

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

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QUARTERLY

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BULLETIN TRIMESTRIEL

**CMI Assembly
22 April, 1988**

**Assemblée du CMI
22 avril 1988**

ATTENDING - PRESENTS

Officers - Membres du Bureau

President Président	: Francesco Berlingieri
Vice-Presidents Vice-Présidents	: William Birch Reynardson : Nicholas J. Healy : J. Niall McGovern : Jean Warot
Secretary General Administrative Secrétaire Général Administratif	and Treasurer: et Trésorier: : Henri Voet
Members of the Executive Council Membres du Conseil Exécutif	: Hrvoje Kacic : Allan Philip : Lionel Tricot
Administrative Officer Conseiller Administratif	: Miss H. Schrynemakers : Mrs. A. Philippart : Mr. G. Bouton

Delegates - Délégués

BELGIQUE	: Jean Van Ryn : Lionel Tricot (**) : Leo Delwaide : Henri Voet, Jr.
CANADA	: D. Brander-Smith : William Tetley
CESKOSLOVENSKO	: Bohuslav Klein
DANMARK	: Allan Philip (**)
BUNDESREPUBLIK DEUTSCHLAND	: Rolf Herber
DEUTSCHE DEMOKRATISCHE REPUBLIK	: Dr. Ralf Richter
ESPAÑA	: J. Goñi : J. Alcántara
FRANCE	: Pierre Latron : Philippe Boisson
IRELAND	: J. Niall McGovern (*)
ITALIA	: E. Vincenzini
JAPAN	: Hisashi Tanikawa : Seiichi Ochiai
JUGOSLAVIJA	: Hrvoje Kacic (**)

(*) Already mentioned as Vice-President

(*) Déjà mentionné comme Vice-Président

(**) Already mentioned as member of the Executive Council

(**) Déjà mentionné comme membre du Conseil Exécutif.

MAROC	: M.D.Margaoui : F. Azzabi
NETHERLANDS	: G.J.van der Ziel
PORTUGAL	: Vice-Admiral Machado-Moura
SUISSE	: Dr.Rudolf Sarasin : A. von Ziegler
SVERIGE	: Lars Boman
UNITED KINGDOM	: Lloyd Watkins
U.S.A:	: Francis O'Brien : M.Leckszas
U.S.S.R.	: George Ivanov : Miss Margarita Lvova

OBSERVERS

UNCTAD	: Ricardo Vigil
UNIDROIT	: Royston M.Goode

CMI Assembly 22 April, 1988

1. Members

The Maritime Law Association of Hong Kong and the Association Marocaine de Droit Maritime have been accepted with acclamation as new members of the Comité Maritime International.

The President welcomed Mr.MARGAOUT, the President of the Association Marocaine de Droit Maritime who expressed his appreciation for the honour bestowed on his Association. He will make his best efforts for the expansion of maritime law in the Arab countries.

The President rendered homage to Mr.Yoshio Shinoda, a Vice-President of the Japanese Maritime Law Association and a Titulary Member of the C.M.I. who recently passed away. The Assembly observed a minute of silence in memory of the deceased.

2. Elections

Mr.Jean Warot, the senior Vice-President attending the meeting, after having paid tribute to the successful work and admirable devotion to duty of President Francesco Berlingieri, announced that the out going president was prepared to serve for another term of office and nominated him for re-election. Mr.Birch Reynardson warmly supported this proposal.

Professor Francesco Berlingieri was re-elected President by acclamation.

In compliance with the Rules for the election of the Officers of the C.M.I., President Berlingieri nominated the following gentlemen for re-election as Vice-Presidents :
Nicholas J.HEALY Sr., Anatolyi KOLODKIN, J.Niall MCGOVERN, Walter MÜLLER, Tsuneo OHTORI, José Domingo RAY, Nagendra SINGH and Jean WAROT.

