

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

Winter, 1985

— COMITE MARITIME INTERNATIONAL

— Hiver 1985

QUARTERLY

BULLETIN TRIMESTRIEL

IMPORTANT

This copy of a new revised issue of the CMI NEWS LETTER - Winter 1985 - cancels and replaces the one originally published January 1986

Cet exemplaire d'une édition rectifiée du CMI NEWS LETTER - Hiver 1985 - annule et remplace celle publiée initialement.

Janvier 1986

The Montreal Draft Salvage Convention

STATUS REPORT ON THE WORK IN
THE LEGAL COMMITTEE OF I.M.O.
by BENT NIELSEN, Copenhagen

RAPPORT ACTUEL DES ACTIVITES AU
COMITE JURIDIQUE DE L'OMI.
par BENT NIELSEN, Copenhague

1. During the Legal Committee's meeting in September 1981, shortly after the Montreal Conference the CMI Draft Salvage Convention was presented to the Legal Committee of IMO by Professor Francesco Berlingieri, whose speech is printed in CMI NEWS LETTER of December 1981.

However, other important matters kept the Committee busy and it was only after the IMO International Diplomatic Conference in May 1984 that the Montreal draft was again put on the agenda of the Legal Committee.

The Committee commenced its work on a new salvage convention at its 52nd session in September 1984, and has continued during its 53rd, 54th and 55th sessions held in December 1984, March 1985, and October 1985 respectively.

Salvage has been the main topic and the Committee has used the Montreal draft as its basic working document. CMI's report to IMO, which is printed in CMI NEWS LETTER, September 1984, has been much used by the Committee and CMI has been represented during the meetings by Professor Francesco Berlingieri for part of the time and by the writer.

The Committee's work has been very thorough and we have as representatives of the CMI taken an active part in the debate, during which we have replied to many questions and explained the thoughts behind the Montreal draft when needed.

The Committee is now in the middle of its 3rd reading. It is expected that a fourth reading is necessary and that the Committee's work cannot be finished earlier than at its 57th session to be held late October 1986. IMO will then arrange an International Diplomatic Conference, possibly for this purpose alone, which is tentatively expected to take place in 1988 or 1989.

In general the Montreal draft has been very well received by the Committee. Although the work is not finished and the Committee has made no final decisions, a provisional report is thought to be of interest.

2. The Montreal draft extend the scope of salvage so as to include not only ships and their cargoes but any other property in danger at sea. This generally is meeting with the Committee's approval. However, questions are raised with respect to certain borderline cases, and the Committee presently is considering proposals to exclude property which is permanently attached to the shoreline or to the seabed and certain property in danger in inland waters.

Further some delegations oppose including sunken vessels on the grounds that in some jurisdictions sunken vessels are always considered to be wrecks, the removal of which is governed by other rules than salvage rules.

3. It is also discussed whether drilling platforms while working should be considered vessels or other property. This is relevant, because the Montreal draft contains a number of rules which are only applicable with respect to owners of vessels, not of other property, e.g. the important rules concerning the ship-owners' duties to arrange salvage and to pay special compensation.

4. The definition of "damage to the environment" also generally is approved. It is, however, discussed whether to extend the scope from "coastal or inland waters" to the exclusive economic zone or perhaps even to all waters. On the other hand there are proposals to limit the concept of damage to the environment by excluding explosion and fire as examples of major incidents which can cause environmental damage.

5. With respect to the scope of application, the Committee seem to have accepted the lex fori rule proposed in Art.2, but have deleted the provision saying that the convention should also be applicable "when the salvor belongs to or the salving vessel or the vessels salved is registered in a contracting state" on the grounds that it was superfluous and unclear, which was a view also held by many in the CMI.

6. Art. 1.3,2 of the Montreal draft makes it clear that the fact that a salvor has performed salvage operations under the control of a public authority shall not prevent him from obtaining compensation for salvage under the convention. Some delegations are concerned that this might lead to double recovery, others feel that salvors in such cases should be compensated under other schemes, but most delegations appear to support that the rule should be retained. Presently, however, the Committee retains the provision in square brackets for further consideration.

7. The Committee has thoroughly discussed the principle of the Montreal draft Art.1.4, that as a general rule the provisions of the convention shall not be mandatory. One delegation does not favour this principle at-all, while some delegations feel that a provision may be necessary, in which the convention expressly identify which rules are mandatory and it has been pointed out that some rules of the Montreal draft are by nature mandatory, e.g. rules concerning invalidity of salvage contracts, the duties of the master to save life and the duty of the owner, master and the salvor to protect the environment.

However, there seems to be a widespread approval of the principle that the rules concerning payment to the salvor, be it a normal reward or special compensation, must not be made mandatory.

8. The Committee has discussed the nature of the rules concerning the duties of the owner, master and salvor in Art.2 of the Montreal draft. The question whether these rules are intended to be both of a private law and a public law nature has been replied to in the affirmative by the representative of the CMI. To the extent the Committee will feel it necessary to have penalties to enforce the public law side of the provisions, this no doubt will be left to national law. However, presently many members of the Committee do not seem to have made up their minds with respect to these rules.

9. The majority of the Committee is in favour of Art.2.4 of the Montreal draft dealing with cooperation of contracting states; some have suggested that the article should place stronger obligations on the states; however, no concrete proposals have so far been tabled.

10. The Montreal draft Art.3.4, Apportionment between Salvors, Art.3.5, Salvage of Persons, Art.3.6, Services rendered under existing Contracts, Art.3.7, The Effect of Salvors' Misconduct, Art..3.8, Prohibition by the Owner or Master, Art.4.1, Maritime Lien, Art.4.2, Duty to Provide Security, Art.4.3, Interim Payment, Art.4.4, Limitation of Actions, and Art.4.6, Interest, all seem generally to be acceptable to the Committee, perhaps with minor alterations.

11. Art. 4.5, jurisdiction, is the subject of some discussion, in particular the Committee seems to be in doubt, as was the CMI, as to whether such a provision at-all is required in the salvage convention.

12. The Committee does not seem to be too happy with Art. 4.7 of the Montreal draft concerning publication of arbitral awards. On the one hand many delegations find it difficult to realize what duties this article puts upon the contracting state, on the other hand there seems to be substantial opposition to proposals for even stronger provisions. The Committee therefore has decided to retain the provision in square brackets for further consideration.

13. The Montreal draft contains in Art. 5.1 a provision under which the contracting states are recommended to give salvors the protection in manner and extent equivalent to that provided for in the 1976 limitation convention. Many delegations have stated that they considered the provision was without meaning, mainly because a party to the 1976 limitation convention would per force apply that convention while a non-party would be under no obligation to this and could apply its own national law. Only one delegation has favoured retention, and as a result the Committee has decided to delete the provision.

The representative of the CMI has made it clear that within the CMI it was rather strongly felt that the provision, even in its present non-obligatory form, would be useful to the industry. It has been explained that the problem is that the salvors in an increasing number of cases do not perform their services from vessels (or with close relation to vessels). In such cases they do not have the right to limitation. The 1976 convention, however, has solved the problem basically by providing that such salvors have a right of limitation as if they worked from a tug of 1500 tons. It is likely that the new salvage convention will be accepted by many states, who do not accept the 1976 convention, and it is therefore explained that it would be very helpful to the salvors and thereby perhaps to the whole industry that the salvage convention as the LOF 80 included such a protection. It is still hoped that the Committee may reconsider its position.

14. The Committee has also at some length considered the introduction of certain rules of public law dealing with salvage, but it seems now unlikely that any additional rule of public law will be introduced in the new salvage convention.

a) A proposal for a treaty law provision on mandatory salvage in certain urgent cases has not been approved by the Committee, whose majority has decided that there was no need for such a rule and concluded that the question would not be re-opened unless new facts emerged which would render it appropriate to revert to the matter.

b) The Committee has considered whether new rules should be introduced with respect to notification requirements between vessels in distress, salvors and coastal states and has communicated with the Marine Environment Protection Committee (MEPC). MEPC has recommended certain guidelines for reporting incidents to the assembly of IMO for adoption in conjunction with the amended protocol 1 to the Marpol 73/78 convention.

c) The Committee has finally considered proposals to establish certain port of refuge for vessels threatening environmental damage. These proposals do not seem to have much support, but the considerations are not finalized.

15. The most important innovation proposed in the Montreal draft no doubt is the compensation scheme to be applied in cases where there was a risk of environmental damage.

These rules formed the heart of the compromise reached by the commercial parties represented in Montreal. The negotiations in particular were at that time held between the P & I Clubs and the salvors, but neither the representatives of the shipowners nor the property insurers made any reservations.

16. As it will be remembered, the Montreal draft contains in Art.3-3 provisions concerning the so-called safety-net, under which the salvor if the vessel or its cargo threatens damage to the environment is guaranteed the payment by the owner of his costs and an additional bonus not exceeding his costs, if he actually prevents or minimizes such damage. These rules are only applied to the extent the salvor should fail to save the vessel or its cargo or the value of the salved property should prove to be lower than the compensation under the safety-net. If this is not the case, the salvor will be paid for his efforts out of the traditional Salvage award, and in the Montreal draft Article 3-2.1 the skill and efforts of the salvors in preventing or minimizing damage to the environment constitute one of the considerations on the basis of which the reward must be fixed. Reference has often been made in this respect to an "enhancement" of the salvage reward but the use of this expression is misconceived and misleading, for it might imply that the reward is fixed on the basis of the other considerations and then that the amount is "enhanced" on the basis of the skill and efforts of the salvors in preventing or minimizing damage to the environment. The reward, however, is fixed taking into account all the considerations listed in Article 3-2.1 including the aforesaid skill and efforts which are therefore not separately quantified. They are only part of the total lump sum award which is normally distributed between the salved interests pro rata according to the salved values.

17. At the start of the Legal Committee's work the CMI's representative reported to the Committee that informal inquiries seemed to show that the commercial parties still supported the compromise. No-one, however, seemed particularly happy which shows the fine balance of the solution. The Committee was therefore told that if the basic elements of the compromise were made part of the final convention, it would find a widespread support, which again possibly would facilitate the life of the final convention and the prospects of its speedy and wider international implementation.

It has been the CMI's main concern to make the Legal Committee aware of this and to remind the Committee about it on appropriate occasions. The Committee has also listened to this and so far very little criticism or objections to the Montreal compromise have been voiced by the delegates.

18. However, recently the matter has been thoroughly discussed in the International Union of Marine Insurers and was one of the topics on the agenda of the meeting of this organization, which was held in Tokyo late September 1985.

Before that meeting a circular letter was sent out by IUMI to its member-associations describing in some detail the compromise and the arguments pro et con the compromise and asking for replies in writing before the Tokyo meeting, in particular if any association was against the compromise.

It is understood that out of 17 replies received, 1 from an important national association was against the compromise, while the remaining 16 national associations supported the compromise with more or less enthusiasm. It is further understood that basically the same picture emerged during the Tokyo meeting.

The matter will come up on the next meeting of the Legal Committee early in April 1986.

Provided other important parties, such as the P & I Clubs and the salvors do not withdraw their support from the compromise, it is expected that the fact that there is widespread but not a complete approval by the property underwriters will not change the Legal Committee's attitude to this matter.

No doubt there will also be contacts between the commercial parties before the next meeting in the Legal Committee and the situation may at that time have changed.

19. However, since there is presently some discussion regarding the compromise, it might be helpful to summarize some of the points made.

Reluctant cargo underwriters seem to feel that it is unfair that owners of "innocent cargoes" shall pay their share of the enhancement. Such share, it is argued, should be carried by the owners alone, if they would have been liable for the environmental damage which was avoided and/or by the "guilty cargo".

The main points which have been made against this are the following :

a) The owner or insurer of "innocent cargo" does obtain something in return, because the shipowners (and the P. & I. Clubs) fund the safety-net alone, even in cases where the owner is "innocent" (i.e. would have no liability for the environmental damage).

b) It should be noted that the safety-net provided by shipowners in principle is unlimited, while a salvage award must not exceed the value of the property salved. This fits in pragmatically with the fact that the P. & I. Clubs, who shall pick up the safety-net for the shipowners, work with unlimited cover or very substantial limits, while the cargo underwriters' cover normally is limited to the value of the goods.

c) The existence of the safety-net would often add substantially to the encouragement of potential salvors with the result that much "innocent cargo", which would otherwise have been lost, is salved. The best example of this are several recent war casualties in the Gulf area, where high cost salvage operations to stricken tankers under LOF 80 have been commenced immediately and successfully completed in cases, where the chances of success were so limited that salvors probably would have hesitated to invest costs, if they had risked losing their investments under the traditional no cure no pay rule.

d) It has always been appreciated that there would from time to time be cases in which the compromise might produce results which, taken in isolation, seem unfair. Sometimes the hull and cargo underwriters would pay the entire costs of a successful salvage operation, although that operation had prevented a potential P. & I. Club liability. Sometimes the P. & I. Clubs would pay

the entire costs of an unsuccessful salvage (plus all the resultant liabilities), where their own interests alone would have dictated that no salvage be attempted but the ship and the cargo be towed to deep water and sunk. The commercial sense of the compromises overrides these "hard cases". It is already working with respect to LOF 80 and it seems in practice to have worked smoothly and without upsetting either group of underwriters.

e) The owner of "innocent cargo" retains any right he may have to recover his losses from the guilty party, be it the ship-owner or another cargo owner, while it has always been a fundamental principle of salvage law - and indeed with respect to GA - that the salvage award (or other GA expenditure) without prejudice to any right of recovery is borne by the owners of all the salved property pro rata to their salved values. The underlying concept has always been that all the salved property is to be treated as participating in a common adventure and no distinction is made between anyone part and any other part. This is not a new problem arising particularly with regard to enhancement.

f) Finally, it would be almost impossible to quantify the part of the reward relating to the skill and efforts of the salvors in preventing or minimizing damage to the environment. When fixing the award, the tribunal takes into account the facts of the actual situation which among many other relevant facts may include a danger to the marine environment; such danger may again cause quite different methods of salvage than would otherwise have been used. To say what the award would have been, if such an element among many were not there, is highly speculative. As it is written by a Lloyd's arbitrator, Geoffrey Brice, Q.C., "salvage and enhanced Awards", Lloyd's Maritime and Commercial Law Quarterly, February 1985, page 41 :

"... one could no more divorce those features from the overall assessment of remuneration than one can divorce other features such as the state of the weather or of the sea on particular days during the salvage service".

20. It must be realized that the compromise was not intended to be a strictly logical, but rather a pragmatic arrangement for the broadly equitable sharing of the costs between various parties who have an interest in maintaining a willing salvage industry. The practice following LOF 80 has shown that such a compromise can work smoothly. However, it is realized that the subject is somehow complex and it is hoped that members of the national maritime law associations, if need be, will support and explain the compromise in any communication they may have with governmental or commercial parties.

Copenhagen, 25 November, 1985.

Second China Seminar

Following the request of the Economic and Social Commission for Asia and the Pacific - ESCAP -, the CMI organized a second Seminar in Xiamen in the People's Republic of China. The subjects of the Seminar had been chosen by the Chinese Ministry of Communications in agreement with the President of the CMI and they were collision, salvage and limitation of liability of shipowners.

On each of these subjects various lectures were given by the three lecturers of the CMI : Francesco Berlingieri, Kaj Pineus and Jan Schultsz. To these lectures one on safety of navigation was added, such lecture was delivered by Professor P.J. Slot.

The lectures on each of the subjects were the following :

Part I - COLLISION

- a. Civil jurisdiction
- b. Conflict of laws

Deuxième Séminaire en Chine

Faisant suite à la demande de la Commission Economique et Sociale pour l'Asie et le Pacifique - ESCAP -, le CMI a organisé un second Séminaire à Xiamen en République Populaire de Chine. Les sujets du Séminaire avaient été choisis par le Ministère Chinois des Communications en accord avec le Président du CMI soit : abordage, assistance et sauvetage, et limitation de la responsabilité des propriétaires de navires.

Diverses conférences furent données sur chacun de ces sujets par les trois conférenciers du CMI : Francesco Berlingieri, Kaj Pineus et Jan Schultsz. A ces conférences vint s'en ajouter une autre par le Professeur P.J.Slot sur la sécurité de la navigation.

Les conférences sur chacun des sujets furent les suivantes :

Partie I - ABORDAGE

- a. Compétence civile
- b. Conflit de lois

- c. Apportionment of liability
- d. Measure of damages
- e. Single and cross liability

Part II - SAFETY OF NAVIGATION

- a. Safety of navigation and International law

Part III - SALVAGE

- a. Conflict of laws
- b. The concept of salvage in civil and common law
- c. Contractual and non contractual salvage
- d. International unification :
 1. the 1910 Brussels Convention
 2. the revision of the 1910 Convention: the CMI Montreal draft
- e. Calculation of the remuneration
- f. Liability of the salvor for damages caused to the property salved
- g. Persons entitled to the remuneration
- h. Debtors of the remuneration
- i. Lloyd's Open Form of salvage agreement
- j. Security to salvors

Part IV - LIMITATION OF LIABILITY OF SHIPOWNERS

- a. Historical background and efforts towards unification
- b. Conflict of laws
- c. The general limits
 1. the 1957 Brussels Convention
 2. the 1976 London Convention
 3. problems related to the determination of ship's value
- d. The special limits
 1. the limitation of liability of operators of nuclear ships
 2. the limitation of liability in respect of pollution damage
 3. the limitation of liability in respect of damage caused by hazardous and noxious substances
- e. Concluding remarks.

The Seminar was held from 2nd-6th December, 1985 at the Jimei Navigation Institute of Jimei, Xiamen and was attended by over 50 persons. The lectures were very well received and the participants took a very active part in the discussions which followed each of the lectures. Whilst in the occasion of the first Seminar simultaneous translation had been arranged, this time it proved to be unnecessary, for almost all the participants had sufficient command of the english language to understand the lectures and to participate to the discussions.

A third Seminar will be organized in July 1986, and amongst the subjects of such Seminar there will be pollution and towage.

Professor Francesco Berlingieri.

- c. Répartition de la responsabilité
- d. Fixation des dommages-intérêts
- e. Single and cross liability

Partie II - SECURITE DE LA NAVIGATION

- a. La sécurité de la navigation et le droit international

Partie III - ASSISTANCE ET SAUVETAGE

- a. Conflit de lois
- b. Le concept de l'assistance et du sauvetage en droit civil et commun
- c. Sauvetage contractuel et non contractuel
- d. Unification internationale :
 1. Convention de Bruxelles de 1910
 2. révision de la Convention de 1910: le projet Montréal du CMI
- e. Calcul de la rémunération
- f. Responsabilité du sauveteur pour les dommages causés aux propriétés sauvées
- g. Personnes ayant droit à la rémunération
- h. Débiteurs de la rémunération
- i. Lloyd's Open Form of salvage agreement
- j. Garantie accordée aux sauveteurs.

Partie IV - LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES

- a. Arrière-plan historique et efforts vers l'unification
- b. Conflit de lois
- c. Les limitations générales
 1. Convention de Bruxelles de 1957
 2. Convention de Londres de 1976
 3. problèmes relatifs à la détermination de la valeur du navire
- d. Les limitations spéciales
 1. limitation de la responsabilité des exploitants de navires nucléaires
 2. limitation de la responsabilité en matière de dommages dus à la pollution par les hydrocarbures
 3. limitation de la responsabilité en matière de dommages dus à des substances nocives et dangereuses
- e. Conclusions.

Au Séminaire qui s'est tenu du 2 au 6 décembre 1985 à l'Institut de Navigation de Jimei à Xiamen assistaient plus de cinquante personnes. Les conférences furent très bien suivies et les participants prirent une part active aux discussions qui eurent lieu après chacune des conférences. Tandis que pour le premier Séminaire il avait été fait appel à la traduction simultanée, ceci s'est démontré inutile cette fois, parce que presque tous les participants possédaient suffisamment la langue anglaise que pour comprendre les conférences et participer aux discussions.

Un troisième Séminaire sera organisé en juillet 1986 et parmi les sujets de ce Séminaire figureront la pollution et le remorquage.

Professeur Francesco Berlingieri.

Brussels Conventions

RIDER TO THE STATEMENT OF THE RATIFICATIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

DENUNCIATION BY
THE UNITED KINGDOM OF GREAT-BRITAIN AND NORTHERN IRELAND

On the 1st December, 1985 was registered with the Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, the denunciation by the United-Kingdom of Great Britain and Northern Ireland of the following Convention and Protocols :

1. INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING SHIPS AND PROTOCOL OF SIGNATURE DONE AT BRUSSELS OCTOBER 10, 1957
2. PROTOCOL DONE AT BRUSSELS 21 DECEMBER, 1979, TO AMEND THE INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING SHIPS OF 10 OCTOBER, 1957

denunciation which also applies to the following Territories, to which the Convention and the Protocol had been extended :

Isle of Man, Bermuda, Falkland Islands, Gibraltar, Hong Kong, British Virgin Islands, Bailiwicks of Guernsey and Jersey, Caiman Islands, Montserrat, Turks and Caicos Islands.

In accordance with the provisions of articles 13 and 14.2 of the Convention and VII.2 of the Protocol, this denunciation will become operative on 1st. December, 1986.

Conventions de Bruxelles

AJOUTE A L'ETAT DES RATIFICATIONS DES CONVENTIONS INTERNATIONALES DE DROIT MARITIME DE BRUXELLES

DENONCIATION PAR
LE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'
IRLANDE DU NORD

Le 1er décembre 1985 a été enregistrée au Ministère des Affaires Etrangères, du Commerce extérieur et de la Coopération au Développement de Belgique, la dénonciation par le Royaume-Uni de Grande Bretagne et d'Irlande du Nord de la Convention et des Protocoles suivants:

1. CONVENTION INTERNATIONALE SUR LA LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES DE MER ET PROTOCOLE DE SIGNATURE, SIGNES A BRUXELLES LE 10 OCTOBRE 1957
2. PROTOCOLE, FAIT A BRUXELLES LE 21 DECEMBRE 1979 PORTANT MODIFICATION DE LA CONVENTION INTERNATIONALE SUR LA LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES DE MER DU 10 OCTOBRE 1957

dénonciation qui vaut également pour les Territoires suivants, auxquels la Convention et le Protocole avaient été étendus :

IMO Conventions

RIDERS TO THE STATEMENT OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE (CLC 1969)

ACCESSION - ADHESION

Benin 1 November, 1985

INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE (FUND 1971)

ACCESSION - ADHESION

Benin 1 November, 1985

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS (LLMC 1976)

ACCESSION - ACCESSION

Benin 1 November, 1985

Conventions OMI

AJOUTES A L'ETAT DES RATIFICATIONS ET ADHESIONS DES CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE

CONVENTION INTERNATIONALE SUR LA RESPONSABILITE CIVILE POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDROCARBURES (CLC 1969)

General Average

Mr. Kaj Pineus, Honorary Vice-President of the C.M.I., former Average Adjuster of Sweden, has recently published at Messrs. ALMQVIST & WIKSELL INTERNATIONAL, 108 Drottninggatan, P.O.Box 45150, S-104 30 Stockholm, Sweden, a study on

" GENERAL AVERAGE
THE PRACTICAL PROBLEMS ".

Copies can be obtained from the above Publishers at the price of SEK.125.00/US\$.14.00 (plus postage).

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The Titulary Members are reminded that there is no need for them to subscribe to the CMI NEWS LETTER and to the YEARBOOK as, indeed, they obtain these CMI publications free of charge.

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The National Associations of Maritime Law are kindly reminded that they can take out a global subscription to the CMI NEWS LETTER and to the YEARBOOK in favour of their members at reduced rates. Details may be obtained by application to the C.M.I. Secretariat.

Next Meetings

THE ASSEMBLY

The 1986 regular meeting of the Assembly will be held on Friday 11 April, 1986. The venue will be the Brussels Hilton, Boulevard de Waterloo 38, B-1000 Brussels. (tel: 32(2)513.88.77 - Telex: 22744).

THE EXECUTIVE COUNCIL

The next meeting of the Executive Council will be held on Thursday 10 April, 1986 and will start at 19:00 at the Brussels Hilton.

Arrangements have been made with the Brussels Hilton for a block reservation of rooms for the delegates at a reduced price. Hence, when the delegates effect their bookings with the Brussels Hilton, they should mention that they are attending the CMI Assembly meeting.

(January 1986)

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c/o Messrs. HENRY VOET-GENICOT, Borzestraat 17, B-2000 Antwerp - Belgium.

