁽¹⁾ An extract of this Communication is annexed to the speech of Mr. De Ruiter.

AGENDA OF THE CONFERENCE

- 1. Offshore craft and structures**
- 2. Classification societies**
- 3. Wreck removal**
- 4. Collision and Salvage**
- 5. EDI**
- 6. Maritime Liens and Mortgages and Arrest of Ships**
- 7. Uniformity of the law of carriage of goods by sea**
- 8. Towards a Third Party Liability Convention-Report to CMI Assembly**
- 9. The future of the CMI**

OFFSHORE CRAFT AND STRUCTURES

I

REPORT OF THE CHAIRMAN, RICHARD SHAW

The subject was listed for discussion on the first day of the Conference, Monday 9th June, in the afternoon session.

The Opening Ceremony and lunch, both attended by HRH Prince Philip of Belgium, were so successful that the start of our work was delayed by about an hour, thus reducing the time available, but a lively debate took place, attended by some 60 delegates. A detailed report of the debate, with the names of the participants, is annexed,

The main aspect discussed was whether the CMI should continue work on a broader based offshore convention in the light of the failure of the Sydney Draft to gain support in the IMO Legal Committee. Representatives of E and P Forum and the International Marine Contractors Association argued that such a convention was neither necessary nor desirable, while other delegates agreed that the provision of UNCLOS 82, now in force in more than 80 states, required positive action by states particularly in the fields of environmental protection and compensation for pollution, and that a convention drafted by CMI would provide a valuable framework for such action, avoiding uncoordinated legislation by coastal states.

The Chairman reported that 12 of the 16 respondents to the questionnaire sent out by the International Subcommittee were in favour of further work by CMI, and the delegates of Russia and China, who were not included in these figures, also expressed support. Some delegates counselled a more cautious approach limited to mobile craft, but the majority view favoured work on offshore mobile craft but not necessarily limited to the mobile mode.

A working paper discussing 9 possible subjects for such a convention was distributed to delegates, and a copy is annexed to this report. Comments from member associations on the points addressed in this paper are invited. They should be sent to the Chairman, Richard Shaw, at the address below.

At the CMI Assembly on 14th June Mr Shaw reported on the week's work, and at the meeting of the CMI Executive Committee the same day, the recommendation to continue further work towards a broader based offshore convention was approved.

A correspondence group will be established consisting of the members of the CMI Offshore Working Group together with those delegates who spoke at the session on 9th June and delegates nominated by National Maritime Law Associations in their replies to the questionnaire. Any other MLA who would like to nominate a person to the correspondence group is encouraged to do so by contacting Mr Shaw.

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II

WORKING PAPER SUBMITTED BY THE CMI INTERNATIONAL SUB COMMITTEE ON OFFSHORE MOBILE CRAFT AND STRUCTURES TO THE 1997 CENTENARY CONFERENCE

Introduction

The work of the International Sub Committee and its predecessor working group is summarised in the report of the Chairman at pages 105 to 113 of the CMI Yearbook 1996. This also contains a spreadsheet of the replies received from member International Maritime Law Associations to the questionnaire sent out in May 1996, and copies of the 1996 Revised Canadian Discussion Paper and of the Drafting Suggestions and Notes put forward by the Canadian Maritime Law Association at the Sydney Conference.

The contents of those documents will not be repeated in this working paper, the purpose of which is to set out further comments on certain specific topics which may well be addressed by a comprehensive offshore convention. These comments have been drafted by individual members of the International Sub Committee, but have been seen and approved by the Sub Committee as a whole.

It is hoped that the contents of this working paper, read together with the documents at pages 105 to 155 of the 1996 CMI Yearbook, will be of assistance to delegates in considering the subjects to be discussed at the session at 1400 on Monday 9th June, and in the work which will inevitably follow. The list of topics addressed in this paper is not intended to be exclusive, but includes most of the subjects which the majority of National Maritime Law Associations

responding to the questionnaire considered appropriate for inclusion in such a convention. They are:

1. Ownership, including Financing and Mortgages
2. Registration and Flag
3. Maritime Liens and Rights of Civil Arrest
4. Civil Jurisdiction
5. Penal Jurisdiction
6. Salvage
7. Limitation of Liability
8. Liability for pollution
9. Removal of Decommissioned Structures and Wrecks

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.

1. Ownership, including Financing and Mortgages.

1.1. Presently, there is no uniform international regime. Since types of industrial plant used in the offshore industry are costly to build and operate, and there is considerable risk inherent in their operation, international rules respecting ownership and finance are commercially desirable.

1.2 The responses of the National Maritime Law Associations show a consensus that this topic should be included as part of an international regime.

1.3 It is necessary first to consider what types of structures ought to be covered. Self propelled tankers would be covered already by domestic legislation and conventions applying to ships. As the legal status and application of national standards to fixed platforms and dumb barges varies widely between countries, but such structures are an integral part of offshore operations, offshore units and floating storage units should be covered.

1.4 Clause 60(8) of UNCLOS means that fixed structures and artificial islands cannot be regarded as part of state territory unless located in the Territorial Sea. Therefore one cannot apply domestic law respecting property rights in immovables to artificial islands simply by the legal principle of accession to the soil. Unilateral attempts by national governments to extend property laws of general application to structures outside the territorial sea could be subject to challenge under international law or risk non-recognition by courts of other states. Therefore a specific international legal regime is needed for property in fixed structures and artificial islands.

1.5 The question whether or not an offshore unit is a ship has bedevilled discussion of this subject for many years. It is the view of the Subcommittee that the term offshore unit is to be preferred to cover both fixed and mobile modes.

1.6 Offshore units as so defined do not include artificial islands, that is those created by fill or dumping. The majority of respondents to the questionnaire did not consider that such artificial islands should be included in a convention at this time. Anthropogenic structures such as concrete base platforms are intended to be included.

1.7 Adoption of a general principle that all offshore units be registered would permit the stable and predictable application of rules for the granting of mortgages or hypothecs in offshore units.

1.8 It is also necessary to develop international rules respecting ownership and civil and penal responsibility, which would apply during positioning voyages of offshore units destined to become semipermanent structures, from their building location to their operating site and from that site to their next location or dismantling site.

2. Registration and Flag.

2.1 There is general support from national associations that this topic should be considered for an international regime.

The domestic law of some states may permit self-propelled offshore units to be registered as ships, but there is no uniform international regime.

2.2 All offshore units should have a nationality. This would permit the clear application of the law of property of the flag under which units are registered. It is undesirable that unregistered or 'stateless' offshore units be permitted to operate outside internal waters without some juridical connection to a state and its legal system. Because operation of offshore units is an internationally diffuse industry with many points of contact to various places of business, determination of property rights in 'stateless' units would give rise to complex conflict of laws issues and the granting of security in such units for financing would be hampered by legal uncertainties. The application of principles of penal jurisdiction over unlawful acts committed on board 'stateless' units would be particularly unpredictable.

2.3 The international regime should provide for the registration by flag states of ownership and mortgage or hypothec interests in offshore units. It is material whether such units are registered as ships, or in specialised registries established for that purpose.

2.4 Consistent with Articles 4 and 6 of the 1986 Ship Registration Convention, 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 and ensure that their registry systems permit the identification and regulatory accountability of offshore unit owners. As a minimum, the convention should provide for a right of general public access to information recorded in domestic registries.

2.5 Consideration could be given to an international registry of offshore units as a long term objective. An international registry or clearing house for Offshore Units should be established to facilitate searches and financing. Such a registry should include Offshore Units used both in territorial waters or coastal economic zones or on the high seas. The establishment of such a registry may be complemented by an international uniform regime for property and financing interests in offshore units.

2.6 Because the stationing of Offshore Units for lengthy periods within territorial waters or the Exclusive Economic Zones of coastal states gives rise to unique jurisdictional issues, the legal status and incidents of flagged Offshore Units ought not necessarily be identical to those of a mobile cargo carrying vessel. These jurisdictional issues will be discussed below.

2.7 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 should permit automatic revision through IMO tacit amendments procedure to take into account development of new technology.

3. Maritime Liens and Rights of Civil Arrest.

3.1 A threshold issue which needs to be debated is whether maritime liens ought to attach to offshore units. These are not as mobile as conventional cargo carrying vessels. It is recognised IMO policy not to extend the scope or categories of maritime liens.

3.2 The objective of maritime liens is to accord a privilege to certain classes of claims that are considered most worthy of rights of recovery against mobile assets of an industry operating in a high risk environment. The concept of maritime liens evolved before those of workers' social benefits or compulsory insurance. The same objective could be met by international rules providing for compulsory insurance for certain risks, for the ranking of priorities among creditors, and for consistent administration of multinational estates of insolvent operators. While the principle of compulsory liability insurance has been accepted internationally for carriage of heavy petroleum and some bulk HNS, it is unlikely that an international consensus would be identified in the foreseeable future to support development of a compulsory insurance system applicable to Offshore Units for the types of claims which have given rise traditionally to maritime liens.

3.3 This section of the paper does not discuss pollution liability and compensation rules discussed elsewhere. Assuming comprehensive pollution discharge liability and compensation regimes are in place for Offshore Units, the following maritime liens could be recognised as attaching to Offshore Units in whatever mode, and ranking ahead of claims by mortgagees or the holders of hypothecs:

- 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

These are the same categories of claims recognised as maritime liens under Article 4 of the Maritime Liens and Mortgages Convention 1993. Such liens could be subject to a general limitation of liability regime if adopted for Offshore Units.

3.4 Recognition of these types of liens should not impair offshore unit financing any more than the present priorities of maritime liens impair ship financing. It is open to secured creditors to require that operators provide insurance or other risk management systems for such risks.

3.5 With the possible exception of cargo stowed aboard a floating production unit, industry practices in the location of transfer of title after extraction and the ratio of value of cargo to Offshore Unit may make General Average practically irrelevant to an offshore unit liability regime. It is debatable whether an offshore regime need recognise a lien for general average.

3.6 In addition to the restricted types of claims for which the status and high priority of maritime liens are conferred, the 1993 Maritime Liens and Mortgages Convention permits state parties to establish rights of arrest for other types of claims, such as goods supplied to a vessel, but with a priority lower than maritime liens or mortgages. Consideration may be given to whether such an optional regime is appropriate to Offshore Units.

3.7 The rights conferred by a maritime lien usually are associated with rights of arrest. Offshore Units have different operating characteristics from ships which affect conferral of arrest rights. For example, a spudded down jackup unit is less likely to depart the jurisdiction to evade service than a cargo carrying ship. Domestic laws differ whether arrest confers possession of the ship upon the creditor, court officers, and whether the expenses of maintaining the res pending disposition are recoverable as a first charge on the proceeds of sale. An Offshore Unit anchored in the open sea is in a different risk environment than a bulk carrier secured inside a harbour.

3.8 As the arrest of an Offshore Unit while positioned offshore may be impractical, if this Convention addresses maritime lien rights, it 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.

3.9 Similarly to responsibility for arrested property after its seizure, domestic laws differ on the rights and obligations of secured creditors and claimants for liabilities arising from their taking possession of security. This is a difficult issue. For example, if a creditor in possession is made responsible for discharges of pollutants, obtaining financing for Offshore Units may be more expensive or commercially impracticable. On the other hand, an Offshore Unit on station improperly maintained or abandoned by an insolvent operator is a greater risk to passing ships and the environment than a derelict ship alongside a wharf. Environmental issues of creditors' responsibility for operating or decommissioning oil wells on land has spawned litigation. While some coastal states' laws require operators to provide insurance or other security for such claims, there is no uniformity of practice.

3.10 There are several choices. The regime could 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. Because the general goal is to ensure that exercise of creditors' remedies does not heighten environmental or operational risks (including the risk that compensation may not be available if an accident occurs), a convention could simply provide that coastal licensing states must take adequate measures to ensure that in the event an Offshore Unit is arrested or seized by creditors, international safety and pollution prevention obligations are fulfilled by whatever means the state chooses. These means could include

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imposing responsibilities on creditors, assumption of responsibilities by state authorities, or assumption of responsibilities by industry response organisations.

3.11 It should also be considered whether any right conferred for the arrest of Offshore Units be extended to 'sister units'.

4. Civil Jurisdiction.

4.1 The national associations who commented on this topic considered this would be usefully treated as part of the regime.

4.2 Compared to merchant vessels, Offshore Units are unique in that a foreign flag entity with a multinational work force 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 previous maritime conventions dealing with civil or penal jurisdiction. There is potential for confusion because of absent or differing domestic legislation concerning the exercise of civil and penal jurisdiction seaward of internal waters. While UNCLOS states the general principle that coastal states have the general right of regulation within their exclusive economic zone, Article 56 is clear that rights of exploitation of EEZ areas must be exercised with regard to the rights of other States and UNCLOS. Therefore if a coastal state makes the policy choice of licensing foreign flag units to operate within its territorial sea or EEZ, it should have a corresponding obligation to respect rights that are incident to that foreign flag.

4.3 The 1994 CMI Sydney Draft International Convention on Offshore Mobile Craft incorporates by reference the 1952 Convention Concerning Civil Jurisdiction in matters of Collision and the 1969 Convention on Civil Liability for Oil Pollution Damage. The former gives a collision action plaintiff a choice of forum of the place of the defendant's habitual residence or business, the place of the collision or a place at which the ship or a sister ship may be arrested. The latter Convention restricts claims for pollution damage compensation to the courts of the affected state party.

4.4 Multiplicity of litigation, with its disadvantages of increased delay, expense and potentially inconsistent results, is to be avoided. It would be desirable that the regime provide for uniformity of jurisdictional rules. A useful distinction may be made between jurisdiction over maritime claims *ex contractu* and those *ex delicto*. As most of the participants in the offshore industry are commercially sophisticated, as a general rule such parties should be left free to stipulate as they wish for choice of forum clauses.

4.5 An exception to this general rule may be contracts of engagement for Offshore Unit Personnel. Some, but not all, coastal states administer workers' compensation systems in which the right to sue is displaced by a 'no fault' benefits system. This is an aspect of a more general issue whether an international regime should address conditions of employment. An offshore operator may employ several subcontractors for services on board a single unit. If, for example, employees of multiple contractors are injured in one accident, it would appear inefficient at best and at worst unjust if the issue of liability

could be determined before several tribunals depending on the existence and selected courts in employment contract choice of forum clauses. Also, an unfettered right by employers to stipulate a forum could leave workers domiciled in other countries without practical access to the contractual tribunal. Offshore industry contractors hire workers with a view to labour costs. If the contractor obtains an economic benefit from being able to hire workers from a particular country, it is reasonable that the contractor pay for that benefit by accepting the jurisdiction of the courts or employment tribunals of the workers' domicile.

4.6 An international regime could provide for consolidation of proceedings in multijurisdictional claims.

4.7 Different considerations apply to claims *ex delicto*, for victims of wrongdoers do not generally choose to suffer loss. Here, the regime could appropriately provide for a range of permitted forums, such as the place of the accident and the domicile or place of business of the claimant or defendant.

4.8 As a general principle, each state party should ensure that its Courts possess the necessary jurisdiction to entertain claims arising from matters covered by the regime, including activities and obligations in the EEZ.

5. Penal Jurisdiction.

5.1 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)

5.2 While penal jurisdiction over incidents on board ships generally has been considered a matter for the flag state, the positioning of offshore units for long periods gives rise to important public interests of the coastal states.

5.3 While most responses to the questionnaire considered that this topic may be addressed, one national law association considers that inclusion of penal jurisdiction in a convention covering Offshore Units and structures is unnecessary, as it doubts that a gap in jurisdiction exists. Not all states' domestic law provides for exercise of functional penal jurisdiction outside of the territorial sea. Where such laws exist, the operation of Offshore Units creates great potential for conflicts between interests of different states. This type of operation was not contemplated in previous maritime conventions such as the 1952 International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation. Granting the flag state exclusive penal jurisdiction may have been appropriate to vessels exercising the traditional right of innocent passage, but it does not address the regulatory interest of Coastal States over Offshore Units and structures as recognized by UNCLOS.

5.4 Types of offence 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.

5.5 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 a general interest in suppressing international crimes such as piracy, terrorism and deliberate transboundary pollution.

5.6 As seen in practically every system of domestic offshore licensing, Coastal States have an interest in regulatory compliance arising from external aspects of unit operation such as pollutant discharges. Both coastal and flag states have an interest in regulatory compliance arising from internal matters such as construction and maintenance standards.

5.7 Unlike regulatory offences, personal offences may 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 on-board operating officers.

5.8 Although Offshore Unit occupants' domiciliary states have an interest in bringing their nationals to justice for offences against public order, it may be that the policy choice whether to treat nationals as liable for offences committed abroad simply on the basis of nationality should be left to individual governments rather than be addressed in a convention.

5.9 Recognising 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.

5.10 The deliberate disabling or destruction of an Offshore Unit could have catastrophic consequences for those on board 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.

5.11 Given the increasing international incidence of refugee movements and economic migrants, the Convention could appropriately provide for the physical protection and repatriation of stowaways aboard Offshore Units.

6. Salvage.

Oil rigs and offshore structures have traditionally been excluded from the class of recognised subjects of salvage, since they do not fall within the descriptions of ship, cargo freight, bunkers or stores. – see the “GAS FLOAT WHITTON No 2” [1897] A.C. 337.

However a significant change in the principles of the law of salvage, as recognised both nationally and internationally, was made by Article 3 of the 1989 Salvage Convention, which provides:

“This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.”

This article did not appear in the CMI Montreal Draft, but was introduced as a possible subject of reservation in the IMO Legal Committee. At the IMO Diplomatic Conference the International Association of Drilling Contractors expressed serious concern at the possibility of a volunteer salvor attempting to render salvage services to a sophisticated drilling rig without the necessary knowledge of its complex systems and stability. The final text reflects the view of the Conference that such rigs should be proper subjects of salvage while they are under tow or under way to or from a drilling site, but that, while they are actually “on location” engaged in the exploration, exploitation or production of sea-bed mineral resources, they should be excluded from liability to pay salvage remuneration to a volunteer salvor.

This does not of course exclude, and indeed never has excluded the possibility of the owners of such a craft or structure concluding an agreement with a contractor to render services which will be remunerated on a salvage basis. There have been several cases of salvage services being rendered to oil rigs on Lloyds Form of Salvage Agreement even before the 1989 Salvage Convention. Article 1 (Definitions) includes the following:

a) Salvage operation means any act or activity undertaken to assist a vessel or other property in danger in navigable waters or in any other waters whatsoever.

b) Vessel means any ship or craft, or any structure capable of navigation.

c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.

A fixed structure attached to the offshore sea bed can hardly be described as “permanently and intentionally attached to the shoreline” and, even if it is not a vessel, does fall within the definition of property.

The wording of Article 3 appears to envisage the possibility of a salvage service being rendered to a fixed structure on location but which is not actually

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engaged in exploration, exploitation or production. This would indeed be a very significant extension of salvage law, which has traditionally resisted the notion of salvage of a fixed structure such as a pier.

It was never suggested during the 1989 Diplomatic Conference that such fixed structures lay outside the jurisdiction of the IMO, but this aspect was never actively debated.

While therefore the extension of the rules of salvage to fixed or floating platforms and to mobile offshore drilling units is to be welcomed, and while it is probably undesirable to try to extend the principles of a new article in a Salvage Convention not yet ten years old, some clarification in a comprehensive offshore convention of the position of units which are on location but not actively engaged in exploration, exploitation or production would be helpful.

It should be remembered that clarification of these issues will enable a salvor whose operations have been effective in preventing or minimising damage to the environment to claim Special Compensation under Article 14 of the 1989 Salvage Convention.

In their Initial Drafting Suggestions and Notes dated 31st August 1994 the Canadian MLA suggested that 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 provisions may well form part of the conditions for the grant of a licence to the operator, but it is questionable whether a comprehensive convention should contain such mandatory provisions.

In drafting the 1989 Salvage Convention the CMI and IMO both steered clear of creating specific obligations on the ship and rig owner to accept salvage services, even where the circumstances indicated that it was prudent (or even essential) to do so. Unreasonable refusal to accept salvage assistance may, in the appropriate case, prejudice the owner's insurance coverage, but it would run counter to the policy adopted by IMO in drafting the Salvage Convention to create some form of criminal offence in such circumstances. How else could the obligation to accept salvage assistance be enforced?

7. Limitation of liability.

There is at present no regime in force to impose on the operator or owner of a fixed or floating platform or mobile offshore drilling unit liability for damage caused by pollution resulting from their activities. An attempt to create a convention in 1977 produced the CLEE Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources.

This convention has however never received the necessary ratifications and accessions for entry into force.

Since 1977, however, the general approach to pollution damage claims has developed significantly, particularly with reference to oil pollution, but also concerning pollution by other Hazardous and Noxious substances carried by sea. The typical picture is one of strict liability on the vessel owner, with

direct action against his insurer, but with a finite limit of liability calculated by reference to the tonnage of the vessel and the availability of insurance coverage for such liabilities. It has been suggested that the CLEE Convention failed to gain International acceptance because it offered the alternatives of limited and unlimited liability.

Discussions are already taking place in the IMO legal Committee as to the possibility of an all-embracing liability convention for ship owners, with compulsory third-party liability insurance and the right of direct action by the victim against the insurer, similar to that required in almost all countries of the owner of a motor vehicle.

Recent debate on the subject of reinsurance of P and I Club coverage for oil pollution damage under the US OPA 90 legislation suggests that, even in the fields of offshore exploration and exploitation, insurers will not be willing to offer cover with direct action by claimants without some realistic limit of liability for damages. While therefore the notion of unlimited liability has obvious attractions to claimants, the substantial benefits to them of strict liability and direct action against insurers will probably justify, in the longer term, the necessary political will to accept limitation of liability as the price for these benefits.

The modern law of limitation of liability is set out in the 1976 Convention on Limitation of Liability for Maritime Claims. Article 15(5)(b) of that convention expressly provides:

"This convention shall not apply to...floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof."

It may well be that the members of the IMO are now ready to reconsider this position. It is noteworthy that the 1994 Sydney Draft contained in article 5 a provision which would extend the right of Limitation of Liability to the owner or operator of a craft (not permanently fixed into the sea bed) used or intended for exploration or exploitation of the mineral resources of the sea bed.

The 1976 Convention adopted the gross tonnage of the ship, calculated in accordance with the 1969 International Convention on Tonnage Measurement of Ships, as the yardstick by which the Limitation Fund should be calculated, thus avoiding the problems associated with ships of differing tonnages depending on their configuration at the time. The 1969 Tonnage Convention can be applied to mobile offshore craft, whether self propelled or not, but it is clearly inappropriate to fixed structures. A reference to the tonnage of crude oil, or the volume of natural gas, passing through the platform during the year preceding the incident giving rise to the claim, might be a possibility, although special rules would be required for redundant structures.

In their Initial Drafting Suggestions and Notes dated 31st August 1994 the Canadian MLA has proposed that if an Offshore Unit is working at the material time in association with a Floating Storage Unit, the combined tonnage of the two (or more) units concerned should be the basis for calculation of the limitation fund.

Clearly some provision would be required specifying the circumstances in which a person liable would be deprived of the right to limitation of liability.

The formula adopted in Article 4 of the 1976 Limitation Convention has proved satisfactory in practice, and has been adopted in other conventions such as the 1992 Protocol on Liability of Oil Pollution Damage and the 1996 Convention on Liability for Hazardous and Noxious Substances. It is recommended that it be adopted in any comprehensive Offshore Convention. It reads:

“A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.”

8. Liability for pollution from offshore craft and structures.

8.1 The CLEE Convention 1977.

There is currently (1997) in place no universal regime governing liability for pollution from offshore activities. In 1976 a conference in London sponsored by the UK Government produced the Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources (CLEE 1977). That convention attempted to build on the model of the 1969 CLC Convention on liability for oil pollution from tankers, including the following elements:

- i. strict liability;
- ii. channelling of all claims to an identified party (in the case of CLEE77 the operator of the installation);
- iii. a very restricted list of exceptions;
- iv. limited liability up to a (then) relatively high level (40m SDR);
- v. evidence of insurance or other financial security; and
- vi. direct action against the insurer.

Some states, however, were unwilling to accept the notion of limited liability in the offshore field, and as a result an additional article was included in the final text of the

CLEE77 convention giving the controlling state the right to fix a higher limit than that provided in article 6 of the CLEE convention, or even no limit at all. This proved a fatal

flaw, and the CLEE convention has not entered into force.

It is, perhaps significant that the CLEE Convention did not include provisions for the establishment of an industry-contributed fund to cover liabilities in excess of the limits provided by article 6. Such a fund was established in the case of tanker-source oil pollution by the 1971 Fund Convention and this model has been adopted in the 1996 Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (the HNS Convention).

The International Sub-Committee understands that the Governments of Norway and Germany have maintained the principle of unlimited liability in their legislation relating to offshore exploration and exploitation, and it will be useful to investigate whether this has acted as a deterrent to these activities in the sea areas under their jurisdiction.

It may be useful to draw a distinction between pollutant discharges emanating from natural reservoirs and those from offshore craft themselves or associated man-made facilities like pipelines. While it may be difficult to estimate the potential severity of future uncontrolled blowouts (like that suffered by the IXTOC 1), the maximum storage capacity of structures such as pipeline sections, FPSO's and holding barges is known and the potential risk therefore rateable for insurance purposes. A pollution limitation regime which attempted to cap liability for discharges from particular blowout occurrences could suffer the disadvantages of significant under compensation or the expense of insuring a fund in excess of the cost of a particular incident. On the other hand a limitation regime based on contributions from both offshore unit operators and the owners of the extracted commodity, applying only to discharges from offshore craft and related structures, may be workable.

8.2 *The Offshore Pollution Liability Agreement (OPOL).*

This is a contract voluntarily entered into by a number of oil companies on 4th September 1974 and which came into force on 1st May 1975. It has been amended regularly since then, the last such amendment being in 1992. Originally conceived to apply only to operations in waters under UK jurisdiction, it has been extended to all European Union coastal states and Norway.

By this agreement, participating companies accept strict liability for pollution damage and the cost of remedial measures arising from their operations up to a maximum of US\$ 100 million per incident. The six principles of the CLEE set out above are broadly incorporated in OPOL.

This agreement shares many concepts with TOVALOP, the tanker industry's interim solution to oil pollution damage claims introduced following the "TORREY CANYON" casualty pending widespread acceptance of the 1969 CLC and 1971 Fund Conventions. TOVALOP, and its attendant top-up agreement CRYSTAL, were formally terminated on 20th February 1997.

While therefore it may be argued that the OPOL scheme adequately meets the needs of claimants at the present time, it would be unsafe to assume that it will remain in place indefinitely, and the argument for a broadly accepted convention governing liability for pollution from offshore oil activities remains a valid one.

8.3 *Pollution from Offshore Craft.*

To the extent that Offshore craft fall within the definition of "ship" in the relevant national laws, the applicable regimes relating to liability for pollution from ships will apply. This was the philosophy behind article 7 of the Sydney Draft, which made the 1969 CLC and subsequent protocols apply to craft to the extent that they would not otherwise apply.

It may be questioned however whether this provision really added to the existing law, and, more important, whether it met the perceived need for a pollution liability regime covering damage caused by pollutants other than oil carried in bulk as cargo. The 1992 Protocol extends this regime to oil carried in the bunkers of the ship but not, paradoxically, to used lube oil in the sump of the main and auxiliary engines.

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Offshore craft rarely carry persistent oil in bulk, but may well carry other pollutant substances. A new convention must therefore be cast broadly enough to ensure that it covers all potential pollutants carried in connection with offshore operations by craft, whether or not they fall within the accepted definition of "ship".

Care will be required to incorporate provisions to avoid duplication of liability for pollution damage on both the operator of an offshore craft under a regime based on the CLEE principles and the owner of a craft which falls within the definition of a ship under the principles applicable to ship-source pollution.

9. Removal of decommissioned structures and wrecks.

This subject is also included in the work of another CMI International Sub-Committee under the Chairmanship of Mr Bent Nielsen, whose report appears at pages 173 to 224 of the 1996 Year Book. Care must therefore be exercised to avoid unnecessary duplication. However it is noteworthy that the report of the 75th (April 1997) Session of the IMO Legal Committee includes the following paragraph no 76 under the heading of Draft Convention on Wreck Removal – Types of wrecks/ships covered:

"Some delegations supported the inclusion of offshore installations but with reservations that it should be strictly on the same bases as in the 1989 Salvage Convention i.e. when in transit. The Committee decided that as the CMI is studying this matter, it would be preferable to await the outcome of the CMI study."

III

NOTES OF THE SESSION

Chair: **Richard Shaw**

Panel Members: **Edgar Gold, Hisashi Tanikawa, Nigel Frawley, Winston Rice, Jim McCulloch (Global Marine Inc. – Offshore Industry Representative)**

The Chair summarized the events leading to setting up the working group and introduced the panellists.

Professor Tanikawa discussed the linkage of the IMO Legal Committee with the CMI. The Rio Draft of 1977 was presented to the IMO Legal Committee. The Legal Committee decided that this should be included in future work. However, the Legal Committee was very occupied with other matters, such as CLC Athens and HNS.

After 1990, the IMO Legal Committee reconsidered its long term programme. IMO requested that the CMI update the Rio Draft because of the fifteen years which had elapsed since the Rio Draft.

The CMI adopted a revised updated version of the Rio Draft at its 1994 Sydney Conference. This was presented to the IMO legal committee in its October 1995 session. The IMO Legal Committee considered other matters had priority and expressed concern regarding the contents and structure of the Sydney Draft. One representative on the Legal Committee pointed out that the application of existing Conventions relating to ships to offshore craft may not be appropriate.

Prof. Tanikawa considers that government members of IMO Legal Committee are interested only in some aspects of an offshore convention such as wreck removal and compensation for pollution.

His personal view is that the CMI should concentrate on these topics.

The IMO Legal Committee awaits the results of the CMI study.

Prof. Tanikawa discussed the relative jurisdiction of UN agencies and IMO with respect to the topics in the offshore convention.

For example, UNCTAD has sponsored the Ship Registration Convention. He considered that there might be some uncertainty as to which of the IMO Committees would consider the proposed offshore convention.

Dr. Gold spoke on the importance of UNCLOS. UNCLOS entered into force in November 1994. 116 states now have ratified. The Convention provides important directives on the offshore. The internationally binding content of UNCLOS must be read in conjunction with the Rio Declaration. UNCET sets out basic principles for environmental assessment and capacity. The UNCLOS articles relevant to coastal state management of the offshore were summarized.

The entry into force of UNCLOS has given these provisions legal effect. Offshore operation is now subject to these public international law obligations. IMO has decided to occupy the field and has asked the CMI to develop a convention.

There is no convenient international organization to give effect to these UNCLOS obligations. CMI and the offshore industry must decide if they wish to participate in the development of a system to implement UNCLOS or let coastal states take the initiative.

Nigel Frawley spoke on the Canadian position. He referred to the OCEAN RANGER and PIPER ALPHA disasters and the recommendations of the inquiries. The results of the questionnaire were discussed and the nine areas referred to. He discussed the need for a regime to address construction standards, removal of decommissioned structures, management quality assurance, occupational health and safety, navigation and safety, pollution prevention and response, security. We are very encouraged by response to the questionnaire, but would like a response from all countries with an interest in this subject.

Winston Rice encouraged participation in answers to the questionnaire. The answers are from countries representing half the worldwide offshore fleet. We need further input from production countries. Speaking individually, what appeals to him from the industry viewpoint is uniformity. Treat the people and equipment in the same way legally. Lets have enforceable liens and mortgages. The regime should apply to mobile craft (including fixed craft while being

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positioned). We must first consider which of those nine topics are really ripe for application to mobile craft. Once having selected which topics are appropriate for an international regime, let us look.

The industry does not want to be burdened by another layer of regulation, but a properly drafted convention complete within its four corners would assist in getting a predictable legal regime.

The structure of the Rio and Sydney draft cannot work by incorporation by reference of other international treaties. The subject matter is best treated by IMO and if treated by IMO, who better to assist than the CMI.

Jim McCulloch is not in favour of a convention such as this because there is not a problem to be solved. If we do embark on this project, it will be a daunting task to make sure that we do good and not do damage. If you look at how the industry actually operates, the making of rules will require a lot of thought.

If, however, there truly is an impetus from IMO, the industry will want to be involved.

The Chair discussed the original brief of the Committee. The first task was to determine if there was an interest. The questionnaire shows 12 of 15 states in favour of further work on some aspects. We have representatives from two industry associations attending this meeting, namely the E&P Forum and the International Association of Drilling Contractors.

Paul Willee (Australia) expressed the formal support of Australia for the Dr. Gold's position. He individually sees some difficulty in existing relationships with domiciliary regimes and not to water down penal jurisdiction. The Chair referred to the discuss.

Emery Harper (United States) commented on liens and mortgages.

The Chair stated there is a need to clarify the rules on arrest of rigs.

Winston Rice commented on the limited geographical jurisdiction of some states' courts and conflicts of law problems.

Jim McCulloch observed financing of rigs presently does not appear to be impaired by the lack of an international regime.

The Chair emphasized the need to move away from the sterile debate as to whether rigs are ships.

Mike Cloughley of E&P Forum stated that the IMO is not concerned with fixed installations except for navigation safety and oil spill response. UNCLOS gives authority to IMO to regulate removal of fixed structures as hazards to navigation. Fixed installation activities are governed by existing treaties and regional arrangements. He considered FPSOs should be treated as fixed installations.

We have to demonstrate a need for a convention. The views of governments should be canvassed.

The London Convention does not cover platforms, but it is now considering further rules for these structures, reflecting regional agreements such as the Oslo and Paris agreements.

The ISO is now adopting American Petroleum Institute standards to develop standards for fixed and mobile installations.

The IMO is in favour of regional conventions. They take into account

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particular needs of regions and have more chances of implementation because of peer group pressure. There are disbenefits to global regulation. They would be either bland or reflect the views of those who spoke out loudest. He accepted that there are jurisdictional holes, but why not sink efforts into a network of regional conventions covering the whole world.

George Fowler (United States) agreed generally with Jim McCulloch. He considered more work may be needed to cover offshore activities in areas outside the territorial sea.

Jean Serge Rohart (France) observed the role of the CMI is to harmonize national legislation. He wondered whether there is a sufficient interest for a regime covering fixed, as distinct from mobile craft. He perceives there would be better progress if efforts were concentrated on mobile craft.

Anatoly Kolodkin (Russia) regarded as essential to consider the private law system in light of the UNCLOS principles. He did not agree with having fixed structures being governed only by coastal states or regional conventions, but rather an international regime. It may be necessary to identify another sponsoring international organization.

Walter De Sa Leitao (Brazil) expressed the view that the work should be confined to mobile offshore craft only to reflect the Rio Draft.

Gaetano Librando of the IMO spoke on the work of the IMO Legal Committee. An Offshore Craft Convention is maintained in the work program of the IMO Legal Committee. The IMO Secretariat is anticipating completion of the work by the CMI. It is very important that member states of the IMO be convinced of the opportunity and need for a convention. It is up to the CMI to convince governments of the desirability of such a convention.

The conventions on terrorist acts against offshore platforms and its protocol are in force as of 1992. IMO is concerned with fixed platforms for aspects of navigation such as lighting and vessel routing systems.

Professor Tanikawa noted that Offshore Craft is on the IMO Legal Committee biennial work programme. Just because some aspects of fixed structures may be excluded does not mean fixed structures are excluded from any consideration.

The Chair read the resolution of the IMO Legal Committee at its October 1995 meeting, which encouraged the CMI to continue its work on a broader based international convention.

Anthony Reid (International Marine Contractor's Association) observed that the IMO has been involved in some limited aspects of fixed structures. OPRC Convention requires contingency plans and safety of navigation, but that is it. IMO has been involved on mobile craft. Its construction standards guidelines reflect the Ocean Ranger investigation recommendations.

Luc Grellet (France) commented that France shares concern of Canada for broad convention. The dangers caused by both fixed and mobile craft are the same. Therefore a convention should address pollution and liability aspects.

Song Lisong (China) as a representative of Chinese offshore industry noted there are some domestic laws in force, but that consideration may be

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given to an international convention. It would be better to have a workable convention on some topics than attempts to cover too much.

Tom Mensah (President, Tribunal for the Law of the Sea) commented that the word 'encourage' in the IMO Committee is a very strong word in the vocabulary. The credibility of CMI and IMO has produced very good instruments. It is important that some result come out of this work. Let us concentrate on mobile rigs, but do not exclude aspects of fixed craft on navigation and pollution.

Simon Fletcher (United Kingdom) noted that the UK maritime law association did consult industry, including insurers, average adjusters before expressing its support for a convention.

There were closing comments from the panel. **Edgar Gold** noted that the CMI has historically responded to problems identified by industry. We hear from industry there is no problem, but IMO has asked us to consider this. For almost every convention at some stage industry says 'there is no problem'. This will not necessarily deter governments from going ahead. **Nigel Frawley** said an international convention could take the best of domestic state legislation could be a guide for an international convention to benefit those areas of the world who do not have a regime. **Winston Rice** sees a need to focus efforts from now on. **Jim McCulloch** sensed a perception that a pollution regime is necessary, and this is an impetus for concern. Pollution from offshore craft is very small.

The Chair summarized the discussion as supporting further work by the CMI on a convention to cover a more restricted scope than the Canadian proposal. Ownership rules need clarification. Limitation of liability is a difficult topic. Liability for pollution is an important issue. The CLEE convention did not receive widespread support and ratification, particularly because of the existence of the option between limited and unlimited liability. It may be necessary to consider whether there is support for fund to cover very large claims along the lines of the oil pollution and HNS funds.

CLASSIFICATION SOCIETIES

INTRODUCTION TO THE PANEL ON CLASSIFICATION SOCIETIES

by Dr. Frank Wiswall

Ladies and Gentlemen: You will have read the Report on the Joint Working Group on a Study of Issues re Classification Societies which begins on page 328 of the CMI Yearbook 1996, so I will not bore you with a lengthy introduction to this very interesting subject.

Suffice it to say that what is presented in the Yearbook is the fruit of five years of labor on the part of persons from various sectors of the industry who have been intent upon resolving a number of difficult and contentious issues. I am happy to say that complete agreement has been reached within the Joint Working Group on one important document, the Principles of Conduct for Classification Societies. It is the first document of its kind, and in addition to establishing a standard for measurement of the performance, it has a bearing upon one of the core issues in the other document – the liability and limitation of liability of Classification Societies.

The other document is, in terms of printed text, 99% agreed. Unfortunately it is necessary for you to mark the text of the Model Clauses at page 341 with square brackets around clause 8 and around the last few words in clause 9(a), beginning with the word “multiplied” in line 3. As you see, the remaining difficulty is over what is usually the most troublesome point, limitation of liability.

The whole exercise began, as the Report makes clear, with an examination of the problems posed by an increasing frequency of claims against the Societies. Some of this, the Societies admit, is attributable to themselves; but in large part the jump in claims results from the search by claimants for a “deep pocket” in addition to the shipowner and his insurers.

An attempt will be made to bridge this final gap at one or two future meetings of the Joint Working Group. If it succeeds we will have triumphed over all the odds, which were from the outset truly formidable. If we fail, the familiar square brackets will appear around an “X” and a “Y” in the final text, leaving it to the Societies and their clients to work out a limitation – without internationally-agreed benchmarks – whenever an individual contract is negotiated. Clearly success here is better for the industry than failure.

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This morning we will see where the principal interests stand at present on the open issue. You will hear from two individuals who have been deeply involved in this work from the beginning. Our first speaker is Mr. Amund Skou, Vice-President and General Counsel of Det Norske Veritas, who has been sitting behind the "IACS card" at all the meetings of the Group; I know from experience that we can count on Amund to "tell it like it is" from the IACS viewpoint. Our second speaker is Dr. Bernd Kröger, who has been sitting behind the "CMI card" at the group's meetings and who is a Titulary Member of the Comité, but who speaks today from his viewpoint as the Managing Director of the German Shipowners' Association and also the Chairman of the Maritime Law Committee of ICS. Let us hear what these gentlemen have to say, and then we will entertain questions and comments for the remainder of our allotted time.

**PRESENTATION ON BEHALF OF IACS TO THE
CENTENARY CONFERENCE OF THE CMI**

By A.W. Skou, DNV

The CMI Joint Working Group on Classification Societies.

Ladies and Gentlemen – Colleagues

I am head of Corporate Legal Affairs at DNV in Oslo. However, today my function is to represent IACS which is a participant in the Joint Working Group on Classification Societies. The work of this group has just been presented to you by Frank Wiswall and we thank Frank for his able chairmanship.

A. The beginning of the exercise.

Before commenting on the results of the Working Group, allow me briefly to go back five years.

CMI took the initiative on this work to discuss certain legal aspects related to classification societies. IACS was invited to participate and has attended every meeting of the Group during these five years. Throughout this exercise IACS has participated in a positive and constructive manner. We think the initiative by CMI was important and timely and we have enjoyed the close co-operation and communication during these years with the other important members of the international shipping community. The classification societies have not always been effective in their communication within the industry. However, I think we have improved. And I think the CMI work also has presented an opportunity to the class societies to reaffirm to the industry that we are a part – an important part – of the shipping world.

The basis for the Joint Working Group task was presented as follows by CMI five years back:

"The premise for this undertaking is that the classification societies play

a unique and increasingly vital role in the promotion of maritime safety and environmental protection. A considerable problem is felt to be the frequency of claims against the classification societies as additional “deep pocket” defendants. If this claims exposure to the societies was of continue unchecked, the societies could, *in extremis*, be forced to withdraw some of the services which they perform in the public interest – the necessary implication being a deterioration in maritime and environmental safety”.

In other words: CMI launched this initiative in an attempt to help the classification societies to establish an appropriate level of protection. I would like to emphasise this point. I think it is important for this Conference to have this in mind when considering the final result of the Working Group.

IACS are pleased to note that useful model contractual clauses and principles of conduct have been formulated as an important result of the Group’s work.

B. The rationale for limitation.

I would also like to add another observation before commenting upon the result of the Working Group:

Classification societies have always offered their services under provisions providing for limitation of liability. I think there is no question about the fact that the liability should be limited also in the future. As for myself, I have never met any customer, underwriter or any other direct or indirect user of the classification service – or lawyer for that matter – who has questioned the fact that classification societies ought to enjoy limitation of liability. It is not on this point that there are differences of opinion. The debate has focused, however, on the appropriate level of limitation.

When discussing that level, I think it is important to start with some basic observations as to the reasons for limitation. I think these are fundamental and I think their nature is important when discussing the overall liability exposure of classification societies. The major reasons are as follows:

1. The classification service does not add to the risk picture. The purpose of classification is to reduce the risk, not to increase it. The classification society does not replace other participants in the industry. The classification society operates in addition to others, not instead of. Hence, the incident is not caused by a classification society, but by others. The potential error or default by the class society in most cases is the fact that something that should have been discovered was nevertheless not discovered.
2. Classification often relates to assets of high value and therefore the class society is exposed, potentially, to high risks. These risks do not correspond to the level of classification fees charged. The fees are based upon the service performed, not the values of the assets surveyed – and certainly not the tonnage; I shall come back to this later.
3. It is expected that the class societies shall be in the forefront of technology. For example, in the past decade or two we have been involved with the industry in exiting new developments like high speed light craft and FPSO’s. In such situations, we cannot always base our decisions on many years

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of survey experience and/or many years of research and development. In some cases a specific project might be regarded more as a research project than a straightforward operational matter. In spite of this, it is expected that the class societies take a firm position. It nevertheless, things go wrong, the societies should not face a huge claim.

4. The class service is performed for our fee-paying customer, but is regularly relied on by many more such as underwriters, cargo-owners, cargo-underwriters, secondhand vessel buyers, governmental authorities, banks, etc., etc. In other words, the class society communicates with many different parties, and the consequence for failure is correspondingly high.

5. The classification service is performed in the public interest. If the liability exposure is high, this public interest service becomes more expensive or might even be abandoned to be taken on by governments enjoying sovereign immunity.

6. High liability exposure is often used as an argument for motivating high quality performance. However, the highest motivating factor for class societies is our dependence on the trust and confidence of the market. If customers, flag authorities, underwriters and others do not have confidence in the individual society, that society will wither and die. That is the driving force behind all quality-driven classification societies.

These were some arguments for liability limitation. How can CMI help establish such protection on the right level? This was the original objective of the working group – five years ago, as quoted above. Please understand we are not asking for *immunity* from liability.

C. What is the proper liability level, and what is the right limitation mechanism?

This is a difficult question because of the following elements:

1. There is a dramatic difference between potential risk/loss and the fee charged.
2. The size of the fee varies widely. Anything from USD 1,000 to USD 1 million or more. A typical annual classification survey fee for one ship may be in the region of USD 20.000.

During the first 4 years of work within the Joint Working Group the fee was the only basis for drafting a limitation clause. Suddenly, during the last year, the tonnage of the vessel has emerged, as an alternative. However, I shall quote from the report of the Group – the Joint Working Report (page 331 in the CMI Yearbook 1996):

“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”.

Tonnage as a criterion for limitation is unacceptable. Tonnage has no relevance to the class service. Tonnage as a criterion will also invite comparison with the liability of the shipowner under the Limitation Convention. This is absolutely unacceptable to IACS. As an example: a

100.000 tonne vessel will represent a potential liability of USD 45 million. This Conference should appreciate that this is utterly unacceptable to IACS.

The limitation of liability for classification societies must be very different from the limitation applying to shipowners. Shipowners are in full control of the operation of the vessel at all times. The owner has full control over the level of maintenance, the quality of the operation, the manning, the waters in which the vessel trades, etc. In comparison, the role of the classification society is important but it is much more peripheral to the vessel. The surveyor only visits the ship intermittently and for brief periods. Therefore, it is unfair that the two parties should be treated equally as regards liability exposure.

Another factor comes into play, which is of a legal nature, namely the difference in jurisprudence and actual court cases in various parts of the world. In some jurisdictions, we have seen recent major decisions rendered by, for instance, the House of Lords and the Court of Appeal⁽¹⁾ where it has been held that class societies do not owe any duty of care towards third parties. Therefore, class societies which may face claims in these jurisdictions would be less likely to expose themselves voluntarily to high liability through the CMI work. In other parts of the world the law is less certain for the very reason that very few cases have ever been tried. In most jurisdictions, therefore, it is an open question whether class societies are subject to liability towards third parties. These differences in the international jurisprudence creates difficulties when trying to establish a common level of liability exposure applying to all classification societies in all parts of the world.

All these factors, and many more, make it difficult to establish a common basis for a global model clause on liability limitation for classification societies. If one adds to this a natural conservatism on the part of classification societies (which may or may not be justified), one can easily see the difficult task that CMI has taken upon itself

D. The draft Model Contractual Clauses.

I shall not go into any detail concerning the content of each of these clauses. However, two clauses have attracted special attention during the last few months.

1. The overall liability limitation.

The work of the Joint Working Group has taken place over a period of five long years. Only very recently did a strong disagreement emerge within the Group. A preliminary recommendation from CMI is found in the Conference document which has been submitted to each Conference participant. In that document the limitation is defined through two criteria:

Namely:

⁽¹⁾ "The Nicholas H" House of Lords, and *Reeman vs. Department of Transport & others*, C.A. 1997.

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Ten times the classification fee, or
USD 4 million, whichever is the higher.

This is however, not confirmed to be the joint solution by the entire Joint Working Group. ICS and the International Group of P&I Clubs I have indicated that the level is too low. IACS has confirmed that the level is too high. The present position of IACS is that we are prepared to accept a cap as high as 2 million dollars or ten times the fee, whichever is the *lower*. As you will see, this is different from what you see in your conference papers (see Article 9). However, if everyone can agree, IACS is prepared to discuss an increase in its exposure provided it is capped at a sensible level.

IACS supports the idea that we should try to find a common solution on this. We think it is a benefit to the entire industry that common recommendations are found as a consequence of discussions and co-operation between all participants in the industry.

If this is not possible, IACS will continue to rely on their respective liability clauses and the present international case law and jurisprudence.

2. *No liability for indirect losses.*

The other point subjected to hectic debate within the Joint Working Group lately has been Article 8 concerning exclusion of indirect losses. IACS has confirmed categorically, all through the work of the Joint Working Group, that such a clause must be included. This is in full correspondence with the other agreements that we conclude for services other than classification, typically for certification and other services within the offshore industry. It is a standard term and it is widely accepted in most industries – we claim, in all industries. We see no reason why such a provision should not be included in the model contractual clauses. We feel we have had the support from the Joint Working Group as a whole.

E. Principles of Conduct for Classification Societies.

The other document that the Joint Working Group has drafted is the Principles of Conduct. The contents are presently agreed upon by all participants. IACS feels that the document is an adequate description of the service and the way that the class societies should conduct their business. However, IACS looks upon both documents (the Principles of Conduct and the Model Contractual Clauses) as one package and we think it is essential that the one is not adopted by this Conference unless and until the other is also finalised and adopted. Therefore, since we have not reached agreement on the level of liability in Article 9 of the Model Contractual Clauses, IACS will reserve its position and will not adopt and will not recommend adoption of the Principles of Conduct.

F. Concluding remarks.

IACS has enjoyed the cooperation within the CMI Joint Working Group these last five years. We would welcome a final solution to the Model

Contractual Clauses. We believe that the remaining work should be sent back to the Working Group, where efforts should continue to resolve outstanding differences.

**PRESENTATION ON BEHALF OF THE GERMAN
SHIPOWNERS' ASSOCIATION
AND OF THE MARITIME LAW COMMITTEE OF ICS**

by Dr. Bernd Kröger

1. Permit me to make a preliminary point.

The ocean shipping industry is reliant on efficient and competitive services from classification societies. Such services are today especially provided by the large societies, mainly but not always by the group of classification societies represented by the IACS.

These organisations provide services in competition. Competition guarantees that safety, efficiency and cost-effective commercial operations are not contradictions. The promotion of safety in competitive markets should therefore in future remain the joint goal.

The modern industrial society has growing demands on safety in sea transport and on the safety and environmental protection standards of ocean-going ships. Political attention given to ship and environmental safety is also correspondingly growing. Following on from this, there must be increasing levels of responsibility among all those professionally involved with safety in sea transport. This concerns shipowners, insurers and classification societies. They are involved in a safety partnership. This leads to divided spheres of risk and divided responsibilities, but to a single goal: The goal of guaranteeing optimum ship safety according to the available technology, with modern management structures in markets which are open to competition.

Divided responsibilities include the readiness to take on liability. This means liability is an important component of a modern safety partnership. It signals the readiness to face up to your responsibility and if necessary to commit your own financial resources. It is part of the public perception of market participants.

2. It is within this framework that the liability and limitations of liability of classification societies must be developed. This firstly involves their liability to their contract partner – to the shipping company – and secondly also their liability to third parties which are not involved in the contract.

Many of the contracts with classification societies, which are signed in today's markets, exclude all liability or provide that liability is limited to a small amount.

But the climate is changing – perhaps slowly, but noticeably.

3. The European Commission in its communication "Towards a New Maritime Strategy" puts great weight on firmer improvements to ship safety.

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It calls for "legislative actions on financial sanctions for cargo owners who knowingly or negligently use sub-standard shipping." I will not examine at this point whether such new laws would be sensible. But if consideration is being given to rules for joint financial responsibility for cargo owners regarding the safety of a ship, how close are we to legal definitions for the liability of classification societies? One point should be clear: Such a regulation would not lead to an exemption from liability, but would establish high liability levels.

The OECD is currently discussing sea transport safety in its shipping committee. The committee wants to examine under what conditions legal obligations could be created to put greater responsibility for ship safety on parties involved in sea transport which are not shipping companies. Classification societies are clearly named here. The "public perception" of classification societies is here under discussion too. The discussion is also about the question of responsibility and so also liability.

When regional and international organisations start examining a theme that belongs on the agenda of the IMO, it will not take long before the IMO, too, starts discussing similar ideas. In earlier IMO resolutions, the question of responsibility and liability of classification societies was given clear attention. If liability of classification societies had played a role in the IMO's discussions in 1996 when it examined the increase of liability sums in the 1976 Convention for shipping companies, we would today probably have liability regulated in a convention, connected with a tonnage-based limitation of a substantial size. This would have the advantage of also regulating liability against third parties. But the financial liability level would probably be high.

The most recent legal decisions in the USA (*Sundancer* case) and in the United Kingdom (*Nicholas H.*) involved rulings in favour of classification societies. But the ruling from the House of Lords was a majority judgement. Having in mind what I have said before I am sure this decision will not be the last word. What is also interesting is that the prominent cases to date have been heard in common law jurisdictions. Rulings in civil law jurisdictions might not necessarily follow the trend of the common law courts.

In my view, the paper we have before us should not be judged only on the question of whether one or other clause is weighted towards classification societies or is framed in the interests of the shipping industry or its insurers. More important is the question of if and how a proposal from the CMI on liability and liability limits for classification societies can be integrated into the legal/political development, and whether the CMI can influence this process.

4. If we lay down this position, I come to the following conclusion:

a) The CMI proposes Model Clauses for contracts with classification societies. These could only govern contractual claims. Claims from third parties, based on tort, could only be limited by laws or conventions. This could not be offered by model contractual clauses valid between the classification societies and their customers.

b) With this limitation, the Code of Conduct for classification societies should, in my opinion, be viewed positively. It defines the duty of care classification societies have towards shipowners. This means the area of performance of the classification society is contractually defined. In addition

it is clear that the classification society is not taking the place of the shipowner, who – as is legally defined – has a “non-delegable duty to maintain a seaworthy vessel”. This duty of the shipowner is not changed. The classification society must make it possible for the shipowner to fulfil his duty. The society must survey and certify the ship “acting with reasonable care” according to its technical regulations. The society must discover deficiencies, inform the shipowner of these deficiencies and to require the owner to remove the deficiencies within an appropriate time limit if the class certificate is to be retained. If the shipowner does not take action and a loss occurs, the shipping company alone is liable. But if the classification society negligently fails to discover a major deficiency or does not inform the owner of the discovered deficiency, or does not require the deficiency to be remedied in an appropriate time, or if the society’s regulations do not reflect current technology, then the society would break its obligations to the shipowner. If a loss occurs because of this, there would be an entitlement to compensation. The draft now presented establishes this principle, and this should be welcomed.

c) The classification society is also liable for claims arising out of services by its employees. A condition is that the employees are “acting within the scope of their employment”. This clause has been criticised in the market. I believe it is correct. It reflects civil contract law, at least in European countries. The clause must of course be read in connection with the Code of Conduct. According to the Code’s clause 5 (d), the classification society has a duty “to utilize suitably qualified persons in the performance of its services”. The classification society has broken this duty if it employs a non-qualified surveyor, or takes no action when it is informed that a surveyor has exceeded the areas of his competence. The classification society would then be liable under general contract law. If it has fulfilled these duties, it would not be liable, even if a surveyor has taken action without authorisation outside his scope of employment. This concept should in my view be approved.

d) I have a more critical assessment of the financial liability levels which would be provided by the proposed clauses.

This would consist of two sections. These are clauses 8 and 9 of the Model Clauses. Under these, the classification society will not be liable for “indirect losses”. The liability sum “shall be the amount of a fee for the service giving rise to the liability multiplied by 10, or 3 million units of account, whichever is the greater amount”.

This liability volume is in total too low.

Clause 8 does not define how the difference between a direct loss and an indirect loss will be determined. This is left to national law and to the legal process. The decisive factor here was that the Working Group could not reach agreement on this point. Normally loss will involve a financial loss. Only occasionally would damage to property take place that develops into a financial loss. In many cases there will only be a financial loss. Then the question arises about when such a financial loss is a direct loss, and when it is an indirect loss. This should be made clear in the clause itself. This does not mean the classification society should be held responsible for “remote damages”. Obviously a causal connection and a proximity must exist between

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the action which caused the loss and the loss itself when these requirements are fulfilled, liability must be taken for the loss. An exclusion of financial losses for the reason they are indirect would not be accepted by the market if simultaneously the liability sum is fixed at relatively low levels, as is currently the case in clause 9.

There are some demands from the market that the level of liability for the classification society should correspond to the level of the shipowner's liability. As with shipowners, it would therefore be orientated to the ship's tonnage. The classification societies fear they would so become the insurer of the shipowner. This is not correct. The legal responsibilities and the basis for liability of the shipowner and those of the classification societies are and remain different. The point here purely concerns the liability level. Its upper level need not cover the full loss in every case. But it must reflect an appropriate relationship to the level of a possible damage. The tonnage of the ship would have the advantage of being an objective method of measurement upon which the parties have no influence. Certainly it would be possible to discuss whether the liability level of the classification societies should be set at 100% of tonnage or at a lower percentage level of tonnage. This would prevent the false impression that the liability of the shipowner and the classification society could be identical. We are not dealing with "implied guarantees" but "liability for negligence". However, up to now a compromise has not been possible in this question.

If such a compromise cannot be created on the basis of the tonnage of a ship, another form of liability measurement is of course possible. If, for example, the question is asked about how high the sum is today for which classification societies insure themselves against liability claims, then the answer is generally accepted to be between 25 and 100 million dollars per incident. So this is far higher than the 3 million Special Drawing Rights proposed in the clause. If the internal risk assessment of the classification societies today leads to such a sum being regarded as necessary and appropriate, then it must be asked whether that should also be the liability level for the external liability of classification societies. It would reflect the current situation in insurance markets. It would not make insurance cover of classification societies more expensive and it would receive much better acceptance in the market than the previous proposal. A double-figured million sum as an absolute liability limit would also more closely accord with the responsibility assumed by the classification societies and with public expectation in the current political climate than the proposal we have before us.

Currently the classification societies' liability volume in many contracts is limited to the "fee". The CMI proposal follows this principle. But this no longer corresponds to the high level of responsibility which the classification societies have set for themselves. The argument that the fee is low and therefore the liability must also be low is not convincing. This does not apply on the shipowner's side. It is also unfounded when capacity is available in insurance markets. The size of the premium for such insurance depends on the loss experience and on the risk management of the classification society itself. Whether it is economically possible to pass on the premium cost in the fee of

the classification society is decided as everywhere by competition and the market.

Just how little the proposed sum of 3 million Special Drawing Rights relates to economic reality can be recognised in the contracts which classification societies have recently agreed with European governments. I am referring to contracts under which the classification societies undertake auditing and certification on behalf of the state for the ISM code. In these contracts, classification societies also accept liability up to certain limits. In all contracts, these limits are considerably higher than 3 million special drawing rights. These contracts do not involve groundwork for ship safety, but the certification of company structures. For such contracts, losses would presumably be of a considerably lower level than for contracts involving ship safety. However, the societies do accept a higher liability level. This is not consistent with the CMI proposal so far.

A further point is relevant. The Model Clauses regulate the liability inside a contract, not "liability towards third parties based on tort". But at the same time, they aim at providing a liability limitation that could also be applied to third parties. But this could only be achieved if it is proved that this liability limit is or will be internationally introduced in the relevant markets, that it is tested, accepted and desired by all participants. This is an absolute precondition if the clauses would even legally be used for limiting the liability towards third parties. If essential market partners do not view the level as "reasonable", the desired effect of an exemplary function towards claims of third parties cannot be achieved.

If in the end CMI is going to submit a proposal to the market which all the partners in the market cannot agree on, the situation would not remain at the *status quo ante*. It can be foreseen, that either courts will make new decisions and will force another regulatory form, or that national or international lawmakers would take action. Liability and liability limits would then be regulated with the help of national legislation or international conventions.

We are not asking for state interventions into private markets. The shipping industry is interested in a solution which is suitable for competitive markets, which provides an appropriate distribution of the financial risk and which provides a sensible liability level, without reducing the flexibility of classification societies in their work. The market partners should not let the chance to reach such a solution be taken out of their hands. The CMI should once more carry out further negotiations. I hope myself that today's discussion will make a contribution to providing the Working Group in CMI with arguments for this. We should not wait for the next maritime law congress with 500 maritime lawyers to take place on a passenger ship caught in a storm at sea, so that we afterwards must examine in a series of different court cases if and to what extent the classification society of a ship is liable. I am pretty sure that after these legal cases we would ask ourselves the question: what do snowflakes and the liability conditions of classification societies have in common? The answer then would be: Both owe their form to the operation of chaos. That would be the worst solution.

ANNEX A

PRINCIPLES OF CONDUCT FOR CLASSIFICATION SOCIETIES

Introduction:

1. The following Principles of Conduct for Classification Societies have been formulated 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 to the XXXVI (Centenary) International Conference of the CMI. 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)⁽²⁾.

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⁽³⁾, 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⁽⁴⁾. 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.

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;

⁽²⁾ See, e.g., Res. A.789(19) of November 1995.

⁽³⁾ "Shipowner" for the purposes of these Principles of Conduct shall mean the individual or juridical person in a contractual relationship with the Classification Society.

(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⁽⁵⁾ of a course of relevant technical studies; and either

(i) successful completion of a programme of technical training⁽⁶⁾; or

⁽⁴⁾ "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.

⁽⁵⁾ 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.

⁽⁶⁾ "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

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(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 (5) years thereafter.

(c) To make copies of the documents referred to in (a) available:

(i) upon request, to the owner or other person in an equivalent contractual relationship with the Society;

(ii) to third parties when 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.

(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.

are authorized to undertake. This system should comprise appropriate training courses including, *inter alia*, international instruments and appropriate procedures connected to the certification process, as well as practical tutored training; and it should provide documented evidence of satisfactory completion of the training.” Report of the IMO Sub-Committee on Flag State Implementation, FSI3/17, 23 March 1995, Annex 5, p.8.

WRECK REMOVAL

I

REPORT OF THE CHAIRMAN OF THE PANEL, BENT NIELSEN

The IMO Legal Committee is currently engaged in consideration of a draft Convention on Wreck Removal prepared by the delegations of Germany, the Netherlands and the United Kingdom. In 1995, the Executive Council of CMI decided to establish an International Sub-Committee to study the subject and to render assistance in connection with the work of the IMO Legal Committee. The Chairman's preliminary report and questionnaire were published in CMI News Letter No. 1-1996.

In order to encourage a wide ranging exchange of views, a panel discussion was held at the Antwerp Centenary Conference during the afternoon of 10 June 1997. The working documents for the session were published in CMI Yearbook 1996-Antwerp I (page 173 et seq.), the main document being the draft Convention (pages 175 to 184). An additional note summarising the outcome of the seventy-fifth session of the IMO Legal Committee had been prepared by the Chairman of the Sub-Committee and distributed in advance.

Participants were not disappointed with the proceedings which successfully brought together detailed academic arguments and everyday problems faced by practitioners. The following comprehensive notes of the session capture the depth of the discussion and underline delegates' support for further work to assist IMO in creating a unified legal framework.

At its seventy-sixth session (October 1997), the IMO Legal Committee decided to retain consideration of a draft Convention on Wreck Removal as a priority item on its work programme for 1998. The Correspondence Group was requested to continue its work and report to the seventy-seventh session which will be held in April 1998.

The Sub-Committee is expected to reconvene in advance of the next session of the IMO Legal Committee.

II

NOTES OF THE SESSION HELD ON 10 JUNE 1997

The session was chaired by the Chairman of the Sub-Committee, Bent Nielsen. The panel comprised Magnus Göransson, Patricia Birnie and Eric Japikse. Linda Howlett acted as rapporteur. The session benefited from the attendance of Jan de Boer, Co-ordinator of the IMO Correspondence Group on Wreck Removal.

The Chairman introduced the panellists and advised that Mr. Göransson would consider the relationship between the draft convention and other conventions on liability and compensation; Professor Birnie would address the public international law aspects of the draft convention; and Mr. Japikse would examine the civil liability provisions of the draft convention.

The Chairman suggested that following an exchange of views on the subjects introduced by the panellists and time permitting, the following questions could usefully form the basis for further discussion:

- Was there a compelling need for a wreck removal convention?
- Should the wreck removal convention include cargo and/or other objects which were or had been on board ships?
- Should cargo contribute to the payment of compensation?
- Should the wreck removal convention apply to ships/wrecks within territorial waters?
- What degree of danger should be required to trigger the application of the wreck removal convention? Was the proposed list of criteria for determining the existence of a hazard (Article V) usable?
- Were the provisions of Article VII paragraph 3 sufficient to enable the shipowner to engage the assistance of any available salvor regardless of flag?
- Who should have the duty to report wrecks?
- Should the wreck removal convention contain a provision similar to Article 11 of the Salvage Convention encouraging State co-operation on matters such as admittance to ports?
- Was the proposed three year time bar in Article IX acceptable?
- Any other questions.

The Chairman further suggested that the provisions regarding evidence of financial security should not be discussed because they were likely to generate an extensive debate. He noted that the IMO Legal Committee was considering evidence of financial security as a separate item.

The focus of **Mr. Göransson's** presentation was the relationship between the draft wreck removal convention and other conventions on liability and compensation. He made the following introductory observations:

- The subject of wreck removal had been on the IMO Legal Committee's agenda since the 1970s but was only given priority status after the conclusion of the HNS Convention last year.
- Some delegations had questioned the need for a wreck removal convention. (IMO Assembly Resolutions A.500 and A.777 recommend that the

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Council and the Committees should entertain proposals for new conventions only on the basis of clear and well-documented demonstration of compelling need and having regard, *inter alia*, to the costs to the maritime industry and the burden on legislative and administrative resources of Member States.) The Legal Committee had debated the issue but had not reached any conclusion.

- Despite the lack of agreement on the fundamental question of need, the Legal Committee had decided to commence consideration of certain key issues and a correspondence group had been formed to advance the matter. One of the key issues which had been identified was the relationship with other conventions.

- The types of risks to be covered by the wreck removal convention could have a direct bearing on the question of possible conflicts with other liability regimes i.e. there would be little potential for conflict if measures undertaken to avoid threats of pollution of the marine environment were not covered by the wreck removal convention. The great majority of those who spoke at the last Legal Committee meeting, however, favoured the broadest possible scope i.e. coverage of safety, environment and coastline risks.

Mr. Göransson noted that the possibility of conflict between the wreck removal convention and the 1992 CLC, the 1996 HNSC and the draft convention on liability and compensation for bunker spills stemmed from the definition of environmental damage in the latter conventions, in particular the preventive measures component of that definition. “Preventive measures” was defined as any reasonable measures taken by any person after an incident had occurred to prevent or minimise damage. The wreck removal convention would oblige the shipowner to undertake or to compensate “removal” of a “hazard”. “Removal” included any form of prevention of the hazard. “Hazard” included any threat of danger to the marine environment or coastline. “Wreck” included anything that was or had been on board a sunken or stranded ship. Accordingly there was a clear potential for conflict.

Mr. Göransson identified three options for dealing with the conflict, viz.

- Maintain the present draft i.e. accept that there might be an overlap and allow the shipowner to limit liability in accordance with the relevant limitation regime, if any. The shipowner might, however, be required to constitute two limitation funds.

- Conclude that there was no overlap because the regimes were intended to operate separately with different objectives and different parties and the regimes themselves would prevent double recovery.

- Exclude claims for compensation for damage as defined in the 1992 CLC, the 1996 HNSC and the draft convention on liability and compensation for bunker spills from the wreck removal convention. This option had received overwhelming support at the last session of the Legal Committee.

Mr. Göransson noted that it was difficult to imagine any claims of an environmental nature which would fall within the ambit of the wreck removal convention if the third option above was chosen. Only those substances which had intentionally been excluded from the 1996 HNSC such as coal and other solid bulk cargo and low-level radioactive material came to mind and it was unlikely that the Legal Committee would welcome the inclusion of those

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substances through the "back door". Perhaps this explained why a number of delegations at the last session of the Legal Committee had felt that the convention should not deal with environmental risks at all.

The ensuing discussion included the following interventions:

Mr. de Boer (Netherlands) stated that the primary aim of the wreck removal convention was to establish that States had a right to intervene beyond territorial waters. He accepted that strict liability of the shipowner for marking and removal of wrecks could be considered "preventive measures" under the other liability and compensation regimes and that this was not desirable. The correspondence group was working on an exclusion clause.