Assemblée du CMI 22 avril 1988

1. Membres

L'Association Marocaine de Droit Maritime et "The Maritime Law Association of Hong Kong" sont acceptées à l'unanimité en qualité de nouveaux membres du Comité Maritime International.

Le Président souhaite la bienvenue à Monsieur MARGAOUT, le Président de l'Association Marocaine de Droit Maritime. Ce dernier exprime son appréciation pour l'honneur qui est fait à son Association. Il s'efforcera de promouvoir l'expansion du droit maritime dans les pays arabes.

Le Président rend hommage à Monsieur Yoshio Shinoda, un des Vice-Présidents de l'Association Japonaise de Droit Maritime et un membre titulaire du C.M.I. qui est récemment décédé. L'Assemblée observe une minute de silence à la mémoire du défunt.

2. Elections

Monsieur Jean Warot, le plus ancien Vice-Président présent en séance, après avoir rendu hommage au travail réussi et à l'admirable dévouement du Président Francesco Berlingieri, annonce que le Président sortant est disposé à assumer un nouveau mandat et le propose pour être réélu. Monsieur Birch Reynardson appuie chaleureusement cette proposition.

Le Professeur Francesco Berlingieri est réélu Président du C.M.I. par acclamation.

En application du Règlement pour l'élection des membres du Bureau du C.M.I., le Président Berlingieri propose pour être réélu comme Vice-Présidents les personnalités suivantes :
Nicholas J.HEALY Sr., Anatoyi KOLODKIN, J.Niall MCGOVERN, Walter MÜLLER, Tsuneo OHTORI, José Domingo RAY, Nagendra SINGH et Jean WAROT.

The President also explained that due to the increasing amount of work and in order to alleviate the burden of the President's task, he suggested the nomination of two further Vice-Presidents, Allan Philip of Copenhagen and Jan C. Schultsz of Amsterdam.

All these gentlemen were elected or re-elected Vice-Presidents by acclamation.

The re-election as Secretary General Executive of Jan Ramberg and as Secretary General Administrative and Treasurer of Henri Voet, proposed by the President, was unanimously accepted.

In pursuance of proposals made by the Nominating Committee, as defined under Rule C of the Rules for the election of the members of the Executive Council, and in order to favour at the same time the continuity and the renewal, Lionel Tricot, Norbert Trotz and Jacques Villeneuve were nominated for re-election, José Goñi, Ole Lund and William Tetley for election as members of the Executive Council. There were no other candidates.

The six above named nominees were elected by acclamation.

The President thanked Hrvoje Kacic, Allan Philip and Jan C. Schultsz for their co-operation in the work of the C.M.I. during their terms of office as members of the Executive Council.

3. XXXIVth International Conference of the CMI, Paris 1990 from 1st to 6 July, 1990.

Mr. Pierre Latron, the President of the Association Française du Droit Maritime, informed that preparations were well in hand. He confirmed that the Conference will be held in the UNESCO headquarters and that arrangements have already been made with appropriate hotels for block reservations of rooms.

Three subjects for the Conference have been examined by the Executive Council, they are :

- Sea Waybills,
- Distribution of risks in the carriage of goods
- Bare-boat chartering.

1) Mr. Birch Reynardson reported briefly on the subject of Sea Waybills. He explained that it came up at the Venice Colloquium and that, thereafter, a Sub-committee was set up, chaired by Sir Anthony Lloyd. This Sub-committee had already held two meetings and the replies to the Questionnaire show that the Member Associations favour this subject, which is also followed by UNCTAD, IMO, UNCITRAL and BIMCO. The Executive Council thought that another meeting of the Sub-committee would be desirable and this suggestion was accepted by the Assembly. Mr. Birch Reynardson was asked to pass this resolution to the Chairman of the International Subcommittee.

2) Mr. Jean Warot, the Chairman of a small Working Group consisting of Mr. Filipovic, Mr. Ramberg, Mr. Tricot and

Le Président explique qu'en raison du surcroît de travail et dans le but d'alléger la tâche du Président, il propose que soit nommés deux Vice-Présidents supplémentaires, Allan Philip de Copenhague et Jan C. Schultsz d'Amsterdam.