Avarie Commune

Monsieur Kaj Pineus, Vice-Président d'Honneur du C.M.I., ancien dispacheur en Suède, a publié dernièrement chez ALMQVIST & WIKSELL INTERNATIONAL, Drottninggatan 108, P.O.Box 45150, S-104 30 Stockholm, Suède, une étude sur:

" GENERAL AVERAGE
THE PRACTICAL PROBLEMS ".

Des exemplaires de cette publication peuvent être obtenus chez les éditeurs au prix de SEK.125.00/\$US.14.00 (plus frais de port).

Abonnements à CMI NEWS LETTER et à l'ANNUAIRE

Il est rappelé aux Membres Titulaires qu'il n'est pas nécessaire pour eux de souscrire un abonnement à CMI NEWS LETTER et à l'ANNUAIRE. En effet, ces publications du C.M.I. leur sont envoyées gratuitement.

Les autres abonnés, exception faite des Associations de Droit Maritime membres du C.M.I., sont priés de s'adresser à : "Editors Almqvist & Wiksell Periodical Company, Almqvist & Wiksell International, P.O.Box 45150, S-104 30 Stockholm, Suède, telex 12430 Almqwik S".

L'attention des Associations Nationales de Droit Maritime est une fois de plus attirée sur la possibilité qui existe pour elles de souscrire, à un prix fort avantageux, un abonnement global en faveur de leurs membres. Le secrétariat est à leur disposition pour leur fournir de plus amples détails.

Prochaines Réunions

L'ASSEMBLEE

La réunion statutaire 1986 de l'Assemblée aura lieu le vendredi 11 avril 1986 à l'Hôtel Brussels Hilton, Boulevard de Waterloo 38, B-1000 Bruxelles (téléphone: 32(2)513.88.77 - telex: 22744).

LE CONSEIL EXECUTIF

La prochaine réunion du Conseil Exécutif se tiendra le jeudi 10 avril 1986 à 19h. à l'hôtel Brussels Hilton.

Un arrangement a été pris avec l'hôtel Brussels Hilton pour la réservation d'un certain nombre de chambres à prix réduit. Il convient, dès lors, que lorsqu'ils effectuent leurs réservations au Brussels Hilton, les délégués signalent qu'ils assisteront à l'Assemblée du CMI.

(Janvier 1986)



CMI NEWS LETTER

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Winter, 1985

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— Hiver 1985

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However, other important matters kept the Committee busy and it was only after the IMO International Diplomatic Conference in May 1984 that the Montreal draft was again put on the agenda of the Legal Committee.

The Committee commenced its work on a new salvage convention at its 52nd session in September 1984, and has continued during its 53rd, 54th and 55th sessions held in December 1984, March 1985, and October 1985 respectively.

Salvage has been the main topic and the Committee has used the Montreal draft as its basic working document. CMI's report to IMO, which is printed in CMI NEWS LETTER, September 1984, has been much used by the Committee and CMI has been represented during the meetings by Professor Francesco Berlingieri for part of the time and by the writer.

The Committee's work has been very thorough and we have as representatives of the CMI taken an active part in the debate, during which we have replied to many questions and explained the thoughts behind the Montreal draft when needed.

The Committee is now in the middle of its 3rd reading. It is expected that a fourth reading is necessary and that the Committee's work cannot be finished earlier than at its 57th session to be held late October 1986. IMO will then arrange an International Diplomatic Conference, possibly for this purpose alone, which is tentatively expected to take place in 1988 or 1989.

In general the Montreal draft has been very well received by the Committee. Although the work is not finished and the Committee has made no final decisions, a provisional report is thought to be of interest.

2. The Montreal draft extend the scope of salvage so as to include not only ships and their cargoes but any other property in danger at sea. This generally is meeting with the Committee's approval. However, questions are raised with respect to certain borderline cases, and the Committee presently is considering proposals to exclude property which is permanently attached to the shoreline or to the seabed and certain property in danger in inland waters.

Further some delegations oppose including sunken vessels on the grounds that in some jurisdictions sunken vessels are always considered to be wrecks, the removal of which is governed by other rules than salvage rules.

3. It is also discussed whether drilling platforms while working should be considered vessels or other property. This is relevant, because the Montreal draft contains a number of rules which are only applicable with respect to owners of vessels, not of other property, e.g. the important rules concerning the ship-owners' duties to arrange salvage and to pay special compensation.

4. The definition of "damage to the environment" also generally is approved. It is, however, discussed whether to extend the scope from "coastal or inland waters" to the exclusive economic zone or perhaps even to all waters. On the other hand there are proposals to limit the concept of damage to the environment by excluding explosion and fire as examples of major incidents which can cause environmental damage.

5. With respect to the scope of application, the Committee seem to have accepted the lex fori rule proposed in Art.2, but have deleted the provision saying that the convention should also be applicable "when the salvor belongs to or the salving vessel or the vessels salved is registered in a contracting state" on the grounds that it was superfluous and unclear, which was a view also held by many in the CMI.

6. Art. 1.3.2 of the Montreal draft makes it clear that the fact that a salvor has performed salvage operations under the control of a public authority shall not prevent him from obtaining compensation for salvage under the convention. Some delegations are concerned that this might lead to double recovery, others feel that salvors in such cases should be compensated under other schemes, but most delegations appear to support that the rule should be retained. Presently, however, the Committee retains the provision in square brackets for further consideration.

7. The Committee has thoroughly discussed the principle of the Montreal draft Art.1.4, that as a general rule the provisions of the convention shall not be mandatory. One delegation does not favour this principle at-all, while some delegations feel that a provision may be necessary, in which the convention expressly identify which rules are mandatory and it has been pointed out that some rules of the Montreal draft are by nature mandatory, e.g. rules concerning invalidity of salvage contracts, the duties of the master to save life and the duty of the owner, master and the salvor to protect the environment.

However, there seems to be a widespread approval of the principle that the rules concerning payment to the salvor, be it a normal reward or special compensation, must not be made mandatory.

8. The Committee has discussed the nature of the rules concerning the duties of the owner, master and salvor in Art.2 of the Montreal draft. The question whether these rules are intended to be both of a private law and a public law nature has been replied to in the affirmative by the representative of the CMI. To the extent the Committee will feel it necessary to have penalties to enforce the public law side of the provisions, this no doubt will be left to national law. However, presently many members of the Committee do not seem to have made up their minds with respect to these rules.

9. The majority of the Committee is in favour of Art.2.4 of the Montreal draft dealing with cooperation of contracting states; some have suggested that the article should place stronger obligations on the states; however, no concrete proposals have so far been tabled.

10. The Montreal draft Art.3.4, Apportionment between Salvors, Art.3.5, Salvage of Persons, Art.3.6, Services rendered under existing Contracts, Art.3.7, The Effect of Salvors' Misconduct, Art.3.8, Prohibition by the Owner or Master, Art.4.1, Maritime Lien, Art.4.2, Duty to Provide Security, Art.4.3, Interim Payment, Art.4.4, Limitation of Actions, and Art.4.6, Interest, all seem generally to be acceptable to the Committee, perhaps with minor alterations.

11. Art. 4.5, jurisdiction, is the subject of some discussion, in particular the Committee seems to be in doubt, as was the CMI, as to whether such a provision at-all is required in the salvage convention.

12. The Committee does not seem to be too happy with Art. 4.7 of the Montreal draft concerning publication of arbitral awards. On the one hand many delegations find it difficult to realize what duties this article puts upon the contracting state, on the other hand there seems to be substantial opposition to proposals for even stronger provisions. The Committee therefore has decided to retain the provision in square brackets for further consideration.

13. The Montreal draft contains in Art. 5.1 a provision under which the contracting states are recommended to give salvors the protection in manner and extent equivalent to that provided for in the 1976 limitation convention. Many delegations have stated that they considered the provision was without meaning, mainly because a party to the 1976 limitation convention would per force apply that convention while a non-party would be under no obligation to this and could apply its own national law. Only one delegation has favoured retention, and as a result the Committee has decided to delete the provision.

The representative of the CMI has made it clear that within the CMI it was rather strongly felt that the provision, even in its present non-obligatory form, would be useful to the industry. It has been explained that the problem is that the salvors in an increasing number of cases do not perform their services from vessels (or with close relation to vessels). In such cases they do not have the right to limitation. The 1976 convention, however, has solved the problem basically by providing that such salvors have a right of limitation as if they worked from a tug of 1500 tons. It is likely that the new salvage convention will be accepted by many states, who do not accept the 1976 convention, and it is therefore explained that it would be very helpful to the salvors and thereby perhaps to the whole industry that the salvage convention as the LOF 80 included such a protection. It is still hoped that the Committee may reconsider its position.

14. The Committee has also at some length considered the introduction of certain rules of public law dealing with salvage, but it seems now unlikely that any additional rule of public law will be introduced in the new salvage convention.

a) A proposal for a treaty law provision on mandatory salvage in certain urgent cases has not been approved by the Committee, whose majority has decided that there was no need for such a rule and concluded that the question would not be re-opened unless new facts emerged which would render it appropriate to revert to the matter.

b) The Committee has considered whether new rules should be introduced with respect to notification requirements between vessels in distress, salvors and coastal states and has communicated with the Marine Environment Protection Committee (MEPC). MEPC has recommended certain guidelines for reporting incidents to the assembly of IMO for adoption in conjunction with the amended protocol 1 to the Marpol 73/78 convention.

c) The Committee has finally considered proposals to establish certain port of refuge for vessels threatening environmental damage. These proposals do not seem to have much support, but the considerations are not finalized.

15. As it will be remembered that in the Montreal draft Article 3-2.1 the skill and efforts of the salvors in preventing or minimizing damage to the environment constitute one of the considerations on the basis of which the reward must be fixed. Reference has often been made in this respect to an "enhancement" of the salvage reward but the use of this expression is misconceived and misleading, for it might imply that the reward is fixed on the basis of the other considerations and then that the amount is "enhanced" on the basis of the skill and efforts of the salvors in preventing or minimizing damage to the environment. The reward, however, is fixed taking into account all the considerations listed in Article 3-2.1 including the aforesaid skill and efforts which are therefore not separately quantified. They are only part of the total lump sum award which is normally distributed between the salved interests pro rata according to the salved values.

16. At the start of the Legal Committee's work the CMI's representative reported to the Committee that informal inquiries seemed to show that the commercial parties still supported the compromise. No-one, however, seemed particularly happy which shows the fine balance of the solution. The Committee was therefore told that if the basic elements of the compromise were made part of the final convention, it would find a widespread support, which again possibly would facilitate the life of the final convention and the prospects of its speedy and wider international implementation.

It has been the CMI's main concern to make the Legal Committee aware of this and to remind the Committee about it on appropriate occasions. The Committee has also listened to this and so far very little criticism or objections to the Montreal compromise have been voiced by the delegates.

17. However, recently the matter has been thoroughly discussed in the International Union of Marine Insurers and was one of the topics on the agenda of the meeting of this organization, which was held in Tokyo late September 1985.

Before that meeting a circular letter was sent out by IUMI to its member-associations describing in some detail the compromise and the arguments pro et con the compromise and asking for replies in writing before the Tokyo meeting, in particular if any association was against the compromise.

It is understood that out of 17 replies received, 1 from an important national association was against the compromise, while the remaining 16 national associations supported the compromise with more or less enthusiasm. It is further understood that basically the same picture emerged during the Tokyo meeting.

The matter will come up on the next meeting of the Legal Committee early in April 1986.

Provided other important parties, such as the P & I Clubs and the salvors do not withdraw their support from the compromise, it is expected that the fact that there is widespread but not a complete approval by the property underwriters will not change the Legal Committee's attitude to this matter.

No doubt there will also be contacts between the commercial parties before the next meeting in the Legal Committee and the situation may at that time have changed.

18. However, since there is presently some discussion regarding the compromise, it might be helpful to summarize some of the points made.

Reluctant cargo underwriters seem to feel that it is unfair that owners of "innocent cargoes" shall pay their share of the enhancement. Such share, it is argued, should be carried by the owners alone, if they would have been liable for the environmental damage which was avoided and/or by the "guilty cargo".

The main points which have been made against this are the following :

a) The owner or insurer of "innocent cargo" does obtain something in return, because the shipowners (and the P. & I. Clubs) fund the safety-net alone, even in cases where the owner is "innocent" (i.e. would have no liability for the environmental damage).

b) It should be noted that the safety-net provided by shipowners in principle is unlimited, while a salvage award must not exceed the value of the property salved. This fits in pragmatically with the fact that the P.& I.Clubs, who shall pick up the safety-net for the shipowners, work with unlimited cover or very substantial limits, while the cargo underwriters' cover normally is limited to the value of the goods.

c) The existence of the safety-net would often add substantially to the encouragement of potential salvors with the result that much "innocent cargo", which would otherwise have been lost, is salved. The best example of this are several recent war casualties in the Gulf area, where high cost salvage operations to striken tankers under LOF 80 have been commenced immediately and successfully completed in cases, where the chances of success were so limited that salvors probably would have hesitated to invest costs, if they had risked losing their investments under the traditional no cure no pay rule.

d) It has always been appreciated that there would from time to time be cases in which the compromise might produce results which, taken in isolation, seem unfair. Sometimes the hull and cargo underwriters would pay the entire costs of a successful salvage operation, although that operation had prevented a potential P. & I.Club liability. Sometimes the P.& I Clubs would pay the entire costs of an unsuccessful salvage (plus all the resultant liabilities), where their own interests alone would have dictated that no salvage be attempted but the ship and the cargo be towed to deep water and sunk. The commercial sense of the compromises overrides these "hard cases". It is already working with respect to LOF 80 and it seems in practice to have worked smoothly and without upsetting either group of underwriters.

e) The owner of "innocent cargo" retains any right he may have to recover his losses from the guilty party, be it the shipowner or another cargo owner, while it has always been a fundamental principle of salvage law - and indeed with respect to GA - that the salvage award (or other GA expenditure) without prejudice to any right of recovery is borne by the owners of all the salved property pro rata to their salved values. The underlying

concept has always been that all the salved property is to be treated as participating in a common adventure and no distinction is made between anyone part and any other part. This is not a new problem arising particularly with regard to enhancement.

f) Finally, it would be almost impossible to quantify the part of the reward relating to the skill and efforts of the salvors in preventing or minimizing damage to the environment. When fixing the award, the tribunal takes into account the facts of the actual situation which among many other relevant facts may include a danger to the marine environment; such danger may again cause quite different methods of salvage than would otherwise have been used. To say what the award would have been, if such an element among many were not there, is highly speculative. As it is written by a Lloyd's arbitrator, Geoffrey Brice, Q.C., "salvage and enhanced Awards", Lloyd's Maritime and Commercial Law Quarterly, February 1985, page 41 :

" ... one could no more divorce those features from the overall assessment of remuneration than one can divorce other features such as the state of the weather or of the sea on particular days during the salvage service".

19. It must be realized that the compromise was not intended to be a strictly logical, but rather a pragmatic arrangement for the broadly equitable sharing of the costs between various parties who have an interest in maintaining a willing salvage industry. The practice following LOF 80 has shown that such a compromise can work smoothly. However, it is realized that the subject is somehow complex and it is hoped that members of the national maritime law associations, if need be, will support and explain the compromise in any communication they may have with governmental or commercial parties.

Copenhagen, 25 November, 1985.

Second China Seminar

Following the request of the Economic and Social Commission for Asia and the Pacific - ESCAP -, the CMI organized a second Seminar in Xiamen in the People's Republic of China. The subjects of the Seminar had been chosen by the Chinese Ministry of Communications in agreement with the President of the CMI and they were collision, salvage and limitation of liability of shipowners.

On each of these subjects various lectures were given by the three lecturers of the CMI : Francesco Berlingieri, Kaj Pineus and Jan Schultsz. To these lectures one on safety of navigation was added, such lecture was delivered by Professor P.J. Slot.

The lectures on each of the subjects were the following :

Part I - COLLISION

- a. Civil jurisdiction
- b. Conflict of laws
- c. Apportionment of liability
- d. Measure of damages
- e. Single and cross liability

Part II - SAFETY OF NAVIGATION

- a. Safety of navigation and International law

Part III - SALVAGE

- a. Conflict of laws
- b. The concept of salvage in civil and common law

Deuxième Séminaire en Chine

Faisant suite à la demande de la Commission Economique et Sociale pour l'Asie et le Pacifique - ESCAP -, le CMI a organisé un second Séminaire à Xiamen en République Populaire de Chine. Les sujets du Séminaire avaient été choisis par le Ministère Chinois des Communications en accord avec le Président du CMI soit : abordage, assistance et sauvetage, et limitation de la responsabilité des propriétaires de navires.

Diverses conférences furent données sur chacun de ces sujets par les trois conférenciers du CMI : Francesco Berlingieri, Kaj Pineus et Jan Schultsz. A ces conférences vint s'en ajouter une autre par le Professeur P.J.Slot sur la sécurité de la navigation.

Les conférences sur chacun des sujets furent les suivantes :

Partie I - ABORDAGE

- a. Compétence civile
- b. Conflit de lois
- c. Répartition de la responsabilité
- d. Fixation des dommages-intérêts
- e. Single and cross liability

Partie II - SECURITE DE LA NAVIGATION

- a. La sécurité de la navigation et le droit international

Partie III - ASSISTANCE ET SAUVETAGE

- a. Conflit de lois
- b. Le concept de l'assistance et du sauvetage en droit civil et commun

- c. Contractual and non contractual salvage
- d. International unification :
 - 1. the 1910 Brussels Convention
 - 2. the revision of the 1910 Convention: the CMI Montreal draft
- e. Calculation of the remuneration
- f. Liability of the salvor for damages caused to the property salved
- g. Persons entitled to the remuneration
- h. Debtors of the remuneration
- i. Lloyd's Open Form of salvage agreement
- j. Security to salvors

Part IV - LIMITATION OF LIABILITY OF SHIOPWNERS

- a. Historical background and efforts towards unification
- b. Conflict of laws
- c. The general limits
 - 1. the 1957 Brussels Convention
 - 2. the 1976 London Convention
 - 3. problems related to the determination of ship's value
- d. The special limits
 - 1. the limitation of liability of operators of nuclear ships
 - 2. the limitation of liability in respect of pollution damage
 - 3. the limitation of liability in respect of damage caused by hazardous and noxious substances
- e. Concluding remarks.

The Seminar was held from 2nd-6th December, 1985 at the Jimei Navigation Institute of Jimei, Xiamen and was attended by over 50 persons. The lectures were very well received and the participants took a very active part in the discussions which followed each of the lectures. Whilst in the occasion of the first Seminar simultaneous translation had been arranged, this time it proved to be unnecessary, for almost all the participants had sufficient command of the english language to understand the lectures and to participate to the discussions.

A third Seminar will be organized in July 1986, and amongst the subjects of such Seminar there will be pollution and towage.

Professor Francesco Berlingieri.

Brussels Conventions

RIDER TO THE STATEMENT OF THE RATIFICATIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

DENUNCIATION BY
THE UNITED KINGDOM OF GREAT-BRITAIN AND NORTHERN IRELAND

On the 1st December, 1985 was registered with the Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, the denunciation by the United-Kingdom of Great Britain and Northern Ireland

- c. Sauvetage contractuel et non contractuel
- d. Unification internationale :
 - 1. Convention de Bruxelles de 1910
 - 2. révision de la Convention de 1910: le projet Montréal du CMI
- e. Calcul de la rémunération
- f. Responsabilité du sauveteur pour les dommages causés aux propriétés sauvées
- g. Personnes ayant droit à la rémunération
- h. Débiteurs de la rémunération
- i. Lloyd's Open Form of salvage agreement
- j. Garantie accordée aux sauveteurs.

Partie IV - LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES

- a. Arrière-plan historique et efforts vers l'unification
- b. Conflit de lois
- c. Les limitations générales
 - 1. Convention de Bruxelles de 1957
 - 2. Convention de Londres de 1976
 - 3. problèmes relatifs à la détermination de la valeur du navire
- d. Les limitations spéciales
 - 1. limitation de la responsabilité des exploitants de navires nucléaires
 - 2. limitation de la responsabilité en matière de dommages dus à la pollution par les hydrocarbures
 - 3. limitation de la responsabilité en matière de dommages dus à des substances nocives et dangereuses
- e. Conclusions.

Au Séminaire qui s'est tenu du 2 au 6 décembre 1985 à l'Institut de Navigation de Jimei à Xiamen assistaient plus de cinquante personnes. Les conférences furent très bien suivies et les participants prirent une part active aux discussions qui eurent lieu après chacune des conférences. Tandis que pour le premier Séminaire il avait été fait appel à la traduction simultanée, ceci s'est démontré inutile cette fois, parce que presque tous les participants possédaient suffisamment la langue anglaise que pour comprendre les conférences et participer aux discussions.

Un troisième Séminaire sera organisé en juillet 1986 et parmi les sujets de ce Séminaire figureront la pollution et le remorquage.

Professeur Francesco Berlingieri.

Conventions de Bruxelles

AJOUTE A L'ETAT DES RATIFICATIONS DES CONVENTIONS INTERNATIONALES DE DROIT MARITIME DE BRUXELLES

DENONCIATION PAR
LE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'
IRLANDE DU NORD

Le 1er décembre 1985 a été enregistrée au Ministère des Affaires Etrangères, du Commerce extérieur et de la Coopération au Développement de Belgique, la dénonciation par le Royaume-Uni de Grande Bretagne et d'Irlande du Nord de

of the following Convention and Protocols :

1. INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING SHIPS AND PROTOCOL OF SIGNATURE DONE AT BRUSSELS OCTOBER 10, 1957
2. PROTOCOL DONE AT BRUSSELS 21 DECEMBER, 1979, TO AMEND THE INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING SHIPS OF 10 OCTOBER, 1957

denunciation which also applies to the following Territories, to which the Convention and the Protocol had been extended :

Isle of Man, Bermuda, Falkland Islands, Gibraltar, Hong Kong, British Virgin Islands, Bailiwicks of Guernsey and Jersey, Caiman Islands, Montserrat, Turks and Caicos Islands.

In accordance with the provisions of articles 13 and 14.2 of the Convention and VII.2 of the Protocol, this denunciation will become operative on 1st. December, 1986.

la Convention et des Protocoles suivants:

1. CONVENTION INTERNATIONALE SUR LA LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES DE MER ET PROTOCOLE DE SIGNATURE, SIGNES A BRUXELLES LE 10 OCTOBRE 1957
2. PROTOCOLE, FAIT A BRUXELLES LE 21 DECEMBRE 1979 PORTANT MODIFICATION DE LA CONVENTION INTERNATIONALE SUR LA LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES DE MER DU 10 OCTOBRE 1957

dénonciation qui vaut également pour les Territoires suivants, auxquels la Convention et le Protocole avaient été étendus :

Conformément aux dispositions des articles 13 et 14.2 de la Convention et VII.2 du Protocole, cette dénonciation prendra effet à la date du 1er décembre 1986.

IMO Conventions

RIDERS TO THE STATEMENT OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE - (CLC 1969)

ACCESSION - ADHESION

Benin 1 November, 1985

INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE (FUND 1971)

CONVENTION INTERNATIONALE PORTANT CREATION D'UN FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDROCARBURES (FUND 1971)

ACCESSION - ADHESION

Benin 1 November, 1985

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS (LLMC 1976)

CONVENTION SUR LA LIMITATION DE LA RESPONSABILITE EN MATIERE DE CREANCES MARITIMES (LLMC 1976)

ACCESSION - ACCESSION

Benin 1 November, 1985

General Average

Mr.Kaj Pineus, Honorary Vice-President of the C.M.I., former Average Adjuster of Sweden, has recently published at Messrs. ALMQVIST & WIKSELL INTERNATIONAL 108 Drottninggatan, P.O.Box 45150, S-104 30 Stockholm, Sweden, a study on

" GENERAL AVERAGE
THE PRACTICAL PROBLEMS ".

Copies can be obtained from the above Publishers at the price of SEK.125.00/US\$.14.00 (plus postage).

Avarie Commune

Monsieur Kaj Pineus, Vice-Président d'Honneur du C.M.I., ancien dispacheur en Suède, a publié dernièrement chez ALMQVIST & WIKSELL INTERNATIONAL, Drottninggatan 108, P.O.Box 45150, S-104 30 Stockholm, Suède, une étude sur:

" GENERAL AVERAGE
THE PRACTICAL PROBLEMS ".

Des exemplaires de cette publication peuvent être obtenus chez les éditeurs au prix de SEK.125.00/\$US.14.00 (plus frais de port).

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The Titulary Members are reminded that there is no need for them to subscribe to the CMI NEWS LETTER and to the YEARBOOK as, indeed, they obtain these CMI publications free of charge.