Professor Wetterstein (Finland) expressed concern about the proliferation of liability and compensation conventions and wondered whether there was any preparedness to discuss a comprehensive convention, leaving aside the oil pollution and nuclear regimes but possibly including the 1996 HNSC.

Mr. Göransson replied that at the last session of the Legal Committee the Polish delegation had expressed similar concerns and had proposed that the Legal Committee should commence work on a general convention on liability for damage caused to third parties. While the proposal had received some support, most delegations were of the view that it was too ambitious and might jeopardise the entry into force of existing conventions e.g. the 1996 HNSC.

Mr. Scholz (Germany) expressed support for the current approach of the Legal Committee whereby the problems of member states were specifically addressed on a point by point basis. He stated that the need for a wreck removal convention had been documented. There were a number wrecks located outside territorial waters which posed hazards to navigation and there was no jurisdictional basis for States to remove them and recover costs.

The Chairman referred to Mr. Göransson's observation that few environmental risks would remain if claims under the 1992 CLC, the 1996 HNSC and the draft convention on liability and compensation for bunker spills were excluded from the scope of the wreck removal convention.

Mr. Kegels (Belgium) referred to the recent sinking of the *Albion II* not far from French territorial waters. Concern had been expressed about the environmental threat posed by the ship's bunkers. He did not see how wreck removal and bunker risks could be separated.

Mr. Scholz (Germany) was of the view that wreck removal and environmental hazards could not be clearly separated.

Mr. Göransson observed that the draft convention on liability and compensation for bunker spills contained a similar definition of "damage" to that which was contained in the 1992 CLC and 1996 HNSC. The removal of a ship or wreck would qualify as "preventive measures" under that definition and accordingly there was a potential conflict between those conventions and the draft wreck removal convention. As he had previously mentioned, at the last session of the Legal Committee many delegations had expressed support for avoiding that potential conflict by excluding CLC, HNS and bunker claims from the wreck removal convention.

Professor Wetterstein (Finland) was of the view that the wreck removal

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convention should be as comprehensive as possible to avoid the need for a further convention.

Mr. Watson (United States) saw a need to balance the right of States to remove wrecks which posed a threat to the marine environment against the interest of shipowners to know what their liability was. Certainty would be enhanced if pollution damage and other liabilities which were covered by other conventions were excluded from the wreck removal convention.

Professor Birnie addressed the public international law aspects of the draft convention. She made the following observations:

- There was no convention in existence which specifically concerned the removal of wrecks. UNCLOS did not specifically refer to wrecks
- States had an obligation to protect the marine environment in internal waters and the territorial sea. Coastal States exercised sovereignty over their territorial waters, subject to the rules on innocent passage, and thus had the right to remove wrecks therein and impose obligations on shipowners but there were no rules as to how such powers should be exercised. Many coastal states had enacted wreck removal legislation. The need for unification of such laws was queried.
- The legal position beyond the territorial sea was less clear. The coastal State had, according to Article 221 of UNCLOS and the 1969/71 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. Neither the UNCLOS provisions nor related conventions prohibited or clearly approved removal of wrecks beyond the territorial sea for purposes of ensuring safety of navigation. UNCLOS did not debar the development of new conventions provided that such conventions were compatible with UNCLOS. As new specific rights would be created it would be desirable that any convention should attract wide consensus. In this respect it was noted that not all States had predominantly coastal interests.

The ensuing discussion included the following interventions:

Dr. Kröger (Germany) was of the view that Article 221 of UNCLOS merely clarified the right of coastal States to intervene beyond their territorial waters. In his opinion a general right to intervene existed.

Professor Birnie responded that such a conclusion depended on whether the right to intervene was part of customary law. There was no right in International Law to safety interventions and no specific reference to “wrecks”.

Mr. de Boer (Netherlands) agreed that coastal States did not have any right under UNCLOS to make safety interventions. He was also of the opinion that the right to intervene in respect of certain environmental concerns was not covered by Article 221 of UNCLOS or the Intervention Convention e.g. where a small ship sank beyond territorial waters with bunkers on board.

Prof. Lagoni (Germany) was of the view that the right of coastal States to make environmental interventions was part of customary law. The 1969 Intervention Convention had been prepared in response to the *Torrey Canyon* incident and was specifically directed to extreme emergency situations. Since

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1969 there had been a significant increase in the number of ships and offshore rigs. When Article 221 of UNCLOS was drafted it was recognised that the right to intervene should be expressed in broader terms than the right contained in the Intervention Convention. However, Article 221 addressed jurisdiction only and not liability. A clear rule regarding coastal States' jurisdiction beyond territorial waters, e.g. in approaches to ports, was required for the benefit of both shipowners and coastal States.

Professor Birnie noted that at the time of the *Torrey Canyon* incident there had been some disagreement as to whether the right to intervene existed under customary international law or not. The Intervention Convention had been developed to clarify the position.

Professor Wetterstein (Finland) queried the scope of the right to intervene under customary international law and noted the specific definition of "maritime casualty" contained in Article 221 paragraph 2 of UNCLOS.

Professor Birnie was of the view that there were ambiguities in Article 221 of UNCLOS which could form the basis for extending the right to intervene. It was up to States to interpret it. The legal position beyond the territorial sea was not clear and States exerting jurisdiction in those areas could face opposition, e.g. from shipowners.

Mr. Kolodkin (Russia) could not agree that coastal States had a general right to intervene in the EEZ under customary international law. Coastal States had a right to make pollution interventions in that area but not other interventions. Russia had ratified UNCLOS and had made a statement at the time to the effect that it would not accept extensions of coastal States powers beyond territorial seas.

Professor Lagoni noted that Article 221 of UNCLOS referred to the right of coastal States to intervene beyond the territorial sea to protect their coastline and related interests, including fishing, from pollution etc. He was not sure that a narrow interpretation of Article 221 was correct.

Mr. Scholz (Germany) noted the different interpretations of Article 221 and felt that clarity was required. In his view a wreck removal convention was required for wrecks which constituted hazards in the broad sense as defined in the draft.

The Chairman noted that there were no specific rules in UNCLOS or elsewhere concerning hazards to surface navigation. He queried whether a new convention which allowed coastal States to intervene beyond territorial waters with respect to such hazards would be compatible with UNCLOS.

Mr. Japikse queried whether a number of States were entitled to agree a convention which would impose a liability regime on shipowners of States which were not parties to the convention.

Professor Birnie noted that generally third party States could not be bound.

Mr. Göransson noted that the 1996 HNSC imposed strict liability on shipowners of third party States. Accordingly he did not see any problem with the liability regime envisaged in the draft wreck removal convention.

The Australian Delegate observed that a number of floating containers could pose a hazard.

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Professor Gold (Canada) was of the view that a coastal State could intervene under Article 221 of UNCLOS where, for example, a small vessel sank in shallow waters beyond the territorial sea in an approach to a tanker port because it was possible that a tanker could collide with the wreck and accordingly there would be a “threat of pollution following upon a maritime casualty”.

Professor Lagoni (Germany) observed that in practice the coastal State decided whether there was a threat of pollution and acted. It had happened and had not been contested. Whether shipowners should pay the costs of coastal States’ interventions had been contested but the right of coastal States to intervene had not.

Mr. de Boer (Netherlands) was of the opinion that if a ship sank in an approach to a port and there was no threat of pollution, the coastal State would have no right under Article 221 of UNCLOS to intervene.

Dr. Kröger (Germany) was of the view that practically all cases would fall under Article 221 of UNCLOS. Although a wreck might not pose a threat of pollution itself, other ships in the area which could collide with the wreck posed a threat of pollution because they carried bunkers. Accordingly he queried whether there was a real need for another public law convention.

At this stage in the proceedings, the Chairman suggested that the question of compelling need for a wreck removal convention be taken up.

Dr. Kröger (Germany) expressed the opinion that the right of coastal States to intervene was established under UNCLOS and the Intervention Convention. It was not clear whether the right existed in customary law. A new convention would only assist in clarifying the right. Accordingly as regards public international law, he doubted whether there was a compelling need for the convention, although he acknowledge that States which were not party to UNCLOS might require it. He was unsure whether there was a compelling need as regards civil liability. In this respect he noted that the vast majority of wrecks which necessitated removal occurred in territorial waters and accordingly were subject to national laws. The CMI study had revealed that there were more similarities than differences in the various national laws. From an economic perspective there was no need to harmonise the national laws: shipowners and their P&I Clubs were not experiencing any difficulty in claims handling. Wrecks beyond territorial waters which necessitated removal were rare: the Annex to the report of the IMO Correspondence Group on Wreck Removal listed a number of such incidents. In his opinion there was no compelling need for a convention from an economic perspective but from a legal and CMI perspective a need could exist.

Dr. Kröger also questioned whether cargo interests should contribute to the payment of compensation. He noted that cargo responsibility had been included in the 1992 CLC/IOPCFC and the 1996 HNSC. He further noted that some coastal States required shipowners to use their national salvors. Although that requirement was in the economic interest of national salvors it was not in the economic interest of shipowners and accordingly should be addressed in the wreck removal convention.

Professor Hare (South Africa) observed that the right of coastal States to

intervene beyond territorial waters where the vessel concerned did not constitute an environmental threat was a "grey area". He queried whether it would be possible to revisit the Intervention Convention and address this public law aspect. He acknowledged that such an approach would not address the civil liability issues.

Mr. Watson (USA) noted that there were some less legitimate reasons for wreck removal, e.g. body removal, casualty investigation, and that owners have had to pay considerable sums for such activities. In his view it would be helpful if the convention could clarify the circumstances in which wreck removal was **not** required.

Professor Wetterstein (Finland) was sceptical of the need for a wreck removal convention. Finland had not experienced any practical problems, however it would not oppose a convention if there was global support.

Mr. Harrington (Canada) would be sympathetic to the development of a convention if there was a need. Canada had not experienced any problems. Canada was not party to the Intervention Convention because it was confident of its own powers under customary law.

Mr. Kegels (Belgium) noted that most States had national laws governing wreck removal and the removal of dangerous cargoes. States would not want the rights which they had today to be decreased. In his view there was no need for a wreck removal convention in territorial waters, however a need might emerge if the convention was restricted to areas which were not covered.

Mr. Scholz (Germany) was of the view that some States had a clear need. The position in Germany was very different to that in Canada. He noted that the draft convention was not restricted to intervention and civil liability. It included, for example, securing measures, marking of wrecks and measures to safeguard navigation. The coastal State had the right to determine whether a hazard existed but it also had specific obligations to safeguard navigation: the convention was balanced.

Mr. de Boer (Netherlands) agreed with Mr. Scholz. There was a lot of traffic outside Dutch territorial waters and no applicable legal regime. The shipowner could sue the State for intervening. All interests would gain if the law was harmonised.

Mr. Japikse noted that a Dutch High Court decision had established that the State had rights to intervene where it had assumed duties to maintain navigation routes, however under that regime the liability of the shipowner was based on proven fault not strict liability.

Mr. de Boer (Netherlands) responded that the Dutch Wreck Act established a regime of strict liability for wreck removal in territorial waters. Under that regime the shipowner could be held liable for costs involved in wreck removal but the State was exonerated from any liability to the shipowner for consequential losses caused by its intervention. The State had no such rights beyond the territorial sea.

Professor Gold (Canada) considered that the Intervention Convention should be revisited as had been suggested by Professor Hare. The Convention was almost thirty years old. It could be modernised. A lot of States were not attracted to the Intervention Convention because it took away rights.

Mr. Göransson observed that the possible revision of the Intervention Convention had not been considered by the IMO Legal Committee. The Committee had first to decide on the question of need and would then consider an appropriate solution.

Professor Lagoni (Germany) was of the view that the convention should mandatorily apply to territorial waters. There would be a need for the convention if it was agreed that cargo should contribute to the payment of compensation. At present cargo did not contribute although in many instances it was cargo which necessitated wreck removal.

Mr. Japikse in his presentation focused on the civil liability provisions of the draft convention. He made the following observations:

- Article VIII paragraph 1 provided that the shipowner shall pay to the State “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 ...” In his view the provision was worded in a loose manner and consequently was capable of different constructions. In particular the terms “costs”, “other services”, and “technical advice” were ambiguous. Objectivity, uniformity and a reasonable measure of certainty were not served by such terminology. In addition he noted that the rights of States were carefully spelt out whereas the obligations of the shipowner were dealt with in a cursory manner.

- An accurate definition or determination of the compensation payable was required. It would be difficult for owners and their insurers to calculate their liability under the current provision. He also noted that there was no “reasonableness”-test in the present text. The adoption of guidelines as an Annex to the convention should be considered.

- Limitation posed another problem. Article VIII paragraph 2 provided: “The shipowner shall be entitled to limit liability in accordance with the applicable international convention [or, as appropriate, the applicable national law]”. The intention was not to create additional limitation regimes. The words in square brackets should be retained because there should be certainty that the national right to limit applied to liability under the wreck removal convention in circumstances where the State was not party to any international convention.

However, even with the bracketed words the provision was not wholly satisfactory:

- shipowners would be exposed to unlimited liability in circumstances where States had no national limitation regime in relation to wreck removal and were not parties to the international limitation conventions. This went against the general view that the shipowner should have the right to limit.

- there would be notable disunity because international conventions and national laws varied substantially in terms of limitation for wreck removal.

- the convention should specify whether conventional or national law should prevail.

In Mr. Japikse’s opinion, the problems identified had a bearing on the proposed compulsory insurance/financial security requirement in Article XI. Given the varying applicable limitation regimes, it would be difficult for

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insurers/guarantors to calculate their exposure. In addition, where unlimited liability arose the P&I Clubs had indicated that they could not be expected to provide unlimited cover subject to direct action (1996 Yearbook, p198).

Mr. Japikse concluded that Articles VIII and XI were inadequate and that the draft convention was unfairly balanced in favour of States.

The Chairman asked whether the convention should include guidelines concerning the calculation of compensation. Had practitioners experienced problems in calculating the claims of States?

Mr. Watson (USA) advised that he had encountered a problem concerning the calculation of recoverable expenses in a case where the shipowner had carried out wreck removal.

Mr. Japikse drew a parallel with the problems of construction of "fair rate" in the Salvage Convention.

Mr. de Boer (Netherlands) observed that the provisions of the draft convention were modelled on similar provisions in the 1992 CLC and the 1996 HNSC. There was no reference to reasonableness in those provisions. The IOPC Fund had developed guidelines in respect of the admissibility of claims and account would be taken of international developments.

Mr. Japikse was of the view that measures taken and the costs incurred by the State should be reasonable. A more detailed determination of compensation was required to avoid costs and litigation.

Mr. Harrington (Canada) observed that characterisation of an incident was important. He cited the example of the *Rio Orinocco* incident. If it had been characterised as a wreck, the shipowner would have had unlimited liability. It was, however, characterised as a pollution incident to which the CLC and Fund regime applied.

Dr. Kröger (Germany) noted that the reference in Article VIII paragraph 2 to applicable limitation regimes gave a wrong impression because in many cases there was no applicable regime: States may have exercised the reservation in the 1976 LLMC or were not parties to international limitation conventions or had no national law on the subject. In his view evidence of financial responsibility for liabilities under the convention was not required. In most cases the costs and expenses of wreck removal would fall within the limits of the 1976 LLMC. Where that regime applied the shipowner was required to constitute a limitation fund which was available to claimants. There was no need for evidence of financial responsibility in addition to the limitation fund.

Professor Wetterstein (Finland) observed that in some jurisdictions there was no requirement to constitute a fund and evidence of financial responsibility might therefore be required.

The Chairman advised that the comparative analysis of national laws relating to wreck removal had revealed that the right to limit existed in very few countries. The prevailing view within the IMO Legal Committee appeared to be that the status quo should be maintained.

Mr. Göransson noted that most of the States parties to the 1976 LLMC had exercised the right of reservation.

Mr. Scholz (Germany) stated that it was not the purpose of Article VIII

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paragraph 2 to place additional burdens on shipowners. He was of the view that shipowners' civil liability should be guaranteed by financial responsibility but was prepared to await the outcome of the discussions in the IMO Legal Committee on this subject. In his opinion the draft convention was balanced: States were obliged to mark and secure wrecks (Article VI); shipowners were obliged to remove wrecks (Article VII).

The Chairman invited consideration of the questions which he had posed at the beginning of the session.

The following observations were made concerning the question of whether the convention should include cargo or other objects which were or had been on board ships:

Mr. Harrington (Canada) felt that all property should be included.

Dr. Kröger (Germany) referred to the overlap between the wreck removal convention and the CLC and HNSC which had been the subject of Mr. Göransson's presentation. He queried whether cargo which fell outside the ambit of the CLC and HNSC should be responsible for contributions under the wreck removal convention.

Mr. Watson (USA) observed that cargo could pose a hazard to navigation but queried who liability would be asserted against. Would cargo policies include that risk? Would cargo owners have the ability to pay?

Mr. de Boer (Netherlands) advised that cargo had been included in the draft convention primarily for reasons of the hazard which it could pose to navigation. The shipowner would be liable in the first instance.

Mr. Marshall (UK) advised that cargo underwriters would be reluctant to assume that risk.

Mr. Chard (UK) observed that in many instances it was the cargo which necessitated the removal of a wreck.

Mr. Harrington (Canada) cited the example of a general average situation where there was no pollution aspect. Jettison of cargo may be required to save property. Cargo would have to contribute in that instance.

Time did not permit consideration of the other questions which had been posed by the Chairman.

The Brazilian Delegate was of the opinion Article VII paragraph 7 was an unbalanced provision. He suggested that Article VI of the Intervention Convention would provide a better precedent.

COLLISION AND SALVAGE

REPORT OF THE CHAIRMAN OF THE PANEL, PROF. R. E. JAPIKSE

1. In the light of criticisms levelled at some provisions of the 1989 Salvage Convention from various quarters (including practitioners and others engaged in the convention's application), the CMI has set up a working group (WG) to consider the issues in question. Its preliminary report (1996) – published in CMI News Letter 1996, nr. 1 – served as a starting point for the panel discussion at the Antwerp Centenary Conference, together with the Group chairman's further introductory report in Yearbook 1996 Antwerp I (page 169 et seq.) and with other documentation indicated therein.

At the Antwerp session, panel members addressed:

- the implications and consequences of the House of Lords' judgment in "*The Nagasaki Spirit*" on (inter alia) the meaning of "fair rate" – as a reimbursement of direct and indirect expenditure – under the special compensation rule of art. 14-(3) (G. Brice Q.C.);
- the practical experiences in applying that rule, more particularly in relation to matters of calculation (e.g.) of the direct and indirect expenditure of a salvor's fleet involving sometimes complex factual investigation and the employment of independent professional accountants by each party to analyze such questions as depreciation and fleet utilization; and in general: the amount and costs of evidence needed to establish the components outlined in art. 14-(3) for the special compensation (R.H. Wallis, solicitor);
- the Clubs' views on questions of whether or not changes should be considered with regard to the geographically restricted application (art. 1-d) of the special compensation rule and to the formula of this rule itself (Ch. Mawdsley, chairman of the International Group of P&I Clubs' Committee on Salvage);
- the salvors' views on the same questions (G. Koffeman, Smit Internationale).

2. From the speakers' addresses and the ensuing discussions at the session a variety of comments and opinions has emerged. A summary of them is given hereunder.

(a) *General*: no revision so soon after the convention has come into force; any change sought would at the same time re-open debates on old and new issues; any attempt to revise would also (threaten to) destroy the compromise embodied in the convention; consideration might however be given to preparing a memorandum explaining the intent of the Convention to reduce the amount of costly and lengthy investigation of what is a "fair rate" in individual cases and working towards uniformity of approach internationally.

(b) *Geographic scope of application* of the special compensation rule pursuant to art. 1-(d):

- a desire to have a more precise demarcation between "waters adjacent to territorial waters" (where the special compensation applies) and waters beyond that area (no application of the rule), the former category being too vague and uncertain; specified distances were suggested (50 or 110 or 200 miles or economic zone); salvors wish to know at the outset if the place of a casualty is or is not within the special compensation areas (the mere decision to mobilize and move the personnel and equipment being already in itself one which involves substantial sums of money);
- no change of the present position, let alone an extension of the rule to all waters, for various reasons such as: the restriction in art. 1-(d) has been debated and deliberately opted for in the run-up to the convention; the salvage convention should not be turned into an environment convention; underwriters are not meant to insure the world, nor do they see to whom liability could be owed in international waters; there are few cases (if not now only one) in such waters;
- removal of the restriction in art. 1-(d);
- doubts as to what is going to happen if the restriction were to go.

(c) *Special compensation*.

- views among Club managers are divided; some (probably the majority) feel unhappy about the LOF (system leads to delays, disputes and substantial legal costs; little or no control over costs/ planning of salvage operations in potential special compensation instances); there is also concern as to the level of remuneration (too high in simple cases, and insufficient in the complicated ones as is borne out by the list of salvors which have gone out of business); it is being suggested that salvors should be invited to provide services on a daily rate basis (i.e. at generous tariffs for personnel and equipment), but much work has yet to be done in discussions thereon (also with other underwriters) in order to find out whether the proposal is workable at all; further a Code of Practice was mentioned to satisfy control fears and establish closer co-operation between Clubs (who are to appoint observers) and salvors; other concerns relate to heavy equipment not used but argued to be needed (e.g. wreck removal quotes reveal considerable differences between salvors in different areas);

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- other opinions say the principle of “no cure, no pay” should not be abolished by putting in daily tariffs;
- *The “Nagasaki Spirit”* outcome (no profit element in the “fair rate”) was thought by several attendants to be correct in that the special compensation is not intended to turn “no cure” into a profit and thus render the convention on salvage one on environment;
- while “no cure” should cover unsuccessful pollution fighting, better incentives are required for other cases (a “net margin” idea was aired as well as the suggestion that “expenses” should be more liberally awarded);
- in the same context indeed some notable sympathy could be registered for the deliberate modification laid down in the South African enacting legislation (“fair rate” means: “a rate of remuneration which is fair having regard to the scope of the work and to the prevailing market, if any, for work of a similar nature”);
- as to the “expenses” and evidence thereof the introduction of guidelines (to be studied by CMI) would be helpful, and some even recommended to have an economist take part in such work;
- others proposed to seek the quotations from bookers in the small market for (the use of) tugs as a basis for proof;
- the salvor member of the panel drew attention to an interesting announcement made by his company in its brochure “Fairness and balance between the Parties (Smit’s policy on the use of LOF)”: the special compensation will only be applied for the duration of the pollution threat, and not over the entire period of the actual salvage operation (as the House of Lords in *The “Nagasaki Spirit”* held salvors to be entitled to).

3. Other points brought up:

- in art. 13, par. (2), there should not be an exception to the rule that ship and cargo are proportionally liable to pay salvage: the second sentence, allowing countries to channel the liability to the vessel in first instance, is not in line with insurance policies or practices;
- the correlation between art. 8 (duty to carry out salvage with due care) and art. 18 (salvor’s misconduct) merits further consideration for construction purposes;
- art. 19 is not sufficiently clearly drafted since the last words in the passage “property in danger which is not and has not been on board the vessel” should rather read “a vessel”.

In connection with these observations reference was made to R. Shaw, *Lloyd’s Maritime and Commercial Law Quarterly*, 1996, pages 216-217 and 225-227.

4. Conclusion.

The WG has much to digest and consider, the views and suggestions thrown

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up at the panel session having to be examined, answered and weighed, not least the essential question of whether a revision of the convention would look justifiable or indeed advisable and, if so, on what points. The WG were to be enlarged so as to include the expertise of G. Brice Q.C., who kindly offered participation in the work if thought helpful.

ELECTRONIC DATA INTERCHANGE (EDI)

REPORT OF THE CHAIRMAN OF THE WORKING GROUP

by Alexander von Ziegler

The EDI-Presentation of the CMI Working Group

A presentation and discussion of the Working Group on EDI was held during the Centenary Conference of the Comité Maritime International (CMI) in Antwerp in June 1997. The phenomenon called EDI which stands for Electronic Data Interchange has already occupied an international subcommittee of CMI during the Paris Conference in 1990.

CMI, throughout its existence, has engaged a remarkable amount of energy towards the development and unification of international maritime law. Consistently, its aim has been focused on the facilitation of international maritime commerce and international trade. From 1897 to the present, the conditions of international trade have changed. The challenge for CMI, though, has remained the same: how can existing legal principles be unified to create a standard legal and logistical mechanism which enables shippers, traders, ship owners, and other entities involved in the trade environment to engage in efficient, and therefore prosperous, commercial activity? The logistical conditions have changed since the times of the Harter Act and the Hague Rules. In the first years of this century, the challenge of establishing a uniform bill of lading had been achieved and had led to a very reliable system of trade. Under this system, the contract of sales of goods was finely tuned with its ancillary contracts such as the letter of credit, contract of insurance, and the contract of carriage. Almost a century later, technology has changed shipping reality, and it is now the task for all bodies involved in the unification of international trade to provide a workable legal framework for these technical realities. CMI undoubtedly will need to play a decisive role in this process.

It is for this reason that the Executive Council of CMI has appointed a Working Group and asked this Group to assist UNCITRAL in its project on a Model Law on Electronic Commerce. This initial assignment has been expanded into a watching brief on all developments in the field of EDI and electronic commerce. In this context, the Working Group has established and

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maintained a constant liaison with UNCITRAL and other organizations and entities involved in the unification of principles on EDI and electronic commerce, particularly the ICC. As to the future, the next important element entrusted to the EDI Working Group is the information and education regarding issues involving EDI and legal requirements of a modern electronically-supported international trade.

The discussion and presentations during the Antwerp Conference provided a perfect opportunity to address the aims set by the Executive Council. The major goal of the EDI Presentation was to enhance the awareness of the issues involved in an electronic environment and in the electronic simulation of the traditional functionality of the bill of lading.

When one looks at the very important functions of the bill of lading – the receipt, the contract and the document of title –, it is quite amazing to see that very few of these practices have found coverage in the existing conventions on bills of lading and the carriage of goods by sea. If traders want to use electronic means to obtain the same results achieved by the use of paper bills of lading, then all of this and much more must be unified, at least within this electronic system. As discussed earlier, CMI took the first step in the right direction by establishing the CMI Rules in 1990. Many developments have occurred since. It is therefore necessary to first gain an overview and then to discuss issues of particular interest. After a look at the experiences and research of the authors of this text, the conclusion shall examine whether more concrete steps can be defined.

The EDI Presentation covered several topics concerning EDI, each featuring the work of distinguished professionals from the field of international maritime law. The keynote article, written by George F. Chandler, III, provided a thorough look at the history of EDI and explained in detail its evolution involving various attempts to implement a system which could utilize electronic messages. He continued with a complete and informative explanation of the CMI Rules and illustrated their applicability to EDI in his speech, *Maritime Electronic Commerce for the Twenty-First Century* (Annex 1). Finally, after familiarizing the reader with the world of EDI, Mr. Chandler concluded his work with a discussion of EDI projects both currently underway and planned for the future and offered much insight into those potential directions that EDI, and in turn, the CMI might take.

Then, Mrs. Johanne Gauthier undertook an introduction into the commercial possibilities of electronic commerce and put the EDI issues in a broader context. She also made valuable links to many EDI-projects in commercial circles like the “BOLERO” project and in the International Organisations, in particular within ICC (Annex II).

She was followed by Jan Ramberg, Chairman of the Electronic Bill of Lading Subcommittee of the 1990 Paris Conference, who gave a short overview of the goals achieved with the “Paris Rules” on Electronic Bills of Lading (Uniform Rules for Electronic Bills of Lading) (Annex III).

Next, Robert Howland’s contribution, *UNCITRAL Model Law*, featured a step-by-step approach to the UNCITRAL Model Law on Electronic Commerce and gave the reader much useful insight into the reasoning and intent of its drafters (Annex IV).

Under the heading *The Legal Obstacles to Implementation of the Electronic Bill of Lading in Civil Law Countries*, Luis Cova Arria contrasted the civil law treatment of electronic bills of lading with the approach taken by common law jurisdictions and described the EDI Working Group's efforts to find solutions compatible with both systems in drafting the Model Law (Annex V).

Gertjaan van der Ziel continued the discussion by pinpointing relevant topics to be addressed before an electronic system can be fully functional in *Main Legal Issues Related to the Implementation of the Electronic Transport Documentation* and finished his selection with the proposal of several possible solutions regarding these issues (Annex VI).

In a final conclusion it was my duty as a Chairman to wrap things up by emphasizing CMI's pivotal position in the transition from paper to paperless transactions and offers some closing thoughts and recommendations based on the issues addressed by the distinguished speakers.

Issues Regarding the Implementation of EDI

The first group of questions to be addressed focuses generally on the impending transition to EDI, not just in the field of maritime law, and includes such queries as how to tackle the requirements of a signed, original writing, evidentiary issues, the purposes of a registry and a certifying authority as well as the inclusion of a contract by reference, all of which are so necessary to our current paper-based system. The Model Law takes a "functional-equivalent" approach to these problems; and yet, this method can be nothing more than a temporary solution destined to create further complications when analogies to paper no longer prove helpful due to the phasing out of the current paper-based system.

Further questions come to mind when discussing ways to specifically include maritime principles in an electronic system such as, for example, regarding notices and information. Although much of the work done in the field of EDI thus far has been applicable to commercial law in general, the uniqueness and international flavor of maritime law can prove to be a rich source in the search for solutions as to how to fully implement an electronic system.

In addition, many issues related to EDI are, at present, not addressed in any international convention. In fact, because many such conventions adhere to the formalities which are part of the current paper-based system, it is possible that an electronic system would not automatically receive the benefits of those conventions, although this problem appears to be easily solved by their express incorporation on a contractual basis. Another important area yet to be resolved is the interplay between the contractual and the title functions of bills of lading and how these functions can be sustained in the evolution towards an electronic system.

Clearly, many long-term, permanent answers to these questions are needed. When seeking solutions to these problems, it is important to stay focused on the substance, rather than the form, of current paper bill of lading rules. Thus, while striving to incorporate electronically-based methods into the

process of international trade, the essential functions served by the old system will not be lost. It is therefore critical to search for ways to endow electronic messages with unique qualities expressed in paper bills of lading.

For a system of electronic messages to succeed, several cooperative steps must occur, both on a national and an international level. Those conditions and laws which impede the implementation and success of EDI, including choices of law and jurisdiction, rights, liabilities, competition, patents, and privacy issues, must be amended to work with EDI as the world moves toward the achievement of a single international standard. At the same time, necessary restrictions must be both non-discriminatory and objective. International organizations must work together to encourage these changes and perhaps even bring about an international convention which addresses these issues. The promotion of these measures will also increase the reliability of electronic messages and thus further help EDI to become more widespread.

The Role of the CMI in the Future of EDI

Thus, it is clear that much work still remains to be done before an electronic system can be fully implemented. While the CMI must take immediate action in the field of EDI, it also needs to proceed extremely carefully so as not to upset the delicate balance of the mechanics of trade. The CMI has both the experience and the expertise required to play a pivotal role in the transition from a paper to a paperless system. However, it cannot take on this great responsibility alone; close cooperation with other international organizations, such as UNCITRAL and the ICC, as well as involvement with commercial EDI projects, is necessary to achieve success.

The CMI has an old and established tradition of offering its services to the international shipping community in the field of unification of maritime law. Undoubtedly, in the context of EDI and electronic commerce, therefore, the advice and assistance of the CMI can do much to further a better understanding of the issues to be addressed as well as to foster solutions not yet found.

Under the broad umbrella of the United Nations Organization and, in particular, of UNCITRAL, a number of governmental as well as non-governmental international organizations are involved in EDI. The great majority of these groups are non-governmental international organizations representing the interests of a particular industry. In this respect, the CMI is quite different, since it is a platform where all interests are represented and where the overall aim is to achieve uniformity in a way which is acceptable to the international commercial environment.

This feature makes the CMI platform a very unique one, a fact which has been appreciated by UNCITRAL as well, and explains why UNCITRAL is also looking specifically at the CMI as the coordinator of all other interested organizations to provide a good basis and possibly even a draft of a harmonizing instrument for further consideration in governmental bodies.

The mechanics of international trade are very delicate and fragile. This is why, over the last centuries and millenniums, trade and trade law has emerged

through the development of an accepted and adhered to custom of trade and usage.

Today's world has changed once more; only this time, the changes are considered to be a revolution rather than an evolution. While, undoubtedly, some practical and working examples of EDI set-ups might exist outside the field of maritime transport, the CMI is no longer in a position to be able to draw on existing and broadly established usages, *lex maritima*, or *lex mercatoria* as during the good old times of the codification of the Hague Rules and the Collision Convention. The technical possibilities invented by mankind now force us, the people involved in the harmonization and unification of maritime law, to follow this amazing development.

Codifications of the mechanics of international trade (the Hague Rules, UCP 500, Incoterms) must also adapt to this ever faster development. However, if the evolution of the law and of the unification of trade practice is not done with the utmost diligence and in full compliance with today's technological and logistical reality and requirements, the developers will fail, thus jeopardizing the fragile, and perhaps even vital, mechanics of trade.

I would like to go one step further: the new visions of an electronic trade, the breaking down of the practical and technical boundaries, and the chance to be at the forefront of the beginning of a new EDI-guided era will undoubtedly lead to a more complete revision of the way we look at the traditional paper bill of lading. Some repercussions of this development may even lead to the review of some issues of liability and to a new weighting of the traditional allocation of responsibilities and risks as between carriers and shippers.

In all of these questions, whether or not they concern liability issues, the CMI needs to step in to ensure full analysis of the functionality of the bill of lading in the greater context of trade and shipping, its unification where useful and necessary, and eventually, its accurate translation into an electronic framework.

The CMI's work towards a possible unification of issues and problems arising in the context of the functionality of the bill of lading is certainly useful; in fact, this observation would hold true even in the context of a traditional paper-based trade. Unification of those issues, however, becomes crucial, if not vital, where an electronic environment is established.

The CMI's role in this process will be to collect as many features of the functionality of the bill of lading as possible and, from those features, to define and create general principles which could eventually form the basis for a single, unified system. These standardized rules could then complement systems created for the laws governing carriage of goods by sea which are currently covered by the Hague and Hague-Visby Rules. However, this step alone would be insufficient: the advent of new technology and, in particular, of electronic possibilities should lead the CMI to generate a revised and unified system which would then be translated for the purposes of EDI. Thus, the real challenge the CMI now faces is to coordinate all current developments in the fields of liability, functionality of the bill of lading, and EDI and apply appropriate working methods to each of those elements.

This enterprise can be called "*BACK TO THE FUTURE*", because to

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tackle the challenging task of setting up a new electronic trade system, we must go *back* in time. We need to return to the period when those architects of the current trade system were defining what this system and, in particular, the bill of lading should do. As it stands today, the bill of lading, among other documents, enables the on-selling or trading of goods while traveling on a vessel; it proves to the buyer that goods are shipped on board in good order and in the quantities described, and most importantly, triggers payment by banks.

We must go “back to the *future*”, because we need to establish legal rules supporting a newly designed electronic system. Law and technology are closely interlinked, and each influences the other. Both law and technology must be open-minded and creative. This means that the challenges set forth by the realities of EDI may be an excellent opportunity – perhaps only once in a century – to re-think our trade system and to adjust the current state of the law to today’s changed commercial and logistical reality.

At the end of this long journey, we will realize that EDI has changed the way we look at the law of maritime transport, whether transactions are performed through the traditional paper form or conducted by way of an electronic and thus paperless form.

Therefore, in the field of EDI, it is up to the CMI to safeguard the proper translation of all functions of the bill of lading into the EDI environment, as well as the correct and complete identification of all messages and information used in exchange in the course of a traditional performance of a contract of carriage of goods by sea, and the provision for such information in the EDI system that supersedes the old paper system.

As an initial phase, I believe the CMI Working Group on EDI must:

- a) identify laws addressing bills of lading and separate those provisions necessary for the international trade from those which can be deemed “habit” or even “superstition”;
- b) list all issues arising in the relationship between the carrier and the shipper/consignee from the very first moment of the contractual relationship until the very end;
- c) guard against uncertainty arising from the fact that the communications containing information transmitted during the performance of a contract of carriage are made on an electronic basis instead of by traditional means;
- d) develop principles to protect that the trade and shipping routine is properly translated on an electronic level;
- e) observe the discussions and developments in the field of EDI and act as a watchdog to ensure that no such development is contrary to the interest of a smoother performance of maritime trade or existing maritime law;
- f) identify existing work compiled by other bodies which could be used for proper CMI studies in this field;
- g) monitor further developments of international projects on EDI which are aimed at general principles but have repercussions on maritime law; and last but not least
- h) participate in the general discussion within CMI in areas of transportation law in order to actively take part in the preparation of general rules on the contract of carriage of goods for the future.

Conclusion

It is critical to remember that the CMI is not a legislative body; thus no law, no convention, and no legal transformation can be directly produced under the umbrella of the CMI alone. Therefore, the CMI's approach to this adventure must reflect that reality. Although it is true that the CMI undoubtedly has great expertise in preparing international harmonizing instruments, it should be prepared to cooperate closely with governmental international organizations. However, the CMI's vast experience deposits it squarely in the forefront of the action as the harmonization process for instruments of international maritime law picks up speed. The role of the CMI in the process of standardizing EDI, then, is not only a privilege but also a great obligation.

ANNEX I

MARITIME ELECTRONIC COMMERCE FOR THE TWENTY-FIRST CENTURY

By George F. Chandler, III

Background

The large multi-national companies are the captives of the computer. As they plunge deeper and deeper into computerization for accounting, inventories, etc., they look to be able to extend or connect their systems to their banks, freight forwarders and transport providers for more efficient handling of their supplies or products. While the various pockets of service providers might be able to connect to other multi-nationals, it is not always possible to connect to all the other necessary parties. Unless and until all of the parties to an international transaction can connect to one system, so that every user would see the same invoice, bill of lading, etc., no matter what software runs which computer (whether personal computer or mainframe), paper would necessarily be generated, thereby defeating the obvious advantages of computerization. Accordingly, some of these multi-nationals are putting considerable pressure on their banks, carriers, and freight forwarders to have the necessary linkage. This pressure should eventually result in several dominant systems, and ultimately in a single universal standard, capable of paperless commerce.

To achieve this goal, Electronic Data Interchange (EDI)⁽¹⁾ has been devised. EDI is the computer to computer transmission of standard business documents in a ready to process form. This covers such applications as inquires, planning, ordering, purchasing, acknowledgements, pricing, scheduling, status, shipping, receiving, invoices, payment and financing. Industry groups such as automotive, chemical, shipping, airline, retail stores, etc. can all use these applications to do business with their customers, suppliers, and service providers, as well as their own inventory and control systems.

In a perfect system, a company's inventory system could automatically determine the need for additional parts and electronically transmit that need to a supplier's automated system, which would ship the parts to arrive just in time at the company's plant. No human need interact with this transaction other than to monitor it, nor would paper need to be generated to accomplish this. The three companies involved: the user, the supplier and the carrier would

⁽¹⁾ The distinction is often made between "EDI" and little "edi." The first follows a structured format necessary to conduct the exchange of documents for business purposes, while edi can be all other electronic media such as fax, e-mail, etc. The better term for all electronic ways of doing business is electronic commerce, with EDI as a specialized part of electronic commerce.

automatically process and record each step, generating the necessary credits and debits and changes in inventory.

Systems at this level, or very close to it, have been devised by major industries, particularly the automotive industry. The system known as Odette covers the European automobile manufacturers. In the United States there is no industry system such as Odette, but automotive manufacturers generally follow the system being used by General Motors, as the dominant company in the industry.

In the United States in the 1960's, the Transportation Data Coordinating Committee (TDCC) took the lead in developing EDI standards. In the 1970's the American National Standards Institute's (ANSI) ASC X12⁽²⁾ came on the scene to begin developing national EDI standards to wean North American industry away from their proprietary standards. After a number of years of working together, TDCC brought its messages into ASC X12, such that there would be no competing standards, at least for North American.

No single group has come to dominate European EDI. The British group, simplification of International Trade Procedures (SITPRO) through its Trade Data Interchange (TDI) was, like TDCC, among the pioneers of EDI. Unfortunately, the TDI messages and the TDCC messages were incompatible.

In 1987 the United Nations, through the Economic Commission for Europe, launched EDI for Administration, Commerce and trade (EDIFACT) combining the elements of TDCC and TDI messages, thereby producing three incompatible sets of messages. Inasmuch as UN/EDIFACT had only two fully approved transaction sets after its first three years in operation, conflicts were not a problem.

Various maritime projects were attempted to take advantage of EDI. DISH was among the first, as a joint venture between European shippers and carriers. After trials, interest waned due to software problems and a lack of consensus among the carriers on how to proceed.⁽³⁾ DISH was followed by the short lived EDISHIP in 1990 at the initiative of 10 carriers⁽⁴⁾.

Thus by 1990 there were a great number of projects, but little uniformity and very limited usage.

Modern developments in electronic commerce

In an effort to make EDI available to a broader group of businesses, the American Bar Association (ABA) published the Model Form of Electronic Data Interchange Trading Partner Agreement in 1989. The Electronic Data Interchange Council of Canada followed with the Model Form of Electronic Data Interchange Trading Partner Agreement in 1990. Such model agreements have also been published in Australia, France, New Zealand and the United

⁽²⁾ ANSI is the U.S. member of the International Standard Organization (ISO). ASC X12 is the Accredited Standards Committee, X.12 (for EDI).

⁽³⁾ See "EDISHIP Goes Live in January" by Elizabeth Canna, *American Shipper*, December 1990, p. 61.

⁽⁴⁾ See *id.*

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Kingdom, to name a few. There is even an European Model EDI Agreement.⁽⁵⁾

The purpose of these agreement is to assist those companies that lack the resources of the large corporations in putting together such agreements, and provide them with the confidence to know that all critical aspects have been covered, when contracting to do business under EDI. Even if the model agreement is not actually used, it is useful as a template or a checklist in completing an agreement to use EDI with a trading partner.

That such agreements are necessary is an indicator of the relative infancy of EDI, where various groups doing EDI, can not connect without going through an elaborate procedure. At this point in time the state of EDI is that it still lacks an international dimension (except internally for multinational corporations). A company operating in the United States and in Europe, would need different software in each location. Frequently, an industry, such as Odette, operates its own proprietary software which is unable to function with other systems. Thus we are in a series of technological or proprietary "ghettos" that have minimal contact with other such groups.

The UN/EDIFACT messaging has the potential to overcome this isolation, and create a means of global communication. Unfortunately, users have been very slow to adopt this system, either because of the great delays in awaiting approval of EDIFACT messaging, or the tendency of not being a "pioneer".⁽⁶⁾ Recently, General Motors Corporation announced that as of January 1, 1998, it would begin implementation of UN/EDIFACT messaging in order to replace the ASC X12 and proprietary messages now in use by December 31, 1998. Other American automotive companies have announced that they will follow suit. Odette has indicated that it will consider such a change, but has made no commitment.

The magnitude of such a change can not be underestimated. The European and American automotive industries are each big enough to sweep many other companies into this change, and overcome the barriers of timidity for others. Presently, the TDCC/ASC X12 messaging dominates the North American market⁽⁷⁾. The GM shift will cause all automotive suppliers, carriers, and related companies to have two systems, one under UN/EDIFACT for automotive accounts and the other under ASC X12 for all other uses. Short term, there is translation software that can bridge that gap. Long term, it is certain to lead to pressure to switch to UN/EDIFACT, since translation software is not as efficient as the product itself.⁽⁸⁾

⁽⁵⁾ See the Official Journal of the European Commission No. L 338/98-117 (94/820/EC) 28.12.94.

⁽⁶⁾ The analogy of the American pioneers who faced great risks and frequent deaths in settling the American West is used in electronic commerce to describe the pitfalls of being first. First is not always profitable, i.e. Sony's Beta videotape was first, but it failed to capture the market.

⁽⁷⁾ See, *Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems*, Yiannopoulos (1995), p.281

⁽⁸⁾ While officially committed to eventual adoption of UN/EDIFACT, the X12 members have been resisting such a step (which was forced on them to begin with) by pushing the transition date back. Many X12 members using the stable X12 messages would prefer to keep X12, but now must reconsider in view of the GM decision.

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While the latest developments for UN/EDIFACT are encouraging, there is continuing cause for concern about the UN/EDIFACT governing structure. The European Commission's Working Party 4 (WP.4) administers UN/EDIFACT, but the process has been extremely slow at the higher levels. In an attempt to overcome this problem, responsibility for UN/EDIFACT is being transferred from WP.4 to CEFACT. It is not known at this time how CEFACT will administer the program.

Other initiatives underway include open EDI under development by the ISO to try to eliminate the need for prior agreement between the parties to use EDI.

The ICC, Paris, as part of its Project E-100, has created ETERMS⁽⁹⁾ which would be a database that can be used to incorporate terms by reference. For example, the terms and conditions of a contract would be placed into the ETERMS database, and could be incorporated by reference in the contract messages without actually having to include the full text of the terms and conditions in the messages. There are still a number of issues to be worked out, including a model law on incorporation by reference by the UNCITRAL Working Group on Electronic Commerce.

EDI has been characterized as "mainframesque standards that seem terminally clunky."⁽¹⁰⁾ Indeed many of the EDI designers resist doing EDI on anything but mainframe computers. They disdain using desktop computers for EDI. However, if EDI is to ultimately prevail, it will have to operate across all platforms, and not just mainframes.

Some have suggested that the problems with the administration of UN/EDIFACT, the bias of its designers towards main frames, and the prolonged resistance to its implementation have caused EDI to miss its window of opportunity, opening the door for other systems to come into play. Only hindsight will tell who was right, and who captured the "mindshare"⁽¹¹⁾ for electronic commerce. It has been said that minds are won in the electronic market place when the product convinces the users that it has security, privacy, authenticity and provides recourse when performance is lacking. No international system can meet these lofty goals at this time, although UN/EDIFACT comes closest.

Seadocs – The first effort to go electronic

The first attempt at an electronic system was through SEADOCS⁽¹²⁾

⁽⁹⁾ See ETERMS Repository Guidebook, ICC Document No. E100/INT.3. October 1996.

⁽¹⁰⁾ See "EDI too Clunky? Try to take the CrossRoute to 'Interprise Commerce'" by Bob Metcalfe, *Infoworld*, February 24, 1997, p. 36.

⁽¹¹⁾ Mindshare is used to denote the prevailing view of which program or computer will, over the long term, win out over its competitors – a fickle indicator at best.

⁽¹²⁾ A project of INTERTANKO (International Association of Independent Tanker Owners) and Chase Manhattan Bank. For further details, see Merges & Reynolds, *Toward a Computerized System for Negotiating Ocean Bills of Lading*, 6 J. Law and Commerce (Univ. of Pittsburgh) 23, 36 (1986). The CMI took up this concept under the title ELECTRODOCS.

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which was envisioned to use a central registry (in this case the registry was a bank) to which all parties to the bill of lading would communicate. This system was not an EDI system, because the bank became the central electronic registry communicating by telex after receiving an original paper bill of lading. While the system and process were well conceived, the concept was never used for some very practical reasons:

- (a) The insurance costs would be formidable (if insurance was even available). Even one error in 10,000 (which is very good quality control) could result in a loss of \$20,000,000.00 or more.
- (b) No one wanted to add the transaction costs as a cost of doing business over and above present costs. A central registry adds an additional layer of operation and administration that someone must pay for. The carriers would only marginally benefit from this type of system (since they still have the expense to issue paper bills of lading) and were not interested in paying for it. The trading companies, while interested in better security and more timely transfers, did not care to add to the costs and pay a fee of \$500.00 or more for each transfer they made.
- (c) The major trading companies were very uneasy about having all of their trades recorded in a central location, and thus readily available to unscrupulous competitors or intrusive governments. If all the major international banks had such a facility, then such a concern might not have surfaced, but only Chase showed interest in the project (and was expected to provide the service exclusively).

While the system has never been abandoned by INTERTANKO,⁽¹³⁾ Chase had discontinued its efforts, and no other party has stepped in to take Chase's place.

The challenge of negotiability

There is ongoing concern and skepticism about handling negotiable transactions through EDI – only the issue of the signature seems to cause more anguish. The very thought of replacing negotiable documents with EDI messages produces a mindset that is difficult to overcome.⁽¹⁴⁾ After all, how can one electronically duplicate a process that requires the exchange of a piece of paper (usually a signed one at that) in order to negotiate? Perhaps the discussion would be better served, if the process were looked at as a challenge to be undertaken. After all, if EDI negotiability is possible, then most other commercial functions can be undertaken as well.

Negotiable or transferable documents include: bills of lading, warehouse

⁽¹³⁾ See INTERTANKO letter dated 11th April, 1991 to the UN Economic and Social Council, Economic Commission for Europe, Committee on the Development of Trade – Working Party 4.

⁽¹⁴⁾ Many consider that the term "bill of lading" can only refer to a paper bill of lading, notwithstanding the fact that a paper bill of lading in use today is not the bill of lading that originally used the term, no more than term "charter party" is anything like the original document. Both terms are representative of a well established process.

receipts, checks, stocks, bonds, deeds, or anything that can be used to transfer rights and/or title. A negotiable document usually will be an order or bearer instrument. Possession of a negotiable bill of lading entitled the holder to possession of the goods described there in and covers title to the holder. Non-negotiable (but transferable) documents (such as common receipts, parking check, etc.) would entitle the holder to possession but would not convey title. Thus if one had a negotiable bill of lading for a fur coat, one is entitled to possession and can demonstrate title, while if one had only a coat check for a fur coat, one would be entitled to possession, but would have to demonstrate title by some other means.

A negotiable bill of lading, as used in international trade, is: indispensable to the conduct and financing of business involving the sale and transportation of goods between parties located at a distance from one another. It constitutes an acknowledgment by a carrier that it has received the described goods for shipment. It is also a contract of carriage. As a document of title it controls the possession of the goods themselves.⁽¹⁵⁾

Thus it functions as the receipt for the goods, the contract with the shipping company, and the title to the goods. It also functions as the basic shipment information sheet (describing the goods, shipment dates and ports, etc.), verification sheet for insurance purposes, and verification for the letter of credit. A non-negotiable bill of lading (which can be transferred) still retains the functions of receipt, contract of carriage, information sheet, verification sheet for insurance, and a means to transfer title (but it is not proof of title).

Some contend that instruments such as negotiable bills of lading are out-moded and should be discarded as business moves to EDI. Indeed, there may come a time, when commerce is so secure, trustworthy and universal that businesses feel comfortable in discarding negotiable transfers. But that day is not yet here, and there are significant numbers of transactions requiring negotiable transfers. Some accommodations must be made for them, if EDI is to truly satisfy the needs of commerce.

The first thing to do is dissect the process of negotiability into its necessary and fundamental elements, while stripping away the myths, misconceptions and superficialities. As long as the focus is on the signed, original document then the task is very difficult. but the substance of a negotiable document is not its signature or its original nature, but the process that inspires confidence in that piece of paper.

It has been said that:

"...Attempts to create electronic bills of lading are viewed under the possessory notice theory as dematerializing bills of lading, thereby rendering such bills ineffective."⁽¹⁶⁾

This ignores the fact that bill of lading or any of document of title is an abstract representation of the material goods it describes-just as paper money

⁽¹⁵⁾ *Berisford Metals Corp. v. S/S SALVADOR*, 779 F 2d 841, 845 (2 Cir 1985).

⁽¹⁶⁾ *Electronic Contracting, Publishing, and EDI Law*, Baum, p. 692 (1991).

is the abstract representation of the monetary unit it describes. In both cases, the paper has no real value of its own, and its value exists only as long as there is confidence that it can be redeemed for the material promised. Signatures, stamps and other superficialities only provide confidence to the gullible. The wise avoid form over substance, and look to the process that fulfills the promise supplied by the negotiable instrument.

It is easy to understand how people have come to look at the negotiable instrument as material. When the Sumerians began to record agricultural transactions with clay pictographs over 5,000 years ago,⁽¹⁷⁾ such pieces came to substitute for the grain or animals. We have continued to use some medium, be it clay or paper, to abstractly represent the goods identified, or the monetary value stated. This is to such an extent that the focus tends to be more on the instrument than the things themselves. Accordingly, we must keep in mind that the instrument is merely the medium for transfer. On that basis any medium, including EDI, can be used if the parties agree and have confidence in it.

It is the information that's important, not the paper.

There is nothing inherent in a paper check, draft, warehouse receipt, bill of lading, etc. that deserves our absolute confidence. In fact our common experience is that such instruments are susceptible to deception, fraud and error, and we use them with the knowledge that they are less than perfect. The risk of using such instruments is reduced by the rules that develop around them, such as the UCP 500, INCOTERMS 1990, etc. Those rules define the process for the use of the instruments that prevent misunderstandings and limit misuse. Without such written rules (and the related law developed by courts), the confidence in such instruments would be much reduced. After all, it would be considered quite risky to purchase real estate with only the deed as proof of that purchase, no matter how many seals, ribbons or signatures the deed might carry. For a transaction as important as the conveyance of real estate, an independent registration system is essential to provide the confidence to make the deed a worthy instrument. Certainly, if the registration system was suspected to be corrupt, there is nothing in the paper deed that would overcome that suspicion.

Thus it can be said that neither paper itself nor the mere printing and embellishments on that paper are the key to negotiability. Rather, it is the agreed process that the medium (which currently is paper) is put through that achieves negotiability. If we wish to update the medium to EDI, then we need only devise a process that will instill confidence.

However, any process used must be verifiable. How does a transfer of a negotiable instrument verify its authenticity or its contents? That is best accomplished by communicating with the party that issued the instrument. In EDI without a piece of paper to look at, one would only have the transmission from the transferor, and thus verification would be necessary in all cases. Since

(17) *History Begins at Sumer*, Kramer (1981).

the most secure means of verification is with a trustworthy registry, logic dictates that verification be built into each transfer through some type of registry – either a centralized registry or a registry operated by the issuing party.

Using a registry system (either a central register or a one-party register), any negotiable document can be duplicated electronically, provided the movement of that document is broken down into its most elemental steps, and replaced by appropriate EDI messages. Once it is recognized that the traditional functions of paper can be performed by the electronic transmission of information, then the ultimate business function, negotiability, can be undertaken as well.

The only limitation to EDI is a mental one. For those who can not bring themselves to abandon impressive looking pieces of paper for computer video screens or printouts, no argument can be put forward to justify negotiable transactions using EDI. For those who need or believe in EDI, they will come to realize that we put our faith not in the piece of paper, but in the process and that any process can be duplicated electronically. thus it is not a question of if it can be done, but when.

Registry functions and types

Any form of transferability or negotiability under electronic commerce will require some form of a registry – that is an “honest” middleman or a party that is otherwise responsible to deliver property. Someone has to hold the “stake”, record the transaction, and maintain the integrity of the transaction, or there would be chaos, because no one is responsible to see that the transaction is completed.

While it is easy enough to say that a registry must be used, what kind are there and how are they operated? Who operates electronic registries?

At the moment, there are no answers to these questions because no true electronic registries are in use. Many may be contemplated, they are in the future. The only examples of operating registries are the traditional ones that use paper.

However, most of the existing registries are worthy models to emulate, having established reputations for integrity. Accordingly, an examination and understanding of their basic structure may well serve to establish future registries.

The easiest form of registry to recognize is the Governmental model, where an agency or subdivision of the state records and authenticates transfers of property in public records. This type of registry is essential for high value property and land transactions.⁽¹⁸⁾ For public policy reasons, the state usually takes no responsibility for any errors. The costs of such registries are usually covered by the user fees, although the state may bear part of the costs.

⁽¹⁸⁾ UNIDROIT is working on setting up an international registry system for mobile equipment. See *Exploratory Report*, Study LXXXIIC – Doc. 1.

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Another form of registry is the central model, where a private group conducts its transaction over a private network accessible only to its members. Banking networks, such as S.W.I.F.T., can operate securely and quickly in such environments, as can networks devoted to stock trading. A central registry requires considerable staff to enforce system rules and maintain security. This considerable cost can be spread out over many users to lessen the impact on the bottom line, but even spread out, it can be a significant expense – justified by greater security and reliability than can be achieved by any one bank at that level of cost. Access to the actual records of the transactions are usually kept confidential, but summaries of the transactions may be reported publicly in areas such as stock trading. Transactional costs are usually borne by the users, rule books are a necessity.

Finally, the private form of registry is conducted over open networks, where the issuer of the document of title (or the party having responsibility for the safe delivery of the property) administers the transfer or negotiation process. Liability for misdelivery parallels the paper practice. Costs are borne by each user, which should not be significant since complexity is avoided, and no additional staff should be needed to run a central register.

Table 1. outlines the characteristics of the three types of registries.

Table 1. REGISTRIES

	<u>GOVERNMENT</u>	<u>CENTRAL</u>	<u>PRIVATE</u>
<i>Purpose</i>	recording of transfers	recording and transfer of rights	transfer of rights
<i>Access</i>	public	members only	parties
<i>Administrator</i>	government	third party	issuer
<i>Costs</i>	user fees	membership fees	internal or transactional
<i>Insurance</i>	none	registry or user	issuer
<i>Allocation of Risk</i>	on user	on registry or user	on issuer
<i>Security</i>	moderate	highest	as needed
<i>Uses</i>	real estate, (deeds, and mortgages), leased, secured transactions	securities, commodities, bonds, money, foreign currency	bills of lading, warehouse receipts, cotton receipts

The CMI Rules for electronic bills of lading

The CMI's work began in the early 1980's as a search for a waybill that would be acceptable in those jurisdictions, where the law did not favor non-negotiable bills of lading,⁽¹⁹⁾ such as, at that time, the United Kingdom. Efforts to create an electronically controlled⁽²⁰⁾ tanker bill of lading, were incorporated into this process, only to be spun off in 1988⁽²¹⁾ to a newly formed International Subcommittee on the Electronic Transfer of Rights to Goods in Transit⁽²²⁾. The International Subcommittee's work⁽²³⁾ was completed in Paris on June 29, 1990 when the CMI voted overwhelmingly⁽²⁴⁾ for the CMI Rules for Electronic Bills of Lading.

The CMI Rules do not have the force of law, and are entirely voluntary. The parties (and all succeeding parties) must agree to use the CMI Rules, either prior to beginning the electronic procedures, or as part of the initial protocols. In as much as the nature of EDI is commercial and entirely voluntary, it was felt that a set of voluntary rules was more appropriate than a treaty.

The CMI Rules set forth the minimum requirements to create an electronic bill of lading. The messages and message elements required by the CMI Rules do not prohibit additional message elements or other messages, nor do the Rules specify the technical makeup of such messages. Thus where the CMI Rules require a Receipt Message, any message containing the required elements and used for that purpose would be suitable, even if it contained other elements and was actually called something else. Some of the elementary shipping messages are not part of the process under the CMI Rules (such as the Notice of Arrival, Freight bill, etc.), but these messages, while necessary information for the carriage of goods, are not needed for the negotiation of the bill of lading.⁽²⁵⁾ Accordingly, the actual list of messages needed for the carriage of goods will be greater than listed in the CMI Rules.

One of the essential elements is the Private Key to the CMI Rules, which replaces the paper bill of lading to be transferred. With paper bills of lading, the Holder is one who has the original bill of lading (or the set). Electronically, the Holder has the unique Private Key, much like a PIN number used in the Automatic Teller Machines but for use with only one transaction. The Private

⁽¹⁹⁾ Under English and Commonwealth Law that term is an oxymoron since only a negotiable bill of lading can be a bill of lading.

⁽²⁰⁾ Based on telex transmissions, but with computer record keeping.

⁽²¹⁾ See Chandler, *The Electronic Transmission of Bills of Lading*, 20 J. Mar. Law & Comm. 571, p. 573-4 (1989).

⁽²²⁾ See, Ramberg, *Electronic Transfer of rights to Goods in Transit*, CMI Document ELECTRO-1/III-89; Also in Thomsen & Wheble, *Trading with EDI: The Legal Issues*, p. 185-95 (1989).

⁽²³⁾ The Subcommittee was Chaired by Prof. Jan Ramberg of Sweden. The Drafting Committee was composed of Mlle Johanne Gauthier of Canada, Mr Hans Levy of Denmark, Mr Gerjan van der Ziel of the Netherlands, and your author.

⁽²⁴⁾ Thirty-two voted for the CMI Rules, none against and only two of the national maritime law associations abstained (France and Nigeria).

⁽²⁵⁾ See Section 8. — How the CMI Rules would work with EDI messages.

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Key is used to verify messages from the Holder, and when the transfer has been made to a new Holder an entirely new Private Key is provided to the new Holder, and only the new Private Key can be used to instruct the carrier. It must be clearly understood, however, that the Private Key is merely the means of verifying the message. Other methods of security such as passwords, access codes, digital signatures, biometrics and/or unique identifying codes would still be necessary. The CMI Rules deliberately did not specify the type of security to be used since this necessarily entails technology and the state-of-the-art-issues for which maritime legal experts are ill equipped, and which are subject to rapid obsolescence.

Another essential element is the private registry, which leaves the risk and duty of delivery with the carrier, as it has at the present time. However, with more positive, direct communications available to be kept informed about delivery, the carrier reduces the risk of non-delivery.⁽²⁶⁾

As was noted in a recent UNCITRAL Report:

46. Next it was observed that, under a paper bill of lading, the carrier was responsible for any misdelivery of the goods, i.e., delivery to the person who was not the holder of the bill of lading. That responsibility was said to be essentially the same under the CMI Rules in that the carrier was responsible to ascertain who was the person entitled to take delivery of the goods (by virtue of being the holder of the private key) and was responsible for delivering the goods to the right person. Because of this parallelism of responsibility there was no need to elaborate special provisions on liability of the carrier for misdelivery under the CMI Rules.⁽²⁷⁾

The CMI Rules represent the efforts of experienced maritime attorneys from the major trading nations to provide the legal requirements for shipping goods under EDI with confidence, even where a country does not otherwise recognize EDI messages. However, where local laws do not permit such transactions, the CMI Rules provide for the issuance of the customary paper bill of lading – which also may be done when one of the transferees lacks the electronic equipment to communicate electronically. This flexibility in the CMI Rules provides the basis for an estoppel to prevent a participating party to attempt to claim that the procedures were not valid because they were not in writing.

The criticism to date has been primarily from the banking community which is very uneasy about this switch to EDI, and the lack of any specified security. Notwithstanding the fact that banks make extensive use of the transmission of data by computers over their own secure networks, such as S.W.I.F.T., the switch to EDI is a significant and, too many, a dangerous change. Once undertaken, it will mean that the banks will have to interface

⁽²⁶⁾ In particular, the elimination of letters of indemnity to cover delayed production of bills of lading, will do away with a liability and administrative nightmare.

⁽²⁷⁾ See UNCITRAL, Working Group on EDI, Report on the Work of the 30th Session, U.N. Doc. A/CN.9/421 (14 March 1996), para. 46.

with multiple networks not subject to their security. That, of course, is a technical issue which the CMI Rules do not address, but one that the shipping industry will need to address for its own security purposes. No system can enjoy perfect security, but certainly Electronic Bills of Lading, by their very nature, can offer vast improvement over the murky world of paper bills of lading.

How the CMI rules would function

In order to devise the CMI Rules it was necessary to break down the movement of a bill of lading into its most elemental steps, then decide which of those elements were necessary to negotiability. The functional equivalents of those necessary elements were then used to construct the Electronic Bill of lading. By doing so, no radical change in practice results. The transactions under the CMI Rules would follow most of the same steps under present paper based transactions, thereby retaining current procedures, while providing superior control and a lower error rate.

Figure 1 shows the interaction between the parties in a letter of credit transaction, where the bank is the agent for the consignee and the shipper is using a third-party service provider (who could be a freight forwarder, a bank, an independent provider, etc.). Each of the message lines would be a piece of paper before EDI.

Figure 2 shows a simple letter of credit transaction where the bank is listed as the consignee. If no credit is needed, then the procedure would be the same, except no bank would be involved, only the first private key would be used, and the shipper would issue the delivery instructions – in effect the equivalent of a straight bill of lading.

How the CMI rules would work with EDI messages

Under the UN/EDIFACT International Forwarding And Transport Framework (IFTMFR) there is a group of preset messages specifically attuned to ocean transport. These messages would also fit well with the CMI Rules.²⁸ Among the messages are:

<u>Cargo</u>	<u>Vessel</u>
IFTM Booking, Provisional (IFTMBP)	—>
<— IFTM Booking, Confirmation (IFTMBC)	
IFTM Booking, Firm (IFTMBF)	—>
<— IFTM Booking, Confirmation (IFTMBC)	
IFTM Shipping Instruction (IFTMIN)	—>
<— IFTM Instruction Contract Status (IFTMCS)	
<— IFTM Arrival Notice (IFTMAN)	

²⁸ See, Jones, *EDI: The New Transport Revolution* (1993), p.54-57.

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Each message is built from established segments to insure uniformity for the data being used. Names of places have been standardized⁽²⁹⁾ to avoid confusion or conflicts, and terms and acronyms are standardized as well, lest differences in languages cause confusion. Within a segment there are data elements or "fields", that is a blank space to be filled in with particular information. For example the description of the goods. Since the segments are uniform, such that they can be used for any relevant message, the description of the goods, as filled for the first message, can be recycled for all other messages that use that segment without having to retype it each time. This not only saves the time of having to retype the field, it avoids the possibility of error from retyping each time it is used.⁽³⁰⁾

A representative IFTM message (in this case for shipping instructions) is enclosed (figure 3) to demonstrate the segments that go into a message, the last being the description, marks and numbers. However, the message itself does not appear this way since there is a great deal of incidental data that is needed to put a message together. A page (1 of 10) of a representative message (in this case a purchase order) is also enclosed (figure 4) to demonstrate the large amount of data that goes into a message as it is transmitted. Most of the incidental data would be filtered out so that the message would be understandable as received.

Accordingly, the UN/EDIFACT messages could be used in conjunction with the CMI Rules, if they are ever implemented by the ocean carriers and their customers for the carriage of goods by sea. So the question becomes, why haven't they been implemented?

Emerging from the dark ages of maritime EDI

Not long after the CMI Rules for Electronic Bills of Lading were established in Paris and EDISHIP was launched, both in 1990, the optimistic hopes of a rapid implementation of maritime EDI were dashed in a shipping downturn. Much of the maritime industry's EDI strength was jettisoned as carriers had to concentrate on survival. Projections that EDI would be in full use in the North Atlantic container trades by 1995 were never met. Consequently, carriers have struggled to maintain interest in a tool that everyone acknowledges would be the soundest, most efficient means of conducting maritime commerce.⁽³¹⁾ However, until users are convinced that a stable, reliable system is actually in use and "everyone" is using it, interest can be awfully hard to generate.

⁽²⁹⁾ The names of even the well known ports can have several spellings, depending on how it is known in various languages. To avoid conflict on this point, UN/EDIFACT provides a list of the agreed spellings of each place.

⁽³⁰⁾ Of course, if an error is made at the initial entry, that error would be carried over to each message using that segment or data element.

⁽³¹⁾ A recent study of the ISA system by the University of Pittsburgh and Eastman Kodak showed that where a fully integrated EDI system was employed and no paper bill of lading had to be issued, there was a savings of about \$90, per bill of lading.