Toutes ces personnalités sont élues ou réélues en qualité de Vice-Présidents.

La réélection en qualité de Secrétaire Général Exécutif de Jan Ramberg et en qualité de Secrétaire Général Administratif et de Trésorier de Henri Voet, proposée par le Président, est unanimement acceptée.

En application des propositions formulées par la Commission des présentations, telles que définies dans la Règle C du Règlement pour l'élection des membres du Conseil Exécutif, et dans le but de favoriser à la fois la continuité et le renouvellement, les personnalités suivantes ont été proposées pour être élues ou réélues en qualité de membres du Conseil Exécutif : Lionel Tricot, Norbert Trotz et Jacques Villeneuve; José Goñi, Ole Lund et William Tetley.

Les six personnalités précitées sont élues ou réélues.

Le Président remercie Hrvoje Kacic, Allan Philip et Jan C. Schultsz pour leur collaboration aux travaux du C.M.I. pendant la durée de leur mandat en qualité de membres du Conseil Exécutif.

3. XXXIVème Conférence Internationale du CMI, Paris 1990 - du 1er au 6 juillet 1990.

Monsieur Pierre Latron, le Président de l'Association Française du Droit Maritime, informe l'Assemblée que la préparation de la conférence va bon train. Il confirme qu'elle aura lieu au siège de l'UNESCO et que des arrangements ont déjà été pris avec des hôtels appropriés pour la réservation de chambres.

Le Conseil Exécutif a examiné trois sujets pour la Conférence, à savoir :

- Les lettres de transport maritime,
- La distribution des risques dans le transport de marchandises,
- L'affrètement coque nue.

1) Monsieur Birch Reynardson fait brièvement rapport sur le sujet des lettres de transport maritime. Il explique que l'étude de ce sujet a commencé lors du Colloque de Venise et que par la suite une commission internationale a été créée sous la présidence de Sir Anthony Lloyd. Cette commission s'est déjà réunie à deux reprises et les réponses au questionnaire démontrent que les Associations Membres tiennent à ce sujet qui est également suivi par CNUCED, CNUDCI, OMI et BIMCO. Le Conseil Exécutif a été d'avis qu'il est souhaitable que la commission se réunisse une fois de plus. Cette suggestion est acceptée par l'Assemblée et Monsieur Birch Reynardson est prié de faire part de cette résolution au Président de la commission internationale.

2) Monsieur Jean Warot qui préside un petit groupe de travail composé de Messieurs Filipovic, Ramberg, Tricot et lui-

himself, introduced the subject of the distribution of risks in the carriage of goods. He referred to the report that had been written by the Secretary General Executive after the meeting of the Working Group in Paris on 25 January, 1988. The Executive Council had considered this report and felt that it might be desirable to carry out a study in order to achieve uniformity in this area.

After a thorough debate, during which the majority of the delegates expressed themselves in favour of a study of this problem, it was decided to give the President full authority to further investigate the question whether the uniformity of the law on the carriage of goods by sea should be placed on the agenda of the Paris Conference and the manner in which the study of the problem should be approached.

3) There was no opposition to study further the subject of Bare-boat Chartering but Mr. William Birch Reynardson stressed the point that, albeit the urgency and importance of the subject was appreciated, it was not a very well-known subject. Hence, it might be helpful to hold some sort of restricted seminar before the Paris Conference.

This suggestion was accepted and the Administrative Officer was instructed to find a suitable place in Belgium, outside Brussels, for organizing such a seminar on the two days preceeding the meeting of the 1989 regular annual Assembly.

The Assembly also accepted the proposal to put the subject on the agenda of the Paris Conference and to set up an International Subcommittee, leaving the decision to the Executive Council whether this Subcommittee should become active either before or after the seminar.