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The National Associations of Maritime Law are kindly reminded that they can take out a global subscription to the CMI NEWS LETTER and to the YEARBOOK in favour of their members at reduced rates. Details may be obtained by application to the C.M.I. Secretariat.

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Il est rappelé aux Membres Titulaires qu'il n'est pas nécessaire pour eux de souscrire un abonnement à CMI NEWS LETTER et à l'ANNUAIRE. En effet, ces publications du C.M.I. leur sont envoyées gratuitement.

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L'attention des Associations Nationales de Droit Maritime est une fois de plus attirée sur la possibilité qui existe pour elles de souscrire, à un prix fort avantageux, un abonnement global en faveur de leurs membres. Le secrétariat est à leur disposition pour leur fournir de plus amples détails.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

March, 1985

— COMITE MARITIME INTERNATIONAL

Mars, 1985

QUARTERLY

BULLETIN TRIMESTRIEL

Highlights From Spanish Maritime Legislation and Jurisprudence

Introduction

The present report will review the recent state of Spanish maritime legislation, the most significant maritime law decisions from our Courts of Justice and the activities of the Spanish Maritime Law Association, during the last two years 1983 and 1984.

Spanish Maritime Legislation

While the maritime provisions of our now one hundred-years old Commercial Code yet continue to rule over our domestic shipping environment as a guardian of the past, a number of features under private maritime law have recently been developed by the adoption of International Conventions, or indeed superseded where uniformity of laws was sought by the particular Conventions.

The legislative input of the Spanish Socialist Government has hitherto been very considerable during the last two years, and the Spanish Legislative Chamber (the Congress) was rather active in dealing with and passing bill of law reform as a result. Basic fields of substantive and procedural legislation were thereby revised and updated with bearing on the shipping business, such as the Act 8/1983 (25.6.83) relating to the urgent and part Reform of the Penal Code: the Act 34/1984 (6.8.84) relating to the urgent Reform of the Civil Procedure Law, shortening the trial periods and the overall length of the legal proceedings in reference to new borderlines according to the amount of claim (e.g., the longtermed lawsuit of major quantity starts from any sum in excess of 100 million peseta) and introducing the provisional enforcement of judgments under appeal, which coupled with severe rules on cost award to the winning party and other important amendments will undoubtedly help confidence to be returned to the Spanish Court system, though a lot is yet to be done; the Act 22/1984 (29.6.84)

amending the rate of the money legal interest, which is currently calculated in reference to the basis rate of the Bank of Spain (such rate shall be increased with two points with regard to interest awarded by a Court on liquidated sums, pursuant to Art.20 of the above Act 34/1984).

Relevant areas of maritime activity have been touched by the wave of law reform. Thus, the Spanish insurance market was reorganized in depth by the Act 33/1984 (2.8.84) relating to the Ordinance of the Private Insurance, which brought in substantial amendments in matters of state control of the insurance activity, liability margin and technical reserves, Assured's protection, reinsurance business, etc., with a view to dressing up Spanish underwriting for EEC membership. The traditionally powerful Spanish shipbuilding industry, in later years becoming over-sized and partly redundant, was sharply tackled by a Royal Decree 1271/1984 (13.6.84) relating to Reconversion of the Shipbuilding industry, whereby the Government aims at making the yards financially competitive at a time of fierce international struggle for construction orders through tax reliefs, financial incentives and investment aid to technological development, promotion of domestic building and repairing orders through soft and generous loans and reduction of manpower.

Four maritime International Conventions were given force during 1984, namely, the Brussels Protocol of 23.2.68 amending the International Convention for the unification of certain rules of law relating to Bills of Lading (the Hague-Visby Rules) and the Brussels Protocol of 21.12.79 amending the Convention as modified by the 1968 Protocol (these two Protocols were incorporated into the domestic legislation by their publication in the Official Bulletin of 3.2.84; having regard to the Spanish ratification on 6.1.82,

of the 1979 Protocol, the 1968 Amendments were automatically adopted by effect of the provision of Art.6-2 of the SDR Protocol, and both amendments entered into force on 14th February, 1984); the Protocol to amend the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, Brussels, 21.12.79, was published officially on 1.10.84 and entered into force for Spain the same day it gained international force, i.e., the 6th October 1984 (the ratification instrument had been lodged on 14.5.82); the three foregoing Protocols have had an important amending effect over the Spanish law on carriage of goods by sea and limitation of shipowners' liability and will particularly rescue from advocates' desks a great deal of questions regarding to gold value units of limitation and conversion rates into national currency, which had previously split the views of the Spanish scholars in the absence of specific amendments or clear directions from the Supreme Court.

The IMO London Protocol of 1978 relating to the International Convention for preventing Pollution from Ships of 1973 (MARPOL 73/78) received domestic entry on 6.10.84, following to ratification instrument of 22.6.84, though with exception of Annexes III, IV and V thereto.

Two other modern Conventions have been ratified by Spain but will not receive national enforcement until their requirements for international entry into force are finally met, such as the FUND PROT 1976 (Spanish ratification on 5.4.82) and the Limitation of Liability for Maritime Claims, LLMC 1976 (ratified by Spain on 13.11.81). Two other treaties relating to the subject-matter of Passengers and their Luggage by Sea : the Athens Convention of 13.12.74 (PAL 1974) and the amending London Protocol of 19.11.76 (PAL PROT 1976) are similarly lacking general force while our country has ratified (PAL 1974 on 8.10.81) or adhered to (PAL PROT 1976) though not becoming Spanish law yet.

The IMO 1981 amendments to the Regulations for preventing Collisions at Sea (London Convention of 20.12.72) were adopted by Spain and given full force on 23.6.83.

The Spanish Liner trade was another government's target for administrative control and reorganization, which caused a specific regulation to come out on 13.4.84, i.e., the Royal Decree 720/1984 (28.3.84) relating to the Ordinance of the regular maritime transport. Its provisions include both international and coastal trades under liner service for passengers and/or cargo and are conceived to protecting the national flag interests.

Other projects under the policy of reform of the maritime public and private legislation were in the government's office agenda, such as the liberalisation of the shipping trade combined with flag protection measures, the penal Merchant Marine regulations, the transfer of Harbour Master's responsibilities to civil servants, the consolidation of the marine administrative offices into a single Ministry Department, etc., at the end of 1984; and so still was waiting for a berth, since prepared by our Association in 1980, the draft of the Marine Insurance Act. The draft is currently in a promising stage before the Ministry of Justice, but despite its amending effect over the entire Section III (Chapter III) of the 1885 Commercial Code the expectations for a date with our Legislative Chamber at Parliament House in the near future are very scarce and a few years will yet go by before it becomes law.

Important Spanish Court decisions

In the course of the last two years the Spanish provincial civil courts have dealt with numerous shipping cases involving relevant issues of law and procedure that range from sea carriage to marine insurance; normally, the decisions of the local courts were appealed to the territorial courts (High Courts), and a lesser number of the latter were finally reviewed by the Spanish Supreme Court. We will in this report outline and mention those Supreme Court findings deemed to be significant only.

In the matter of maritime transport, the cargo survey effected ashore within 24 hours from the completion of discharge was held to be sufficient record of loss and damage to the goods for the purpose of the notice of protest required by Art.952(2) of the Commercial Code (Supreme Court Judgment of 24.2.83); damage to the goods through poor and inadequate air ventilation of the holds was held to engage fully the carrier's liability and not falling under one of the exculpatory exceptions provided by Art. 8 of the COGSA 1949 (SCJ 31.3.83); bills of lading issued in London containing a clause "liner terms" did not cause the application of the customs of the port of London to a dispute over payment of discharging costs as incurred at the port of discharge, Las Palmas, in the absence of express agreement, which should after all be null and void by virtue of the Paramount and Jurisdiction clauses of the B/L providing for the application of Spanish law (SCJ 30.6.83); damage occurred to containerised goods through mishandling after discharge at Liverpool related to a stage of transportation outside the ruling scope of the COGSA 1949, and thence the aspect of the claim's time-bar was held to be governed by the 1-year provision of

the Spanish Commercial Code(SCJ 31.1.84), which illustrated the conflicting and different concept of the time limit for suit under the COGSA 1949 (a term of maturity) and the Commercial Code (a term of prescription); where the loss of part of cargo arose from the ship's casualty for which her Master was found to be primarily responsible, the vessel's Owners can be sued by the cargo owners and held liable for the acts of the Master irrespectively of a right of direct action against the Master and without prejudice to an Owners' recovery action against him (SCJ 14.2.84); a few months later, the subject of time limit was again before our Supreme Court, which through an outstanding piece of decision ruled that even the period of statutory maturity as provided for by Art.22 of the COGSA 1949 could be altered or extended by agreement of the parties who were free to agree on the contractual life of the cargo claims, thus endorsing the validity and effectiveness of the time-bar extensions (SCJ 30.5.84).

In reference of liability for oil pollution damage, the casualty of the spanish tanker "URQUIOLA" in May, 1976 was examined by our Supreme Court in an action brought by the widow of the lost Master against the Spanish State.

It was held that the loss of the Master's life was consequent upon the occurrence of a chain of successive events caused by a proven failure of the public services as to marine charts warning, navigational aid information, port organization and safety in respect of salvage assistance, for all of which the State was strictly, directly and patrimonially responsible (SCJ 18.7.83).

The area of time bars as applied to shipbuilding was ruled upon to the effect that, despite the subsidiary application of the Civil Code provisions relating to the hire of works, the nature of the contract of shipbuilding remained to be wholly mercantile and, thence, the 1-year period of limitation set out by Art. 952(1) of the Commercial Code ought to apply (SCJ 10.2.84). With regard to sale and purchase, a small trawler was held to be a movable res and not a place of business for transfer of property by sale, although ships are regarded as non-movable property for purposes of marine hypothecation only (SCJ 12.7.83).

"Booking Notes" issued under charter-parties were held to be proper contracts of affreightment and not merely undertakings to load cargo (SCT 10.11.83); in relation to demurrage claims, our Supreme Court decided that the liability to pay demurrage was closely linked with the Owners' responsibility for bad stowage of the cargo within the

same chartering context and a set-off approach might be made where the Owners' fault in regard to the stowage is duly proved and the extent of the damage to the goods is clearly established (SCJ 28.2.84).

In the matter of marine salvage, Division 4 of the Supreme Court found that the tug assistance rendered to a stranded vessel was performed under circumstances of good weather and absence of danger to the distressed ship such that the services could be assimilated to "towage" despite their qualification as "assistance at sea" and the award should be reduced accordingly (SCJ 10.5.83).

There were quite a few cases relating to marine insurance during the period under review. Thus, the subrogation by cargo insurers to the rights of the Assured was held to be sufficiently proven by the mere exhibit of the insurance certificate showing the plaintiff's capacity of insurer; disclosure of the actual insurance policy was not required for the purpose of the automatic subrogation provided under Art.780 of the Commercial Code (SCJ 2.11.83). The subrogation of rights vested in the insurers by payment of the indemnity to the sellers of the cargo is subject to the sellers having received assignment of the insurance rights from the actual beneficiary of the insurance, i.e., the buyers of the cargo at destination. In order for the subrogation to be effective it is a condition precedent that the assured seller becomes subrogated to the interest of the buyers to whom the insurance benefit had been transferred by the sale of the goods (SCJ 2.6.84). The construction of unclear terms as contained in the insurance policy clauses must not protect the insurers having drafted such clauses because the insurance policy is a "contract of adhesion", which need be interpreted to the best of the Assured's interest preservation (SCJ 13.4.84); failure of the vessel's reefer equipment does not need be absolute, tantamount of a complete stoppage of refrigeration, and a temporary breakdown will be well within the terms of insurance cover (SCJ 13.4.84 and 17.5.84).

The deviation of the carrying vessel to a port other than the port of destination named in the policy, or the extension of the voyage to another port, without the consent of the insurers cannot be a ground for declining liability under the policy where the insurers did not show that the cause of the damage to the cargo was due to acts of the Assured or that he had taken part in, or had been privy to, the voluntary deviation of the vessel (SCJ 17.9.84).

Special attention should be paid to the steadily-continued trend of our Supreme Court during the period in the matter of recognition and enforcement of foreign arbitration awards.

New arbitral awards issued in London in respect of maritime law issues were admitted for enforcement in Spain against the defaulting party and further light was thrown over questions like the validity of the arbitration agreement, which should be tested by the law of the country of the award, i.e. English law, under the provisions of the 1958 New York Convention (SCA 17.6.83); or in regard to the exception of Spanish Public policy, which was ruled out by the Court having regard to the fact that the 1958 New York Convention is now Spanish law and therefore a clause deemed to be valid according to English law could not be violating our country's public policy (ACJ as above); or over the topic of proof of the award's finality, which was held not to be strictly required by the New York Convention, it being sufficient that the award was "obligatory" or binding on the parties (ACJ 4.10.83); or in respect of negative reciprocity of the country of the party seeking the enforcement, which was found to be irrelevant having regard to the material fact that the country of the award (i.e., United Kingdom) was signatory of the New York Convention (ACJ as above). An interesting remark may be made with respect to the objection - which is often raised - that a clause providing for "general average and arbitration to be settled in London" should be understood as a covenant leading to arbitration in matters relating to general average adjustments only, which the Court fully repudiated on the grounds that the English concept of "settlement" embraces disputes of all kinds that can be resolved out of Court (ACJ 17.6.83).

The Spanish Maritime Law Association
(A.E.D.M.)

A new Executive Committee was elected in June 1983 and a general state of activity has since flourished. Membership has increased considerably and the financial budget has been adequately restored. The AEDM Bulletin is published again since January 1984 on a quarterly basis. We had also meetings and made representations to Ministers and Departments of the Government, the Congress, the General Council of the Judicature, the University, the General Council of Advocates and associations (shipowners, underwriters, shipagents, shipbrokers, etc.).

The working groups, in number of six, for research of maritime law topics were set in motion and are largely assisting the Association in its commitments with the CMI and with the Spanish official delegations to IMO and UNCTAD.

The AEDM has organized and sponsored several Conferences and Seminars, during the period, meeting high participation and successful results: the I. National Conference on Maritime Law (August 30 to September 3, 1983) held on board of the cruising boat "Vacationer" along a route from Seville to Malaga with calls at Huelva, Cadiz, Ceuta and Algeciras; the one-day Seminar of Madrid on "Time charters" (1.12.83); the Seminar on "Marine Insurance and the London Clauses, organized in Barcelona (December, 1983) by the AEDM local Committee of Maritime Law; the one-day Seminar of Madrid on "Maritime Arbitration", set up in cooperation with the "Spanish Shipowners' Association (9.2.84); the two-days I. Seminar on "Shipsfinance", held in Madrid (May 17-18, 1984); the II. Conference of Maritime Law held in Aviles and Gijon (June 14-15-16, 1984) by the AEDM regional Committee of Asturias; the I. Seminar on Maritime Law organized by the School of Judicature in Madrid (October 5-6, 1984), assisted by the AEDM with a view to commencing a series of meetings and debates between judges, maritime lawyers and University scholars, which turned out to be a most useful experience.

The AEDM has actively participated in the activities and meetings (London, Copenhagen, Brussels, of the various CMI Working Groups, and sent delegates to the General Assembly meeting of Brussels in April 1984.

We are now preparing for the XXXIII CMI Conference in Lisbon, for which occasion a large demand of attendance is envisaged from AEDM members bearing in mind not only the weight of the Conference topics over the shipping market of today but also very particularly our traditional links of neighbourhood with the Portuguese CDMI.

José María Alcántara
Maritime Lawyer, Madrid.

Brussels Conventions

RIDER TO THE STATEMENT OF THE RATIFICATIONS OF AND ACCESSIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

DENUNCIATION

The Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, has registered on 22 November, 1984 a verbal note, dated 20 November, 1984, emanating from the Embassy of Italy in Brussels, notifying the denunciation by Italy of the

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING AND PROTOCOL OF SIGNATURE SIGNED AT BRUSSELS ON 25 AUGUST, 1924

According to the provisions of Article 15 of this Convention, this denunciation will become operative on 22 November, 1985

Conventions de Bruxelles

AJOUTE A L'ETAT DES RATIFICATIONS ET ADHESIONS DES CONVENTIONS INTERNATIONALES DE DROIT MARITIME DE BRUXELLES

DENONCIATION

Le 22 novembre 1984 a été enregistrée au Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique une note verbale datée du 20 novembre 1984 émanant de l'Ambassade d'Italie à Bruxelles notifiant la dénonciation par l'Italie de la :

CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE DE CONNAISSEMENT ET PROTOCOLE DE SIGNATURE, SIGNES A BRUXELLES LE 25 AOUT 1924

Conformément aux dispositions de l'article 15 de la Convention, la dénonciation produira ses effets à l'égard de l'Italie le 22 novembre 1985.

Personalia

Information has been received regarding the new list of the Officers of the Asociación Argentina de Derecho Marítimo

Avis a été reçu concernant la nouvelle composition du Bureau de l'Asociación Argentina de Derecho Marítimo

ASOCIACIÓN ARGENTINA DE DERECHO MARÍTIMO
c/o Dr. José Domingo Ray, 25 de Mayo 489,
5th fl., 1339 Buenos Aires

President:	Dr. José D. Ray
Vice-Presidents:	Dr. Antonio R. Mathé Dr. Alberto Dodero
Secretary :	Dr. Alberto C. Cappagli
Pro-Secretary:	Dr. Domingo M. López Saavedra
Treasurer :	Sr. Francisco Weil
Pro-Treasurer :	Dr. Carlos R. Lesmi
Members :	Alm. Francisco Alemán Dr. Carlos García Terán Sr. Victorio Piotto Dr. Fernando Romero Carranza Dr. Abraham Austerlic Dr. Carlos Levi.

XXXIII^d International Conference of the C.M.I.

XXXIII^e Conférence Internationale du C.M.I.

The Lisbon Conference will be held from 19th until 25th May, 1985.

The deadline for the registration of participations to the Conference has been fixed at the 28th March, 1985.

For complementary information please apply to the Secretariat of the Conference :

La Conférence de Lisbonne aura lieu des 19 au 25 mai 1985.

La date limite pour l'enregistrement des participations à la Conférence a été fixée au 28 mars 1985.

Pour des renseignements complémentaires, veuillez vous adresser au Secrétariat de la Conférence:

LISBOA C.M.I. 1985
attn: Vice-Almte RA J.P.Bustorff Guerra
Comissão de Direito Marítimo Internacional
Praça do Comércio
1188, LISBOA - Portugal
Tlx: 12587 Cencom P.

CMI Publications

The following publications are available from the Administrative Secretariat of the C.M.I. c/o Messrs.Henry Voet-Genicot, Borzestraat 17 - B.2000 Antwerpen - Belgium :

Publications du CMI

Les publications ci-dessous sont disponibles au Secrétariat Administratif du C.M.I. c/o Firme Henry Voet-Genicot, Borzestraat 17 - B.2000 Antwerpen - Belgique :

A. CONFERENCE DIPLOMATIQUE DE DROIT MARITIME DE BRUXELLES

1. 9ème session - Bruxelles 1952
2. 10ème session - Bruxelles 1957
3. 11ème session - (1ère phase)-Bruxelles 1961
4. 11ème session - (2ème phase)-Bruxelles 1962
5. 12ème session - (1ère phase)-Bruxelles 1967
6. 12ème session - (2ème phase)-Bruxelles 1968

L'exemplaire / per copy : US\$. 20.--

B. PROCES-VERBAUX DES CONFERENCES DU C.M.I. MINUTES OF THE C.M.I. CONFERENCES

1. Anvers/Antwerp 1947 (20)
2. Amsterdam 1949 (21)
3. Naples 1951 (22)
4. Madrid 1955 (23)
5. Rijeka 1959 (24)
6. Athènes/Athens 1962 (25)
7. Stockholm 1963 (26)
8. New York 1965 (27)

L'exemplaire / per copy : US\$. 12.--

9. Tokyo 1969 (28) (7 fascicules - 7 booklets)
10. Hambourg/Hamburg 1974 (30) (2 fascicules - 2 booklets)
11. Rio de Janeiro 1977 (31) épuisé - out of print.

Par fascicule / per booklet : US\$.4.--

12. Montreal 1981 (32) MONTREAL I - : US\$.10.-
MONTREAL II- : US\$.10.-

C. DOCUMENTATION CMI

1. Documentation CMI 1968 (6 fascicules - 6 booklets)
2. Documentation CMI 1969 (6 fascicules - 6 booklets)
3. Documentation CMI 1970 (6 fascicules - 6 booklets)
4. Documentation CMI 1971 (6 fascicules - 6 booklets)
5. Documentation CMI 1972 (3 fascicules - 3 booklets)
6. Documentation CMI 1973 - épuisé - out of print -
7. Documentation CMI 1974 (4 fascicules - 4 booklets)
8. Documentation CMI 1975 (4 fascicules - 4 booklets)
9. Documentation CMI 1976 (4 fascicules - 4 booklets)

Par jeu de fascicules - Per annual set : US\$.20.--

D. CMI NEWS LETTER & ANNUAIRE/YEARBOOK

1. 1978
2. 1979 (février:épuisé - February:out of print)
3. 1980
4. 1981
5. 1982 (décembre:épuisé - December:out of print)
6. 1983

Série annuelle complète - Full yearly set : US\$.12.--

E. DOCUMENTS C.M.I.

1. CONVENTIONS INTERNATIONALES DE DROIT MARITIME-TEXTES
INTERNATIONAL CONVENTIONS ON MARITIME LAW - TEXTS
L'exemplaire / per copy : US\$.12.--
2. CMI SEMINAR ON APPORTIONMENT OF RISKS IN MARITIME
LAW - Aix en Provence September, 1976
L'exemplaire / per copy : US\$.10.--
3. CMI COLLOQUIUM ON THE HAMBURG RULES, Vienna
January, 1979 - L'exemplaire / per copy : US\$.10.--
4. ICC-CMI RULES INTERNATIONAL MARITIME ARBITRATION
ORGANIZATION
REGLEMENT CCI-CMI ORGANISATION INTERNATIONALE
D'ARBITRAGE MARITIME
L'exemplaire / per copy : US\$.5.--
5. COURT APPOINTED EXPERTS IN MARITIME CASES,
A Comparative Law Study by Arthur Boal and David R.Owen
L'exemplaire / per copy : US\$.5.--

Note: The report on the CMI COLLOQUIUM ON BILLS OF LADING,
Venice May, 1983 is available from Almqvist & Wiksell
Periodical Company to whom subscriptions to the CMI NEWS
LETTER as from 1st January, 1984 should also be directed.



CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

— COMITE MARITIME INTERNATIONAL —

Special issue May, 1985

Edition spéciale mai 1985

THE ASSESSMENT OF DAMAGES IN MARITIME COLLISIONS

Report of the Chairman of the International Subcommittee,
Mr. Jean Warot.

The Committee has finished its work and its Chairman submits to the Comite Maritime International and to National Associations his report together with the draft of a Convention.

I. INTRODUCTION

In January 1957, the Secretariat was given instructions based on a proposal formulated by Maître Dor, Vice-President of the C.M.I., to prepare a Convention on the calculation of damages in cases of collision.

Maître Dor had, at that time, drawn attention to the desirability of unification because there were different practices in the various maritime states. This initiative led to the setting up of an International Committee under the chairmanship of Maître Ian Asper, and the Secretary of the Committee was the undersigned.

After having received interesting contributions from the National Associations, this Committee drew up a draft Convention based on the existing legislation and jurisprudence of the various states, which was to have been submitted to the Assembly of the C.M.I. at the time of the Athens Conference in 1962.

However, this unifying text was not discussed at that time because the Conference, after having heard the report of the International Committee, limited itself to passing a resolution adopting the three following principles :

1. compensation should put the party suffering loss in a position as close as possible to what would have been his position if the collision had not taken place.
2. the party suffering loss always has the obligation of mitigating the damage so far as possible.
3. the party causing the collision is responsible for loss and damage reasonably attributable to his fault.

FIXATION DES DOMMAGES-INTERETS DANS LES ABORDAGES MARITIMES

Rapport de Monsieur Jean Warot,
Président de la Commission Internationale

Le Comité a terminé ses travaux et son Président soumet au Comité Maritime International et aux Associations Nationales son rapport accompagné d'un projet de convention.

I. INTRODUCTION

En janvier 1957, le bureau permanent avait été saisi d'une proposition formulée par Maître DOR, Vice-Président du C.M.I., pour la préparation d'une convention sur la détermination des dommages-intérêts en matière d'abordage.