Part II - The Work of the CMI

In order to generate that interest, nine global container carriers announced in 1995 a project known as the Ocean Carriers' Electronic Access Network (OCEAN)⁽³²⁾. The nine carriers (now grown to 11⁽³³⁾) formed the Information Systems Agreement (ISA) in 1991 to facilitate electronic commerce. Determined to graduate from the proprietary system that each had designed for itself, to the frustration of its customers who used multiple carriers, ISA has standardized the UN/EDIFACT messages. However, the delays in receiving approved EDIFACT revisions and the lack of interest by shippers and consignees has forced ISA to use ASC X12 messages as a temporary measure. Inasmuch as ASC X12 is only in use in North America, this tends to restrict the messaging to North American users, particularly the very large shippers who are already plugged into their ocean carriers.⁽³⁴⁾ 1997 is supposed to be the year that EDIFACT messages will be used, enabling worldwide usage.⁽³⁵⁾

Recently, the National Customs Brokers and Freight Forwarders Association of America (NCBFAA) adopted the ISA's standards, adding credibility to the use of EDI messaging. If the NCBFAA follows through, more users will be able to see a stable, reliable system in place that will, hopefully, lead to a "critical mass" of users and widespread adoption of shipping EDI.⁽³⁶⁾

Current maritime EDI projects

Shortly after the CMI rules were completed, BIMCO undertook a project to develop an electronic bill of lading system based on the CMI rules. After studying the costs for such a project, it eventually had to be rejected as requiring too great of an investment. The preliminary work done for BIMCO was later utilized to develop the BOLERO project, which has itself had difficulty in maintaining funding. Now on its third group of investors⁽³⁷⁾, the concept of BOLERO is being reviewed⁽³⁸⁾, even though it had reported the successful completion of a pilot project.⁽³⁹⁾

⁽³²⁾ See "Shippers' EDI Plan - Nine carriers team for electronic cargo tracking" by Stephanie Stahl, *Informationweek*, January 23, 1995, p.16. See also, *EDI World*, p.40, July, 1994, and "Shipping Lines to Adopt Common User interface for EDI" by Bill Burch, *Network World*, May 16, 1994, p.4.

⁽³³⁾ American President Lines, Crowley American Transport, Hapag-Lloyd, K Line, Lykes Lines, Maersk, Mitsui OSK Lines, P&O Nedlloyd, OOCL, Sea-Land Service, and Yang Ming Line. There had been 12, but the recent combination of P&O and Nedlloyd reduced to 11.

⁽³⁴⁾ For most of such shipments, the bill of lading is irrelevant except for record keeping purposes. Of far greater significance is the location and timing of arrival of the goods. Thus, the full set of ocean shipment messages are not in use in any event, further constricting the learning curve.

⁽³⁵⁾ The group of experts who designed the EDI messages have formed the International Transportation and Implementation Guideline Group (ITIGG) to develop global implementation rules and sample guides. (E-mail dated June 2, 1997; T. Huckbody, ISA)

⁽³⁶⁾ See "Carriers Push Standard Communications Format", by Bill Mongelluzzo, *NY Journal of Commerce*, March 20, 1997.

⁽³⁷⁾ At this time, principally through a joint venture of the Through Transport Club (TT Club) and S.W.I.F.T., whose members constitute 32% and 40%, respectively, of the Bolero Association Ltd. See, announcement of 1 February, 1997.

⁽³⁸⁾ See, Membership Bulletin 1/97 dated 13 February 1997.

⁽³⁹⁾ See "Bank Group completes E-Commerce Test" by Stephanie Stahl, *Informationweek*, April 1, 1996.

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Generally, the scope of BOLERO, in its previous forms, was very ambitious. The concept was to provide EDI service to all the parties concerned with the carriage of goods: the shipper, the carrier, the bank, the consignee, etc., notwithstanding the inevitable conflicts that arise in the normal course of events between these parties. Even though BOLERO was to incorporate the CMI Rules, it would not employ a private registry, but a central one – much as had been attempted in the SEADOCS project. Like SEADOCS, this created a liability issue: who would be liable for misdelivery caused by a system error, or who would pay for the insurance to cover such a liability (if, indeed, coverage could be obtained). It also created a problem of confidentiality, since all trade data would now be stored in one central location. As with SEADOCS, these issues were not been resolved in the previous BOLERO iterations.

Hopefully, the new form of BOLERO will find a way around these problems. In any event, the experience of SEADOCS and the CMI Rules has shown that a central registry for all parties to an electronic bill of lading, simply has too many problems to be practical. There may well be a place for the grouping of some of the parties such as: shipper and freight forwarder; shipper, consignee, and bank; carrier and a service provider; etc.⁽⁴⁰⁾

Anticipating the imminent arrival of EDI, ICC, Paris has modified INCOTERMS to permit EDI messages in lieu of paper documents⁽⁴¹⁾, and has revised its Uniform Custom and Practices⁽⁴²⁾ to permit the use of EDI in documentary credit transactions.

The ICC, Paris has also undertaken a project known as E-100, the objective of which is develop and promote an electronic alternative to paper-based methods of trade transactions.⁽⁴³⁾ As part of Project E-100 there are Working Parties on Electronic Transport Documents and on Electronic Credits. The Working Party on Electronic Credits recently considered the concept of an electronic credit.⁽⁴⁴⁾ Project E-100 is still under development.

Another project was MANDATE by the EC's TEDIS Program. Its objective was to establish an electronic alternative to negotiable documents using a trusted third-party (TTP). Its central feature is the „ENI“ (for Electronic Negotiable Instrument) using „ENITERMS“ (for Electronic Negotiable Instrument Terms).⁽⁴⁵⁾ While MANDATE offers a complete system, no examples of its use are known.

⁽⁴⁰⁾ In an ICC Maritime Symposium at Barcelona in April 1992 in a paper by Gertjan van der Ziel, *A View of the Electronic Bill of Lading*, it was suggested that a party, such as a carrier could or should contract with an agent to perform its registry functions. This would be a sound idea for small or middle size carriers, and was what BIMCO first intended. The same approach by shippers and consignees, using either banks or freight forwarders as their agents, is the most logical approach at this stage of maritime electronic commerce. To undertake to serve all of these parties at once (notwithstanding the many other problems that have been previously listed), is too much at this stage of maritime electronic commerce.

⁽⁴¹⁾ INCOTERMS 1990.

⁽⁴²⁾ UCP500.

⁽⁴³⁾ Sec. ICC Project E-100, Terms of Reference.

⁽⁴⁴⁾ Sec. ICC Document No. E100-21/3, Concept of an Electronic Credit.

⁽⁴⁵⁾ Sec. MANDATE – Final Report, dated 4/4/95.

Uncitral takes up EDI

The Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) recommended that a Working Group investigate the need for UNCITRAL's intervention in the area of Electronic Data Interchange (EDI) in 1991, with particular emphasis on negotiable documents such as bills of lading.⁽⁴⁶⁾ The Commission tasked the Working Group on International Payments (WG.IV) with identifying the legal issues involved and to consider possible statutory provisions.⁽⁴⁷⁾ That Working Group met in 1992⁽⁴⁸⁾, and outlined the legal issues involved and proposed possible solutions.⁽⁴⁹⁾ Of particular interest was the discussion regarding the CMI Rules for Electronic Bills of Lading, 1990. It was recommended that statutory law be examined to facilitate such rules.⁽⁵⁰⁾ The Commission adopted the recommendations of the Working Group, renamed it the Working Group on Electronic Data Interchange, and tasked it with developing laws to facilitate EDI.⁽⁵¹⁾ After seven sessions (including Commission sessions) the Working Group on EDI had completed its draft of the model laws⁽⁵²⁾ for consideration by the Commission. At that time, following two proposals, one by United Kingdom of Great Britain and Northern Ireland,⁽⁵³⁾ and the other by the United States of America,⁽⁵⁴⁾ the Working Group requested that the UNCITRAL Secretariat prepare a background study on negotiability and transferability of EDI transport documents with a particular emphasis on EDI maritime transport documents.⁽⁵⁵⁾

The Commission endorsed the recommendation of the Working Group on EDI and directed the Secretariat to proceed to draft a report on EDI Maritime transport documents.⁽⁵⁶⁾ The UNCITRAL Secretariat then requested the assistance of the CMI. For the first time, a joint CMI-UNCITRAL *ad hoc* group of experts was formed and met in London on the 4th and 5th of December 1995.⁽⁵⁷⁾ Greatly assisted by an inspired *aide-mémoire*,⁽⁵⁸⁾ the joint

⁽⁴⁶⁾ UNCITRAL, Electronic Data Interchange, Report by the Secretary General, 24th Session, U.N. Doc. A/CN.9/350 (15 May 1991).

⁽⁴⁷⁾ Report of UNCITRAL, 24th Session, U.N. Doc. A/46/17 (10-28 June, 1991).

⁽⁴⁸⁾ Your author participated in this Working Group, and its successor Working Groups, as one of the Representatives of the United States of America.

⁽⁴⁹⁾ UNCITRAL, Report of the Working Group on International Payments, 24th Session, U.N. Doc. A/CN.9/360 (17 February, 1992).

⁽⁵⁰⁾ See *id.* at Paragraphs 119.-124.

⁽⁵¹⁾ Report of UNCITRAL, 25th Session, U.N. Doc. A/47/17 (4-22 May, 1992).

⁽⁵²⁾ UNCITRAL, Report of the Working Group on EDI, 29th Session U.N. Doc. A/CN.9/407 (16 March, 1995).

⁽⁵³⁾ UNCITRAL, U.N. Doc. A/CN.9/WG.IV/WP.66.

⁽⁵⁴⁾ UNCITRAL, U.N. Doc. A/CN.9/WG.IV/WP.67.

⁽⁵⁵⁾ See *id.* at paragraphs 106.-118.

⁽⁵⁶⁾ Report of UNCITRAL, 28th Session, U.N. Doc. A/50/17 (2-26 May, 1995), paragraphs 307.-309.

⁽⁵⁷⁾ Mr. Renaud Sorieul of the UNCITRAL Secretariat, Mr. Patrick Griggs for the CMI, Mr. George F. Chandler, III, Mr. Robert I.L. Howland, Mr. Gertjan van der Ziel, and Prof Jan Ramberg were the participants in the meeting.

⁽⁵⁸⁾ Created by Mr. Howland, and much appreciated by the other participants.

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group of experts proceeded to draft an article concerning maritime transport, termed article "X".⁽⁵⁹⁾

As the draft took shape, the lack of international uniformity, even for negotiable bills of lading, could not be ignored. The disuniformity was so extensive that the expectations of a shipper of a bill of lading were not likely to be accomplished when the bill of lading reached many other countries, causing difficulties in maritime commerce. Bill of Lading issues, such as stoppage-in-transit, can arise in multiple jurisdictions, each with conflicting laws, leaving the parties frustrated and unsatisfied by conflicting decisions. It was agreed that had there been a convention providing international uniformity for the use and practice of bills of lading, much of the draft would not have been necessary.⁽⁶⁰⁾ While the proposed draft together with the CMI Rules, should overcome these impediments, the best solution would be a comprehensive convention covering all types of bills of lading.

The Working Group on EDI⁽⁶¹⁾ with the thorough report of the Secretariat⁽⁶²⁾ in hand, proceeded to deliberate and refine the draft of Article "X" for presentation to the Commission.⁽⁶³⁾ A prominent part of the discussion was, once again, the international disuniformity in the treatment of bills of lading with examples, such as bills of lading which are negotiable in the country of issuance being regarded as non-negotiable in the country where delivery is to occur. This discussion led to the recommendation that this disuniformity needed to be considered by some other Working Group tasked with considering issues of carriage of goods by sea in conjunction with other interested organizations.⁽⁶⁴⁾

The Draft then went to the Commission on its 29th session in New York. First, the remaining general articles of the Model Law were completed, and renamed the "UNCITRAL Model Law on Electronic Commerce" to better serve the wider scope of the model laws⁽⁶⁵⁾ to be applied, not just to EDI, but all forms of electronic messaging, now being referred to as electronic commerce.⁽⁶⁶⁾ The name of the Working Group was accordingly changed to reflect this decision.

⁽⁵⁹⁾ UNCITRAL, Working Group on EDI, Note by the Secretariat, Electronic Data Interchange, 30th Session, U.N. Doc. A/CN.9/WG.IV/ WP.69 (31 January, 1996), paragraph 95.

⁽⁶⁰⁾ See *id.* at paragraph 89.

⁽⁶¹⁾ Messrs. Chandler (USA), Howland (UK), and van der Ziel (CMI) participating, and Mr. Sorieul presiding.

⁽⁶²⁾ See note 13.

⁽⁶³⁾ UNCITRAL, Report of the Working Group on EDI, 30th Session, U.N. Doc. A/CN.9/421 (14 March 1996), page 31.

⁽⁶⁴⁾ See *id.* at paragraphs 104.-108.

⁽⁶⁵⁾ These Model Laws are not self-executing, but must be enacted into law by each country or political subdivision wishing to facilitate electronic commerce. In the United States, the State of Illinois has already adopted some of the Model Laws' provisions (see Illinois Electronic Security Act).

⁽⁶⁶⁾ Report of UNCITRAL, 29th Session, U.N. Doc. A/51/17 (28 May - 14 June, 1996), paragraphs 174.-177.

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Article "X" was the subject of extensive discussion resulting in further changes to the article, and the article being split into two articles, 16 and 17,⁽⁶⁷⁾ and deemed applicable to all modes of transport.⁽⁶⁸⁾ Having completed the first seventeen articles for the model laws, the Commission turned its attention to the future work of the renamed Working Group on Electronic Commerce, and tasked the Secretariat with furnishing a report on digital signatures.⁽⁶⁹⁾

The Commission also took up the Working Group's recommendation for a review of issues under the carriage of goods by sea. Noting that budget constraints and the availability of a Working Group, would prevent the subject being taken up by UNCITRAL for at least several years, it was decided to invite interested groups, such as the CMI, to submit proposals for the Secretariat to gather and submit in a future report to the Commission.⁽⁷⁰⁾ As noted by the Commission:

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 Insurance (IUMI), the International Federation of Freight Forwarders Associations (FIATA), the International Chamber of Shipping (ICS) and the International Association of Ports and Harbors (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.⁽⁷¹⁾

Since that time, the Secretariat has issued its report on Digital Signatures⁽⁷²⁾ for the Working Group to consider, which it did at its 31st session. This issue proved to be very difficult to deal with since it is so dependent on technology rather than law. Preliminary drafts were prepared with the understating that further work and discussion were

⁽⁶⁷⁾ For the full text of the model law, including its transport articles, see *id.* at pages 70-77.

⁽⁶⁸⁾ While the goal of the Working Group was to provide articles relevant to maritime transport, the final draft was felt to be capable of facilitating any transport document without impinging on any usage.

⁽⁶⁹⁾ See *id.* at paragraphs 216.-218.

⁽⁷⁰⁾ See *id.* at paragraphs 210.-215.

⁽⁷¹⁾ See *id.* at paragraph 215.

⁽⁷²⁾ UNCITRAL, Working Group on Electronic Commerce, Note by the Secretariat, U.N. Doc A/CN.9/WG. IV/WP.71 31st Session (31 December, 1996).

necessary.⁽⁷³⁾ While digital signatures have been under development for over six years by various commercial groups, development has been hampered by lack of a standard. Notwithstanding the interest being generated by software developers and technology buffs, there is surprisingly little usage of these tools.⁽⁷⁴⁾ Each software developer sets its own standard, such that if a commercial party was to insist on digital signatures for all of its commercial activities, it would have to pay for and set up different programs with virtually every party with which it wished to do business. With so many competing standards, the International Standards Organization (ISO) is unable to achieve consensus on a standard. This has led to the proponents of digital signatures pressing UNCITRAL, through its member states, to set legal norms which are, in many respects, technical standards. The Working Group has resisted being swept up into the standards controversy, leaving only certifying authorities for discussion, and maintaining its media neutral/technology neutral approach.⁽⁷⁵⁾

Specific aspects of the UNCITRAL model laws

The first 15 articles of the Model Law have no direct application to maritime commerce, but they are essential if maritime commerce is to be performed in an electronic environment.

Chapter I. contains the general provisions: sphere of application⁽⁷⁶⁾, definitions⁽⁷⁷⁾, interpretation⁽⁷⁸⁾, and variation by agreement⁽⁷⁹⁾. The only unique feature of this chapter is the creation of the term "Data Message",⁽⁸⁰⁾ used to differentiate the crux of the communication from other forms of information, and traditional messages. The Working Group struggled with the appropriate term through the years of development of the Model Law. In fact, virtually any name could be used since there is no precedent for such a concept. The easiest solution would have been to simply call the concept "message," but that term is so generic that it would have caused confusion with the common usage of message. Thus "Data Message," while unique, has no special meaning other than to give substance to a concept.

⁽⁷³⁾ UNCITRAL, Report of the Working Group on Electronic Commerce, 31st Session, U.N. Doc. A/CN.9/437 (12 March, 1997).

⁽⁷⁴⁾ See "Role Of Digital Certificates Looks Secure (But Roadblocks To Use Include No Interoperability, Too Many Issuing Authorities)" "Netweek by Dave Kosiur, *PC Week*, April 28, 1997; "1997 Will Be The Year Of Wrestling With Certificate Authority Issues" Lantalk by Paul Merenbloom, *Infoworld*, January 13, 1997.

⁽⁷⁵⁾ The approach used in creating the CMI Rules for Electronic Bills of Lading. Any other approach or attempt to reference the state of the art leads to immediate obsolescence, as the technology changes. Also, any legal organization such as the Working Group (or the CMI), inherently lacks the expertise to tackle such issues. The value of this approach may be seen in the CMI Rules, which are still relevant, notwithstanding the quantum changes in technology since 1990.

⁽⁷⁶⁾ Article 1.

⁽⁷⁷⁾ Article 2.

⁽⁷⁸⁾ Article 3.

⁽⁷⁹⁾ Article 4.

⁽⁸⁰⁾ Article 2(a).

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Variation by agreement⁽⁸¹⁾ is provided to facilitate freedom to contract. Interpretation⁽⁸²⁾ encourages the users and those who would interpret these Model Laws to be broad-minded in their application of the Model Laws because of their international origins.

Chapter II concerns the application of legal requirements to data messages, and starts off by providing legal recognition of data messages,⁽⁸³⁾ prohibiting data messages being denied legal recognition solely because they are data messages. While it may be regarded as common sense, it is necessary because electronic commerce is such a new concept, there is likely to be resistance to accepting it over traditional forms. Certainly such a provision will help in supporting electronic bills of lading.

Articles 6 through 8, respectively, writing, signatures and original, provide functional equivalency. That is where there is a legal requirement for one of these categories, that requirement can be satisfied by equivalent data messages. In the CMI Rules for Electronic Bills of Lading, such requirements are met by estoppel, which may not be sufficient in some jurisdictions. Where such laws are adopted, uncertainty in the use of electronic bills of lading will be reduced.

The issue of admissibility and evidential weight of data messages,⁽⁸⁴⁾ is provided for those jurisdictions still using the "best evidence" rule.⁽⁸⁵⁾ However, as noted during the Working Group's deliberations, there are likely to be instances, even in civil law countries that have no such rules, where a court is going to be uncomfortable with accepting evidence generated by a computer, rather than the physical documents that have traditionally been used.

The remaining article in that chapter sets forth requirements for retention of data messages.⁽⁸⁶⁾ For data messages to be reliable, it is essential that they can be stored without any modification being made to them, possibly over long periods of time. Equally important is that they remain accessible over that long period of time. That requirement may seem easy to comply with, but it is not that easy given the speed at which technology changes take place in computer hardware and software. Significant changes in technology can take place in a few years time, such that a data message generated years ago can not be read and printed by the equipment now on hand. Thus it is not enough to save data disks, without at least one compatible and operational computer and printer to read and print needed data messages.⁽⁸⁷⁾

Chapter III provides for the protocols of communication of data

⁽⁸¹⁾ Article 4.

⁽⁸²⁾ Article 3.

⁽⁸³⁾ Article 5.

⁽⁸⁴⁾ Article 9.

⁽⁸⁵⁾ A rule which requires production of the actual document used in the dispute, and which would only admit a copy, if the party urging use of the copy can satisfactorily explain why the actual document (that is the best evidence) is not available.

⁽⁸⁶⁾ Article 10.

⁽⁸⁷⁾ There are programs that can convert old data in obsolete formats or programs into newer formats. However, if that conversion process alters the data in anyway, then the authenticity of the data could be compromised.

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messages; that is the transmission of offers and acceptances by data messages,⁽⁸⁸⁾ the validity of statements,⁽⁸⁹⁾ attribution of data messages,⁽⁹⁰⁾ acknowledgment of receipt,⁽⁹¹⁾ and the time and place of dispatch and receipt of data messages.⁽⁹²⁾ While these articles are not directly needed for electronic bills of lading, they would be helpful in defining rights and responsibilities for data messages used to effect the CMI Rules.

Part two of the Model Law addresses electronic commerce in specific areas, the first of which is carriage of goods. In article 16, actions related to contracts of carriage of goods, various actions that would have been recorded on separate pieces of paper as the goods would be processed for transport are described and specified to apply to this chapter. This is necessary to be sure that all of the data messages applicable to transport are treated the same, rather than having acceptance for just the critical data messages, and having to revert to paper documents for the incidental actions. The actions are so comprehensive that they could be made applicable to any mode of transport, and not just maritime.

Article 17, Transport Documents, proceeds to tie these actions to data messages,⁽⁹³⁾ in lieu of paper documents, whether or not there is a legal requirement for a paper document or legal consequences for not having a paper document.⁽⁹⁴⁾ Paragraph 17(3) establishes uniqueness as an absolute requirement to transfer rights by means of data message. Without such a provision, the CMI Rules, or any other scheme to transfer rights, could not function. Enactment of a Model Law containing such a provision would serve to validate voluntary rules for the transfer of rights in goods, such as the CMI Rules, and is an important development for such usages.

Paragraph 17(4) sets the standard of reliability for such messages, while Paragraph 17(5) recognizes that, while there are instances where the parties may have to revert to a paper bill of lading,⁽⁹⁵⁾ both systems can not be in use at the same time, otherwise uniqueness would be destroyed.⁽⁹⁶⁾ Accordingly, before a paper bill of lading can be issued the use of data messages must be terminated, and that fact recorded on the paper bill of lading.

Paragraph 17(6) insures that if a cargo convention, such as the Hague rules, would have been compulsorily applicable to a paper bill of lading, had it been issued, a contract of carriage created by data messages would also be subject to the convention.

⁽⁸⁸⁾ Article 11.

⁽⁸⁹⁾ Article 12.

⁽⁹⁰⁾ Article 13.

⁽⁹¹⁾ Article 14.

⁽⁹²⁾ Article 15.

⁽⁹³⁾ Article 17(1).

⁽⁹⁴⁾ Article 17(2). For example, where there is no formal legal requirement for a paper bill of lading, but the law would look to custom and practice and reject anything that did not conform to custom and practice, then this paragraph is needed.

⁽⁹⁵⁾ Such a bill of lading would be, in effect, a "switch bill of lading". See, Toh Kian Sing, *Of Straight and Switch Bills of Lading*, [1996] Lloyd's Mar & Comm LQ 416.

⁽⁹⁶⁾ Proper practice for switch bills of lading requires that the bill of lading issuer collect the first bill of lading before releasing the second bill of lading. See *id.* At p.419.

The CMI's future work on EDI

The UNCITRAL Model Law on Electronic Commerce would provide a legal foundation for the CMI Rules for Electronic Bills of Lading, if enacted in those countries that have legal impediments to such transactions. Certainly, the CMI national associations could and should recommend⁽⁹⁷⁾ adoption of the Model Law in their respective countries. While the UNCITRAL Working Group on Electronic Commerce will continue its work,⁽⁹⁸⁾ and add further articles to the Model Law, its work in the maritime arena is complete.

Regarding the CMI Rules, one of essential operating assumptions in its drafting was to create a set of rules that would, at least, provide legal guidance and comfort as EDI messaging came into more extensive use. As that use developed the CMI would be revisited and revised, if needed, to accommodate the trade. Insofar as only minimal usage has occurred with EDI messaging – merely informational messages that are not sufficient to form a contract of carriage (usually with shippers who are operating under shipping contracts, and who have little need for a bill of lading). Accordingly no real usage has occurred to enable a review of CMI Rules. Given the slowness with which EDI (at least through UN/EDIFACT) is developing, it could be well into the twenty-first century before the CMI will have any work to do in this area.

Certainly, a study group for electronic commerce should be maintained to monitor and possibly work with the ICC's E-100 project particularly in the area of transport documents. A watching brief on the activities of BOLERO, or its successors, should also be maintained, with capability of assisting BOLERO, or at least proving comments, if invited to do so.

While there is no substantive work for CMI to undertake at this time on EDI or electronic commerce, supporting efforts will be needed from time to time.

Future work on related issues

As previously noted, the disuniformity of the practice and usage of bills of lading and other contracts of carriage impacted upon the work of the Joint CMI-UNCITRAL *ad hoc* group of experts. This problem was also recognized within the UNCITRAL Working Group, and led to the recommendation of the Working Group that all aspects of the carriage of goods be examined. With the acceptance by the Commission of this concept, and the Commission's invitation to interested organizations such as the CMI to submit proposals in this regard, the CMI should take the leading role in organizing a group to undertake this work.

⁽⁹⁷⁾ The Executive Council of the CMI may wish to consider some sort of recommendation to the national associations.

⁽⁹⁸⁾ This work will not include issues regarding carriage of goods, which will be the province of some future Working Group, if any.

This work should be split into the traditional liability issues of the cargo conventions, and the non-liability aspects of carriage of goods. The goal would be to develop these issues in a separate international subcommittee or study group for ultimate harmonization with the work product of the International Subcommittee taking up the conventional liability issues.

At one time it was enough to say that maritime law for the carriage of goods need concern itself only from tackle-to-tackle, and leave the rest to national or local law. However, as the speed and complexity of transport has evolved, it is clear that the maritime law must recognize that the tackle-to-tackle period has not been the maritime interface for maritime commerce for some time now. Routinely, the liner services issue bills of lading extending the period of coverage beyond tackle-to-tackle to cover their extended responsibilities. This is done because the great variance in national laws leaves too many uncertainties. Accordingly, international uniformity needs to be established for the period before and after the goods are in the ship's tackle, and for the associated issues that arise before and after tackle-to-tackle.

Rather than take each of these issues piecemeal, with the possibility of inconsistent treatment, it was proposed that the entire body of carriage of goods issues (apart from liability) needs to be reviewed comprehensively to insure international uniformity and to facilitate maritime commerce. No other body is better suited to take on a project of such significance to maritime law than the CMI.

Should we fail to recognize and anticipate the needs of maritime commerce, no doubt other areas of the legal community will step in and provide the services needed to correct such problems, rendering maritime law obsolete and irrelevant. With the wealth of experience that this organization can bring to bear on issues such as this, we must fill this need, and work with UNCITRAL to provide a functional and comprehensive regime for the carriage of goods that all maritime nations and interests can unite behind.

Given the involvement and insight that this panel has accumulated to date, it would only be logical to maintain the panel members as a study group⁽⁹⁹⁾ to draft provisions in this area for an International Subcommittee focused on the broader liability issues, or to use the panel as a nucleus for a working group or an International Subcommittee. Given the nature of the issues to be undertaken, the study group form would seem to provide the flexibility needed to bring things together in the least time.

⁽⁹⁹⁾ To be sure the panel would be widened to ensure a broad mix of views, and observers for the relevant areas invited to participate.

APPENDIX A

CMI RULES FOR ELECTRONIC BILLS OF LADING

1. *Scope of Application*

These rules shall apply whenever the parties so agree.

2. *Definitions*

- a. "Contract of Carriage" – means any agreement to carry goods wholly or partly by sea.
- b. "EDI" means Electronic Data Interchange, i.e. the interchange of trade data effected by teletransmission.
- c. "UN/EDIFACT" – means the United Nations Rules for Electronic Data Interchange for Administration, Commerce and Transport.
- d. "Transmission" – means one or more messages electronically sent together as one unit of dispatch which includes heading and terminating data.
- e. "Confirmation" – means a Transmission which advises that the content of a Transmission appears to be complete and correct, without prejudice to any subsequent consideration or action that the content may warrant.
- f. "Private Key" – means any technically appropriate form, such as a combination of numbers and/or letters, which the parties may agree for securing the authenticity and integrity of a Transmission.
- g. "Holder" – means the party who is entitled to the rights described in Article 7(a) by virtue of its possession of a valid Private Key.
- h. "Electronic Monitoring System" – means the device by which a computer system can be examined for the transactions that it recorded, such as a Trade Data Log or an Audit Trail.
- i. "Electronic Storage" – means any temporary, intermediate or permanent storage of electronic data including the primary and the back-up storage of such data.

3. *Rules of procedure*

- a. When not in conflict with these Rules, the Uniform Rules of Conduct for interchange of Trade Data by Teletransmission, 1987 (UNCID) shall govern the conduct between the parties.
- b. The EDI under these Rules should conform with the relevant UN/EDIFACT standards. However, the parties may use any other method of trade data interchange acceptable to all of the users.
- c. Unless otherwise agreed, the document format for the Contract of Carriage shall conform to the UN Layout Key or compatible national standard for bills of lading.
- e. In the event of a dispute arising between the parties as to the data actually transmitted, an Electronic Monitoring System may be used to verify the data received. Data concerning other transactions not

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related to the data in dispute are to be considered as trade secrets and thus not available for examination. If such data are unavoidably revealed as part of the examination of the Electronic Monitoring System, they must be treated as confidential and not released to any outside party or used for any other purpose.

- f. Any transfer of rights to the goods shall be considered to be private information, and shall not be released to any outside party not connected to the transport or clearance of the goods.

4. *Form and content of the receipt message*

- a. The carrier, upon receiving the goods from the shipper, shall give notice of the receipt of the goods to the shipper by a message at the electronic address specified by the shipper.
- b. This receipt message shall include:
 - (i) the name of the shipper;
 - (ii) the description of the goods, with any representations and reservations, in the same tenor as would be required if a paper bill of lading were issued;
 - (iii) the date and place of the receipt of the goods;
 - (iv) a reference to the carrier's terms and conditions of carriage; and
 - (v) the Private Key to be used in subsequent Transmissions.The shipper must confirm this receipt message to the carrier, upon which Confirmation the shipper shall be the Holder.
- c. Upon demand of the Holder, the receipt message shall be updated with the date and place of shipment as soon as the goods have been loaded on board.
- d. The information contained in (ii), (iii) and (iv) of paragraph (b) above including the date and place of shipment if updated in accordance with paragraph (c) of this Rule, shall have the same force and effect as if the receipt message were contained in a paper bill of lading.

5. *Terms and conditions of the Contract of Carriage*

- a. It is agreed and understood that whenever the carrier makes a reference to its terms and conditions of carriage, these terms and conditions shall form part of the Contract of Carriage.
- b. Such terms and conditions must be readily available to the parties to the Contract of Carriage.
- c. In the event of any conflict or inconsistency between such terms and conditions and these Rules, these Rules shall prevail.

6. *Applicable Law*

The Contract of Carriage shall be subject to any international convention or national law which would have been compulsorily applicable if a paper bill of lading had been issued.

7. *Right of Control and Transfer*

- a. The Holder is the only party who may, as against the carrier:
 - (1) claim delivery of the goods;

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- (2) nominate the consignee or substitute a nominated consignee for any other party, including itself;
 - (3) transfer the Right of Control and Transfer to another party;
 - (4) instruct the carrier on any other subject concerning the goods, in accordance with the terms and conditions of the Contract of Carriage, as if he were the holder of a paper bill of lading.
 - b. A transfer of the Right of Control and Transfer shall be effected: (i) by notification of the current Holder to the carrier of its intention to transfer its Right of Control and Transfer to a proposed new Holder, and (ii) confirmation by the carrier of such notification message, whereupon (iii) the carrier shall transmit the information as referred to in article 4 (except for the Private Key) to the proposed new Holder, whereafter (iv) the proposed new Holder shall advise the carrier of its acceptance of the Right of Control and Transfer, whereupon (v) the carrier shall cancel the current Private Key and issue a new Private Key to the new Holder.
 - c. If the proposed new Holder advises the carrier that it does not accept the Right of Control and Transfer or fails to advise the carrier of such acceptance within a reasonable time, the proposed transfer of the Right of Control and Transfer shall not take place. The carrier shall notify the current Holder accordingly and the current Private Key shall retain its validity.
 - d. The transfer of the Right of Control and Transfer in the manner described above shall have the same effects as the transfer of such rights under a paper bill of lading.
8. *The Private Key*
- a. The Private Key is unique to each successive Holder. It is not transferable by the Holder. The carrier and the Holder shall each maintain the security of the Private Key.
 - b. The carrier shall only be obliged to send a Confirmation of an electronic message to the last Holder to whom it issued a Private Key, when such Holder secures the Transmission containing such electronic message by the use of the Private Key.
 - c. The Private Key must be separate and distinct from any means used to identify the Contract of Carriage, and any security password or identification used to access the computer network.
9. *Delivery*
- a. The carrier shall notify the Holder of the place and date of intended delivery of the goods. Upon such notification the Holder has a duty to nominate a consignee and to give adequate delivery instructions to the carrier with verification by the Private Key. In the absence of such nomination, the Holder will be deemed to be the consignee.
 - b. The carrier shall deliver the goods to the consignee upon production of proper identification in accordance with the delivery instructions specified in paragraph (a) above; such delivery shall automatically cancel the Private Key.

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- c. The carrier shall be under no liability for misdelivery if it can prove that it exercised reasonable care to ascertain that the party who claimed to be the consignee was in fact that party.

10. Option to receive a paper document

- a. The Holder has the option at any time prior to delivery of the goods to demand from the carrier a paper bill of lading. Such document shall be made available at a location to be determined by the Holder, provided that no carrier shall be obliged to make such document available at a place where it has no facilities and in such instance the carrier shall only be obliged to make the document available at the facility nearest to the location determined by the Holder. The carrier shall not be responsible for delays in delivering the goods resulting from the Holder exercising the above option.
- b. The carrier has the option at any time prior to delivery of the goods to issue to the Holder a paper bill of lading unless the exercise of such option could result in undue delay or disrupts the delivery of the goods.
- c. A bill of lading issued under Rules 10(a) or (b) shall include: the information set out in the receipt message referred to in Rule 4 (except for the Private Key); and (ii) a statement to the effect that the bill of lading has been issued upon termination of the procedures for EDI under the CMI Rules for Electronic Bills of Lading. The aforementioned bill of lading shall be issued at the option of the Holder either to the order of the Holder whose name for this purpose shall then be inserted in the bill of lading or to bearer.
- d. The issuance of a paper bill of lading under Rule 10(a) or (b) shall cancel the Private Key and terminate the procedures for EDI under these Rules. Termination of these procedures by the Holder or the carrier will not relieve any of the parties to the Contract of Carriage of their rights, obligations or liabilities while performing under the present Rules nor of their rights, obligations or liabilities under the contract of carriage.
- e. The Holder may demand at any time the issuance of a print-out of the receipt message referred to in Rule 4 (except for the Private Key) marked as non-negotiable copy. The issuance of such a print-out shall not cancel the Private Key nor terminate the procedures for EDI.

11. Electronic data is equivalent to writing

The carrier and the shipper and all subsequent parties utilizing these procedures agreed that any national or local law, custom or practice requiring the Contract of Carriage to be evidenced in writing and signed, is satisfied by the transmitted and confirmed electronic data residing on computer data storage media displayable in human language on a video screen or as printed out by a computer. In agreeing to adopt these Rules, the parties shall be taken to have agreed not to raise the defense that this contract is not in writing.

APPENDIX B

UNCITRAL MODEL LAW ON ELECTRONIC COMMERCE

PART ONE. ELECTRONIC COMMERCE IN GENERAL

CHAPTER I. SPHERE OF APPLICATION*

Article 1

*Sphere of application**

This Law** applies to any kind of information in the form of a data message used in the context*** of commercial**** activities.

Article 2

Definitions

For the purposes of this Law:

- (a) "*Data message*"; means information generated, stored or communicated by electronic, optical or analogous means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;
- (b) "*Electronic Data Interchange (EDI)*" means the transfer from computer to computer of information using an agreed standard to structure the information;
- (c) "*Originator*" of a data message means a person by whom, or on whose behalf, the data message purports to have been generated, stored or communicated, but it does not include a person acting as an intermediary with respect to that data message;

* The Commission suggests the following text for States that might wish to limit the applicability of this Law to international data messages:

"This Law applies to a data message as defined in paragraph 1 of article 2 where the data message relates to international commerce".

** This Law does not override any rule of law intended for the protection of consumers.

*** The Commission suggest the following text for States that might wish to extend the applicability of this Law:

This Law applies to any kind of information in the form of a data message, except in the following situations: [...]."

**** The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions; any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.

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- (d) “*Addressee*” of a data message means a person who is intended by the originator to receive the data message, but does not include a person acting as an intermediary with respect to that data message;
- (e) “*Intermediary*”, with respect to a particular data message, means a person who, on behalf of another person receives, transmits or stores that data message or provides other services with respect to that data message;
- (f) “*Information system*” means a system for generating, transmitting, receiving or storing information in a data message.

Article 3

Interpretation

- (1) In the interpretation of this Law, regard is to be had to their international source and to the need to promote uniformity in their application and the observance of good faith.
- (2) Questions concerning matters governed by these laws which are not expressly settled in them are to be settled in conformity with the general principles on which this Law is based.

Article 4

Variation by agreement

- (1) As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement.
- (2) Paragraph (1) does not affect any right that may exist to modify by agreement any rule of law referred to in Chapter II.

CHAPTER II.

APPLICATION OF LEGAL REQUIREMENTS TO DATA MESSAGE

Article 5

Legal recognition of data messages

Information shall not be denied legal effectiveness, validity or enforceability solely on the grounds that it is in the form of a data message.

Article 6

Writing

- (1) Where a rule of law requires information to be in writing or to be presented in writing, or provides for certain consequences if it is not, a data message satisfies that rule if the information contained therein is accessible so as to be usable for subsequent reference.

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(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being in writing.

(3) The provisions of this article do not apply to the following:

[...]

Article 7

Signature

(1) Where the law requires a signature of a person, that requirement is met in relation to a data message if:

- (a) a method is used to identify that person and to indicate that person's approval of the information contained therein in the data message; and
- (b) that method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any agreement between the originator and the addressee of the data message.

(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

(3) The provisions of this article do not apply to the following:

[...]

Article 8

Original

(1) Where the law requires information to be presented in its original form, or provides for certain consequences if it is not, a data message satisfies that rule if:

- (a) there exists a reliable assurance as to the integrity of the information between the time when it was first generated in its final form, as a data message or otherwise; and
- (b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.

(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.

(3) For the purposes of subparagraph (a) of paragraph (1):

- (a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered apart from the addition of any endorsement, and any change which arises in the normal course of communications, storage, or display; and
- (b) the standard of reliability required shall be assessed in the light of the purpose for which the information was composed and in the light of all the relevant circumstances.

(4) The provisions of this article do not apply to the following:

[...]

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Article 9

Admissibility and evidential value of a data message

(1) In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to prevent the admission of a data message in evidence:

- (a) on the grounds that it is a data message; or,
- (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.

(2) Information presented in the form of a data message shall be given due evidential weight. In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.

Article 10

Retention of data messages

(1) Where the law requires that certain documents, records or information be retained, that requirement is met by retaining data messages, provided that the following conditions are satisfied:

- (a) the information contained therein is accessible so as to be usable for subsequent reference; and
- (b) the data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and
- (c) such information, if any, is retained as enables the identification of the origin and destination of a data message and the date and time when it was sent or received.

(2) An obligation to retain documents, records or information in accordance with paragraph (1) does not extend to any information the sole purpose of which is to enable the message to be sent or received.

(3) A person may satisfy the requirement referred to in paragraph (1) by using the services of any other person, provided that the conditions set forth in subparagraphs (a), (b) and (c) of paragraph (1) are met.

CHAPTER III. COMMUNICATION OF DATA MESSAGE

Article 11

Formation and validity of contracts

(1) In the context of contract formation, unless otherwise agreed by the

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parties, an offer and the acceptance of an offer may be expressed by means of data message. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.

(2) The provisions of this article do not apply to the following:

[...]

Article 12

Recognition by parties of data messages

(1) As between the originator and the addressee of a data message, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

(2) The provision of this article do not apply to the following:

[...]

Article 13

Attribution of data messages

(1) A data message is that of the originator if it was sent by the originator itself.

(2) As between the originator and the addressee, a data message is deemed to be that of the originator if it was sent:

- (a) by a person who had the authority to act on behalf of the originator in respect of that data message; or
- (b) by an information system programmed by or on behalf of the originator to operate automatically.

(3) As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that assumption, if:

- (a) in order to ascertain whether the data message was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or
- (b) the data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify data messages as its own.

(4) Paragraph (3) does not apply:

- (a) as of the time when the addressee has both received notice from the originator that the data message is not that of the originator, and had reasonable time to act accordingly; or
- (b) in a case within paragraph (3) (b), at any time when the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was not that of the originator.

(5) Where a data message is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the

data message as received as being what the originator intended to send, and to act on that assumption. The addressee is not so entitled when it knew or should have known, had it exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the data message as received.

(6) The addressee is entitled to regard each data message received as a separate data message and to act on that assumption, except to the extent that it duplicates another data message and the addressee know or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was a duplicate.

Article 14

Acknowledgement of receipt

(1) Paragraphs (2) to (4) of this article apply where, on or before sending a data message, or by means of that data message, the originator has requested or agreed with the addressee that receipt of the data message be acknowledged.

(2) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by:

- (a) any communication by the addressee, automated or otherwise, or
- (b) any conduct of the addressee, sufficient to indicate to the originator that the data message has been received.

(3) Where the originator has stated that the data message is conditional on receipt of that acknowledgement, the data message is treated as though it has never been sent, until the acknowledgement is received.

(4) Where the originator has not stated that the data message is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time:

- (a) the originator may give notice to the addressee stating that no acknowledgement has been received and specifying a time, which must be reasonable, by which the acknowledgement must be received; and
- (b) if the acknowledgement is not received within the time specified in subparagraph (a), may, upon notice to the addressee, treat the data message as though it had never been transmitted, or exercise any other rights it may have.

(5) Where the originator receives the addressee's acknowledgement of receipt, it is presumed that the related data message was received by the addressee. That presumption does not imply that the data message corresponds to the message received.

(6) Where the received acknowledgement states that the related data message met technical requirements, either agreed upon or set forth in applicable standards, it is presumed that those requirements have been met.

(7) Except in so far as it relates to the sending or receipt of the data message, this article is not intended to deal with the legal consequences that may flow either from that data message or from the acknowledgement of its receipt.

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Article 15

Time and place of dispatch and receipt of a data messages

- (1) Unless otherwise agreed between the originator and the addressee, the dispatch of a data message occurs when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.
- (2) Unless otherwise agreed between the originator and the addressee of a data message, the time of receipt of a data message is determined as follows:
 - (a) if the addressee has designated an information system for the purpose of receiving such data messages, receipt occurs:
 - (i) at the time when the data message enters the designated information system; or
 - (ii) if the data message is sent to an information system of the addressee that is not the designated information system, at the time when the data message is retrieved by the addressee;
 - (b) if the addressee has not designated an information system, receipt occurs when the data message enters an information system of the addressee.
- (3) Paragraph (2) applies notwithstanding that the place where the information system is located may be different from the place where the data message is received under paragraph (4).
- (4) Unless otherwise agreed between the originator and the addressee of a computerized transmission of a data message, that data message is deemed to be dispatched at the place where the originator has its place of business, and is deemed to be received at the place where the addressee has its place of business. For the purposes of this paragraph:
 - (a) if the addressee or the originator has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business;
 - (b) if the addressee or the originator does not have a place of business, reference is to be made to its habitual residence.
- (5) The provisions of this article do not apply to the following:
[...]

PART TWO. ELECTRONIC COMMERCE IN SPECIFIC AREAS

CHAPTER I. CARRIAGE OF GOODS

Article 16

Actions related to contracts of carriage of goods

Without derogating from the provisions of part I of this Law, this chapter applies to any action in connection with, or in pursuance of, a contract of carriage of goods, including but not limited to:

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- (a) (i) furnishing the marks, number, quantity or weight of goods;
(ii) stating or declaring the nature or value of goods;
(iii) issuing a receipt for goods;
(iv) confirming that goods have been loaded;
- (b) (i) notifying a person of terms and conditions of the contract;
(ii) giving instructions to a carrier;
- (c) (i) claiming delivery of goods;
(ii) authorizing release of goods;
(iii) giving notice of loss of, or damage to, goods;
- (d) giving any other notice or statement in connection with the performance of the contract;
- (e) undertaking to deliver goods to a named person or a person authorized to claim delivery;
- (f) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;
- (g) acquiring or transferring rights and obligations under the contract.

Article 17

Transport documents

(1) Subject to paragraph (3), where the law requires that any action referred to in article 16 be carried out in writing or by using a paper document, that requirement is met if the action is carried out by using one or more data messages.

(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for failing either to carry out the action in writing or to use a paper document.

(3) If a right is to be granted to, or an obligation is to be acquired by, one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by the transfer, or use of, a paper document, that requirement is met if the right or obligation is conveyed by using one or more data messages, provided that reliable method is used to render such data message or messages unique.

(4) For the purposes of paragraph (3), the standard of reliability required shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement.

(5) Where one or more data messages are used to effect any action in subparagraphs (f) and (g) of article 16, no paper document used to effect any such action is valid unless the use of data messages had been terminated and replaced by the use of paper documents. A paper document issued in these circumstances shall contain a statement of such termination. The replacement of data messages by paper documents shall not affect the rights or obligations of the parties involved.

(6) If a rule of law is compulsorily applicable to a contract of carriage of goods which is in, or is evidenced by, a paper document, that rule shall not be

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inapplicable to such a contract of carriage of goods which is evidenced by one or more data messages by reason of the fact that the contract is evidenced by such data message or messages instead of by a paper document.

(7) The provisions of this article do not apply to the following:

[...]

ANNEX II

THE BROADER CONTEXT OF ELECTRONIC COMMERCE

by **Johanne Gauthier**

The Broader Context of EDI

George Chandler gave you a brief history of EDI in the maritime world. He also prepared an excellent and very exhaustive paper on the subject. My topic is less structured. I was asked to explain or rather place this history in the context of the more general use of EDI and other electronic commerce technologies (collectively referred to as “EDI” in this presentation).

Many may think – we heard a lot about EDI and paperless trade in the early 90’s. It has not happened yet. So let us talk about something else. EDI is dead. – So, the very first thing I would like to say is that there were many reasons for this slow start (George reviews some of them in his paper) but despite the initial delay in the adoption of EDI, this new way of doing business is here to stay. In fact, EDI should become in the next 5 years a predominant method of contracting domestic and international sales.

As you can see, I am much more optimistic and daring in my predictions than George and here are some of the reasons why.

In 1990, when the CMI adopted its Uniform Rules for Electronic Bills of Lading in Paris, it was almost ahead of its time. The sub-committee working on this topic knew that there was then little use of EDI in the shipping industry, but it wanted to help our pioneers by providing them with a more secure legal environment. Why should uncertainties as to the application of important international rules such as The Hague Rules or Hague-Visby Rules be an impediment to the implementation of a “paperless trade” in our industry.

But for once, the impediments that effectively delayed the rapid adoption of EDI not only in the maritime sector but in the business world generally were not legal issues, rather the bumps in the road were an economic downturn and technological problems such as the use of incompatible hardware in different parts of the world and the proliferation of standards.

I am not personally too concerned with the popularity of the ANSI standard in North America (ASC X12) and the slow adoption of the U.N./EDIFACT format. First, ANSI did benefit from a 17-year head start. Second, it may provide an easier format for the sender (free form) but it does not make the task of the receiver easy. Third, according to knowledgeable sources (i.e. users of EDI in Canada) there is little doubt that the U.N./EDIFACT format is better adapted to international transactions and the transmission of shipping documents. Because of its quality, this norm will prevail in the end.

In that respect, at the end of 1996, the International Transportation

Implementation Guideline Group ("ITIGG"), a group of industry representatives developed a set of the guidelines for the uniform interpretation and implementation of the U.N. EDIFACT format in the maritime industry. These guidelines are now available for use by members of the OCEAN Project referred to by George.

Although there is no doubt that paperless transactions bring about significant economies, a recent survey carried out in Canada found that, according to the users, the biggest benefit of EDI was an improved customer service and a closer relationship between trading partners. It also indicated that 68% of the enterprises which implemented EDI did so at the request of a customer. This stresses the importance and great influence exerted by large companies such as General Motors. Such enterprises are often referred to as "hubs" because they have the power to force their numerous suppliers including carriers to adopt the new technologies. This also explains why shipping companies are unlikely to invest and use EDI on a very large scale until they feel a sufficiently strong pressure to do so from their customers. Such demand is now growing.

It is also important to understand that the implementation of EDI in an organization is usually done in stages. Not every transaction and operation is converted at the same time. For most users in Canada (and this is probably true in the rest of the world) phase 1 involves the exchange of electronic documentation with your closest trading partners, i.e. important customers or main suppliers. This means the exchange of price lists, purchase orders and invoices. The financial (i.e. payment) and logistic operations (i.e. transportation) within an organization have typically been the last items on the list for implementation of most companies. In fact, in 1996, only 12% of the Canadian users had reached that point.

The senior management in most companies often knows very little about shipping and, for many of them, discussing ocean bills of lading can be quite intimidating. Generally, the matter is simply referred back to traffic managers where it often dies because in Canada the typical traffic manager is seldom a computer buff well versed with the new technologies.

This does not mean, however, that EDI has not been used in the transportation industry. But, just as a trading company will start using EDI with its closest ally, ocean carriers started using the technology either in-house (intranet) or to communicate with ports and customs authorities as well as other connecting carriers.

The new technologies has been used by those who needed them most. For example, in the container trade, there was a great need for EDI given that the shipping manifest is often the size of a bible, that one needs to track a large number of containers on various terminals as well as keep a multitude of customers aware of the whereabouts of their cargo, this explains why Cast, Canada Maritime, OOCL to name just a few got involved early. On the other hand, the bulk trade with its one page shipping manifest did not produce many pioneers.

In Canada, the shipping lines regularly involved with the two main railway companies had to make use of the technology in their dealing with

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these companies. In effect, Canadian National Railway (CN) and Canadian Pacific Railway (CP) have been acting as hubs seriously promoting the use of EDI among their customers and their connecting carriers. To illustrate this, in the month of April 1996, CN alone transacted electronically 82,000 bills of lading with its customers and with custom authorities and about 340,000 bills of lading with other connecting carriers.

The railways in North America have their own proprietary network called R-EDI. Having invested a lot in this system, CN promote it by giving away software enabling their customer to use it. They even provide facilities that their customer can use to send their documentation electronically. In addition to enormous savings, CN and CP claim that EDI enables them to save time and, thus, to operate more efficiently. For example, a long train can take no more than 15 minutes to clear customs. The manifest and the other pertinent documentation is sent to the American customs authorities electronically ahead of the train, clearance is effected so quickly that the train rarely even stops at the border. CN indicated that its goal is to reduce this operation to 5 minutes.

The advent of internet and the possibility of on-line EDI is an important recent step for it reduces the cost of implementation and makes the technology more accessible. The popularity and the increased use of internet is undeniable. In the U.K. alone, one in four companies is connected to internet and one in six has a web site. Therefore, for those of you who wondered whether the popularity of the internet meant the death of EDI, I wish to say that it is quite the contrary.

Today, one can find many members of the transportation industry including the maritime industry on the Net with interactive sites offering services ranging from booking, shipment tracking, schedules, vessels particulars and plans, even ship auctions. In some countries, you can already consult the ship registry and file your mortgage forms electronically.

The more companies will get used to trading with EDI at hand and with other modes of transportation, the more they will put pressure on shipping companies to offer them this service. This is why it is of interest to keep abreast of what goes on in other modes of transportation. As I already mentioned, railways in Canada have more than 2,000 trading partners at the moment. Courier services, such as FedEx, are also already using the Internet and EDI extensively. The major airlines are currently in the process of automating both their passenger and cargo services. For example, British Airways has just announced that by year 1999, it plans to convert 50% of its freight agents to EDI. Their goal is to use EDI for all their cargo bookings by year 2002. To show their seriousness, they invested \$150 million dollars to build a new fully automated World Cargo Centre at Heathrow. It will open in 1999. On a smaller scale, this was the approach successfully adopted by CN a few years ago in Canada when they consolidated their customer service and documentation centre in Edmonton. Only EDI could enable them to do so in a country the size of Canada.

United Airlines, Lufthansa, SAS as well as American Airlines have all started some form of system for doing away with the issuance of a ticket. There

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are various different methods but generally, after making a booking through internet or other means, using a "Chip card" or a simple credit card, the passenger simply registers for boarding, using the said credit card or the "Chip card". A registration receipt or boarding card is then issued. Security and immigration rules which could constitute a major obstacle to such development are already being worked out. For example, American Airlines has a special agreement with the German and American authorities who will accept as the only official travelling document the registration receipt issued upon boarding the plane. Insofar as connections are concerned, many of the companies have started discussions on how to harmonize their electronic systems. Although still in their infancy, experts predict that these systems will become very popular because they bring significant savings (apparently the costs linked to the issuance of a ticket represent about 20/25% of its price) that ultimately benefit the consumers.

The developments in the trucking industry have been slower, mostly for economic reasons. At present, captive trucking companies involved in door to door movements have used EDI. With other companies, electronic logs and intranet have been popular at least in Canada.

Between 1992 and 1996, even if there was a steady growth of about 30% per year in the number of EDI users, there were in 1996 only about 10,000 companies in Canada and 100,000 companies in the U.S.A. fully converted to EDI. Since 1996, the process has been accelerating; for example, a single small company in Quebec sold 126,000 licences to its software EDIKIT in the last 3 months of 1996. Most experts predict exponential growth after 1998.

The road to a paperless international transaction is being paved by many other players and through numerous initiatives and projects. To give you a complete picture, I would have to review with you what is being done to facilitate the use of EDI with regard to sales contracts, customs and other governmental authorities dealing with taxation and document retention as well as electronic methods of payment. Given the limited time available, I can only say a few words about just a few of these important aspects with which we should all try to become familiar to prepare ourselves for the changes ahead.

With respect to sales contracts, most legal issues will be resolved through the use of interchange agreements (various models have been developed for particular countries and trades) and with national implementation of the UNCITRAL Model Law on Electronic Commerce (the Model Law) which will be presented to you by Robert Howland later this morning.

Already, our American colleagues have proposed amendments to Section 2 of their Uniform Commercial Code to implement the Model Law with some adjustment and more details. The Uniform Law Conference of Canada has adopted a uniform statute on evidence of computer generated records. It will work this fall on a uniform statute for the implementation of the Model Law.

The International Chamber of Commerce has been working for a few years on its Project E-100 which covers several topics related to EDI. Their work on Electronic credits and a concept for an EDI letter of credit is of particular interest. They also have a working party on what is referred to as

ETERMS. This concept involves the creation of a Repository which could include various information such as **i)** commercial terms and conditions submitted by trading partners, **ii)** best practice rules for electronic commerce and **iii)** conventions, laws or standards relevant to electronic transactions. Such information could then be incorporated into an international transaction concluded electronically by reference to the ICC ETERM registration number or code.

Legislations dealing with digital signature and other type of electronic signatures have been adopted in many states in the United States and similar legislations are being considered in other countries. UNCITRAL is currently assessing the need for a model law on this topic. Statutes dealing with the certification process and particularly certification authorities are being considered. The Canadian Government is in the process of implementing its own certification system to authenticate the electronic signatures to be used by its various departments in their dealings with government suppliers.

Insofar as payment is concerned, apart from the electronic transfer of funds currently done through banks (see UNCITRAL Model law on International Credit Transfers), various electronic methods of payment are being developed. Some are more adapted to the consumer trade such as electronic money like Digicash, Netcash or the more sophisticated electronic wallet concepts like Mondex. With the adoption of encryption standards, the use of credit cards on the internet can now be more secure than their traditional method of use. After an initial proliferation of encryption standards, the major financial institutions as well as major players such as IBM and Microsoft have now agreed on a standard called "SET". Various pilots involving international transactions have taken place for example a Danish company bought airway tickets from a Norwegian airline using its Danish Europay charge account.

In Canada, banks are now promoting the use of EDI more aggressively with their corporate customers and financial institutions have shown a growing interest in other aspects of electronic commerce. The involvement of S.W.I.F.T. (the bank- owned network) in the Bolero Project in association with The Through Transport Club is certainly a good example of such interest.

Certainly, the success of private initiatives such as BOLERO which proposes to provide a service platform to its users (banks, carriers, ports, exporters, importers, freight forwarders, etc.) to store and exchange international trade documents will be of particular significance for the maritime community. In effect, the system being developed by S.W.I.F.T. and the T.T. Club is said to be designed to secure through the use of a Central Registry and the use of authenticated public key signature techniques, the transmission of electronic bills of lading based on the CMI Rules as well as other documents currently used in the international trade such as insurance certificates and certificates of origin. Hopefully, this will also include electronic letters of credit .

Although I had very little time to cover such a broad topic, I hope that I have been able at least to alert you to the fact that EDI will have a tremendous impact on the way business is conducted.

As members of the maritime industry, we must be aware of these changes

in the global environment in which our industry operates. Most of us are lawyers. The psychological adjustment that will be required to adapt to a paperless world may be even greater for us than for our clients. We will be called upon to give advice on how best to protect our clients in this new environment. The answer cannot be: don't do it. We will also be required to present our cases without the comfort of traditional written evidence. We will finally have to present the point of view of our community and protect its interest when international rules and conventions as well as national laws are rewritten to accommodate this new reality.

That is a big program but I am confident that we are up to the challenge. Certainly, the CMI proved that it can be part of these changes by promptly adopting the CMI Rules on electronic bills of lading and by ensuring that this topic would be discussed today.

ANNEX III

THE 1990 CMI RULES ON ELECTRONIC BILLS OF LADING IN THE CONTEXT OF ELECTRONIC COMMERCE

by Jan Ramberg

The 1990 CMI Rules on Electronic Bills of Lading in the Context of Electronic Commerce

Some six years after the adoption of the 1990 CMI Rules for Electronic Bills of Lading UNCITRAL launched its Model Law on electronic commerce in 1996 inviting States to enact national legislation on the basis of the Model Law.

The CMI, in the late 1980's, was certainly right to go ahead in the expectation that world trade was soon to develop into electronic commerce thus switching to "paperless systems" not only in the maritime field but also generally. Nevertheless, in view of the rather slow progress in the early 1990's one may well think that the CMI acted more or less like a maritime Jules Verne in looking too far beyond into the future. In doing so, however, the CMI quite wisely abstained from anything else than merely imitating electronically the paper bill of lading and its characteristic function to vest the holder with the right to control the disposition of the goods and to transfer that right of control on to somebody else. In other words, the CMI limited the exercise to deal with the primary commercial function of the bill of lading in the relationship between the shipper-carrier-consignee. The fact that a person holding a particular paper document would have a right of control and transfer would result into a number of important consequences, such as the function of the paper bill of lading to serve as an instrument in passing title to the goods from one person to another by the simple transfer of the original document. Furthermore, the paper bill of lading could serve as an instrument required to stop delivery of the goods to a buyer having become insolvent, "the right of stoppage in transit". The CMI wisely abstained from introducing any particular liability regime under the electronic bill of lading distinguished from how the situation would have been if a paper bill of lading had been issued instead.

This being said, it is easier to understand the flat reference in Rule 5 to the usual terms of conditions of the contract of carriage which are incorporated by reference and, in order to protect the holder of the bill of lading, the further provision in Rule 6 that the use of the electronic system does not change the applicability of any international convention or national law which would have been compulsorily applicable if a paper bill of lading had been issued. Further, the electronically recorded information with respect to the particulars usually contained in a paper bill of lading appears from Rule 4 so that the party handing over the goods to the carrier would have information recorded with

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respect to his own name, the goods, the date and place of the receipt of the goods as well as the reference to the carrier's terms and condition of carriage. The shipper would also get information about a so-called Private Key which he would use himself or which would be used in subsequent transmissions when the right of control and transfer is surrendered to other parties. As soon as this so-called "receipt message" has been confirmed by the shipper to the carrier, the shipper is regarded as the Holder of the electronic bill. It is also possible to update the receipt message with the date and place of shipment when the goods have been loaded onboard the ship. Again, the above-mentioned information would have the same force and effect as if the receipt message was contained in a paper bill of lading.

The CMI Rules comprise two distinctly different elements, namely the modalities connected with the electronic transfer as such and the imitation of the paper bill of lading, particularly with respect to the right of control and transfer. It is important to keep in mind that the CMI Rules are restricted to the shipper-carrier-consignee relationship and that they basically work on the electronic information exchanged between these parties. Thus, the so-called Private Key is according to Rule 8 unique to each successive Holder and it is not transferable to anybody else. The carrier as well as the Holder must each maintain the security of the Private Key. The right of control and the right to transfer that control to somebody else is determined in Rule 7. Here it appears that the Holder is the only party who, as against the carrier, may

1. claim delivery of the goods;
2. nominate the consignee or substitute a nominated consignee for any other party including itself;
3. transfer the Right of Control and Transfer to another party;
4. instruct the carrier on any other subject concerning the goods, in accordance with the terms and conditions of the Contract and Carriage, as if he were the holder of a paper bill of lading

The transfer of the Right of Control and Transfer is effected in five steps namely

1. notification of the current Holder to the carrier of its intention to transfer its Right of Control and Transfer to a proposed new Holder;
2. the carrier's confirmation of this notification message;
3. the carrier's transmittance of the information contained in the so-called "receipt message" (except for the Private Key) to the proposed new Holder;
4. the proposed new Holder's notification to the carrier of its acceptance of the Right of Control and Transfer
5. the cancellation of the current Private Key and the issuance of a new Private Key to the new Holder.

The CMI Rules, in Rule 10, also provide an option for the parties to get out of the electronic system so that they can receive a paper bill of lading in replacement of the electronic bill of lading. If such opting out occurs the Private Key must be cancelled and the procedures for electronic data interchange under the Rules terminated. However, in the event of a termination of the electronic procedures the accrued rights and obligations of the parties according to the Contract of Carriage are preserved. In Rule 11 it is explicitly

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stated that the electronic data are equivalent to any "in writing" requirements.

The above-mentioned UNCITRAL Model Law on Electronic Commerce contains a specific Part II dealing with "electronic commerce in specific areas". The first chapter of this Part II deals with carriage of goods. Articles 16 and 17 of the UNCITRAL Model Law have not only been drafted on the basis of the 1990 CMI Rules but also with the participation of some of the persons engaged in the CMI project. Generally, the UNCITRAL Model Law rests on the concept that an exchange of electronic information should be regarded as functionally equivalent to a paper document. In some jurisdictions, such a modern approach may well be accepted without the support of legislation, while in other jurisdictions the replacement of paper documents by electronic data interchange is unthinkable without new legislation. Legislation would then be particularly needed where the paper document, as is the case with the maritime bill of lading, represents a kind of legal symbol used for the transfer of rights between parties engaged in different capacities in international trade.

There can be no doubt that we are now facing a rather difficult transition period before electronic commerce has become fully developed and that the ongoing battle between the modernists and the traditionalists will not be settled in the very near future. Still, I think it is reasonable to assume that the switch to electronic trading will leave the conservative lawyers behind, particularly when it is now obvious that banks will be engaged in the so-called BOLERO project which has recently been launched in co-operation between SWIFT representing all commercial banks throughout the world and the Through Transport Club covering the liability of a great number of container and multimodal transport operators. Needless to say, considerable efforts are being made to reduce the risks inherent in the electronic system but nevertheless the difficult transition will entail some risks which simply cannot be avoided. It will be an important task for the CMI to co-operate with the parties on the market for the purpose of reducing such risks by pursuing its objective to unify the law in the modern era of electronic commerce.

ANNEX IV

UNCITRAL MODEL LAW ON ELECTRONIC COMMERCE

by R. I. L. Howland

UNCITRAL Model Law on Electronic Commerce

Background

In June, 1996, the UN Commission on International Trade Law (UNCITRAL) approved its "Model Law on Electronic Commerce". In May, 1997, it published the "Guide to Enactment". This publication includes the text of the Model Law and, in addition, provides a commentary giving insight into the reasoning behind the various Articles of the Law and summarises the consensus of the discussions which were more fully recorded in the Reports of the seven meetings of the Commission and its Working Group. This Guide and the Reports provide much of the material upon which this paper is based.

The Model Law is probably the most comprehensive single work actually dealing with the legal barriers to electronic commerce. This paper concentrates on just a few parts of the Model Law and brings out some of the factors which were considered when it was being drafted and which are not revealed in the text itself.

Purpose

The purpose of the Model Law is to provide national legislators with a set of internationally acceptable rules. It could be enacted as a single statute, although States may prefer to enact it in several separate pieces of legislation. Some States may not need all the Articles — or not just yet. Some may need to adjust the text to suit their own legislative style; but this should be done with care, because the purpose is to achieve the same meaning throughout the world.

"Functional equivalent"

The Model Law does not prescribe what technical methods must be used as substitutes for conventional documents. Nor does it try to change or extend definitions of such words as "writing", "signature" and "original", stretching their ordinary and expected meanings to cover computer techniques. The Model Law takes instead what is described as the "functional equivalent" approach. This means identifying the essential purpose and function of a traditional method; then deriving from that the criteria which must be met by electronic messages or records, if they are to be as legally recognised as the corresponding paper documents performing the same function.

“Writing”, “Signature”, and “Original”

Some principal examples of the “functional equivalent” approach are to be found in the Model Law in:

- Article 6, which deals with the situation in which there is a requirement of law that information be in writing;
- Article 7, which deals with legal requirements of form for signatures;
- Article 8, which deals with legal requirements of form for originals – that is, when the law requires information to be expressed in its original form.

As for the writing requirement, the essential purpose is that the information should be “accessible so as to be usable for subsequent reference”.

There has been debate as to whether “accessible” is necessary as well as “usable”. It was decided that the word “accessible” was needed, because information in the form of computer data must actually be capable of being retrieved, and any hardware and software necessary for this should be retained and available to enable the use. To be “usable” in theory, or in the abstract, or potentially, was not thought to be sufficient alone; the information must also be “accessible” to the person who needs to use it.

The essential functions of a signature are to identify the author and to confirm his approval of the information.

The question has been raised as to whether one should attribute to electronic methods of doing this a particular or special legal validity beyond that of just satisfying the requirement of form. It was generally agreed not to. Whether or not a signature, or its electronic functional equivalent, has legal validity (or confers legal validity on what it is appended to) should be left to the applicable law. It was not felt that an electronic signature should be given the greater privilege of a fast-track route to legal “sanctification”, which was not enjoyed by a conventional signature.

As for an the requirement that information be expressed in its original form, its essential nature is that it gives a reliable assurance of the integrity of the information; it is complete and has not been altered.

Information which is exactly the same as it was at its beginning; that is what someone wants when they ask for the “original”. This is expressed in Article 8; but a sensible allowance was included to make it clear that the electronic equivalent of adding an endorsement will not prevent a block of data qualifying as an “original”. The Article also makes allowance for the addition or deletion of strings of data which is done simply for communications purposes. Technical communication procedures can include or strip out some beginning and end data segments. This should be allowed and it should not be an excuse for alleging that the whole block of data has become invalid as an original.

These Articles illustrate the “functional equivalent” approach in the context of the law.

Requirement of law

A number of Articles all start with the phrase "Where the law requires". The question is: "What law?" It was agreed this should include statutory and regulatory law. It also includes judicially-created law and other procedural law. It includes case law to the extent that it is recognised as a source of law; and it even includes customs and practices, to the extent that they have been incorporated into the legal system of the State. It was not intended that the phrase, as used in the Model Law, should include practices or areas of law that had not become part of the law of the State.

Transport

Articles 16 and 17 deal with transport. Of all the transport documents, Bills of Lading are the most obvious, although Articles 16 and 17 can apply just as much to contracts of carriage which conventionally call for the use of other documents. These Articles deal with contracts for the carriage of goods and the actions inherent in performing those contracts. The introductory Article 16 is virtually a catalogue of the actions, transactions and transfers of information which take place in and around a contract of carriage of goods. These include transferring rights and obligations – which will bring in the famous problem of negotiability.