4) Mr. Goñi believed that the subject of the Conflict of Laws would be a good subject and worth of being studied. This subject covers a vast area. Its study has already been initiated by the C.M.I.: in August 1985 a questionnaire has been prepared by Vice-President Walter Müller and in June 1986 a synopsis of the replies, prepared by President Berlingieri, has been circulated to the Member Associations.

The Assembly felt that it might be appropriate to examine in Paris some of the problems falling within that area, more or less in the same way as the Sea Way-bills and the Assessment of Damages in Maritime Collisions have been considered at the Lisbon Conference in 1985.

The Executive Council will consider the problem and inform the Member Associations of its suggestions. Thereafter, it will be decided what problem(s) can be discussed in Paris.

5) Implementation of International Conventions

This subject has been introduced by a questionnaire prepared by President

même, introduit le sujet de la distribution des risques dans le transport des marchandises. Il fait référence au rapport rédigé par le Secrétaire Général Exécutif après la réunion du groupe de travail à Paris le 25 janvier 1988. Le Conseil Exécutif a examiné ce rapport et il a été d'avis qu'il pourrait être souhaitable de procéder à une étude dont le but serait de réaliser l'uniformité dans ce domaine.

Après un débat au cours duquel la majorité des délégués se sont exprimés en faveur de l'étude du problème, il est décidé de donner tous pouvoirs au Président pour approfondir l'examen de la question de savoir si l'uniformité du droit concernant le transport des marchandises par mer devait être ou non placée à l'ordre du jour de la Conférence de Paris et de quelle manière l'étude de ce problème pourrait être entreprise.

3) Il n'y a pas d'opposition à la poursuite de l'étude du sujet de l'affrètement coque nue. Toutefois, Monsieur William Birch Reynardson a mis l'accent sur la circonstance que ce sujet, quelles que soient son importance et l'urgence de l'examiner, n'était pas un sujet bien connu; dès lors, selon lui, il pourrait être utile qu'il fasse l'objet d'un séminaire restreint avant la Conférence de Paris.

Cette suggestion est acceptée et le Conseiller Administratif est chargé de trouver en Belgique, en dehors de Bruxelles, un endroit convenable pour l'organisation d'un séminaire de ce genre pendant les deux jours précédant la réunion de l'Assemblée annuelle statutaire en 1989.

L'Assemblée accepte également la proposition de mettre le sujet à l'ordre du jour de la Conférence de Paris et de créer une commission internationale, tout en laissant au Conseil Exécutif le soin de décider si cette commission devait entamer ses travaux avant ou après le séminaire.

4) Monsieur Goñi est d'avis que le sujet des conflits de lois serait un bon sujet et digne d'être étudié. Il couvre un vaste domaine. Naguère, le C.M.I. en a commencé l'étude: au mois d'août 1985 un questionnaire a été rédigé par le Vice-Président Walter Müller et en juin 1986 un résumé des réponses, entrepris par le Président Berlingieri, a été distribué aux Associations Membres.

L'Assemblée estime qu'il pourrait convenir d'examiner à Paris certains des problèmes tombant dans ce domaine, suivant la même manière dont à la Conférence de Lisbonne en 1985 il a été procédé en ce qui concerne la lettre de transport maritime et la fixation des dommages-intérêts en matière d'abordage.

Le Conseil Exécutif est chargé de se pencher sur la question et de faire part de ses suggestions aux Associations Membres. Par la suite il sera décidé quel(s) problème(s) peut(vent) faire l'objet d'échanges de vues à Paris.

5) Mise en oeuvre des Conventions Internationales

Ce sujet a été introduit par un questionnaire rédigé par le Président Berlingieri

Berlingieri in December 1986. Twelve replies have yet been received. The President expressed the hope that before the end of the year at least twelve more replies will be made available by the Member Associations. Thereafter the replies may be treated in the same way as has been done concerning the replies to the subject "Private International Maritime Law".