Maître DOR avait souligné, à l'époque, l'intérêt d'une unification car la pratique dans les pays maritimes était différente. Cette initiative avait abouti à la désignation d'une Commission Internationale présidée par M. Ian ASSER et le secrétaire de cette Commission était le signataire de la présente note.

Après avoir reçu des Associations nationales des contributions intéressantes, cette Commission, faisant le point sur l'état des législations nationales et de la jurisprudence, avait établi un projet de convention qui devait être soumis à l'assemblée du C.M.I. lors de la Conférence d'Athènes, en 1962.

Cependant, ce texte d'Union ne fut pas discuté car la Conférence, après avoir entendu le rapport de la Commission Internationale, se borna à voter une résolution retenant les trois principes suivants :

- " 1) la réparation doit remettre la victime dans une situation aussi proche que possible de celle qui eût été la sienne si l'abordage ne s'était pas produit;
- " 2) la victime doit toujours atténuer le dommage dans la mesure du possible;
- " 3) l'auteur de l'abordage répond du préjudice raisonnablement imputable à sa faute."

The C.M.I. Assembly, at the suggestion of the President of the C.M.I., decided to take up again the study of these problems and after having received the answers of 24 National Associations, the Sub-Committee appointed a special Committee.**

This special Committee met on several occasions and has drawn up a text which accompanies this report.

II. STUDY OF THE ANSWERS SUBMITTED BY NATIONAL ASSOCIATIONS.

(a) There was unanimous approval for the adoption of the principles put forward for the approval of the Associations viz:

1. compensation for damage corresponding to "Restitutio in integrum".
2. indemnification should include the elements of "damnum emergens" and "lucrum cessans"
3. mitigation of damage.

These rules should be applied, of course, without overriding or contradicting the principles of limitation of liability of the owner of a ship in the form set out by the Brussels Conventions of 1925, 1957 and 1976.

(b) However, there was by no means that degree of unanimity when it came to the question of the applicable law.

The law of the various states in general provide for the application of the following rules :

- if the collision takes place in the territorial sea of a country then without exception the "lex loci delicti" is applied.
- if the collision takes place on the high Seas, there is in theory a choice to be made between the law of the flag and the "lex fori".
- if the two ships fly the same flag there is unanimous agreement that the law of the flag should be applied.
- if the two ships fly different flags, the National Courts in general apply their own law, that is to say the "lex fori", to avoid conflicts of interest which would be difficult or even impossible to resolve.

** This special Sub-Committee was under the chairmanship of the undersigned and comprised the following delegates:

- Mr. Patrick Griggs (Great Britain) Secretary of the Committee
- Mr. Kaj Pineus (Sweden)
- Mr. Geoffrey Fletcher (Belgium)
- Mr. Henrik Christrup (Denmark)
- Mrs. Ida Ivanovna Barinova (U.S.S.R.)
- Mr. James F. Molesey (U.S.A.)
- Mr. P. Blusse van Oud-Alblas (Netherlands)
- Mr. Roland Chauvin (Canada)
- Mr. Jean Brisset (Canada)

L'assemblée du C.M.I., sur la suggestion de son Président, a décidé de reprendre l'étude de ces problèmes et, après avoir reçu les réponses de 24 Associations nationales, le Sous-Comité a désigné une Commission spéciale.**

Cette Commission s'est réunie à plusieurs reprises et elle a établi un texte qui accompagne ce rapport.

II. ETUDE DES REPONSES DES ASSOCIATIONS NATIONALES

a) L'unanimité s'est faite pour adopter les principes proposés à l'approbation des Associations, soit:

- 1.- Réparation du dommage correspondant à une "Restitutio in integrum"
 - 2.- Indemnisation qui doit comprendre le damnum emergens et le lucrum cessans
 - 3.- Minimisation des dommages
- ces règles s'appliquant bien entendu sans empiéter ou contredire le principe de la limitation de responsabilité du propriétaire de navire de mer, tel qu'énoncé par les Conventions de Bruxelles de 1925, 1957 et 1976.

b) Cependant, cette unanimité est loin d'être réunie lorsqu'il s'agit de déterminer le droit applicable.

Les jurisprudences nationales retiennent, en général, les critères d'application suivants :

- si l'abordage a lieu dans les eaux territoriales d'un pays, c'est sans exception la "lex loci delicti" qui s'applique;
- si l'abordage a lieu en haute mer, il y a théoriquement un choix à faire entre la loi du pavillon et la lex fori;
- si les deux navires battent le même pavillon, l'unanimité se fait pour appliquer la loi du pavillon;
- si les deux navires battent des pavillons différents, les tribunaux nationaux appliquent en général leur propre loi, c'est à dire la lex fori, pour éviter des conflits de lois difficiles sinon impossibles à résoudre.

** Cette commission réunissait sous la présidence du signataire, les délégués suivants :

- Mr. Patrick Griggs (Grande Bretagne). Secrétaire de la Commission
- Mr. Kaj Pineus (Suède)
- Mr. Geoffrey Fletcher (Belgique)
- Mr. Henrik Christrup (Danemark)
- Mrs. Ida Ivanovna Barinova (U.R.S.S.)
- Mr. James F. Molesey (USA)
- Mr. P. Blusse van Oud-Alblas (Pays-Bas)
- Mr. Roland Chauvin (Canada)
- Mr. Jean Brisset (Canada)

It appears therefore that the great majority of the Associations would not wish to see the establishment of a conflict of laws rule. Complete freedom must be left to National Courts to apply their own law.

The International Convention for the Unification of certain Rules in cases of Collision signed Brussels in 1919 contains a formula which should be our guide.

Article 1 of that Convention provides :

"Where a collision occurs between sea-going vessels or between sea-going vessels and vessels of inland navigation, the compensation due for damages caused to the vessels, or to any things or persons on board thereof, shall be settled in accordance with the following provisions, in whatever waters the collision takes place."

TOTAL LOSS OF THE SHIP AND DETERMINATION OF THE VALUE OF THE SHIP WHICH HAS BEEN LOST.

Virtually all the National Associations indicated that it was necessary to maintain the principle of market value. However, many Associations are of the view that one should take account of the value that the ship might have for her owner.

SHIP WHICH SUFFERED DAMAGES

A large majority of the Associations were of the view that temporary repairs and permanent repairs should be paid provided that the costs are justified. Very many Associations rejected the principle of reductions based on a new for old allowance.

LOSS OF USE OF THE SHIP

The methods of calculating the level of compensation vary from country to country and no general rule can be ascertained from the replies received. A reference to the net profit of the owner during the three voyages preceding the casualty and the three voyages following it does appear however to be the solution favoured by the majority.

LOSSES AND DAMAGES AFFECTING CARGO - DELAY IN THE DELIVERY OF CARGO.

There was virtual unanimity for the adoption of the following principles :

- market value at the port of destination
- when the market value cannot be established, the value to be used will be the cost of the goods to the owner of the goods with a further payment of a certain percentage to provide compensation for loss of profit.

Finally, some compensation for delay in delivery is generally admitted.

Il apparaît ainsi que la grande majorité des Associations ne souhaite pas que l'on établisse une règle de conflit. Il faut laisser aux tribunaux nationaux une liberté totale pour appliquer leur propre jurisprudence.

La Convention Internationale pour l'Unification de certaines règles en matière d'abordage, signée à Bruxelles en 1910, contient une formule qui doit nous guider.

L'article 1 de cette convention dispose :

"En cas d'abordage survenu entre navires de mer..... les indemnités dues à raison des dommages causés aux navires, aux choses ou aux personnes se trouvant à bord sont réglées conformément aux dispositions suivantes, sans qu'il y ait lieu de tenir compte des eaux où l'abordage s'est produit".

PERTE TOTALE DU NAVIRE ET DETERMINATION DE LA VALEUR DU NAVIRE PERDU.

La quasi-unanimité des Associations nationales a indiqué qu'il fallait retenir le critère suivant : valeur de marché ("market value").

Cependant, de nombreuses Associations estiment que l'on doit tenir compte de la valeur que le navire pouvait représenter pour son armateur.

NAVIRE EN ETAT D'AVARIES

Une grande majorité des Associations s'est dégagée pour estimer que les réparations provisoires et les réparations définitives doivent être remboursées sur justifications.

De très nombreuses Associations ont écarté le principe de la déduction du vieux au neuf.

CHOMAGE DU NAVIRE

Les méthodes de calcul de l'indemnité varient selon les pays et aucune règle générale ne peut se dégager des réponses reçues.

Une référence aux gains nets de l'armateur pendant les trois voyages qui ont précédé l'accident et les trois voyages qui l'ont suivi, paraît cependant avoir la faveur du plus grand nombre.

PERTES ET AVARIES AFFECTANT LA CARGAISON - RETARD DANS LA LIVRAISON DE CELLE-CI.

Une quasi-unanimité se manifeste pour l'adoption des principes suivants:

- "Valeur de marché au port de destination;
- "Lorsque la valeur de marché ne peut être déterminée, le prix retenu sera celui du coût de la marchandise pour son propriétaire avec l'octroi d'un certain pourcentage pour compenser le profit perdu".

Enfin, une indemnité pour retard dans la livraison est généralement admise.

PASSENGERS - CREW - LOSS OF HUMAN LIFE -
INJURIES - LOST LUGGAGE - LOSS OF
CREW'S EFFECTS.

The great majority of the Associations are in favour of the application of national laws since some of the provisions of the law of a country are considered to be matters of public policy.

INTEREST

The payment of interest is accepted by the National Associations. However, none of them was of the view that a definite rate of interest should be laid down, and their preference was for the application of the law or the jurisprudence of the country.

EXCHANGE PROBLEMS

The response varied depending on the country. It appeared, however, that there was a tendency towards calculating damages in the currency in which the expense had been incurred. In the same way, reference was generally made to the principle of conversion into the national currency at the rate of exchange applying on the date of a payment.

CONSTRUCTIVE TOTAL LOSS

There was unanimity for the view that this was a term of art in insurance, but certain countries drew attention to the fact that by implication their Courts referred to the concept of constructive total loss to assess whether a ship is in a state such as to allow repair or to lead to the conclusion that repair is impossible and, if repairs can be carried out, whether they can only be carried out for an amount exceeding the value of the ship.

III ANALYSIS OF THE PROPOSED TEXT.

Preliminary Comments

The Committee worked most assiduously and we must thank the Secretary General of the Committee, Mr. Patrick Griggs, who brought to the work an invaluable contribution in drawing up the English text which is proposed. In its last draft, this text takes into account the observations made by the Members of the Committee and also, and above all, all the amendments proposed by the British Maritime Law Association, amendments which have been approved by the President of the C.M.I. and by the undersigned.

Commentary on the Article

ARTICLE 1 - Definitions

The Committee took the view that it was necessary for the text to contain definitions.

The words "total loss" have been defined in such a way as to include the case where damage suffered by the

PASSAGERS - EQUIPAGE - PERTE DE VIES HUMAINES - BLESSURES - BAGAGES PERDUS BIENS PERDUS PAR L'EQUIPAGE.

Les Associations préconisent en grande majorité l'application de leur loi nationale car certaines dispositions de la loi d'un pays sont d'ordre public.

INTERET.

Le paiement d'un intérêt est admis par les Associations nationales. Cependant, aucune d'elles ne souhaite que l'on fixe un taux définitif et leur préférence va à l'application de la loi ou de la jurisprudence nationale.

PROBLEME DE CHANGE

Les réponses diffèrent selon les pays. Cependant, une tendance se manifeste pour que l'on retienne la valeur de la monnaie dans laquelle la dépense a été exposée.

Damême, se réfère-t-on généralement au principe d'une conversion en monnaie nationale au taux du jour en vigueur à la date du paiement.

"CONSTRUCTIVE TOTAL LOSS"

L'unanimité s'est faite pour dire qu'il s'agit d'une notion d'assurance mais certains pays rappellent qu'implicitement leurs tribunaux s'y réfèrent pour apprécier l'état du navire qui est ou non réparable, et s'il est réparable, pour une dépense supérieure à sa valeur marchande.

III. ANALYSE DU TEXTE PROPOSE.

Remarque préliminaire.

La Commission a travaillé avec beaucoup d'assiduité et il faut remercier son Secrétaire Général, Mr. Patrick GRIGGS, qui a apporté une contribution inestimable à ces travaux en établissant le texte anglais qui est proposé.

Dans son dernier état, ce texte tient compte des observations formulées par les membres de la Commission, et aussi et surtout par les amendements proposés par l'Association Britannique du Droit Maritime, amendements qui ont été approuvés par le Président du C.M.I. et par le signataire de ce rapport.

Commentaires sur les articles

ARTICLE 1 : Définitions

La Commission a estimé que le texte devait comprendre des définitions.

- Les mots "perte totale" ont été définis de façon à comprendre le cas où les dommages subis par le navire

ship brings about the need for repairs, the cost of which would be, as has already been said above, higher than the value of the ship which has suffered the damage.

We therefore find ourselves in a position similar to "constructive total loss".

However, the question may be put whether this Article is perhaps incomplete and whether it might not be necessary to give a definition of collision through an explanation, for example, of this concept to bring within the definition the effects of wash from a ship which might cause damage to another ship or to a floating object which is moored.

The suggestion was also put forward that the definition might be expanded to cover cases where ships are trapped in a port by the presence of another ship which has sunk in the passage leading to the port.

ARTICLE 2

This Article leads into Article 3 and does not call for any special comment.

ARTICLE 3

This article clearly defines the conditions applicable to "Restitutio in integrum".

ARTICLE 4

This article brings fully into the text the principle of mitigation of damages and it will be noted with satisfaction that the idea of reasonable diligence has been introduced.

ARTICLE 5

This Article sets out the need for the damage to be the immediate and direct consequence of the collision, which excludes indirect damage and respects the exclusion for remoteness which is found in Anglo-Saxon law.

ARTICLE 6

The text of this Article seems to us to be very clear indeed. However, we know that our English friends have asked that the concept of "value" should be better defined, for we may find ourselves dealing with a case where the purchase of a similar ship could not take place because such a similar ship might not exist in the part of the world where the ship which has sunk was trading.

ARTICLE 7

This Article completes the provisions of the preceding Article in that it deals with the loss of use suffered by the Owner of the ship which has sunk. The Committee had, at one time, thought of including in the reimbursement of costs incurred as a result of the collision, the reimbursement of fines, indemnities and other expenses incurred as the consequence of pollution

entraîneraient des réparations dont le coût serait, comme il l'a été dit plus haut, supérieur à la valeur du navire accidenté.

Nous nous trouvons ainsi dans un cas semblable à la "constructive total loss".

Cependant, l'on peut se demander si cet article n'est pas incomplet et s'il ne faudrait pas donner une définition de l'abordage en étendant, par exemple, cette notion à l'effet de "wash" qui pourrait causer un dommage à un navire ou à un objet flottant amarré.

Il a été aussi suggéré d'étendre cette définition au cas des navires bloqués dans un port par la présence d'un autre navire coulé dans la passe qui conduit à ce port.

ARTICLE 2 :

Cet article annonce l'article 3 et n'appelle pas de commentaire spécial.

ARTICLE 3 :

Cet article définit bien les conditions de la "Restitutio in integrum".

ARTICLE 4 :

Cet article traduit bien le principe de la minimisation des dommages et l'on notera avec satisfaction que la notion de diligence raisonnable est introduite.

ARTICLE 5 :

Il rappelle cette exigence d'un dommage qui doit être la suite immédiate et directe de l'abordage, ce qui exclut les dommages indirects et respecte l'exclusion pour "remoteness" du droit anglo-saxon.

ARTICLE 6 :

Le texte de cet article nous paraît d'une clarté exemplaire. Cependant, nous savons que nos amis anglais demandent que la notion de "valeur" soit mieux définie car l'on peut se trouver en présence du cas où l'achat d'un navire semblable ne pourrait avoir lieu, car il n'existerait pas de navire similaire dans la partie du monde où le navire coulé était exploité commercialement.

ARTICLE 7:

Cet article complète les dispositions de l'article précédent en traitant de la perte d'exploitation subie par l'armateur du navire coulé.

La Commission avait songé à inclure dans le remboursement des dépenses exposées résultant de l'abordage, les amendes, indemnités et autres dépenses encourues par suite d'une pollution ou de l'enlèvement d'une épave. Il a

or wreck removal. However, the point was quite correctly made that if that were done, it might be that one would be providing for the reimbursement of expenses which would not have any connection with the casualty.

ARTICLE 8

This Article does not call for any comment. It is designed to give effect in a positive way to the general comments put forward by the Associations.

ARTICLE 9

This Article deals with indemnification of the shipowner for loss of profit which is the consequence of loss of use of his ship. The Article contains very complete provisions because it is designed to meet all the following typical situations:

loss of profit :

- when the ship is trading under a voyage charterparty,
- when the ship is trading in a regular liner service,
- when the ship is trading on a consecutive voyage basis under a time charter,
- when repairs are undertaken,
- in cases of successive collisions.

It has been suggested that one should try to give a more complete definition of the word "profit" but it seemed to us that the word can only mean net profit to the exclusion of gross profits. Thus, in effect, at no time, can there be any unjustified enrichment of the Owner.

ARTICLE 10

This Article contains the provisions relating to cargo. Here again, the text seems excellent to us in its conciseness. It should not give rise to any objections.

ARTICLE 11 - Claims individuals - Death.

Bearing in mind the particular nature of these problems and the very strict control which is carried out by National Courts in cases of claims by individuals, it seemed reasonable to provide that the parties should have recourse to the competent Courts.

ARTICLE 12

It is clear that a justified claim of the shipowner or of the cargo owner should give rise to a payment of interest, but to calculate the rate of that interest and the date from which it is calculated, it seemed reasonable again to refer to the competent Courts dealing with the claim.

ARTICLE 13

This Article contains a reference to other Conventions and is a necessary part of the text. We are, of course, thinking most particularly of the Brus-

été justement remarqué que l'on pouvait se trouver en présence de "frais" qui soient sans rapport avec l'événement.

ARTICLE 8 :

Cet article n'appelle pas de commentaire. Il répond d'une façon positive aux remarques générales formulées par les Associations.

ARTICLE 9 :

Il traite de l'indemnisation due à l'armateur pour le "gain manqué" par suite de la perte de l'usage de son navire.

Cet article contient des dispositions très complètes car il envisage toutes les situations classiques :

- perte de gain :

- au cas où le navire bénéficie d'une charte-partie au voyage.
- au cas où le navire est exploité en ligne régulière.
- au cas où le navire accomplit des voyages consécutifs avec un affréteur à temps.
- au cas où des réparations sont entreprises.
- en cas d'abordages successifs.

Il a été suggéré que l'on devrait tenter de définir plus complètement le mot "gain", mais il nous paraît qu'il ne peut s'agir, bien entendu, que de "gains nets" à l'exclusion des gains bruts. A aucun moment en effet, il ne peut y avoir un enrichissement sans cause de l'armateur.

ARTICLE 10 :

Cet article contient les stipulations relatives à la cargaison.

Là encore, le texte nous paraît excellent dans sa concision. Il ne devrait prêter à aucune contestation.

ARTICLE 11 : Dommages corporels - Décès.

Compte tenu du particularisme de ces problèmes et du contrôle très strict exercé par les tribunaux nationaux en la matière, il a paru raisonnable de renvoyer les parties à la jurisprudence du tribunal saisi.

ARTICLE 12

Il est évident que la créance de l'armateur ou du propriétaire de la cargaison doit produire un intérêt, mais pour calculer le taux de cet intérêt et son point de départ, il a paru raisonnable, encore une fois de se référer à la jurisprudence du tribunal saisi.

ARTICLE 13 :

Cet article contient une référence aux autres conventions. Il s'imposait.

Nous pensons bien entendu plus particulièrement aux Conventions de

sels Conventions on the Limitation of Liability of Ships.

These are the fruits of the work of the Committee. Within the Committee, there was virtual unanimity for the proposal to consider the drawing up of a Convention, or at the very least of a text which could correspond to rules which might be followed by National Courts.

- Preliminary Draft International Convention on the Assessment of Damages in Maritime Collisions

ARTICLE 1

In the present convention the following expressions have the following meaning :

- (a) "Claimant" means: the party suffering physical or financial loss as a result of a collision, in respect of which redress is due.
- "Claimant" includes any one of the following persons: the owner of the vessel, the charterer, the owner of the goods, or any third party including crew members and passengers.
- (b) "Total loss" means : the actual loss of the vessel or damage to the vessel where the cost of repair together with the residual value of the vessel exceeds its value when repaired.
- (c) "Damages" means: the financial compensation payable to the claimant.
- (d) "Loss of use" means: the period of time during which the claimant is deprived of the use of the vessel.

PRINCIPLES

ARTICLE 2

In the event of collisions between seagoing vessels (or between seagoing vessels and inland navigation vessels) the damages which may be claimed from the party at fault shall be assessed by the Court having jurisdiction pursuant to the following principles and provisions.

ARTICLE 3

Damages shall place the claimant as nearly as possible in a position equivalent to that which he occupied prior to the incident giving rise to the claim. The burden of proving the damages suffered shall be on the claimant.

ARTICLE 4

Damages shall not be recoverable to the extent that they might have been avoided or minimized by the exer-

Bruxelles sur la limitation de la responsabilité du propriétaire de navire de mer.

Tel est le fruit du travail de la Commission.

Une quasi-unanimité s'est faite au sein de cette Commission pour que l'on envisage de proposer l'établissement d'un texte conventionnel ou, à tout le moins d'un texte correspondant à des règles qui pourraient être suivies par les tribunaux nationaux.

- Projet de Convention Internationale sur la Fixation des Dommages-Intérêts dans les Abordages Maritimes

ARTICLE 1

Dans la présente Convention, les expressions suivantes sont employées avec les significations indiquées ci-dessous :

- (a) "Victime" signifie : la partie qui a éprouvé une perte matérielle ou financière résultant d'un abordage et pour laquelle réparation lui est due.
- "Victime" comprend une quelconque des personnes suivantes : le propriétaire du navire, l'affréteur, le propriétaire des marchandises, ou tout tiers comprenant les membres de l'équipage et les passagers.
- (b) "Perte totale" signifie : la perte réelle du navire ou les avaries au navire lorsque le coût des réparations ajouté à la valeur résiduelle du navire excède sa valeur, une fois réparé.
- (c) "Dommages-intérêts" signifie : le dédommagement financier qui pourra être payé à la victime.
- (d) "Chômage" signifie : la période de temps pendant laquelle la victime sera privée de l'usage de son navire.

LES PRINCIPES

ARTICLE 2

En cas d'abordage survenu entre des navires de mer (ou entre des navires de mer et des bateaux de navigation intérieure) les dommages-intérêts qui peuvent être réclamés à la partie fautive seront fixés par le Tribunal compétent conformément aux principes et aux dispositions ci-après.

ARTICLE 3

Les dommages-intérêts devront remplacer la victime dans une situation équivalente à celle qui était la sienne antérieurement à l'événement qui a motivé la réclamation. Le fardeau de la preuve des dommages encourus incombera à la victime.

ARTICLE 4

Les dommages-intérêts ne seront alloués que dans la mesure où le dommage aurait pu être évité ou minimisé par

cise of reasonable diligence by the claimant.

ARTICLE 5

Unless otherwise provided in this Convention only damages proximately caused by the collision shall be recoverable.

TOTAL LOSS

ARTICLE 6

(1) In the event of the vessel being a total loss, the claimant shall be entitled to recover the value of the vessel; such value shall be the value which it represented to its owner, account having been taken of the type, age, condition and nature of operation of the vessel at the time of the collision.

(2) Where, however, it is possible to acquire a similar vessel, the value of the vessel shall be determined by reference to the price of such vessel.

ARTICLE 7

Subject to the terms of Article 4 the claimant shall, in addition to the value of the vessel determined under Article 6, be entitled:

- (1) to compensation for the loss of use of the vessel.
- (2) to reimbursement of expenses reasonably incurred as a result of the collision.
- (3) to an indemnity in respect of sums paid by way of compensation to third parties.
- (4) to reimbursement of sums paid as compensation for death personal injury and loss of or damage to personal possessions by reason of the claimants contractual or statutory obligations.

VESSEL DAMAGED

ARTICLE 8

In the event of the vessel not being a total loss, the claimant shall be entitled :

- (1) to compensation for loss of use of the vessel as defined in Article 9 hereof.
- (2) to reimbursement of the cost of temporary and final repairs and associated expenses.
- (3) to damages as specified in Article 7 (2),(3) and (4) hereof.

l'exercice d'une diligence raisonnable de la victime.

ARTICLE 5

Sauf stipulation contraire de la présente Convention, seul ouvrira droit à réparation le dommage découlant directement de l'abordage.