Actions, not just information

However, starting Article 17 at the beginning, Paragraph (1) is similar to Article 6, which deals with satisfying a requirement for information to be in writing. At one stage, it was questioned whether anything more than Article 6 was needed here but it became clear that some of the Article 16 actions were not just providing information, they were in themselves actions with legal significance. One had to take account of the actual performing of them, not merely the information about them. When the action is something conventionally done by transferring an actual written document, such as the endorsement and delivery of a Bill of Lading, the Model Law must deal with what is to be achieved by that actual transfer, not merely the movement of information about it.

Multiple messages

Additionally, in paragraph (1) of Article 17, there is a reference to the use of "one or more messages". This is because Article 16 actions could require several messages to replicate what is done in a single action using a single paper document. For example electronically negotiating or transferring a right between two persons, using a central registry, could typically use at least five, and probably more, separate and different messages.

Technical methods

At this point it is worth emphasising that Article 17 does not specify any particular technical methods for electronically replicating the actions listed in Article 16. For transferring rights there are a number of technical means currently available or being developed. These include tamper resistant hardware, smartcards, central registries, and other methods, as well as combinations of these. No doubt others will be invented and offered commercially to the trading public. The Model Law can apply to all types of methods.

Negotiability

The most significant paragraph in this Article is Paragraph (3), supported by paragraph (4). These deal with the famous, not to say notorious, matter of negotiability. These paragraphs, if adopted into a State's law, would permit granting and transferring of rights to be carried out electronically and without paper documents, provided there is an assurance that a particular right can be held by only one person at any one time. That is the case, under existing law, if a paper document is used. If a person holds the original Bill of Lading, he can be certain of at least this: no-one else has it. And, if under the contract, possession of it and eventual surrender of it is necessary in order to obtain delivery of the goods, he knows that, so long as he has it, that right to delivery cannot be enjoyed by any other person. To give effect to this, whatever electronic procedures are used for transferring a right, they must ensure the right becomes that of the intended person and of no other person. The transferee must be confident that no-one else could possibly enjoy that right while he has it. It is, of course, equally important that, if the electronic procedures are to be acceptable, they must also ensure that only one such right was created in the first place.

These functional principles are given effect in the conventional paper world of maritime transport, because at any one time there is only a single holder of the Bill of Lading and only that holder is legally able to exercise the rights which the Bill of Lading confers; and also because the carrier only issues one Bill of Lading (or set of them) for one consignment of goods, so that from the outset, there is not more than one Bill of Lading (or set) covering the same goods.

All this is sometimes called the "guarantee of singularity". Any electronic method will need to provide such a guarantee. Without it, no method can be commercially acceptable; no-one will buy it. A provision such as that intended by paragraph (3), supported by Paragraph (4), is absolutely necessary to permit the use of electronic methods instead of a paper document when creating or transferring a right which is intended to be enjoyed by only one person at a time.

The "difficult" word in Article 17 (3)

When considering the creating of a right and the transferring of it to one person, a view amongst the UNCITRAL delegates was that a method could be

regarded as satisfactory, if it could be described as rendering a message or messages “unique”. Supporting this, there was a view that the notion of “uniqueness” was not unknown to practitioners of transport law and users of transport documents. It was felt by some that, if the description “unique” is applied to the messages, it could perhaps be assumed that this would indicate sufficiently that there is at any one time only one right or obligation and only one recipient of it.

However, when States are considering adopting this text into their bodies of law, some legislators may feel the need to give more attention to this language in order to avoid any possible misunderstandings, because some doubt has been expressed about the adequacy of this word “unique”. Drafters of legislation will need to remember that all electronic messages are, in any case, always and necessarily unique — each with its own addressee, its own time of dispatch, its own contents. They will remember, too, that under some registry-based methods, a single initial allocation of a right or a single transfer of it to one person will use several separate individual messages, not just one; so the word “unique” must not be made to mean “only one” message. Furthermore, they will realise that several sets of messages could be sent to several different persons at the same time or in quick succession, purporting to transfer the same right. Each of the messages and, indeed, each of the transfers, would be in themselves “unique”; yet all but one of them may be fraudulent.

Of course, there was no disagreement that this last scenario is precisely what paragraph (3) is intended to prevent. Nevertheless, some drafters of legislation may wish to reconsider what text would give absolutely clear effect to the intention. They may wish to use language which indicates clearly that, whatever data message method is used to transfer rights and obligations to someone, it must secure that they are conveyed exclusively to the intended person and to no-one else, and that no use of the method should be capable of being inconsistent with this principle.

Consequences of not putting something in writing

A brief mention should be made of Paragraph (2) of Article 17. There are similar paragraphs in Articles 6, 7, and 8. Often it is mandatory law not only that something must be done, but that it must be done in a particular way; for example, a requirement that something be done in writing, which is covered by Article 6. However, in other situations, a person may be free to choose whether or not to perform an action, and free to choose how to do it. But doing it in other than a particular way could carry adverse consequences in law. For example, a Consignee can, of course, choose whether and how he will notify a claim for loss or damage, but where Article III of the Hague Rules applies, he would be at a disadvantage if he chooses to do it other than in writing. Paragraph (2) and those like it give him the choice of using electronic communication, and they put this on an equal footing with writing.

Application of laws to written documents only

There is one last disadvantage suffered by electronic equivalents to Bills of Lading and Paragraph (6) of Article 17 deals with it. At present some laws, for example, those which implement the Hague or Hague-Visby Rules, apply mandatorily to contracts of carriage for which Bills of Lading are issued, but not if Bills of Lading are not issued. One day this may change and those Rules, or their successors, might apply to all or most contracts of carriage, regardless of what documents are issued, or if none are. But, meanwhile, a small problem continues, because not all contracts attract those Rules.

Of course, parties can and do choose whether or not to incorporate the Hague-Visby Rules, for example, into their non-Bill-of-Lading contracts, including electronic contracts. But it would have been too arbitrary for UNCITRAL to have simply said that such Rules must always apply to electronically effected contracts. That could have had the undesirable effect of automatically embracing some contracts to which the Hague or Hague-Visby Rules were never intended to apply. It would have made those Rules reach parts they were not intended to reach.

Thus what UNCITRAL did at this stage was to say that parties should not claim that such Rules do not apply simply on the grounds that electronic messages have been used instead of Bills of Lading. That is why paragraph (6) says such Rules shall "not be inapplicable" on those grounds. This means that parties can, if they want, have the Hague or Hague-Visby Rules apply to their electronically effected contracts of carriage, with the conventional force of law, without fear of that being challenged or over-ruled simply on the grounds that no Bill of Lading was issued.

ANNEX V

**LEGAL OBSTACLES TO THE IMPLEMENTATION OF THE
ELECTRONIC BILL OF LADING IN CIVIL LAW COUNTRIES**

by Luis Cova Arria

**Legal Obstacles to the Implementation of the Electronic Bill of Lading in
Civil Law Countries**

This brief paper deals with the legal obstacles to the use of electronic bills of lading in civil law jurisdictions and the solutions given by the draft Model Law on Electronic Commerce (hereinafter referred to as the "Model Law"),⁽¹⁾ regarding the probative effect requirement that most countries require for negotiable bills of lading.

In civil law countries, a negotiable bill of lading is a document of credit, similar to a check, bill of exchange, or draft. It gives the holder in due course the right to claim delivery of the cargo described in the document, whether or not such holder is deemed the owner of the cargo under the law of the country where delivery is to take place. The nature of the bill of lading gives it the presumption that its date as well as the parties' endorsements are true and correct unless and until the contrary is proven.⁽²⁾ In addition, if a bill of lading is drawn up in accord with the appropriate legal requirements, it is considered to be complete evidence by all the parties concerned as well as between such parties and third parties such as underwriters or endorsees.

The function of the bill of lading as an instrument of document or negotiable instrument in civil law countries is undisputed among scholars.⁽³⁾ It is deemed to be a document of credit for which consideration has been given, as opposed to an abstract document of credit (such as the check, the bill of exchange, or the draft), and incorporates not only the right to claim delivery or disposal of the cargo, but also other kinds of rights arising from the contract of carriage. While a check or a bill of exchange gives the holder rights which he may execute in an abstract way without taking the consideration into account, the bill of lading cannot be disconnected from the consideration given and which dwells in the contract of carriage, the vicissitude of which contract affects the rights of its holder.

French doctrine holds that a bill of lading is not a document of title (*titre*

⁽¹⁾ UNCITRAL Report of the Working Group on EDI, 29th Session, UN Doc.A/CN.9/407(16 March 1995).

⁽²⁾ Venezuelan Commercial Code, Art. 127

⁽³⁾ Ray, José Domingo (1992) Chap. III, pp. 67 and 68. in: *Derecho de la Navegacion*. Buenos Aires; Garrigues, Joaquín (1980) Tomo II, p. 680, in: *Curso de Derecho Mercantil*, 7th Ed., Madrid.

de propriété), because the rights which are transferred with it are of credit (*titre de créance*) but not of ownership. Under French law, a bill of lading gives its holder the right to claim delivery of the cargo described in such a document just as a bill of exchange gives its holder the right to demand a sum of money.⁽⁴⁾

The requirement that the bill of lading be in writing is imposed not only for commercial reasons, considering the relationship between shipper and carrier or between carrier and consignee, but is also imposed for the purpose of dealing with custom or administrative agencies. Many countries require that a written and signed bill of lading be presented to the customs or administrative authorities for importation or exportation data or for customs clearance.

This factor is the main reason why the laws of many civil law countries require that a bill of lading, as a bill of exchange, be in writing and why such laws often mention that in the absence of a written instrument, the bill of lading and the bill of exchange are considered to be non-existent.⁽⁵⁾

According to some common law scholars, however, the bill of lading in common law countries is not a negotiable instrument as is a bill of exchange or a check. Bills of lading in common law jurisdictions are assignable or transferable and are better described as documents of title.⁽⁶⁾

Professor Ramberg, when speaking on the English legal treatment of the bill of lading, has pointed out this distinction between the civil law and the common law, saying that under English law, the holder may have better rights than the previous holder, and for that reason, the bill of lading is called a "quasi-negotiable" document.⁽⁷⁾

Although in common law jurisdictions, the holder of the bill of lading has a right of control over the goods represented by that bill of lading (this is often seen as "linking" the contract of carriage between the shipper and the carrier with the contract of sale between the shipper and the consignee), the legal doctrine in those countries has created difficulties regarding the independent rights of a party other than the carrier's contracting party. Thus, it is difficult to bring the consignee into a contractual relationship with the carrier and thereby entitle the consignee to claim the goods. It is in this context that the bill of lading has been recognized as an extremely important tool in international trade, since the possession of at least one original bill of lading would entitle the holder to claim the goods from the carrier. Thus, as noted by Professor Ramberg, "It is the paper document as such which contains the solution to the problem".⁽⁸⁾

⁽⁴⁾ Remond-Gouilloud, Martine (1993) *Droite Maritime*, 2nd Ed., Paris. p. 356.

⁽⁵⁾ Venezuelan Commercial Code, Arts. 126, 734, 735; Spanish Commercial Code, Arts. 51, 52, 706, 707; Argentinean Commercial Code, Art. 210.

⁽⁶⁾ Tetley, William (1988) *Marine Cargo Claim*, 3rd Ed., Montreal, p. 220.

⁽⁷⁾ Ramberg, Jan (1982) *Transporte Multimodal*, Lima Seminar, (Reports in Spanish with English Translation), p. 50.

⁽⁸⁾ See Ramberg, J. (1989) Electronic transfer of rights to goods in transit, p. 186, in H.B. Thomson and B. Wheble (eds.), *Trading with EDI – The legal issues*. London: IBC Financial Books.

With a view toward determining how these purposes or functions of a paper bill of lading can be fulfilled through "Data Messages" techniques,⁽⁹⁾ the UNCITRAL's Working Group on EDI, in the preparation of the Model Law on Electronic Commerce,⁽¹⁰⁾ has adopted the so-called "functional-equivalent" approach as an analytical tool. However, it must be recognized that when the paper-based system of trade and carriage is replaced by a system of data message communications providing the same functional-equivalence as paper transactions, issues of substantive law will have to be addressed.⁽¹¹⁾

Inasmuch as a negotiable bill of lading will continue to be required where there is a need for a document of credit or a document of title, as in the case of goods which are traded in the course of transit, or where money is raised on the security of goods, as under a banker's commercial credit, the obstacles to applying the functional-equivalent approach become clear. For example, consider the delivery of an endorsed bill of lading as one element of a transaction, which has been traditionally accomplished by the handing over of the document. The same course of action in EDI would include at the outset two, and likely as many as six data messages, none of which when concluded come close to the same result as the delivery of the paper bill of lading.⁽¹²⁾

Uncertainties abound as to what "delivery" and other terms, such as "performance" mean in the context of electronic commerce and must be carefully considered and included in the future work of the UNCITRAL's Working Group on Electronic Commerce.⁽¹³⁾

There is no doubt that, generally, data messages can provide the same level of security as paper, provided that a number of legal requirements are met. It is also beyond dispute that a data message cannot be considered the equivalent of a paper document in that it is of a different nature and does not necessarily perform all the possible functions of a paper document. Likewise, the concepts "bill of lading" and "document" were grounded in paper-based practice, and therefore no strict equivalent to such concepts exists in an electronic environment. Thus, the need arises to attain the same types of

⁽⁹⁾ Art. 2 of the Model Law has created the term "Data Messages" to differentiate the decisive factor of the information generated, sent, received, or stored by electronic, optical, or similar means (electronic data interchange, EDI, electronic mail, telegram, telex, or telecopy) from other forms of information and conventional messages.

⁽¹⁰⁾ See UNCITRAL Working Group on EDI, Note by the Secretariat, Electronic Data Interchange, 30th Session, UN Doc. A/CN.9/WG.IV/WP.69 (31 January 1996) p. 11, para. 50.

⁽¹¹⁾ The Model Law does not attempt to define a computer-based equivalent to any kind of paper document. Instead, it singles out basic functions of paper-based form requirements, with a view to providing criteria which, once they are met by data messages, enable such data messages to enjoy the same level of legal recognition as the corresponding paper document performing the same function." (See UN Doc. A/CN.9/W.69 (31 January 1996) para.51, p.12).

⁽¹²⁾ Model Law, Art. 17(1)(3), in order to provide functional-equivalency to transport writing documents, allows that actions related to such documents or the transfer of the rights therein contained may be carried out by using more than one data message.

⁽¹³⁾ See UNCITRAL Working Group on EDI, Note by the Secretariat, Electronic Data Interchange, 30th Session, UN Doc. A/CN.9WG.IV/WP.71 (31 January 1996), para. 6, p. 5; UNCITRAL, Report of the Working Group on EDI, 29th Session UN Doc. A/CN.9/407 (16 March 1995).

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unique qualities which exist in a traditional bill of lading, whether the paper bill of lading is considered a document of credit or a document of title, in a "de-materialized" form.

Beyond the above difficulties present when dealing in an electronic environment is a problem arising from a rule embodied in most national laws, along the lines of Article 14(1) of the Hamburg Rules, which requires that "the carrier must, on demand of the shipper, issue to the shipper a bill of lading".⁽¹⁴⁾

The CMI Rules for Electronic Bills of Lading, in consideration of the probative effects of an EDI bill of lading and in order to avoid legal complications that may arise when written evidence is required, stipulate that an electronic recording or printout from such recording would be a sufficient indication of the parties' agreement to apply the CMI Rules and further intent "not to raise the defense that [the] contract is not in writing".⁽¹⁵⁾ The Rules' solution to the writing, signature, and original requirements of an electronic bill of lading is met by estoppel. I doubt whether this common law doctrine, by which a person is precluded from denying a certain state of fact, contrary to previous allegations or conduct, will be admitted in civil law countries as evidence of a contract which is required by law to be "in writing".⁽¹⁶⁾ In consequence, since the applicable local law will decide whether, and to what extent, such agreement satisfies the legal requirement of evidence "in writing", as noted above, in most countries, as a matter of evidence, such a "de-materialized" document will not have any legal value.⁽¹⁷⁾

In other words, to enjoy the same level of legal recognition as the corresponding paper document performing the same function, serious legal obstacles to "de-materialized" transport documents are to be anticipated, such as, among others: (i) the satisfaction of writing and signing requirements; (ii) the probative effect of electronic communications; and (iii) the determination of the place, date, and hour of contractual formation.

In consideration of such types of situations, Chapter II of the Model Law deals with the application of legal requirements for data messages.⁽¹⁸⁾ The

⁽¹⁴⁾ Neither the Hague/Visby Rules nor the Hamburg rules expressly state that a bill of lading for the carriage of goods by sea must be written on paper or manually signed. However, both Rules, when imposing on the carrier the duty to "issue" a bill of lading upon the demand of the shipper, refer to "documents" and list the information that must be stated in the bill of lading. Art. 1 of the Hamburg Rules expressly states that "writing includes, inter alia, telegram and telex". As to the signature requirement, the Hamburg Rules, Art. 14, para. 3, states that the "signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued".

⁽¹⁵⁾ Rule 11.

⁽¹⁶⁾ The common law "estoppel" doctrine is somewhat close to what is known in civil law jurisdictions as "tacit consent". However, in this country, a tacit consent will not be sufficient to evidence the existence of a title of credit (Venezuelan Civil Code, Art. 1149).

⁽¹⁷⁾ It appears that for the time being such paperless transport documents shall be valid only in the United Kingdom. The UK COGSA-1992 empowers the Secretary of State to make provisions for the application in cases where a telecommunication system is used for effecting transactions (See UNCTRAL Report A/CN.4/WG.IV/WP.69 (31 January 1996) fn. 31).

⁽¹⁸⁾ Legal recognition, writing, signature, original, admissibility, and evidential weight and retention of data messages (Arts. 5-10).

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focal points of Chapter II are the remarks that "information shall not be denied legal effectiveness, validity, or enforceability solely on the grounds that it is in the form of a data message,"⁽¹⁹⁾ that "where the law requires information to be in writing, or provides for certain consequences if it is not, a data message satisfies the rule if the information contained therein is accessible so as to be usable for subsequent reference",⁽²⁰⁾ and that the legal requirement that the document be signed is met in relation to a data message if the method of identification used is as "reliable as was appropriate for the purpose for which the data message was generated or communicated".⁽²¹⁾

Such provisions are necessary to the legal implementation of the EDI bill of lading, together with the provision that where a rule of law requires information to be presented or retained in its original form or provides for certain consequences if it is not, a data message satisfies that rule if: (i) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise; and (ii) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.⁽²²⁾

In order to achieve the condition of "uniqueness" of a paper bill of lading, a data message, as a bill of lading, must remain complete and unaltered, apart from the addition of any endorsements and any changes which arise in the normal course of communication, storage, and display.⁽²³⁾

In addition, the Model Law incorporates the "Best Evidence" rule.⁽²⁴⁾ This rule requires production of the actual instrument utilized in the dispute and only permits the use of a copy if the litigant urging use of the copy is able to reasonably demonstrate why the original instrument (that is, the "best evidence") is not obtainable.

In assessing the admissibility and evidential weight of data messages in any legal proceedings, regard shall be had to the reliability in which the data message was generated, stored, or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factors.⁽²⁵⁾

The problem with the Best Evidence rule is that it is not recognized in all common law jurisdictions nor in civil law jurisdictions.⁽²⁶⁾ Some civil law

⁽¹⁹⁾ Art. 5.

⁽²⁰⁾ Art. 6. The UNCITRAL Working Group has just started a preliminary study on digital signatures and related issues, taking into consideration the Draft Uniform International Authentication and Certification Practice being prepared by the International Chamber of Commerce (ICC) and the Digital Signatures Guidelines published by the American Bar Association (see UNCITRAL Working Group on EDI, Note by the Secretariat, 31st Session, New York (18-28 February 1997) para. 10, p. 6).

⁽²¹⁾ Art. 7.

⁽²²⁾ Art. 8, para. 1(a)(b).

⁽²³⁾ Art. 8, para. 3(a).

⁽²⁴⁾ Art. 9, para. 1(b).

⁽²⁵⁾ Art. 9, para. 2.

⁽²⁶⁾ See UNCITRAL Report of the Working Group on Electronic Data Interchange, 29th Session, UN Doc. A/CN.9/407 (16 March 1995) pp. 22-23, paras. 80-81.

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countries have recently adopted the "Open Evidence" rule,⁽²⁷⁾ but under such a rule, a data message must be linked with other evidence already admitted (namely, the testimony of witnesses or experts) in order to be admitted. In addition, a data message will be admitted only in those cases where it is not barred by the substantive law of the country as evidence. As mentioned above, in most civil law countries, a "de-materialized" bill of exchange or bill of lading is not allowed to evidence its existence by law.

Considering that the intention of the Model Law on Electronic Commerce is not to constitute a "general framework identifying the legal issues and providing a set of legal principles and basic rules governing communications through EDI", but "to adapt existing statutory requirements so that they would no longer constitute obstacles to the use of EDI",⁽²⁸⁾ it is necessary to adopt the Model Law in those countries as a method of implementing a negotiable electronic bill of lading there.

As a well-respected professor has said, the use of the electronic bill of lading is essentially "a business rather than a legal decision and that such concerns call for technological rather than legal solutions".⁽²⁹⁾ However, it is important to mention that the Model Law is not intended only for application in the context of existing communications techniques, but rather as a set of flexible rules that should accommodate foreseeable technical developments.

In conclusion, this author wholeheartedly agrees with Mr. Gertjaan van der Ziel's statement that until the Model Law is adopted in those countries which have the legal obstacles referred to above, "electronification of trade is a long term issue"⁽³⁰⁾ to which the observation could be added that one of the problems of the Model Law is that it tries to regulate a factual situation in advance of the accomplishment of its practical and technical solutions.

⁽²⁷⁾ Art. 395 of the Venezuelan Code of Civil Procedure, enacted in 1986. This Article states that the parties may use any kind of evidence not expressly prohibited by law.

⁽²⁸⁾ See Report of the Working Group on Electronic Data Interchange (EDI) on the work of its 29th session, UN Doc. A/CN.9/407, para. 23, p. 9.

⁽²⁹⁾ See Yiannopoulos, A.N., ed. *General Report in Ocean Bill of Lading: Traditional Form, Substitute and EDI Systems* (1995) The Hague: Kluwer Law International, p.13.

⁽³⁰⁾ Dr. Alexander von Ziegler's Report to the CMI's Executive Council on the Possibilities for Further Work in the Field on EDI (21 November 1996).

ANNEX VI

MAIN LEGAL ISSUES RELATED TO THE IMPLEMENTATION OF ELECTRONIC TRANSPORT DOCUMENTATION

by G. J. Van Der Ziel

Can electronic Bills of lading (B/L's) exist?

A preliminary question is whether an electronic B/L can exist; because, until now, concepts like transferability and negotiability have necessarily been linked to paper documents. Only something tangible can be physically transferred from one person to another; the result of such physical transmission being that rights and possibly liabilities are transferred in respect of certain goods as stated in that tangible document.

What is happening now is that – within the scope of the development of electronic commerce in general – methods are evolving for negotiating and transferring rights and liabilities electronically, without depending on the use of tangible documents. The aim of this process is to arrive at a series of interrelated EDI-messages which together, taken as a whole, may have the same function as a paper B/L.

Of course, software can be developed (or may already have been developed) which is able to produce the data contained in these messages on-screen and in a format that looks like a traditional B/L. But such a “screen B/L” is no B/L; instead, it just assists a person to read electronically transmitted and stored data in the event that human interference in a computer communication is desirable or required.

If such a screen B/L is printed, it can be regarded as a paper B/L. It may be an original or a copy, and should be dealt with accordingly. Today, already many paper B/L's in circulation have been generated by a computer.

However, an electronic B/L is something quite different: it is the label and the marketing name for what I have just called the series of interrelated EDI messages which together, taken as a whole, may have the same function as a paper B/L. I underline the word “may”. Whether or not these EDI messages will have the same function will depend on whether the legal issues involved are adequately addressed.

What are these legal issues?

In general, the legal issues can be divided in two categories:

- those related to the use of electronic messages generally, and
- those specifically related to the functions of the transport document

itself.

First, a few words on the first category. Requirements in law may prescribe that certain information be in writing, that certain contracts are only valid if they are in a written form, that certain information needs a signature, or that only an original form is acceptable to certain authorities. Rules of evidence may restrict the admissibility of electronic messages or be detrimental to the evidential weight of electronic messages. Rules relating to the retention of information, e.g. for tax purposes, may impede the storage of certain information in an electronic form. These impediments to the use of EDI can only be lifted through amending the relevant, now outdated, legislation concerned. Here, the UNCITRAL Model Law provides a useful tool.

Another type of legal issue in this category relates to subjects which are usually dealt with contractually. These include the attribution of data messages, the acknowledgement of receipt of data messages, the formation of contracts by means of data messages as well as the time and place of dispatch and receipt of data messages. Standard provisions on these subjects are included in the UNCITRAL Model Law as well. It is also possible to lay down provisions of this kind in standard conditions, to which the parties in their EDI messages may make reference, preferably in a coded form. At the same time, such standard conditions may also include less EDI-specific issues, such as matters relating to liabilities, law and jurisdiction, etc.

Thirdly, I draw attention to general legislation other than mentioned before which may have a specific relevancy in an EDI environment: laws relating to computer crime, personal privacy protection, patents and licensing, and even competition law. As to the latter, if access to an EDI network is reasonably required for doing business in a certain market, such access must be granted on a non-discriminatory basis while the conditions connected to such access must be transparent and objective (e.g. to protect the operational security of the network, to retain the integrity of the network or to secure the interoperability of services and data protection). Further, dominant market positions may be created or reinforced through EDI.

I turn now to the second category, the legal issues related to the functions of the transport document itself. Of course, these are of greater interest to the CMI. It should, however, be kept in mind that some of the general legal issues on EDI are extremely relevant to the implementation of electronic transport documentation as well.

In the following section, I will deal mainly with the electronic replacement of the B/L. Because of its negotiability, it is more complicated than other transport documents. But some questions raised hereunder may be applicable to other transport documents, *mutatis mutandis*, as well.

I begin with the 1990 CMI Rules on Electronic Bills of Lading. In my opinion, these rules have to be viewed in their historical context. They were drafted as a reaction to the general belief in the Eighties that the edification of transport documents necessarily had to stop at the B/L, because its symbol function would prevent the electronic replacement of this document. The prime merit of the CMI Rules is that they adopt the functional approach to the B/L, because their very basis is the transfer of rights under a contract of maritime carriage. As an example of the right approach, the Rules did a great job: the

Bolero system, currently under development, follows the path indicated by the CMI Rules, whereas the Seadocs system, which in 1986 unfortunately did not get a chance to start up, was still based on the paper B/L principles.

The CMI Rules, however, have two major shortcomings. First, in respect of the legal effect of the key issues in the Rules no more than references are made to the legal effects of the paper B/L. I point to Rule 4(d), relating to the receipt message, and to Rule 7, relating to the right of control and transfer. As to the (mandatory) information in the receipt message, it is said in Rule 4(d) that this information "shall have the same force and effect as if the receipt message were contained in a paper bill of lading". Further, in Rule 7, the reference to the legal effects of the paper B/L is even made twice: In Rule 7(a)(4), it is said that the Holder (as defined in the Rules) has the right to "instruct the carrier...as if he were the holder of a paper bill of lading". I quote also from Rule 7(d): "The transfer of the Right of Control and Transfer in the manner described above shall have the same effects as the transfer of such rights under a paper bill of lading."

It may be clear that these references to bill of lading principles on an "as if" basis can only survive for a transitional period during which the paper B/L still exists. However, a system based on transfer of rights and developed with the very purpose of replacing the paper B/L needs legal rules of its own. If such a new system becomes successful, the B/L will gradually disappear. Then, B/L law will fade away as well, all the more so because, historically, B/L law is based on merchants' customs and practices.

Second, the CMI Rules only deal with the law of carriage of goods. The proprietary function of the B/L is not dealt with in the Rules, because it would have led CMI into other fields of law. That may be the case; however, over the years, the contractual function and the title function of the B/L have become so closely connected, even commingled, that in any B/L replacement system, both functions must get equal attention.

I would like to emphasize that it is not my intention to criticise the CMI Rules. CMI did well in 1990 (The only mistake we made, in my view, was that, in our enthusiasm, we decided to change the title of the Rules from "Rules for the electronic transfer of rights to goods in transit" to "Rules for electronic B/Ls". The original heading covered much better its contents and might have avoided some of the resulting criticisms.). However, to have dealt with the two above shortcomings already in 1990 would have been premature and beyond the main goal of the Rules. Moreover, complicated as these issues are, they were regarded too time consuming and, most importantly, only partly within the competence of the CMI.

The time has come to look at the core issue to be dealt with in the years to come: to establish again, without the use of a paper symbol, the link between the contractual rights in respect of the goods under the contract of carriage on the one hand and certain proprietary rights in respect of the goods based on a contract of sale or on a credit agreement on the other.

One of the main difficulties is that the above indicated link is not based on an uniform standard provided by international uniform law. These matters are governed by national law, often not even statutory law, but law developed

from cases, usages and practices. To a large extent, the same applies to the contractual rights in respect of the goods under a contract of carriage. Generally, in maritime transport, these rights are not well defined. The existing conventions mainly deal with liabilities and focus on the carrier. If, under a new EDI system, the emphasis is to be on a transfer of rights, through novation or otherwise, it should become clear what exactly these rights are. Their contents have to be properly defined. But that alone is not sufficient. Do they have to be agreed contractually, or are some of them of such a fundamental nature that they may be exercised without being expressly agreed upon? Take as an example, the right to change the name of the consignee. When the rights of a shipper are transferred to a new holder, will he acquire all of the shipper's rights, or will some rights remain with the shipper? As to such remaining rights, will they be several or joint and several? Similar questions can be posed as to the shipper's liabilities. A further question is whether the assumption of liabilities by a subsequent holder is contingent upon whether he exercises his rights or not. A next and most important question is whether a subsequent holder has rights of his own, e.g. estoppel rights, or liabilities of his own, e.g. to accept delivery of the goods in the discharge port.

It should be noted that some of the answers to the above questions which could or should be given under the current paper B/L system do not necessarily need to be the same in a paperless electronic system.

Additionally, in respect of the creation or the transfer of proprietary rights in respect of the goods, no uniform law exists. These matters are governed by national law and are often based on incomplete statutory law supplemented by case law, doctrines and customs and practices of the trade concerned.

If certain goods are not being held directly by their possessor but are under the custody of a third party, the possessor must, as a matter of principle, be able to exercise some form of (exclusive) control, and the various national jurisdictions may differ in respect of the degree of control that is required for possession. Fortunately, in respect of transfer of such possession the *traditio longa manu* is well recognized throughout the world. If the goods to be transferred are held by a third party, their possession can be transferred through an agreement to that effect between the seller and the buyer as well as the notification of the intended transfer of possession to the custodian, in our case the carrier.

In respect of pledges and/or other security rights relating to the goods, the element of exclusive control is of crucial importance as well. As to formalities, when the pledgee or the holder of certain security rights has no physical or direct control of the goods, in some jurisdictions, a registration of the pledge or the security rights concerned is a requirement for their validity. Goods covered by a paper B/L are usually exempted from such an obligation to be registered.

If, in respect of goods in transit, a paper B/L is issued, in many jurisdictions the possessor or pledgee of such goods is legally in a better position than without such issuance, because the holder of a document of title in these jurisdictions enjoys a further and better protection against the rights of third parties in respect of the goods than an ordinary possessor or pledgee. This strong position of the B/L holder may also work the other way around: the

carrier is better protected against misdelivery if he delivers the goods to a person whose right of delivery is confirmed by the contents of a paper B/L that is presented to him than if he delivers to a person without such a document.

When doing away with the paper B/L, another complication is determining the applicable law. As to proprietary rights in many jurisdictions, the *lex rei sitae*, the law of the location of the goods is mandatorily applicable and may be different from the law applicable to the sales contract and/or the contract of carriage. These various *lex rei sitae* jurisdictions may have different solutions to the applicable law question when the goods are on the high seas. The use of a B/L generally helps to avoid or limit these problems.

A further problem is the existence of some practices which are based on the existence of a B/L but are not always wholly in conformity with the strict B/L law principles. In view of the practical acceptability of any paper B/L system, the importance of the existence of these practices should not be underestimated.

I mention in random order:

- the trading in the goods to be shipped before the issue of the B/L;
- the value of the B/L after discharge and delivery of the goods by the carrier; the B/L may still embody a claim on the carrier, but does it also still represent the goods?;
- the title function of the B/L after the goods have been lost or have become unidentifiable during the carriage;
- the contractually agreed right of the shipper to instruct the carrier to deliver the goods without presentation of a B/L;
- the practice between traders to buy and sell on the basis of letters of indemnity;
- the switch B/L and the antedated B/L; and
- the practice of some consignees not to take delivery of the goods, because they first have to resell the goods in order to be able financially to take up the B/L or because they have a dispute with their sellers about the quality of a previous shipment, and, therefore, they want to reject the goods under their sales contract.

I wish to mention that the above practices are not just a matter of lack of discipline. Generally, they flow from genuine needs of the trade or from established usages such as the term of payment "one month after delivery by the carrier" which exists in the oiltrade.

An advantage may be that some of the difficulties inherent to the present paper system will automatically disappear under an electronic system, such as:

- the issue of more than one original B/L;
- the difference between negotiable and non negotiable B/Ls, and the question whether a B/L made out to a named person must be surrendered to the carrier in the discharge port;
- the difference between blank endorsed B/Ls and B/Ls endorsed to a named person; and
- the anonymity of the holder towards the carrier, although in some trading circles, this will be considered a disadvantage of electronic trading.

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In my view, a better and unified definition of the rights and obligations which the parties have under a contract of maritime carriage, including the proper answers to the questions which I just raised in that respect, will contribute to overcoming the problems which may exist in respect of the proprietary side of the matter.

It is under the paper B/L system that the principles of transportation law and the requirements of proprietary law have gone hand in hand. A retention of title or a right of stoppage in transit may be of no avail if the holder of these rights does not have the corresponding powers under the contract of carriage.

The same should apply to an electronic B/L replacement system. The electronic technique is able to provide a much higher level of security than is possible under a paper system. This security combined with a more refined and unified maritime transportation law should enable proprietary law to regard its requirements in respect of transfer of (constructive) possession or establishment of pledges as satisfied. After all, the *traditio longa manu* and the *traditio clavium* (transfer of the keys) are much older modes to transfer property than through the relatively new paper B/L.

It should be realized, however, that an electronic B/L replacement system cannot and will not be an exact electronic replica of the paper B/L system. However, in terms of its functionality, it can be made much akin to it or even exceed it.

After all these theoretical contemplations, I will conclude with a practical example which may be illustrated by two sheets of paper (Figure 1 and Figure 2).

In Figure 1, you will see the mechanics of a *longa manu* transfer of property of goods in transit. In Figure 2, you will see the mechanics of a transfer of the right of control under a contract of carriage according to the CMI rules. It is, in my view, the challenge to us as transport lawyers, where exclusive access to goods is concerned, to define the right of control in such a way that the users of an electronic B/L replacement system are legally on safe and secure grounds when the builders of such system combine these two sheets into one.

Figure 1

TRADE LAW
PASSING OF PROPERTY
BY
AGREEMENT TO PASS PROPERTY OF GOODS AS STATED IN B/L
NOTIFICATION TO THE CARRIER
CONFIRMATION BY THE CARRIER

Figure 2

TRANSPORT LAW
PASSING OF RIGHT OF CONTROL AND TRANSFER
BY
NOTIFICATION TO THE CARRIER
CONFIRMATION BY THE CARRIER
TRANSMISSION BY THE CARRIER OF B/L DATA TO BUYER, AND AFTER ACCEPTANCE,
ISSUANCE OF NEW PRIVATE KEY

MARITIME LIENS AND MORTGAGES AND ARREST OF SHIPS

I

MARITIME LIENS AND MORTGAGES

In the part of the session devoted to the analysis of the new Maritime Liens and Mortgages Convention very little attention was paid to the significant improvements of the new Convention as respects that of 1926, consisting, *inter alia*, in the provisions on deregistration and re-registration and on forced sale and subsequent registration of the ship in the name of the purchaser.

Some delegates criticized the Convention because it appeared to aim in particular at protecting mortgagees. Others because it had reduced the number of maritime liens and, more specifically, it had suppressed the maritime lien securing claims for loss of or damage to cargo and that for supplies to the ship.

It was, however, pointed out by other delegates that protection of mortgagees facilitated ships financing, which was essential for the development of merchant marines, and that contractual liens were not justified except in special cases.

Belgium

The balance between the long term and the short term ship financing has been broken to the advantage of the former by the abolition of the maritime lien for claims in respect of work done or supplies made for the preservation of the vessel or the continuation of the voyage. Furthermore, the abolition of the maritime lien in respect of claims for loss of or damage to cargo is not justified, because not all cargo is insured.

Denmark

The 1993 Convention is a distinct improvement over previous conventions, *inter alia* for the adoption of rules on bareboat charter registration. Maritime liens should secure only tort claims.

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France

The 1993 Convention is not acceptable because of the abolition of the maritime lien for claims in respect of work done or supplies made for the preservation of the vessel or the continuation of the voyage.

Germany

The 1993 Convention is generally an improvement, but the lien securing cargo claims should have been maintained. It is accepted that the provisions on national maritime liens would allow the reinstatement of such lien, albeit with a lower priority.

Norway

Article 6 of the 1993 Convention was the result of a abolition of the compromise. However it does not impose any obligation on States Parties to recognize other States national maritime liens.

South Africa

It is unclear what constitutes possession for the purpose of recognition of the right of retention of shiprepairers.

United States

Concern is expressed that the provision allowing maritime liens gives right to choice of law issues.

II ARREST

General comments

It was noted that the right of arrest is an extraordinary remedy and should be cautiously granted.

The view was expressed that the Draft Articles did not deal with the really important topics and that it was premature to refer them to a Diplomatic Conference when so much substantive ground remained to be covered.

The Belgian Delegate presented a paper in which strong objections were made to the restriction of the right of arrest.

The Croatian delegate suggested that the 1952 Convention should not be replaced, but amended by a Protocol.

The Danish delegate cautioned against changing the 1952 Convention, noting its success, unless such changes resulted in real progress.

The Italian delegate felt that the Draft Articles represented a considerable improvement over the 1952 Convention.

The South African delegate stated that the Arrest Convention should not be expressly linked to the 1993 MLM Convention, because such latter Convention has so far attracted very few ratifications and accessions. It should not be a condition precedent to the ratification or accession of the new Arrest Convention that a State should have to be a party to the 1993 Convention; although it is agreed that the new Arrest Convention should take into account the 1952 Convention.

The U.K. and U.S. delegates expressed the view, supported by Canada, that the Draft Articles (and, in fact, the broad application of the 1952 Convention) presented issues which needed to be the subject of further careful analysis.

In particular, the U.K. delegate made the following statement:

The draft Convention under consideration at Antwerp has its origins at the CMI Lisboa Conference 1985 and has been extensively reviewed by a joint IMO/UNCTAD Group of Experts.

It is presented to the Antwerp Conference prior to the convening of a Diplomatic Conference.

The 1952 Arrest Convention has been judged a success, having achieved over 40 ratifications. It is not without flaws, but we should take this opportunity to review the new draft to ensure that it not only remedies those flaws, but also meets the changing needs of the shipping world in the next century.

In 1952 the world was very different. In most jurisdictions it was not possible to obtain security for any legal claim until final judgement had been obtained on the merits. The right of arrest of a ship was an exception to this general principle.

The growth of offshore financial havens, and companies incorporated in those havens, has created new problems for claimants. The "one ship company" whose growth has been encouraged by the "sister ship arrest" provision of art. 4 of the 1952 Arrest Convention, has now become the rule rather than the exception. These points strengthen the case for a new convention.

However, there are a number of "hot topics" in the law relating to arrest of ships current in 1997 which have not, it is submitted, been addressed by the current draft.

These topics are:

1. Is the right of arrest automatic if the claim lies within Article 1, or is it dependent on proof by the arrestor that there exists a risk that the claim will not be paid.

⁽¹⁾ The word conservatory with this meaning is not to be found in the English language. A conservatory is a greenhouse where one grows tomatoes.

2. Is the right of arrest purely "conservatory"⁽¹⁾ as per Art. 1(2) or should it lead automatically to sale of the arrested vessel if no guarantee or other security is put up.
Many civil law countries approach arrest in the former way, whereas the common law countries (and some countries of mixed legal systems such as Canada) adopt the latter.
3. Should the right of "sister ship arrest" under Art. 3(e) – art. 3.1 of the 1952 Convention – be applied narrowly as now in England, or more broadly as in South Africa (under their associated ship jurisdiction) and in France under their "théorie des apparences".
4. Should a ship be arrested for debts of her time charterer – as is apparently the position in France at present. This would appear to be inconsistent with the right of appraisal and sale of an arrested vessel available in common law countries.
5. The relationship of the common law "Mareva injunction" to the right of arrest under the Arrest Convention.
6. Should a lawyer be entitled to arrest a ship for fees payable in respect of services rendered in connection with a maritime claim.

The Chairman of the Panel drew the attention of the delegates to the fact that the replacement of the 1952 Convention by a new Convention had been approved by the CMI 1985 Lisbon Conference and that the Draft Articles were based on the draft adopted by the CMI Lisbon Conference. The observers from IMO and UNCTAD pointed out that the Draft Articles will be submitted to a Diplomatic Conference, tentatively scheduled for the late 1998.

The observer from the International Association of Ports and Harbors made the following statement:

I would like to expose briefly the point of view of the ports which has been reminded in a position paper adopted last week by the IAPH Conference of London.

Throughout the world, ports are the unwilling hosts of arrested vessels which can block major berths for months and even years. In small ports, this can affect heavily the activity of the port, the traffic, the commercial operations and the activity of the users.

Furthermore, when ships agents resign their office, safety and protection measures for the vessels and the environment depend upon the initiatives of the Port Authority alone.

The draft convention which is to be submitted to the Diplomatic Conference after its adoption by the group of experts in Geneva deals with the issue as if it were only a commercial law agreement between the claimants and the sued parties and, despite the proposition of the French delegation supported by several other delegations, and the demand of the IAPH representative, this text does not mention the fact that the detention of an arrested ship cannot take place other than within the domain of a third party, the host port, which can have its proper interest.

The draft text leaves major points to be settled without mention by national and procedural legislation. This is not consistent with the universality aimed at by maritime law.

The ports consider that the Diplomatic Conference should be aware of the following points:

1. The Convention should mention that the arrest and detention of a ship take place in a port.
2. The competent authority responsible for navigation safety should be in a position to settle all safety measures to be taken (location of the ship, crew to be kept on board, unloading of HNS or perishable cargo, maintenance of mooring lines, lights, etc...).
3. In the event of default by the shipowner, the claimant should bear port dues and costs incurred by the arrest and detention of the ship. This arrest, and detention should be limited in time, before release, renewal or conclusion by the forced sale of the ship.
4. The ports consider that it would be most useful if the preamble of the convention includes a reference to the needs of future legislation at national level to protect the interest of ports and other parties involved.

Such legislation already exists in certain national laws but is should be generalised within the preamble of the Convention in order to fill the gaps left by the Convention itself.

It was suggested, however, that these issues were properly matters to be dealt with by the law of the country where the arrest takes place, since they reflect safety issues in the ports and general policy questions applicable in a particular locality.

Comments on specific articles

Article 1

Paragraph 1

In the paper presented by the Belgian delegate the following comments are made:

The wording of this article is open to criticism, especially if the term "such as" is maintained. A detailed list of maritime claims has been set up, which however would be merely indicative and susceptible of extension by analogy. The listing therefore would be more important because of what it excludes than because of what it includes.

Loss and damage to goods are considered a maritime claim under litt. h; the same goes for services to the vessel (litt. l) and claims with regard to the construction and repairs of the equipment.

The Italian delegate made the following statement:

With regard to the question of the closed or open list of maritime claims we observe that the open list insofar as it extends the list of maritime claims appears to better achieve the scope of the Convention, although it may create problems of construction and – to some extent – of forum shopping. On the other hand a closed list may create problems of disparity of treatment and in some national regimes of unconstitutionality. On

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balance the open list seems to be preferable.

Another delegate noted that the failure of the 1952 Convention and of the Draft Articles to recognize the distinction between an arrest to realize the security of a mortgage or a hypothec and an arrest to obtain security for a maritime claim and to deal with the two situations separately, was a fundamental flaw.

Paragraph 4

Doubts were expressed as to whether the words “any person asserting a maritime claim” have the same meaning of the words “a person who alleges that a maritime claim exists in his favour” used in the 1952 Convention (Article 1, para. 4).

The French delegate made the following statement:

Article 3(1) uses the word “asserted” instead of “alleged” as in the 1952 Convention. Is this done in order to force the claimant to bring supporting evidence for his claim which was not required by the 1952 Convention, or “asserted” means still “alleged” which can appear to be the case since article 3(3) refers to the person “allegedly liable”?

Article 3

Paragraph 1

In the paper presented by the Belgian delegate the following comments are made:

The solution provided by art. 3 of the 1952 Convention is based on considerations of equity. It also aligns with the economic reality, since a person exploiting a vessel always takes an active part in the use that is made of that ship, regardless of whether he is the shipowner or only a charterer. We cannot accept, therefore, the recent proposals, that only allow an arrest if the person who owns the ship at the time the claims comes into being, is personally held liable in respect of this claim.

If, under such rules, the shipowner charts out his ship, he will be safe from having his ship arrested, since the claim will only exist vis-à-vis the charterer. If the bill of lading has been issued by a time or a voyage charterer, the holder of the bill of lading, whose goods arrive in damaged condition (due, e.g., to the unseaworthiness of the vessel, or a fault of the crew), and whose resulting claim can be very important, will be bereft of the only object that he can readily arrest (and that is, by the way, the cause of his damage): the ship. Often, he will be struck with a claim against a charterer that he does not really know, located in some remote corner of the earth and not solvent at all. In most cases, the wisest course will be to simply take the loss and forget about the case.

It is irrelevant in this respect to point out that cargo is usually insured. If the subrogated insurer is precluded from recovering its losses, the

insurance premiums will suffer the consequences. Moreover, lots of importers are not insured, or are only partially insured. One must be wary of mixing transport and insurance.

This class of claimants – consignees and their subrogated insurers – will therefore lose both the benefit of the lien and the right to protect themselves by arresting the vessel. In the era of “single ship companies”, the era of liner terms exploitation of vessels under time or voyage charter by adventurers that appeared out of nowhere and are as quickly gone again, the era of the bankruptcy of shipowners that were thought to be invulnerable, the era of flimsy P&I covers that fall apart when called upon, it would be very strange to see the only safeguard still available to the cargo interests abolished.

One can seriously question the morality of such a restriction of the right to arrest.

All claims are respectable. Each claimant must be in a position to protect his claim and not being forced to sit by and watch assets – the sole security for his claim – pass along.

The principle that is touched upon here, is one of the essential principles of law. Articles 2092 and 2093 of the Belgian Civil Code read:

- Whoever is held in person, has to execute his obligations with all his assets whether present or future.
- The assets of the debtor form the guarantee of his creditors and their sale's price is equally distributed among them unless there are legal grounds to privilege one or more of them.

This is more than a rule of law, it is almost the legal translation of a moral principle: an equality between creditors in the protection of their rights.

If the JIGE's draft were to be adopted this would mean that, together with the 1993 Convention on maritime liens and mortgages, two categories of creditors would exist; one of them beneficiary of all rights and the other having none at all.

The same criticism can be made against the 1952 Convention.

The French delegate made the following statement:

It was possible under the 1952 Convention to arrest a vessel to secure debts against charterers after redelivery of the vessel. But it was not possible to sell a vessel who does not belong to the debtor who was the charterer. However some Courts have obliged owners to obtain the lifting of the arrest against a club letter covering not only the owner's liability but also the charterer's liability. This is the reason why it is suggested to amend article 4 in adding after “sufficient security” the following wording: “covering the potential liability of the person who owns the arrested vessel”.

In two judgments dated 21.3.95 and 4.2.97 the Cour de Cassation has ruled that an owner cannot be held liable for the charterers debts relevant to the commercial management of the vessel, but is liable for the charterer's debts relevant to the “gestion nautique” (nautical management) of the vessel.

Therefore under French law it is possible to arrest a vessel to secure the

charterer's debts covering the "nautical management" of the vessel.

The proposed convention which provides that the arrest is possible only with regard to claims secured by a maritime lien, prevents in fact the arrest for claims against charterers since it is not very frequent that a claim is secured by a maritime lien.

When a vessel has been arrested under the "theory of community of interest" the judgment condemning the debtor can not be enforced on the arrested vessel. It is then necessary in order to make that judgment enforceable, to obtain from the court of the place of arrest a judgment holding that there is a community of interest between the debtor and the owner of the arrested vessel, so that the judgment condemning the debtor can be enforced on the arrested vessel. Therefore we propose that under article 3(3) at the 5th line after "can be enforced" to add the wording "or made enforceable".

The Italian delegate made the following statement:

The main problem which should be clearly solved by this article is whether and to what extent arrest should be allowed whenever the person liable is not the owner of the ship. The 1952 Convention has shown that (in certain countries) the protection of the maritime claimants may become theoretical in certain circumstances. On the other hand in other cases the owner is forced to put up security even though the claim is not enforceable against the ship.

This article allows arrest in case of convention and national (lex fori) liens. This seems to add little to the point because the maritime claimant having a claim against the charterer would in such circumstances obtain arrest and enforcement precisely because of the (convention and national) lien.

Therefore the step forward seems to be art. 3(1)(e)(ii) in conjunction with art. 3(3). The solution adopted, however, whilst it may be acceptable in common law countries, has little meaning/effect (if any) in civil law countries.

The consequence will be to favour forum shopping and we do not consider this to be a good solution.

The delegates from Argentina, Chile, Colombia, Uruguay and Venezuela made the following joint statement:

1. Many Latinoamerican Countries are "Cargo Countries", namely countries where a very important proportion of their imports are carried by vessels of foreign countries; such is for instance the case of Argentina.
2. These countries were quite concerned when in the 1993 Convention it was deleted the lien that cargo's claims already had on the vessel in the case of damage to such cargo. But these countries were afterward deeply concerned when they were aware that in the draft of a new Convention on arrest of sea going vessels, according the provisions of its Article 3, the rights of a cargo owner to arrest a vessel as a

- consequence of damages suffered by its cargo during the performance of the contract of carriage, should be severely restricted.
3. It seems to us that the pretended restriction of the right of a consignee to protect his legal rights of arresting a vessel as consequence of damages suffered by the cargo during transport is unfair specially when it is perfectly known that the big share of the carriage of goods to and from Latinoamerica in general is performed by vessels normally operated by companies which are not owners of such ships. In our opinion, if a future Conference approves such restriction to the consignee's right to arrest a vessel, it will be very difficult that many Latinoamerican countries will be prepared to accept and ratify it.
 4. Our proposal is that in article 3 be incorporated a specific provision according to which a cargo claimant be entitled to arrest a vessel as a consequence of the damages suffered by his goods during the performance of the carriage.
 5. One alternative also would be to incorporate in the draft the proposal of the Delegation of USA, according to the wording of paragraph b), page 307 of ANTWERP I. But in our opinion it would be more clear and also fair to recognize positively the right of a cargo owner to arrest a vessel for the damage suffered by his goods during the carriage.

Paragraph 2

Several delegates expressed the view that the sister ship arrest provisions, lacking strict definition in the 1952 Convention, have been adopted too broadly by several countries. France (who is a State Party) and South Africa (who is not), were cited as jurisdictions where such arrests have gotten out of hand.

It was also pointed out that the increasing use of ship leasing required careful evaluation of the effect of sister ship arrest.

Article 4

Paragraph 2 and Paragraph 4 (b) (ii)

The Italian delegate made the following statement:

We are firmly of the view expressed by the Rapporteur namely that the limit of the value of the ship must stand, for the arrest of the asset can be lifted (and in many jurisdiction must be lifted) by depositing an amount of money equivalent to its value or, as it is nowadays the rule, by providing security in that amount.

Article 6

Paragraph 1

The French delegate made the following statement:

The French MLA is in favour of the deletion of the provision of Art. 6(1).

This should be left, as under the 1952 Convention, to the entire discretion of the court, since the risk would exist that, in using the terms “may ... impose ...”, the present Draft, if adopted, would lead all courts to consider this possibility as a recommendation and, precedent after precedent, the rule will become general, of a compulsory nature, with the effect that courts should impose such counter-security upon the arrestor.

Paragraph 2

The Italian delegate made the following statement:

We have some reserves about the solution adopted in connection with the matter of wrongful or unjustified (this word should stand) arrest. We believe that the Courts which have jurisdiction on the merits should also have jurisdiction for wrongful arrest claims.

It is our recommendation therefore that the CMI should promote further work on the draft aimed at clarifying the doubtful/unsatisfactory points [and at obtaining that these be discussed and settled at diplomatic level via UNCTAD/IMO].

Article 8

Paragraph 1

The French delegate made the following statement:

This provision of the Draft grants to the ship of a non contracting State a regime which is more favourable than that under the 1952 Convention. This fact might adversely affect ratification.

In the 1952 Convention the ship of a non contracting State may be subject to the provisions of the Convention but does not benefit of the protection ensured thereby. In France, for example, a ship may be arrested as security for a non maritime claim and this is the case also with respect to foreign claimants.

In the Draft the ship of a non contracting State will benefit exactly of the same protection than that granted to a ship of a contracting State. The only difference (which is important but in our view insufficient) consists in the fact that the ship of a non contracting State may also be arrested as security for a non maritime claim, but only by a person having his habitual residence or principal place of business in the State where the arrest is effected: art. 8.7. In France, a French claimant will therefore be entitled to arrest the ship of a non contracting State as security for a non maritime claim, but this will not be the case for an English or an Italian claimant (subject to the provisions of the European Community law: a nice conflict between conventions in perspective).

It is therefore felt that the system presently in force is preferable and it is hoped that it will be maintained.

UNIFORMITY OF THE LAW OF CARRIAGE OF GOODS BY SEA

Report of the Panel

The Chairman of the Panel reminded the meeting that the terms of reference of the IS-C were not of drafting a new Convention or a Protocol, but rather to prepare a study on the most relevant issues with proposals as to the best manner in which they should be solved with a view to obtaining international uniformity⁽¹⁾.

In pursuance of the decision of the Council the IS-C identified the 19 issues listed in Annex I to the Report of the Chairman (CMI Yearbook 1996, p. 346) and held discussions on each of them in the course of its four sessions. The Reports of the Sessions were published in the CMI Yearbooks 1995 and 1996⁽²⁾ and a summary of the discussions may be found in Annex I to the Report of the Chairman (Yearbook 1996, at pages 346-353).

The Chairman suggested that since it would be impossible to review all such issues in the short time available, the discussions should be confined to the more significant amongst them, i.e.: (i) Period of application; (ii) Identity of the carrier; (iii) Liability of the carrier; (iv) Jurisdiction.

The Chairman then suggested that the last part of the session be devoted to the consideration of the desirability of enlarging the subject matter, by regulating also other areas which are part of or are strictly related to the law of carriage of goods by sea such as:

1. Relationship between carriage of goods by sea and multimodal transport
2. Transport documents

⁽¹⁾ The following is an extract from the minutes of the CMI Assembly held on 13th April 1996 (CMI News letter No. 2/1996, p. 11):

Dr. Albrecht speaking for the German MLA stressed that the aim of the International sub-Committee should not be that of preparing a new convention but rather to consider the possible need for a revision of the existing legal regimes. The President stated that the problem of how the work of the Sub-Committee should proceed had been considered and that following the proposal made by its chairman the Executive Council had decided that the final result of the work of the Sub-Committee should consist of a study on the most relevant issues with proposals as to the best manner in which they should be solved with a view to obtaining international uniformity of the Law of the Carriage of Goods by Sea. Such study should then be submitted to the competent UN organisations accompanied by an explanatory note stating that the suggestions made in the study might be considered by such organisations in case they would in the future find that none of the existing legal regimes is such as to ensure satisfactory international uniformity.

⁽²⁾ There is published as an annex hereto a synopsis of the four reports in which the discussions under each subject are assembled together in order to facilitate consultation.

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3. Bankability of transport documents
4. Relationship between contract of carriage and contract of sale of goods
5. Contracts ancillary to the contract of carriage, such as forwarding contracts and contracts with terminal operators.

The general view was that prior to embarking in the study of new subjects it is imperative to complete the work on the basis of the terms of reference given to the IS-C by the Executive Council and that, for such purpose, wherever changes to the existing rules were deemed advisable, texts should be drafted.

The discussion on the four issues indicated by the Chairman may be summarized as follows:

(i) Period of application

It was generally agreed that the period of application of the uniform rules should ideally coincide with the period during which the carrier is in charge of the goods. Whilst, therefore, the provision of the Hague-Visby Rules is no more justified, that of the Hamburg Rules, though much closer to the above principle, seems to be insufficient. The uniform rules should in fact 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 inland depots to or from the port of loading or respectively the port of discharge.

(ii) Identity of the carrier

The problem of the identity of the carrier must not be confused with that of the joint liability of the contracting carrier and of the actual (or performing) carrier. In fact even if they are jointly liable the problem of identifying them still exists.

The third party holder of the bill of lading or other transport document may have difficulties in identifying the person against whom a claim in respect of loss of or damage to the goods may be made if the name of such person is not clearly indicated in the document.

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.

It was also suggested that the carrier must be compelled to indicate his name and address in the transport document and that the breach of this obligation should be sanctioned with the loss of the right to limit his liability.

(iii) Liability of the carrier

The majority view was again in favour of the maintenance of the

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provisions in Article 3(1) and (1) on the duties of the carrier whilst the minority considered that by adopting a provision on the liability of the carrier such as that of article 5(1) of the Hamburg Rules the aforesaid provisions became superfluous.

The question whether the exonerations from liability with respect to errors in navigation and fault in the management of the ship was again discussed. As at the time of the Paris Conference and during the sessions of the IS-C there was a clear majority in favour of the maintenance of the errors in navigation defence; whilst the views were almost equally balanced in respect of the maintenance or abolition of the fault in the management defence.

It was then considered whether the list of the (other) excepted perils still serves a useful purpose and the majority was of the view that it should be maintained, but that it should be simplified.

(iv) Jurisdiction

The views expressed during the sessions of the IS-C were confirmed. It was in fact thought by the majority that a provision on jurisdiction is needed and that such provision could be based on Article 21 of the Hamburg Rules, except that:

- (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.

No time was available for the consideration of the problem relating to the desirability of enlarging the subject matter of the study to other areas. It was thought that this problem ought first to be considered by the Executive Council.

*Uniformity of the law of Carriage of Goods by Sea***ANNEX****INTERNATIONAL SUB-COMMITTEE ON UNIFORMITY OF THE
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1 Definitions

a) “Carrier” and “Actual Carrier”

First Session (1995,231)

Mr. Rasmussen (Denmark) felt that “carrier” in Hague-Visby should be presumed to mean the “contracting carrier” as in Hamburg. **Prof. Tetley** (Canada) felt that the Hamburg definition should be used.

Mr. McGovern (Ireland) believed that the Hamburg definition causes problems; “carrier” should include the “actual carrier”, but some articles of Hamburg omit reference to the “actual carrier”.

Dr. Kienzie (Germany) pointed out the difficulty that the definition of “carrier” in both conventions is linked to the underlying liability regime, which in the case of Hamburg is based upon the Warsaw Convention for carriage by air. Both **Prof. Berlingieri** and **Prof. Tanikawa** (Japan) agreed.

Mr. Rasmussen (Denmark) stated that the Hamburg definition is at least clear, whereas the Hague-Visby ‘definition’ is an illustrative list. **Prof. Tetley** (Canada) and **Mr. Cova-Arria** (Venezuela) concurred, favouring the Hamburg definition.

Prof. Wetterstein (Finland) would prefer a ‘simplified Hamburg’ definition, as in the recent Scandinavian legislation. **Prof. Berlingieri** saw the majority view as being that the Hague-Visby definition of “carrier” is too loose.

Third Session (1996, 385, 395)

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.

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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.

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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.

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.

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.

b) "Shipper"

First Session (1995, 231)

Prof. Berlingieri pointed out that Hague-Visby has no definition of "shipper"; should there be one?

Prof. Sturley (U.S.A.) felt that there should be such a definition.

Prof. Tetley (Canada) stated that the definition of "shipper" was a late addition to the Hamburg text.

Prof. Wetterstein (Finland) pointed out that the Scandinavian legislation defines both the "contracting" and the "actual" shipper.

Dr. Kienzle (Germany) cautioned that a definition of "shipper" should not get mixed up with the domestic law of agency. **Prof. Berlingieri** concluded that it remains an open question whether a definition of "shipper" is needed.

Second Session (1996, 364)

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).

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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.

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 extend 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.

Third Session (1996, 387)

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.

c) “Consignee”

Second Session (1996, 365)

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

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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".

Third Session (1996, 387)

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".

d) *"Contract of Carriage"*

First Session (1995, 232)

Prof. Berlingieri asked whether this term should be restricted to a certain document, or should be applied to whatever document is most relevant in any given case.

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Mr. Koronka (U.K.) felt that the term should be applied to any appropriate document, except a charterparty.

Mr. McGovern (Ireland) queried why a voyage charterparty should be excluded.

Mr. Rasmussen (Denmark) responded that charterparties are concluded between parties presumed to be commercial equals; therefore only bills of lading, EDI documents, and some but not all waybills should be covered.

Prof. Wetterstein (Finland) supported this view.

Prof. Sturley (U.S.A.) felt that charterparties should not be covered but remain open to free negotiation, whereas EDI documents should be covered.

Prof. Tetley (Canada) supported this view.

Mr. Chandler (U.S.A.) found Hamburg flawed in that it does not cover non-negotiable documents.

Prof. Tanikawa (Japan) believed that a new regime should cover any contract of carriage, with freedom to depart from the rule in the case of charterparties.

Dr. Faghfour (UNCTAD) questioned the status of bills of lading issued pursuant to charterparties; it would not be good to leave their status uncertain.

Mr. Hooper and **Mr. Chandler** (U.S.A.) responded that coverage should extend to a 3rd party holder of any document issued subject to a charterparty or of any non-negotiable documents.

Dr. Kienzle (Germany) observed that a bill of lading issued under a charterparty may not recite the charterparty but only incorporate it by reference; if a bill of lading issues under a charterparty, it is non-negotiable under the ICC Rules.

Prof. Tetley (Canada) believed that nothing should be done with regard to the term "contract of carriage", as both Hague-Visby and Hamburg were really in accord in this respect.

Prof. Berlingieri, summing up, felt that there was a consensus that the Hague-Visby definition is acceptable.

Second Session (1996, 365)

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

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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 **Prof. 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.

Third Session (1996, 387)

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.

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Mr. Rasmussen (Denmark) wished to continue to exempt charter parties, and this was the 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.

e) “Deck Cargo”

First Session (1995, 232)

Prof. Berlingieri pointed out that deck cargo was excluded from coverage under Hague-Visby.

Mr. McGovern (Ireland) stated that deck cargo should be covered by a new regime, except for live animals. This view was supported by **Prof. Sturley** (U.S.A.) and **Dr. von Ziegler** (Switzerland).

Prof. Berlingieri concluded that there was a consensus in favour of including deck cargo in general, but excluding live animals.

Second Session (1996, 367)

Prof. Berlingieri noted that the consensus at the First Session was to include deck cargo, but exclude live animals.

Third Session (1996, 367)

Prof. Berlingieri asked whether “deck cargo” should be included in the definition of “goods”.

Mr. Rasmussen (Denmark) believed that deck cargo should be included.

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.

f) “Live animals”

Second Session (1996, 367)

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.

Third Session (1996, 388)

Mr. Rasmussen (Denmark) believed that live animals should be specifically excluded.

Prof. Hu (China) would include live animals, subject to special rules.

Mr. Kleiven (Norway) supported this view.

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.

g) “Package”

First Session (1995, 232)

Following a brief discussion, **Prof. Berlingieri** concluded that there was no consensus whether a definition of “package” should be included.

Second Session (1996, 367)

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”.

h) “Ship”

First Session (1995, 232)

Prof. Berlingieri pointed out that while “ship” was defined in Hague-Visby, it was not defined in Hamburg. After a brief discussion, there appeared to be no consensus whether the term should be defined in the future work.

Second Session (1996, 368)

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”.

i) “Delivery”

Fourth Session (1996, 415)

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 (U.S.A.) 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 (U.S.A.) 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** (U.S.A.) 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.

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

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Mr. Alcantara (Spain) and **Prof. Sturley** (U.S.A.) 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 (U.S.A.) 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 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 (U.S.A.) stated that his delegation could entertain some 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 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.

2. Scope of application

First Session (1995, 240)

Mr. Rasmussen (Denmark) stated that Hague-Visby applies only to the export end, whereas Hamburg is much broader; the broadest possible scope of application is preferable.

Mr. Hooper (U.S.A.) noted that the American COGSA applied to both inbound and outbound carriage; application to the whole movement evidenced by the bill of lading was best. **Prof. Tetley** (Canada) felt that the multimodal

convention should be applied to all movements originating or terminating outside the port.

Mr. Alcantara (Spain) and **Prof. Park** (Korea) favoured application to both inbound and outbound carriage.

Prof. Sturley (U.S.A.) felt that of the two, application to inbound carriage was more important than outbound, but that one could have both provided that there was a uniform system.

Dr. von Ziegler (Switzerland) noted that most continental States have the Hague-Visby rule, so that it is important to judge the impact of any change; Article 10 of Hague-Visby was not a conflict-of-laws rule, but simply a rule of application. **Prof. Philip** observed that the parties have the option under Hague-Visby to choose another applicable law; one could not separate the scope of application from choice of law and conflicts.

Prof. Berlingieri questioned the nature of the relationship between choice of law and uniform rules; in Italy the uniform rules to which the State is party prevail over the domestic conflict of laws rules; he noted in this regard that Italy had enacted the untranslated French text of the Hague Rules.

Mr. Rzeszewicz (Poland) said that his country had the same rule as in Italy; he preferred application both inbound and outbound.

Dr. Kienzle (Germany) noted that the rule in his country, as in Switzerland, drew no distinction between inbound and outbound carriage; in this regard it was interesting that Germany had enacted the English text of the Hague Rules.

Mr. Roland (Belgium) stated that the law of his country applied Hague-Visby inbound as well as outbound; as to conflicts, priority was always given to an international convention.

Prof. Sturley (U.S.A.) explained that in America conventions were on the same constitutional footing with statute law, so that conventional provisions can be effectively modified or nullified by later statutory enactments.

Prof. Tanikawa (Japan) observed that the statute law of his country was based upon Hague-Visby, but applied to any carriage by sea, and that Japan was also a State party to Hague-Visby; the domestic conflict-of-laws rules will determine 'which version' of Hague-Visby will apply in a given case; the parties to a bill of lading may choose the rule of Hague-Visby or another rule.

Mr. Japikse (Netherlands) noted that the Hague-Visby Rules were embodied in Dutch legislation, but he would not oppose extension to inbound carriage.

Mr. Koronka (U.K.) favoured extension to inbound carriage, or even to the place of delivery.

Mr. Rohart (France) also favoured extension to inbound carriage, and noted that the law of his country applied both pre- and post-tackle.

Mr. McGovern (Ireland) also favoured extension to inbound carriage.

Mr. Salter (Australia and New Zealand) noted that Australia was planning to enact a modified extension to inbound carriage.

Prof. Berlingieri explained that Hague-Visby Articles 10(c) and Hamburg 2(1)(e) allowed application of the Convention itself, in which case the Convention provisions were binding; Hamburg Article 2 creates confusion

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over which is applicable: the Convention text or the domestic law enacting the Convention.