4. Co-operation with Intergovernmental Organizations

A. The work done within the Legal Committee of IMO in respect of the Convention on Salvage has been closely followed by Mr. Bent Nielsen. His last status report has been published in the Winter 1987 issue of the CMI NEWS LETTER. It is expected that a Diplomatic Conference will be convened by IMO in April of next year. It is felt that the Montreal compromise will hold. Mr. Sarasin informed that this compromise has been accepted by IUMI.

B. Mr. IVANOV reported on the work of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and related subjects. He praised the assistance given by President Berlingieri and Vice-President McGovern.

Mr. Vigil also expressed his appreciation for the co-operation of the C.M.I. to the joint work of IMO and UNCTAD in this field. President Berlingieri believes that the form of co-operation that has been achieved on this occasion and which is based on mutual trust is the appropriate one. He will attend the May meeting of the group of Experts in London.

C. Mr. Nicholas J. HEALY reported on the meeting in January of this year in New York of the Working Group of UNCITRAL on the Draft Convention on Terminal Operators. At this meeting the Draft Convention was completed. President Berlingieri informed that the recent regulation in the port of Genova is based on the UNCITRAL's document.

D. Draft Convention on International Financial Leasing.

UNIDROIT has prepared a Draft Convention on International Financial Leasing that will be submitted to a Diplomatic Conference that will be held at Ottawa from 9th to 28th May, 1988.

Mr. Allan PHILIP, who has kindly accepted to attend this Conference as an observer representing C.M.I., explained that the question which is of interest to the C.M.I. is whether or not the Convention should apply to ships. The Draft includes ships and has some provisions regarding ships despite the fact that the contracts about ships are very different from contracts about goods. It is generally felt in maritime circles that the Convention should not apply to ships.

Professor R.M. GOOD, who is the Chairman of the Working Group of technical experts on International Financial Leasing within UNIDROIT, made a presentation of the

en décembre 1986. Douze réponses ont déjà été reçues. Le Président espère qu'avant la fin de l'année au moins douze autres réponses émanant des Associations Membres seront parvenues. Ultérieurement, les réponses pourront être traitées de la même manière que celles reçues à propos du sujet "Droit International Privé Maritime".

4. Collaboration avec les organisations inter-gouvernementales

A. Monsieur Bent Nielsen a suivi de près les travaux au sein du Comité Juridique de OMI à propos de la Convention sur l'Assistance. Son dernier rapport a été publié dans l'édition "Hiver 1987" de CMI NEWS LETTER. On s'attend à ce que OMI réunira une Conférence Diplomatique au mois d'avril de l'année prochaine. On a l'impression que le compromis de Montréal tiendra. Monsieur Sarasin informe l'Assemblée de ce que ce compromis a été accepté par IUMI.

B. Monsieur IVANOV fait rapport sur les travaux du groupe conjoint inter-gouvernemental d'experts concernant les privilèges et hypothèques maritimes et autres sujets y relatifs. Il rend hommage à l'assistance prêtée par le Président Berlingieri et le Vice-Président McGovern. Monsieur Vigil exprime son appréciation pour la collaboration du CMI au travail entrepris en commun par OMI et CNUCED dans ce domaine.

Le Président Berlingieri croit que la forme de la collaboration qui a été réalisée à cette occasion et qui est basée sur la confiance mutuelle, est celle qui convient. Il assistera au mois de mai à la réunion de groupe d'experts à Londres.

C. Monsieur Nicholas J. HEALY fait rapport à propos de la réunion au mois de janvier à New York du groupe de travail de CNUDCI qui s'occupe du projet de Convention sur les Opérateurs de Terminaux. A cette réunion il fut mis la dernière main au projet.

Le Président Berlingieri annonce que le récent règlement dans le port de Gênes est basé sur le document de CNUDCI.

D. Projet de Convention sur le Crédit-bail International.

UNIDROIT a rédigé un projet de convention sur le Crédit-bail International. Ce projet sera présenté à une Conférence Diplomatique qui se réunira à Ottawa du 9 au 28 mai 1988.