PERTE TOTALE

ARTICLE 6

(1) En cas de perte totale du navire, la victime aura le droit de recouvrer la valeur du navire : cette valeur sera celle que le navire représentait pour son propriétaire compte tenu du type, de l'âge, de l'état et de la nature de l'exploitation du navire au moment de l'abordage.

(2) Toutefois, lorsqu'il est possible d'acquérir un navire similaire, la valeur du navire sera déterminée par voie de référence au prix d'un tel navire.

ARTICLE 7

Sous réserve des dispositions de l'article 4 la victime aura droit, en plus de la valeur du navire déterminée à l'article 6 :

- (1) à une indemnité pour la perte résultant du chômage du navire.
- (2) au remboursement des dépenses raisonnablement encourues par suite de l'abordage.
- (3) à une indemnité correspondant aux sommes versées à des tiers à titre d'indemnisation.
- (4) au remboursement des sommes payées à titre d'indemnité pour les pertes de vies humaines, dommages corporels et pour les pertes ou dommages à des biens personnels à raison d'obligations de nature contractuelles ou prévues par la loi.

AVARIES AU NAVIRE

ARTICLE 8

Dans le cas où le navire n'est pas considéré comme totalement perdu, la victime aura droit :

- (1) à une indemnité pour perte résultant du chômage du navire, telle que déterminée à l'article 9 ci-après.
- (2) au remboursement du coût des réparations provisoires et du coût des réparations définitives et de toutes dépenses annexes.
- (3) aux indemnités telles que déterminées à l'article 7 (2),(3) et (4) ci-dessus.

ARTICLE 9

Sous réserve des dispositions de l'article 4 la victime aura droit, en sus du remboursement des dépenses

defined above, be entitled to recover damages for net loss of earnings and for expenses incurred as a result of the loss of use of the vessel.

In calculating the loss of earnings the following factors may be taken into account :

(1) When loss of use of the vessel occurs during the performance of a voyage charterparty and such loss of use does not entail cancellation of the charterparty, the claimant shall be entitled to compensation calculated according to the average net earnings on the two previous and two subsequent voyages.

If such loss of use entails the proper cancellation of the charterparty, the claimant who has not yet earned his freight shall be entitled to damages comprising the net freight lost.

(2) When loss of use of the vessel occurs while it is being operated commercially on a regular line, the claimant shall be entitled to reimbursement of the net freight lost.

In the event of the freight not yet having been earned by the vessel at the time of the collision or when the loss of use of the vessel continues beyond the duration of the voyage during which the collision took place, compensation shall be calculated according to the average net earnings on the two previous and two subsequent voyages.

(3) When loss of use of the vessel occurs while it is performing a consecutive voyage or time charter, the claimant shall be entitled to compensation calculated on the unconsumed portion of the consecutive voyage or time charter, such compensation shall also include the loss suffered by the charterer by virtue of the interruption of the charterparty.

In the event of the loss of use entailing cancellation of the charterparty, the claimants shall be entitled to compensation calculated according to the average net earnings on the two previous and two subsequent voyages.

When in the events (1), (2) and (3) set out above no reference to two previous and two subsequent voyages is possible, the net earnings on other relevant voyages or on the voyage during which the collision took place shall form the basis of compensation.

(4) When collision damage repairs are carried out in conjunction with necessary owners' work or with essential repair work arising out of another incident the claimant shall be entitled to recover damages for loss of use only to the extent that the period under repair is extended by reason of the collision damage repairs.

ci-dessus définies, au paiement de dommages-intérêts pour le manque à gagner et pour les dépenses exposées par suite du chômage du navire.

Pour le calcul du manque à gagner, les éléments suivants pourront être pris en considération :

(1) Lorsque le chômage du navire a lieu au cours de l'exécution d'une charte-partie au voyage et sans en entraîner la résiliation, la victime aura droit à une indemnité calculée d'après la moyenne des gains nets réalisés lors des deux voyages précédant et des deux voyages suivant l'événement.

Si ce chômage a pour conséquence la résiliation de la charte-partie, la victime qui n'a pas encore son fret aura droit à des dommages-intérêts comprenant le montant net du frêt perdu.

(2) Lorsque le chômage du navire a lieu alors qu'il est exploité commercialement, en ligne régulière, la victime aura droit au remboursement du montant net du fret perdu.

Au cas où le fret n'a pas été gagné au moment de l'abordage ou lorsque le chômage du navire se prolonge au-delà de la durée du voyage au cours duquel l'abordage a eu lieu, l'indemnisation sera calculée d'après la moyenne des gains nets réalisés lors des deux voyages précédant et des deux voyages suivant l'événement.

(3) Lorsque le chômage du navire se produit pendant l'exécution d'un voyage consécutif ou au cours d'un affrètement à temps, la victime aura droit à une indemnité calculée sur la partie du voyage consécutif ou de la charte-partie à temps non encore effectuée; cette indemnisation comprendra également la perte éprouvée par l'affréteur par suite de l'interruption de la charte-partie.

En cas de chômage entraînant la résiliation de la charte-partie, la victime aura droit à une indemnisation calculée d'après la moyenne des gains nets réalisés lors des deux voyages précédant et des deux voyages suivant l'événement.

Lorsque, dans les cas prévus aux paragraphes (1),(2) et (3) ci-dessus, il n'est pas possible de se référer à deux précédents voyages ou à deux voyages subséquents, l'indemnisation sera établie par référence à d'autres voyages ou au voyage au cours duquel l'abordage s'est produit.

(4) Lorsque les réparations résultant de l'abordage sont exécutées en même temps que des travaux commandés par l'armateur ou en même temps que des travaux nécessités par un autre incident, la victime aura droit à des dommages-intérêts pour le chômage du navire uniquement pour la durée des travaux de réparations résultant de l'abordage.

(5) In the event of successive collisions, a party liable for subsequent collisions shall be bound to pay damages calculated pursuant to the provisions of this Article to the extent that the repair period is lengthened.

CARGO

ARTICLE 10

The owner of goods on board a vessel which is involved in a collision shall be entitled to recover damages when such goods have been lost or damaged in their carriage.

Such damages shall be calculated as follows :

(1) If the goods are lost, their owner shall be entitled to reimbursement of their market value at the port of arrival at the time when they should have arrived.

(2) When such market value cannot be determined in a precise manner, the value of the goods shall be equal to the price which the merchandise has cost its owner, plus a profit margin assessed at a lumpsum value of 10 % of the value of the goods and the freight collected for the carriage.

(3) If the goods are damaged, their owner shall be entitled to damages equal to the difference between the market value of the goods in a sound condition upon arrival and the market value of the damaged goods.

(4) In the event of such damage being caused by the lengthening of the voyage by virtue of the collision, like damages assessed according to the same bases of calculation shall be due to the owner of the goods.

PERSONAL INJURY AND DEATH

ARTICLE 11

Where the claimant is a crew member or passenger, the damages recoverable for loss of life, personal injury and loss of or damage to personal possessions shall be determined by the Court having jurisdiction.

INTEREST

ARTICLE 12

Where under this Convention damages are payable the claimant shall in addition be entitled to interest at such rates and for such period as the Court seised of the matter shall determine.

GENERAL

Nothing in this Convention shall affect any rights or liabilities which may arise under the Conventions.

(5) En cas d'abordages successifs, la partie responsable des abordages subséquents sera tenue de payer des dommages-intérêts calculés selon les dispositions du présent article, dans la mesure où la durée des travaux de réparations aura été prolongée.

CARGAISON

ARTICLE 10

Le propriétaire de marchandises chargées à bord d'un navire impliqué dans un abordage aura droit à des dommages-intérêts lorsque ces marchandises auront été perdues ou avariées au cours de leur transport.

Ces dommages-intérêts seront calculés comme suit :

(1) Si les marchandises sont perdues, leur propriétaire aura droit au remboursement de leur valeur marchande en vigueur au port de destination, au moment où elles auraient dû y parvenir.

(2) Lorsque cette valeur marchande ne peut être déterminée d'une manière précise, la valeur des marchandises sera égale au prix que leur propriétaire les a payées, augmenté d'une marge bénéficiaire d'un montant forfaitaire de 10 % de la valeur de ces marchandises et du montant du frêt payé pour leur transport.

(3) Si les marchandises sont endommagées, leur propriétaire aura droit à des dommages-intérêts correspondant à la différence entre la valeur marchande des marchandises à l'état sain à l'arrivée et la valeur marchande de ces marchandises en état d'avarie.

(4) Au cas où ces avaries auront été causées par la prolongation du voyage du fait de l'abordage, des dommages-intérêts, fixés selon les mêmes bases de calcul, seront dus au propriétaire des marchandises.

DOMMAGES CORPORELS ET PERTE DE VIE HUMAINE

ARTICLE 11

Lorsque la victime est un membre de l'équipage ou un passager, les dommages-intérêts qui peuvent être alloués pour perte de vie humaine, pour dommages corporels, et pertes ou dommages à des objets personnels, seront fixés par le Tribunal compétent.

INTERETS

ARTICLE 12

Lorsque la victime a droit à des dommages-intérêts conformément à cette Convention elle aura également droit à un intérêt calculé sur une durée et à un taux déterminés par le Tribunal saisi.

GENERALITES

La présente Convention ne porte pas atteinte aux dispositions d'autres Conventions Internationales.

TOWARDS A TRANSFERABLE SEA WAYBILL

Prepared by Professor Kurt Grönfors
Chairman of the International Working Group

PURPOSE OF THIS PAPER

1. The purpose of this paper is to offer a basis for discussion how far waybills (W/Bs) could be further adapted to fulfil more of the same functions as bills of lading (Bs/L) fulfil today. This latter type of document is especially designed to meet the needs in international trade of selling and purchasing goods in transitu and of using the cargo carried as security for financing the transactions underlying the transport.

THE B/L PATTERN

2. The B/L is a unique type of document in so far as the mechanism for releasing the goods is concerned. The carrier has to deliver the cargo carried only to the bearer of one original of the B/L, against surrender of the document as the usual phrase goes. This characteristic is a comparatively late addition to the other prerequisites of the B/L. An English decision by the House of Lords in 1793, Lickbarrow v Mason (1794) T.R. 685, can be looked upon as the finalization of a fullfledged B/L in a modern sense of this term. (This development is covered in an excellent way by Bennett in his regrettably not very wellknown study The History and Present Position of the Bill of Lading as a Document of Title to Goods, Cambridge 1914). When documents of transport dating from Marseille in the 13th century or even from Ancient Rome are called Bs/L, this is utterly misleading, because they do not include any prerequisite against surrender of the document. And this is the only decisive distinction mark in relation to other types of transport documents.

3. The purpose of this idea of requiring the simultaneous exchange of one original document against the goods carried is to enable merchants to sell and purchase the B/L as substitute for the goods themselves as long as the goods are in the charge of the carrier, as if the original document were in fact the goods themselves. Thus the B/L has been given a representative function. For at the very end of the whole operation it will be exchanged for the cargo carried, and this act of substitution enables the merchants involved to treat the B/L as representing the goods.

4. A necessary condition for the effective operation of this system is, of course, that the bearer of the original document, who holds the right to demand delivery of the goods at the place of their final destination, will not have to face the risk of someone else having the right to intervene in the regular performance of the transport, e.g. by being permitted to give instructions to the carrier to unload and re-route the goods with the result that these will never arrive to their named destination. He who, by holding the original B/L, has the right to claim the delivery of the goods must consequently have the right to control the goods when in transitu. The right to claim delivery and the right of control are necessarily linked to each other for functional reasons.

5. Because of the regrettable usage of carriers to issue more than one original B/L, mostly three originals, there does exist such a risk of someone intervening. Therefore, it is a universally accepted rule that the right to control the goods in transitu requires the production of a "full set", in other words all existing originals. Thus the right to control the goods is tied to the possession of all originals. Only when the carrier can be sure that he, by following new instructions, does not breach his promise to deliver the goods at their final place of destination to the holder of one original of the B/L, he can feel himself free to agree to new instructions - obviously no other original is floating around in the market.

6. The term right of control (or right of disposal) is used as a label indicating the right to give all sorts of new instructions to the carrier as to the fulfilment of the contract of carriage. The contents of the right of control covers such instructions as to stop the goods in transit, including their withdrawal already at the terminal of departure, to unload, to warehouse or to re-route the goods, and to deliver the goods to some other person than the first consignee indicated in the B/L at any stage of the transit as well as to change the place of delivery of the goods.

7. The consignor has the exclusive right of control from the moment the carrier takes the goods in his charge and the consignor has got all originals in his possession. As long as he keeps these originals, he still has the right of control. As soon as he has himself given away at least one original, he loses his right of control. A person who buys one original has the right to demand the delivery of the goods, as soon as they have arrived at the place of final destination. The right to intervene before that time with new instructions belongs only to the person who has got all the originals. By these arrangements it is possible for the parties in a sales contract to vary the point of time when the goods leaves the seller's sphere of influence and enters into the sphere of influence of the purchaser and thus to adapt the individual financing arrangements according to their own wishes.

8. The details about the contents of the right of control now given are designed in order to make the trading with cargo in transit as easy as possible. The possible interventions can be labelled the positive functions of the right to control, and they are all reflecting an activity from the side of the purchaser. They are supplemented by the negative function (Germ. Sperrfunktion), meaning that the person having the right to control knows that no outsider can interfere with the regular fulfilment of the carriage. This function is especially important for banks and other institutions financing the underlying sales contract. If the bank has the right of control, it has security in the goods carried in a way that is similar to the possession of the goods themselves.

9. But the right of control has its limitation. The carrier has the right not to comply with the instructions as to the goods, if these instructions interfere with the carrier's normal or intended operations, or if they are not practically possible to carry out at the time when the instructions reach the carrier, or if damage or substantial inconvenience otherwise would be caused to him or to consignees of other consignments. One example offers the situation when the unloading of all cargo in the hold is required, because the consignment in question is stowed on the very bottom. On the other hand, the carrier can follow the instructions given by someone not being the bearer of the necessary document, but in such a case the carrier is responsible to the bearer for all damage caused thereby. Furthermore, a seller can use his right of stoppage in transitu to the goods, based on the sales contract, even if the necessary document is already held by the buyer. Thus, being the bearer of the necessary document or documents does not give exactly the same effective protection as being in the possession of the goods themselves. Bearing in mind these facts, one might raise the question, if the right of control really can be said to constitute a legal right. The answer seems to be Yes, in the same way as many other rights, called rights, often are substantially limited in a similar manner. The terminology seems to be appropriate, as long as the limitations are kept in mind.

10. Persons using their right of control are liable to the carrier. This side of the right has to be stressed as well. The liability includes a reasonable remuneration and the duty to indemnify the carrier against all expenses, loss and damage involved in carrying out the instructions given to him by the person having the right of control.

THE W/B PATTERN

11. A different pattern has developed by usage in land transportation by railroad. It was codified and further elaborated in the first version of the European Railway Convention 1890. The main structure of this pattern was transferred to air transportation by the Warsaw Convention 1929 and to road transportation by the European Road Transport Convention CMR in 1956.

12. The main characteristic for the W/B pattern is that the mechanism for releasing the goods is entirely independant from any paper document at all. One reason why things developed that way was that waybills (or consignment notes, as they were also called) originally did not manifest any promise by the carrier to deliver the goods to a certain person but only constituted a notice from the sender to the receiver in the shape of a letter (compare Fr lettre de voiture, Germ. Frachtbrief), not involving the carrier. This is reflected in the text of traditional land waybills from the 17th century. ("Dear Sir. Today I have delivered one drum of tar, weighing 50 pounds, to the coach man X in town A and ordered him to carry it to town B, where you can have it delivered to you by asking his agent Y for it as soon as the

goods have arrived. Your humble servant"). Consequently it was up to the consignor (sender of the letter) to issue such waybill.

13. Later on carriers grew more and more interested in what particulars were given by senders when writing letters to receivers. The first step in the direction of involving the carrier seems to have been that the sender showed the letter to the carrier and had him confirm the correctness of the particulars given by writing a short sentence of confirmation and his name on the waybill. The next step was that the carrier himself issued the waybill, which thereby was based on the contract of carriage and thus also included a promise from the carrier to deliver the goods to the person indicated in the waybill. Still the filling in of all details in the waybill usually is made by the consignor like in the olden days, and the waybill is only signed by the carrier.

14. In these circumstances, which are the prerequisites for the consignee's having the goods delivered to him? They are tied not to the existence of a certain paper document but to the simple facts that

- (1) the goods have arrived at their final place of destination and
- (2) the person demanding the delivery of the goods identifies himself as the consignee named in the waybill, the contents of which is known to the carrier, who regularly possesses one copy (not being an original) of it.

15. The purpose of this pattern is not to make further selling and purchasing of the goods easier when in transitu. It is not intended to change the name of the consignee. There was considered to exist no need for transferring the goods to some other person under the short transit periods in land and air transportation; only maritime transits were sufficiently long as to create a practical need for further transactions during the period of time necessary for the carriage. This means that a W/B is non-negotiable in the sense that it does not represent the goods like the B/L - in this respect the W/B comes very close to the American concept of straight B/L.

16. As has already been pointed out (supra 4), the right to demand the delivery of the goods at their final place of destination and the right to control the goods when in transit are necessarily interrelated. The W/B pattern being completely independant of the transport documents themselves thus requires that the right to control the goods is equally independant of the documents. As a consequence, the main rule concerning the control of the goods must be that the consignor has the right to control the goods (1) until they have arrived at their final place of destination and (2) a person identifying himself as the named consignee has demanded their delivery. No change of person is made and the situation is kept within the original frame from the start until the end.

17. Experience soon proved that such a rule was too rigid to meet the practical needs of commercial life. Even when the identity of the consignee did not change and was never intended to be changed, consignors wanted to have a possibility of transferring their "grip on the cargo" to their consignee at some convenient point of time when this person had paid for the goods and needed to have the possibility of giving instructions to the carrier. In other words, there existed a need to adapt the contract of carriage to the individual particulars of the contract of sale and the contract of financing the sale.

18. The wishes of the trade went even further. When grain was exported from Italy to Northern Europe by rail during the second part of the 19th century, transit times were rather long and at the time of issuance of the rail waybill it was often not known for certain, which point of final destination was to be used or who ultimately could prove to be the final buyer. In other words, there existed just the same need for trading with the goods in rail transport as in long maritime carriage of commodities.

19. The solution to these problems was the introduction of the duplicate (first copy) of the waybill. In the middle of the 19th century there existed, under European national rail legislations and usages, at least five different systems of solving the pro-

blem of controlling the goods when in transit. The codification made in the European Rail Transport Convention, 1890, contains a mixture of the German principle of reserving the right of control for the sender as long as possible and the French system of linking the right of disposal with the possession of the duplicate in a way that comes close to the effects of Bs/L (das System des Frachtbriefsduplicats mit konnosementsähnlicher Wirkung). Later on, the duplicate system was adopted in aviation by the Warsaw Convention and for road transport in the CMR.

20. How can these functions be fulfilled effectively by attaching the right to control the goods during transport to the possession of the duplicate of the waybill? As long as there is no change of the name of the consignor, there are obviously no problems to achieve new instructions to the carrier (the positive function) by producing the duplicate, just like a full set of Bs/L. The same is true as to assuring the person possessing the duplicate that no person outside can intervene in the regular performance of the carriage (the negative function). (Compare supra 8.) It might be difficult to understand how it can be possible to imitate the functions of transferability to a type of document that is not intended for transfer.

As long as the goods have not arrived at their intended final place of destination, a change of "the actual consignee" can be made by surrendering the duplicate to the new purchaser of the goods (combined with a written notice to the carrier to deliver the goods in transit to the new person). But what about the situation when this person lives at the place of final destination and the goods already have arrived? Here it must be kept in mind that there are two distinct prerequisites for the coming to an end of the right to control (supra 14), the second being that the named consignee demands the delivery of the goods. As long as the consignee does not appear, the person having the right of control can exercise his right also at the place of final destination. In other words, the new buyer of the goods exercises his right of control instead of demanding the delivery of the goods, as he is not the consignee, and the consignee refrains from appearing and claiming the goods.

21. In this way, the function of transferability is achieved. Still there has been no shift of the named consignee to a new named consignee.

THE B/L CRISIS

22. The mechanism for releasing the goods followed as to Bs/L has served international trade extremely well, especially during the 19th century, when the time needed for goods transit was long enough and public mail operated within shorter periods of time. But nowadays the situation has changed. Transit times gradually become shorter and periods of time needed for postal services show a tendency to grow. It is a far too common situation that the goods have arrived but the consignee still is waiting for his original B/L. In the meantime goods are piling up in harbours and unnecessary delay is caused. This phenomenon is often referred to as the B/L crisis.

23. One way of curing this disease obviously is to adopt the W/B pattern of land and air transport. This is frequently done today by the introduction of sea waybills, a type of document becoming more and more frequent in fast liner services. The goods is then no longer dependant on the arrival by mail of a unique piece of paper (one original) but on the simple facts that the goods have arrived and that someone identifying himself as the consignee claims their delivery (compare supra 14).

24. The W/B is non-negotiable in the sense that it does not represent the goods like the B/L. In this way it comes close to the American concept straight B/L (compare supra 15). For the mechanism for releasing the goods is completely independent of a specific piece of paper like the B/L (compare supra 12).

25. But what about the right of control, which is attached to the possession of a specific document, the duplicate (first copy)? Is it attached in the same sense as the right to get the goods delivered under the B/L pattern? The answer to this question is definitely No. The possession of the duplicate is used only as an easy way of evidencing who has the right of control but not as a necessary condition for having such right. The handling over of the duplicate from sender to receiver is construed as an implied declaration of intention saying, that

the former assigns his right to control the goods in favour of the receiver (consignee). Of course, the same effect can be achieved by an express declaration to the same effect. In both cases the consignee or his bank (financing institution) can be sure that no outsider has the right to intervene and disturb the regular performance of the contract of carriage. This construction of the legal function of the duplicate is proved also by the fact, that duplicates as a rule are not issued to sea waybills and in computerized systems are substituted by an express declaration of intention in order to secure the position of banks and other financing institutions.

26. But merely adopting the W/B pattern as used today in land and air transport, meaning to use its mechanism for releasing the goods, cannot fully meet the requirements of international trade to use the W/B instead of the B/L when trading with goods. Some functions of a B/L can be imitated and perhaps meet the requirements of a substitute for a regular B/L in a special section of mercantile transactions. But in other fields the W/B is not enough to constitute a practical alternative to a B/L - it offers a solution only in cases where the parties do not intend to sell the goods when in transit to someone else. As a consequence, one has to raise the question, if the W/B pattern can be further elaborated in the direction of getting closer to the B/L pattern, without accepting the serious deficiency of its mechanism for releasing the goods.

ELABORATING THE W/B PATTERN

27. Provided that the traditional W/B pattern is kept intact in so far that there is no change of the named consignee, the same procedure can be used as today in order to reach some degree of transferability. You can sell the goods to a new person by using the right of control, as long as the goods are in transitu or at least are not claimed by the named consignee at the place of final destination. If a bank is named as consignee and holds the right to control the goods in transit as well, it can be sure that no one from the outside can intervene in the performance of the contract of carriage. The real buyer of the goods is named as notify address only and has to pay the bank, which then assigns its right to demand the delivery of the goods to the buyer, who produces this assignment to the carrier and then gets the goods delivered. This procedure is standard in cases, where rail, road or air waybills are used as a basis for letters of credit. It would be technically possible to develop this technique further, meaning that the addressee transfers to another person his right to appear to the bank (cessio) and thus creates a chain of new persons acquiring the same right. Such a procedure imitates the further sale and purchase of a B/L. This is, in fact, not made in practice and the procedure does not create the same security as offered under the B/L system. Thus, it does not seem possible to achieve more without changing the traditional pattern.

28. Therefore, what is needed to change the name of the consignee. This is not done under the traditional W/B pattern. In principle, however, there does not seem to exist any legal obstacle against such a cessio, only a very important proviso and limitation. It has already been underlined (supra 4 and 16) that the right to claim delivery of the goods and the right to control the goods in transitu are necessarily linked to each other for functional reasons. It cannot be permitted to separate these two functions by transferring them to different persons - or the whole system would immediately break down. But as long as these two functions are kept together when transferred to a new person, this clearly is a possible technique. By using such a legal technique, we would open up the use of W/Bs also in cases where transferability is eagerly needed.