Mr. Alcantara (Spain) wondered about applicability to domestic water transport; Hague-Visby appeared to exclude this possibility. **Prof. Tetley** (Canada) noted that the law of his country applied Hague-Visby internally as well as externally.

Prof. Sturley (U.S.A.) observed that the common American practice is to incorporate COGSA in domestic bills of lading.

Mr. Rasmussen (Denmark) favoured the extension to domestic carriage by water, for the sake of uniformity.

Dr. von Ziegler (Switzerland) would tie domestic application of the Convention to the application of domestic law, including conflict-of-laws rules; this is the present situation in Switzerland and Japan. Prof. Philip noted that the Convention on a Uniform Law of Sales, for example, did not apply in all domestic cases.

Prof. Berlingieri felt that the Sub-Committee should strive to avoid application of any conflicts rules.

Prof. Tetley (Canada) agreed; it was enough to demand application to inbound and outbound carriage.

Second Session (1996, 379)

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.

Third Session (1996, 389)

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. Interpretation

First Session (1995, 241)

The question being put, there was an obvious consensus in favour of adopting this clause.

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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 responsibility – Period of application

First Session (1995, 233)

Prof. Berlingieri saw the real question as whether coverage should be tackle-to-tackle, or whether the period of carriage should extend to coverage while the goods are in the custody of the carrier in the port.

Mr. Rasmussen (Denmark) proposed that coverage should extend to the period while the goods are in the terminal (the “terminal period”).

Mr. Japikse (Netherlands) asked how one would determine whether the carrier has custody of the goods.

Prof. Tetley (Canada) responded that Hamburg answered that question in Art. 4(2)(b)(iii).

Prof. Sturley (U.S.A.) explained that the original concept was that a uniform regime was needed only tackle-to-tackle, leaving the status of goods in the port or terminal to the national law of the port State.

Prof. Berlingieri pointed out that, historically, not many carriers operated warehouses when the Hague Rules were drawn in the 1920's.

Mr. Rohart (France) believed that where the shipper does not know the identity of the stevedore, there is an argument for extending the period of the carrier's liability.

Mr. McGovern (Ireland) favoured liability for the carrier from taking charge of the goods through their discharge from the ship; there are too many variables in conditions following discharge to hold the carrier liable. This view was supported by **Mr. Kleiven** (Norway).

Mr. Koronka (U.K.) proposed that the liability of the carrier should run for the period during which he is “in charge” of the goods, which would terminate when the goods are put “at the disposal of” the shipper; this event might occur beyond the boundaries of the port or terminal.

Mr. Salter (Australia and New Zealand) supported the concept of an “in charge” period for liability, but this should commence at “delivery” of the goods to the carrier, as this is a better-known term; “delivery” may of course occur inside or outside the port. This concept recognized the ‘container revolution’ which has occurred since the Visby Amendments were drawn.

Prof. Wetterstein (Finland) agreed, noting that Hamburg makes an excessively restrictive exception to the “bailee's liability”.

Dr. von Ziegler (Switzerland) also agreed.

Mr. Chandler and **Prof. Sturley** (U.S.A.) were of the view that it is the bill of lading or waybill which determines the period of liability, and that this regime should only determine the extent of liability; they supported a “delivery-to-redelivery” concept.

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Prof. Tanikawa (Japan) did not oppose some extension of the period of liability, but felt that this should not go beyond the Hamburg maximum; the period should be limited to events which take place within the port or terminal.

Dr. Raposo (Portugal) favoured a “custody within the port” rule; he pointed out that in Hamburg the definition only ran to the period of applicability of the rule.

Mr. Rasmussen (Denmark) thought the COGBS regime should not apply to intermodal transport; he also favoured limitation to events occurring within the port or terminal.

Mr. Japikse (Netherlands) did not favour any extension; in most cases liability beyond the port was covered by a multimodal through bill.

Mr. Koronka (U.K.) felt that the COGBS regime should apply up to the point at which the CMR Convention governed.

Prof. Berlingieri felt that there was at least a consensus that coverage should be “port-to-port”, but queried whether this might conflict with other transport conventions and/or international law.

Prof. Wetterstein (Finland) emphasized the need for a convention on combined transport to resolve these conflicts; he favoured port-to-port coverage in the COGBS regime. **Mr. Chandler** (U.S.A.) pointed out that, in most cases, the carrier will decide this issue by the terms of the bill of lading.

Prof. Berlingieri concluded that there was a consensus on the concept of liability while the goods are in the custody of the carrier within the port of loading or discharge; there remained some doubts whether the COGBS regime could itself apply beyond the port. It was clear that Article 2 of Hague-Visby would need to be amended.

Second Session (1996, 368)

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.

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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 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 a 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 **Prof. 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.

Third Session (1996, 389)

Prof. Berlingieri queried whether the limits of Hamburg were appropriate.

Mr. Chandler and **Prof. Sturley** (U.S.A.) observed that the political

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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 COGBS 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 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

First Session (1995, 237-238)

Prof. Berlingieri noted that Hamburg allows "other documents" to govern.

Mr. McGovern (Ireland) found severe problems with Hamburg, as for example in Article 16(4); if cargo pays the carrier with a worthless cheque, Hamburg denies the shipowner a lien on the cargo.

Mr. Roland (Belgium) saw that Article 15(g) of Hamburg created problems; under the law of his country, for example, the master of the ship must sign the bill of lading, whereas under Hamburg virtually anyone but the shipper himself may sign. **Prof. Berlingieri** observed that this problem also relates to that of the identity of the carrier.

Prof. Tanikawa (Japan) held that the name and address of the carrier should be required to be entered in every bill of lading; Hamburg is notably deficient in this respect.

Dr. von Ziegler (Switzerland) agreed.

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Mr. Chandler (U.S.A.) noted that the UCP 500 standard will accept charterparty bills of lading, but requires specific identification of the carrier — banks will not accept such bills unless the carrier's identity properly appears; carriers must therefore now use a clear form bill of lading.

Prof. Berlingieri thought that a possible solution might be a rule that unless another name appears in the bill of lading, the contracting carrier will be absolutely deemed to be the carrier.

Mr. Rasmussen (Denmark) agreed; the contracting carrier must be held to be the carrier unless the name of the performing carrier is entered. This was supported by **Mr. Chandler** (U.S.A.).

Mr. McGovern (Ireland) agreed that the identity of the carrier was a crucial problem, but that the only solution was a [rebuttable] presumption that the shipowner was the carrier unless another carrier was listed.

Prof. Tanikawa (Japan) posed the problem of a ship bareboat-chartered and subsequently voyage-chartered, where the agent of the voyage charterer has issued a bill of lading in the name of the master; what would be the result?

Dr. Raposo (Portugal) noted that in his country the shipowner and the ship in rem are liable unless the carrier can be identified.

Mr. Rasmussen (Denmark) saw the solution not only as a presumption against the contracting carrier, but also in joint and several liability with the performing carrier; he pointed out that it was equally important to identify the shipper in the bill of lading.

Mr. Koronka (U.K.) thought that very sloppy issuance of bills of lading was really to blame, and the problem with a presumption against the shipowner becomes clear where there is multiple COGBS — how does one determine which shipowner should be liable; he favoured the Danish approach of joint and several liability. **Prof. Tetley** (Canada) thought his country solved the problem as did Hamburg Article 10; but **Prof. Berlingieri** and **Dr. von Ziegler** (Switzerland) disagreed that Hamburg solved the problem.

Dr. Wiswall saw a majority in favour of a presumption of liability against the contracting carrier.

Prof. Berlingieri thought that the identification requirement was inadequate under Hague-Visby, but that some Hamburg requirements were not only commercially difficult and even impossible, but also dangerous.

Mr. McGovern (Ireland) pointed out that Hamburg provided no means of enforcing the requirements of Article 15, especially considering Article 15(3).

Dr. von Ziegler (Switzerland) felt that another remedy might be to lengthen the period for time bar to suit.

Mr. Rasmussen (Denmark) felt this problem to be a cause of great commercial confusion; the clause should not be allowed to defeat a presumption against the contracting carrier unless the performing carrier was identified in the bill of lading or his identity later proved.

Mr. Roland (Belgium) noted that in his country the clause was invalid and the contracting carrier was not allowed to evade responsibility.

Mr. McGovern (Ireland) wondered if the contracting carrier were a forwarding agent without financial substance, why he should be the exclusive defendant in a suit?

Dr. von Ziegler (Switzerland) answered that if this were the case it would be because the plaintiff shipper had chosen a straw man to issue the bill of lading rather than insisting upon the shipowner; the problem was shippers being encouraged to be careless by the present regime.

Mr. Koronka (U.K.) agreed.

Mr. Roland (Belgium) observed that if the bill of lading is required to be issued by the master, the shipowner must be the presumptive carrier.

Dr. Raposo (Portugal) believed that at present the master seldom personally issues the bill of lading, and this is increasingly being done by computer on shore.

Second Session (1996, 364, 375)

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.

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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 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.

Third Session (1996, 391)

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.

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.

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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.

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 cases 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;

(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 of the carrier

a) Duties of the carrier

First Session 1995, 234)

Mr. Rohart (France) stated that his country wished to maintain the concept of due diligence so that some reciprocal obligations may be placed upon the shipper.

Prof. Tanikawa (Japan) asked whether the obligation of the shipowner to exercise due diligence to maintain seaworthiness should be extended to cover the voyage itself.

Mr. Rasmussen (Denmark) felt that due diligence should be kept, as concrete provisions are necessary for guidance; however, he had reservations over an extension to cover the voyage.

Prof. Wetterstein (Finland) supported this position; due diligence to avoid unseaworthiness need not be mentioned if Hamburg Article 5 applies, but mention is necessary if the basis is Hague-Visby.

Mr. Hooper (U.S.A.) saw the need to retain due diligence, but would not extend the obligation.

Mr. Alcantara (Spain) favoured striking out due diligence and Article 3 of Hague-Visby.

Dr. von Ziegler (Switzerland) was very much in favour of keeping due diligence, as under the civil law system the parties to a contract cannot realistically adopt it; due diligence was only deleted from the Hamburg text by a drafting committee composed chiefly of civil lawyers. **Prof. Park** (Korea) saw no reason to delete due diligence; to do so would create confusion among carriers.

Dr. Raposo (Portugal) would keep due diligence and perhaps extend its application to containers as well as the ship.

Mr. Salter (Australia and New Zealand) would ideally prefer to delete due diligence and use the Hamburg Article 5 liability test.

Mr. Koronka (U.K.) favoured keeping due diligence in an amended form; he would not want to extend the period, because in the end this would make no difference.

Mr. Rzeszewicz (Poland), **Dr. Kienzle** (Germany), **Mr. Japikse** (Netherlands) and **Mr. Kleiven** (Norway) all spoke in favour of keeping the concept without change.

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Mr. Cova-Arria (Venezuela) would keep due diligence, but extend the period of coverage. **Prof. Tetley** (Canada) would keep both Hague-Visby Article 3 and Hamburg Article 5 without change, though he favoured the Hamburg provision.

Prof. Berlingieri, summarizing, saw that a clear majority wished to keep at least Hague-Visby Article 3(1) and (2) in any event, but a few favoured deletion. Some would link it, regardless of the outcome, to the fate of Hague-Visby Article 4.

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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 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.

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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.

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 the question whether the duty to exercise due diligence to maintain seaworthiness should run throughout the voyage be discharged at the outset of the voyage: 6 in favour of the first solution and 7 in favour of the second.

b) Exoneration from liability

First Session (1995, 234)

Mr. McGovern (Ireland) would retain error in navigation, but would be willing to delete error in management. This position was supported by **Mr. Salter** (Australia and New Zealand), **Mr. Rzeszewicz** (Poland) and **Prof. Tanikawa** (Japan).

Prof. Tetley (Canada) held that if the work was to be based upon Hague-Visby, then the list of exceptions should remain except for errors in navigation and management; if the basis of the work was to be Hamburg, as he preferred, the entire list should be deleted.

This position was supported by **Mr. Cova-Arria** (Venezuela).

Mr. Kleiven (Norway) and **Dr. Kienzle** (Germany) reserved their position as to the errors in navigation and management.

Mr. Japikse (Netherlands) did not care for the Hamburg approach; he supported the principle of reasonableness and so preferred to keep the list, including errors in navigation and management, as an aid to developing the facts of a given case.

This position was supported by **Dr. Raposo** (Portugal) and **Prof. Park** (Korea).

Mr. Koronka (U.K.) would keep the list, including errors in navigation and management, but would shift the burden of proof to the carrier.

Dr. von Ziegler (Switzerland) would retain the list whether or not the regime was based upon Hague-Visby or Hamburg, as an explicit list was needed for guidance; he could, however, drop the errors in navigation and management.

Mr. Alcantara (Spain) preferred Hamburg Article 5, but if Hague-Visby were the basis then he would delete the errors in navigation and management.

Prof. Wetterstein (Finland) pointed out that the Scandinavian legislation had deleted the list; he was in favour of dropping the errors in navigation and management, but retaining the fire exception from Hamburg.

Mr. Hooper (U.S.A.) would keep a list, but delete the errors in navigation and management; the burden of proof should lie equally upon ship and cargo, so that failure to carry the burden would result in a 50-50 division of damages.

Mr. Rasmussen (Denmark) would keep the list, including errors in navigation and management, and would add the Hamburg fire exception; the list could also be 'overhauled' to modernize it.

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Mr. Rohart (France) felt that if Hague-Visby were the basis, Article 4(1) should be deleted and unseaworthiness should be listed with latent defects in sub-paragraph (p); he favoured a mixed text from Hague-Visby and Hamburg, but based on a list as in the French proposal at pp. 22-23 of the Synopsis.

Mr. Chandler (U.S.A.) pointed out that particularity and clarity were necessary to promote settlement of claims; it was virtually impossible to reach settlements under Hamburg because of the ambiguities.

Second Session (1996, 370)

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.

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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 solicited an informal indicative vote:

(a) As to the error in management defense: to retain the defense – 8 in favour; to eliminate the defense – 7 in favour.

(b) 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.

c) *Excepted perils*

First Session (1995, 234)

Mr. McGovern (Ireland) would retain the list of exceptions.

This position was supported by **Mr. Salter** (Australia and New Zealand), **Mr. Rzeszewicz** (Poland) and **Prof. Tanikawa** (Japan). **Prof. Tetley** (Canada) held that if the work was to be based upon Hague-Visby, then the list of exceptions should remain (except for errors in navigation and management); if the basis of the work was to be Hamburg, as he preferred, the entire list should be deleted.

This position was supported by **Mr. Cova-Arria** (Venezuela).

Mr. Leiven (Norway) and **Dr. Kienzle** (Germany) were in favour of retaining the entire list (reserving their position as to the errors in navigation and management).

Mr. Japikse (Netherlands) did not care for the Hamburg approach; he supported the principle of reasonableness and so preferred to keep the list, (including errors in navigation and management), as an aid to developing the facts of a given case.

This position was supported by **Dr. Raposo** (Portugal) and **Prof. Park** (Korea).

Mr. Koronka (U.K.) would keep the list (including errors in navigation and management), but would shift the burden of proof to the carrier.

Dr. von Ziegler (Switzerland) would retain the list whether or not the regime was based upon Hague-Visby or Hamburg, as an explicit list was needed for guidance; (he could, however, drop the errors in navigation and management).

Mr. Alcantara (Spain) preferred Hamburg Article 5, but if Hague-Visby were the basis then he would delete the errors in navigation and management.

Prof. Wetterstein (Finland) pointed out that the Scandinavian legislation had deleted the list (he was in favour of dropping the errors in navigation and management, but retaining the fire exception from Hamburg).

Mr. Hooper (U.S.A.) would keep a list (but delete the errors in navigation and management); the burden of proof should lie equally upon ship and cargo,

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so that failure to carry the burden would result in a 50-50 division of damages.

Mr. Rasmussen (Denmark) would keep the list (including errors in navigation and management) and would add the Hamburg fire exception; the list could also be 'overhauled' to modernize it.

Mr. Rohart (France) felt that if Hague-Visby were the basis, Article 4(1) should be deleted and unseaworthiness should be listed with latent defects in sub-paragraph (p); he favoured a mixed text from Hague-Visby and Hamburg, but based on a list as in the French proposal at pp. 22-23 of the Synopsis.

Mr. Chandler (U.S.A.) pointed out that particularity and clarity were necessary to promote settlement of claims; it was virtually impossible to reach settlements under Hamburg because of the ambiguities.

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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 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).

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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.

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Prof. Berlingieri asked for views as to the "catalog of exceptions".

Mr. Chandler and **Mr. Hooper** (U.S.A.) favoured keeping the catalog 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.

7. Liability of the actual (performing) carrier

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Mr. Rasmussen (Denmark) stated that the contracting carrier must be held to be the carrier unless the name of the performing carrier is entered. This was supported by **Mr. Chandler** (U.S.A.).

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Mr. Rasmussen (Denmark) saw the solution not only as a presumption against the contracting carrier, but also in joint and several liability with the performing carrier; he pointed out that it was equally important to identify the shipper in the bill of lading.

Mr. Koronka (U.K.) thought that very sloppy issuance of bills of lading was really to blame, and the problem with a presumption against the shipowner becomes clear where there is multiple COGBS — how does one determine which shipowner should be liable; he favoured the Danish approach of joint and several liability. **Prof. Tetley** (Canada) thought his country solved the problem as did Hamburg Article 10; but **Prof. Berlingieri** and **Dr. von Ziegler** (Switzerland) disagreed that Hamburg solved the problem.

Dr. Wiswall saw a majority in favour of a presumption of liability against the contracting carrier.

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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.]

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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.

8. Through carriage

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Mr. Salter (Australia and New Zealand) thought Hamburg Art. 11 useless and wholly superfluous provision.

Mr. Rohart (France) and **Mr. Koronka** (U.K.) supported this view.

Prof. Tanikawa (Japan) observed that the original proposal was that the first carrier should be liable throughout the period of carriage; the present text was a bad compromise, promoted by certain academics.

Mr. Rasmussen (Denmark) noted that this provision was taken into the Scandinavian legislation; he thought it a useful provision. **Prof. Tetley** (Canada) also favoured the provision.

Mr. Alcantara (Spain) thought it caused no problems.

Dr. Kienzle (Germany) felt that the provision may be in conflict with the multimodal convention.

Mr. Japikse (Netherlands), **Dr. von Ziegler** (Switzerland) and **Mr. McGovern** (Ireland) were opposed to the provision in any COGBS regime.

Prof. Berlingieri found that there was a majority opposed to the adoption of Hamburg Article 11.

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Prof. Berlingieri observed that 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 the contracting carrier in case 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

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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.]

9. **Deviation**

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Mr. Koronka (U.K.) observed that the doctrine of deviation was now effectively dead in Great Britain.

Dr. von Ziegler pointed out that deviation was originally linked to insurance, but is not needed now and should be dropped from the COGBS regime; only reasonable deviation for safety of life and property should be a listed exception. This position was supported by **Prof. Tanikawa** (Japan).

Prof. Wetterstein (Finland) stated that there was no special rule on this in the Scandinavian legislation, but that reasonable deviation is an exception.

Mr. Rasmussen (Denmark) noted that if containers were carried on deck in violation of the contract of carriage, then this was a constructive deviation giving rise to liability.

Prof. Sturley (U.S.A.) saw a need to clarify the rule on deviation, because Article 4(4) now carries a negative implication.

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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.

Prof. Fujita (Japan) stated that if it proved necessary to retain any provision on deviation, it then should be moved into the catalog.

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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.

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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.

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.) stated that 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.

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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].”

10. Delay

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[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 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.

11. Limits of liability

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Prof. Wetterstein (Finland) favoured unlimited liability.

Mr. Hooper (U.S.A.) felt a uniform rule to be more important than the extent of liability. **Mr. Chandler** (U.S.A.) observed that, finally, cargo interests had decided that they preferred the Hague-Visby package limitation.

Mr. Alcantara (Spain) felt that the trend was away from package limitation and toward a higher global limitation.

Prof. Wetterstein (Finland) believed that cargo liability should not in any case be subject to global limitation.

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Mr. Rasmussen (Denmark) stated that the present Hague-Visby limits were too low and the limits of a new regime must at least equal Hamburg.

Dr. Wiswall and **Mr. Koronka** (U.K.) were of the opinion that a higher limit than Hamburg would be essential in order to secure adoption of a new COGBS regime.

Dr. von Ziegler (Switzerland) observed that while limitation can be "bought out", no shipper ever does it; the Hague-Visby and Hamburg limits should be adjusted for inflation, but there should not be a quantum increase.

Prof. Sturley (U.S.A.) felt that a commercial approach to limitation was necessary.

Mr. Koronka (U.K.) pointed out that most cargo was now self-insured.

Mr. Rohart (France) believed that the problem lay in the package vs. kilo limitation; the differential between package and weight should be re-balan.

Mr. Hooper (U.S.A.) observed that the package limitation in container cases is so high that it very often exceeds the value of the goods; he did not see how the differential could be re-balanced.

Prof. Berlingieri asked what were the negative consequences of the present limitation, given that the shipper always has the option of choosing the highest limit.

Mr. Roland (Belgium) felt that the crux of the problem was that the package limit was too low and the kilo limit too high; there should be only one basis for limitation.

Dr. von Ziegler (Switzerland) pointed out that the same discussion had taken place in Visby; he felt that if one limitation were chosen it should be based upon the kilo, as favoured by many at the Visby Conference.

Prof. Tanikawa (Japan) supported the existing system, as there were many cases in which only the package limitation made sense; while his country's delegation at Visby opposed the package limit, it now accepted it; if the cargo was of a high value, the shipper always had the option to declare it and pay for the higher limit.

Mr. Chandler (U.S.A.) saw it as essential that both limits be maintained; it could endanger acceptance of any new regime if one of the present limits was abandoned.

Mr. Rasmussen (Denmark) agreed with this, but thought that the present limits could be adjusted.

Mr. Roland (Belgium) pointed out the problem of defining a 'unit', and that is why his country preferred the present system; the serious problem was that of metric tons vs. kilos vs. long tons in bulk cargo cases, and there was an urgent need to focus on this issue.

Prof. Berlingieri queried the real meaning in this context of "goods lost or damaged"; if for example a large machine is shipped in several component pieces and one critical piece is damaged, what is the weight of the goods for calculation of the limit?

Mr. Kleiven (Norway) noted that the Scandinavians were trying to harmonise COGBS with CMR, as the latter will be applied to domestic traffic.

Mr. Rasmussen (Denmark) stated that his country did not support this approach.

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Prof. Berlingieri saw one consideration in favour of the Hague-Visby limitations as being that a ship can carry more goods than any type of vehicle which is contemplated in the CMR Convention.

Dr. von Ziegler (Switzerland) observed that the only constant measure in COGBS is weight, and this is why comparisons with the Warsaw Convention are invalid; he would prefer to keep both kilo and package limitations, pointing out that the limit under CMR is 17 SDRs per kilo.

Prof. Sturley (U.S.A.) noted that limitation of liability works only when there is a limit, and cannot work if there is no available limit. **Mr. McGovern** (Ireland) recalled that the present Hague-Visby limitation system was the "Diplock compromise" which was reached in the last minutes of the Visby Conference, and thought it would be very unwise to attempt to reopen the basic issue.

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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.

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 COGBS 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 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.

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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.

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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.]

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.

12. Loss of right to limit

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Prof. Sturley (U.S.A.) pointed out that his country had unique provisions of domestic law of COGBS such as the “fair opportunity” requirement, which affected limitation differently from the Hague-Visby Rules.

Mr. Hooper (U.S.A.) favoured the Hamburg wording “such loss or damage” rather than the Hague-Visby Article 4bis(4) wording “the loss or damage”.

Prof. Tanikawa (Japan) felt that the basic wording in both conventions should be maintained, with only minor adjustments.

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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.

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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 agreed that the Sub-Committee would set aside the matter of the shipping unit for future consideration].

13. Transport documents

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Mr. Rasmussen (Denmark) believed the time had come to extend the provisions to cover waybills, referencing the CMI Rules on Sea Waybills; the present measures were otherwise satisfactory.

Mr. Rohart (France), **Prof. Park** (Korea), **Mr. Rzeszewicz** (Poland), and **Dr. Raposo** (Portugal) believed the present provisions to be satisfactory, and did not favour extension to sea waybills.

Mr. Japikse (Netherlands) felt that the present provisions should be extended to apply to sea waybills.

Mr. Salter (Australia and New Zealand) believed that the Hague-Visby provisions should be reviewed in light of more recent developments in shipping technology, and agreed that the present provisions should be extended to apply to sea waybills.

Mr. McGovern (Ireland) saw a problem in Hamburg Article 16(4); he favoured extension of Hague-Visby to sea waybills.

Mr. Cova-Arriá (Venezuela) favoured the Hamburg approach in this regard, so in that context there would be no need to provide particularly for sea waybills.

Dr. Kienzle (Germany) noted that the law of his country provided a "concealed shipment" endorsement, obviating the need for extension to sea waybills.

Prof. Berlingieri, summing up, detected a slight majority in favour of extension of the Hague-Visby provisions to sea waybills and a majority in favour of permitting the endorsement of "shipper's load and count"; the present provisions seemed otherwise satisfactory.

Second Session (1996, 375)

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.

Third Session (1996, 388 + 401)

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 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.)

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

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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.

14. Evidentiary value

First Session (1995, 238)

Prof. Tanikawa (Japan) did not understand the necessity for provisions on evidentiary value, particularly with respect to sea waybills, which are non-negotiable; the present Hague-Visby provisions were satisfactory in this respect.

Prof. Tetley (Canada) felt that the effect of the bill of lading was better stated in Hamburg than in Hague-Visby, but that what was really needed was a 'Bills of Lading Act' separate from either regime.

Mr. Hooper (U.S.A.) saw a need to remove the Hague-Visby prohibition of the "shipper's load and count"; such endorsements should be clarified as in Hamburg Article 16, but "shipper's load and count" should be permitted.

Dr. von Ziegler (Switzerland) supported this view; it was especially needed where the cargo was pre-packaged or containerized, and a provision permitting the "shipper's load and count" endorsement should be added to Hague-Visby Article 3(4).

Mr. Japikse (Netherlands) agreed.

Mr. Koronka (U.K.) was uneasy about the present Hague-Visby provisions, and felt that there should be a positive obligation upon the master to verify shipments, especially when the container belonged to the carrier; he recalled that containers were originally introduced for the benefit of the shipowner rather than the shipper.

Prof. Berlingieri, summing up, detected a slight majority in favour of extension of the Hague-Visby provisions to sea waybills and a majority in favour of permitting the endorsement of "shipper's load and count"; the present provisions seemed otherwise satisfactory.

Second Session (1996, 376)

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.

15. Liability of the shipper

Fourth Session (1996, 403)

Prof. Berlingieri (Chairman) posed the questions whether the solution of

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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 (U.K.) observed that the law of carriage of goods by sea (COGSA) 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 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 (U.S.A.) 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 Subcommittee 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** (U.S.A.) asked how one would differentiate between them; was the difference only a matter of agency?

Prof. Wetterstein observed that a contractual shipper 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 (U.S.A.) 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 (U.S.A.) 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 (U.S.A.) felt that there were too many complications to be able to formulate a satisfactory definition of shipper. The facts of a particular case 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 (U.S.A.) 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 (U.S.A.) 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 (U.S.A.) 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 (U.K.) 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.

16. Dangerous cargo

First Session (1995, 239)

Dr. von Ziegler (Switzerland) saw no need for any changes in Hague-Visby.

Dr. Raposo (Portugal) would change only the reference to "carrier".

Prof. Tanikawa (Japan) found some confusion in Hamburg Article 13(1) and (2).

Prof. Tetley (Canada) felt that while the wording of Hamburg Article 13 was not perfect, it was considerably better than Hague-Visby and should therefore be adopted.

This view was supported by **Mr. Rzeszewicz** (Poland), **Prof. Sturley** (U.S.A.) and **Mr. Rasmussen** (Denmark).

Prof. Berlingieri saw the majority as favouring the wording of Hamburg Article 13.

Second Session (1996, 376)

Prof. Berlingieri noted that the Hamburg provision on dangerous cargo 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.

Fourth Session (1996, 405)

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.

17. Letters of guarantee

First Session (1995, 241)

Prof. Tanikawa (Japan) found that the carrier fraud in 17(3) inevitably implied fraud by the shipper as well; this is an unfair provision.

Mr. Alcantara (Spain) agreed that this is not a good provision and is eventually destructive.

Prof. Tetley (Canada) and **Mr. Roland** (Belgium) were of the same view.

Dr. Wiswall saw a further problem in that the provision must rely upon any distinctions in national law between criminal fraud and civil or commercial fraud, so that it could in no event have uniform application.

Mr. Kirinka (U.K.) felt this a fundamentally flawed provision rovision which has no place in a COGBS regime.

Mr. Rasmussen (Denmark) agreed, and noted that the Scandinavian legislation had omitted this provision.

Mr. Rohart (France) suggested that such a letter of guarantee should be utterly void if the cargo is misdescribed. **Mr. Hooper** (U.S.A.) observed that the Pomerene Act in America made the issuance of such guarantees a crime.

Prof. Berlingieri, summing up, stated the consensus that letters of guarantee should not be encouraged, and should perhaps be prohibited altogether.

Second Session (1996, 380)

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.

Fourth Session (1996, 405)

Prof. Berlingieri (Chairman) queried whether there should be a provision that actively discouraged the use of letters of guarantee.

Mr. Chandler (U.S.A.) 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 (U.K.) did not favour a provision discouraging letters of guarantee, which would run far beyond the scope of COGBS 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 (U.K.) 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.

18. Notice of loss

First Session (1995, 239)

Mr. Roland (Belgium) felt that time should begin to run (a) on discharge or (b) when the consignee has access to the goods; the best would be (c) when the goods reach their actual final destination.

Prof. Tanikawa (Japan) felt that the time for notice provided in Hamburg Article 19(1) was too short, especially since the goods are already in the hands of the receiver; the carrier therefore would have the burden of proving intervening damage; the Hague-Visby provisions are better.

Mr. Chandler (U.S.A.) thought the complexity of the Hamburg provisions likely to produce more litigation.

Mr. Rasmussen (Denmark) believed that the 1-day rule of Hamburg caused injustice; the Hague-Visby provisions were preferable both for notice and time bar.

Prof. Tetley (Canada) observed that the Scandinavian legislation did not accept Hamburg Article 19, but he felt that Hamburg 19 and 20 together constituted a system, and to extract one provision from this would be a mistake; one must take either Hamburg as a whole or Hague-Visby as a whole, and not pick-and-choose among the provisions.

Mr. Rohart (France) preferred Hamburg Article 19, but felt that a 7-day period would be better than 15 days; he also preferred the 2-year time bar.

Mr. Japikse (Netherlands) would have no problem with a 2-year time bar, but preferred the Hague-Visby notice provision.

Mr. Salter (Australia and New Zealand) could accept a 2-year time bar, but was not really desirous of any change from Hague-Visby.

Dr. von Ziegler (Switzerland) pointed out that the 2-year time bar in Hamburg was taken from the Warsaw Convention, which applies primarily to passengers and is not appropriate for marine cargo; he preferred Hague-Visby.

Dr. Raposo (Portugal) agreed; the Hamburg 2-year time bar is excessive.

Mr. Beare (U.K.) agreed and saw that the 1-year time bar of Hague-Visby operated in favour of insurers, and this helped to keep transport costs down.

Prof. Park (Korea) also agreed; the Hague-Visby provisions for both notice and time bar were far preferable. This view was supported by **Mr. Hooper** (U.S.A.), **Mr. Rzeszewicz** (Poland), **Dr. Kienzle** (Germany), **Mr. Cova-Arria** (Venezuela) and **Mr. McGovern** (Ireland).

Second Session (1996, 377)

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.

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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 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.

Part II - The Work of the CMI

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.

Fourth Session (1996, 407)

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 (U.S.A.) 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

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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.

19. Time bar

First Session (1995, 240)

Mr. Roland (Belgium) felt that time should begin to run (a) on discharge or (b) when the consignee has access to the goods; the best would be (c) when the goods reach their actual final destination.

Mr. Rasmussen (Denmark) believed that the 1-day rule of Hamburg caused injustice; the Hague-Visby provisions were preferable both for notice and time bar.

Prof. Tetley (Canada) observed that the Scandinavian legislation did not accept Hamburg Article 19, but he felt that Hamburg 19 and 20 together constituted a system, and to extract one provision from this would be a mistake; one must take either Hamburg as a whole or Hague-Visby as a whole, and not pick-and-choose among the provisions.

Mr. Rohart (France) preferred Hamburg Article 19, but felt that a 7-day period would be better than 15 days; he also preferred the 2-year time bar.

Mr. Japikse (Netherlands) would have no problem with a 2-year time bar, but preferred the Hague-Visby notice provision.

Mr. Salter (Australia and New Zealand) could accept a 2-year time bar, but was not really desirous of any change from Hague-Visby.

Dr. von Ziegler (Switzerland) pointed out that the 2-year time bar in Hamburg was taken from the Warsaw Convention, which applies primarily to passengers and is not appropriate for marine cargo; he preferred Hague-Visby.

Dr. Raposo (Portugal) agreed; the Hamburg 2-year time bar is excessive.

Mr. Beare (U.K.) agreed and saw that the 1-year time bar of Hague-Visby operated in favour of insurers, and this helped to keep transport costs down.

Prof. Park (Korea) also agreed; the Hague-Visby provisions for both notice and time bar were far preferable. This view was supported by **Mr. Hooper** (U.S.A.), **Mr. Rzeszewicz** (Poland), **Dr. Kienzle** (Germany), **Mr. Cova-Arria** (Venezuela) and **Mr. McGovern** (Ireland).

Second Session (1996, 378)

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 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.

Fourth Session (1996, 407)

Prof. Berlingieri (Chairman) noted that the issue to be resolved was whether the time limitation should be one or two years.

Mr. Chandler (U.S.A.) 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 ninety-day period for recourse and indemnity actions should run from the end of the one-year limitation period.

Prof. Sturley and **Mr. Chandler** (U.S.A.) 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 COGBS 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 (U.K.) 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.

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Mr. Chandler (U.S.A.) 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 (U.S.A.) 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 (U.S.A.) 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.

Mr. Koronka (U.K.) emphasised that the provision should relate to notice, and not to time bar.

Prof. Sturley (U.S.A.) 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 (U.S.A.) 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) compared 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.

20. Choice of law

First Session (1995, 241)

Prof. Philip observed that the parties have the option under Hague-Visby to choose another applicable law; one could not separate the scope of application from choice of law and conflicts.

Prof. Berlingieri questioned the nature of the relationship between choice of law and uniform rules; in Italy the uniform rules to which the State is party prevail over the domestic conflict of laws rules; he noted in this regard that Italy had enacted the untranslated French text of the Hague Rules.

Mr. Roland (Belgium) stated that the law of his country applied Hague-Visby inbound as well as outbound; as to conflicts, priority was always given to an international convention.

Prof. Sturley (U.S.A.) explained that in America conventions were on the same constitutional footing with statute law, so that conventional provisions can be effectively modified or nullified by later statutory enactments.

Prof. Tanikawa (Japan) observed that the statute law of his country was based upon Hague-Visby, but applied to any carriage by sea, and that Japan was also a State party to Hague-Visby; the domestic conflict-of-laws rules will determine 'which version' of Hague-Visby will apply in a given case; the parties to a bill of lading may choose the rule of Hague-Visby or another rule.

Mr. Alcantara (Spain) wondered about applicability to domestic water transport; Hague-Visby appeared to exclude this possibility.

Prof. Tetley (Canada) noted that the law of his country applied Hague-Visby internally as well as externally.

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Prof. Sturley (U.S.A.) observed that the common American practice is to incorporate COGSA in domestic bills of lading.

Mr. Rasmussen (Denmark) favoured the extension to domestic carriage by water, for the sake of uniformity.

Dr. von Ziegler (Switzerland) would tie domestic application of the Convention to the application of domestic law, including conflict-of-laws rules; this is the present situation in Switzerland and Japan.

Prof. Philip noted that the Convention on a Uniform Law of Sales, for example, did not apply in all domestic cases.

Prof. Berlingieri felt that the Sub-Committee should strive to avoid application of any conflicts rules.

Prof. Tetley (Canada) agreed; it was enough to demand application to inbound and outbound carriage.

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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 COGSA 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 COGSA. The answer was to have provisions similar to those of the Warsaw Protocol, which pre-empt national rules on conflict of laws.

Prof. Sturley (U.S.A.) 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.

21. Jurisdiction

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Mr. Salter (Australia and New Zealand), **Mr. Rohart** (France), **Prof. Tetley** (Canada), **Mr. Alcantara** (Spain) and **Mr. Hooper** (U.S.A.) thought Article 21 of the Hamburg Rules acceptable, while conceding that it was not cast in the best possible wording.

Mr. Rasmussen (Denmark) did not think this was a workable provision; it is contrary to widespread commercial practice, and it may be in conflict with the European Judgements Convention.

Prof. Sturley (U.S.A.) noted that this provision was considered at the Hague Rules Conference in 1920 and was rejected as inappropriate.

Mr. Koronka (U.K.) had sympathy with the provision, and did not think it complicated the situation.

Prof. Tanikawa (Japan) pointed out that this provision was another drawn from the Warsaw Convention, and while it was appropriate for passengers it was not appropriate for marine cargo; it made no sense in the context of a COGBS regime, and he opposed it.

Mr. McGovern (Ireland) also opposed the provision.

Prof. Philip remarked that this was a strangely-worded jurisdiction clause.

Dr. von Ziegler (Switzerland) agreed, noting that jurisdiction was not limited to States parties to Hamburg; this was a very serious flaw, which failed to ensure the applicability of the Convention.

Mr. Roland (Belgium) would favour the principle, if the provision required the competent court to be in a State party to the Convention.

Dr. von Ziegler (Switzerland) queried why there could not be a choice of the court of any State party.

Mr. Roland (Belgium) and **Prof. Philip** felt that this would be in accord with Article 17 of the new European Judgements Convention. Summing up, Prof. Berlingieri found a majority in favour of a provision giving a reasonable choice of jurisdiction.

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Mr. Rasmussen (Denmark) stated that the jurisdiction clause in the new 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.

Fourth Session (1996, 410)

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 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 (U.K.) 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** (U.S.A.). 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.

22. Arbitration

First Session (1995, 243)

Mr. Salter (Australia and New Zealand) did not like the wording of the provision and did not think it necessary or desirable; he would favour a provision stating that the parties might agree to arbitrate if they chose to do so, and to arbitrate anywhere they chose.

Mr. Rohart (France) was opposed to this Hamburg provision.

Mr. Japikse (Netherlands) was also opposed; all that was needed was a requirement that arbitrators apply the Convention.

Mr. Alcantara (Spain) felt the provision should give a right to arbitration only when the parties were agreed, and should require arbitrators to apply the Convention; private justice should not be made mandatory, whereas public justice demanded protection of the weaker party by giving a right to invoke the jurisdiction of a competent court.

Mr. Rasmussen (Denmark) believed the Hamburg provision would cause many problems.

Prof. Sturley (U.S.A.) was concerned because of the recent SKY REEFER decision in his country; the proposed legislation being considered in the U.S. Association offered a choice to arbitrate within the United States.

Prof. Tanikawa (Japan) thought that an arbitration provision was unnecessary.

Prof. Tetley (Canada) pointed out that under Hague-Visby there is arbitration only if provided in the bill of lading, i.e., at the choice of the carrier; Hamburg at least guaranteed the claimant a reasonable choice of forum for arbitration.

Dr. von Ziegler (Switzerland) felt that there should be both jurisdiction and arbitration clauses in the COGBS regime, so as not to 'undermine' liability; but the arbitration forum should be limited to States parties.

Prof. Tetley (Canada) thought it should be provided that any jurisdiction and/or arbitration clauses were to be void unless agreed in writing between the parties.

Mr. Rasmussen (Denmark) noted that the Scandinavian legislation applies the provision of Hamburg Article 22 only as between the Scandinavian countries.

Prof. Berlingieri felt that in light of the discussions the Sub-Committee must resolve the jurisdiction clause issues before returning to consideration of the arbitration issues.

Second Session (1996, 381)

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

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therefore accept the Hamburg provision. This view was supported by **Prof. Bonassies** (France).

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.

Fourth Session (1996, 411)

Prof. Sturley (U.S.A.) 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 (U.K.) 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** (U.S.A.) 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.

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).

Prof. Fujita (Japan) thought it might be a necessary evil to regulate arbitration.

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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 (U.S.A.) 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 (U.S.A.) 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 (U.S.A.) thought it important that the "tail" of charterparty considerations should not be allowed to "wag the dog" of the liner trade which 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 (U.S.A.) 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 (U.S.A.) 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.

TOWARDS A THIRD PARTY LIABILITY CONVENTION

REPORT OF THE PANEL FROM THE SESSION HELD ON 9 JUNE 1997

On Monday afternoon June 9, 1997 a panel was convened under the chairmanship of Patrick J.S. Griggs to discuss the concept of a comprehensive Third Party Liability Convention (TPLC). The choice of topic was developed by the Executive Council in response to private and IMO interest in the subject. The panel was comprised of the following members:

Patrick J.S. Griggs, U.K., Chairman
Karl-Johan Gombrii, Norway
Alfred E. Popp, Q.C., Canada
Professor Jan Ramberg, Sweden
A. Barry Oland, Canada, Rapporteur

The Chairman and the panellists presented summaries of their papers to the meeting. The amount of interest in the topic was demonstrated by the large number of delegates in attendance who occupied almost every seat in the conference room.

I. INTRODUCTION AND OVERVIEW: PATRICK J. S. GRIGGS

The Chairman, Mr. Griggs described the form of the meeting and gave an overview of his paper, "*Towards a Third Party Liability Convention*" dated April 2, 1997 and published in the 1996 CMI Yearbook at pages 156 to 165.

Beginning with the premise of uniformity the paper describes those areas of maritime law where success has been achieved on an international basis.

The paper points out that many successful international conventions such as CLC have been driven by events. The CLC Convention is reviewed with respect to its four elements, brought together for the first time in that Convention:

1. The shipowner is liable regardless of fault (with limited exceptions).
2. Pollution damage is defined in respect of which compensation is payable.

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3. The shipowner may limit his liability, in respect of an incident to a special oil pollution fund, calculated by reference to the ship's tonnage.
4. The shipowner is obliged to maintain insurance, or other evidence of financial responsibility up to the amount of limit of liability.

The most important feature of the paper is the focus on the subject matter of eighteen existing or proposed maritime conventions. The paper reduces the list by elimination of those convention subjects which would not fit conveniently within a third party liability convention.

The paper presents an analysis of the requirement that any comprehensive TPLC should contain sections dealing with four essential elements namely:

1. Liability.
2. Compensation.
3. Limitation of Liability.
4. Evidence of Financial Responsibility (Compulsory Insurance).

The paper then discusses the eight remaining convention subjects to determine how these four elements are dealt with in the existing instruments.

Liability

Strict-Liability applies, or is projected to apply for nuclear ships, oil pollution, HNS, wreck removal and pollution from bunkers.

Semi-Strict Liability applies in relation to carriage of passengers under the Athens Convention '74.

Fault Liability applies to collisions and carriage of goods.

The paper points out that if a TPLC was to include collision and carriage of goods it would have to have a two-tier liability system because there is no place for strict liability in relation to collision and carriage of goods.

Compensation

The paper suggests that the definition of damage found in the HNS Convention could be adopted for nuclear ships, oil pollution, HNS damage and oil pollution from bunkers.

The HNS definition of damage would not work in the context of collision, carriage of goods, carriage of passengers or wreck removal. The paper recognizes that a separate definition of damage would have to be developed for these subjects.

Limitation of Liability

The paper describes the multiplicity of current limitation regimes and concludes it would be impractical to attempt to rationalize the different limitation regimes to provide a single fund to cover all types of claims.

The paper recommends the limitation part would have to provide a general fund for normal maritime claims topped up by a specific fund for certain types of claim.

Evidence of Financial Responsibility (Compulsory Insurance)

The paper points out that compulsory insurance is required for nuclear damage, oil pollution and HNS. The draft conventions on wreck removal and bunker pollution both include a requirement for evidence of financial responsibility.

No evidence of compulsory insurance or financial responsibility is required at present for collisions, carriage of goods and carriage of passengers. The paper concludes that shipowners would object most strongly to compulsory insurance requirements for collisions and carriage of goods, but perhaps they would not resist such insurance requirements in relation to carriage of passengers.

A significant issue in relation to compulsory insurance is the right of direct action against a vessel's insurers. This is a feature of oil pollution and HNS, but surprisingly, not for nuclear damage.

Clearly, direct action would be opposed most strongly in the context of collisions and carriage of goods. It does have relevance in relation to the carriage of passengers.

Conclusions

The paper concludes that carriage of goods should be excluded from a TPLC, but collision could be included, but only in relation to limitation of liability.

II. LIABILITY AND COMPENSATION: KARL-JOHAN GOMBRII

In his paper, *Liability and Compensation*⁽¹⁾, Karl-Johan Gombrii of Norway, considers the concepts of liability and compensation. He suggests that if an attempt is made to develop a TPLC it should be on a comprehensive basis, with the convention covering much more substance than the existing conventions which TPLC is intended to replace. Mere streamlining of existing conventions would not warrant the time and effort required and would not be widely accepted.

Scope

The paper suggests that the scope of a TPLC could be:

1. To cover liability in relation to damage from operation of a ship and suggests that Article 1.1(b) of the 1952 Arrest Convention serve as a basis. It refers to events "occurring in conjunction with operation of any ship".
2. Restricted to non-contractual liability, a term synonymous with third party liability, or liability in tort. The paper proposes that a TPLC should apply to cases where the "third party is potentially liable to the world at large."

⁽¹⁾ The full text of the paper is published as Annex I to this Report.

The Liable Person

The paper questions application of the channelling principle used in recent pollution conventions, as many countries make a distinction between the registered owner when compared to the "reder" in Germany and Scandinavian countries, or "armateur" in Francophone jurisdictions.

The paper points out the differences between the use of registered owner compared with operator when defining the liable person. It is notable that the U.S. 1990 OPA provides for joint and several liability for the registered owner and operator.

The paper proposes that the basic rule in a TPLC should be that the operator is liable, but that exception would be made in relation to certain types of liability, such as liability for pollution damage.

The point is made that while pollution conventions channel liability to the registered owner, they also provide for compulsory insurance. This suggests that where compulsory insurance is required channelling of liability is also required.

Vicarious Liability

The paper discusses the extent to which the person primary liable is liable also for acts or omissions of other persons (servants or agents).

The paper concludes that uniform international rules on vicarious liability would be difficult to achieve because of significant differences in national law. The paper recommends that a TPLC should lay down general rules and principles, but leave legal niceties to national law.

Strict Liability

The paper suggests that there is no basis for a TPLC to change the strict liability concept for pollution claims.

The paper concludes that the basic general rule of a TPLC should be that it should cover liability for negligence, i.e. a negligent act or omission on the part of the liable person, or of those for whom he is vicariously liable. The burden of proof should remain with the claimant.

Compensation – Damage

The final question posed by Mr. Gombrii relates to rules on compensation. He points out the differences in national law on rules for compensation and the difficulty for a state to single out maritime law for a different compensation regime.

He submits that questions of compensation would have to be dealt with in a general way in a new TPLC. The basic principles can be expressed, but it is unavoidable that the finer legal points would have to be left to national law.

At the end of his presentation, Mr. Gombrii posed this pertinent question: "Whether it is realistic to believe that a convention can be agreed which could

unify and harmonize national laws on non-contractual liability, and to believe that a new convention would receive broad acceptance”.

III. LIMITATION OF LIABILITY IN A TPLC: PROFESSOR JAN RAMBERG

Professor Jan Ramberg in his paper *Limitation of Liability in a TPLC*⁽²⁾ raises the question whether the concept of limitation of liability would survive if a TLPC was developed. He reviews the historical basis for limitation and considers to whom the right to limit should extend.

The paper describes the erosion of the right to limit in the CLC and HNS Conventions. The question is asked, if we were to start from scratch, would the law develop in the same way?

Professor Ramberg asks if the 1976 Convention is based on insurability, why is unlimited liability uninsurable? How is it that other industries organize their affairs and assume risks without a corresponding right of limitation? The paper proceeds to describe five reasons why limitation should not be abolished in a new TPLC.

The paper proposes the need for an alternative to the traditional method of developing particular conventions to meet specific situations. The paper proposes the following for consideration:

1. Instead of abolishing the right to limit liability, the limits could be raised to such a degree to make any particular HNS type regime unnecessary.
2. The right to limit could be restricted to third party claims to prevent overlap with the right to limit according to contract.
3. The right to limit should appear as part of the legal regime governing the liability such as in the 1969 CLC Convention.

Conclusion

According to Professor Ramberg there would be no insurmountable difficulties to spelling out in a TPLC, a general principle of liability for negligence, supplemented where appropriate, by rules on strict liability for certain cases such as HNS.

The paper proposes that the right to limit should not be in a context separate from the basic question of liability, but be preconditioned by compulsory insurance.

The paper concludes that the present method of creating particular solutions for particular situations will lead to complexity and proliferation of different solutions contrary to the objective of unification of CMI.

IV. FINANCIAL SECURITY (COMPULSORY INSURANCE): A. E. POPP, Q.C.

Alfred E. Popp, Q.C., Chairman of the IMO Legal Committee spoke to the session to describe the Legal Committee's current work on provision of financial security previously known as compulsory insurance.

⁽²⁾ The full text of the paper is published as Annex II to this Report.

Financial security is part of the 1969 CLC and HNS Conventions. Two conventions under discussion at IMO, namely compensation for pollution from ship's bunkers and wreck removal are also likely to have this feature.

Because of the great variety of regimes there has been a proposal from Poland that financial security should be dealt with in the context of a more general convention addressing liability for damage caused by all seagoing ships.

He endorsed the point made by the Chairman that a general liability regime has appeal. If liability was linked to compulsory insurance there could be a reduction in the number of overlapping and/or independent liability regimes.

Mr. Popp described the British Government's initiative at the 74th Legal Committee meeting where proof of financial responsibility was advocated to prevent delinquent shipowners from avoiding liabilities. The suggestions (a) to (e) of the British paper were reviewed. He reported that there appeared to be general acceptance that rules on compulsory insurance must be linked to a liability regime.

Mr. Popp reported on strong opposition from the International Chamber of Shipping to a compulsory insurance regime. The ICS argues that lack of insurance in respect of perhaps 5% of the world's fleet does not warrant adoption of the proposed convention.

Following the 74th session of the Legal Committee a Correspondence Group was formed and given terms of reference. The CMI is a member of this Group.

The Correspondence Group under the leadership of Professor Rosaeg of Norway reported to the 75th session. It identified five approaches, but did not advocate a particular solution. It did suggest that a way forward would be to introduce as a matter of priority requirement of evidence of financial responsibility in connection with passenger claims. This suggestion will be worked upon by the Correspondence Group.

In conclusion Mr. Popp advised that leaving aside the question of need, on which the Legal Committee remains completely divided, it would appear that any rules respecting financial responsibility must be linked closely to rules of liability. It would be difficult to envisage a convention whose basic objective is to ensure that shipowners maintain proof of ability to meet third party liabilities, without a clear definition of those liabilities including applicable limitations.

Mr. Popp suggested that since rules respecting financial security are most important to some states, particularly as they relate to passenger claims, it appears that initially passenger claims will be the object of further study.

V. QUESTIONS

I. Strict Liability Concept

After presentation of the papers there followed an open forum discussion.

The Chairman to begin the discussion asked two questions which concern strict and general liability concepts.

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1. Should the concept of strict liability be extended?
2. Should we contemplate a convention of general liability with proof of fault as a general rule, with strict liability for specific types of claim?

France: Professor Pierre Bonassies, Faculté de Droit Aix – Marseille

1. To the first question, no, at present.
2. To the second question, yes, but the 1910 Collision Convention does not apply to collisions with shore structures, only between two ships and strict liability should apply to the latter type of claim.

Denmark: Hans Levy, Skuld Copenhagen

Strict liability would be a difficult concept to extend. Rather any TPLC should be a general liability convention to cover everything, but with the addition of a strict liability regime for a limited range of claims.

United Kingdom: Lord Mustill

Limitation of liability must be considered as an integral part of any TPLC. Lord Mustill commented that strict liability applies to carriage by air, but this works because of the relatively low cap on quantum. This is in part because in air claims liability is difficult to prove, especially in a crash situation.

Croatia: Professor Velimir Filipovic

What type of regime should we accept, absolute liability, or strict liability with some exceptions, or proof of fault? In some circumstances proof of fault with a very low threshold can be more strict than strict liability with exceptions.

Canada: Professor William Tetley, Q.C., McGill University

1. Strict liability will not work in practice.
2. We should consider the civil law method of general paragraph(s) to deal with liability in the same way as the French Civil Code.
3. Suggested that one person should try to draft an instrument. One strong person with ideas should take on the project. This would produce a unified document as opposed to a document drafted by a committee.

II. Claims in Contract as well as Tort?

The Chairman asked the question:

Should a TPLC cover claims in contract as well as in tort (delict)?

Denmark: Hans Levy, Skuld Copenhagen

1. A general limitation convention should cover tort claims only. However, it should be noted that carriage of goods claims in Hague and Hague-Visby Rules effectively allows a double limitation which is unsatisfactory.

2. The question must be asked why are shipowners, alone in industry, allowed to limit liability.
3. For shipowners with P & I the cover is without a cap because there is limitation. In fact liability underwriters would have to change their method of underwriting if there was no limit. They would not insure unless there was a limit.

France: Professor Pierre Bonassies, Faculte de Droit Aix – Marseille

A TPLC should never cover contract claims.

Panel: Alfred E. Popp, Q.C.

The CLC Conventions were ones of exception adopted as a result of a disaster. The HNS Convention is similar in concept and in the context strict liability was justified. He expressed the view that a TPLC should be restricted to tort liability and not extend to contract.

III. Channelling of Liability

The Chairman posed two questions:

1. Should liability be channelled to the registered owner or the operator, or both?
2. To what extent should the owner/operator be vicariously liable for acts of servants or agents?

Croatia: Professor Velimir Filipovic

There are two types of channelled liability (1) general liability and (2) specific liability (i.e., nuclear). The issue is whether liability should be channelled to the registered owner. In the IMO Legal Committee, Poland for example says it is wrong to go against only the registered owner. In these days of managed ships there are owners, managers and time charterers responsible for what happens on board.

It was noted that in the IMO Legal Committee the trend is to channel liability to the registered owner.

Denmark: Uffe Lind Rasmussen, Danish Shipowners Association

Proposed that a better idea is to channel responsibility to the liable person. For a general TPLC the registered owner is often not relevant. This is not the same as CLC or HNS. Liability should be placed on the actual operator not on a Swiss bank or indirect owner. It would be useful to have a bareboat charterer liable.

France: Professor Pierre Bonassies, Faculté de Droit Aix – Marseille

Agreed with Mr. Rasmussen. Also stated there is a contradiction between the 1984 Protocol to the Oil Pollution Convention and now in the HNS

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Convention. A second option is to consider joint liability between the registered owner and operator.

Italy: (Speaker not identified)

A mistake was made when the decision was taken in 1984 to modify the original CLC definition. Channelling to the registered owner is not correct. Liability should be allocated according to fault.

International Oil Pollution Compensation Fund: Mans Jacobsson, Director

There are two questions to be answered:

1. Who is to be liable?; and
2. Should the liability be channelled?

The registered owner may be liable, but also victims may claim against whoever they want, under national laws.

IV. TPLC a Worthwhile Objective

The Chairman asked a final summary question:

Is this a worthwhile exercise? Do you approve that CMI should attempt to prepare a comprehensive TLPC with the aim of doing away with many of the existing liability conventions?

Panel: Professor Jan Ramberg

It would be possible to make a modified form of convention. A proposed TPLC should cover third party liability, except HNS and CLC Conventions. We should not change conventions that are working well i.e., CLC and Fund Conventions with Protocols.

If as is now the case, limitation floats above liability in a separate convention, the right to limit will be lost in the long run.

Denmark: Uffe Lind Rasmussen, Danish Shipowners Association

The following comments were made:

1. No one is opposed to international uniformity.
2. The concept of a TPLC would have the opposite effect on uniformity. Each of the conventions presently in force is ratified by different countries. Only a very few states would ratify a new general convention.
3. A TPLC would create numerous problems for CLC and HNS because you cannot separate these from a TPLC. Immense problems would be caused because of the strict liability concepts in CLC and HNS Conventions.
4. The analysis in the papers proves the difficulties with the concept of a TPLC. Each subject matter requires its own rules of liability.
5. It is not necessary to combine limitation and liability in one convention.

Germany: Bernd Kroger, GM Director, Verband Deutscher Reeder

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The following questions were asked:

1. What is the aim of a TPLC? To ensure payment to victims at a reasonable cost to ship, underwriters and cargo? If so, then we already have this result in existing conventions.
2. Creeping strict liability will not be stopped by a new convention. It is a matter of judicial interpretation connected to national law.
3. Proof of financial responsibility (compulsory insurance). This is a political question. If it occurs there will be state intervention in the insurance market and direct action against underwriters will be introduced. We need to remember and consider that the present insurance scheme is working well.
4. The CLC and HNS Convention were based on a political approach with shared responsibility between owners and cargo. This would not be possible to introduce in a TPLC.

Norway: Professor Erik Rosaeg, Scandinavian Institute of Maritime Law (Chair of IMO Correspondence Group on Financial Responsibility)

1. The project is very complex.
2. Uniformity is important, but if the result is to end up with yet another international convention that does not achieve uniformity, that would be detrimental.
3. Could the CMI draft escape clauses to conventions, so that new instruments could provide in certain circumstances that it would be possible to depart from the convention.

Panel: Alfred E. Popp, Q.C., Chairman, IMO Legal Committee

Mr. Popp spoke to reinforce what was stated by Mr. Rosaeg. The CMI could be helpful to IMO, if CMI could collaborate with the IMO Legal Committee about such individual issues as channelling.

CMI has the expertise to advise IMO on channelling. Better to put CMI's effort into those issues, than into a global convention that will encounter practical problems.

Greece: Basil Spiliopoulos, G & NL Daniolos

A strict liability convention would put lawyers out of business. Is this what we want?

France: Professor Pierre Bonassies, Faculté de Droit Aix – Marseilles

Commented that people are passive or active. He believes it would be possible to draft a global convention. He believes it would be a good idea for CMI to pursue a new TPLC.

Croatia: Professor Velimir Filipovic

To prepare a new TPLC would be most difficult. To develop a liability ceiling will be difficult. We can wish for unification but really do not need it.

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The rich and poor countries will have different views and a final compromise will be unacceptable to everyone.

Spain: Senor Goni, Goni & Co., Madrid

The CMI's goal is unity. We should try to achieve uniformity and not say at the beginning that it is impossible.

Denmark: Hans Levy, Skuld Copenhagen

Mr. Levy spoke of three concepts (1) uniformity; (2) simplicity and (3) necessity. We should exercise great caution in the future. Even when all three are present it remains difficult to get ratification.

Germany: Dr. Rolf Herber, Ahlers Vogel Hamburg

Dr. Herber expressed a pessimistic view of the project. States only ratify conventions if there is need. The CMI approach should be minimalist. The experience in Carriage of Goods shows that new conventions lead to a split system with new and different regimes. On the matter of limitation of liability the 1976 Convention with 1996 Protocol provide an existing global convention now in place.

THE JOINT VIEW OF THE PANELLISTS

As the Chairman stated in his introductory remarks a universally accepted third party liability convention covering liability, compensation, limitation and financial security would be of enormous benefit to shipowners, their insurers and victims of a maritime accident. Drafting such an instrument would be complex but could probably be achieved. (Professor Pierre Bonassies has advised that as an intellectual exercise he will put pen to paper and produce a draft instrument).

All the members of the panel recognise that the liability section of the instrument would be extremely complex because it would need to accommodate a range of claims in respect of which strict liability might apply to some and fault liability to others.

As far as compensation is concerned defining damage for a wide range of claims would not be feasible and at the expense of unification domestic law would probably have to prevail with general principals only being established by the Convention.

As regards limitation the panellists agree that there would need to be a general limitation fund for "ordinary" maritime claims with supplementary funds, provided by shipowners, for special types of claim (pollution etc.). A fundamental and apparently insoluble problem would be the need to hive off the HNS Fund from the 1996 HNS Convention into a separate HNS Fund Convention matching the 1971 IOPCF. It is recognised that there would be very strong and understandable opposition to this from shipowning interests.

On the plus side a TPLC with an underlying general limitation fund with special supplementary funds would solve the linkage problems which proved insoluble in the context of the 1996 HNS Convention.

As regards proof of financial responsibility/compulsory insurance, the fear was expressed that incorporating such a requirement for certain types of claim would undoubtedly lead to calls for this requirement to be extended to other more general types of claim. Again this is a development which would be strongly opposed by shipowning interests and by liability insurers.

The panellists listened carefully to the contributions from delegates at the conference and have concluded that desirable as a TPLC is as a tidying up exercise, there are enormous practical problems involved and there is a strong probability that any instrument (if it proved capable of drafting) would not attract support from a sufficient number of states to become a viable proposition. Indeed it was felt that what set out to be an exercise of unification might end up by simply adding another alternative to the current complex pattern of liability conventions. The panel's recommendation to the Executive Council is to maintain this topic in the CMI work programme and to encourage Professor Bonassies to produce a draft instrument. With this document in hand it should be possible to determine whether the practical problems highlighted in the Antwerp discussions are soluble or not.

ANNEX I

**THIRD PARTY LIABILITY CONVENTION – LIABILITY AND
COMPENSATION**

by

**Advokat Karl-Johan Gombrii
Northern Shipowners' Defence Club**

I have been given fifteen minutes in which to deal with liability and compensation as to be included in a possible new Third Party Liability Convention. It follows that I have no time to waste on small talk and I shall allow myself one introductory comment only. It is perceived by some, that a new Third Party Liability Convention will only be a streamlining of existing conventions and conventions presently in the pipeline (such as on wreck removal and pollution by bunkers). In that perspective, the drafting of a new convention would basically be an editing exercise or exercise of re-drafting without significantly changing or adding to the substance. I said “only streamlining”, but hasten to add that even that would be complicated and time-consuming. My question is: Would it be worthwhile? Would the advantages outweigh the cost, time and insecurity that will necessarily follow when a new convention presupposes the denunciation of existing conventions.

By the way I have formed the questions, you will have understood that I am extremely hesitant to such a minimalistic approach. Without expressing any view, at this stage, as to whether the idea that a new convention and its broad acceptance would result in greatly increased harmonisation is realistic, I take the view that if an attempt is to be made, it shall be on a comprehensive basis. In other words, the starting point ought to be that the convention shall cover much more substance than the conventions which it is intended to replace.

On that basis, I offer the following comments:

1. A convention on third party liability will have to delimit in various ways the damage for which it provides liability. A starting point, I presume, will be to provide that the convention covers liability in relation to damage arising from the operation of a ship. Hence, if somebody stumbles on the thick carpet on the floor of the shipowner's office, liability therefor would not be covered by the convention. The “concept” operation of a ship may not be entirely easy to define. We all remember the “*Tojo Maru*” case, where a diver operated outside the salvor and caused damage to the ship to be salvaged. Perhaps the solution in Art. 1.1 b. of the 1952 Arrest Convention could serve as a basis? It refers to events “occurring in connection with the operation of any ship”.
2. A further delimitation that the drafters may wish to make is in relation to contractual liability. In other words, I assume that a new convention would limit its scope of application to non-contractual liability, which I understand to be synonymous with third party liability or liability in tort. Where there is a

contract, the parties are in principle free to agree on the scope of liability and any limitation thereof both in relation to amounts and to types of losses. In relation to a third party, on the other hand, there is no such possibility to provide for liability by agreement before it arises. Hence, the need for an international regulation seems more apparent in relation to non-contractual liability. As you are aware, however, the borderline between contractual liability and non-contractual liability is not at all clear. Rather, it can be best described as a relatively wide grey area. For example, if the master invites a couple of guests to dine with him on board in a port, and one of the guests slips on the gangway because it has not been properly maintained, it can be argued, depending on the jurisdiction, that the relationship to the guest is contractual, non-contractual or semi-contractual.

I think, however, that the difficulty may be satisfactorily overcome if the governing principle is that the convention should apply to cases where the "tortfeasor" is potentially liable to the world at large.

3. Whose liability would the convention govern? You will recall that the recent pollution conventions, the CLC Convention with its protocols and the HNS Convention, in principle channel liability to the registered owner. I don't think that that model could be used in relation to liability in general. In many countries, a distinction is made, also for purposes of liability, between the registered owner on the one hand, and on the other hand, the "reder" as in Germany and the Scandinavian countries, or "armateur" in Francophone jurisdictions.

For purposes of this presentation, perhaps the difference can be illustrated by the use of registered owner on the one hand and operator on the other hand. In many countries, a bareboat charter, but not a time charter or voyage charter, has the effect of making the charterer the vessel's operator in relation to third party liability. In such a case, the registered owner would for example not be liable for the negligence of the master, who is employed and instructed by the charterer. Quite another matter is that the resulting claim for damages may be secured by a maritime lien in the vessel, which may actually result in the registered owner having to absorb the claim, but he is not personally liable.

It may be noted in this context that for example the 1910 Collision Convention does not identify the person who is liable, rather it refers to the liability of one or the other vessel. In my country, there is no doubt that the personal liability for damages covered by the 1910 Convention rests with the operator and not the registered owner in case the vessel is bareboat chartered.

You will recall that for example the 1990 Oil Pollution Act provides for joint and several liability for the registered owner and the operator, which of course is a possibility. I would otherwise have thought that the basic rule in a new convention would have to be that the operator is liable but that exceptions may be made in relation to certain types of liability, such as liability for pollution damage.

It may also be noted in this context that the fact that the pollution conventions channel liability to the registered owner, of course also has to do with the fact that they provide for compulsory insurance. It is no doubt easier to identify the registered owner and check whether he has insurance. The name of the

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operator may not appear from public sources and he may be difficult to identify.

4. The convention, in my view, will also have to deal with the extent to which the primarily liable person is also liable for the acts and omissions of other persons. No doubt, if the operator is liable, negligent acts and omissions by his employees will be deemed to be negligent acts or omissions by the operator. It probably becomes more difficult when a decision shall be taken as to which further "servants and agents" the operator shall be liable for. Should a pilot be included as in the 1910 Collision Convention? What about stevedores? What about tugs? What about repair yards? What about harbour authorities giving negligent directions to a vessel and what about Authorities having faulted in the marking of a fairway etc.? The task of devising international rules in that context is no doubt challenging. Perhaps the best way forward would be to lay down general rules and principles and leave legal niceties to national law. Generally speaking, and as I will revert to, I think that it will be necessary to abandon any ambition of regulating everything and adopt the idea that a fair amount of detailed substance will have to be left to national law.

5. With respect to the basis for liability, Mr. Griggs has already mentioned that the pollution conventions provide for strict liability. That would also seem to be in line with national laws on pollution damage in general in many countries, and I don't think that it would be wise to try to change the basis for liability in that respect. On the other hand, it is my view that the basic general rule of a Third Party Liability Convention should be that it is for negligence, i.e. for a negligent act or omission on the part of the liable person or the ones for which he is vicariously liable. I also take the view that the basic rule should be that the burden of proof is on the claimant.

If, in this perspective, we look back at the question of the extent of vicarious liability, the draftsmen of a new convention may wish to consider whether the duties of the liable person shall be considered to be non-delegable where there is strict liability and whether the duties shall be delegable where the liability is for negligence, to the effect that the liable person should then not be liable e.g. for independent contractors such as a repair yard.