Monsieur Allan Philip, qui a bien voulu accepter d'être présent à cette Conférence en qualité d'observateur représentant le C.M.I., explique que la question qui intéresse le C.M.I. est celle de savoir si cette Convention s'appliquera aux navires ou non. Le projet comprend les navires et contient certaines dispositions concernant les navires malgré le fait que les contrats à propos de navires soient fort différents de ceux à propos de marchandises. D'une manière générale on estime dans les milieux maritimes que la convention ne doit pas s'appliquer aux navires.

Le Professeur R.M. GOOD qui préside le groupe de travail d'experts techniques sur le crédit-bail international au sein d'UNIDROIT, fait la présentation de la

Convention. The intention is to facilitate cross border financial leasing by a threefold way: to put legal responsibility on the person where it belongs; to try to insure that the lessor's rights are protected without interference of liens, mortgages, etc.; to allow the lessor to recover the loss in case of insolvency of the lessee. The Convention has a very restricted scope. Nevertheless, as it includes all movables, it is meant to apply to ships, aircrafts, etc. The major difficulties reside in Article 5 and perhaps is the text not sufficiently clear regarding liens, which it was meant not to disturb.

From the comments of delegates it appeared that there is no support for the inclusion of ships in the Convention because this may bring about a lot of difficulties.

In conclusion of the debate the President suggested that an alternative to the exclusion of ships from the Convention would be a reservation in the Convention to the effect that ships might be excluded.

Professor GOOD observed that it would be helpful if UNIDROIT might be made acquainted with the practical difficulties that would result from the inclusion of ships in the Convention. In order to meet this observation the President asked Mr. Philip to prepare a position paper regarding the difficulties under reference and stating the reasons of the views expressed by the delegates of the Member Associations of the C.M.I.

5. Fourth Seminar in the People's Republic of China - Shanghai

This Seminar was held in October 1987. Professor J. Schultsz and Mr. Gordon W. Paulsen lectured at that seminar. The President expressed his appreciation for their devotion.

6. Seminar in Lagos - Nigeria

This Seminar will be held immediately after the meeting of the Assembly from 25th April to 29th April, 1988. It is organized by the Nigerian Maritime Law Association in co-operation with the C.M.I. Charitable Trust. President Berlingieri, Mr. William Birch Reynardson, Mr. Hrvoje Kacic, Professor Jan Ramberg and Mr. Jacques Villeneuve had kindly accepted to be the speakers. Unfortunately, due to illness, Professor Jan Ramberg and Mr. Jacques Villeneuve will be prevented from attending the Seminar. The main topics that will be examined are the Charter-parties and the liability under Bills of Lading.

7. Law Reports on International Maritime Jurisprudence

The President referred to his covering letter addressed to the Presidents of the Member Associations and dated 19th November, 1987 and to the questionnaire INMAJU-1. The aim of this study is to find out whether or not the International Conventions are interpreted in the same

convention. L'intention est de faciliter le financement du crédit-bail au-delà des frontières de trois manières : placer une responsabilité légale sur la personne sur laquelle elle pèse; s'efforcer d'assurer que les droits du bailleur soient protégés sans interférence de privilèges, hypothèques, etc.; permettre au bailleur de récupérer sa perte dans les cas d'insolvabilité du locataire. La Convention a un domaine d'application très restreint; néanmoins, comme elle comprend tous les meubles, elle est destinée à s'appliquer aux navires, avions, etc. Les difficultés majeures résident dans l'article 5; il se peut que le texte ne soit pas suffisamment clair concernant les privilèges bien que l'intention est de ne pas les déranger.

Il résulte des commentaires des délégués que l'inclusion des navires dans la convention ne jouit d'aucun appui, parce que cela peut amener une série de difficultés.

En conclusion des échanges de vues, le Président suggère qu'une alternative à l'exclusion des navires de la convention, pourrait être une réserve dans la convention visant à permettre l'exclusion des navires.