29. More in detail, such an innovation would work in the following way. By an express declaration to the carrier, the consignor (or his consignee) may at any time, from the time when the goods have been taken in charge by the carrier until they have been delivered, assign his right to obtain delivery to a named person. The right of control and the right to obtain delivery are inseparable and cannot be assigned independently from each other. If the goods carried are used as security by a bank offering a documentary credit or a collect mandate, the bank must get notice of the assignment (lat denuntiatio). Such a procedure does not require that the bank itself is named as

consignee. Now we are getting really close to the traditional B/L pattern.

30. Does this mean that we have succeeded in imitating all the B/L functions within the framework of W/Bs ? This question has to be answered in the negative. The W/B has been transformed into a transferable document (quasi-negotiable paper) in the same meaning as a B/L is transferable, but it is still not a negotiable paper in the strict sense of this term. The very far-reaching protection of new person bona fide acquiring a B/L, labelled negotiability in a strict sense, is lacking as far as W/Bs are concerned. The liability for the correctness of the particulars included in the B/L thanks to the doctrine of estoppel is also lacking in W/Bs, documents being only prima facie evidence of the particulars contained under legal systems not extending the doctrine of estoppel to this type of document.

31. The question can be raised if this is a deficiency or not. These most far-reaching qualities of Bs/L have proved to be just those qualities that make the B/L an extraordinary efficient vehicle for fraudulent actions. For trading purposes, interest is focused on the paper documents only, living their own life when sold or purchased. As the exclusive connection with the goods carried remains the mechanism for releasing the goods against surrender of the document only, a mechanism which nowadays fails to work properly with "the bill of lading crisis" as a result. Do we want to reproduce the same effects within the W/B pattern ? Or would the lack of these special qualities prove to be an improvement of a new W/B created in order to meet the demands of modern trade in a balanced way ? The W/B pattern focuses on the contract of carriage. The right of control combined with a possibility of transferring the rights of a named consignee to a new person, or even to more new persons in a chain, from the commercial point of view might give enough protection to enable banks and other financing institutions to accept the goods carried as security.

32. Such questions have to be further illuminated by an in-depth discussion before we finally will be able to decide which path we have to follow.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

Summer, 1985

— COMITE MARITIME INTERNATIONAL

Eté 1985

QUARTERLY

BULLETIN TRIMESTRIEL

XXXIIIth International Conference of the C.M.I Lisboa 19/25 May, 1985

To organize a Conference in a manner as successful as the 1981 Montreal Conference, was almost impossible. The Portuguese Association, the Comissão De Direito Marítimo Internacional, did this in a splendid manner and it is for me a great pleasure to express once more to its President Dr.José J.de Almeida Borges, to the Chairman of the Organizing Committee Vice-Admiral J.P.Bustorff Guerra and to all the members of the Committee the gratitude of the CMI.

The two subjects on the agenda of the Conference were, as it is known, the revision of the 1967 Brussels Convention on Maritime Liens and Mortgages and the revision of the 1952 Brussels Convention on Arrest of Ships. Thanks also to the preparatory work done by the two International Sub-committees, the Conference succeeded in preparing revised texts of the two Conventions which met with the approval of a large majority of the Member Associations present at the Conference: the draft revision of the 1967 Convention on Maritime Liens and Mortgages was approved with 25 votes in favour, none against and 8 abstentions whilst the draft revision of the 1952 Convention on Arrest of Ships was approved with 23 votes in favour, 3 against and 7 abstentions. (*)

The two drafts have been sent to IMO and UNCTAD for their considerations. In my letter to the Secretaries-General of the two Intergovernmental Organizations I have confirmed that the CMI is available for any further cooperation which may be required with a view to ensuring as wide a uniformity as possible in the areas covered by the two drafts.

(*) The approved texts will be printed in the booklet "LISBOA II", that will shortly come out of print. Copies will be made available upon application to the Secretariat of the CMI at Antwerp.

XXXIIIème Conférence Internationale du C.M.I. Lisboa 19/25 mai 1985

Organiser une Conférence avec le succès qu'a connu la Conférence de Montréal 1981 était une gageure. L'Association Portugaise, le Comissão de Direito Marítimo, a réussi à le faire d'une manière magnifique et c'est avec le plus grand plaisir que j'exprime, une fois de plus, la gratitude du CMI à son Président, Dr.José J.de Almeida Borges, et à tous les membres du Comité d'Organisation, en particulier à celui qui le dirigeait, le Vice-Amiral J.P.Bustorff Guerra.

Comme on le sait, les deux sujets à l'ordre du jour de la Conférence étaient la révision de la convention de Bruxelles de 1967 sur les priviléges et hypothèques maritimes et celle de la convention de Bruxelles de 1952 sur la saisie des navires. Grâce au travail préparatoire accompli par les commissions internationales, la Conférence est parvenue à élaborer des textes revisés des deux conventions, textes qui ont recueilli l'approbation d'une large majorité parmi les Associations Membres représentées à la Conférence: le projet de révision de la convention de 1967 sur les priviléges et hypothèques maritimes a été approuvé par 25 votes favorables, aucun vote négatif et 8 abstentions; le projet de révision de la convention de 1952 sur la saisie des navires a recueilli en sa faveur 23 votes; il y a eu 3 votes défavorables et 7 abstentions. (*)

Les deux projets ont été remis pour examen à OMI et CNUCED. Dans ma lettre aux Secrétaires Généraux de ces deux organisations Intergouvernementales j'ai confirmé que le CMI était à leur disposition pour toute collaboration ultérieure qui pourrait être requise dans le but d'assurer une uniformité aussi large que possible dans les matières traitées dans les deux projets.

(*) Les textes approuvés seront reproduits dans l'opuscle "LISBOA II" qui sortira de presse prochainement et dont des exemplaires pourront être obtenus sur demande auprès du Secrétariat du CMI à Anvers.

In the occasion of the Lisbon Conference further and profitable work has been done on the subject of the Assessment of Damages in Collision cases and on the subject of Sea Waybills. The International Sub-committees on the first of these subjects will continue its work. In consideration of the progress achieved by the Working Group on Sea Waybills, an International Sub-committee will now be appointed by the Executive Council.

Francesco Berlingieri,
President of the C.M.I.

A l'occasion de la Conférence de Lisbonne des travaux profitables ont été poursuivis sur les sujets de la fixation des dommages-intérêts dans des cas d'abordage et des lettres de transport maritime. La commission internationale s'occupant du premier de ces sujets poursuivra ses travaux. Compte tenu des progrès réalisés par le groupe de travail sur les lettres de transport maritime, une commission internationale sera créée par le Conseil Exécutif.

Francesco Berlingieri,
Président du C.M.I.

The 1985 CMI Assembly

L'Assemblée du CMI de 1985

Attending - Présents

OFFICERS - MEMBRES DU BUREAU

President Président	: Francisco Berlingieri
Honorary Vice-President Vice-Président d'Honneur	: Kaj Pineus
Vice-Presidents Vice-Présidents	: William Birch Reynardson J. Niall McGovern Tsuneo Ohtori José Domingo Ray Jean Warot
Secretary General Executive Secrétaire Général Exécutif	: Jan Ramberg
Members of the Executive Council Membres du Conseil Exécutif	: Harry Kacic John C. Moore Allan Philip Georg Röhreke Jan C. Schultsz
Secretary General Administrative and Treasurer Secrétaire Général Administratif et Trésorier	: Henri Voet
Secretariat Secrétariat	: Miss H. Schrynenmakers Henri Voet, Jr.

DELEGATES - DELEGUES

ARGENTINA	: José Domingo Ray (x)
AUSTRALIA	: P.G. Willis K.J. Carruthers
BELGIQUE	: Lionel Tricot Jean Coens Roger Roland
BRASIL	: Pedro Calmon Filho Rucemah L. Pereira Maria Cristina Padilha
CANADA	: D. Brander-Smith Frawley

CHINA	Zhu, Zengjie Gao, Sunlai
COLOMBIA	Sigifredo Ramirez
CZECHOSLOVAKIA	B. Klein
DENMARK	Allan Philip (xx) B. Nielsen
DEUTSCHE DEMOKRATISCHE REPUBLIK	Dr. Ralf Richter Dr. Trotz
DEUTSCHLAND BUNDESREPUBLIK	Dr. Dr. Walter Richter Dr. B. Kröger Dr. G. Röhreke (xx)
ESPAÑA	José Ma. Alcantara Miss Maria Balmaseda Luis de San Simon
FINLAND	N-G. Palmgren
FRANCE	Philippe Boisson Jacques Villeneau Cdt. Pierre Houssin
GREAT BRITAIN	Lloyd Watkins
GRECE	Panayotis SOTIROPOULOS
INDIA	S. Bannerjee
IRELAND	N. Niall McGovern (x)
ITALIA	Paolo Berlingieri Franco Bonelli
JAPAN	Hisashi Tanikawa K. Egashira Harada Kazuhiro
MEXICO	Ignacio L. Melo
NETHERLANDS	Jan C. Schultsz (xx)
NIGERIA	Fola Sasegbon O. Humponu-Wusu
NORWAY	Miss Karin M. Bruzelius H. Nygaard
PANAMA	Joel Medina Woodrow De Castro Antonio Dudley
PERU	Percy Urday
POLAND	Wojciech Adamczak
PORTUGAL	A. Henriques G. Conceição Silva J. M. Baptista da Silva
SUISSE	Rudolf Th. Sarasin
SWEDEN	Per-Erik Hedborg Claës Palme
UNITED STATES OF AMERICA	Graydon S. Staring Richard W. Palmer M. Keating Gordon W. Paulsen Nicholas J. Healy

(x) Already mentioned as Vice-President

(x) Déjà mentionné comme Vice-Président

(xx) Already mentioned as Member of the Executive Council

(xx) Déjà mentionné comme membre du Conseil Exécutif.

U.S.S.R.

G.G.Ivanov
A.G. Kalpin

VENEZUELA

Dr.Luis Cova Aria
P. Anevalo
A. Torres Partidas
Velimir Filipovic.

YUGOSLAVIA

OBSERVER
OBSERVATEUR

UNCTAD/CNUCED - Ricardo Vigil.

1. New Members

a) The Uruguayan Maritime Law Association was with acclamation elected as the 42nd Member Association of the C.M.I.

b) The following were with acclamation elected as new Titulary Members of the C.M.I. :

Belgium	:	Geoffrey Fletcher
Chile	:	Prof.José Tomas Guzman S.
Colombia	:	Sigifredo Ramírez Carmona
Italy	:	Dr.Giorgio Berlingieri Prof.Sergio La China
Panama	:	Dr.Woodrow de Castro Dr.José Angel Noriega
Portugal	:	Dr.Mário Ferreira Bastos Raposo Dr.José Manuel Baptista da Silva
United States	:	Richard W.Palmer
Venezuela	:	Pedro Arévalo Suárez
Yugoslavia	:	Dr.Vojislav Borčić

2. Election of the President, the Vice-Presidents, the Officers and the members of the Executive Council

The following were elected with acclamation :

President	:	Professor Francesco Berlingieri
Vice-Presidents:	William Birch Reynardson Nicholas J.Healy,Senior Anatoliy Kolodkin J.Niall McGovern Walter Müller Tsuneo Ohtori José Domingo Ray Nagendra Singh Jean Warot	
Secretary General Executive:	Professor Jan Ramberg	
Secretary General Administrative and Treasurer	: Henri Voet	
Members of the Executive Council :	Hrvoje Kacic Allan Philip Jan C.Schultsz Lionel Tricot Norbert Trotz Jacques Villeneau	
Administrative Officer:	Firm Henry Voet-Genicot	

1. Nouveaux Membres

a) L'Association Uruguayenne de Droit Maritime est élue comme 42ème Association Membre du C.M.I.

b) Sont élues Membres Titulaires du C.M.I. les personnalités suivantes :

Belgique	:	Geoffrey Fletcher
Chili	:	Prof.José Tomas Guzman S.
Colombie	:	Sigifredo Ramírez Carmona
Etats-Unis	:	Richard W.Palmer
Italie	:	Dr.Giorgio Berlingieri Prof.Sergio La China
Panama	:	Dr.Woodrow de Castro Dr.José Angel Noriega
Portugal	:	Dr.Mário Ferreira Bastos Raposo Dr.José Manuel Baptista da Silva
Venezuela	:	Pedro Arévalo Suárez
Yougoslavie	:	Dr.Vojislav Borčić

2. Election du Président, des Vice-Présidents, des membres du Bureau et des membres du Conseil Exécutif

Ont été élus :

Président	:	Professeur Francesco Berlingieri
Vice-Présidents:	William Birch Reynardson Nicholas J.Healy,Senior Anatoliy Kolodkin J.Niall McGovern Walter Müller Tsuneo Ohtori José Domingo Ray Nagendra Singh Jean Warot	
Secrétaire Général Exécutif:	Professeur Jan Ramberg	
Secrétaire Général Administratif et Trésorier	: Henri Voet	
Membres du Conseil Exécutif :	Hrvoje Kačić Allan Philip Jan C.Schultsz Lionel Tricot Norbert Trotz Jacques Villeneau	
Conseiller Administratif:	Firme Henry Voet-Genicot.	

3. Action to be taken on the basis of the outcome of the Conference

The draft conventions on Maritime Liens and Mortgages as well as on Arrest of Ships, which had previously been approved by the C.M.I. Conference, were adopted by the Assembly.

Mr. Ricardo Vigil read a joint statement on behalf of himself and Mr. Tom Mensah representing UNCTAD and IMO respectively as follows :

" The draft revisions of the Conventions on maritime liens and mortgages and arrest have been considered and adopted by the Conference in accordance with the traditional approach of the C.M.I.

The CMI has noted, however, that under the Agreement between IMO and UNCTAD referred to in Annex 2 of the Report of the International Sub-Committee, a new method of dealing with maritime liens and mortgages and related subjects has been adopted by the two inter-governmental bodies who will both be dealing with the matter after the Conference. The two inter-governmental bodies have expressly stated that they will take due and full account of the conclusions reached by the CMI. However, IMO and UNCTAD have agreed to undertake further studies in order not only to determine the need for international legislation or other appropriate action but also the nature and scope of such action. This determination will be made by IMO and UNCTAD in close consultation and co-operation.

In the light of this new development the CMI may consider it helpful to express its willingness and readiness to co-operate with the two inter-governmental bodies in their further studies and discussions. The CMI may also find it useful to indicate clearly that it appreciates that the draft instruments prepared at the Lisbon Conference may not necessarily be considered, in IMO or UNCTAD, in the same way as previous draft conventions developed by the CMI have been considered. However, the CMI can expect and hope that the texts prepared by the Conference together with the background discussions and documents relating thereto will be of relevance and use to the Secretariats and member Governments when these matters are considered in IMO and UNCTAD. In these discussions the expertise and experience of the CMI and the National Maritime Law Associations will be extremely helpful. IMO and UNCTAD will therefore welcome, and be greatly assisted by, any contribution which the CMI may find it possible and appropriate to give to the Secretariats of IMO and UNCTAD and to the relevant intergovernmental bodies at the various stages of their work. In particular it would greatly assist IMO and UNCTAD if the CMI were able to make suggestions, or to authorize the President and other officials of the CMI to make suggestions whenever appro-

3. Actions à entreprendre sur base des résultats de la XXXIII^e Conférence Internationale du C.M.I.

Les projets de conventions sur les Priviléges et Hypothèques Maritimes ainsi que sur la Saisie Conservatoire des navires de mer, qui ont été préalablement approuvés par la Conférence du C.M.I., ont été adoptés par l'Assemblée.

Monsieur Ricardo Vigil, le représentant de CNUCED, donna lecture d'un rapport conjoint en son nom personnel ainsi qu'au nom de Monsieur Tom Mensah qui représentait OMI :

" Les projets de révision des conventions sur les priviléges et hypothèques maritimes et sur la saisie conservatoire ont été pris en considération et adoptés par la Conférence en conformité avec l'attitude traditionnelle du C.M.I.

Le CMI a cependant noté que, suivant l'accord entre OMI et CNUCED auquel il est fait référence à l'Annexe 2 du Rapport de la Commission internationale, une nouvelle manière de traiter les priviléges et hypothèques maritimes ainsi que les problèmes y relatifs, a été adoptée par les deux organismes inter-gouvernementaux qui s'occupent tous deux de cette question après la Conférence. Les deux organismes inter-gouvernementaux ont déclaré expressément qu'il serait dûment et entièrement tenu compte des conclusions auxquelles le CMI est arrivé. Cependant, OMI et CNUCED se sont mis d'accord pour entreprendre encore d'autres études dans le but non seulement de déterminer la nécessité d'une législation internationale ou de toute autre action appropriée mais également la nature et l'importance de pareille action. Cette détermination sera mise en oeuvre par OMI et CNUCED en intime consultation et coopération.

A la lumière de ce nouveau développement, le CMI peut estimer utile d'exprimer son empressement et sa disposition à coopérer avec les deux organismes inter-gouvernementaux dans leurs études et discussions ultérieures. Le CMI peut également estimer utile d'indiquer clairement qu'il tient compte du fait que les projets d'instruments préparés à la Conférence de Lisbonne pourraient ne pas être considérés à l'OMI et à la CNUCED de la même façon que de précédents projets de convention développés par le CMI. Le CMI peut cependant espérer et s'attendre à ce que les textes préparés par la Conférence ainsi que les discussions d'arrière-plan et les documents y relatifs viendront à propos et seront utiles aux Secrétariats et aux Gouvernements membres quand ces matières seront traitées à l'IMO et à la CNUCED. Les connaissances et l'expérience du CMI et des Associations Nationales de Droit Maritime seront extrêmement utiles à l'occasion de ces discussions. OMI et CNUCED feront bon accueil à, et seront grandement aidées par toutes contributions que le CMI peut juger possible et convenable de fournir aux Secrétariats de OMI et de CNUCED ainsi qu'aux organismes inter-gouvernementaux concernés et ce aux différents stades de leurs travaux. En particulier, OMI et CNUCED seraient considérablement aidées si le CMI était à même de formu-

priate, both as regards the studies to be undertaken by the Secretariats of IMO and UNCTAD and also in relation to the procedure to be followed in considering these reports.

These reports will take the fullest possible account of the work done by the CMI. It is essential that the discussions in IMO and UNCTAD are on the basis of the best possible expertise and practical experience available; and any ideas which the CMI may have as to the procedure for ensuring the best possible results will be greatly welcomed by IMO and UNCTAD and highly appreciated by the Legal Committee and the Working Group on Shipping Legislation.

The results of the Conference's work, on both arrest and maritime liens and mortgages, reflect great credit on the CMI. The drafts prepared combine the highest professional knowledge with great technical skill and practical common sense.

It is important - indeed crucial - that these excellent drafts play a significant role in subsequent discussions which they merit. It is our hope that you will present them in such a way that Governments will accept them and agree to use them as an important basis of their future work. "

The President expressed his thanks to Mr.Vigil and to IMO and UNCTAD for their appreciation of the CMI work and submitted to the Assembly for approval the following statement :

" After the possible review of the 1926 and 1967 Brussels Conventions on Maritime Liens and Mortgages, and subsequently also of the 1952 Convention on Arrest of Ships, had been placed on the work programme of the Legal Committee of IMO and of the Working Group on International Shipping Legislation of UNCTAD, the CMI decided to offer its co-operation to both these Organizations.

A copy of the first questionnaire on the Conventions of 1926 and 1967 on Maritime Liens and Mortgages prepared by the CMI in September 1982 was sent to IMO and UNCTAD who expressed the wish to be kept informed on the progress of the work undertaken by the CMI.

This was done regularly during the years that followed and a very fruitful co-operation has developed.

In the various notes prepared by the IMO Secretariat reference was repeatedly made to the work in progress within the CMI. Similarly, in the Report by the UNCTAD Secretariat of July 1984 the support and co-operation of the CMI is acknowledged, and the assistance of the CMI was described as "invaluable".

ler des suggestions ou d'autoriser le Président ou d'autres membres qualifiés du CMI à faire des suggestions appropriées, aussi bien à l'égard des études à entreprendre par les Secrétariats de l'OMI et de la CNUCED qu'en relation avec la procédure à suivre pour la prise en considération de ces rapports.

Ces rapports tiendront compte dans toute la mesure du possible du travail effectué par le CMI. Il est essentiel que les discussions au sein de l'OMI et de la CNUCED aient lieu sur base des meilleures connaissances et expérience pratique disponibles; et toutes idées que le CMI pourrait avoir sur la procédure susceptible d'assurer les meilleurs résultats seront les bienvenues à l'OMI et à la CNUCED et seront hautement appréciées par le Comité Juridique ainsi que par le groupe de travail sur la législation maritime.

Les résultats des travaux de la Conférence sur la saisie conservatoire ainsi que sur les priviléges et hypothèques maritimes font grand honneur au CMI. Les projets préparés combinent les plus hautes connaissances professionnelles avec une grande compétence technique et un solide bon sens.

Il est important - en fait crucial - que ces excellents projets jouent le rôle significatif qu'ils méritent dans les discussions ultérieures. Nous espérons que vous les présenterez d'une manière telle que les Gouvernements les acceptent et soient d'accord de les utiliser comme une importante base de leurs futurs travaux. "

Le Président exprima ses remerciements à Monsieur Vigil et à l'OMI et à la CNUCED pour leur appréciation du travail du CMI et soumit pour approbation à l'Assemblée la déclaration suivante :

" Après que l'éventuelle révision des conventions de Bruxelles de 1926 et de 1967 sur les priviléges et hypothèques maritimes et ensuite également de la convention de 1952 sur la saisie conservatoire des navires de mer ait été mise au programme de travail du Comité Juridique de l'OMI et du groupe de travail de la CNUCED sur la législation maritime internationale, le CMI décida d'offrir sa coopération à ces deux organismes.

Une copie du premier questionnaire sur les conventions de 1926 et 1967 sur les priviléges et hypothèques maritimes rédigé en septembre 1982 a été envoyé à l'OMI et à la CNUCED qui ont exprimé le souhait d'être informées du développement du travail entrepris par le CMI.

Ceci fut fait régulièrement durant les années suivantes et une fructueuse coopération en découla.

Dans ses différentes notes le Secrétariat de l'OMI s'est référé de façon répétée aux travaux en cours au sein du CMI. De même manière, dans le rapport de juillet 1984 du Secrétariat de la CNUCED, l'assistance et la coopération du CMI ont été reconnues et cette assistance du CMI a été qualifiée d'"incalculable".

At the same time discussions took place between the Secretariats of the two Organizations with a view to co-ordinating their studies on the subjects of maritime liens and mortgages and arrest of ships. Such co-ordination was linked to the result of the work undertaken by the CMI.

An agreement was reached in this respect between the Secretary General of IMO and the Secretary General of UNCTAD. Referring to this agreement, the Secretary General of IMO stated that the two Secretariats had agreed that since the CMI was currently studying the subjects of maritime liens and mortgages and arrest of ships, IMO and UNCTAD should await the results of these studies before deciding whether to make any recommendations. At the last meeting of the International Sub-Committee on Maritime Liens and Mortgages the observers from the IMO and UNCTAD Secretariats stated, inter alia, the following :

The Secretariats of IMO and UNCTAD wished to acknowledge the support and collaboration given by the CMI and confirmed that due account would be taken of and consideration given to the outcome of the valuable work in progress in the CMI.

The first stage is now completed. The preparatory work done by the CMI will be considered by IMO and UNCTAD and further studies will be carried out by these Organizations.

The CMI offers its collaboration in these studies and in the in-depth investigation of any problem which IMO and UNCTAD may deem appropriate to consider. It is felt that, in these circumstances, the co-operation of the CMI should not only continue but should be strengthened.

In their Agreement the Secretariats of UNCTAD and IMO stated that in view of the very close link between maritime liens and mortgages it is essential that the studies and examination within UNCTAD and IMO be co-ordinated to the maximum extent possible.

The CMI therefore suggests that IMO and UNCTAD should consider whether it might be feasible for them to jointly undertake, at least in the preparatory stages, studies on all the problems which arise in connection with maritime liens and mortgages and arrest of ships. These studies should include the possibility of closer co-ordination between the two subjects, as well as the choice of the method whereby any change in the existing uniform rules may be best achieved, i.e. whether by means of an international treaty or by following a non-treaty approach.

If this suggestion proves acceptable, the CMI would be glad to give any assistance and co-operation that IMO and UNCTAD request."

A la même époque des échanges de vues eurent lieu entre les Secrétariats des deux organisations en vue d'une coordination de leurs études au sujet des priviléges et hypothèques maritimes et de la saisie des navires. Une telle coordination était liée au résultat des travaux entrepris par le CMI.