6. If we assume that we have overcome the problems of establishing the scope of liability generally, the liable person, the extent of his vicarious liability and the basis for liability, there remains the question of what kind of damage or loss the liability concerns. That has been referred to by Mr. Griggs as a question of compensation. To open up Pandora's box is a euphemism which is used too often, as soon as relatively minor problems arise. In the context of compensation, I think it would rather be an understatement to refer to the opening of Pandora's box. The problems are numerous and serious. Another expression which is often used and abused in relation to common law, is that something goes to the root of the contract. I would like to paraphrase that expression and say that questions of compensation goes to the very root of national legislation. Rules on compensation are often not only complicated but also basic, in that they affect many areas of national law, and the rules on compensation in one area are often related to the rules on compensation in other areas. Therefore, it will be very difficult for a given state to single out

maritime law and accept different rules on compensation in that area because of an international convention. There will be resistance from many quarters to such an idea.

Just to mention a couple of examples, rules on causation and remoteness or similar concepts are different in different legal systems. The underlying principles are similar, even if not entirely identical. I venture to say that, in practice, the result of a given case, a given type of loss will often be treated differently in the different systems. The loss may for example be considered too remote according to one system, but not according to another.

Other examples of difficult item in the context of compensation is the effect of contributory negligence and rules on adjustment of damages, for example in view of the extent to which the tortfeasor and his victim are insured, which is a difficult area of law in many countries, not least in relation to personal injury claims.

It is therefore probably for very good reasons that the CMI has been cautious when dealing with questions of compensation on earlier occasions. Mr. Griggs referred to the Lisbon Rules regarding assessment of damages in collision cases, and the fact that it soon became obvious that an international convention would have to contain provisions which would be inconsistent with national law in many countries. Since that was believed to deter states from ratifying a convention, the Lisbon Rules were adopted as model clauses to be used by parties involved in a collision or to be used as a basis for legislation in countries lacking adequate legislation.

Similarly, the CMI Guidelines on Oil Pollution Damage, were adopted at Sydney in 1994 as guidelines for precisely the same reasons.

"They are intended mainly to promote a consistent approach in cases of doubt as to what the relevant legal rights might be. They have been drawn up in the belief that many national courts will strive, when applying laws based on international conventions, to do so in a manner which is consistent with the approach taken in other countries. In that context, it is hoped that when courts are faced with the task of determining difficult issues in this field, or of enunciating new principles of law, they may derive some assistance from the formulations which have evolved from the CMI's work."

I believe therefore that questions of compensation will have to be dealt with in a general way in a new Third Party Liability Convention. Basic principles may be expressed, but I think that it is unavoidable that many legal niceties and problems will have to be left to national law. Perhaps non-mandatory provisions can be adopted on contentious issues, on which it would not be possible to arrive at unanimously accepted provisions for mandatory use in national law. In my country – and I believe in most others – it is not uncommon for an Act to have some provisions which are mandatory and others which may be derogated from by agreement and which only apply where there is no such agreement. Perhaps the same basic approach could be used in an international convention. Some provisions may be mandatorily applicable whereas others may apply only to the extent that they are apparently not

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inconsistent with the applicable national law. One may ask what may be gained from that in terms of international unification. Well, perhaps not a lot but, in my view, at least as much as with guidelines or model provisions.

* * *

I am afraid that I have been better at pointing out problems than offering solutions. I must also add that within the limited time at my disposal, I am far from able to list all the relevant problems. I have not yet offered an opinion as to the viability of the whole concept of a new Third Party Liability Convention, replacing a number of existing conventions and also conventions in the pipeline. One good reason for that is that I haven't formed a definite view. As I have pointed out, numerous serious problems will have to be overcome. That in itself does not frighten me. The difficult matter is to assess whether it is realistic to believe that agreement can be reached on a convention which could actually unify and harmonise national laws on non-contractual liability and to believe that such a new convention would receive broad acceptance. For that to happen, many sacred cows of many nations will have to be sacrificed. Is that reasonably foreseeable?

ANNEX II**LIMITATION OF LIABILITY IN THE CONTEXT OF A THIRD PARTY LIABILITY CONVENTION****by****Professor Jan Ramberg**

It would, of course, foster the very aim of the CMI to achieve the utmost unification of maritime law if the limitation of shipowner's liability were to be dealt with successfully in the broader context of a third party liability convention. If this is not done, it is quite probable that the right of limitation of liability will become lost – at least in several regions of the world – owing to the proliferation of different liability régimes and the resulting chaos within maritime law.

It is impossible to give a fair presentation of the difficult subject of the shipowner's right of limitation except by plunging into the historical development. Suffice it to say that the law has developed in a battle between different conceptual approaches. We should, however, keep history in mind in order to find a reasonable explanation for the law as it stands today. We still focus on the operation of the ship as a fundamental requirement for the right to limit liability. Indeed, the ship itself could as far as limitation of liability is concerned be regarded as the tortfeasor. Thus, the concept of abandoning the ship so that all claimants would have to satisfy their claims from whatever the ship might be worth after the incident still constitutes at least the starting point for limitation of liability. True, the value of the ship was later to be transformed into a "constructive" value achieved by computing the limitation amount on the basis of the ship's tonnage. The combination of the principle of the value of the ship after the incident and the computation of the limitation amount on the basis of the ship's tonnage appears in the 1924 Convention and the switch to a pure tonnage rule was made in the 1957 Convention. However, a completely new approach – still resting on the tonnage rule – appears from the 1976 Convention where the limitation amount is based on the concept of insurability. To go beyond the maximum insurance market capacity would, it was thought, be detrimental to all parties concerned.

Another important matter – which has to do with the historical starting point – is to define the beneficiaries of the right to limit liability. Here again, the operation of the ship remains the governing factor although, in the 1976 Convention, a small departure has been made as a result of the celebrated case of *Tojo Maru*, where a diver caused explosion damage to a ship while he was operating outside the salvaging vessel. This caused a particular addition to the 1976 Convention whereby salvors generally were accorded the right to limit their liability. Other parties belonging to the "maritime family" do not benefit

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from the same right, e.g. port authorities when directing ships in or out of the port, cargo owners, when the ship or other parties become the victims of damage inflicted by the cargo, or voyage charterers when they induce the ship to proceed to unsafe ports or berths.

Another particular aspect – which again depends upon the historical starting point – concerns the right of the shipowner to limit his liability not only with respect to tort claims but also contract claims. Thus, the particular limits relating to passenger and cargo claims are subjected to a further limit under the global right of limitation of liability.

Beginning with the 1969 Civil Liability for Oil Pollution Convention (CLC) introducing a particular liability régime for oil pollution, the old Collosum of limitation of shipowners' liability started to erode and the erosion continues with the 1996 HNS Convention for the Carriage of Hazardous and Noxious Substances by Sea. Thus, in the event the HNS Convention becomes successful, one would have to operate with no less than three separate limitation funds, the general fund, the oil pollution fund and the additional HNS fund subdivided into different funds for different categories of cargo. Although, in spite of the particular régime in the United States under the 1990 Oil Pollution Act, the 1969 CLC and the 1971 Fund Convention as amended by Protocols have reached broad acceptance, credibility and stability, I doubt that the HNS Convention will become equally successful. Nevertheless, it may be reasonable to ask whether all these complexities which follow from the different liability régimes are really necessary. If we were to start from scratch, unfettered by historical tradition, would we develop the law in the same manner in which it is now being developed? And, in particular, what arguments could in such case be raised in favour of the shipowner's right to limit his liability?

It may well be that the switch in the 1976 Convention from the old concept of basing the limitation on the ship's value to the concept of insurability seriously threatens the very right of limitation. Thus, one may ask why an unlimited liability for shipowners is uninsurable. How is it that other industries may organize their affairs and assume the risks without a corresponding right of limiting their liability? It is not the purpose of my introduction to answer these questions which hopefully will be the subject of further debate. Suffice it to mention some of the arguments supporting the shipowner's right of limitation which, in my mind, merit serious consideration. If the shipowner's right to limit liability would be abolished insurers would only provide protection up to certain limits and perhaps restricting the insurance cover to claims made during shorter periods of time. And the right of claimants to recover damages over and above the insurance may well become illusory because of the insolvency of the tortfeasor or, for that matter, according to the applicable law restricting the extent of damages by the application of principles of reasonableness. Protective measures might be taken by the shipowners themselves by organizing their operations into single ship companies and by tightening, as far as possible, the so-called corporate veil. Practical difficulties might arise when determining the security required for the release of the ship from arrest. And, last but not least, would States

generally be prepared to abolish the shipowner's right to limit his liability? If the answer is negative, international efforts to achieve such abolition would cause further proliferation of maritime law in this important field.

In any event, the traditional method of developing particular legal régimes for particular situations should not be further pursued. The limits could be raised to such a degree as to make particular régimes unnecessary, including the HNS-régime if that Convention would turn out to be unsuccessful. Further, the right to limit liability could be restricted to third party claims so as to prevent an overlap with the right to limit liability according to contract. The right to limit liability should systematically appear in conjunction with the legal régime governing the liability as such or, in other words, in the same manner as in the 1969 CLC. There are no insurmountable difficulties to spell out, in a prospective Third Party Liability Convention, a general principle of liability for negligence supplemented, where appropriate, by particular rules on strict liability in certain cases, e.g. for HNS and similar casualties. The right to limit liability could in such a context, but preferably not in a context independent from the basic question of liability, be preconditioned by compulsory insurance or the providing of financial security for the payment of potential claims. Continuing with the present methodology to create particular solutions for particular cases will, in my mind, inevitably lead to such complexity and proliferation of different solutions as would do great harm to the maritime community and run against the very objective of the CMI to unify the law.

THE FUTURE OF THE CMI*

I

SYNOPSIS OF RESPONSES FROM NATIONAL ASSOCIATIONS**

A. History of the CMI and its current work methods

The declared aim of the CMI and of its affiliated National Associations is the unification of maritime law. The founders of the CMI in laying down guidelines for the work of the Comité stated that:

“No maritime law should be promulgated that did not have input from shipowners, merchants, underwriters, average adjusters, bankers and other persons interested in the maritime trade.”

The founders of the CMI stated that, following the process of consultation, it was then the duty of the lawyers:

“To discern what, among the diverse solutions, is the best”.

Traditionally the CMI has identified a subject worthy of discussion and has then created an International Working Group which is instructed to prepare a questionnaire for circulation to all National Associations. The Working Group examines the responses to the questionnaire and with this raw material begins the painstaking task of producing a draft instrument which is intended to represent the best common elements of the law on the topic under review. For the best part of a century, this has proved to be a satisfactory method of work to which the numerous CMI drafted conventions and other instruments bear witness.

In the early years of its existence, the CMI relied upon the Belgian government to host diplomatic conferences at which CMI draft instruments received a final examination and endorsement before the process of ratification and incorporation into national domestic law could begin. In 1968, the Belgian government withdrew from hosting diplomatic conferences and

* This section contains a *Synopsis of responses from National Associations* (p. 377), a *Report on Plenary Session held on 14 June 1997* (p. 386) and a *Report of Prof. Philip to the CMI Assembly held on 15th June 1997* (p. 393).

** Responses to President Philip's letter of December 3rd were received from Canada, Belgium, Italy, Spain, United Kingdom, the United States and Venezuela.

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this responsibility was assumed by the United Nations. With the creation of the IMO Legal Committee in 1967 to deal with the aftermath of the "Torrey Canyon" disaster, the initiative for harmonisation of maritime law in the private sector was taken over by that organisation. Since that time, the CMI has continued to work in co-operation with the IMO Legal Committee by preparing initial drafts of international maritime law instruments and by lodging submissions with the IMO. It has also continued to work on exclusively CMI projects such as the 1990 and 1994 amendments to the York-Antwerp Rules. The CMI has also taken the initiative on the subject of the liabilities and duties of Classification Societies.

Currently the CMI is co-operating with the Legal Committee of IMO in work on the following subjects:

1. Offshore Mobile Craft
2. Bunker Pollution
3. Evidence of Financial Responsibility/compulsory insurance
4. Wreck removal

B. The future of CMI – Analysis of contributions from National Associations

1. Method of work including International Working Groups, International Sub-Committees and Standing Committees.

(a) **Italy:** Law making initiative and control are now in the hands of UN Agencies but this has not reduced the importance of the role of the CMI. The CMI no longer finalises draft documents to be submitted to diplomatic conferences but prepares initial drafts which are then adopted as the basis of work for one of the UN Agencies. There are thus two preparatory stages before a draft is submitted to a diplomatic conference: the CMI stage and the inter governmental stage. In the past a draft was approved by a CMI conference and was then submitted direct to a diplomatic conference. Such a draft is now submitted to a UN Agency at which the CMI has observer status and can contribute to the work of that agency in preparing a final draft for submission to a full diplomatic conference.

This places a heavy burden upon the CMI observer who attends the deliberations of the UN Agencies because he has to deal with issues which arise and "defend" the CMI draft without opportunity of consultation.

The CMI must devise a method for giving a clear mandate to CMI observers attending the work of UN Agencies.

(b) **Belgium:** The Conventions with the Brussels prefix achieved a balance between the Common Law and Civil Law countries. This balance has been lost – there has been an Anglo-Saxon takeover.

In order to produce balanced instruments it is essential that the points of view of three essential groups should be given proper consideration:

- (i) Owners, their financiers and their insurers
- (ii) the cargo owners and their insurers

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- (iii) auxiliary services (shipping agents, stevedores, shippers, ships chandlers and others).

The Brussels Conventions were conceived by the CMI giving due respect to all these diverse interests. Nobody felt slighted. A good convention is one which satisfies the interests of all and accommodates the concerns of all.

However, under the influence of the CMI – even though now reduced to the role of a privileged advisor – the conventions produced (mortgages and liens, arrest of ships, assessment of damages for oil pollution, York/Antwerp Rules) all serve to protect the owner, those who finance him, and his liability insurers and disregard the interests of cargo owners and their insurers.

The CMI should return to its role of initiating legislation which is based on a balanced view of the interests of all parties through compromise.

An example of this lack of balance is the work being done to strike a balance between the Hague/Visby Rules and the Hamburg Rules. Driven by the Scandinavian delegates the CMI is in danger of producing a new liability regime which is even more favourable to shipowner interests than the Hague/Visby Rules.

The CMI needs to decide whether it wants to continue to be a conciliator, looking for harmonious solutions, taking account of the views of all parties involved in maritime commerce or whether it simply wishes to be the spokesman for one of the parties involved. It needs to decide also whether it wishes to take account of all interests, at an international level, or if it wishes to speak only on behalf of a limited number of countries.

The CMI must define its philosophy, clarify its position. This will need greater consultation and may need a more harmonious composition of the Executive Council.

- (c) **Canada:** At present International Sub-Committees are created on an ad-hoc basis in reaction to problems as they arise. The CMI should create a group of Standing Committees for important subjects so that these committees can be proactive rather than reactive as at present. Specifically, the following Standing Committees should be created:

- Carriage of Goods by Sea;
- Classification Societies;
- Limitation and Liability Conventions;
- Marine Insurance;
- Pollution;
- Salvage;
- Ship Registration, Mortgages and Liens;
- SOLAS.

The Chairmen for these committees should be rotated on a regular basis. These Standing Committees should use video and telephone conference procedures rather than regular meetings in order to reduce operational costs. (See subsequent note re Correspondence Groups).

- (d) **Spain:** International Sub-Committees and Working Groups appointed by the Executive Council should have chairmen elected from amongst the offices of the Executive Council. The Chairmen expenses should be paid by the CMI. Chairmen should only come from outside the Executive Council if there are no

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suitable candidates on the Executive Council.

Relations with other international organisations should be put on a more formal basis and individuals should be appointed as liaison officers and observers to those organisations.

(e) **UK:** Where suitable, the work of existing or new International Sub-Committees should be undertaken by Correspondence Groups (organised on the lines of IMO Legal Committee Correspondence Groups) in order to save travel costs and give more National Associations an opportunity to contribute to the work of the CMI.

Where the pace of progress on a subject is dictated by the Legal Committee of IMO or other UN Agencies, National Associations must recognise and accept that full consultation may not be possible and that the CMI's position will have to be presented by a small (but representative) International Working Group which should be supervised by officers of the CMI, members of the Executive Council or a Correspondence Group.

(f) **Venezuela:** The work of the CMI is mostly done by small Working Groups normally confined to experts from Europe and North America with no representation from Africa, Asia and Latin America. These National Associations must be heard and one possibility would be to create regional sub-committees who could submit work to International Working Groups. Where possible existing groups (such as Iberoamerican Institute of Maritime Law) should be consulted.

2. Future work projects

(a) **Italy:** In the past the work of unification through International Conventions has been considered to be completed once the Convention has been approved and has come into force. It is now clear that this is simply the first stage. Ratification of or accession to an International Convention does not achieve uniformity. It is necessary that a Convention be properly implemented and the necessary changes be made to national laws. The work of monitoring the implementation of International Conventions is indispensable. The CMI should gather information on implementation and should consider extending its role to offering expert assistance in implementation of International Conventions, Rules or Codes.

The CMI should also monitor the interpretation of Conventions by national courts. It could offer its services in this regard to the appropriate Intergovernmental Organisation.

Monitoring could be organised through the CMI National Associations. An ad-hoc committee should be created by the CMI with the task of carrying out this work. The committee could test the system by selecting one or more Conventions, which has received wide ratification, prepare a questionnaire for National Associations and analyse the results with a view to ascertaining divergencies in interpretation.

The use of Model Laws or Guidelines is advocated. Conventions are not always suitable instruments. The work on Model Laws or Guidelines should be carried out by CMI jointly with other international organisations; a

combination of the experience of various organisations is required in order to achieve a satisfactory result. Working Groups or International Sub-Committees may not be suitable for such work unless the CMI is leading the project. The CMI may have to accept, on joint projects, that it can only be represented by a single observer.

The CMI should look for projects such as that carried out in relation to Classification Societies, on which it can take the initiative.

- (b) **Spain:** The CMI should consider the following subjects for future work:
- (i) Marine insurance. The English Marine Insurance Act 1906 and other civil legislation. Is it adequate?
 - (ii) Conflicts of law. Torts and delicts on board ship and collisions; the effect of the UE Rome Convention on Contractual Obligations 1980.
 - (iii) A global look at all pollution, environmental and HNS legislation; the adoption of the latest conventions and effectiveness in practice.
 - (iv) Stowaways.
 - (v) Multimodal Transport Laws in conjunction with the examination of issues of liability for the safe carriage of goods by sea.
 - (vi) Port liabilities, risks and interplay organisational aspects with transportation of goods and navigation (including agents, stevedores, terminal operators, forwarders, etc).
 - (vii) Co-ordination among already enforceable Conventions. Drafting problems, improvements, revision needs, interference with public law enactments etc.
- (c) **USA:** The CMI should carry out a reflective, contemplative analysis of the mission, objectives, organisational structure and constituent makeup of CMI. The CMI should identify who is its "customer". Is it the constituent associations, the industry, titular members or other entities or a combination. The CMI should organise as a matter of urgency a strategic, long range planning committee to study and report on directions required for the next five or ten years. This committee should be composed of members outside the Council but it should report to the Council after contacting and considering available internal and external resources. A committee should be briefed to designate some general "destinations" and needs but should leave it to the Council to designate the final objectives and the manner in which those objectives or goals may be obtained.
- (d) **Belgium:** A regime needs to be created requiring all shipowners to carry obligatory third party liability insurance with direct rights of action against insurers.
- (e) **Canada:** The CMI, as one of the few private international maritime law organisations, has many topics for a work programme. These would include:
- (i) Arrest Convention;
 - (ii) Bunker Spill Convention;
 - (iii) Carriage of Goods by Sea;
 - (iv) Classification Societies;
 - (v) Compulsory Insurance;

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- (vi) Limitation of Conventions;
- (vii) Marine Insurance;
- (viii) Technologies linked to Electronic Commerce;
- (ix) Offshore Mobile Craft Convention;
- (x) Port State Control;
- (xi) Salvage and the Environment;
- (xii) Wreck Removal.

The Executive Council should create an active and specific work programme concerning some or all of the above topics to be undertaken by the appropriate Standing Committees

The CMI must, if its future work products are to be widely accepted, remove the perception that it is principally a shipowners representative body that lobbies on behalf of shipowners and P&I Clubs. CMI must position itself as the champion of uniform development of commercial maritime law. It should re-establish its impartiality.

The CMI should develop closer relations with the IMO and should work more closely with the IMO legal committee. The CMI should consider with the IMO legal committee the possibility of obtaining some funding for its work from IMO.

The CMI should continue to develop active relationship with other international maritime organisations dealing with the development in uniformity of maritime law.

(f) **UK:** The CMI should continue to look independently for work topics outside the orbit of IMO and other UN Agencies. Multimodal transport is a possible subject for a CMI initiative.

(g) **Venezuela:** The CMI should be more active in persuading States to adopt international instruments with which it has been involved.

3. Conferences and profile

(a) **Spain:** The CMI should organise one Conference every four years and an International Colloquium every two years (between main Conferences). The CMI should also organise seminars in different countries, sponsored by the CMI but organised by the local National Association.

(b) **UK:** There should be more frequent CMI sponsored Conferences at which a wider range of delegates should be given the opportunity to update themselves on the work of the CMI and to contribute to that work. These Conferences should be held in recognised business centres in order to attract delegates. It should be recognised that for delegates these Conferences would be an opportunity for lawyers and others in the maritime field to meet and develop relationships and friendships. The traditionally quadrennial Conferences should continue.

The CMI should raise its profile, publicise its activities and generally look for opportunities to express in public its views on relevant issues.

(c) **Venezuela:** In addition to regular Conferences every 4 years the CMI should organise a Colloquium every 2 years.

4. Role and importance of National MLA

(a) **Belgium:** The CMI risks being dominated by wealthy National Associations who can afford dues and attend Assembly meetings. It is wrong that the voices of the poorer National Associations should not be heard. Maritime commerce is international in nature and it is necessary to avoid countries obtaining a dominant position. It is important that International Conventions should be “just” that is to say taking account of the interests of all and not designed to protect the interests of certain groups. The CMI must find a way of responding to its prime function which is to allow everyone to have a say. The more nations that are able to contribute to the drafting of an instrument the greater likelihood there is that the instrument will be widely accepted. More and more of the CMI’s decisions are taken by the Executive Council; all decisions come “from on high” and “les jeux sont faits d’avance”. This situation must be urgently remedied.

Geographical distance should not be an obstacle preventing National Associations from joining in a vote when decisions need to be taken. Proxy voting should be introduced.

(b) **Canada:** There is a perception that the CMI has a European bias which affects its work methods and results. The CMI president and/or designated Executive Counsellors should visit North and South America, Africa and Asia from time to time. This would develop the CMI’s relations with its member associations. On such visits National Associations would have the opportunity to express ideas on CMI work and the Executive Counsellor would have the opportunity of examining the effectiveness of the National Association.

Some National Associations exist in name only because they have not developed an inclusive approach to membership and work product. Some National Associations are moribund and hard questions need to be asked about the ability of some National Associations to organise themselves effectively. Constitutions and membership criteria of National Associations should be scrutinised to determine if they are unduly restrictive. National Associations must be encouraged to ensure participation by a wide range of members of the marine industry, insurers, terminal operators, academics and government officials.

It is recommended that Executive Council with the assistance of CMI members should undertake a country by country review of all National Associations to determine the status and effectiveness of the internal organisation, work methods and leadership.

(c) **UK:** Where full international sub-committees have been created it is very notable that only a minority of National Associations find it possible to bear the expense of sending a representative to meetings. In order for the CMI to remain an inclusive organisation new work methods (such as creation of Correspondence Groups) should be considered.

National Associations should be invited to organise themselves in such a way that they can respond within a reasonable time to CMI questionnaires and other enquiries.

(d) **Venezuela:** The former practice of Executive Counsellors attending conferences organised by National Associations should be revived. This would help to give credibility to National Associations.

The CMI must ask National Associations to include non-lawyers, brokers, shipowners, agents, underwriters, adjusters in their Associations. Many National Associations have become dominated by lawyers. Better balanced membership is essential if CMI is to retain its credibility.

5. Administrative aspects including location and staffing of headquarters

(a) **Canada:** For good historic reasons the administration of the CMI has been located in Antwerp. It has been run from private offices and run well. This is a good opportunity to improve the effectiveness of the CMI and meet the demands of the next century by changing the present location and method of working. Specifically:

- (i) Development of a permanent headquarters. Belgium has received the prestige and benefits of having the CMI on its soil for 100 years. The Belgian Government might be persuaded to fund a permanent establishment to house the Treasurer/Administrator, Secretariat and (possibly) the Secretary General. There could be a boardroom and meeting rooms so that apart from Executive Council and sub-committee meetings other international organisations could be invited for seminars or meetings which would add to the prestige of the CMI.
- (ii) Move the head office from Antwerp to Brussels or London. Antwerp is a difficult place for international travellers to reach and CMI members are more likely to have business in London or Brussels.
- (iii) The Secretariat should have up-to-date communications technology in a permanent headquarters to better service the membership at large.

(b) **USA:** The CMI should promptly review and modify the staffing, communications and methods of communication, eg use of E-Mail and other technology.

(c) **Spain:** The CMI should set up a permanent Enquiry Office to be located and run under the supervision of the Secretary General. This office should be entrusted to deal with enquiries on legal issues and other requests for information and documents which may be received from National Associations. Internet communication services are essential.

(d) **UK:** Given the changed role and the decrease in opportunities for National Associations to contribute to CMI work projects, the CMI's publications must play an increasingly important role in keeping members advised of the progress on work in hand. If necessary, more resources should be devoted to the publishing limb of the organisation. Currently only twelve National Associations distribute Yearbooks to members. A much wider

distribution should be encouraged. The CMI should open a Home Page on the Internet on which all its publications can be displayed.

There should be a full review of the administrative expenses involved, currently running at around £150,000 per annum, to see whether any economies can be made. The Belgian government, as host nation to the CMI for 100 years, might be invited to offer free accommodation and secretarial services.

(e) **Venezuela:** CMI should encourage National Associations to inform their members of the CMI's activities. The CMI Yearbooks and News Letters should be more widely distributed.

6. Executive Council including tenure, frequency of meetings and communications

(a) **Belgium:** The Executive Council decides too much without proper consultation. Distance prevents representatives of National Associations attending Assembly Meetings and their voice is therefore not heard. Proxy voting should be introduced to remedy this situation. The Executive Council often acts in a high handed manner imposing decisions without proper consultation – the creation of the EuroSection is an example of this.

(b) **Canada:** The CMI membership consists of some 55 National MLAs (many of these are inactive). There are 15 members of the Executive Council including the Treasurer and Administrator. The size of the Council might be increased (despite the cost penalty) to better reflect the present world shipping community. South East Asia is not represented. The perception, if not the reality, is that there is a European bias in the CMI. Certainly the CMI has been centralised in Europe for the past 100 years, and for good reason, but the world has changed and a more international image, with a resulting increase in credibility, is desired. It is recommended that the Executive Council should be increased by two to three people to develop representation from South East Asia (Singapore), Africa and China. Article 14 of the Constitution would need to be amended.

As regards tenure, the recent amendments to the Constitution should, with vigilance, encourage a regular turnover of Officers and members of the Executive Council. Increased efforts should be made to recruit younger and more active people to the Executive Council.

As regards Executive Council meetings, two meetings a year are probably insufficient to give full effect to the requirements of the CMI Constitution and its responsibilities as a prestigious international organisation. The Executive Council should spend more time on strategic planning. The CMI should consider ways of arranging more Executive Council meetings without necessarily increasing the costs by using such devices as video, telephone conferences in addition to face to face meetings. If there are to be more meetings, with a resulting increase in costs, it is suggested that National MLAs should contribute part of the costs of a representative from their country attending Executive Council meetings.

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It is recommended that the Executive Council have more frequent (possibly monthly) meetings by telephone/video conference in addition to the two regular meetings per annum currently held. A small working group should be established to study the issue of travel expenses. Meetings of the Executive Council should be arranged, where possible, to coincide with other international events/conferences which are likely to be attended by some members of the Executive Council in their business capacity.

The CMI should embrace electronic communication technology by establishing an E-Mail communication system and by establishing a web site which could be accessed by National MLA's and CMI members.

(c) **Venezuela:** The CMI should embrace modern communications technology.

7. Payment of dues and finances generally

(a) **Belgium:** A method must be found of enabling even those who do not pay their dues to have their voice heard in CMI discussions.

(b) **Canada:** The Canadian Maritime Law Association has prepared a detailed submission on finances and this appears as Appendix 1 to this report.

(c) **UK:** There should be a full review of the administrative expenses involved in running the CMI (currently around £150,000 per annum). The objectives of this exercise should be to see whether any economies can be made.

II

REPORT ON PLENARY SESSION (JUNE 14TH 1997)

The documents available to the delegates attending the Plenary Session were:

1. Synopsis of Responses from National Associations
2. Response from the maritime Law Association of Australia and New Zealand
3. Response from the Association Française du Droit Maritime.
4. Document ANTW./97;FUTURE-2;Summary of Issues.

The **President, Professor Allan Philip**, opened the session and indicated that following general opening statements he would wish delegates to deal with the groups of issues (1 to 7 contained in the Summary of Issues).

Nigel Frawley (Canada) confirmed the loyal support of his Association and enthusiasm for the work of the CMI. He suggested that the CMI was at something of a crossroads and must change with the times. It should clarify its role and generally modernise its administrative functions and communications.

Dr Albrecht (Germany) referred to the "100 glorious years" of the CMI and echoed Canada in pointing out that times change and new solutions are required for new problems. He suggested that all delegates should accept that

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UN Agencies have taken over much of the work which the CMI used to do but he urged the CMI to continue to take the initiative in looking for areas in which uniformity of law could, with advantage, be achieved. Apart from taking the initiative in such matters the CMI should continue its work in co-operation with the UN Agencies. Dr Albrecht stressed that in an organisation, such as the CMI, the members are all important; they must be kept informed of what is happening if their interest in projects is to be retained. In this connection he thought that some structural changes might be necessary and certainly felt that new ways of consulting National Associations would need to be found. He suggested that more seminars should take place and that bi-lateral meetings of National Associations on particular topics might be valuable.

Professor Jan Ramberg (Sweden) pointed out that a number of proposals which had already been made would require an increase in expenditure. The CMI is short of funds. He thought that it might be possible to earn some additional income from seminars organised on a commercial basis.

Mr Niall McGovern (Ireland) emphasised the importance of the CMI as a source of friendship and business contacts. He reminded delegates that the founders of the CMI had intended that the driving force of the organisation should be "the men who do the business" and that the lawyers should "merely hold the pen". He felt that this had perhaps been ignored by some National Associations. He added that the CMI should be very selective in picking the subjects to be worked upon and stressed that the work product should not be too academic and that practical problems should be accorded practical solutions. He proposed that the CMI retain, as much as possible, its method of work; using International Working Groups, questionnaires and International Sub-committees. He did not like the idea of allowing a CMI spokesman to attend meetings without full consultation of all members. Mr McGovern was critical of the IMO Legal Committee, suggesting that the amendments which the Committee made to CMI drafts did not necessarily always improve them.

Mr Jose-Maria Alcantara (Spain) proposed that the CMI should continue its debate about the future beyond the Plenary Session. He placed three proposals on the table:

1. Improvement in the link with National MLA's
2. Seek alternative financing – the CMI cannot live on its dues alone;
3. Seek new ideas and new blood.

Lord Mustill (UK) suggested that the CMI needed to be clear as to its role which should be pro-active rather than re-active. The CMI should be a leader – not a follower; it should project itself to the outside world and should develop more youthful characteristics.

Professor Zhu (China) criticised the CMI for being dominated by European nations and pointed out that Asia is where the economies are growing. He suggested that the developing countries should be more involved.

Mr Pereira (Brazil) urged the CMI to continue trying to make itself "really international".

Maitre Roger Roland (Belgium) urged the CMI to establish its general principles and to develop a philosophy. He expressed the view that several more recent CMI conventions had lacked balance and suggested that this is

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why many of the earlier conventions had received more support from States Parties and then the recent one.

President Philip agreed that National Associations needed to be better balanced between the shipping trades and the lawyers.

Mr James Moseley (USA) expressed his Association's support for the CMI and urged the Organisation to "look at the horizon and beyond". In its advisory capacity he suggested that the world community would continue to consult the CMI only if the CMI produced good quality work and had something useful to offer. Leadership and more careful attention to planning were necessary.

Tom Mensah (President of the Tribunal for the Law of Sea, Hamburg) expressed his gratitude for the knowledge of maritime law which he had acquired "at the feet of the CMI". He contrasted the role of the CMI before the 1960's and after. In his view the CMI had an essential role to play and this was advising other organisations upon the best way to harmonise law. The CMI should recognise that the IMO Legal Committee stands between it and the Diplomatic Conferences but this does devalue the work of CMI. He stressed that the CMI should regard itself as a centre of excellence and it would only remain important as long as the quality of its work was high. As to the allegation that the CMI was dominated by Western European nations he said that he felt that this was a "matter of perception". He did, however, recognise that a way should be found of helping to form new National Maritime Law Associations.

Professor Francesco Berlingieri (Italy) agreed that the debate should concern how to achieve the aims of the CMI. Initiating conventions might no longer be its primary function.

John Hare (South Africa) urged the CMI to adopt modern communication systems. He said that it was essential for smaller or distant nations to become more involved in the day to day work of the CMI. This could only be achieved by embracing modern communication systems.

Professor Francesco Berlingieri (Italy) raised the problem of the CMI Observer who is required to defend the CMI draft in discussions with UN Agencies. How could he be empowered?

Ron Salter (Australia) urged the CMI to embrace electronic means of communication. This, he said, would enable Correspondence Groups to be run to which all National Associations, wherever they could contribute.

Nigel Frawley (Canada) endorsed the use of Correspondence Groups and advocated the use of phone/video conferencing.

Niall McGovern (Ireland) in relation to the role of the CMI Observer said that he should be in a position to explain the thinking of the CMI and point out topical problems but should not be in a position to authorise change to CMI drafted documents.

Professor H. Tanikawa (Japan) stated that Correspondence Groups "could be useful" and suggested that the CMI should consider starting Standing Committees within both CMI and National Associations.

Mr. Rolf Herber (Germany) discussed the problem of CMI Observers. He stressed that they cannot get instructions on all possible issues and that they

should be encouraged to express their “personal views” in the absence of direct authority from CMI. He adopted the idea of Correspondence Groups with enthusiasm and suggested that National Associations should only nominate an expert in a particular topic under discussion to work on Correspondence Groups.

Mr J. S. Rohart (France) urged more democracy in the CMI. He supported the concept of Standing Committees on the right topic.

Mr Bent Nielsen (Denmark) also drew attention to the problems of CMI Observers at Legal Committee meetings. Substantial documents had to be submitted two months before a meeting which left only four months following a meeting during which the CMI could carry out its consultations. This gave no opportunity to sub-Committees to produce their work and to check it with the Executive Council.

Richard Shaw (UK) also spoke on the subject of modern communications and pointed out that his International Working Group/Sub-Committee on Offshore Mobile Craft had benefitted from a number of meetings in which tele-conferencing was employed.

Delegates were then invited by **President Philip** to turn their attention to the seven groups of issues listed in the summary agenda (ANTW/97; FUTURE - 2).

1-2. Future work and work methods

Mr Jim Moseley (USA) urged the CMI to, once again, become its “own man” and, with this in mind, to create a Committee to produce a long range work structural plan for the CMI.

Lord Mustill (UK) supported the creation of such a committee and suggested that the CMI could usefully tackle a “most cosmopolitan area of law” – marine insurance where in his view, the field is open. He accepted that elements in the UK insurance market might not be happy but suggested that this was a topic ready for consideration. The emphasis should be on establishing general principles and not, necessarily, on producing a convention.

Jose-Maria Alcantara (Spain) proposed that the Executive Council should set up a committee to produce details of a working plan. As regards future work the CMI should consider getting involved in competition law and should investigate whether an exclusively CMI run arbitration scheme might be welcome.

Alfred Popp (Chairman, IMO Legal Committee) emphasised that he was speaking in a personal capacity and not on behalf of the Legal Committee. He suggested that the CMI should recognise that much of the work which it used to do had moved to inter-governmental bodies. Nonetheless the special expertise of the CMI should not be wasted. The CMI is in a unique position to produce balanced solutions based on a careful analysis of national laws unaffected by political considerations. He described this as a most valuable contribution. He suggested that the CMI should step up its co-operation with inter-governmental bodies and put the relationship on a more formal basis. Of

the 15 or so organisations with Observer status at Legal Committee meetings he felt that the CMI was the only organisation capable of offering balanced solutions. Apart from exploring subjects referred to it by inter-governmental bodies he suggested that CMI should look to a creative agenda perhaps by arranging a consultation process with the governments of Member States. These might be subject which the CMI could investigate and prepare preliminary documentation for the Legal Committee. He also suggested that the CMI had a role to play in ensuring that new and existing international instruments were implemented in Member States. The CMI should survey the position in relation to existing instruments and could perhaps help the governments of developing nations with technical assistance in implementation. He pointed out that the IMO had funds available to pay consultants to help IMO Member States facing problems of implementation. The consultants could come from within CMI.

Dr Albrecht (Germany) supported the proposals under 2 (b), (d) and (e) in ANTW/97.

Future – 2

Professor Tanikawa (Japan) supported the suggestions of Mr Alfred Popp and recommended that an informal Consultation Group should be set up jointly with the IMO Secretariat to discuss future projects on which the CMI might be able to assist. He also suggested that the CMI should nominate representatives to establish and maintain close contacts within UN Agencies and other inter-governmental bodies. The role of the CMI in gathering and distributing information should be developed further.

Professor Francesco Berlingieri (Italy) supported the idea that the CMI should devote time to tracking the implementation and interpretation of conventions.

Mr Thomas Mensah (President, Tribunal for the Law of the Sea) also picked up the suggestion in relation to implementation of Conventions which he suggested should be monitored by National Maritime Law Associations. Liaison with inter-governmental bodies and UN Agencies in this connection would also be useful. He strongly urged the CMI to make efforts to shed its image as a organisation representing the interests of shipowners and insurers. National Associations should be encouraged to increase their membership of organisations representing shippers of cargo as well as other branches of the shipping trade.

Mr Dermot McNulty (Ireland) stressed the urgency for the CMI for changing its image so that it could be widely seen as an organisation representing all facets of the shipping trade.

3. Conferences etc.

Mr. J. S. Rohart (France) suggested that the CMI should revise its conference system. One week with a day off in the middle is too long. A

The Future of the CMI

conference of this length could only be justified if the CMI was in the process of drafting an instrument. He suggested that the CMI should aim to organise more conferences and that each one should be shorter.

Mr. Jose Maria Alcantara (Spain) recommended quadrennial meetings with colloquia in between and endorsed the proposal contained in 3(b)(c)(d)&(e). He also proposed that the CMI should investigate the possibility of obtaining some funding from governments or other international organisations for its work.

Mr. Niall McGovern (Ireland) suggested, in relation to 3(d), that it was not necessary actively to seek to project a profile. If the quality of the work was good enough the assistance of the CMI would become widely in demand.

Thomas Burckhardt (Switzerland) felt that fund raising seminars should be a feature of the activities of CMI and that its periodic conferences should be no more than three or four days. He urged the CMI not to abandon its drafting work.

Dr. Albrecht (Germany) thought that the gap between full conferences should be four years at the minimum and that the conferences should be shorter. He was not in favour of CMI sponsoring conferences and agreed that the CMI, like all other international organisations, did need to develop a profile. The profile of the CMI should be one of quality and the organisation should be seen as the champion of uniformity. He was in favour of the CMI encouraging national governments to send observers to its conferences.

4. National MLA

Joanne Gauthier (Canada) emphasised that the survival on the CMI depends of the membership of National MLAs which must be properly organised and representative. She suggested that the CMI should set guidelines for membership. **President Philip** suggested that it might be helpful for the CMI Administrator to receive from all Associations, a list of its members.

Jonathan Hare (Africa) suggested that some of the outlying MLAs, such as that in South Africa, would appreciate visits, subject to funds being available to cover the cost, from members of the Executive Council.

Jose-Maria Alcantara (Spain) considered the questions listed under section 4 of the summary and recommended that voting by proxy should be allowed and that the proxies should be collected in advance. The votes in respect of which proxies would be permitted should be limited to matters of membership, structure and items vital to the future of the CMI. He also invited the Executive Council to seek a better geographical spread for its membership. As regards help for National Associations he felt that offers of assistance would be appreciated but that in no sense should this be an inquisition carried out by the officers of the CMI. As a side issue he mentioned that he felt that there were too many Titulary Members and that the requirements for nomination were not being strictly adhered to. He was very much in favour of a campaign to increase the number of member MLA's.

Niall McGovern (Ireland) was against all forms of proxy voting. He accepted that the CMI was seen to be dominated by European nations and a

Part II - The Work of the CMI

broader based geographical membership would be appropriate. Officers of the CMI could certainly offer to help with advice on making national MLA's more efficient but should not force their assistance on those MLAs. He felt that a recruitment drive in the Far East would be desirable and appropriate.

Nigel Frawley (Canada) stated that proxy voting should not be permitted. If any national MLA felt strongly enough about an issue a phone link could be arranged to enable them to hear and join in the debate.

Dr. Albrecht (Germany) urged the Executive Council to find ways of persuading national MLA's to respond more regularly to questionnaires. He could not suggest a reason why some MLA's were bad in this respect.

Mr. Ezenachukwu (Nigeria) felt that there was not enough encouragement being given to national MLAs by the officers of the CMI.

5. Administration

President Philip pointed out that in relation to question 5(b) the CMI should not seek financial aid from governments as this would imperil its UN consultative status and would generally damage its independence.

Nigel Frawley (Canada) urged the Executive Council to approach the Belgian government to see whether subsidised accommodation might be made available. Perhaps a new host nation could be found to accommodate the CMI without getting so close as to effect its important independent status.

José-Maria Alcantara (Spain) stated that the economics of the operation were vitally important and recommended that the CMI should continue to be based in Antwerp for historical and other good reasons. He also suggested that government aid might be contemplated. As regards his suggestion of setting up a CMI enquiry office he proposed that the cost of this could be covered by making a charge to people who made enquiries.

Bent Nielsen (Denmark) whilst accepting that administration was inevitably expensive suggested that the secretarial functions of the CMI needed to be improved. In particular he thought that the communications were haphazard and inefficient. On a more general point he suggested that the CMI should augment income by running seminars.

J. S. Rohart (France) suggested that the aim should be to achieve a better service for less money. He was content that the headquarters should remain in Antwerp.

Niall McGovern (Ireland) warned against seeking government aid which would imperil the independence of the CMI and felt that the organisation should continue to be based in Antwerp.

Jonathan Hare (South Africa) expressed the view that the CMI's publications were vital and should be put on the Internet and that hard or electronic copies should be available on request. He was also in favour of the Secretariat remaining in Antwerp.

Mr. Jose Apollo (Ecuador) warned against seeking government aid on the basis that this would compromise the independence of the CMI. He would like the Secretariat to remain in Antwerp and took the opportunity of thanking the Belgian Association for its hospitality at the Antwerp Conference.

6. The Executive Council

Jose-Maria Alcantara (Spain) was against increasing the size of the Executive Council and felt that the necessary international geographical spread could be achieved within the current numbers.

7. Dues

Mr B. Oland (Canada) summarised the Canadian view on the subject of finances. He confirmed the Canadian Association's strong support for the CMI but warned that the organisation could not continue to function unless the finances were sound. An efficient Secretariat was essential. If it was not efficient national MLAs could easily be disheartened and cease to take any interest. He urged delegates to look carefully at Appendix 1 to the Synopsis which contained the Canadian breakdown of the finances of the CMI. In particular he drew attention to the fact that the cost of administration absorbed nearly 40% of the income and he questioned whether the organisation needed so many officers. The cost of travel for those whose travel expenses were chargeable to the CMI represented nearly 34% of the expenses and he wondered whether the use of modern communications could reduce the need for travel. He urged the CMI to become more "commercial" in the way in which it run its operation. He urged the Executive Council to set up a committee to examine the running of the CMI and in this connection suggested that one or two businessmen should be included on the committee. Finally he recommend that the Executive Council should become much tougher on unpaid dues and should suspend delinquent associations in accordance with the constitution.

III

REPORT OF PROF. ALLAN PHILIP TO THE CMI ASSEMBLY HELD ON 15TH JUNE 1997

We now come to CMI in the future.

In my letter past December we invited you to make comments and suggestions with respect to working methods and subjects. We thought that at a Centenary it is natural to look back and forward. We also thought that, although CMI function reasonably well, like with an old car it is useful from time to time to make an overhaul. We also wanted to hear the ideas, including any criticism, that our members might have.

We got the nine written replies and the very interesting discussion of yesterday morning. That has given us a lot of food for thought. We have had a first exchange of views yesterday afternoon during the short time available between boat trip and banquet and we shall continue with that this afternoon.

Part II - The Work of the CMI

Some ideas are uncontroversial and may be implemented very soon. Others will require further study.

It is, of course, very important that in implementing suggestions we do it with proper timing and do not risk to interfere with the day to day work of the organization.

We must be able to continue to fulfil our functions at the same time as we modify the machinery and I want to underline what I have had confirmed this week from many sides, including the governmental organizations with which we work, that they are very happy with the way in which we fulfil those functions.

The very provisional conclusion is that we shall set up one or probably two committees to make recommendations on the various topics that cannot be dealt with off hand by the Council.

It is especially the relation to and communication with the member associations and the working methods that we use in our work that have to be looked at, but also the machinery in the broad sense at our disposal. Closely related to that are the financial aspects, the money we use and from whom we get it. That has now much more actuality as an increasing number of member association are complaining over the size of their contributions, both absolutely and in relative terms. It is a very difficult matter to make any form of redistribution of contributions, as it has been experienced before. A special committee probably has to be set up for this purpose and for looking at finances in the light of the past and the requirements of the future, especially the needs which will result from changing the working process technologically as it has been proposed if that is what we decide.

It was suggested yesterday that any committee to be set up should not only consist of council members and I would agree that it would be good to be able to draw on assistance from able and willing members in that respect.

Now it is often said that committees are the devil's creation. I can ensure you that we wish to work as quickly as possible, taking into consideration that all labour is on a voluntary basis.

We shall be reporting back to you in writing and at the next assembly, if necessary by calling an extraordinary assembly at the end of the year or early next year.

**CLOSING SPEECHES
OF
THE PRESIDENT OF THE CMI
PROF. ALLAN PHILIP**

**SPEECH OF THE PRESIDENT OF THE CMI,
PROF. ALLAN PHILIP,
AT THE BANQUET AT THE CENTENARY CONFERENCE**

My final task at this conference is to bring to the Belgian Association our very heartfelt thanks for a successful conference and a wonderful week in this charming city. We returned to our birthplace of one hundred years ago with high expectations as to the reception we would get from our parent association. These expectations have been exceeded by far. The hospitality throughout the week, the excursions, receptions, boat trips and dinners have really been fantastic, even to the point of serving a grand *crû* red wine to 500 people.

As I said on Monday, this has been a different type of conference from what we are used to. We have held a number of mini seminars on subjects which we have studied in the past or have considered studying more in depth in the future. I think that the participation at the meetings and the interest shown by participants has proven that this has been the right choice for this Centenary Conference and that even in the future, this type of meeting should at least form a part of meetings and conferences.

I wish, on behalf of all of you, to thank all those in the working groups, subcommittees and panels, who have contributed to ensuring that the intellectual content of the conference has been of a high order.

This being said, the responsibility of making this conference such a tremendous success as I feel it has been, is with the Belgian Association under Roger Roland, the agency it has engaged to assist it under the devoted leadership of Mr. Van Riel, and last but not least, our own secretariat here in Antwerp under Baron Delwaide and efficiently run by Mrs. Sterckx.

All of these deserve our sincere thanks for creating the framework necessary for the success of the conference. I think we should applaud them.

Let me finish by thanking you all for your contributions to the success of the conference, intellectually or otherwise.

The CMI cannot do anything by itself. Its results are due to the time and effort devoted to its work by many individual members. An enormous number of members have, over the last 100 years, contributed to making CMI what it is today.

It has been a special satisfaction to me at this conference to see how many members have come and have actively participated in the work. In particular, I have rejoiced in the great number of younger participants at this conference. It confirms to me that there will also, in the next century, be members who will take up the work and continue it.

Closing Speeches of the President of the CMI

As I said on Monday, we shall have to adjust ourselves to new circumstances just as we have been able to in the past. The discussion we had this morning will undoubtedly contribute to that.

I thank you all for contributing each in your own way to making the first 100 years and this conference in celebration thereof a great success and wish you continued enjoyment tonight and a happy return to your countries.

**SPEECH OF THE PRESIDENT OF THE CMI,
PROF. ALLAN PHILIP,
AT THE ASSEMBLY OF THE CMI JUNE 14, 1997**

First of all thank you, Patrick, Jim and Jean-Serge for your nice words. And then, thank you all and through you the national associations from which you come, and all those in them whom I have met and worked with during 40 years of activity within the CMI.

I have enjoyed these last 6 years as president of the CMI. It has been a time full of work of many kinds and full of meetings with many members, and it has been most interesting.

I never had the ambition of becoming president, and I think you know that I said no when it was first suggested to me. I had many good reasons for that with which I shall not bother you.

When I accepted, it was because there was a need for a change of generation for which we had not and were not prepared. I thought I could bridge that gap and prepare that change and that is what I have strived for, and I am glad to say that I believe we have succeeded. There is now a good group of people of a younger generation and with a lot of knowledge and experience, who can take over and take the CMI into the 21st century. There is a new president, who has all the qualifications needed for the job. And there is a reasonable age composition, which can ensure the continuity, which is very important in such an organization, a fact which I hope you will keep in mind in the future, notwithstanding any wishes to have a certain turnover in the composition of the Council.

If my six years have been a reasonably successful period for the CMI, it is only due to the fact that I have had a wonderful response from all parts of the organization whenever it was needed, be it the Council, the Assembly or the National Associations. That has, of course, been especially true with respect to the two conferences that have been held during my time, that in Sydney and the present. For that I am extremely grateful. And I thank you all for the confidence you have shown me during those 6 years.

But CMI is more than conferences and internal relations. The close cooperation between the CMI and a number of international organizations and CMI's activity in trying to influence the development in the maritime field on a number of levels result in a constant stream of faxes passing over the president's table, which must be taken care of one way or the other. Many have helped me to do that and I cannot mention all their names. But I am extremely grateful for it. However, I have been so fortunate like Franklin Roosevelt to have a little kit-

Closing Speeches of the President of the CMI

chen cabinet to draw upon, without whose help I would not have been able to complete the task. Each one of them has been burdened with a lot of work, and sometimes I have wondered whether my principal task perhaps really was to allocate work between them. They have, however, responded in a wonderful way. I hope that nobody else will feel injured, if I mention their names. It is Francesco Berlingieri, Patrick Griggs and Frank Wiswall and then, of course, the officers, Henri Voet and Alexander von Ziegler as well as Leo Delwaide and his office, particularly Ms. Sterckx. I wish to tell you how grateful I am for the help and assistance you have given me and how much I have enjoyed our co-operation.

Let me finish by thanking you all and wishing all the best for the CMI in the future.

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 Etats dont le nom est suivi par un astérisque ont fait des réserves. Un résumé du texte de ces réserves est publié après la liste ratifications de chaque Convention.

**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) - The States whose names are followed by an asterisk have made reservations. The text of such reservations is published, in a summary form, at the end of the list ratifications of each convention.

**Convention internationale pour
l'unification de certaines
règles en matière
d'Abordage
et protocole de signature**

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1er mars 1913

**International convention
for the unification of certain
rules of law relating to
Collision between vessels
and protocol of signature**

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Angola	(a)	20.VII.1914
Antigua and Barbuda	(a)	1.II.1913
Argentina	(a)	28.II.1922
Australia	(a)	9.IX.1930
Norfolk Island	(a)	1.II.1913
Austria	(r)	1.II.1913
Barbados	(a)	1.II.1913
Belgium	(r)	1.II.1913
Brazil	(r)	31.XII.1913
Canada	(a)	25.IX.1914
Cape Verde	(a)	20.VII.1914
China	(a)	28.VIII.1994
Cyprus	(a)	1.II.1913
Croatia	(a)	8.X.1991
Denmark	(r)	18.VI.1913
<i>(denunciation 1 September 1995)</i>		
Dominican Republic	(a)	1.II.1913
Egypt	(a)	29.XI.1943
Estonia	(a)	15.V.1929
Fiji	(a)	1.II.1913
Finland	(a)	17.VII.1923
France	(r)	1.II.1913
Gambia	(a)	1.II.1913
Germany	(r)	1.II.1913
Ghana	(a)	1.II.1913
Goa	(a)	20.VII.1914
Greece	(r)	29.IX.1913
Grenada	(a)	1.II.1913
Guinea-Bissau	(a)	20.VII.1914
Guyana	(a)	1.II.1913
Haiti	(a)	18.VIII.1951
Hungary	(r)	1.II.1913
India	(a)	1.II.1913
Iran	(a)	26.IV.1966
Ireland	(r)	1.II.1913
Italy	(r)	2.VI.1913
Jamaica	(a)	1.II.1913
Japan	(r)	12.I.1914

*Abordage 1910**Collision 1910*

Kenya	(a)	1.II.1913
Kiribati	(a)	1.II.1913
Latvia	(a)	2.VIII.1932
Luxembourg	(a)	22.IV.1991
Libyan Arab Jamahiriya	(a)	9.XI.1934
Macao	(a)	20.VII.1914
Madagascar	(r)	1.II.1913
Malaysia	(a)	1.II.1913
Malta	(a)	1.II.1913
Mauritius	(a)	1.II.1913
Mexico	(r)	1.II.1913
Mozambique	(a)	20.VII.1914
Netherlands	(r)	1.II.1913
Newfoundland	(a)	11.III.1914
New Zealand	(a)	19.V.1913
Nicaragua	(r)	18.VII.1913
Nigeria	(a)	1.II.1913
Norway	(r)	12.XI.1913
Papua New Guinea	(a)	1.II.1913
Paraguay	(a)	22.XI.1967
Poland	(a)	2.VI.1922
Portugal	(r)	25.XII.1913
Romania	(r)	1.II.1913
Russian Federation⁽¹⁾	(r)	10.VII.1936
Saint Kitts and Nevis	(a)	1.II.1913
Saint Lucia	(a)	3.III.1913
Saint Vincent and the Grenadines	(a)	1.II.1913
Solomon Islands	(a)	1.II.1913
Sao Tome and Principe	(a)	20.VII.1914
Seychelles	(a)	1.II.1913
Sierra Leone	(a)	1.II.1913
Singapore	(a)	1.II.1913
Slovenia	(a)	16.XI.1993
Somalia	(a)	1.II.1913
Spain	(a)	17.XI.1923
Sri-Lanka	(a)	1.II.1913
Sweden	(r)	12.XI.1913
<i>(denunciation 19 December 1995)</i>		
Switzerland	(a)	28.V.1954
Timor	(a)	20.VII.1914

⁽¹⁾ 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.

*Abordage 1910**Assistance et sauvetage 1910*

Tonga	(r)	13.VI.1978
Trinidad and Tobago		1.II.1913
Turkey		4.VII.1913
Tuvalu		1.II.1913
United Kingdom		1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla,	(a)	
Bermuda, Gibraltar, Hong Kong⁽¹⁾, Falk-	(a)	
land Islands and Dependencies, Cayman	(a)	
Islands, British Virgin Islands, Montserrat,		
Caicos & Turks Islands. Saint Helena,		1.II.1913
Wei-Hai-Wei		21.VII.1915
Uruguay		17.VII.1967
Zaire		

**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

Algeria	(a)	13.IV.1964
Angola	(a)	20.VII.1914
Antigua and Barbuda	(a)	1.II.1913
Argentina	(a)	28.II.1922
Australia	(a)	9.IX.1930
Norfolk Island	(a)	1.II.1913
Austria	(r)	1.II.1913
Bahamas	(a)	1.II.1913

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will or continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997.

In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Assistance et sauvetage 1910**Assistance and salvage 1910*

Barbados	(a)	1.II.1913
Belgium	(r)	1.II.1913
Belize	(a)	1.II.1913
Brazil	(r)	31.XII.1913
Canada	(a)	25.IX.1914
<i>(denunciation 22.XI.1994)</i>		
Cape Verde	(a)	20.VII.1914
Cyprus	(a)	1.II.1913
Croatia	(a)	8.X.1991
Denmark	(r)	18.VI.1913
Dominican Republic	(a)	23.VII.1958
Egypt	(a)	19.XI.1943
Fiji	(a)	1.II.1913
Finland	(a)	17.VII.1923
France	(r)	1.II.1913
Gambia	(a)	1.II.1913
Germany	(r)	1.II.1913
Ghana	(a)	1.II.1913
Goa	(a)	20.VII.1914
Greece	(r)	15.X.1913
Grenada	(a)	1.II.1913
Guinea-Bissau	(a)	20.VII.1914
Guyana	(a)	1.II.1913
Haiti	(a)	18.VIII.1951
Hungary	(r)	1.II.1913
India	(a)	1.II.1913
Iran	(a)	26.IV.1966
Ireland	(r)	1.II.1913
Italy	(r)	2.VI.1913
Jamaica	(a)	1.II.1913
Japan	(r)	12.I.1914
Kenya	(a)	1.II.1913
Kiribati	(a)	1.II.1913
Latvia	(a)	2.VIII.1932
Luxembourg	(a)	22.IV.1991
Macao	(a)	20.VII.1914
Malaysia	(a)	1.II.1913
Malta	(a)	1.II.1913
Madagascar	(r)	1.II.1913
Mauritius	(a)	1.II.1913
Mexico	(r)	1.II.1913
Mozambique	(a)	20.VII.1914
Netherlands	(r)	1.II.1913

*Assistance et sauvetage 1910**Assistance and salvage 1910*

Newfoundland	(a)	12.XI.1913
New Zealand	(a)	19.V.1913
Nigeria	(a)	1.II.1913
Norway	(r)	12.XI.1913
<i>(denunciation 9.XII.1996)</i>		
Oman	(a)	21.VIII.1975
Papua - New Guinea	(a)	1.II.1913
Paraguay	(a)	22.XI.1967
Poland	(a)	15.X.1921
Portugal	(r)	25.VII.1913
Romania	(r)	1.II.1913
Russian Federation	(a)	10.VII.1936
Saint Kitts and Nevis	(a)	1.II.1913
Saint Lucia	(a)	3.III.1913
Saint Vincent and the Grenadines	(a)	1.II.1913
Solomon Islands	(a)	1.II.1913
Sao Tomé and Principe	(a)	20.VII.1914
Seychelles	(a)	1.II.1913
Sierra Leone	(a)	1.II.1913
Singapore	(a)	1.II.1913
Slovenia	(a)	13.X.1993
Somalia	(a)	1.II.1913
Spain	(a)	17.XI.1923
Sri Lanka	(a)	1.II.1913
Sweden	(r)	12.XI.1913
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Timor	(a)	20.VII.1914
Tonga	(a)	13.VI.1978
Trinidad and Tobago	(a)	1.II.1913
Turkey	(a)	4.VII.1955
Tuvalu	(a)	1.II.1913
United Kingdom ⁽¹⁾	(r)	1.II.1913
Anguilla, Bermuda, Gibraltar, Hong Kong ⁽²⁾, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks & Caicos Islands, Saint Helena	(a)	1.II.1913
<i>(denunciation 12.XII.1994 effective also for Falkland Islands, Montserrat, South Georgia and South Sandwich Islands)</i>		

⁽¹⁾ Including Jersey, Guernsey and Isle of Man.

⁽²⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997:

In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Assistance et sauvetage 1910**Assistance and salvage - Protocole 1967*

United States of America	(r)	1.II.1913
Uruguay	(a)	21.VII.1915
Zaire	(a)	17.VII.1967

**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

Austria	(r)	4.IV.1974
Belgium	(r)	11.IV.1973
Brazil	(r)	8.XI.1982
Croatia	(r)	8.X.1991
Egypt	(r)	15.VII.1977
Jersey, Guernsey & Isle of Man	(a)	22.VI.1977
Papua New Guinea	(a)	14.X.1980
Slovenia	(a)	13.X.1993
Syrian Arab Republic	(a)	1.VIII.1974
United Kingdom	(r)	9.IX.1974

*Limitation de responsabilité 1924**Limitation of liability 1924*

**Convention internationale pour
l'unification de certaines
règles concernant la
Limitation de la responsabilité
des propriétaires
de navires de mer
et protocole de signature**

Bruxelles, 25 août 1924
Entrée en vigueur: 2 juin 1931

**International convention for
the unification of certain
rules relating to the
Limitation of the liability
of owners
of sea-going vessels
and protocol of signature**

Brussels, 25th August, 1924
Entered into force: 2 June, 1931

Belgium	(r)	2.VI.1930
Brazil	(r)	28.IV.1931
Denmark (denunciation - 30.VI.1983)	(r)	2.VI.1930
Dominican Republic	(a)	23.VII.1958
Finland (denunciation - 30.VI.1983)	(a)	12.VII.1934
France (denunciation - 26.X.1976)	(r)	23.VIII.1935
Hungary	(r)	2.VI.1930
Madagascar	(r)	12.VIII.1935
Monaco (denunciation - 24.I.1977)	(r)	15.V.1931
Norway (denunciation - 30.VI.1963)	(r)	10.X.1933
Poland	(r)	26.X.1936
Portugal	(r)	2.VI.1930
Spain	(r)	2.VI.1930
Sweden (denunciation - 30.VI.1963)	(r)	1.VII.1938
Turkey	(a)	4.VII.1955

**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

Algeria	(a)	13.IV.1964
Angola	(a)	2.II.1952
Antigua and Barbuda	(a)	2.XII.1930
Argentina	(a)	19.IV.1961
Australia*	(a)	4.VII.1955
Norfolk	(a)	4. VII.1955
Bahamas	(a)	2.XII.1930
Barbados	(a)	2.XII.1930
Belgium	(r)	2.VI.1930
Belize	(a)	2.XI.1930
Bolivia	(a)	28.V.1982
Cameroon	(a)	2.XII.1930
Cape Verde	(a)	2.II.1952
Cyprus	(a)	2.XII.1930
Croatia	(r)	8.X.1991
Cuba*	(a)	25.VII.1977
Denmark*	(a)	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
Dominican Republic	(a)	2.XII.1930
Ecuador	(a)	23.III.1977
Egypt* (1)	(a)	29.XI.1943
Fiji	(a)	2.XII.1930
Finland	(a)	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).

*Règles de La Haye**Hague Rules*

France*	(r)	4.I.1937
Gambia	(a)	2.XII.1930
Germany	(r)	1.VII.1939
Ghana	(a)	2.XII.1930
Goa	(a)	2.II.1952
Greece	(a)	23.III.1993
Grenada	(a)	2.XII.1930
Guyana	(a)	2.XII.1930
Guinea-Bissau	(a)	2.II.1952
Hungary	(r)	2.VI.1930
Iran	(a)	26.IV.1966
Ireland*	(a)	30.I.1962
Israel	(a)	5.IX.1959
Italy	(r)	7.X.1938
<i>(denunciation – 22.XI.1984)</i>		
Ivory Coast*	(a)	15.XII.1961
Jamaica	(a)	2.XII.1930
Japan*	(r)	1.VII.1957
<i>(denunciation – 1. VI.1992)</i>		
Kenya	(a)	2.XII.1930
Kiribati	(a)	2.XII.1930
Kuwait*	(a)	25.VII.1969
Lebanon	(a)	19.VII.1975
Malaysia	(a)	2.XII.1930
Madagascar	(a)	13.VII.1965
Mauritius	(a)	24.VIII.1970
Monaco	(a)	15.V.1931
Mozambique	(a)	2.II.1952
Nauru*	(a)	4.VII.1955
Netherlands*	(a)	18.VIII.1956
<i>(denunciation – 26.IV.1982)</i>		
Nigeria	(a)	2.XII.1930
Norway	(a)	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
Papua New Guinea*	(a)	4.VII.1955
Paraguay	(a)	22.XI.1967
Peru	(a)	29.X.1964
Poland	(r)	4.VIII.1937
Portugal	(a)	24.XII.1931
Macao	(a)	2.II.1952
Romania	(r)	4.VIII.1937
Sao Tomé and Principe	(a)	2.II.1952
Sarawak	(a)	3.XI.1931
Senegal	(a)	14.II.1978
Seychelles	(a)	2.XII.1930
Sierra-Leone	(a)	2.XII.1930

*Règles de La Haye**Hague Rules*

Singapore	(a)	2.XII.1930
Slovenia	(a)	25.VI.1991
Solomon Islands	(a)	2.XII.1930
Somalia	(a)	2.XII.1930
Spain	(r)	2.VI.1930
Sri-Lanka	(a)	2.XII.1930
St. Kitts and Nevis	(a)	2.XII.1930
St. Lucia	(a)	2.XII.1930
St. Vincent and the Grenadines	(a)	2.XII.1930
Sweden	(a)	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
Switzerland*	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Tanzania (United Republic of)	(a)	3.XII.1962
Timor	(a)	2.II.1952
Tonga	(a)	2.XII.1930
Trinidad and Tobago	(a)	2.XII.1930
Turkey	(a)	4.VII.1955
Tuvalu	(a)	2.XII.1930
United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)*	(r)	2.VI.1930
<i>(denunciation – 13.VI.1977)</i>		
Gibraltar	(a)	2.XII.1930
<i>(denunciation – 22.IX.1977)</i>		
Bermuda, Hong Kong (1), Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.		
<i>(denunciation 20.X.1983)</i>		
Anguilla	(a)	2.XII.1930
Ascension, Saint Helène and Dependencies	(a)	3.XI.1931
United States of America*	(r)	29.VI.1937
Zaire	(a)	17.VII.1967

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Hague Rules will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997.

In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

RESERVATIONS

Australia

- a) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.
- b) The Commonwealth of Australia reserves the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Cuba

Le Gouvernement de Cuba se réserve le droit de ne pas appliquer les termes de la Convention au transport de marchandises en navigation de cabotage national.

Denmark

...Cette adhésion est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:

- 1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissances et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
- 2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
- 3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention."

Egypt

...Nous avons résolu d'adhérer par les présentes à la dite Convention, et promettons de concourir à son application. L'Egypte est, toutefois, d'avis que la Convention, dans sa totalité, ne s'applique pas au cabotage national. En conséquence, l'Egypte se réserve le droit de régler librement le cabotage national par sa propre législation...

France

...En procédant à ce dépôt, l'Ambassadeur de France à Bruxelles déclare, conformément à l'article 13 de la Convention précitée, que l'acceptation que lui donne le Gouvernement Français ne s'applique à aucune des colonies, possessions, protectorats ou territoires d'outre-mer se trouvant sous sa souveraineté ou son autorité.

Ireland

...Subject to the following declarations and reservations: 1. In relation to the carriage of goods by sea in ships carrying goods from any port in Ireland to any other port in Ireland or to a port in the United Kingdom, Ireland will apply Article 6 of the Convention as though the Article referred to goods of any class instead of to particular goods, and as though the proviso in the third paragraph of the said Article were omitted; 2. Ireland does not accept the provisions of the first paragraph of Article 9 of the Convention.

Ivory Coast

Le Gouvernement de la République de Côte d'Ivoire, en adhérant à ladite Convention précise que:

- 1) Pour l'application de l'article 9 de la Convention relatif à la valeur des unités monétaires employées, la limite de responsabilité est égale à la contre-valeur en francs CFA sur la base d'une livre or égale à deux livres sterling papier, au cours du change de l'arrivée du navire au port de déchargement.
- 2) Il se réserve le droit de réglementer par des dispositions particulières de la loi nationale le système de la limitation de responsabilité applicable aux transports maritimes entre deux ports de la république de Côte d'Ivoire.