Le Professeur R.M. GOOD fait observer qu'il pourrait être utile pour UNIDROIT d'être mis au courant des difficultés d'ordre pratique qui pourraient résulter de l'inclusion des navires dans la convention. Afin de donner suite à cette observation, le Président demande à Monsieur Philip de préparer un document expliquant les difficultés dont il s'agit et faisant état des motifs de la manière de voir exprimée par les délégués des Associations Membres du C.M.I.

5. Quatrième Séminaire dans la République Populaire de Chine - Shanghai

Ce séminaire s'est tenu en octobre 1987. Le Professeur Jan C. Schultsz et Monsieur Gordon W. Paulsen y ont participé. Le Président exprime son appréciation pour leur dévouement.

6. Séminaire à Lagos - Nigeria

Ce séminaire aura lieu immédiatement après la réunion de l'Assemblée, du 25 avril au 29 avril 1988. Il est organisé par "The Nigerian Maritime Law Association" en collaboration avec CMI Charitable Trust. Le Président Berlingieri, Monsieur William Birch Reynardson, Monsieur Hrvoje Kacic, le Professeur Jan Ramberg et Monsieur Jacques Villeneuve ont accepté d'être les orateurs. Malheureusement à la suite de maladie le Professeur Jan Ramberg et Monsieur Jacques Villeneuve ne pourront pas participer au séminaire. Les principaux sujets qui seront examinés sont les chartes-parties et la responsabilité sous l'empire de connaissances.

7. Compte-rendu de la Jurisprudence Maritime Internationale

Le Président fait référence à la lettre qu'il a adressée aux Présidents des Associations Membres en date du 19 novembre 1987 pour leur faire parvenir le questionnaire INMAJU-1. L'étude vise à découvrir si les conventions internationales sont interprétées de la même manière.

manner in all countries. This is an experiment and it is only after the material will have been collected that it may be decided whether such material is worth of being published.

In reply to questions put by delegates, the President specified that only current judicial decisions should be given attention and that it was premature to already appoint a working group; instead some samples of appropriate replies might be sorted out and circulated in order to provide guide lines for the Member Associations. Five replies have already been received.

8. Colloquium at Tulane University

This Colloquium was held from 9th to 12th November, 1987, and despite the fact that the attendance was below the expectations, it is true to consider that it was very successful. The documents are being edited and the final book containing these documents will be available in the near future. The Colloquium has been self-supporting.

9. CMI Charitable Trust

Mr. Birch Reynardson informed that the capital fund of the Trust has been steadily increasing thanks in particular to donations and to the Pineus Fund and now amounts to GBP.120,000.--. Financial support has been given to studies within the Southampton University and to the organization of the Seminar in Lagos. Still more money is necessary to finance the expanding activities of the C.M.I. and it is important that this organization, which is independent from Governments, might continue to expand. A useful vehicle for putting money into the Trust is for the Member Associations to pay over their annual contribution.

10. Report of the Treasurer

The Treasurer commented on the balance sheet as of 31 December, 1987 and on the profit and loss account for the year 1987; these papers had been circulated to the Presidents of the Member Associations by letter dated 29th January, 1988. The Assembly granted with thanks release to the Treasurer.

11. Budget and Contributions to the CMI for 1988

The Treasurer introduced the budget for the year 1988, which includes the rates of annual contribution of the Member Associations and of the Titulary Members as per a schedule that has not varied over the recent years. His proposals were received and approved by the Assembly.

The Treasurer explained that the sale of the book "International Conventions on Maritime Law" had so far not been a success and that the royalties payable to the CMI out of the proceeds of the sale of the book only had covered, at this stage, 10% of the printing costs. It was resolved that the Member Associations should encourage their members to buy this very useful book.

12. Instituto Hispano-Luso-Americano

Vice-Admiral Machado-Moura made a pre-

re dans tous les pays ou non. Il s'agit d'une expérience et ce n'est qu'après que le matériel aura été réuni que l'on pourra décider s'il vaut la peine d'être publié.