Un accord fut conclu à cet égard entre le Secrétaire Général de l'OMI et le Secrétaire Général de la CNUCED. Se référant à cet accord, le Secrétaire Général de l'OMI déclara que les deux Secrétariats avaient convenu que, puisque le CMI était occupé à étudier la question des priviléges et hypothèques maritimes et celle de la saisie conservatoire des navires de mer, IMO et CNUCED attendraient les résultats de ces études avant de décider de faire des recommandations quelconques. Lors de la dernière réunion de la Commission internationale sur les priviléges et hypothèques maritimes les observateurs des Secrétariats de l'OMI et de la CNUCED déclarèrent, entre autres, ce qui suit :

Les Secrétariats de OMI et de CNUCED désirent reconnaître l'assistance et la collaboration fournies par le CMI et confirment qu'il sera dûment tenu compte du résultat des précieux travaux en cours au sein du CMI.

Cette première étape est maintenant réalisée. Le travail préparatoire effectué par le CMI sera pris en considération par OMI et CNUCED et des études complémentaires seront entreprises par ces Organisations.

Le CMI offre de collaborer à ces études et à l'examen en profondeur de tout problème que OMI et CNUCED estimeraient devoir examiner. On peut estimer, dans ces circonstances, que la collaboration du CMI doit non seulement se poursuivre, mais aussi être renforcée.

Dans leur accord les Secrétariats de CNUCED et OMI précisent, qu'en considération du lien étroit existant entre les priviléges et les hypothèques maritimes, il est essentiel que les études et examens au sein de CNUCED et OMI soient coordonnés dans toute la mesure du possible.

Dès lors, le CMI suggère que OMI et CNUCED envisagent s'il ne leur est pas possible d'entreprendre en commun, au moins aux stades préliminaires, des études sur tous les problèmes qui surgissent en matière de priviléges et hypothèques maritimes et de la saisie conservatoire des navires de mer. Ces études devraient porter sur une possibilité de coordination plus étroite entre les deux sujets ainsi que sur le choix de la méthode par laquelle un quelconque changement dans les règles uniformes existantes pourrait être le mieux obtenu, c'est-à-dire soit au moyen d'un traité international, soit en abordant le problème sans traité.

Si cette suggestion était acceptable, le CMI serait heureux d'offrir toute l'assistance et la coopération que OMI et CNUCED pourraient souhaiter."

The statement of the President was unanimously approved by the Assembly.

The President stated that in view of both IMO and UNCTAD having on the Agenda of their October meetings the revision of the Maritime Liens and Mortgages and Arrest Conventions, it was imperative that the drafts adopted at Lisbon, accompanied by an explanatory report, be made available to both IMO and UNCTAD before the end of August. He therefore suggested that the Presidents of the two International Sub-Committees be instructed to prepare the draft of the reports which should then be submitted to the Executive Council. He also suggested that the Assembly should authorize the Executive Council to examine and approve the reports for subsequent submission to IMO and UNCTAD. The proposals of the President were unanimously approved.

4. Work in Progress

Professor Ramberg reported on the work in progress within the CMI. He particularly mentioned the two additional subjects debated during the CMI Conference namely the assessment of damages in maritime collisions and sea waybills. It appeared that the majority did not favour a draft convention on assessment of collision damages but preferred Rules which could be used in settlement and court cases. With respect to the subject of sea waybills it appeared that a broader approach was favoured and that the subsequent study within the CMI should rather deal with transport documentation for carriage of goods by sea generally. An International Sub-Committee to deal with this subject will be appointed.

The President reported on the present situation with respect to the elaboration of guidelines for maritime legislation and seminars in the Far East. A final version of the guidelines had now been adopted. A seminar had been held in Dalian in October 1984 with the participation of the President himself, Professor Allan Philip and Mr. Emery Harper as lecturers. A second seminar in the People's Republic of China was planned for late 1985 to deal with particularly limitation of liability, salvage and collision.

Mr. Claës Palme (Sweden) reported on the present status of the work with respect to towage. He mentioned that work on general conditions for towage is now in process within BIMCO (The Baltic and International Maritime Conference in Copenhagen).

Mr. Bent Nielsen (Denmark) reported on the work within the Legal Committee of IMO with respect to Salvage. The CMI

La déclaration du Président fut unanimement approuvée par l'Assemblée.

Le Président ajouta, qu'en considération du fait que OMI et CNUCED ont porté à l'ordre du jour de leurs réunions d'octobre la révision des conventions sur les priviléges et hypothèques maritimes et sur la saisie conservatoire des navires de mer, il était impératif que les projets adoptés à Lisbonne, accompagnés d'un rapport explicatif, soient mis à la disposition de OMI et de CNUCED avant la fin août. Il suggéra dès lors que les présidents des deux Commissions internationales soient chargés de préparer les projets des rapports qui devraient ensuite être soumis au Conseil Exécutif. Il suggéra également que l'Assemblée autorise le Conseil Exécutif à examiner et à approuver les rapports en vue de leur transmission subséquente à OMI et à CNUCED. Les propositions du Président furent approuvées à l'unanimité.

4. Travaux en Cours

Le Professeur Ramberg fit rapport sur les travaux en cours au sein du C.M.I. Il mentionna particulièrement les deux sujets additionnels débattus pendant la Conférence de Lisbonne, notamment la fixation des dommages-intérêts en matière d'abordages maritimes ainsi que les sea waybills. Il est apparu que la majorité n'est pas en faveur d'un projet de convention sur l'évaluation des dommages-intérêts en matière d'abordages maritimes mais préfère des Règles qui pourraient être utilisées en cas de règlements et de décisions judiciaires. En ce qui concerne les sea waybills il apparaît que l'on est en faveur d'aborder la chose d'une façon plus large et que l'étude subséquente au sein du C.M.I. porte plutôt sur les documents de transport des marchandises par mer en général. Une commission internationale sera créée pour s'occuper de cette question.

Le Président fit rapport sur la situation actuelle en ce qui concerne l'élaboration de lignes de conduite pour la législation maritime et les séminaires en Extrême-Orient. Une version finale de ces lignes de conduite a maintenant été adoptée. Un séminaire a eu lieu à Dalian en octobre 1984 avec la participation du Président lui-même, du Professeur Allan Philip et de Monsieur Emery Harper comme conférenciers. Un second séminaire en République Populaire de Chine est prévu pour la fin 1985 pour traiter particulièrement de la limitation de la responsabilité, de l'assistance et de l'abordage.

Monsieur Claës Palme (Suède) fit rapport sur l'état actuel des travaux concernant le remorquage. Il signala que des travaux sur les conditions générales de remorquage sont actuellement en cours au sein de BIMCO (The Baltic and International Maritime Conference in Copenhagen).

Monsieur Bent Nielsen (Danemark) fit rapport sur les travaux à propos de l'Assistance au sein du Comité Juridique

Montreal draft Convention is being used as the basic working paper and has been presented to the Legal Committee by the President of the C.M.I. and Mr.Nielsen himself. The draft had so far been well received. A particular problem had recently emerged in view of deliberations within IUMI (The International Union of Maritime Underwriters) and this was related to the problem arising when cargo prone to cause damage to the environment was carried on the same ship together with other cargo having no such characteristics ("innocent cargo"). It was questioned if such cargo should contribute to pay such part of the salvage award which related to measures to prevent damage to the environment. The President and Mr.Nielsen will meet with the President of IUMI in early June this year to discuss the matter.

- The Convention on Civil Liability for Oil Pollution and the Fund Convention

The President informed that six countries have now signed the Protocols to the above mentioned Conventions. The President urged that the delegates for the Maritime Law Associations present at the Assembly would contact their respective Governments in order to enhance the signing and ratification of the Protocols.

5. Accounts 1984

The Assembly approved the accounts of the year 1984 and granted with thanks release to the Treasurer.

6. Budget 1985

The Assembly approved the budget for the year 1985.

The 1985 contributions of the members are fixed at the same amounts as for the year 1984. In order to avoid unnecessary bank charges, the Assembly has approved the suggestion made by the Treasurer that as from now the contributions of the Titulary Members would be collected locally by the Member Association of the country to which these Titulary Members belong and paid to the Treasurer of the C.M.I. by way of one single global payment.

Second China Seminar

ESCAP has requested the CMI to accept responsibility of organizing a second Seminar in China on subjects of maritime law.

Following the request of the Ministry of Communications of the People's Republic of China, the subjects which have been chosen are Collision, Salvage and Limitation of the Liability of Shipowners.

de OMI. Le projet de Convention élaboré par le C.M.I. à Montréal est utilisé comme document de travail de base et a été présenté au Comité Juridique par le Président du C.M.I. et par Monsieur Nielsen lui-même. Le projet a reçu un accueil favorable jusqu'à présent. Un problème particulier est apparu au cours des délibérations au sein de IUMI (Union Internationale des Assureurs Maritimes); il se présente quand des cargaisons susceptibles de causer des dommages à l'environnement sont transportées sur le même navire que des marchandises n'ayant pas ces mêmes caractéristiques ("innocent cargo"). On s'est posé la question de savoir si ces dernières doivent contribuer au paiement de la part de l'indemnité d'assistance qui est relative aux mesures prises en vue de la prévention des dommages à l'environnement. Le Président et Monsieur Nielsen rencontreront le Président de IUMI au début de juin de cette année pour discuter de cette matière.

- Conventions sur la Responsabilité Civile pour les Dommages dus à la Pollution par les Hydrocarbures et sur le Fonds d'Indemnisation-----

Le Président informa que six pays ont maintenant signé les Protocoles aux Conventions ci-dessus. Le Président insista pour que les délégués des Associations de Droit Maritime présents à l'Assemblée contactent leurs Gouvernements respectifs dans le but de hâter la signature et la ratification de ces Protocoles.

5. Comptes 1984

L'Assemblée a approuvé les comptes de l'année 1984 et a donné, avec ses remerciements, son quitus au Trésorier.

6. Budget 1985

L'Assemblée a approuvé le budget de l'année 1985.

Les cotisations des membres pour 1985 sont fixées aux mêmes montants que pour l'année 1984. Dans le but d'éviter des frais de banque inutiles, l'Assemblée a approuvé la suggestion faite par le Trésorier de faire récolter dès maintenant les cotisations des Membres Titulaires par l'Association Membre du pays auquel ils appartiennent et de la régler au Trésorier au moyen d'un seul paiement global.

Deuxième Séminaire en Chine

L'"ESCAP" (Economic and Social Commission for Asia and the Pacific) a prié le C.M.I. d'accepter la charge d'organiser en Chine un second séminaire sur des questions de droit maritime.

A la demande du Ministère des Communications de la République Populaire de Chine, les sujets qui ont été choisis sont l'abordage, l'assistance et le sauvetage ainsi que la limitation de la responsabilité des propriétaires de navires.

The programme was discussed in the occasion of the Lisbon Conference of the CMI with the delegates of the China Council for the Promotion of International Trade and the plan of the lectures which has been agreed is the following :

1. Collision

- a. Jurisdiction
- b. Conflict of laws
- c. Apportionment of liability
- d. Measure of damages
- e. Single and cross liability

2. Salvage

- a. The concept of Salvage in civil and common law
- b. Contract Salvage and non contract Salvage
- c. International unification
 - 1) the 1910 Brussels Convention
 - 2) the revision of the 1910 Convention: the CMI Montreal draft
- d. Amount of the remuneration
- e. Loss or reduction of the remuneration
- f. Persons entitled to the remuneration
- g. Debtors of the remuneration
- h. Lloyd's Open Form of Salvage Agreement
- i. Securities
- j. Conflict of laws

3. The Law on Limitation of Liability of Shipowners

- a. Historical background and efforts towards unification
- b. Conflict of laws - forum shopping
- c. The General Limits
 - 1) the 1957 Brussels Convention
 - 2) the 1976 London Convention
 - 3) Problems related to the determination of ship's value
- d. The Special Limits
 - 1) the Limitation of Liability of Operators of nuclear ships
 - 2) the Limitation of Liability in respect of Pollution damages
 - 3) the Limitation of Liability in respect of damage caused by Hazardous and Noxious substances
- e. Loss of the Right to Limit

The Seminar will be held in Xiamen in the first week of December 1985. The members of the CMI team will be the President of the CMI Professor Francesco Berlingieri, the Honorary Vice-President Dr.Kaj Pineus and Professor Jan Schultsz, one of the members of the Executive Council of the CMI.

Damages in Collision Cases

The Working Group reinforced by a number of delegates held a preliminary meeting on the afternoon of Monday,

Le programme a été mis au point avec les délégués du Conseil Chinois pour la Promotion du Commerce International à l'occasion de la Conférence de Lisbonne du C.M.I. et le détail des exposés a été convenu comme suit :

1. L'abordage

- a. jurisdiction
- b. conflit de lois
- c. partage de responsabilité
- d. ampleur des dommages-intérêts
- e. responsabilité simple et réciproque

2. L'assistance

- a. conception de l'assistance en droit civil et en "common law"
- b. assistance contractuelle et non-contractuelle
- c. unification internationale
 - 1) Convention de Bruxelles de 1910
 - 2) Revision de la Convention de 1910: le projet C.M.I. de Montreal
- d. montant de la rémunération
- e. perte ou réduction de la rémunération
- f. personnes pouvant prétendre à une rémunération
- g. débiteurs de la rémunération
- h. Lloyd's Open Form of Salvage Agreement
- i. sécurités
- j. conflit de lois

3. La loi sur la limitation de la responsabilité des propriétaires de navires

- a. aperçu historique et efforts tendant à l'unification
- b. conflit de lois - "forum shopping"
- c. limitations générales
 - 1) la Convention de Bruxelles de 1957
 - 2) la Convention de Londres de 1976
 - 3) les problèmes relatifs à la fixation de la valeur du navire
- d. limitations spéciales
 - 1) la limitation de la responsabilité des exploitants de navires nucléaires
 - 2) la limitation de la responsabilité en matière de dommages dus à la pollution
 - 3) la limitation de la responsabilité en matière de dommages causés par des substances dangereuses et nocives
- e. perte du droit à la limitation

Le séminaire aura lieu à Xiamen pendant la première semaine de décembre 1985. Les membres de la délégation du C.M.I. seront le Président du C.M.I., le professeur Francesco Berlingieri, le Vice-Président d'Honneur, le Dr.Kaj Pineus et le Professeur Jan Schultsz, un des membres du Conseil Exécutif du C.M.I.

Dommages-Intérêts dans des Cas d'Abordage

Le Groupe de Travail renforcé par un certain nombre de délégués a tenu une réunion préliminaire dans

May 20th. Following a brief discussion it was agreed that whilst there might be considerable demand for a convention on this topic, there were many controversial issues on which the further views of the National Associations were needed. In addition, it was generally recognised that many of these issues of law are not restricted to the maritime field but indeed provided some of the most difficult questions faced by lawyers whether maritime or non-maritime in every country. I mention in particular such legal issues as damages for loss of use, loss of life and interest on claims.

Following this preliminary meeting I was able to discuss this matter with our President and it was agreed that the full International Committee would at this stage abandon ideas of producing a draft Convention and that a two part operation would be put in hand:-

Firstly, the full International Committee would proceed to review the preliminary draft Convention which had been presented to this Conference. The initial aim would be to produce a set of Rules or Guidelines based on the draft Convention which might prove useful in the resolution of disputes relating to the assessment of collision damages. The ultimate fate of any such Rules would be uncertain. They might form the basis for a full Convention in the future, if there was a desire for this, or they might remain as a useful guide and no more.

Secondly, in the future, the Working Group would work towards the preparation of a synthesis of national laws on the various aspects of damages in collision cases. This will involve circulating those National Associations who have not so far submitted summaries of their laws. It will also involve asking some National Associations who have already contributed to develop further certain parts of their submissions. The U.S. delegation has already taken a useful initial step having prepared a collation and summary of the material so far submitted. It is contemplated that on certain aspects the International Working Group will seek some outside academic assistance.

It was with the first task in view that the Committee embarked upon two full sessions during the week. It was apparent at the first meeting that delegates were pleased to be relieved of the burden of producing a full Convention and were keen to advance positive ideas for inclusion in a set of Rules. No-one was seeking to introduce vague generalities to avoid controversy; quite the reverse - proposals were detailed, directed to the difficult

l'après-midi de lundi 20 mai. A la suite d'une brève discussion il fut convenu que bien qu'il y ait une demande importante pour l'établissement d'une convention sur ce sujet, il y avait néanmoins de nombreux points controversés sur lesquels l'avis des Associations Nationales devait être demandé. De plus, il a été reconnu en général que de nombreux points de droit qui n'étaient pas limités au domaine maritime pouvaient poser des questions difficiles aux juristes, qu'ils soient marins ou non-maritimes dans chaque pays. Nous mentionnons en particulier le problème juridique des dommages-intérêts pour perte d'utilisation, perte de vies humaines et d'intérêt.

A la suite de cette réunion préliminaire nous avons été en mesure de discuter ces idées avec notre Président et il fut convenu que le Comité International complet devrait à ce stade abandonner l'idée de produire un projet de convention et qu'une opération en deux temps devrait être entreprise.

En premier lieu le Comité International au complet devrait procéder à la révision du projet préliminaire de convention qui avait été présenté à la conférence. Le but initial serait d'établir des règles ou des lignes de conduite basées sur le projet de convention qui, elles pourraient se révéler utiles dans la solution des litiges relatifs à la fixation des dommages-intérêts en matière d'abordage. Le sort final de ces règles ne pouvait être défini maintenant. Elles pourraient former la base d'une convention dans l'avenir si tel était le désir ou elles pourraient être utiles seulement comme un guide.

Deuxièmement dans l'avenir, il fut décidé que le Groupe de Travail se pencherait sur la préparation d'une synthèse des lois nationales des aspects divers des dommages-intérêts dans les cas d'abordage.

Ceci entraînerait la diffusion de ces travaux aux Associations Nationales qui n'avaient pas encore soumis un résumé de leurs lois. Ceci consisterait aussi à demander aux Associations Nationales qui avaient déjà contribué de développer certains aspects de leurs idées. La délégation des Etats-Unis a déjà pris une initiative utile en ayant préparé un sommaire des réponses déjà obtenues. Il est envisagé que sur certains aspects le Groupe de Travail International demandera une aide universitaire de l'extérieur.

Ce fut donc la première tâche à laquelle le Comité s'est attaché au cours de deux réunions plénières pendant cette semaine. Il apparut à la première réunion que les délégués étaient satisfaits d'être dispensés de la charge d'établir un texte conventionnel et étaient désireux de promouvoir des idées positives pour être incluses dans un recueil de règles. Personne n'a souhaité introduire des généralités vagues afin d'éviter toute

issues and positive. The aim of most, if not all, of the contributions from the floor was to help create a set of Rules which would be of practical use to those engaged anywhere in the world in the assessment of collision damages.

I will not bore this assembly with a detailed account of our discussions. It is sufficient to say that the International Working Group will leave this Conference with a list of textual and drafting suggestions as long as the Avenue de Libertade and with many hours of close study and hard work ahead.

Before closing I will, however, give you an idea of some of the interesting and challenging problems which have arisen.

1. Is it necessary to seek to define what is a collision?

The general understanding is that a collision involves physical contact between two or more ships. However, what of damage caused by the wash or wake of a ship proceeding too fast in restricted waters? If damage is thereby caused should that be covered by the Rules? What of the damage to the jetty caused by a ship being forced against it by the wash of the speeding vessel? The view of delegates seems to be that we would be wrong to adopt a definition which differed in any way from that contained in the 1910 Collision Convention. This issue will need study and no doubt redrafting.

2. How shall we define "total loss"-indeed should we define it?

As drafted, a ship would be deemed a total loss if the "cost of repairs together with the residual value..... exceeds its value when repaired". This definition was vigorously attacked by one delegation who suggested that the definition might be amended to provide that a ship shall be deemed a total loss when the cost of repairs exceeds two-thirds of its value. On the other hand, another delegation felt that a vessel should be treated as a total loss when its repair is no longer "economically feasible". Again useful contributions which will need to be analysed.

3. Is "claimant" the proper English equivalent of "victim" - the word used in the original draft text? A person who is a "victim" is someone who suffers a loss - he only later becomes a "claimant" or "demandeur".

controverse, bien au contraire tous ont souhaité formuler des propositions détaillées concernant les problèmes difficiles et des solutions positives. Le but recherché par les plus nombreux sinon par tous a été de contribuer à la création d'un recueil de règles qui présenterait un intérêt pratique à ceux engagés partout dans le monde dans la détermination des dommages conséquence d'un abordage.

Nous n'importunerons pas l'Assemblée avec un compte-rendu détaillé de nos discussions. Il suffit de dire que le Groupe de Travail International quittera la Conférence avec une liste de projets de textes et des suggestions aussi longues que l'Ave.de Libertade laissant pour l'avenir de nombreuses heures d'étude attentive et de travail acharné.

Avant de terminer nous vous donnerons cependant une idée de quelques uns des problèmes intéressants qui ont été évoqués.

1. Est-il nécessaire de chercher à donner une définition de l'abordage?

L'idée générale est qu'un abordage comporte un contact physique entre deux ou plusieurs navires. Cependant, que faut-il penser d'un dommage qui est causé par le sillage d'un navire avançant trop rapidement dans des eaux étroites? Si un tel dommage survient doit-il être prévu dans ces règles et que faut-il penser d'un dommage causé à un quai par un navire qui est drossé contre cette jetée? L'opinion des délégués paraît être que ce serait une erreur de donner une définition autre que celle qui se trouve dans la Convention de 1910 sur l'abordage. Ce problème demandera des études et sans aucun doute une nouvelle rédaction.

2. Comment définirons-nous la perte totale dans la mesure où nous devons la définir dans le projet?

Un navire sera réputé être une perte totale si le coût des réparations avec sa valeur résiduelle dépasse la valeur après réparation. Cette définition a été vigoureusement attaquée par une délégation qui a suggéré que la définition devrait être modifiée afin de stipuler qu'un navire sera réputé perte totale quand le coût des réparations dépassera deux tiers de sa valeur. D'autre part, une autre délégation a estimé qu'un navire devrait être considéré comme une perte totale quand le coût de ces réparations n'est pas économiquement acceptable. Là encore des contributions utiles devront être analysées.

3. Est-ce que le mot "demandeur" est l'équivalent du mot "victim" - ce mot qui est utilisé dans le texte original. Une personne qui est une victime est celle qui éprouve une perte, ce n'est que plus tard qu'elle devient un demandeur.

4. Should we have a definition of "cargo" or "goods" - both words appear in the Rules. Ships carry containers and trailers which can hardly be described as "cargo" or "goods". The French word "chose" may prove to be a useful word to cover such objects as well as more traditional cargo. However, the International Working Group will have a difficult task to find a workable English equivalent to "chose".

5. Do we know what we mean when we provide that damages shall place the claimant "as nearly as possible" in the same position financially as he was in prior to the collision? One delegation would like to see this Rule simplified and have made some useful drafting suggestions which will be carefully studied.

6. What word or words should be used to set an overall limit on sums recoverable by way of "damages" or "dommages-intérêts"?

Here we come up against the very real differences which exist between the Anglo-Saxon and other legal systems. Is there a real difference between damages which are "proximately" caused by a collision and those which are "directly" caused? The U.K. delegation insists that there is an important difference and that "directly" cannot replace "proximately" without opening the door to all sorts of unwanted claims.

7. If claimants can recover, by way of indemnity, sums which they have paid to third parties as a consequence of the collision, we must restrict their right of recovery to payments which they were under a legal obligation to pay. Wording must be found to achieve this.

8. Should a claimant whose vessel has become a total loss as a result of collision be entitled to claim damages for loss of use in addition to claiming the value of this vessel? The U.S. and U.K. delegations pointed out that their Courts do not normally permit such a separate claim believing that the value of the vessel when assessed for purposes of the claim should take into account the earning capacity of the ship. If damages for loss of use were to be awarded as well this would represent a double recovery. A fundamental and difficult point with which the Working Group will have to deal.

It would be possible to go on giving examples of the textual and drafting problems which face us. Apart from these criticisms of the existing text, we have had many suggestions for additional provisions. In particular,

4. Devons-nous établir une définition des cargaisons ou des marchandises - les deux mots apparaissent dans les règles. Des navires transportent des conteneurs et des semi-remorques qui peuvent être difficilement décrites comme cargaison ou marchandise. Le terme français "chose" peut se révéler être un mot utile afin d'inclure de tels projets en même temps qu'une cargaison traditionnelle. Cependant le Groupe de Travail International aura une tâche plus difficile afin de trouver un équivalent anglais du mot "chose".

5. Savons-nous ce que nous voulons dire lorsque nous stipulons que les dommages-intérêts mettront le demandeur aussi près que possible dans une position financière semblable à celle qui était la sienne avant l'abordage. Une délégation souhaitait que cette règle soit spécifiée et a fait des suggestions utiles de rédaction qui seront étudiées attentivement.