Japan

Statement at the time of signature, 25.8.1925.

Au moment de procéder à la signature de la Convention Internationale pour l'unification de certaines règles en matière de connaissance, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:

- a) A l'article 4.

Le Japon se réserve jusqu'à nouvel ordre l'acceptation des dispositions du a) à l'alinéa 2 de l'article 4.

- b) Le Japon est d'avis que la Convention dans sa totalité ne s'applique pas au cabotage national; par conséquent, il n'y aurait pas lieu d'en faire l'objet de dispositions au Protocole. Toutefois, s'il n'en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.

Statement at the time of ratification

...Le Gouvernement du Japon déclare

- 1) qu'il se réserve l'application du premier paragraphe de l'article 9 de la Convention; 2) qu'il maintient la réserve b) formulée dans la Note annexée à la lettre de l'Ambassadeur du Japon à Monsieur le Ministre des Affaires étrangères de Belgique, du 25 août 1925, concernant le droit de régler librement le cabotage national par sa propre législation; et 3) qu'il retire la réserve a) de ladite Note, concernant les dispositions du a) à l'alinéa 2 de l'article 4 de la Convention.

Kuwait

Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l'article 4, paragraphe 5, est augmenté jusque £ 250 au lieu de £ 100.

The above reservation has been rejected by France and Norway. The rejection of Norway has been withdrawn on 12 April 1974. By note of 30.3.1971, received by the Belgian Government on 30.4.1971 the Government of Kuwait stated that the amount of £ 250 must be replaced by Kuwait Dinars 250.

Nauru

Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territory of Nauru; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Netherlands

...Désirant user de la faculté d'adhésion réservée aux Etats non-signataires par l'article 12 de la Convention internationale pour l'unification de certaines règles en matière de connaissance, avec Protocole de signature, conclue à Bruxelles, le 25 août 1924, nous avons résolu d'adhérer par les présentes, pour le Royaume en Europe, à ladite

Convention, Protocole de signature, d'une manière définitive et promettons de concourir à son application, tout en Nous réservant le droit, par prescription légale,

1) de préciser que dans les cas prévus par l'article 4, par. 2 de c) à p) de la Convention, le porteur du connaissement peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par l'article 4, par. 2 a) de la Convention;

2) d'appliquer, en ce qui concerne le cabotage national, l'article 6 à toutes les catégories de marchandises, sans tenir compte de la restriction figurant au dernier paragraphe dudit article, et sous réserve:

1) que l'adhésion à la Convention ait lieu en faisant exclusion du premier paragraphe de l'article 9 de la Convention;

2) que la loi néerlandaise puisse limiter les possibilités de fournir des preuves contraires contre le connaissement.

Norway

...L'adhésion de la Norvège à la Convention internationale pour l'unification de certaines règles en matière de connaissement, signée à Bruxelles, le 25 août 1924, ainsi qu'au Protocole de signature y annexé, est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne la Norvège:

1) La loi sur la navigation norvégienne continuera à permettre que dans le cabotage national les connaissements et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées ou soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.

2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi norvégienne sur la navigation - le transport maritime entre la Norvège et autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.

3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome le 23 novembre 1933, ne seront pas affectées par cette Convention.

Papua New Guinea

Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territories of Papua and New-Guinea; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the 1st paragraph of that Article.

Switzerland

...Conformément à l'alinéa 2 du Protocole de signature, les Autorités fédérales se réservent de donner effet à cet acte international en introduisant dans la législation suisse les règles adoptées par la Convention sous une forme appropriée à cette législation.

United Kingdom

...I Declare that His Britannic Majesty's Government adopt the last reservation in the additional Protocol of the Bills of Lading Convention. I Further Declare that my signature applies only to Great Britain and Northern Ireland. I reserve the right of each of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of

each of the territories over which his Britannic Majesty exercises a mandate to accede to this Convention under Article 13, "...In accordance with Article 13 of the above named Convention, I declare that the acceptance of the Convention given by His Britannic Majesty in the instrument of ratification deposited this day extends only to the United Kingdom of Great Britain and Northern Ireland and does not apply to any of His Majesty's Colonies or Protectorates, or territories under suzerainty or mandate.

United States of America

...And whereas, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said convention and protocol of signature thereto, 'with the understanding, to be made a part of such ratification, that, notwithstanding the provisions of Article 4, Section 5, and the first paragraph of Article 9 of the convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding 500.00 dollars, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

And whereas, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding: That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the 'Carriage of Goods by Sea Act', the provisions of said Act shall prevail:

Now therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said convention and protocol of signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings hereinabove recited and made part of this ratification.

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

Belgium	(r)	6.IX.1978
Denmark	(r)	20.XI.1975
Ecuador	(a)	23.III.1977
Egypt*	(r)	31.I.1983
Finland	(r)	1.XII.1984
France	(r)	10.VII.1977

*Règles de Visby**Visby Rules*

Greece	(a)	23.III.1993
Italy	(r)	22.VIII.1985
Lebanon	(a)	19.VII.1975
Netherlands*	(r)	26.IV.1982
Norway	(r)	19.III.1974
Poland*	(r)	12.II.1980
Singapore	(a)	25.IV.1972
Sri-Lanka	(a)	21.X.1981
Sweden	(r)	9.XII.1974
Switzerland	(r)	11.XII.1975
Syrian Arab Republic	(a)	1.VIII.1974
Tonga	(a)	13.VI.1978
United Kingdom of Great Britain	(r)	1.X.1976
Bermuda, Hong-Kong⁽¹⁾	(a)	1.XI.1980
Gibraltar	(a)	22.IX.1977
Isle of Man	(a)	1.X.1976
British Antarctic Territories,		
Caimans, Caicos & Turks Islands,		
Falklands Islands & Dependencies,		
Montserrat, Virgin Islands (extension)	(a)	20.X.1983

RESERVATIONS**Egypt Arab Republic**

La République Arabe d'Egypte déclare dans son instrument de ratification qu'elle ne se considère pas liée par l'article 8 dudit Protocole (cette déclaration est faite en vertu de l'article 9 du Protocole).

Netherlands

Ratification effectuée pour le Royaume en Europe. Le Gouvernement du Royaume des Pays-Bas se réserve le droit, par prescription légale, de préciser que dans les cas prévus par l'article 4, alinéa 2 de c) à p) de la Convention, le porteur du connaissement peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).

Poland

Confirmation des réserves faites lors de la signature, à savoir: "La République Populaire de Pologne ne se considère pas liée par l'article 8 du présent Protocole".

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Visby Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 3 of the Protocol.

*Protocole DTS**SDR Protocol*

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

Australia	(a)	16.VII.1993
Belgium	(r)	7.IX.1983
Denmark	(a)	3.XI.1983
Finland	(r)	1.XII.1984
France	(r)	18.XI.1986
Georgia	(a)	20.II.1996
Greece	(a)	23.III.1993
Italy	(r)	22.VIII.1985
Japan	(r)	1.III.1993
Mexico	(a)	20.V.1994
Netherlands	(r)	18.II.1986
New Zealand	(a)	20.XII.1994
Norway	(r)	1.XII.1983
Poland*	(r)	6.VII.1984
Spain	(r)	6.I.1982
Sweden	(r)	14.XI.1983
Switzerland*	(r)	20.I.1988
United Kingdom of Great-Britain and Northern Ireland	(r)	2.III.1982
Bermuda, British Antarctic Territories, Virgin Islands, Caimans, Falkland Islands & Dependencies, Gibraltar, Hong-Kong ⁽¹⁾, Isle of Man, Montserrat, Caicos & Turks Island (extension)	(a)	20.X.1983

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the SDR Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 8 of the Protocol.

RESERVATIONS

Poland

Poland does not consider itself bound by art. III.

Switzerland

Le Conseil fédéral suisse déclare, en se référant à l'article 4, paragraphe 5, alinéa d) de la Convention internationale du 25 août 1924 pour l'unification de certaines règles en matière de connaissance, telle qu'amendée par le Protocole de modification du 23 février 1968, remplacé par l'article II du Protocole du 21 décembre 1979, que la Suisse calcule de la manière suivante la valeur, en droit de tirage spécial (DTS), de sa monnaie nationale:

La Banque nationale suisse (BNS) communique chaque jour au Fonds monétaire international (FMI) le cours moyen du dollar des Etats Unis d'Amérique sur le marché des changes de Zürich. La contrevalet en francs suisses d'un DTS est déterminée d'après ce cours du dollar et le cours en dollars DTS, calculé par le FMI. Se fondant sur ces valeurs, la BNS calcule un cours moyen du DTS qu'elle publiera dans son Bulletin mensuel.

**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

Algeria	(a)	13.IV.1964
Argentina	(a)	19.IV.1961
Belgium	(r)	2.VI.1930
Brazil	(r)	28.IV.1931
Cuba*	(a)	21.XI.1983
Denmark	(r)	2.VI.1930
<i>(denunciation – 1.III.1965)</i>		
Estonia	(r)	2.VI.1930
Finland	(a)	12.VII.1934
<i>(denunciation – 1.III.1965)</i>		
France	(r)	23.VIII.1935
Haiti	(a)	19.III.1965
Hungary	(r)	2.VI.1930
Iran	(a)	8.IX.1966
Italy*	(r)	7.XII.1949
Lebanon	(a)	18.III.1969
Luxembourg	(a)	18.II.1991

*Maritime liens and mortgages 1926**Immunity 1926*

Madagascar	(r)	23.VIII.1935
Monaco	(a)	15.V.1931
Norway	(r)	10.X.1933
<i>(denunciation – 1.III.1965)</i>		
Poland	(r)	26.X.1936
Portugal	(a)	24.XII.1931
Romania	(r)	4.VIII.1937
Spain	(r)	2.VI.1930
Switzerland	(a)	28.V.1954
Sweden	(r)	1.VII.1938
<i>(denunciation – 1.III.1965)</i>		
Syrian Arab Republic	(a)	14.II.1951
Turkey	(a)	4.VII.1955
Uruguay	(a)	15.IX.1970
Zaire	(a)	17.VII.1967

RESERVATIONS**Cuba**

(Traduction) L'instrument d'adhésion contient une déclaration relative à l'article 19 de la Convention.

Italy

(Traduction) L'Etat italien se réserve la faculté de ne pas conformer son droit interne à la susdite Convention sur les points où ce droit établit actuellement:

– l'extension des privilèges dont question à l'art. 2 de la Convention, également aux dépendances du navire, au lieu qu'aux seuls accessoires tels qu'ils sont indiqués à l'art. 4;

– la prise de rang, après la seconde catégorie de privilèges prévus par l'art. 2 de la Convention, des privilèges qui couvrent les créances pour les sommes avancées par l'Administration de la Marine Marchande ou de la Navigation intérieure, ou bien par l'Autorité consulaire, pour l'entretien et le rapatriement des membres de l'équipage.

**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

Argentina

(a) 19.IV.1961

Belgium

(r) 8.I.1936

Brazil	(r)	8.I.1936
Chile	(r)	8.I.1936
Cyprus	(a)	19.VII.1988
Denmark	(r)	16.XI.1950
Estonia	(r)	8.I.1936
France	(r)	27.VII.1955
Germany	(r)	27.VI.1936
Greece	(a)	19.V.1951
Hungary	(r)	8.I.1936
Italy	(r)	27.I.1937
Luxembourg	(a)	18.II.1991
Libyan Arab Jamahiriya	(r)	27.I.1937
Madagascar	(r)	27.I.1955
Netherlands	(r)	8.VII.1936
Curaçao, Dutch Indies		
Norway	(r)	25.IV.1939
Poland	(r)	16.VII.1976
Portugal	(r)	27.VI.1938
Romania	(r)	4.VIII.1937
<i>(denunciation – 21.IX.1959)</i>		
Somalia	(r)	27.I.1937
Sweden	(r)	1.VII.1938
Switzerland	(a)	28.V.1954
Suriname	(r)	8.VII.1936
Syrian Arab Republic	(a)	17.II.1960
Turkey	(a)	4.VII.1955
United Arab Republic	(a)	17.II.1960
United Kingdom*	(r)	3.VII.1979
United Kingdom for Jersey, Guernsey and Island of Man	(a)	19.V.1988
Uruguay	(a)	15.IX.1970
Zaire	(a)	17.VII.1967

RESERVATIONS

United Kingdom

We reserve the right to apply Article 1 of the Convention to any claim in respect of a ship which falls within the Admiralty jurisdiction of Our courts, or of Our courts in any territory in respect of which We are party to the Convention. We reserve the right, with respect to Article 2 of the Convention to apply in proceedings concerning another High Contracting Party or ship of another High Contracting Party the rules of procedure set out in Chapter II of the European Convention on State Immunity, signed at Basle on the Sixteenth day of May, in the Year of Our Lord One thousand Nine hundred and Seventy-two.

In order to give effect to the terms of any international agreement with a non-Contracting State, We reserve the right to make special provision:

(a) as regards the delay or arrest of a ship or cargo belonging to such a State, and (b) to prohibit seizure of or execution against such a ship or cargo.

*Compétence civile 1952**Civil jurisdiction 1952*

**Convention internationale pour
l'unification de certaines règles
relatives à la**

**Compétence civile
en matière d'abordage**

Bruxelles, 10 mai 1952

Entrée en vigueur:

14 septembre 1955

**International convention for the
unification of certain rules
relating to**

**Civil jurisdiction
in matters of collision**

Brussels, 10th May, 1952

Entered into force:

14 September 1955

Algeria	(a)	18.VIII.1964
Antigua and Barbuda	(a)	12.V.1965
Argentina	(a)	19.IV.1961
Bahamas	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica*	(a)	13.VII.1955
Cote d'Ivoire	(a)	23.IV.1958
Croatia*	(r)	8.X.1991
Cyprus	(a)	17.III.1994
Djibouti	(a)	23.IV.1958
Dominican Republic	(a)	12.V.1965
Egypt	(r)	24.VIII.1955
Fiji	(a)	10.X.1974
France	(r)	25.V.1957
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany	(r)	6.X.1972
Greece	(r)	15.III.1965
Grenada	(a)	12.V.1965
Guinea	(a)	23.IV.1958
Guyana	(a)	29.III.1963
Haute Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Ireland	(a)	17.X.1989
Italy	(r)	9.XI.1979
Khmere Republic*	(a)	12.XI.1959
Kiribati	(a)	21.IX.1965
Luxembourg	(a)	18.II.1991

*Compétence civile 1952**Civil jurisdiction 1952*

Madagascar	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958
Mauritius	(a)	29.III.1963
Morocco	(a)	11.VII.1990
Niger	(a)	23.IV.1958
Nigeria	(a)	7.XI.1963
North Borneo	(a)	29.III.1963
Paraguay	(a)	22.XI.1967
Poland	(a)	14.III.1986
Portugal	(r)	4.V.1957
Romania	(a)	28.XI.1995
Sarawak	(a)	29.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands	(a)	21.IX.1965
Spain	(r)	8.XII.1953
St. Kitts and Nevis	(a)	12.V.1965
St. Lucia	(a)	12.V.1965
St. Vincent and the Grenadines	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.IX.1965
United Kingdom of Great Britain and		
Northern Ireland	(r)	18.III.1959
Gibraltar, Hong-Kong ⁽¹⁾	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Caiman Islands, Montserrat	(a)	12.V.1965
Anguilla, St. Helena	(a)	12.V.1965
Turks Isles and Caicos	(a)	21.IX.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and Dependencies	(a)	17.X.1969
Zaire	(a)	17.VII.1967

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Civil Jurisdiction Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Civil jurisdiction 1952**Penal jurisdiction 1952***RESERVATIONS****Costa-Rica**

(Traduction) Le Gouvernement de la République du Costa Rica, en adhérant à cette Convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.

En conséquence, la République du Costa Rica ne reconnaît pas comme obligatoires les literas b) et c) du premier paragraphe de l'article premier."

"Conformément au Code du droit international privé approuvé par la sixième Conférence internationale américaine, qui s'est tenue à La Havane (Cuba), le Gouvernement de la République du Costa Rica, en acceptant cette Convention, fait cette réserve expresse que, en aucun cas, il ne renoncera à sa compétence ou juridiction pour appliquer la loi costaricienne en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire costaricien.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: "Le Gouvernement de la République Populaire Fédérative de Yougoslavie se réserve le droit de se déclarer au moment de la ratification sur le principe de "sistership" prévu à l'article 1^o lettre (b) de cette Convention.

Khmere Republic

Le Gouvernement de la République Khmère, en adhérant à ladite convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.

En conséquence, le Gouvernement de la République Khmère ne reconnaît pas le caractère obligatoire des alinéas b) et c) du paragraphe 1^o de l'article 1^o.

En acceptant ladite convention, le Gouvernement de la République Khmère fait cette réserve expresse que, en aucun cas, elle ne renoncera à sa compétence ou juridiction pour appliquer la loi khmère en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire khmère.

**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

Anguilla*	(a)	12.V.1965
Antigua and Barbuda*	(a)	12.V.1965
Argentina*	(a)	19.IV.1961
Bahamas*	(a)	12.V.1965
Belgium*	(r)	10.IV.1961
Belize*	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Burman Union*	(a)	8.VII.1953
Cayman Islands*	(a)	12.VI.1965
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica*	(a)	13.VII.1955
Croatia*	(r)	8.X.1991
Cyprus	(a)	17.III.1994
Djibouti	(a)	23.IV.1958
Dominica Republic of*	(a)	12.V.1965
Egypt*	(r)	24.VIII.1955
Fiji*	(a)	29.III.1963
France*	(r)	20.V.1955
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany*	(r)	6.X.1972
Greece	(r)	15.III.1965
Grenada*	(a)	12.V.1965
Guyana*	(a)	19.III.1963
Guinea	(a)	23.IV.1958
Haiti	(a)	17.IX.1954
Haute-Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Italy*	(r)	9.XI.1979
Ivory Coast	(a)	23.IV.1958
Khmere Republic*	(a)	12.XI.1956
Kiribati*	(a)	21.IX.1965
Lebanon	(r)	19.VII.1975
Luxembourg	(a)	18.II.1991
Madagascar	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958
Mauritius*	(a)	29.III.1963
Montserrat*	(a)	12.VI.1965
Morocco	(a)	11.VII.1990
Netherlands	(r)	
Kingdom in Europe, West Indies and Aruba	(r)	25.VI.1971

*Compétence pénale 1952**Penal jurisdiction 1952*

Niger	(a)	23.IV.1958
Nigeria*	(a)	7 XI.1963
North Borneo*	(a)	29.III.1963
Paraguay	(a)	22.XI.1967
Portugal*	(r)	4.V.1957
Romania	(a)	28.XI.1995
Sarawak*	(a)	28.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles*	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands*	(a)	21.IX.1965
Spain*	(r)	8.XII.1953
St. Kitts and Nevis*	(a)	12.V.1965
St. Lucia*	(a)	12.V.1965
St. Helena*	(a)	12.V.1965
St. Vincent and the Grenadines*	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Suriname	(r)	25.VI.1971
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	10.VII.1972
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga*	(a)	13.VI.1978
Tuvalu*	(a)	21.IX.1965
United Kingdom of Great Britain and		
Northern Ireland*	(r)	18.III.1959
Gibraltar, Hong-Kong (1)	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Anguilla	(a)	12.V.1965
Turks Islands and Caicos	(a)	21.IX.1965

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Penal Jurisdiction Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

The following declarations have been made by the Government of the People's Republic of China:

1. The Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to observe the provisions of Article 1 of the Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Hong Kong Special Administrative Region.

2. In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Hong Kong Special Administrative Region.

*Compétence pénale 1952**Penal jurisdiction 1952*

Guernsey	(a)	8.XII.1966
Falkland Islands and dependencies	(a)	17.X.1969
Viet Nam*	(a)	26.XI.1955
Zaire	(a)	17.VII.1967

RESERVATIONS**Antigua, Cayman Island, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent**

The Governments of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla (now the independent State of Anguilla), St. Helena and St. Vincent reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs assented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent. They reserve the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent.

Argentina

(Traduction) La République Argentine adhère à la Convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage et autres événements de navigation, sous réserve expresse du droit accordé par la seconde partie de l'article 4, et il est fixé que dans le terme "infractions" auquel cet article se réfère, se trouvent inclus les abordages et tout autre événement de la navigation visés à l'article 1^o de la Convention.

Bahamas

...Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of the Bahamas;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of the Bahamas.

Belgium

...le Gouvernement belge, faisant usage de la faculté inscrite à l'article 4 de cette Convention, se réserve le droit de poursuivre les infractions commises dans les eaux territoriales belges.

Belize

...Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, consented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Belize;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Belize.

Cayman Islands

See Antigua.

Costa-Rica

(Traduction) Le Gouvernement de Costa-Rica ne reconnaît pas le caractère obligatoire des articles 1^o and 2^o de la présente Convention.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: "Sous réserve de ratifications ultérieure et acceptant la réserve prévue à l'article 4 de cette Convention. Conformément à l'article 4 de ladite Convention, le Gouvernement yougoslave se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales".

Dominica, Republic of

... Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Dominica;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Dominica.

Egypt

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler la réserve prévue à l'article 4, alinéa 2. Confirmation expresse de la réserve faite au moment de la signature.

Fiji

The Government of Fiji reserves the right not to observe the provisions of article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respect that ship or any class of ship to which that ship belongs consented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Fiji.

The Government of Fiji reserves the right under article 4 of this Convention to take proceedings in respect of offences committed within the territorial water of Fiji.

France

Au nom du Gouvernement de la République Française je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de la convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage.

Germany, Federal Republic of

(Traduction) Sous réserve du prescrit de l'article 4, alinéa 2.

Grenada

Same reservations as the Republic of Dominica

Guyana

Same reservations as the Republic of Dominica

Italy

Le Gouvernement de la République d'Italie se réfère à l'article 4, paragraphe 2, et se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Khmere Republic

Le Gouvernement de la République Khmère, d'accord avec l'article 4 de ladite convention, se réserve le droit de poursuivre les infractions commises dans ses eaux territoriales.

Kiribati

Same reservations as the Republic of Dominica

Mauritius

Same reservations as the Republic of Dominica

Montserrat

See Antigua.

Netherlands

Conformément à l'article 4 de cette Convention, le Gouvernement du Royaume des Pays-Bas, se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Nigeria

The Government of the Federal Republic of Nigeria reserve the right not to implement the provisions of Article 1 of the Convention in any case where that Government has an agreement with any other State that is applicable to a particular collision or other incident of navigation and if such agreement is inconsistent with the provisions of the said Article 1. The Government of the Federal Republic of Nigeria reserves the right, in accordance with Article 4 of the Convention, to take proceedings in respect of offences committed within the territorial waters of the Federal Republic of Nigeria.

North Borneo

Same reservations as the Republic of Dominica

Portugal

Au nom du Gouvernement portugais, je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de cette Convention.

St. Kitts-Nevis

See Antigua.

St. Helena

See Antigua.

St. Lucia

Same reservations as the Republic of Dominica

*Compétence pénale 1952**Penal jurisdiction 1952*

St. Vincent*See Antigua.***Sarawak***Same reservations as the Republic of Dominica***Seychelles***Same reservations as the Republic of Dominica***Solomon Isles***Same reservations as the Republic of Dominica***Spain**

La Délégation espagnole désire, d'accord avec l'article 4 de la Convention sur la compétence pénale en matière d'abordage, se réserver le droit au nom de son Gouvernement, de poursuivre les infractions commises dans ses eaux territoriales. Confirmation expresse de la réserve faite au moment de la signature.

Tonga*Same reservations as the Republic of Dominica***Tuvalu***Same reservations as the Republic of Dominica***United Kingdom**

1. - Her Majesty's Government in the United Kingdom reserves the right not to apply the provisions of Article 1 of this Convention in any case where there exists between Her Majesty's Government and the Government of any other State an agreement which is applicable to a particular collision or other incident of navigation and is inconsistent with that Article.

2. - Her Majesty's Government in the United Kingdom reserves the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

...subject to the following reservations:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs consented to the institution of criminal and disciplinary proceedings before the judicial or administrative authorities of the United Kingdom.

(2) In accordance with the provisions of Article 4 of the said Convention, the Government of the United Kingdom of Great Britain and Northern Ireland reserve the right to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

(3) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservation provided for in Article 4 of the said Convention...

Vietnam

Comme il est prévu à l'article 4 de la même convention, le Gouvernement vietnamien se réserve le droit de poursuivre les infractions commises dans la limite de ses eaux territoriales.

**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

Algeria	(a)	18.VIII.1964
Antigua and Barbuda*	(a)	12.V.1965
Bahamas*	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize*	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica*	(a)	13.VII.1955
Côte d'Ivoire	(a)	23.IV.1958
Croatia*	(r)	8.X.1991
Cuba*	(a)	21.XI.1983
Denmark	(r)	2.V.1989
Djibouti	(a)	23.IV.1958
Dominica Republic of*	(a)	12.V.1965
Egypt*	(r)	24.VIII.1955
Fiji	(a)	29.III.1963
Finland	(r)	21.XII.1995
France	(r)	25.V.1957
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany*	(r)	6.X.1972
Greece	(r)	27.II.1967
Grenada*	(a)	12.V.1965
Guyana*	(a)	29.III.1963
Guinea	(a)	12.XII.1994
Haiti	(a)	4.XI.1954
Haute-Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Ireland*	(a)	17.X.1989
Italy*	(r)	9.XI.1979
Khmere Republic*	(a)	12.XI.1956
Kiribati*	(a)	21.IX.1965
Latvia	(a)	17.V.1993
Luxembourg	(a)	18.II.1991

*Saisie des navires 1952**Arrest of ships 1952*

Madagascar	(a)	23.IV.1958
Marocco	(a)	11.VII.1990
Mauritania	(a)	23.IV.1958
Mauritius*	(a)	29.III.1963
Netherlands*	(r)	20.I.1983
Niger	(a)	23.IV.1958
Nigeria*	(a)	7.XI.1963
North Borneo*	(a)	29.III.1963
Norway	(r)	1.XI.1994
Paraguay	(a)	22.XI.1967
Poland	(a)	16.VII.1976
Portugal	(r)	4.V.1957
Romania	(a)	28.XI.1995
St. Kitts and Nevis*	(a)	12.V.1965
St. Lucia*	(a)	12.V.1965
St. Vincent and the Grenadines*	(a)	12.V.1965
Sarawak*	(a)	28.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles*	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands*	(a)	21.IX.1965
Spain	(r)	8.XII.1953
Sudan	(a)	23.IV.1958
Sweden	(a)	30.IV.1993
Switzerland	(a)	28.V.1954
Syrian Arabic Republic	(a)	3.II.1972
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga*	(a)	13.VI.1978
Turks Isles and Caicos*	(a)	21.IX.1965
Tuvalu*	(a)	21.IX.1965
United Kingdom of Great Britain* and Northern Ireland	(r)	18.III.1959
United Kingdom (Overseas Territories)*		
Gibraltar, Hong-Kong (1)	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Anguilla, Caiman Islands, Montserrat, St. Helena	(a)	12.V.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and dependencies	(a)	17.X.1969
Zaire	(a)	17.VII.1967

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Arrest Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

RESERVATIONS

Antigua

...Reserves the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

Bahamas

...With reservation of the right not to apply the provisions of this Convention to warships or to vessels owned by or in service of a State.

Belize

Same reservation as the Bahamas.

Costa Rica

(Traduction) Premièrement: le 1er paragraphe de l'article 3 ne pourra pas être invoqué pour saisir un navire auquel la créance ne se rapporte pas et qui n'appartient plus à la personne qui était propriétaire du navire auquel cette créance se rapporte, conformément au registre maritime du pays dont il bat pavillon et bien qu'il lui ait appartenu.

Deuxièmement: que Costa Rica ne reconnaît pas le caractère obligatoire des alinéas a), b), c), d), e) et f) du paragraphe 1er de l'article 7, étant donné que conformément aux lois de la République les seuls tribunaux compétents quant au fond pour connaître des actions relatives aux créances maritimes, sont ceux du domicile du demandeur, sauf s'il s'agit des cas visés sub o), p) et q) à l'alinéa 1er de l'article 1, ou ceux de l'Etat dont le navire bat pavillon.

Le Gouvernement de Costa Rica, en ratifiant ladite Convention, se réserve le droit d'appliquer la législation en matière de commerce et de travail relative à la saisie des navires étrangers qui arrivent dans ses ports.

Côte d'Ivoire

Confirmation d'adhésion de la Côte d'Ivoire. Au nom du Gouvernement de la République de Côte d'Ivoire, nous, Ministre des Affaires Etrangères, confirmons que par Succession d'Etat, la République de Côte d'Ivoire est devenue, à la date de son accession à la souveraineté internationale, le 7 août 1960, partie à la Convention internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952, qu'elle l'a été de façon continue depuis lors et que cette Convention est aujourd'hui, toujours en vigueur à l'égard de la Côte d'Ivoire.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: "...en réservant conformément à l'article 10 de ladite Convention, le droit de ne pas appliquer ces dispositions à la saisie d'un navire pratiquée en raison d'une créance maritime visée au point o) de l'article premier et d'appliquer à cette saisie la loi nationale".

Cuba

(Traduction) L'instrument d'adhésion contient les réserves prévues à l'article 10 de la Convention celles de ne pas appliquer les dispositions de la Convention aux navires de guerre et aux navires d'Etat ou au service d'un Etat, ainsi qu'une déclaration relative à l'article 18 de la Convention.

Dominica, Republic of

Same reservation as Antigua

*Saisie des navires 1952**Arrest of ships 1952***Egypt**

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler les réserves prévues à l'article 10.

Confirmation expresse des réserves faites au moment de la signature.

Germany, Federal Republic of

(Traduction) ...sous réserve du prescrit de l'article 10, alinéas a et b.

Grenada

Same reservation as Antigua.

Guyana

Same reservation as the Bahamas.

Ireland

Ireland reserves the right not to apply the provisions of the Convention to warships or to ships owned by or in service of a State.

Italy

Le Gouvernement de la République d'Italie se réfère à l'article 10, par. (a) et (b), et se réserve:

(a) le droit de ne pas appliquer les dispositions de la présente Convention à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux o) et p) de l'article premier et d'appliquer à cette saisie sa loi nationale;

(b) le droit de ne pas appliquer les dispositions du premier paragraphe de l'article 3 à la saisie pratiquée sur son territoire en raison des créances prévues à l'alinéa q) de l'article 1.

Khmere Republic

Le Gouvernement de la République Khmère en adhérant à cette convention formule les réserves prévues à l'article 10.

Kiribati

Same reservation as the Bahamas.

Mauritius

Same reservation as Antigua.

Netherlands

Réserves formulées conformément à l'article 10, paragraphes (a) et (b):

- les dispositions de la Convention précitée ne sont pas appliquées à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux alinéas o) et p) de l'article 1, saisie à laquelle s'applique le loi néerlandaise; et

- les dispositions du premier paragraphe de l'article 3 ne sont pas appliquées à la saisie pratiquée sur le territoire du Royaume des Pays-Bas en raison des créances prévues à l'alinéa q) de l'article 1.

Cette ratification est valable depuis le 1er janvier 1986 pour le Royaume des Pays-Bas, les Antilles néerlandaises et Aruba.

Nigeria

Same reservation as Antigua.

North Borneo

Same reservation as Antigua.

St. Kitts and Nevis

Same reservation as Antigua.

St. Lucia

Same reservation as Antigua.

St. Vincent and the Grenadines

Same reservation as Antigua.

Sarawak

Same reservation as Antigua.

Seychelles

Same reservation as the Bahamas.

Solomon Islands

Same reservation as the Bahamas.

Tonga

Same reservation as Antigua.

Turk Isles and Caicos

Same reservation as the Bahamas.

Tuvalu

Same reservation as the Bahamas.

United Kingdom of Great Britain and Northern Ireland

... Subject to the following reservations:

1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

United Kingdom (Overseas Territories)

Anguilla, Bermuda, British Virgin Islands, Caiman Islands, Falkland Islands and Dependencies, Gibraltar, Guernsey, Hong Kong, Montserrat, St. Helena, Turks Isles and Caicos

... Subject to the following reservations:

1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

*Limitation de responsabilité 1957**Limitation of liability 1957***Convention internationale
sur la****Limitation
de la responsabilité
des propriétaires
de navires de mer
et protocole de signature**

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

Algeria	(a)	18.VIII.1964
Australia	(r)	30.VII.1975
<i>(denunciation – 30.V.1990)</i>		
Bahamas*	(a)	21.VIII.1964
Barbados*	(a)	4.VIII.1965
Belgium	(r)	31.VII.1975
<i>(denunciation – 1.IX.1989)</i>		
Belize	(r)	31.VII.1975
Denmark*	(r)	1.III.1965
<i>(denunciation – 1.IV.1984)</i>		
Dominica Republic of*	(a)	4.VIII.1965
Egypt (Arab Republic of)		
<i>(denunciation – 8.V.1985)</i>		
Fiji*	(a)	21.VIII.1964
Finland	(r)	19.VIII.1964
<i>(denunciation – 1.IV.1984)</i>		
France	(r)	7.VII.1959
<i>(denunciation – 15.VII.1987)</i>		
Germany	(r)	6.X.1972
<i>(denunciation – 1.IX.1986)</i>		
Ghana*	(a)	26.VII.1961
Grenada*	(a)	4.VIII.1965
Guyana*	(a)	25.III.1966
Iceland*	(a)	16.X.1968
India*	(r)	1.VI.1971
Iran*	(r)	26.IV.1966
Israel*	(r)	30.XI.1967
Japan	(r)	1.III.1976
<i>(denunciation – 19.V.1983)</i>		
Kiribati*	(a)	21.VIII.1964
Lebanon	(a)	23.XII.1994
Madagascar	(a)	13.VII.1965
Mauritius*	(a)	21.VIII.1964
Monaco*	(a)	24.I.1977

*Limitation de responsabilité 1957**Limitation of liability 1957*

Netherlands	(r)	10.XII.1965
<i>(denunciation – 1.IX.1989)</i>		
Aruba*	(r)	1.I.1986
Norway	(r)	1.III.1965
<i>(denunciation – 1.IV.1984)</i>		
Papua New Guinea*	(a)	14.III.1980
Poland	(r)	1.XII.1972
Portugal*	(r)	8.IV.1968
St. Lucia*	(a)	4.VIII.1965
St. Vincent and the Grenadines	(a)	4.VIII.1965
Seychelles*	(a)	21.VIII.1964
Singapore*	(a)	17.IV.1963
Solomon Islands*	(a)	21.VIII.1964
Spain*	(r)	16.VII.1959
Sweden	(r)	4.VI.1964
<i>(denunciation – 1.IV.1984)</i>		
Switzerland	(r)	21.I.1966
Syrian Arab Republic	(a)	10.VII.1972
Tonga*	(a)	13.VI.1978
Tuvalu*	(a)	21.VIII.1964
United Arab Republic*	(a)	7.IX.1965
United Kingdom*	(r)	18.II.1959
Isle of Man	(a)	18.XI.1960
Bermuda, British Antarctic Territories, Falkland and Dependencies, Gibraltar, Hong Kong, British Virgin Islands	(a)	21.VIII.1964
Guernsey and Jersey	(a)	21.X.1964
Caiman Islands, Montserrat, Caicos and Turks Isles*	(a)	4.VIII.1965
Vanuatu	(a)	8.XII.1966
Zaire	(a)	17.VII.1967

RESERVATIONS**Bahamas**

...Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Barbados

Same reservation as Bahamas

Denmark

Le Gouvernement du Danemark se réserve le droit:

- 1) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 2) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Dominica, Republic of

Same reservation as Bahamas

Egypt Arab Republic

Reserves the right:

- 1) to exclude the application of Article 1, paragraph (1)(c);
- 2) to regulate by specific provisions of national law the system of limitation to be applied to ships of less than 300 tons;
- 3) on 8 May, 1984 the Egyptian Arab Republic has verbally notified the denunciation in respect of this Convention. This denunciation will become operative on 8 May, 1985.

Fiji

Le 22 août 1972 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement une lettre de Monsieur K.K.T. Mara, Premier Ministre et Ministre des Affaires étrangères de Fidji, notifiant qu'en ce qui concerne cette Convention, le Gouvernement de Fidji reprend, à partir de la date de l'indépendance de Fidji, c'est-à-dire le 10 octobre 1970, les droits et obligations souscrits antérieurement par le Royaume-Uni, avec les réserves figurant ci-dessous.

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
 - 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
- Furthermore in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of signature, the Government of Fiji declare that the said Convention as such has not been made part in Fiji law, but that the appropriate provisions to give effect thereto have been introduced in Fiji law.

Ghana

The Government of Ghana in acceding to the Convention reserves the right:

- 1) To exclude the application of Article 1, paragraph (1)(c);
- 2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Grenada

Same reservation as Bahamas

Guyana

Same reservation as Bahamas

Iceland

The Government of Iceland reserves the right:

- 1) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 2) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

India

Reserve the right:

- 1) To exclude the application of Article 1, paragraph (1)(c);
- 2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 3) to give effect to this Convention either by giving it the force of law or by including

in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Iran

Le Gouvernement de l'Iran se réserve le droit:

- 1) d'exclure l'application de l'article 1, paragraphe (1)(c);
- 2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Israel

The Government of Israel reserves to themselves the right to:

- 1) exclude from the scope of the Convention the obligations and liabilities stipulated in Article 1(1)(c);
- 2) regulate by provisions of domestic legislation the limitation of liability in respect of ships of less than 300 tons of tonnage;

The Government of Israel reserves to themselves the right to give effect to this Convention either by giving it the force of law or by including in its national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Kiribati

Same reservation as Bahamas

Mauritius

Same reservation as Bahamas

Monaco

En déposant son instrument d'adhésion, Monaco fait les réserves prévues au paragraphe 2° du Protocole de signature.

Netherlands-Aruba

La Convention qui était, en ce qui concerne le Royaume de Pays-Bas, uniquement applicable au Royaume en Europe, a été étendue à Aruba à partir du 16.XII.1986 avec effet rétroactif à compter du 1er janvier 1986.

La dénonciation de la Convention par les Pays-Bas au 1er septembre 1989, n'est pas valable pour Aruba.

Note: Le Gouvernement des Pays-Bas avait fait les réservations suivantes:

Le Gouvernement des Pays-Bas se réserve le droit:

- 1) d'exclure l'application de l'article 1, paragraphe (1)(c);
- 2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

... Conformément au paragraphe (2)(c) du Protocole de signature Nous nous réservons de donner effet à la présente Convention en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Papua New Guinea

(a) The Government of Papua New Guinea excludes paragraph (1)(c) of Article 1.

(b) The Government of Papua New Guinea will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

(c) The Government of Paupua New Guinea shall give effect to the said Convention by including the provisions of the said Convention in the National Legislation of Papua New Guinea.

*Limitation de responsabilité 1957**Limitation of liability 1957***Portugal**

(Traduction) ...avec les réserves prévues aux alinéas a), b) et c) du paragraphe deux du Protocole de signature...

St. Lucia

Same reservation as Bahamas

Seychelles

Same reservation as Bahamas

Singapore

Le 13 septembre 1977 a été reçue une note verbale datée du 6 septembre 1977, émanant du Ministère des Affaires étrangères de Singapour, par laquelle le Gouvernement de Singapour confirme qu'il se considère lié par la Convention depuis le 31 mai 1968, avec les réserves suivantes:

...Subject to the following reservations:

- a) the right to exclude the application of Article 1, paragraph (1)(c); and
- b) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. The Government of the Republic of Singapore declares under sub-paragraph (c) of paragraph (2) of the Protocol of signature that provisions of law have been introduced in the Republic of Singapore to give effect to the Convention, although the Convention as such has not been made part of Singapore law.

Solomon Islands

Same reservation as Bahamas

Spain

Le Gouvernement espagnol se réserve le droit:

- 1) d'exclure du champ d'application de la Convention les obligations et les responsabilités prévues par l'article 1, paragraphe (1)(c);
- 2) de régler par les dispositions particulières de sa loi nationale le système de limitation de responsabilité applicable aux propriétaires de navires de moins de 300 tonnes de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Tonga

Reservations:

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga will regulate by specific provisions of national law the system of liability to be applied to ships of less than 300 tons.

Tuvalu

Same reservation as Bahamas

United Kingdom of Great Britain and Northern Ireland

Subject to the following observations:

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and

*Limitation of liability 1957**Limitation of liability 1957 - Protocol of 1979*

Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

3) The Government of the United Kingdom of Great Britain and Northern Ireland also reserve the right, in extending the said Convention to any of the territories for whose international relations they are responsible, to make such extension subject to any or all of the reservations set out in paragraph (2) of the said Protocol of Signature. Furthermore, in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland declare that the said Convention as such has not been made part of the United Kingdom law, but that the appropriate provisions to give effect thereto have been introduced in United Kingdom law.

United Kingdom Overseas Territories

Anguilla, Bermuda, British Antarctic Territories, British Virgin Islands, Caiman Islands, Caicos and Turks Isles, Falkland and Dependencies, Gibraltar, Guernsey and Jersey, Hong Kong, Isle of Man, Montserrat

... Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

**Protocole portant modification de
la convention internationale sur la
Limitation
de la responsabilité
des propriétaires de navires
de mer
du 10 octobre 1957**

Bruxelles le 21 décembre 1979
Entré en vigueur: 6 octobre 1984

**Protocol to amend the international
convention relating to the
Limitation
of the liability of owners
of sea-going
ships
of 10 October 1957**

Brussels, 21st December, 1979
Entered into force: 6 October, 1984

Australia	(r)	30.XI.1983
Belgium	(r)	7.IX.1983
Luxembourg	(a)	18.II.1991
Poland	(r)	6.VII.1984
Portugal	(r)	30.IV.1982
Spain	(r)	14.V.1982
Switzerland	(r)	20.I.1988
United Kingdom of Great Britain and Northern Ireland	(r)	2.III.1982
<i>(denunciation – 1.XII.1985)</i>		
<i>Isle of Man, Bermuda, Falkland and Dependencies, Gibraltar, Hong-Kong, British Virgin Islands, Guernsey and Jersey, Cayman Islands, Montserrat, Caicos and Turks Isles</i>		
<i>(denunciation – 1.XII.1985)</i>		

*Stowaways 1957**Carriage of passengers 1961***Convention internationale sur les Passagers Clandestins**

Bruxelles, 10 octobre 1957

Pas encore en vigueur

Belgium	(r)	31.VII.1975
Denmark	(r)	16.XII.1963
Finland	(r)	2.II.1966
Italy	(r)	24.V.1963
Luxembourg	(a)	18.II.1991
Madagascar	(a)	13.VII.1965
Morocco	(a)	22.I.1959
Norway	(r)	24.V.1962
Peru	(r)	23.XI.1961
Sweden	(r)	27.VI.1962

International convention relating to Stowaways

Brussels, 10th October 1957

Not yet in force

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

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

Algeria	(a)	2.VII.1973
Cuba*	(a)	7.I.1963
France (<i>denunciation</i> – 3.XII.1975)	(r)	4.III.1965
Haïti	(a)	19.IV.1989
Iran	(a)	26.IV.1966
Madagascar	(a)	13.VII.1965
Morocco*	(r)	15.VII.1965
Peru	(a)	29.X.1964
Switzerland	(r)	21.I.1966
Tunisia	(a)	18.VII.1974
United Arab Republic*	(r)	15.V.1964
Zaire	(a)	17.VII.1967

RESERVATIONS**Cuba***(Traduction)* ...Avec les réserves suivantes:

- 1) De ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux.
- 2) De ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.

3) De donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous une forme appropriée à cette législation.

Morocco

...Sont et demeurent exclus du champ d'application de cette convention:

1) les transports de passagers effectués sur les navires armés au cabotage ou au bornage, au sens donné à ces expressions par l'article 52 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par le dahir du 29 Chaabane 1380 (15 février 1961).

2) les transports internationaux de passagers lorsque le passager et le transporteur sont tous deux de nationalité marocaine.

Les transports de passagers visés...ci-dessus demeurent régis en ce qui concerne la limitation de responsabilité, par les disposition de l'article 126 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par la dahir du 16 Joumada II 1367 (26 avril 1948).

United Arab Republic

Sous les réserves prévues aux paragraphes (1), (2) et (3) du Protocole.

Convention internationale relative à la responsabilité des exploitants de Navires nucléaires et protocole additionnel

Bruxelles, 25 mai 1962
Pas encore en vigueur

International convention relating to the liability of operators of Nuclear ships and additional protocol

Brussels, 25th May 1962
Not yet in force

Lebanon	(r)	3.VI.1975
Madagascar	(a)	13.VII.1965
Netherlands*	(r)	20.III.1974
Portugal	(r)	31.VII.1968
Suriname	(r)	20.III.1974
Syrian Arab Republic	(a)	1.VIII.1974
Zaire	(a)	17.VII.1967

RESERVATIONS

Netherlands

Par note verbale datée du 29 mars 1976, reçue le 5 avril 1976, par le Gouvernement belge, l'Ambassade des Pays-Bas à Bruxelles a fait savoir:

Le Gouvernement du Royaume des Pays-Bas tient à déclarer, en ce qui concerne les dispositions du Protocole additionnel faisant partie de la Convention, qu'au moment de son entrée en vigueur pour le Royaume des Pays-Bas, ladite Convention y devient impérative, en ce sens que les prescriptions légales en vigueur dans le Royaume n'y seront pas appliquées si cette application est inconciliable avec les dispositions de la Convention.

*Carriage of passengers' luggage 1967**Vessels under construction 1967*

**Convention internationale
pour l'unification de certaines
règles en matière de
Transport de bagages
de passagers par mer**

Bruxelles, 27 mai 1967

Pas en vigueur

**International Convention
for the unification of
certain rules relating to
Carriage of passengers'
luggage by sea**

Brussels, 27th May 1967

Not in force

Algeria**(a)**

2.VII.1973

Cuba***(a)**

15.II.1972

RESERVATIONS**Cuba**

(Traduction) Le Gouvernement révolutionnaire de la République de Cuba, Partie Contractante, formule les réserves formelles suivantes:

1) de ne pas appliquer cette Convention lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.

3) en donnant effet à cette Convention, la Partie Contractante pourra, en ce qui concerne les contrats de transport établis à l'intérieur de ses frontières territoriales pour un voyage dont le port d'embarquement se trouve dans lesdites limites territoriales, prévoir dans sa législation nationale la forme et les dimensions des avis contenant les dispositions de cette Convention et devant figurer dans le contrat de transport. De même, le Gouvernement révolutionnaire de la République de Cuba déclare, selon le prescrit de l'article 18 de cette Convention, que la République de Cuba ne se considère pas liée par l'article 17 de ladite Convention.

**Convention internationale relative à
l'inscription des droits relatifs aux**

Navires en construction

Bruxelles, 27 mai 1967

Pas encore en vigueur

**International Convention relating
to the registration of rights
in respect of**

Vessels under construction

Brussels, 27th May 1967

Not yet in force

Croatia**(r)**

3.V.1971

Greece**(r)**

12.VII.1974

Norway**(r)**

13.V.1975

Sweden**(r)**

13.XI.1975

Syrian Arab Republic**(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

**International Convention
for the unification of
certain rules relating to
Maritime liens and
mortgages**

Brussels, 27th May 1967
Not yet in force

Denmark*	(r)	23.VIII.1977
Morocco*	(a)	12.II.1987
Norway*	(r)	13.V.1975
Sweden*	(r)	13.XI.1975
Syrian Arab Republic	(a)	1.VIII.1974

RESERVATIONS

Denmark

L'instrument de ratification du Danemark est accompagné d'une déclaration dans laquelle il est précisé qu'en ce qui concerne les Iles Féroé les mesures d'application n'ont pas encore été fixées.

Morocco

L'instrument d'adhésion est accompagné de la réserve suivante: Le Royaume du Maroc adhère à la Convention Internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes faite à Bruxelles le 27 mai 1967, sous réserve de la non-application de l'article 15 de la dite Convention.

Norway

Conformément à l'article 14 le Gouvernement du Royaume de Norvège fait les réserves suivantes:

- 1) mettre la présente Convention en vigueur en incluant les dispositions de la présente Convention dans la législation nationale suivant une forme appropriée à cette législation;
- 2) faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

Sweden

Conformément à l'article 14 la Suède fait les réserves suivantes:

- 1) de mettre la présente Convention en vigueur en incluant les dispositions de la Convention dans la législation nationale suivant une forme appropriée à cette législation;
- 2) de faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signé à Bruxelles le 10 octobre 1957.

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
s	=	signature by confirmation

Editor's notes

1. This Status is based on advices from the International Maritime Organisation and reflects the situation as at 31st December, 1996.
2. The dates mentioned are the dates of the deposit of instruments.
3. The asterisk after the name of a State Party indicates that that State has made declarations, reservations or statements the text of which is published after the relevant status of ratifications and accessions.

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE

Notes de l'éditeur

1. Cet état est basé sur des informations recues de l'Organisation Maritime Internationale et reflète la situation au 31 décembre 1996.
2. Les dates mentionnées sont les dates du dépôt des instruments.
3. L'asterisque qui suit le nom d'un Etat indique que cet Etat a fait une déclaration, une reserve ou une communication dont le texte est publié à la fin de chaque état de ratifications et adhesions.

CLC 1969

**International Convention on
Civil liability
for oil pollution damage**
(CLC 1969)

 Done at Brussels, 29 November 1969
 Entered into force: 19 June, 1975

**Convention Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les hydrocarbures
(CLC 1969)**

 Signée à Bruxelles, le 29 novembre 1969
 Entrée en vigueur: 19 juin 1975

Albania	(a)	6.IV.1994
Algeria	(a)	14.VI.1974
Australia*	(r)	7.XI.1983
<i>(denunciation 22 June 1988)</i>		
Bahamas	(a)	22.VII.1976
Bahrain	(a)	3.V.1996
Barbados	(a)	6.V.1994
Belgium*	(r)	12.I.1977
Belize	(a)	2.IV.1991
Benin	(a)	1.XI.1985
Brazil	(r)	17.XII.1976
Brunei Darussalam	(a)	29.IX.1992
Cambodia	(a)	28.XI.1994
Cameroon	(r)	14.V.1984
Canada	(a)	24.I.1989
Chile	(a)	2.VIII.1977
China*	(a)	30.I.1980
Colombia	(a)	26.III.1990
Côte d'Ivoire	(r)	21.VI.1973
Croatia	(r)	8.X.1991
Cyprus	(a)	19.VI.1989
Denmark	(a)	2.IV.1975
Djibouti	(a)	1.III.1990
Dominican Republic	(r)	2.IV.1975
Ecuador	(a)	23.XII.1976
Egypt	(a)	3.II.1989
Equatorial Guinea	(a)	24.IV.1996
Estonia	(a)	1.XII.1992
Fiji	(a)	15.VIII.1972
Finland	(r)	10.X.1980
France	(r)	17.III.1975
Gabon	(a)	21.I.1982
Gambia	(a)	1.XI.1991
Georgia	(a)	19.IV.1994
Germany*	(r)	20.V.1975
Ghana	(r)	20.IV.1978
Greece	(a)	29.VI.1976
Guatemala*	(a)	20.X.1982

CLC 1969

Iceland	(r)	17.VII.1980
India	(a)	1.V.1987
Indonesia	(r)	1.IX.1978
Ireland	(r)	19.XI.1992
Italy*	(r)	27.II.1979
Japan	(a)	3.VI.1976
Kazakhstan	(a)	7.III.1994
Kenya	(a)	15.XII.1992
Korea (Rep.of)	(a)	18.XII.1978
Kuwait	(a)	2.IV.1981
Latvia	(a)	10.VII.1992
Lebanon	(a)	9.IV.1974
Liberia	(a)	25.IX.1972
Luxembourg	(a)	14.II.1991
Malaysia	(a)	6.I.1995
Maldives	(a)	16.III.1981
Malta	(a)	27.IX.1991
Marshall Islands	(a)	24.I.1994
Mauritania	(a)	17.XI.1995
Mauritius	(a)	6.IV.1995
Mexico	(a)	13.V.1994
Monaco	(r)	21.VIII.1975
Morocco	(a)	11.IV.1974
Mozambique	(a)	11.IV.1974
Netherlands	(r)	9.IX.1975
New Zealand	(a)	27.IV.1976
Nicaragua	(a)	4.VI.1996
Nigeria	(a)	7.V.1981
Norway	(a)	21.III.1975
Oman	(a)	24.I.1985
Panama	(r)	7.I.1976
Papua New Guinea	(a)	12.III.1980
Peru*	(a)	24.II.1987
Poland	(r)	18.III.1976
Portugal	(r)	26.XI.1976
Qatar	(a)	2.VI.1988
Russian Federation*	(a)	24.VI.1975
Saint Kitts and Nevis*	(a)	14.IX.1994
St.-Vincent and the Grenadines	(a)	19.VI.1989
Saudi Arabia*	(a)	15.IV.1993
Senegal	(a)	27.III.1972
Seychelles	(a)	12.IV.1988
Sierra Leone	(a)	13.VIII.1993
Singapore	(a)	16.IX.1981
Slovenia (succession)	(a)	25.VI.1991
South Africa	(a)	17.III.1976
Spain	(r)	8.XII.1975

CLC 1969

Sri Lanka	(a)	12.IV.1983
Sweden	(r)	17.III.1975
Switzerland	(r)	15.XII.1987
Syrian Arab Republic*	(a)	6.II.1975
Tonga	(a)	1.II.1996
Tunisia	(a)	4.V.1976
Tuvalu (succession)	(a)	1.X.1978
United Arab Emirates	(a)	15.XII.1983
United Kingdom	(r)	17.III.1975
Vanuatu	(a)	2.II.1983
Venezuela	(a)	21.I.1992
Yemen	(a)	6.III.1979
Yugoslavia	(r)	18.VI.1976

The Convention applies provisionally to the following States:

Kiribati**Solomon Islands**

The United Kingdom declared ratification to be effective also in respect of:

Anguilla	8.V.1984
Bailiwick of Jersey and Guernsey, Isle of Man	1.III.1976
Bermuda	1.III.1976
Belize⁽¹⁾	1.IV.1976
British Indian Ocean Territory	1.IV.1976
British Virgin Islands	1.IV.1976
Cayman Islands	1.IV.1976
Falkland Islands and Dependencies⁽²⁾	1.IV.1976

⁽¹⁾ Has since become an independent State and Contracting State to the Convention.

⁽²⁾ The depositary received a communication dated 16 August 1976 from the Embassy of the Argentine Republic in London. The communication, the full text of which was circulated by the depositary, includes the following:

"The extension of the convention to the Islas Malvinas, Georgias del Sur and Sandwich del Sur notified by the Government of the United Kingdom of Great Britain and Northern Ireland to the Secretary-General, on 1 April 1976 ... under the erroneous denomination of "Falkland Islands and Dependencies" - [does] not in any way affect the rights of the Argentine Republic over those islands which are part of its territory and come under the administrative jurisdiction of the Territorio Nacional de Tierra del Fuego, Antártida e Islas del Atlántico Sur.

The afore-mentioned islands were occupied by force by a foreign power. The situation has been considered by the United Nations Assembly which adopted resolutions 2065(XX) and 3160(XXVIII). In both resolutions the existence of a dispute regarding the sovereignty over the archipelago was confirmed and the Argentine Republic and the occupying power were urged to negotiate with a view to finding a definitive solution to the dispute."

The depositary received the following communication dated 20 September 1976 from the Government of the United Kingdom.

"...With reference to the statement of the Embassy of the Argentine Republic ... Her Majesty's Government is bound to state that they have no doubts as to United Kingdom sovereignty over the Falkland Islands and the Falkland Islands Dependencies.

CLC 1969

Gibraltar	1.IV.1976
Gilbert Islands⁽³⁾	1.IV.1976
Hong-Kong	1.IV.1976
Montserrat	1.IV.1976
Pitcairn	1.IV.1976
St. Helena and Dependencies	1.IV.1976
Seychelles⁽⁴⁾	1.IV.1976
Solomon Islands⁽⁵⁾	1.IV.1976
Turks and Caicos Islands	1.IV.1976
Tuvalu	1.IV.1976
United Kingdom Sovereign Base	1.IV.1976
Areas of Akrotiri and Dhekelia in the Island of Cyprus	1.IV.1976

DECLARATIONS, RESERVATIONS AND STATEMENTS**Australia**

The instrument of ratification of the Commonwealth of Australia was accompanied by the following declarations:

"Australia has taken note of the reservation made by the Union of Soviet Socialist Republics on its accession on 24 June 1975 to the Convention, concerning article XI(2) of the Convention. Australia wishes to advise that it is unable to accept the reservation. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. It is also Australia's understanding that the above-mentioned reservation is not intended to have the effect that the Union of Soviet Socialist Republics may claim judicial immunity of a foreign State with respect to ships owned by it, used for commercial purposes and operated by a company which in the Union of Soviet Socialist Republic is registered as the ship's operator, when actions for compensation are brought against the company in accordance with the provisions of the Convention. Australia also declares that, while being unable to accept the Soviet reservation, it does not regard that fact as precluding the entry into force of the Convention as between the Union of Soviet Socialist Republics and Australia."

"Australia has taken note of the declaration made by the German Democratic Republic on its accession on 13 March 1978 to the Convention, concerning article XI(2) of the Convention. Australia wishes to declare that it cannot accept the German Democratic Republic's position on sovereign immunity. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. Australia also declares that, while being unable to accept the declaration by the German Democratic Republic, it does not regard that fact as precluding the entry into force of the Convention as between the German Democratic Republic and Australia."

⁽³⁾ Has since become the independent State of Kiribati to which the Convention applies provisionally.

⁽⁴⁾ Has since become the independent State of Seychelles.

⁽⁵⁾ Has since become an independent State to which the Convention applies provisionally.

Belgium

The instrument of ratification of the Kingdom of Belgium was accompanied by a Note Verbale (in the French language) the text of which reads as follows:

[Translation]

"...The Government of the Kingdom of Belgium regrets that it is unable to accept the reservation of the Union of Soviet Socialist Republics, dated 24 June 1975, in respect of article XI, paragraph 2 of the Convention.

The Belgian Government considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes.

Belgian legislation concerning the immunity of State-owned vessels is in accordance with the provisions of the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, done at Brussels on 10 April 1926, to which Belgium is a Party.

The Belgian Government assumes that the reservation of the USSR does not in any way affect the provisions of article 16 of the Maritime Agreement between the Belgian-Luxembourg Economic Union and the Union of Soviet Socialist Republics, of the Protocol and the Exchange of Letters, signed at Brussels on 17 November 1972.

The Belgian Government also assumes that this reservation in no way affects the competence of a Belgian court which, in accordance with article IX of the aforementioned International Convention, is seized of an action for compensation for damage brought against a company registered in the USSR in its capacity of operator of a vessel owned by that State, because the said company, by virtue of article I, paragraph 3 of the same Convention, is considered to be the 'owner of the ship' in the terms of this Convention.

The Belgian Government considers, however, that the Soviet reservation does not impede the entry into force of the Convention as between the Union of Soviet Socialist Republics and the Kingdom of Belgium."

China

At the time of depositing its instrument of accession the Representative of the People's Republic of China declared "that the signature to the Convention by Taiwan authorities is illegal and null and void".

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following statement and declarations (in the German language):

[Translation]

"In connection with the declaration made by the Government of the Federal Republic of Germany on 20 May 1975 concerning the application of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 to Berlin (West), it is the understanding of the German Democratic Republic that the provisions of the Convention may be applied to Berlin (West) only inasmuch as this is consistent with the Quadripartite Agreement of 3 September 1971, under which Berlin (West) is no constituent part of the Federal Republic of Germany and must not be governed by it."

"The Government of the German Democratic Republic considers that the provisions of article XI, paragraph 2, of the Convention are inconsistent with the principle of immunity of States."⁽¹⁾

⁽¹⁾ The following Governments do not accept the reservation contained in the instrument of accession of the Government of the German Democratic Republic, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, Norway, Sweden and the United Kingdom.

CLC 1969

The Government of the German Democratic Republic considers that the provisions of article XIII, paragraph 2, of the Convention are inconsistent with the principle that all States pursuing their policies in accordance with the purposes and principles of the Charter of the United Nations shall have the right to become parties to conventions affecting the interests of all States.

The position of the Government of the German Democratic Republic on article XVII of the Convention, as far as the application of the Convention to colonial and other dependent territories is concerned, is governed by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960) proclaiming the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations.”

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by a declaration (in the English language) that “with effect from the day on which the Convention enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)”.

Guatemala

The instrument of acceptance of the Republic of Guatemala contained the following declaration (in the Spanish language):

[Translation]

“It is declared that relations that may arise with Belize by virtue of this accession can in no sense be interpreted as recognition by the State of Guatemala of the independence and sovereignty unilaterally decreed by Belize.”

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the Italian language):

[Translation]

“The Italian Government wishes to state that it has taken note of the reservation put forward by the Government of the Soviet Union (on the occasion of the deposit of the instrument of accession on 24 June 1975) to article XI(2) of the International Convention on civil liability for oil pollution damage, adopted in Brussels on 29 November 1969.

The Italian Government declares that it cannot accept the aforementioned reservation and, with regard to the matter, observes that, under international law, the States have no right to jurisdictional immunity in cases where vessels of theirs are utilized for commercial purposes.

The Italian Government therefore considers its judicial bodies competent - as foreseen by articles IX and XI(2) of the Convention - in actions for the recovery of losses incurred in cases involving vessels belonging to States employing them for commercial purposes, as indeed in cases where, on the basis of article I(3), it is a company, running vessels on behalf of a State, that is considered the owner of the vessel.

The reservation and its non-acceptance by the Italian Government do not, however, preclude the coming into force of the Convention between the Soviet Union and Italy, and its full implementation, including that of article XI(2).”

Peru⁽²⁾

The instrument of accession of the Republic of Peru contained the following reservation (in the Spanish language):

⁽²⁾ The depositary received the following communication dated 14 July 1987 from the Embassy of the Federal Republic of Germany in London (in the English language):

[Translation]

"With respect to article II, because it considers that the said Convention will be understood as applicable to pollution damage caused in the sea area under the sovereignty and jurisdiction of the Peruvian State, up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast".

Russian Federation

See USSR.

Saint Kitts and Nevis

The instrument of accession of Saint Kitts and Nevis contained the following declaration:

"The Government of Saint Kitts and Nevis considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes".

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):

[Translation]

"However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol".

Syrian Arab Republic

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):

[Translation]

"...this accession [to the Convention] in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention".

USSR

The instrument of accession of the Union of Soviet Republics contains the following reservation (in the Russian language):

[Translation]

"The Union of Soviet Socialist Republic does not consider itself bound by the

"...the Government of the Federal Republic of Germany has the honour to reiterate its well-known position as to the sea area up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast, claimed by Peru to be under the sovereignty and jurisdiction of the Peruvian State. In this respect the Federal Government points again to the fact that according to international law no coastal State can claim unrestricted sovereignty and jurisdiction beyond its territorial sea, and that the maximum breadth of the territorial sea according to international law is 12 nautical miles."

The depositary received the following communication dated 4 November 1987 from the Permanent Mission of the Union of Soviet Socialist Republics to the International Maritime Organization (in the Russian language):

[Translation]

"...the Soviet Side has the honour to confirm its position in accordance with which a coastal State has no right to claim an extension of its sovereignty to sea areas beyond the outer limit of its territorial waters the maximum breadth of which in accordance with international law cannot exceed 12 nautical miles."

CLC 1969

provisions of article XI, paragraph 2 of the Convention, as they contradict the principle of the judicial immunity of a foreign State.”⁽³⁾

Furthermore, the instrument of accession contains the following statement (in the Russian language):

[Translation]

“On its accession to the International Convention on Civil Liability for Oil Pollution Damage, 1969, the Union of Soviet Socialist Republics considers it necessary to state that:

“(a) the provisions of article XIII, paragraph 2 of the Convention which deny participation in the Convention to a number of States, are of a discriminatory nature and contradict the generally recognized principle of the sovereign equality of States, and

(b) the provisions of article XVII of the Convention envisaging the possibility of its extension by the Contracting States to the territories for the international relations of which they are responsible are outdated and contradict the United Nations Declaration on Granting Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960)”.

The depositary received on 17 July 1979 from the Embassy of the Union of Soviet Socialist Republics in London a communication stating that:

“...the Soviet side confirms the reservation to paragraph 2 of article XI of the International Convention of 1969 on the Civil Liability for Oil Pollution Damage, made by the Union of Soviet Socialist Republics at adhering to the Convention. This reservation reflects the unchanged and well-known position of the USSR regarding the impermissibility of submitting a State without its express consent to the courts jurisdiction of another State. This principle of the judicial immunity of a foreign State is consistently upheld by the USSR at concluding and applying multilateral international agreements on various matters, including those of merchant shipping and the Law of the sea.

In accordance with article III and other provisions of the 1969 Convention, the liability for the oil pollution damage, established by the Convention is attached to “the owner” of “the ship”, which caused such damage, while paragraph 3 of article I of the Convention stipulates that “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, “owner” shall mean such company”. Since in the USSR state ships used for commercial purposes are under the operational management of state organizations who have an independent liability on their obligations, it is only against these organizations and not against the Soviet state that actions for compensation of the oil pollution damage in accordance with the 1969 Convention could be brought. Thus the said reservation does not prevent the consideration in foreign courts in accordance with the jurisdiction established by the Convention, of such suits for the compensation of the damage by the merchant ships owned by the Soviet state”.

⁽³⁾ The following Governments do not accept the reservation contained in the instrument of accession of the Government of the Union of Soviet Socialist Republics, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom.

**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

Albania	(a)	6.IV.1994
Australia <i>(denunciation 22 June 1988)</i>	(a)	7.XI.1983
Bahamas	(acc)	3.III.1980
Bahrain	(a)	3.V.1996
Barbados	(a)	3.V.1996
Belgium	(a)	15.VI.1989
Belize	(a)	2.IV.1991
Brunei Darussalam	(a)	29.IX.1992
Cameroon	(a)	14.V.1984
Canada	(a)	24.I.1989
China*	(a)	29.IX.1986
Colombia	(a)	26.III.1990
Cyprus	(a)	19.VI.1989
Denmark	(a)	3.VI.1981
Egypt	(a)	3.II.1989
Finland	(a)	8.I.1981
France	(AA)	7.XI.1980
Georgia	(a)	25.VIII.1995
Germany*	(r)	28.VIII.1980
Greece	(a)	10.V.1989
India	(a)	1.V.1987
Ireland	(a)	19.XI.1992
Italy	(a)	3.VI.1983
Japan	(a)	24.VIII.1994
Korea, Republic of	(a)	8.XII.1992
Kuwait	(a)	1.VII.1981
Liberia	(a)	17.II.1981
Luxemburg	(a)	14.II.1991
Maldives	(a)	14.VI.1981
Malta	(a)	21.I.1995
Marshall Islands	(a)	27.IX.1991
Mauritania	(a)	6.IV.1995
Mauritius	(a)	17.XI.1995
Mexico	(a)	13.V.1994

CLC Protocol 1976

Netherlands	(a)	3.VIII.1982
Nicaragua	(a)	4.VI.1996
Norway	(a)	17.VII.1978
Oman	(a)	24.I.1985
Peru	(a)	24.II.1987
Poland	(a)	30.X.1985
Portugal	(a)	2.I.1986
Qatar	(a)	2.VI.1988
Russian Federation	(a)	2.XII.1988
Saudi Arabia	(a)	15.IV.1993
Singapore	(a)	15.XII.1981
Spain	(a)	22.X.1981
Sweden	(r)	7.VII.1978
Switzerland	(a)	15.XII.1987
United Arab Emirates	(a)	14.III.1984
United Kingdom	(r)	31.I.1980
Vanuatu	(a)	13.I.1989
Venezuela	(a)	21.I.1992
Yemen	(a)	4.VI.1979

The United Kingdom declared ratification to be effective also in respect of:

Anguilla
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Belize ⁽¹⁾
Bermuda
British Indian Ocean Territory
British Virgin Islands
Cayman Islands
Falkland Islands ⁽²⁾
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

⁽¹⁾ Has since become an independent State and Contracting State to the Protocol.

⁽²⁾ A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

DECLARATIONS, RESERVATIONS AND STATEMENTS

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany contains the following declaration (in the English language):

"...with effect from the date on which the Protocol enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)".

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):

[Translation]

"However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol".

NOTIFICATIONS

Article V(9)(c) of the Convention, as amended by the Protocol

China

"...the value of the national currency, in terms of SDR, of the People's Republic of China is calculated in accordance with the method of valuation applied by the International Monetary Fund."

Poland

"Poland will now calculate financial liabilities in cases of limitation of the liability of owners of sea-going ships and liability under the International Oil Pollution Compensation Fund in terms of the Special Drawing Right, as defined by the International Monetary Fund.

However, those SDR's will be converted according to the method instigated by Poland, which is derived from the fact that Poland is not a member of the International Monetary Fund.

The method of conversion is that the Polish National Bank will fix a rate of exchange of the SDR to the Polish zloty through the conversion of the SDR to the United States dollar, according to the current rates of exchange quoted by Reuter. The US dollars will then be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies.

The above method of calculation is in accordance with the provisions of article II paragraph 9 item "a" (in fine) of the Protocol to the International Convention on Civil Liability for Oil Pollution Damage and article II of the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage."

Switzerland

[Translation]

"The Swiss Federal Council declares, with reference to article V, paragraph 9(a) and (c) of the Convention, introduced by article II of the Protocol of 19 November 1976, that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency

*CLC Protocol 1976**CLC Protocol 1992*

market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette.

USSR

"In accordance with article V, paragraph 9 "c" of the International Convention on Civil Liability for Oil Pollution Damage, 1969 in the wording of article II of the Protocol of 1976 to this Convention it is declared that the value of the unit of "The Special Drawing Right" expressed in Soviet roubles is calculated on the basis of the US dollar rate in effect at the date of the calculation in relation to the unit of "The Special Drawing Right", determined by the International Monetary Fund, and the US dollar rate in effect at the same date in relation to the Soviet rouble, determined by the State Bank of the USSR".

United Kingdom

"...in accordance with article V(9)(c) of the Convention, as amended by article II(2) of the Protocol, the manner of calculation employed by the United Kingdom pursuant to article V(9)(a) of the Convention, as amended, shall be the method of valuation applied by the International Monetary Fund.

Protocol of 1992 to amend the International Convention on

Civil liability for oil pollution damage, 1969

(CLC PROT 1992)

Done at London,
19 November 1992
Entry into force: 30 May 1996

Protocole à la Convention Internationale sur la Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures, 1969

(CLC PROT 1992)

Signé à Londres,
le 19 novembre 1992
Entrée en vigueur: 30 May 1996

Australia	(a)	9.X.1995
Bahrain	(a)	3.V.1996
Denmark	(r)	30.V.1995
Egypt	(a)	21.IV.1995
Finland	(a)	8.I.1981
France	(A)	29.IX.1994
Finland	(a)	24.XI.1995
Germany*	(r)	29.IX.1994
Greece	(r)	9.X.1995

Japan	(a)	13.VIII.1994
Liberia	(a)	5.X.1995
Marshall Islands	(a)	16.X.1995
Mexico	(a)	13.V.1994
Netherlands	(a)	15.XI.1996
Norway	(r)	26.V.1995
Oman	(a)	8.VII.1994
Spain	(a)	6.VII.1995
Sweden	(r)	25.V.1995
Switzerland	(a)	4.VII.1996
United Kingdom	(a)	29.IX.1994

The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Guernsey

The Isle of Man

Falkland Islands (1)

Montserrat

South Georgia and the South Sandwich Islands

DECLARATIONS, RESERVATIONS AND STATEMENTS

Germany

The instrument of ratification of Germany was accompanied by the following declaration:

“The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992.”

⁽¹⁾ A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

*Fund 1971**Fonds 1971*

**International Convention
on the
Establishment of
an International Fund
for compensation
for oil pollution damage**

(FUND 1971)

Done at Brussels, 18 December 1971

Entered into force: 16 October, 1978

**Convention Internationale
portant
Création d'un Fonds
International
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures**

(FONDS 1971)

Signée à Bruxelles, le 18 décembre 1971

Entrée en vigueur: 16 octobre 1978

Albania	(a)	6.IV.1994
Algeria	(r)	2.VI.1975
Australia	(a)	10.X.1994
Bahamas	(a)	22.VII.1976
Bahrain	(a)	3.V.1996
Barbados	(a)	6.V.1994
Belgium	(r)	1.XII.1994
Benin	(a)	1.XI.1985
Brunei Darussalam	(a)	29.IX.1992
Cameroon	(a)	14.V.1984
Canada*	(a)	24.I.1989
Cote d'Ivoire	(a)	5.X.1987
Croatia (1)	(r)	8.X.1991
Cyprus	(a)	26.VII.1989
Denmark	(a)	2.IV.1975
Djibouti	(a)	1.III.1990
Estonia	(a)	1.XII.1992
Fiji	(a)	4.III.1983
Finland	(r)	10.X.1980
France	(a)	11.V.1978
Gabon	(a)	21.I.1982
Gambia	(a)	1.XI.1991
Germany*	(r)	30.XII.1976
Ghana	(r)	20.IV.1978
Greece	(a)	16.XII.1986
Iceland	(a)	17.VII.1980
India	(a)	10.VII.1990
Indonesia	(a)	1.IX.1978
Ireland	(r)	19.XI.1992
Italy	(a)	27.II.1979

(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*

Japan	(r)	7.VII.1976
Kenya	(a)	15.XII.1992
Korea, Republic of	(a)	8.XII.1992
Kuwait	(a)	2.IV.1981
Liberia	(a)	25.IX.1972
Malaysia	(a)	6.I.1995
Maldives	(a)	16.III.1981
Malta	(a)	27.IX.1991
Marshall Islands	(a)	30.XI.1994
Mauritania	(a)	17.XI.1995
Mauritius	(a)	6.IV.1995
Mexico	(a)	13.V.1994
Monaco	(a)	23.VIII.1979
Morocco	(r)	31.XII.1992
Mozambique	(a)	23.XII.1996
Netherlands	(A A)	3.VIII.1982
New Zeland	(a)	22.XI.1996
Nigeria	(a)	11.XI.1987
Norway	(r)	21.III.1975
Oman	(a)	10.V.1985
Papua New Guinea	(a)	12.III.1980
Poland	(r)	16.IX.1985
Portugal	(r)	11.IX.1985
Qatar	(a)	2.VI.1988
Russian Federation (3)	(a)	17.VI.1987
Saint Kitts and Nevis	(a)	14.IX.1994
Seychelles	(a)	12.IV.1988
Sierra Leone	(a)	13.VIII.1993
Slovenia (succession)	(a)	25.VI.1991
Spain	(a)	8.X.1981
Sri Lanka	(a)	12.IV.1983
Sweden	(r)	17.III.1975
Switzerland	(r)	4.VII.1996
Syrian Arab Republic*	(a)	6. II.1975
Tonga	(a)	1.II.1996
Tunisia	(a)	4.V.1976
Tuvalu	(succession)	
United Arab Emirates	(a)	15.XII.1983
United Kingdom	(r)	2.IV.1976
Yanuat	(a)	13.I.1989
Venezuela	(a)	21.I.1992
Yugoslavia	(r)	16.III.1978

(3) As from 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

*Fund 1971**Fonds 1971*

The United Kingdom declared ratification to be effective also in respect of:

	Effective date
Anguilla	1 September 1984
Bailiwick of Guernsey)
Bailiwick of Jersey)
Isle of Man)
Belize (1))
Bermuda)
British Indian Ocean Territory)
British Virgin Islands)
Cayman Islands)
Falkland Islands and Dependencies (2)	16 October 1978
Gibraltar)
Gilbert Islands (3))
Hong Kong)
Montserrat)
Pitcairn Group)
Saint Helena and Dependencies)
Seychelles (4))
Solomon Islands (5))
Turks and Caicos Islands)
Tuvalu (6))
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus)

⁽¹⁾ Has since become the independent State of Belize.

⁽²⁾ The depositary received a communication dated 16 August 1976 from the Embassy of the Argentina Republic in London. The communication, the full text of which was circulated by the depositary, includes the following:

"...the mentioning of the [Islas Malvinas, Georgias del Sur and Sandwich de Sur] in the instrument of ratification ... deposited on 2 April 1976 ... under the erroneous denomination of 'Falkland Islands and Dependencies' - [does] not in any way affect the rights of the Argentine Republic over those islands which are part of its territory and come under the administrative jurisdiction of the Territorio Nacional de Tierra del Fuego, Antártida e Islas del Atlántico Sur.

The aforementioned islands were occupied by force by a foreign power. The situation has been considered by the United Nations Assembly which adopted resolutions 2065(XX) and 3160(XXVIII). In both resolutions, the existence of a dispute regarding the sovereignty over the archipelago was confirmed and the Argentine Republic and the occupying power were urged to negotiate with a view to finding a definitive solution to the dispute."

The depositary received the following communication dated 21 September 1976 from the Government of the United Kingdom.

"With reference to the statement of the Embassy of the Argentine Republic ... Her Majesty's Government is bound to state that they have no doubts as to United Kingdom sovereignty over the Falkland Islands and the Falkland Islands dependencies."

⁽³⁾ Has since become the independent State of Kiribati.

⁽⁴⁾ Has since become the independent State of Seychelles.

⁽⁵⁾ Has since become the independent State of Solomon Islands.

⁽⁶⁾ Has since become an independent State and a Contracting State to the Convention.

DECLARATIONS, RESERVATIONS AND STATEMENTS

Canada

The instrument of accession of Canada was accompanied by the following declaration (in the English and French languages):

"The Government of Canada assumes responsibility for the payment of the obligations contained in articles 10, 11 and 12 of the Fund Convention. Such payments to be made in accordance with section 774 of the Canada Shipping Act as amended by Chapter 7 of the Statutes of Canada 1987".

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the English language):

"that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany."

Syrian Arab Republic

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):

[Translation]

"...the accession of the Syrian Arab Republic to this Convention ... in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention."

**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

Albania	(a)	6.IV.1994
Australia	(a)	10.X.1994
Bahamas	(A)	3.III.1980
Bahrain	(a)	3.V.1996

*Fund Protocol 1976**Protocole Fonds 1976*

Barbados	(a)	6.V.1994
Belgium	(r)	1.XII.1994
Canada	(a)	21.II.1995
Cyprus	(a)	26.VII.1989
Denmark	(a)	3.VI.1981
Finland	(a)	8.I.1981
France	(a)	7.XI.1980
Germany*	(r)	28.VIII.1980
Greece	(a)	9.X.1995
Iceland	(a)	24.III.1994
India	(a)	10.VII.1990
Ireland	(a)	19.XI.1992
Italy	(a)	21.IX.1983
Japan	(a)	24.VIII.1994
Liberia	(a)	17.II.1981
Malta	(a)	27.IX.1991
Marshall Islands	(a)	16.X.1995
Mexico	(a)	13.V.1994
Morocco	(a)	31.XII.1992
Netherlands	(a)	1.XI.1982
Nor way	(a)	17.VII.1978
Poland*	(a)	30.X.1985
Portugal	(a)	11.IX.1985
Russian Federation (1)	(a)	30.I.1989
Spain	(a)	5.IV.1982
Sweden	(r)	7.VII.1978
United Kingdom	(r)	31.I.1980
Vanuatu	(a)	13.I.1989
Venezuela	(a)	21.I.1992

(1) As from 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

The United Kingdom declared ratification to be effective also in respect of:

Anguilla
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Belize (1)
Bermuda
British Indian Ocean Territory
British Virgin Islands
Cayman Islands
Falkland Islands (2)
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

DECLARATIONS, RESERVATIONS AND STATEMENTS

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany contains the following declaration in the English language:

"... with effect from the date on which the Protocol enters into force for the Federal Republic of Germany, it shall also apply to Berlin (West)."

Poland

(for text of the notification, see page 458)

(1) Has since become the independent State of Belize.

(2) A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

*Fund Protocol 1992**Protocole Fonds 1992*

**Protocol of 1992 to amend
the International
Convention on the
Establishment of an
International
Fund for compensation
for oil pollution damage**

(FUND PROT 1992)

Done at London,
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

Australia	(a)	9.X.1995
Bahrain	(a)	3.V.1996
Denmark	(r)	30.V.1995
Egypt	(a)	21.IV.1995
Finland	(a)	24.XI.1995
France	(A)	29.IX.1994
Greece	(r)	9.X.1995
Germany*	(r)	29.IX.1994
Japan	(a)	13.VIII.1994
Liberia	(a)	5.X.1995
Marshall Islands	(a)	16.X.1995
Mexico	(a)	13.V.1994
Norway	(r)	26.V.1995
Oman	(a)	8.VII.1994
Spain*	(a)	6.VII.1995
Sweden	(r)	25.V.1995
Switzerland	(a)	4.VII.1996
United Kingdom	(a)	29.IX.1994

The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Guernsey
The Isle of Man
Falkland Islands (1)
Montserrat
South Georgia and the South Sandwich Islands

(1) The depositary received a communication dated 21 February 1995 from the Embassy of the Argentine Republic in London.

[Translation]

"...the Argentine Government rejects the statement made by the United Kingdom of Great Britain and Northern Ireland on acceding to the Protocol of 1992 to amend the International

DECLARATIONS, RESERVATIONS AND STATEMENTS

Federal Republic of Germany

The instrument of ratification by Germany was accompanied by the following declaration:

"The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992."

Spain

The instrument of accession by Spain contained the following declaration:

[Translation]

"In accordance with the provisions of article 30, paragraph 4 of the above mentioned Protocol, Spain declares that the deposit of its instrument of accession shall not take effect for the purpose of this article until the end of the six-month period stipulated in article 31 of the said Protocol".

Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. In that statement, accession was declared to be effective in respect of the Malvinas Islands, South Georgia and South Sandwich Islands. The Argentine Republic reaffirms its sovereignty over these islands and their surrounding maritime spaces, which constitute an integral part of its national territory.

The Argentine Republic recalls the adoption, by the General Assembly of the United Nations, of resolutions 2065(XX) and 3160(XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/41, 42/19 and 43/25, acknowledging the existence of a dispute concerning sovereignty and urging the Governments of the Argentine Republic and of the United Kingdom of Great Britain and Northern Ireland to enter into negotiations with a view to identifying means of pacific and final settlement of the outstanding problems between the two countries, including all matters concerning the future of the Malvinas Islands, in accordance with the Charter of the United Nations."

The depositary received a communication dated 22 May 1995 from the Foreign and Commonwealth Office, London:

"The Government of the United Kingdom of Great Britain and Northern Ireland have noted the declaration of the Government of Argentina regarding the extension by the United Kingdom of the application of the Convention to the Falkland Islands and to South Georgia and the South Sandwich Islands.

The British Government have no doubt about the sovereignty of the United Kingdom over the Falkland Islands and over South Georgia and the South Sandwich Islands and their consequent rights to extend the said Convention to these Territories. The British Government reject as unfounded the claims by the Government of Argentina."

*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

Argentina	(a)	18.V.1981
Belgium	(r)	15.VI.1989
Denmark ⁽¹⁾	(r)	4.IX.1974
Finland	(A)	6.VI.1991
France	(r)	2.II.1973
Gabon	(a)	21.I.1982
Germany*	(r)	1.X.1975
Italy*	(r)	21.VII.1980
Liberia	(a)	17.II.1981
Netherlands	(a)	1.VIII.1991
Norway	(r)	16.IV.1975
Spain	(a)	21.V.1974
Sweden	(r)	22.XI.1974
Yemen	(a)	6.III.1979

DECLARATIONS, RESERVATIONS AND STATEMENTS**Federal Republic of Germany**

The following reservation accompanies the signature of the Convention by the Representative of the Federal Republic of Germany (in the English language):

"Pursuant to article 10 of the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, the Federal Republic of Germany reserves the right to provide by national law, that the persons liable under an international convention or national law applicable in the field of maritime transport may continue to be liable in addition to the operator of a nuclear installation on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator." This reservation was withdrawn at the time of deposit of the instrument of ratification of the Convention.

The instrument of ratification of the Government of the Federal Republic of Germany was accompanied by the following declaration (in the German language):

[Translation]

"That the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.

⁽¹⁾ Shall not apply to the Faroe Islands.

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the English language):

"It is understood that the ratification of the said Convention will not be interpreted in such a way as to deprive the Italian State of any right of recourse made according to the international law for the damages caused to the State itself or its citizens by a nuclear accident".

**Athens Convention relating
to the Carriage
of passengers
and their luggage by sea
(PAL 1974)**

Done at Athens:
13 December 1974
Entered into force:
28 April 1987

**Convention d'Athènes
relative au Transport
par mer de passagers
et de leurs bagages
(PAL 1974)**

Signée à Athènes,
le 13 décembre 1974
Entrée en vigueur:
28 avril 1987

Argentina*	(a)	26.V.1983
Bahamas	(a)	7.VI.1983
Barbados	(a)	6.V.1994
Belgium	(a)	15.VI.1989
China	(a)	1.VI.1994
Egypt	(a)	18.X.1991
Equatorial Guinea	(a)	24.IV.1996
Georgia	(a)	25.VIII.1995
Germany* ⁽¹⁾	(a)	24.VII.1979
Greece	(A)	3.VII.1991
Jordan	(a)	3.X.1995
Liberia	(a)	17.II.1981
Luxembourg	(a)	14.II.1991
Jordan	(a)	3.X.1995
Malawi	(a)	9.III.1993
Poland	(r)	28.I.1987
Russian Federation* ⁽²⁾	(a)	27.IV.1983

⁽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.

PAL 1974

Spain	(a)	8.X.1981
Switzerland	(r)	15.XII.1987
Tonga	(a)	15.II.1977
Ucraina	(a)	11.XI.1994
United Kingdom	(r)	31.I.1980
Vanuatu	(a)	13.I.1989
Yemen	(a)	6.III.1979

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

DECLARATIONS, RESERVATIONS AND STATEMENTS

Argentina⁽¹⁾

The instrument of accession of the Argentine Republic contained a declaration of non-application of the Convention under article 22, paragraph 1, as follows (in the Spanish language):

[Translation]

“The Argentine Republic will not apply the Convention when both the passengers and the carrier are Argentine nationals”.

The instrument also contained the following reservations:

⁽¹⁾ A communication dated 19 October 1983 from the Government of the United Kingdom, the full text of which was circulated by the depositary, includes the following:

“The Government of the United Kingdom of Great Britain and Northern Ireland reject each and every of these statements and assertions. The United Kingdom has no doubt as to its sovereignty over the Falkland Islands and thus its right to include them within the scope of application of international agreements of which it is a party. The United Kingdom cannot accept that the Government of the Argentine Republic has any rights in this regard. Nor can the United Kingdom accept that the Falkland Islands are incorrectly designated”.

[Translation]

"The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and Their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of "Falkland Islands", and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory".

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):

[Translation]

"The German Democratic Republic declares that the provisions of this Convention shall have no effect when the passenger is a national of the German Democratic Republic and when the performing carrier is a permanent resident of the German Democratic Republic or has its seat there".

USSR

The instrument of accession of the Union of Soviet Socialist Republic contained a declaration of non-application of the Convention under article 22, paragraph 1.

**Protocol to the
Athens Convention relating
to the Carriage
of passengers
and their luggage by sea
(PAL PROT 1976)**

Done at London,
19 November 1976
Entered into force: 10 April 1989

**Protocole à la
Convention d'Athènes
relative au Transport
par mer de passagers
et de leurs bagages
(PAL PROT 1976)**

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 10 avril 1989

Argentina*	(a)	28.IV.1987
Bahamas	(a)	28.IV.1987
Barbados	(a)	6.V.1994
Belgium	(a)	15.VI.1989
China	(a)	1.VI.1994
Georgia	(a)	25.VIII.1995

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Greece	(a)	3.VII.1991
Liberia	(a)	28.IV.1987
Luxemburg	(a)	14.II.1991
Marshall Islands	(a)	29.XI.1994
Poland	(a)	28.IV.1987
Russian Federation ⁽¹⁾	(a)	30.I.1989
Spain	(a)	28.IV.1987
Switzerland	(a)	15.XII.1987
Ukraine	(a)	11.XI.1994
United Kingdom	(r)	28.IV.1987
Vanuatu	(a)	13.I.1989
Yemen	(a)	28.IV.1987

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 ⁽²⁾
Gibraltar
Hong Kong
Montserrat
Pitcairn
Saint Helena and Dependencies

⁽¹⁾ As of 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

⁽²⁾ For the texts of a reservation made by the Argentine Republic and a communication received from the United Kingdom, see page 471 and 472.

DECLARATIONS, RESERVATIONS AND STATEMENTS

Argentina ⁽¹⁾

The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):

[Translation]

"The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of "Falkland Islands", and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory".

**Protocol of 1990 to amend the
1974 Athens Convention
relating to the Carriage
of passengers
and their luggage by sea
(PAL PROT 1990)**

Done at London, 29 March 1990
Not yet in force

**Protocole de 1990 modifiant
La Convention d'Athènes
de 1974 relative au
Transport par mer de
passagers et de leurs bagages
(PAL PROT 1990)**

Fait à Londres, le 29 mars 1990
Pas encore en vigueur

**Egypt
Spain**

(a)	18.X.1991
(a)	24.II.1993

⁽¹⁾ The depositary received the following communication dated 4 August 1987 from the United Kingdom Foreign and Commonwealth Office:

"The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the reservation made by the Argentine Republic as regards the Falkland Islands.

The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and, accordingly, their right to extend the application of the Convention to the Falkland Islands".

*LLMC 1976***Convention on
Limitation of Liability
for maritime claims****(LLMC 1976)**Done at London, 19 November 1976
Entered into force: 1 December, 1986**Convention sur la
Limitation de la
Responsabilité en matière
de créances maritimes
(LLMC 1976)**Signée à Londres, le 19 novembre 1976
Entrée en vigueur: 1 décembre 1986

Australia	(a)	20.II.1991
Bahamas	(a)	7.VI.1983
Barbados	(a)	6.V.1994
Belgium*	(a)	15.VI.1989
Benin	(a)	1.XI.1985
Croatia	(a)	2.III.1993
Denmark	(r)	30.V.1984
Egypt	(a)	30.III.1988
Equatorial Guinea	(a)	24.IV.1996
Finland	(r)	8.V.1984
France*	(AA)	1.VII.1981
Georgia	(a)	20.II.1996
Germany*	(r)	12.V.1987
Greece	(a)	3.VII.1991
Japan*	(a)	4.VI.1982
Liberia	(a)	17.II.1981
Marshall	(a)	29.XI.1994
Mexico	(a)	13.V.1994
Netherlands*	(a)	15.V.1990
New Zealand ⁽¹⁾	(a)	14.II.1994
Norway*	(r)	30.III.1984
Poland	(a)	28.IV.1986
Spain	(r)	13.XI.1981
Sweden*	(r)	30.III.1984
Switzerland*	(a)	15.XII.1987
United Kingdom*	(r)	31.I.1980
Vanuatu	(a)	14.IX.1992
Yemen	(a)	6.III.1979

⁽¹⁾ The instrument of accession contained the following statement:
 “AND WHEREAS it is not intended that the accession by the Government of New Zealand to the Convention should extend to Tokelau”.

The United Kingdom declared its ratification to be effective also in respect of:

Bailiwick of Jersey

Bailiwick of Guernsey

Isle of Man

Belize (1)

Bermuda

British Virgin Islands

Cayman Islands

Falkland Islands (2)

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

DECLARATIONS, RESERVATIONS AND STATEMENTS

Belgium

The instrument of accession of the Kingdom of Belgium was accompanied by the following reservation (in the French language):

[Translation]

"In accordance with the provisions of article 18, paragraph 1, Belgium expresses a reservation on article 2, paragraph 1(d) and (e)".

France

The instrument of approval of the French Republic contained the following reservation (in the French language):

[Translation]

"In accordance with article 18, paragraph 1, the Government of the French Republic reserves the right to exclude the application of article 2, paragraphs 1(d) and (e)".

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):

[Translation]

Article 2, paragraph 1(d) and (e)

"The German Democratic Republic notes that for the purpose of this Convention there is no limitation of liability within its territorial sea and internal waters in respect of the

⁽¹⁾ Has since become the independent State of Belize to which the Convention applies provisionally.

⁽²⁾ For the text of communication received from the Governments of Argentina and the United Kingdom, see page 474.

LLMC 1976

removal of a wrecked ship, the raising, removal or destruction of a ship which is sunk, stranded or abandoned (including anything that is or has been on board such ship). Claims, including liability, derive from the laws and regulations of the German Democratic Republic.”

Article 8, paragraph 1

“The German Democratic Republic accepts the use of the Special Drawing Rights merely as a technical unit of account. This does not imply any change in its position toward the International Monetary Fund”.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the German language):

[Translation]

“...that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany”.

“In accordance with art. 18, par. 1 of the Convention, the Federal Republic of Germany reserves the right to exclude the application of art. 2, par. 1(d) and (e) of the Convention”

Japan

The instrument of accession of Japan was accompanied by the following statement (in the English language):

“...the Government of Japan, in accordance with the provision of paragraph 1 of article 18 of the Convention, reserves the right to exclude the application of paragraph 1(d) and (e) of article 2 of the Convention”.

Netherlands

The instrument of accession of the Kingdom of the Netherlands contained the following reservation:

“In accordance with article 18, paragraph 1 of the Convention on limitation of liability for maritime claims, 1976, done at London on 19 November 1976, the Kingdom of the Netherlands reserves the right to exclude the application of article 2, paragraph 1(d) and (e) of the Convention”.

United Kingdom

The instrument of accession of the United Kingdom of Great Britain and Northern Ireland contained reservation which states that the United Kingdom was “Reserving the right, in accordance with article 18, paragraph 1, of the Convention, on its own behalf and on behalf of the above mentioned territories, to exclude the application of article 2, paragraph 1(d); and to exclude the application of article 2, paragraph 1(e) with regard to Gibraltar only”.

NOTIFICATIONS

Article 8(4)

German Democratic Republic

[Translation]

“The amounts expressed in Special Drawing Rights will be converted into marks of the German Democratic Republic at the exchange rate fixed by the Staatsbank of the German Democratic Republic on the basis of the current rate of the US dollar or of any other freely convertible currency”.

Poland

"Poland will now calculate financial liabilities mentioned in the Convention in the terms of the Special Drawing Right, according to the following method.

The Polish National Bank will fix a rate of exchange of the SDR to the United States dollar according to the current rates of exchange quoted by Reuter. Next, the US dollar will be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies".

Switzerland

"The Federal Council declares, with reference to article 8, paragraphs 1 and 4 of the Convention that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette".

United Kingdom

"...The manner of calculation employed by the United Kingdom pursuant to article 8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund".

Article 15(2)**Belgium**

[Translation]

"In accordance with the provisions of article 15, paragraph 2, Belgium will apply the provisions of the Convention to inland navigation".

France

[Translation]

"...- that no limit of liability is provided for vessels navigating on French internal waterways;

- that, as far as ships with a tonnage of less than 300 tons are concerned, the general limits of liability are equal to half those established in article 6 of the Convention...for ships with a tonnage not exceeding 500 tons".

Federal Republic of Germany

[Translation]

"In accordance with art. 15, par. 2, first sentence, sub-par. (a) of the Convention, the system of limitation of liability to be applied to vessels which are, according to the law of the Federal Republic of Germany, ships intended for navigation on inland waterways, is regulated by the provisions relating to the private law aspects of inland navigation.

In accordance with art. 15, par. 2, first sentence, sub-par. (b) of the Convention, the system of limitation of liability to be applied to ships up to a tonnage of 250 tons is regulated by specific provisions of the law of the Federal Republic of Germany to the effect that, with respect to such a ship, the limit of liability to be calculated in accordance with art. 6, par. 1 (b) of the Convention is half of the limitation amount to be applied with respect to a ship with a tonnage of 500 tons".

Netherlands

Paragraph 2(a)

"The Act of June 14th 1989 (Staatsblad 239) relating to the limitation of liability of

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owners of inland navigation vessels provides that the limits of liability shall be calculated in accordance with an Order in Council.

The Order in Council of February 19th 1990 (Staatsblad 96) adopts the following limits of liability in respect of ships intended for navigation on inland waterways.

I. Limits of liability for claims in respect of loss of life or personal injury other than those in respect of passengers of a ship, arising on any distinct occasion:

1. for a ship non intended for the carriage of cargo, in particular a passenger ship, 200 Units of Account per cubic metre of displacement at maximum permitted draught, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

2. for a ship intended for the carriage of cargo, 200 Units of Account per ton of the ship's maximum deadweight, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

3. for a tug or a pusher, 700 Units of Account for each kW of the motorpower of the means of propulsion;

4. for a pusher which at the time the damage was caused was coupled to barges in a pushed convoy, the amount calculated in accordance with 3 shall be increased by 100 Units of Account per ton of the maximum deadweight of the pushed barges; such increase shall not apply if it is proved that the pusher has rendered salvage services to one or more of such barges;

5. for a ship equipped with mechanical means of propulsion which at the time the damage was caused was moving other ships coupled to this ship, the amount calculated in accordance with 1, 2 or 3 shall be increased by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other ships; such increase shall not apply if it is proved that this ship has rendered salvage services to one or more of the coupled ships;

6. for hydrofoils, dredgers, floating cranes, elevators and all other floating appliances, pontoons or plant of a similar nature, treated as inland navigation ships in accordance with Article 951a, paragraph 4 of the Commercial Code, their value at the time of the incident;

7. where in cases mentioned under 4 and 5 the limitation fund of the pusher or the mechanically propelled ships is increased by 100 Units of Account per ton of maximum deadweight of the pushed barges or per cubic metre of displacement of the other coupled ships, the limitation fund of each barge or of each of the other coupled ships shall be reduced by 100 Units of Account per ton of the maximum deadweight of the barge or by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other vessel with respect to claims arising out of the same incident;

however, in no case shall the limitation amount be less than 200,000 Units of Account.

II. The limits of liability for claims in respect of any damage caused by water pollution, other than claims for loss of life or personal injury, are equal to the limits mentioned under I.

III. The limits of liability for all other claims are equal to half the amount of the limits mentioned under I.

IV. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of an inland navigation ship, the limit of liability of the owner thereof shall be an amount equal to 60,000 Units of Account multiplied by the number of passengers the ship is authorized to carry according to its legally established capacity or, in the event that the maximum number of passengers the ship is authorized to carry has not been established by law, an amount equal to 60,000 Units of Account

multiplied by the number of passengers actually carried on board at the time of the incident. However, the limitation of liability shall in no case be less than 720,000 Units of Account and shall not exceed the following amounts:

- (i) 3 million Units of Account for a vessel with an authorized maximum capacity of 100 passengers;
- (ii) 6 million Units of Account for a vessel with an authorized maximum capacity of 180 passengers;
- (iii) 12 million Units of Account for a vessel with an authorized maximum capacity of more than 180 passengers;

Claims for loss of life or personal injury to passengers have been defined in the same way as in Article 7, paragraph 2 of the Convention on Limitation of Liability for Maritime Claims, 1976.

The Unit of Account mentioned under I-IV is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

Paragraph 2(b)

The Act of June 14th 1989 (Staatsblad 241) relating to the limitation of liability for maritime claims provides that with respect to ships which are according to their construction intended exclusively or mainly for the carriage of persons and have a tonnage of less than 300, the limit of liability for claims other than for loss of life or personal injury may be established by Order in Council at a lower level than under the Convention.

The Order in Council of February 19th 1990 (Staatsblad 97) provides that the limit shall be 100,000 Units of Account.

The Unit of Account is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

Switzerland

[Translation]

"In accordance with article 15, paragraph 2, of the Convention on Limitation of Liability for Maritime Claims, 1976, we have the honour to inform you that Switzerland has availed itself of the option provided in paragraph 2(a) of the above mentioned article.

Since the entry into force of article 44a of the Maritime Navigation Order of 20 November 1956, the limitation of the liability of the owner of an inland waterways ship has been determined in Switzerland in accordance with the provisions of that article, a copy of which is [reproduced below]:

II. Limitation of liability of the owner of an inland waterways vessel

Article 44a

1. In compliance with article 5, subparagraph 3c, of the law on maritime navigation, the liability of the owner of an inland waterways vessel, provided in article 126, subparagraph 2c, of the law, shall be limited as follows:

- a. in respect of claims for loss of life or personal injury, to an amount of 200 units of account per deadweight tonne of a vessel used for the carriage of goods and per cubic metre of water displaced for any other vessel, increased by 700 units of account per kilowatt of power in the case of mechanical means of propulsion, and to an amount of 700 units of account per kilowatt of power for uncoupled tugs and pusher craft; for all such vessels, however, the limit of liability is fixed at a minimum of 200,000 units of account;
 - b. in respect of claims for passengers, to the amounts provided by the Convention on Limitation of Liability for Maritime Claims, 1976, to which article 49, subparagraph 1, of the federal law on maritime navigation refers;
 - c. in respect of any other claims, half of the amounts provided under subparagraph a.
2. The unit of account shall be the special drawing right defined by the International

LLMC 1976LLMC Protocol 1996

Monetary Fund.

3. Where, at the time when damage was caused, a pusher craft was securely coupled to a pushed barge train, or where a vessel with mechanical means of propulsion was providing propulsion for other vessels coupled to it, the maximum amount of the liability, for the entire coupled train, shall be determined on the basis of the amount of the liability of the pusher craft or of the vessel with mechanical means of propulsion and also on the basis of the amount calculated for the deadweight tonnage or the water displacement of the vessels to which such pusher craft or vessel is coupled, in so far as it is not proved that such pusher craft or such vessel has rendered salvage services to the coupled vessels."

United Kingdom

"...With regard to article 15, paragraph 2(b), the limits of liability which the United Kingdom intend to apply to ships of under 300 tons are 166,677 units of account in respect of claims for loss of life or personal injury, and 83,333 units of account in respect of any other claims."

Article 15(4)

Norway

"Because a higher liability is established for Norwegian drilling vessels according to the Act of 27 May 1983 (No. 30) on changes in the Maritime Act of 20 July 1893, paragraph 324, such drilling vessels are exempted from the regulations of this Convention as specified in article 15 No. 4."

Sweden

"...In accordance with paragraph 4 of article 15 of the Convention, Sweden has established under its national legislation a higher limit of liability for ships constructed for or adapted to and engaged in drilling than that otherwise provided for in article 6 of the Convention.

**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

**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

Canada*	(r)	14.XI.1994
China*	(a)	30.III.1994
Denmark	(r)	30.V.1995
Egypt	(a)	14.III.1991
Georgia	(a)	25.VIII.1995
Greece	(a)	3.VI.1996
India	(a)	18.X.1995
Iran (Islamic Republic of)*	(a)	1.VIII.1994
Ireland*	(r)	6.VI.1995
Italy	(r)	14.VII.1995
Jordan	(a)	3.X.1995
Marshall Islands	(a)	16.X.1995
Mexico*	(r)	10.X.1991
Nigeria	(r)	11.X.1990
Norway*	(r)	3.XII.1996
Oman	(a)	14.X.1991
Saudi Arabia*	(a)	16.XII.1991
Sweden*	(r)	19.XII.1995
Switzerland	(r)	12.III.1993
United Arab Emirates	(a)	4.X.1993
United Kingdom*	(r)	29.IX.1994
United States	(r)	27.III.1992

The United Kingdom declared 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

(*) The Argentine Government rejects the statement made by the United Kingdom of Great Britain and Northern Ireland on ratifying the International Convention on Salvage, 1989. In that statement, ratification was declared to be effective in respect of the Malvinas Islands, South Georgia and South Sandwich Islands. The Argentine Republic reaffirms its sovereignty over these islands and their surrounding maritime spaces, which constitute an integral part of its national territory".

*Salvage 1989**Assistance 1989*

DECLARATIONS, RESERVATIONS AND STATEMENTS

Canada

The instrument of ratification of Canada was accompanied by the following reservation:

"Pursuant to Article 30 of the International Convention on Salvage, 1989, the Government of Canada reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

China

The instrument of accession of the People's Republic of China contained the following statement:

[Translation]

"That in accordance with the provisions of article 30, paragraph 1 of the International Convention on Salvage, 1989, the Government of the People's Republic of China reserves the right not to apply the provisions of article 30, paragraphs 1(a), (b) and (d) of the said Convention".

Islamic Republic of Iran

The instrument of accession of the Islamic Republic of Iran contained the following reservation:

"The Government of the Islamic Republic of Iran reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b), (c) and (d)".

Ireland

The instrument of ratification of Ireland contained the following reservation:

"Reserve the right of Ireland not to apply the provisions of the Convention specified in article 30(1)(a) and (b) thereof".

Mexico

The instrument of ratification of Mexico contained the following reservation and declaration:

The Argentine Republic recalls the adoption by the General Assembly of the United Nations, of resolutions 2065(XX) and 3160(XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/41, 42/19 and 43/25, acknowledging the existence of a dispute concerning sovereignty and urging the Governments of the Argentine Republic and of the United Kingdom of Great Britain and Northern Ireland to enter into negotiations with a view to identifying means of pacific and final settlement of the outstanding problems between the two countries, including all matters concerning the future of the Malvinas Islands, in accordance with the Charter of the United Nations."

The depositary received the following communication, dated 9 May 1995, from the Foreign and Commonwealth Office, London:

"The Government of the United Kingdom of Great Britain and Northern Ireland have noted the declaration of the Government of Argentina regarding the extension by the United Kingdom of the application of the Convention to the Falkland Islands and to South Georgia and the South Sandwich Islands.

The British Government have no doubt about the sovereignty of the United Kingdom over the Falkland Islands and over South Georgia and the South Sandwich Islands and their consequent rights to extend the said Convention to these Territories. The British Government reject as unfounded the claims by the Government of Argentina."

[Translation]

"The Government of Mexico reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b) (c) and (d), pointing out at the same time that it considers salvage as a voluntary act".

Norway

The instrument of ratification of the Kingdom of Norway contained the following reservation:

"In accordance with Article 30, subparagraph 1(d) of the Convention, the Kingdom of Norway reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

Saudi Arabia⁽¹⁾

The instrument of accession of Saudi Arabia contained the following reservations:

[Translation]

1. This instrument of accession does not in any way whatsoever mean the recognition of Israel; and
2. The Kingdom of Saudi Arabia reserves its right not to implement the rules of this instrument of accession to the situations indicated in paragraphs (a), (b), (c) and (d) of article 30 of this instrument."

Spain

The following reservations were made at the time of signature of the Convention:

[Translation]

"In accordance with the provisions of article 30.1(a), 30.1(b) and 30.1(d) of the International Convention on Salvage, 1989, the Kingdom of Spain reserves the right not to apply the provisions of the said Convention:

- when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
- when the salvage operations take place in inland waters and no vessel is involved. For the sole purposes of these reservations, the Kingdom of Spain understands by 'inland waters' not the waters envisaged and regulated under the name of 'internal waters' in the United Nations Convention on the Law of the Sea but continental waters that are not in communication with the waters of the sea and are not used by seagoing vessels. In particular, the waters of ports, rivers, estuaries, etc., which are frequented by seagoing vessels are not considered as 'inland waters';
- when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

⁽¹⁾ The depositary received the following communication dated 27 February 1992 from the Embassy of Israel:

"The Government of the State of Israel has noted that the instrument of accession of Saudi Arabia to the above-mentioned Convention contains a declaration with respect to Israel.

In the view of the Government of the State of Israel such declaration, which is explicitly of a political character, is incompatible with the purposes and objectives of this Convention and cannot in any way affect whatever obligations are binding upon Saudi Arabia under general International Law or under particular Conventions.

The Government of the State of Israel will, in so far as concerns the substance of the matter, adopt towards Saudi Arabia an attitude of complete reciprocity."

*Salvage 1989**Oil Pollution Preparedness 1990***Sweden**

The instrument of ratification of the Kingdom of Sweden contained the following reservation:

“Referring to Article 30.1(d) Sweden reserves the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

United Kingdom

The instrument of ratification of the United Kingdom of Great Britain and Northern Ireland contained the following reservation:

“In accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, the United Kingdom reserves the right not to apply the provisions of the Convention when:

- (i) the salvage operation takes place in inland waters and all vessels involved are of inland navigation; or
- (ii) the salvage operation takes place in inland waters and no vessel is involved; or
- (iii) the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

**International Convention on
Oil pollution preparedness,
response and co-operation
1990**

**Convention Internationale de
1990 sur la Preparation, la
lutte et la cooperation en
matière de pollution par les
hydrocarbures**

Done at London: 30 November 1990
Not yet in force.

Signée a Londres le 30 novembre 1990
Pas encore en vigueur.

Argentina*	(r)	13.VII.1994
Australia	(a)	6.VII.1992
Canada	(a)	7.III.1994
Denmark*	(r)	22.X.1996
Egypt	(r)	29.VI.1992
El Salvador	(a)	9.X.1995
Finland	(AA)	21.VI.1993
France	(AA)	21.VII.1993
Georgia	(a)	20.II.1996
Germany	(r)	15.II.1995
Greece	(r)	7.III.1995
Iceland	(r)	6.XI.1992
Japan	(a)	17.X.1995
Liberia	(a)	5.X.1995
Marshall	(a)	16.X.1995
Mexico	(a)	13.V.1994

Oil pollution preparedness 1990

Netherlands	(r)	1.XII.1994
Nigeria	(a)	25.V.1993
Norway	(r)	8.III.1994
Pakistan	(a)	21.VII.1993
Senegal	(r)	24. III.1994
Seychelles	(a)	26.VI.1992
Spain	(r)	12.I.1994
Sweden	(r)	30.III.1992
Switzerland	(a)	4.VII.1996
Tonga	(a)	1.II.1996
Tunisia	(a)	23.X.1995
United States	(r)	27.III.1992
Uruguay	(s)	27.IX.1994
Venezuela	(r)	12.XII.1994

DECLARATIONS, RESERVATIONS AND STATEMENTS**Argentina⁽¹⁾**

The instrument of ratification of the Argentine Republic contained the following reservation:

[Translation]

"The Argentine Republic hereby expressly reserves its rights of sovereignty and of territorial and maritime jurisdiction over the Malvinas Islands, South Georgia and South Sandwich Islands, and the maritime areas corresponding thereto, as recognized and defined in Law No. 23.968 of the Argentine Nation of 14 August 1991, and repudiates any extension of the scope of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, which may be made by any other State, community or entity to those Argentine island territories and/or maritime areas".

Denmark

The instrument of ratification of the Kingdom of Denmark contained the following reservation:

[Translation]

"That the Convention will not apply to the Faroe Islands nor to Greenland, pending a further decision".

By a communication dated 27 November 1996 the depositary was informed that Denmark withdraws the reservation with respect to the territory of Greenland.

⁽¹⁾ The depositary received, on 22 February 1996, the following communication from the Foreign and Commonwealth Office of the United Kingdom:

"The Government of the United Kingdom of Great Britain and Northern Ireland have noted the declaration of the Government of Argentina concerning rights of sovereignty and of territorial and maritime jurisdiction over the Falkland Islands and South Georgia and the South Sandwich Islands.

The British Government have no doubt about the sovereignty of the United Kingdom over the Falkland Islands, as well as South Georgia and the South Sandwich Islands. The British Government can only reject as unfounded the claims by the Government of Argentina."

HNS 1996

**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 PUBLIC AND
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 PUBLIC
ET 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.

**United Nations Convention on a
Code of Conduct
for liner conferences**

Geneva, 6 April, 1974

Entered into force: 6 October 1983

**Convention des Nations Unies sur
un
Code de Conduite
des conférences maritimes**

Genève, 6 avril 1974

Entrée en vigueur: 6 octobre 1983

Algeria	(r)	12.XII.1986
Aruba	(a)	1.I.1986
Bangladesh	(a)	24.VII.1975
Barbados	(a)	29.X.1980
Belgium	(r)	30.IX.1987
Belarus	(A)	28.VI.1979
Benin	(a)	27.X.1975
Bulgaria	(a)	12.VII.1979
Burkina Faso	(a)	30.III.1989
Cameroon	(a)	15.VI.1976
Cape Verde	(a)	13.I.1978
Central African Republic	(a)	13.V.1977
Chile	(S)	25.VI.1975
China	(a)	23.IX.1980
Congo	(a)	26.VII.1982
Costa Rica	(r)	27.X.1978
Croatia	(r)	8.X.1991
Cuba	(a)	23.VII.1976
Czech Republic	(AA)	4.VI.1979
Denmark (except Greenland and the Faroe Islands)	(a)	28.VI.1985
Egypt	(a)	25.I.1979
Ethiopia	(r)	1.IX.1978
Finland	(a)	31.XII.1985
France	(AA)	4.X.1985
Gabon	(r)	5.VI.1978
Gambia	(S)	30.VI.1975
Germany	(r)	6.IV.1983
Ghana	(r)	24.VI.1975
Gibraltar	(a)	28.VI.1985
Guatemala	(r)	3.III.1976
Guinea	(a)	19.VIII.1980
Guyana	(a)	7.I.1980
Honduras	(a)	12.VI.1979
Hong Kong	(a)	28.VI.1985
India	(r)	14.II.1978
Indonesia	(r)	11.I.1977
Iraq	(a)	25.X.1978

*Code of conduct 1974**Code de conduite 1974*

Italy	(a)	30.V.1989
Ivory Coast	(r)	17.II.1977
Jamaica	(a)	20.VII.1982
Jordan	(a)	17.III.1980
Kenya	(a)	27.II.1978
Korea (Rep. of)	(a)	11.V.1979
Kuwait	(a)	31.III.1986
Lebanon	(a)	30.IV.1982
Madagascar	(a)	23.XII.1977
Malaysia	(a)	27.VIII.1982
Mali	(a)	15.III.1978
Mauritania	(a)	21.III.1988
Mauritius	(a)	16.IX.1980
Mexico	(a)	6.V.1976
Morocco	(a)	11.II.1980
Mozambique	(a)	21.IX.1990
Netherlands (for the Kingdom in Europe only)	(a)	6.IV.1983
Niger	(r)	13.I.1976
Nigeria	(a)	10.IX.1975
Norway	(a)	28.VI.1985
Pakistan	(S)	27.VI.1975
Peru	(a)	21.XI.1978
Philippines	(r)	2.III.1976
Portugal	(a)	13.VI.1990
Romania	(a)	7.I.1982
Russian Federation	(A)	28.VI.1979
Saudi Arabia	(a)	24.V.1985
Senegal	(r)	20.V.1977
Sierra Leone	(a)	9.VII.1979
Slovakia	(AA)	4.VI.1979
Slovenia	(AA)	4.VI.1979
Somalia	(a)	14.XI.1988
Spain	(a)	3.II.1994
Sri Lanka	(S)	30.VI.1975
Sudan	(a)	16.III.1978
Sweden	(a)	28.VI.1985
Togo	(r)	12.I.1978
Trinidad and Tobago	(a)	3.III.1983
Tunisia	(a)	15.III.1979
Ukraine	(A)	26.VI.1979
United Kingdom	(a)	28.VI.1985
United Republic of Tanzania	(a)	3.XI.1975
Uruguay	(a)	9.VII.1979
Venezuela	(S)	30.VI.1975
Yugoslavia	(r)	7.VII.1980
Zaire	(a)	25.VII.1977
Zambia	(a)	8.IV.1988

**United Nations Convention
on the
Carriage of goods by sea**

**Hamburg, 31 March, 1978
“HAMBURG RULES”**

Entry into force:
1 November 1992

**Convention des Nations Unies
sur le
Transport de marchandises
par mer**

**Hambourg 31 mars 1978
“REGLES DE HAMBOURG”**

Entrée en vigueur:
1 novembre 1992

Austria	(r)	29.VII.1993
Barbados	(a)	2.II.1981
Botswana	(a)	16.II.1988
Burkina Faso	(a)	14.VIII.1989
Cameroon	(a)	21.X.1993
Chile	(r)	9.VII.1982
Czech Republic	(r)	23.VI.1995
Egypt	(r)	23.IV.1979
Gambia	(r)	7.II.1996
Georgia	(a)	21.III.1996
Guinea	(r)	23.I.1991
Hungary	(r)	5.VII.1984
Kenya	(a)	31.VII.1989
Lebanon	(a)	4.IV.1983
Lesotho	(a)	26.X.1989
Malawi	(r)	18.III.1991
Morocco	(a)	12.VI.1981
Nigeria	(a)	7.XI.1988
Romania	(a)	7.I.1982
Senegal	(r)	17.III.1986
Sierra Leone	(r)	7.X.1988
Tanzania (United Rep. of)	(a)	24.VII.1979
Tunisia	(a)	15.IX.1980
Uganda	(a)	6.VII.1979
Zambia	(a)	7.X.1991

*Multimodal transport 1980**UNCLOS 1982*

**United Nations Convention
on the
International multimodal
transport of goods**

Geneva, 24 May, 1980
Not yet in force.

**Convention des Nations Unies
sur le
Transport multimodal
international de
marchandises**

Genève 24 mai 1980
Pas encore en vigueur.

Chile	(r)	7.IV.1982
Malawi	(a)	2.II.1984
Mexico	(r)	11.II.1982
Morocco	(r)	21.I.1993
Rwanda	(a)	15.IX.1987
Senegal	(r)	25.X.1984
Zambia	(a)	7.X.1991

**United Nations Convention
on the Law of the Sea
(UNCLOS 1982)**

Montego Bay 10 December 1982
Entered into force:
16 November 1994

**Convention des Nations
Unies sur les Droit de la Mer**

Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

Angola	5.XII.1990
Antigua and Barbuda	2.II.1989
Argentina	1.XII.1995
Australia	5.X.1994
Austria	14.VII.1995
Bahamas	29.VII.1983
Bahrain	30.V.1985
Barbados	12.X.1993
Belize	13.VIII.1983
Bolivia	28.IV.1995
Bosnia and Herzegovina	12.I.1994
Botswana	2.V.1990
Brazil	22.XII.1988
Cameroon	19.XII.1985
Cape Verde	10.VIII.1987
Comoros	21.VI.1994
Cook Islands	15.II.1995

UNCLOS 1982

Costa Rica	21.IX.1992
Croatia	5.IV.1995
Cyprus	12.XII.1988
Cuba	12.XII.1988
Djibouti	8.X.1991
Dominica	24.X.1991
Egypt	26.VIII.1983
Fiji	10.XII.1982
Gambia	22.V.1984
Germany	14.X.1994
Ghana	7.VI.1983
Greece	21.VII.1995
Grenada	25.IV.1991
Guinea	6.IX.1985
Guinea-Bissau	24.VIII.1986
Guyana	16.XI.1993
Honduras	5.X.1993
Iceland	21.VI.1985
India	29.VI.1995
Indonesia	3.II.1986
Iraq	30.VII.1985
Italy	13.I.1995
Ivory Coast	26. III.1984
Jamaica	21.III.1983
Jordan	27.11.1995
Kenya	2.III.1989
Korea <i>(Republic of)</i>	29.I.1996
Kuwait	2.V.1986
Lebanon	5.I.1995
Macedonia	19.8.1994
Mali	16.VII.1985
Malta	20.V.1993
Marshall Islands	9.VIII.1991
Mauritius	4.XI.1994
Mexico	18.III.1983
Micronesia	29.VI.1991
Namibia, United Nations Council for	18.VI.1983
Nauru	23.I.1996
Nigeria	14.VIII.1986
Oman	17.VIII.1989
Paraguay	26.IX.1986
Philippines	8.V.1984
Samoa	14.VIII.1995
St. Lucia	27. III.1985
St. Kitts and Nevis	7.I.1993

UNCLOS 1982

St. Vincent and the Grenadines	1.X.1993
Sao Tomé and Príncipe	3.XI.1987
Senegal	25.X.1984
Seychelles	16.IX.1991
Sierra Leone	12.XII.1994
Singapore	17.XI.1994
Slovenia	16.VI.1995
Sri Lanka	19.VII.1994
Somalia	24.VII.1989
Sudan	23.I.1985
Tanzania	30.IX.1985
Togo	16.IV.1985
Tonga	2.VIII.1995
Trinidad and Tobago	25.IV.1986
Tunisia	24.IV.1985
Uganda	9.XI.1990
Uruguay	10.XII.1992
Viet Nam	25.VII.1994
Yemen, Democratic Republic of	21.VII.1987
Yugoslavia	5.V.1986
Zaire	17.II.1989
Zambia	7.III.1983
Zimbabwe	24.II.1993

**United Nations Convention
on Conditions for
Registration of ships**

Geneva, 7 February, 1986
Not yet in force.

**Convention des Nations
Unies snr les Conditions d'
Immatriculation des navires**

Genève, 7 février 1986
Pas encore entrée en vigueur.

Egypt	(r)	9.I.1992
Ghana	(a)	29.VIII.1990
Haiti	(a)	17.V.1989
Hnngary	(a)	23.I.1989
Iraq	(a)	1.II.1989
Ivory Coast	(r)	28.X.1987
Libyan Arab Jamahiriya	(r)	28.II.1989
Mexico	(r)	21.I.1988
Oman	(a)	18.X.1990

**United Nations Convention on
the Liability of operators of
transport terminals in
the international trade**

Done at Vienna 19 April 1991
Not yet in force.

**Convention des Nations Unies snr
la Responsabilité des
exploitants de terminaux
transport dans le commerce
international**

Signée à Vienne 19 avril 1991
Pas encore entrée en vigueur.

Georgia	(a)	21.III.1996
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**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.

Int. Financial leasing 1988

Creditbail International 1988

**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 ownership 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.

CONFERENCES

DU COMITE MARITIME INTERNATIONAL

I. BRUXELLES - 1897

Président: Mr. Auguste BEERNAERT.

Sujets: Organisation du Comité Maritime International - Abordage - Responsabilité des propriétaires de navires de mer.

II. ANVERS - 1898

Président: Mr. Auguste BEERNAERT.

Sujets: Responsabilité des propriétaires de navires de mer.

III. LONDRES - 1899

Président: Sir Walter PHILLIMORE.

Sujets: Abordages dans lesquels les deux navires sont fautifs - Responsabilité des propriétaires de navires.

IV. PARIS - 1900

Président: Mr. LYON-CAEN

Sujets: Assistance, sauvetage et l'obligation de prêter assistance - Compétence en matière d'abordage.

V. HAMBURG - 1902

Président: Dr. Friedrich SIEVEKING.

Sujets: Code international pour l'abordage et le sauvetage en mer - Compétence en matière d'abordage. - Conflits de lois concernant la propriété des navires - Privilèges et hypothèques sur navires.

VI. AMSTERDAM - 1904

Président: Mr. E.N. RAHUSEN.

Sujets: Conflits de lois en matières de privilèges et hypothèques sur navires. - Compétence en matière d'abordage - Limitation de la responsabilité des propriétaires de navires.

VII. LIVERPOOL - 1905

Président: Sir William R. KENNEDY.

Sujets: Limitation de la responsabilité des propriétaires de navires - Conflits de lois en matière de privilèges et hypothèques - Conférence Diplomatique de Bruxelles.

Conferences of the Comité Maritime International

VIII. VENICE - 1907

President: Mr. Alberto MARGHERI.*Subjects:* Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Conflict of law as to Freight.

IX. BREMEN - 1909

President: Dr. Friedrich SIEVEKING.*Subjects:* Conflict of laws as to Freight - Compensation in respect of personal injuries - Publication of Maritime Mortgages and Liens.

X. PARIS - 1911

President: Mr. Paul GOVARE.*Subjects:* Limitation of Shipowners' Liability in the event of loss of life or personal injury - Freight.

XI. COPENHAGEN - 1913

President: Dr. J.H. KOCH.*Subjects:* London declaration 1909 - Safety of Navigation - International Code of Affreightment - Insurance of enemy property.

XII. ANTWERP - 1921

President: Mr. Louis FRANCK.*Subjects:* International Conventions relating to Collision and Salvage at sea. - Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Code of Affreightment - Exonerating clauses.

XIII. LONDON - 1922

President: Sir Henry DUKE.*Subjects:* Immunity of State-owned ships - Maritime Mortgage and Liens. - Exonerating clauses in Bills of lading.

XIV. GOTHENBURG - 1923

President: Mr. Efiel LÖFGREN.*Subjects:* Compulsory insurance of passengers - Immunity of State owned ships - International Code of Affreightment - International Convention on Bills of Lading.

XV. GENOA - 1925

President: Dr. Francesco BERLINGIERI.*Subjects:* Compulsory Insurance of passengers - Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

XVI. AMSTERDAM - 1927

President: Mr. B.C.J. LODER.*Subjects:* Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

Conférences du Comité Maritime International

VIII. VENISE - 1907

Président: Mr. Alberto MARGHERI.*Sujets:* Limitation de la responsabilité des propriétaires de navires
Privilegés et hypothèques maritimes - Conflits de lois relatifs au fret.

IX. BREME - 1909

Président: Dr. Friedrich SIEVEKING.*Sujets:* Conflits de lois relatifs au fret - Indemnisation concernant des
lésions corporelles - Publications des privilèges et hypothèques
maritimes.

X. PARIS - 1911

Président: Mr. Paul GOVARE.*Sujets:* Limitation de la responsabilité des propriétaires de navires en cas
de perte de vie ou de lésions corporelles - Fret.

XI. COPENHAGUE - 1913

Président: Dr. J.H. KOCH.*Sujets:* Déclaration de Londres 1909 - Sécurité de la navigation - Code
international de l'affrètement - Assurance de propriétés ennemies.

XII. ANVERS - 1921

Président: Mr. Louis FRANCK.*Sujets:* Convention internationale concernant l'abordage et la sauvetage en
mer - Limitation de la responsabilité des propriétaires de navires de
mer - Privilèges et hypothèques maritimes - Code de l'affrètement -
Clauses d'exonération dans les connaissements.

XIII. LONDRES - 1922

Président: Sir Henry DUKE.*Sujets:* Immunité des navires d'Etat - Privilèges et hypothèques maritimes
- Clauses d'exonération dans les connaissements.

XIV. GOTHENBURG - 1923

Président: Mr. Efiel LÖFGREN.*Sujets:* Assurance obligatoire des passagers - Immunité des navires d'Etat.
- Code international de l'affrètement - Convention internationale des
connaissements.

XV. GENES - 1925

Président: Dr. Francesco BERLINGIERI.*Sujets:* Assurance obligatoire des passagers - Immunité des navires d'Etat.
- Code international de l'affrètement - Privilèges et hypothèques
maritimes.

XVI. AMSTERDAM - 1927

Président: Mr. B.C.J. LODER.*Sujets:* Assurance obligatoire des passagers - Lettres de garantie -
Ratification des Conventions de Bruxelles.

Conferences of the Comité Maritime International

XVII. ANTWERP - 1930

President: Mr. Louis FRANCK.*Subjects:* Ratification of the Brussels Conventions - Compulsory insurance of passengers - Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933

President: Mr. Edvin ALTEN.*Subjects:* Ratification of the Brussels Conventions - Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners' Liability.

XIX. PARIS - 1937

President: Mr. Georges RIPERT.*Subjects:* Ratification of the Brussels Conventions - Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP - 1947

President: Mr. Albert LILAR.*Subjects:* Ratification of the Brussels Conventions, more especially of the Convention on Immunity of State-owned ships - Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills of Lading - Examination of the three draft conventions adopted at the Paris Conference 1937 - Assistance and Salvage of and by Aircraft at sea - York and Antwerp Rules; rate of interest.

XXI. AMSTERDAM - 1948

President: Prof. J. OFFERHAUS*Subjects:* Ratification of the Brussels International Convention - Revision of the York-Antwerp Rules 1924 - Limitation of Shipowners' Liability (Gold Clauses) - Combined Through Bills of Lading - Revision of the draft Convention on arrest of ships - Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES - 1951

President: Mr. Amedeo GIANNINI.*Subjects:* Brussels International Conventions - Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses) - Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at sea.

Conférences du Comité Maritime International

XVII. ANVERS - 1930

Président: Mr. Louis FRANCK.*Sujets:* Ratification des Conventions de Bruxelles - Assurance obligatoire des passagers - Compétence et sanctions pénales en matière d'abordage en mer.

XVIII. OSLO - 1933

Président: Mr. Edvin ALTEN.*Sujets:* Ratification des Conventions de Bruxelles - Compétence civile et pénale en matière d'abordage en mer - Saisie conservatoire de navires - Limitation de la responsabilité des propriétaires de navires.

XIX. PARIS - 1937

Président: Mr. Georges RIPERT.*Sujets:* Ratification des Conventions de Bruxelles - Compétence civile et pénale en matière d'abordage en mer - Saisie conservatoire de navires - Commentaires sur les Conventions de Bruxelles - Assistance et Sauvetage et par avions en mer.

XX. ANVERS - 1947

Président: Mr. Albert LILAR.*Sujets:* Ratification des Conventions de Bruxelles, plus spécialement de la Convention relative à l'immunité des navires d'Etat - Révision de la Convention sur la limitation de la responsabilité des propriétaires de navires et de la Convention sur les connaissements - Examen des trois projets de convention adoptés à la Conférence de Paris de 1936 - Assistance et sauvetage de et par avions en mer - Règles d'York et d'Anvers; taux d'intérêt.

XXI. AMSTERDAM - 1948

Président: Prof. J. OFFERHAUS.*Sujets:* Ratification des Conventions internationales de Bruxelles - Révision des règles d'York et d'Anvers 1924 - Limitation de la responsabilité des propriétaires de navires (clause or) - Connaissements directs combinés - Révision du projet de convention relatif à la saisie conservatoire de navires - Projet de création d'une cour internationale pour la navigation par mer et par air.

XXII. NAPLES - 1951

Président: Mr. Amedeo GIANNINI.*Sujets:* Conventions internationales de Bruxelles - Projet de Convention concernant la saisie conservatoire de navires - Limitation de la responsabilité des propriétaires de navires de mer - Connaissements (Révision de la clause-or) - Responsabilité des transporteurs par mer à l'égard des passagers - Compétence pénale en matière d'abordage en mer.

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President: Mr. Albert LILAR.*Subjects:* Limitation of Shipowners' Liability - Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

XXIV. RIJEKA - 1959

President: Mr. Albert LILAR*Subjects:* Liability of operators of nuclear ships - Revision of Article X of the International Convention for the Unification of certain Rules of law relating to Bills of Lading - Letters of Indemnity and Marginal clauses. Revision of Article XIV of the International Convention for the Unification of certain rules of Law relating to assistance and salvage at sea - International Statute of Ships in Foreign ports - Registry of operations of ships.

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XXVI. STOCKHOLM - 1963

President: Mr. Albert LILAR*Subjects:* Bills of Lading - Passenger Luggage - Ships under construction.

XXVII. NEW YORK - 1965

President: Mr. Albert LILAR*Subjects:* Revision of the Convention on Maritime Liens and Mortgages.

XXVIII. TOKYO - 1969

President: Mr. Albert LILAR*Subjects:* "Torrey Canyon" - Combined Transports - Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP - 1972

President: Mr. Albert LILAR*Subjects:* Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG - 1974

President: Mr. Albert LILAR*Subjects:* Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

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XXIII. MADRID - 1955*Président:* Mr. Albert LILAR*Sujets:* Limitation de la responsabilité des propriétaires de navires - Responsabilité des transporteurs par mer à l'égard des passagers - Passagers clandestins - Clauses marginales et lettres de garantie.**XXIV. RIJEKA - 1959***Président:* Mr. Albert LILAR*Sujets:* Responsabilité des exploitants de navires nucléaires - Révision de l'article X de la Convention internationale pour l'unification de certaines règles de droit en matière de connaissements - Lettres de garantie et clauses marginales - Révision de l'article XIV de la Convention internationale pour l'unification de certaines règles de droit relatives à l'assistance et au sauvetage en mer - Statut international des navires dans des ports étrangers - Enregistrement des exploitants de navires.**XXV. ATHENES - 1962***Président:* Mr. Albert LILAR*Sujets:* Domages et intérêts en matière d'abordage - Lettres de garantie - Statut international des navires dans des ports étrangers - Enregistrement des navires - Coordination des conventions sur la limitation et les hypothèques - Surestaries et primes de célérité - Responsabilité des transporteurs des bagages.**XXVI. STOCKHOLM - 1963***Président:* Mr. Albert LILAR*Sujets:* Connaissements - Bagages des passagers - Navires en construction.**XXVII. NEW YORK - 1965***Président:* Mr. Albert LILAR*Sujets:* Révision de la Convention sur les Privilèges et Hypothèques maritimes.**XXVIII. TOKYO - 1969***Président:* Mr. Albert LILAR*Sujets:* "Torrey Canyon" - Transport combiné - Coordination des Conventions relatives au transport par mer de passagers et de leurs bagages.**XXIX. ANVERS - 1972***Président:* Mr. Albert LILAR.*Sujets:* Révision des Statuts du Comité Maritime International.**XXX. HAMBOURG - 1974***Président:* Mr. Albert LILAR*Sujets:* Révisions des Règles de York/Anvers 1950 - Limitation de la responsabilité des propriétaires de navires de mer - Les Règles de La Haye.

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President: Prof. Francesco BERLINGIERI*Subjects:* Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII MONTREAL - 1981

President: Prof. Francesco BERLINGIERI*Subjects:* Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985

President: Prof. Francesco BERLINGIERI*Subjects:* Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

XXXIV. PARIS - 1990

President: Prof. Francesco BERLINGIERI*Subjects:* Uniformity of the Law of Carriage of Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading - Revision of Rule VI of the York-Antwerp Rules 1974.

XXXV. SYDNEY - 1994

President: Prof. Allan PHILIP*Subjects:* Review of the Law of General Average and York-Antwerp Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - *Special Sessions:* Third Party Liability - Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

XXXVI. ANTWERP - 1997 - CENTENARY CONFERENCE

President: Prof. Allan PHILIP*Subjects:* Off-Shore Mobile Craft - Towards a Maritime Liability Convention - EDI - Collision and Salvage - Wreck Removal Convention - Maritime Liens and Mortgages, Arrest of Ships - Classification Societies - Carriage of Goods by Sea - The Future of CMI.

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XXXI. RIO DE JANEIRO - 1977

Président: Prof. Francesco BERLINGIERI*Sujets:* Projet de Convention concernant la compétence, la loi applicable, la reconnaissance et l'exécution de jugements en matière d'abordages en mer. Projet de Convention sur les Engins Mobiles "Off-Shore".

XXXII. MONTREAL - 1981

Président: Prof. Francesco BERLINGIERI*Sujets:* Convention pour l'unification de certaines règles en matière d'assistance et de sauvetage maritime - Transport par mer de substances nocives ou dangereuses.

XXXIII. LISBONNE - 1985

Président: Prof. Francesco BERLINGIERI*Sujets:* Convention sur les Hypothèques et privilèges maritimes - Convention sur la Saisie des Navires.

XXXIV. PARIS - 1990

Président: Prof. Francesco BERLINGIERI*Sujets:* Uniformisation de la Loi sur le transport de marchandises par mer dans les années 1990 - Règles Uniformes du CMI relatives aux Lettres de transport maritime - Règles du CMI relatives aux connaissements électroniques - Révision de la Règle VI des Règles de York et d'Anvers 1974.

XXXV. SYDNEY - 1994

Président: Prof. Allan PHILIP*Sujets:* Révision de la loi sur l'Avarie Commune et des Règles de York et d'Anvers 1974 (amendées en 1990) - Projet de Convention sur les Engins Mobiles d'Exploitation des Fonds Marins - *Session Spéciales:* Responsabilité Civile - Sociétés de Classification - Assurances Maritimes: *Is the doctrine of Utmost Good Faith out of date?*

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