6. Quel mot ou mots doivent être utilisés pour établir une limitation globale sur des sommes qui peuvent être recouvrées sous la forme de dommages-intérêts. Ici nous constatons qu'il y a une différence réelle qui existe entre les systèmes juridiques anglo-saxons et les autres. Y a-t-il une différence réelle entre les dommages qui sont "proximately" causés par un abordage et ceux qui en sont la conséquence directe. La délégation britannique insiste sur le point qu'il y a une différence importante et que "directly" ne peut pas remplacer "proximately" sans ouvrir la porte à des réclamations de toute sorte non désirables.

7. Si les demandeurs peuvent recouvrer en forme de dommages-intérêts des sommes qu'ils ont payées à des tiers à la suite d'un abordage il nous faut restreindre leurs droits de récupération au montant qu'ils sont obligés de verser selon une obligation légale. Une rédaction doit être trouvée pour arriver à ce résultat.

8. Un demandeur dont le navire est devenu une perte totale à la suite d'un abordage est-il recevable à demander des dommages-intérêts pour la perte d'utilisation en sus de la valeur de son navire. Les délégations des Etats-Unis et Britannique ont souligné que leurs tribunaux ne permettent pas normalement une réclamation séparée en estimant que la valeur du navire quand elle est établie pour ces sortes de dommages devrait prendre en considération la capacité de gain de ce navire. Si les dommages-intérêts pour perte d'utilisation devaient être accordés en même temps ceci représenterait une double récupération. Il s'agit là d'une question fondamentale et difficile que le Groupe de Travail aura à traiter.

Il devrait être possible de multiplier les exemples de rédaction auxquels nous avons à faire face. A l'exception de ces critiques du texte existant nous avons reçu de nombreuses suggestions pour établir des dispositions

it was suggested that it would be useful to insert a Rule to deal with interest and the effect of inflation on collision damages. With high rates of inflation prevalent in many countries there would certainly seem to be scope for introducing such a Rule.

Lisbon, 25th May, 1985.

Sea Waybills

The Sea Waybills Group having considered a number of potential problems flowing from :

- the arrival of cargo at its destination before the arrival of the relevant negotiable bill of lading,
- and the use of non-negotiable documents, such as Sea Waybills,
- and new techniques such as electronic data processing or creation of a central bill of lading registry and recognizing the necessity of minimizing the uncertainties flowing from it ;

Recommends:

that the Executive Council appoint an International Sub-Committee to study the above mentioned questions and to find solutions thereto, possibly through uniform rules or an international convention, taking into account, among others, the development of a "paper-less" system.

Having recommended to the Executive Council the creation of a Sub-Committee to study generally, while taking into account the method of work proposed by the French Maritime Law Association, the problems listed in its motion of principle the Sea Waybill Working Group suggests that the International Sub-Committee should be instructed to consider, inter alia, the following problems:

- (1) The provision of Sea Waybills presently in use;
- (2) The purpose of a Sea Waybill and its characteristics, particulars, issuance, etc.;
- (3) The needs of the commercial community pertinent to the use of :
 - a) Sea Waybills
 - b) "Paper-less" systems
 - c) Other systems;
- (4) The national legislation covering Sea Waybills or similar non-negotiable consignment note, e.g. Pomerene Act, as well as national case-law ;

additionnelles en particulier il a été suggéré qu'il serait utile d'insérer une règle qui traiterait des problèmes d'intérêts et des effets de l'inflation dans les dommages-intérêts dans des matières d'abordage.

Lisbonne, 25 mai 1985.

Lettres de Transports Maritime

Le groupe de travail "Lettre de transport maritime", ayant pris en considération les problèmes pouvant résulter :

- de l'arrivée des marchandises à destination avant celle des connaissances négociables correspondants ,
- de l'utilisation de documents non négociables telles que des lettres de transport maritime (sea waybills)
- et des nouvelles techniques tels que: procédés électroniques ou création d'un registre central des connaissances, et constatant la nécessité de réduire les incertitudes qui en résultent ;

Recommande :

que le Conseil Exécutif constitue une Commission internationale chargée d'étudier les questions ci-dessus mentionnées et de leur trouver une solution éventuellement au moyen, soit de règles uniformes, soit d'une convention internationale, en tenant compte, parmi d'autres, de l'hypothèse de la mise en oeuvre d'un système sans document ("paper-less" system).

Ayant recommandé au Conseil Exécutif la création d'une Commission en vue d'étudier d'une manière générale, tout en tenant compte de la méthode de travail proposée par la délégation de l'Association Française du Droit Maritime, les problèmes énumérés dans sa motion de principe, le groupe de travail sur les lettres de transport maritime suggère que la Commission internationale soit chargée d'examiner, entre autres, les problèmes suivants :

- (1) Les stipulations présentement en usage en matière de transport maritime ;
- (2) L'objet d'une lettre de transport maritime et ses caractéristiques: particularités, émission, etc.;
- (3) Les besoins de la communauté commerciale en rapport avec l'usage:
 - a) de lettres de transport maritime
 - b) de systèmes dits "paper-less"
 - c) d'autres systèmes;
- (4) Les législations nationales régissant les lettres de transport maritime ou des lettres de voiture non-négociables du même genre, p.ex., "Pomerene Act", ainsi que la prudence de quelques pays;

- (5) Circumstances in which Sea Waybills could or should be used taking into account the desirability of avoiding fraud ;
- (6) How liability for loss, damage and delay would be affected in the absence of a bill of lading or any other transport document ;
- (7) Rights and obligations of the contract of carriage evidenced in Sea Waybill or similar document including
 - a) Rights and obligations of a consignor
 - b) Rights and obligations of a consignee
 - c) Minimum requirements for the identification of the party entitled to delivery ;
- (8) The means to achieve uniform legal regime or regimes taking into account the desirability of having a system compatible with other existing conventions on carriage of goods ;
- (9) Provisions and/or regulations necessary to facilitate the use of Sea Waybills or other similar documents in the parties' financial transactions.

Lisbon 25 May, 1985

IMO Conventions

RIDERS TO THE STATEMENT OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW *

Further to the indications appearing on pages 111 to 123 of the 1984/1985 YEARBOOK of the C.M.I., please note that the International Maritime Organization (IMO) advises that, at 30 June, 1985, the following International Conventions had in addition been ratified (r) or acceded to (a) by various countries which are shown hereunder in alphabetical order together with the date of deposit of the instrument :

International Convention on CIVIL LIABILITY FOR OIL POLLUTION DAMAGE (CLC 1969)

Cameroons (r)

Oman (a)

Protocol to the International Convention on CIVIL LIABILITY FOR OIL POLLUTION DAMAGE (CLC PROT 1976)

Cameroons (a)

Oman (a)

United Arab Emirates (a)

International Convention on the ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE (FUND 1971)

Cameroons (a)

Oman (a)

- (5) Les circonstances dans lesquelles les lettres de transport maritime pourraient ou devraient être utilisées, tenant compte de l'intérêt qu'il y a d'éviter la fraude;
- (6) De quelle manière la responsabilité pour perte, dommage et retard serait affectée en l'absence d'un connaissement ou d'un autre document de transport;
- (7) Les droits et les obligations des parties à un contrat de transport démontré par une lettre de transport ou similaire y compris:
 - a) Les droits et les obligations de l'expéditeur
 - b) Les droits et les obligations du consignataire
 - c) Les exigences minima pour l'identification de la partie ayant droit à la délivrance;
- (8) Les moyens de réaliser un ou des régimes légaux uniformes en tenant compte de l'intérêt qu'il y a d'avoir un système compatible avec les autres conventions existantes sur le transport de marchandises;
- (9) Les stipulations et/ou les règlements nécessaires pour faciliter l'usage de lettres de transport maritime ou d'autres documents du même genre dans les transactions financières.

Lisbonne 25 mai 1985

Conventions IMO

AJOUTES A L'ETAT DES RATIFICATIONS ET ADHESIONS DES CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE *

En complément des indications figurant aux pages 111 à 123 de l'ANNUAIRE 1984/1985 du C.M.I., veuillez noter que l'Organisation Maritime Internationale (OMI) avise qu'à la date du 30 juin 1985, les Conventions Internationales suivantes avaient en outre été ratifiées (r) par, ou fait l'objet d'une adhésion (a) de différents pays repris ci-dessous par ordre alphabétique, avec la date de dépôt de l'instrument :

Convention Internationale sur la RESPONSABILITE CIVILE POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDROCARBURES (CLC 1969)

14 May, 1984

24 January, 1985

Protocole à la Convention Internationale sur la RESPONSABILITE POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDROCARBURES (CLC PROT 1976)

14 May, 1984

24 January, 1985

14 March, 1984

Convention Internationale portant CREATION D'UN FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDROCARBURES (FUND 1971)

14 May, 1984

10 May, 1985

Protocol to the ATHENS CONVENTION
RELATING TO THE CARRIAGE OF PASSENGERS
AND THEIR LUGGAGE BY SEA
(PAL PROT 1976)

Liberia (a)

Convention on LIMITATION OF LIABILITY
FOR MARITIME CLAIMS (LLMC 1976)

Denmark (r)

Finland (r)

Norway (r)

Sweden (r)

* The above riders are based on information provided by IMO and published with their kind permission.

Protocole à la CONVENTION D'ATHENES
RELATIVE AU TRANSPORT PAR MER DE PASSA-
GERS ET DE LEURS BAGAGES
(PAL PROT 1976)

Convention sur la LIMITATION DE LA
RESPONSABILITE EN MATIERE DE CREANCES
MARITIMES (LLMC 1976)

30 May, 1984

8 May, 1984

30 March, 1984

30 March, 1984

* Les ajoutés ci-dessus sont basés sur des informations fournies par l'OMI et publiées avec son aimable permission.

Hamburg Rules

In a recent note of the UNCITRAL Secretariat it is mentioned that the status of ratifications of and accessions to the United Nations Convention on the Carriage of Goods by Sea, 30 March 1978, by 1 May, 1985 was as follows :

<u>State - Etat :</u>	<u>Ratification:</u>	<u>Accession-Adhésion:</u>
Barbados		2 February 1981
Chile	9 July 1982	
Egypt	23 April 1979	
Hungary	5 July 1984	
Lebanon		4 April 1983
Morocco		12 June 1981
Romania		7 January 1982
Tunisia		15 September 1980
Uganda		6 July 1979
United Rep. of Tanzania		24 July 1979

Règles de Hambourg

Dans une récente note émise par le secrétariat de la CNUDCI, il est mentionné que l'état des ratifications de et des adhésions à la Convention des Nations Unies sur le Transport des Marchandises par Mer du 30 mars 1978, arrêté au 1er mai 1985, se présente comme suit :



CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

Autumn, 1985

— COMITE MARITIME INTERNATIONAL —

Automne 1985

QUARTERLY

BULLETIN TRIMESTRIEL

Towage

REPORT OF MR. CLAES PALME, CHAIRMAN OF THE SUB-COMMITTEE OF CMI ON TOWAGE

Some years ago the Assembly decided that the CMI should take up and study the problem of towage.

A small Committee was set up to carry out preparatory work. The undersigned was appointed as chairman of this Committee.

The Committee had a number of meetings at which the first question was whether it would be possible and useful to aim for a convention on towage to be drafted and eventually adopted by the CMI. The alternative would be to try the drafting of a standard contract which could be acceptable to both parties to towage-contract. The Committee came to the conclusion that it would hardly be realistic to go for an International Convention covering towage. Under such circumstances the Committee should concentrate on the efforts to draft a standard contract. To this end the Committee assembled a set of numerous towage contracts as used in various parts of the world. These were studied and the Committee started by laying down the principles in a towage contract and drafting certain paragraphs in such a document.

While this work was under way the Committee learned that the Tug Owners Association had approached BIMCO with the proposal that a Joint Committee should be formed to assess the prospects of establishing agreement over an internationally valid form of standard contract.

In this situation I found it right to report about these developments to the Assembly and suggested that the Committee on towage should defer its work for a while to see whether the work undertaken by the Tug Owners Association might prove successful bearing in mind that after all the two parties to a towage contract ought to be eminently qualified to work out a useful standard contract in between themselves. On the other hand, if the organisations were to fail in the endeavour to arrive at an agreed document, then my view was that the CMI Committee should resume its work. The Assembly decided along these lines.

Remorquage

RAPPORT DE M. CLAES PALME, PRESIDENT DE LA COMMISSION DU CMI SUR LE REMORQUAGE

Il y a quelques années l'Assemblée décida que le CMI devrait s'occuper de l'étude du problème du remorquage.

Une petite commission fut constituée pour exécuter un travail préliminaire. Le soussigné fut désigné en qualité de président de cette commission

La commission eut un nombre de réunions au cours desquelles la première question fut de savoir s'il était possible et utile de tendre vers une Convention sur le Remorquage qui serait éventuellement adoptée par le CMI, une autre alternative étant d'essayer d'établir un projet de contrat qui serait acceptable par les deux parties intéressées au contrat de remorquage. La commission arriva à la conclusion qu'il ne serait pas réaliste de tendre vers une Convention Internationale sur le remorquage. Dans ces conditions la commission concentra ses efforts sur la préparation d'un contrat standard.

On réunit dans ce but de nombreux exemplaires de contrats de remorquage utilisés dans différentes parties du monde. Ceux-ci furent étudiés et la commission commença par fixer les principes d'un contrat de remorquage et d'élaborer un certain nombre de paragraphes d'un tel document.

Au cours de ce travail, la commission apprit que l'Association des Propriétaires de Remorqueurs avait approché BIMCO (The Baltic and International Maritime Conference) en lui proposant la constitution d'un comité commun pour envisager la possibilité d'arriver à un accord sur une formule de contrat standard ayant valeur internationale.

J'ai estimé, dans ces conditions, qu'il convenait d'informer l'Assemblée de ces développements et j'ai suggéré que la commission diffère son travail pendant un certain temps afin de voir si le travail effectué par l'Association des Propriétaires de Remorqueurs pouvait être couronné de succès, considérant qu'en définitive les deux parties au contrat de remorquage devaient être particulièrement qualifiées pour élaborer entre elles un contrat de remorquage valable. D'autre part, s'il se démontrait que ces organisations étaient incapables de mener à bien leurs efforts en vue d'un document reconnu, il fut convenu que la commission reprendrait ses activités. C'est dans ce sens que l'Assemblée décida.

Recently I have been informed that the ISU and ETA have worked out a draft in co-operation with BIMCO which is believed to gain acceptance by both sides. I have not yet been notified as to whether the text has in fact been given the status of an agreed document. However, it is most likely that the draft will be approved and that therefore the issue of an agreed standard contract on towage can now be expected. If this is so this Committee of the CMI can be said to have achieved its purpose merely by the initiative to take up and study the matter in point. This means that for the first time a standard towage contract will have been drafted and agreed upon by the two parties directly involved. i.e. the Tug Owners and the Shipowners.

Claës Palme.

NOTE: Mr.Claës Palme delivered his report at the Assembly of the C.M.I. held at Lisbon on 25 May, 1985.

Since then BIMCO (The Baltic and International Maritime Council) indicated that negotiations had been carried out with the "International Salvage Union" and the "European Tugowners' Association" resulting in the agreement to and the publication of two forms of Standard Towage Agreement, one for Daily Hire and the other for Lump Sum, as both documents are required by the trade, although a great number of the general clauses are identical.

Thanks to the courtesy of BIMCO a number of forms of Agreement have been made available to the CMI headquarters and a copy has been mailed from Antwerp to the Presidents of the CMI Member Associations.

Additional copies may be obtained on application from BIMCO, Kristianiagade 19, DK-2100 Copenhagen, Denmark.

Brussels Conventions

RIDERS TO THE STATEMENT OF THE RATIFICATIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

RATIFICATION BY ITALY

On 22 August, 1985 were registered with the Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, the instruments of ratification by Italy relating to the following Protocols :

PROTOCOL SIGNED AT BRUSSELS ON 23 FEBRUARY 1968 TO AMEND THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING, 25 AUGUST, 1924.

PROTOCOL SIGNED AT BRUSSELS ON 21st DECEMBER 1979 TO AMEND THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO BILLS

J'ai été informé récemment que ISU et ETA avaient élaboré en collaboration avec BIMCO un projet susceptible d'obtenir l'accord des parties respectives. Je n'ai cependant pas été avisé jusqu'à présent si ce texte avait reçu le statut de document officiel. Néanmoins, il est très vraisemblable que ce projet soit approuvé et, qu'en conséquence, la publication d'un contrat standard sur le remorquage puisse être attendue. S'il en est ainsi, la commission du CMI aura atteint son but grâce à son initiative de soulever et d'étudier cette question. Ceci signifie que, pour la première fois, un contrat standard sur le remorquage aura été élaboré et accepté par les deux parties directement intéressées, c'est-à-dire les propriétaires de remorqueurs et les armateurs.

Claës Palme.

NOTE: Monsieur Claës Palme a donné connaissance de son rapport à l'Assemblée du C.M.I. tenue à Lisbonne le 25 mai 1985.

Depuis lors, BIMCO (The Baltic and International Maritime Council) a indiqué que des négociations avaient été menées avec l'"International Salvage Union" et avec l'Association Européenne des Propriétaires de Remorqueurs, négociations dont il est résulté un accord ainsi que la publication de deux formulaires standards de contrat de remorquage, un pour le cas de loyer journalier et l'autre pour celui de forfait, les deux documents étant nécessaires bien qu'un grand nombre de clauses générales soient identiques.

BIMCO a eu l'amabilité de mettre à la disposition du Secrétariat Administratif du CMI un certain nombre de ces formulaires de Contrat dont un exemplaire a été expédié d'Anvers aux Présidents des Associations Membres du CMI.

Des exemplaires supplémentaires peuvent être obtenus sur demande auprès de BIMCO Kristianiagade 19, DK-2100 Copenhague, Danemark.

Conventions de Bruxelles

AJOUTES A L'ETAT DES RATIFICATIONS DES CONVENTIONS INTERNATIONALES DE DROIT MARITIME DE BRUXELLES

RATIFICATION PAR L'ITALIE

Le 22 août 1985 ont été déposés auprès du Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, les instruments de ratification par l'Italie concernant les Protocoles suivants :

PROTOCOLE SIGNE A BRUXELLES LE 23 FEVRIER 1968 PORTANT MODIFICATION DE LA CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE DE CONNAISSEMENT, SIGNEE A BRUXELLES LE 25 AOUT 1924.

PROTOCOLE FAIT A BRUXELLES LE 21 DECEMBRE 1979, PORTANT MODIFICATION DE LA CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES

OF LADING, 25 AUGUST, 1924, AS MODIFIED BY THE AMENDING PROTOCOL OF 23 FEBRUARY, 1968.

In accordance with the provisions of article 13(2) of the Protocol sub 1) it will enter into force as regards Italy on 22 November, 1985.

In accordance with the provisions of article VIII(2) of the Protocol sub 2) it will enter into force as regards Italy on 22 November, 1985.

Whilst effecting these registrations, the Italian Embassy in Brussels stated: "... with regard to the application of article 10 of the International Convention for the unification of certain rules of law relating to Bills of Lading done at Brussels on 25 August, 1924, as amended by the Protocols done at Brussels on 23 February, 1968 and 21 December, 1979, either each State party to the Convention of 1924, or each State party to the Convention as amended by the Protocol of 1968 or further each State party to the Protocol of 1979 will be considered by Italy as Contracting State."

ENTRY INTO FORCE

PROTOCOL TO AMEND THE INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING SHIPS OF 10 OCTOBER, 1957

(BRUSSELS, 21 DECEMBER, 1979)

In accordance with the provisions of its Article VI, the Protocol is entered into force on 6 October, 1984, six ratifications having been deposited. These ratifications are those of: Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, Poland, Portugal and Spain.

IMO Conventions

RIDERS TO THE STATEMENT OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1971)

EN MATIERE DE CONNAISSEMENT DU 25 AOUT 1924, TELLE QU'AMENDEE PAR LE PROTOCOLE DE MODIFICATION DU 23 FEVRIER 1968.

Conformément aux dispositions de l'article 13(2) du Protocole sub 1), cette ratification sortira ses effets à l'égard de l'Italie le 22 novembre 1985.

Conformément aux dispositions de l'article VIII(2) du Protocole sub 2), cette ratification sortira également ses effets à l'égard de l'Italie le 22 novembre 1985.

En procédant à ces dépôts l'Ambassade d'Italie à Bruxelles a déclaré :

"... que, aux fins de l'application de l'article 10 de la Convention Internationale pour l'unification de certaines règles en matière de connaissance, faite à Bruxelles le 25 août 1924, telle qu'amendée par les Protocoles faits à Bruxelles le 23 février 1968 et le 21 décembre 1979, soit tout Etat partie de la Convention de 1924, soit tout Etat partie de la Convention telle qu'amendée par le protocole de 1968, soit encore tout Etat partie aussi du protocole de 1979 sera considérée par l'Italie comme Etat Contractant. "

ENTREE EN VIGUEUR

PROTOCOLE PORTANT MODIFICATION DE LA CONVENTION INTERNATIONALE SUR LA LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES DE MER DU 10 OCTOBRE 1957,

(BRUXELLES LE 21 DECEMBRE 1979)

Conformément aux dispositions de son article VI, le Protocole est entré en vigueur le 6 octobre 1984, six ratifications ayant été déposées.

Ces ratifications sont celles de : Australie, Belgique, Espagne, Pologne, Portugal et Royaume-Uni de Grande Bretagne et Irlande du Nord.

Conventions IMO

AJOUTES A L'ETAT DES RATIFICATIONS ET ADHESIONS DES CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE

Convention Internationale portant Crédit d'un Fonds International d'Indemnisation pour les Dommages dus à la Pollution par les Hydrocarbures (FUND 1971)

RATIFICATIONS

Portugal 11 September 1985
Poland 16 September 1985

Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND PROT 1976)

Protocole à la Convention Internationale portant Crédit d'un Fonds International d'Indemnisation pour les Dommages dus à la Pollution par les Hydrocarbures (FUND PROT 1976)

ACCESSIONS

Portugal 11 September 1985
Poland 30 October 1985

ADHESIONS

Protocol to the International Convention
on Civil Liability for Oil Pollution
Damage (CLC PROT 1976)

Protocole à la Convention Internationale
sur la Responsabilité Civile pour les
Dommages dus à la Pollution par les
Hydrocarbures (CLC PROT 1976)

ACCESSION

Poland 30 October 1985

ADHESION

Next Meetings

THE EXECUTIVE COUNCIL

The next meeting of the Executive Council will be held in Brussels, at Brussels Hilton Hotel on Thursday 10 April, 1986 at 19:00.

THE ASSEMBLY

The 1986 regular meeting of the Assembly will be held in Brussels, at Brussels Hilton Hotel on Friday 11 April, 1986.

Prochaines Réunions

LE CONSEIL EXECUTIF

La prochaine réunion du Conseil Exécutif se tiendra à Bruxelles, à l'Hôtel Brussels Hilton, le jeudi 10 avril 1986 à 19h.

L'ASSEMBLEE

La réunion statutaire 1986 de l'Assemblée se tiendra à Bruxelles, à l'Hôtel Brussels Hilton, le vendredi 11 avril 1986.

Personalia

URUGUAY

Information has been received regarding the new Member Association :

Avis a été reçu concernant la nouvelle Association Membre :

ASOCIACION URUGUAYA DE DERECHO MARITIMO
Circunvalacion Durango 1455 (Plaza Zabala)
Montevideo
Tel.: 95 24 03/95 34 60
Telex: GENNAVE UY 22139

OFFICERS :

President : Dr.Saul Mezzera Jr., Lawyer
Secretary : Mr.Ernesto Berro-Hontou, Manager, Ship Agents' Association
Treasurer : Mr.Erling Rolf Schandy, Lloyd's Agent, P. & I Correspondent, Shipping Agent.
Advisers : Dr. Armando Sciarra Quadri, lawyer
Dr. Ricardo Vidal Aradas, lawyer
Dr. Fernando Aguirre Ramirez, lawyer
Dr. Julio Vidal Amodeo, lawyer
Dr. Oscar Algorta Rachetti, lawyer.

KOREA

The address of the Korea Maritime Law Association has been amended as follows:

L'adresse de l'Association Coréenne de Droit Maritime a été modifiée comme suit:

KOREA MARITIME LAW ASSOCIATION
Rm 902 Bosung Bldg.,
163-3, 2-Ka Eulji-Ro Joong-Ku,
SEOUL - KOREA