En réponse à des questions posées par des délégués, le Président précise que seules des décisions récentes des tribunaux devaient retenir l'attention et qu'il est prématuré de déjà créer un groupe de travail. Par contre quelques exemples de réponses appropriées pourraient être choisis et mis en circulation en vue de fournir des directives aux Associations Membres. Dès à présent cinq réponses ont été reçues.

8. Colloque à l'Université de Tulane

Ce Colloque a eu lieu du 9 au 12 novembre 1987; Bien que le nombre de participants était inférieur à l'attente, il est permis de considérer que ce Colloque a été un succès. Les documents sont en ce moment mis au point et le livre qui les contiendra sera disponible dans un proche avenir. Les frais du Colloque ont été couverts par les recettes.

9. CMI Charitable Trust

Monsieur Birch Reynardson informe l'Assemblée que le capital du Trust s'est accru régulièrement, principalement grâce à des donations et au Fonds Pineus; il s'élève maintenant à GBP: 120.000.--. Un encouragement financier a été fourni à des études au sein de l'Université de Southampton et à l'organisation du séminaire de Lagos. Pour pouvoir financer les activités en expansion du C.M.I. il est nécessaire de disposer de plus d'argent et il est important que cette organisation, qui est indépendante des gouvernements, puisse continuer à s'épanouir. Un moyen utile pour verser de l'argent au Trust consiste pour les Associations Membres à payer un supplément au-delà de leur cotisation annuelle.

10. Rapport du Trésorier

Le trésorier fait le commentaire sur le bilan arrêté au 31 décembre 1987 et sur le compte de profits et pertes pour l'année 1987. Ces documents ont été mis en circulation auprès des Présidents des Associations Membres par lettre du 29 janvier 1988.

L'Assemblée donne décharge au trésorier.

11. Budget et cotisations au CMI pour l'année 1988

Le trésorier présente le budget pour l'année 1988, qui comprend la fixation du montant des cotisations annuelles des Associations Membres et des Membres Titulaires suivant un tableau qui n'a pas varié depuis plusieurs années. Ses propositions sont approuvées par l'Assemblée.

Le trésorier explique que la vente du livre "Conventions Internationales de Droit Maritime" n'est pas un succès et que les redevances revenant au C.M.I. sur le produit de vente du livre n'ont, à ce jour, couvert que 10% des frais d'impression. Les Associations Membres sont invitées à encourager leurs membres à acheter ce livre fort utile.

12. Instituto Hispano-Luso-Americano

Le Vice-Amiral Machado-Moura présente

sentation of the Instituto Hispano-Luso-Americano, the headquarters of which are in Lisbon. There have been some problems of compliance with the domestic law but these have now been solved. The Portuguese Navy assumed financial support during the first year of existence of this Institute, which is now ready to start active working.

Uniform Rules of Conduct for Interchange of Trade Data by Teletransmission (UNCID)

The International Chamber of Commerce (ICC) has established non-obligatory Rules aiming at providing a foundation on which the parties to a trade deal communicating via computer in a system based on electronic data interchange (EDI) can build a "communication agreement", a contract with legally binding effect.

Copies of the Rules (UNCID) in English and French are available on request from ICC PUBLISHING S.A., 38, Cours Albert Ier, F-75008 Paris, France.

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 : Seychelles 12 April, 1988

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

accession : Seychelles 12 April, 1988

Next Meetings

The next meeting of the Executive Council shall take place in London on Wednesday 7 September, 1988.

CMI Publications

REMINDER

We remind all interested persons and in particular non-members of the CMI that they should apply for CMI Publications and in particular for the new Compendium of INTERNATIONAL CONVENTIONS ON MARITIME LAW (current price: SEK.400.) as well as for the subscriptions to the CMI NEWS LETTER and YEARBOOK to the publishers :

The Almqvist & Wiksell Periodical Company
P.O.Box 638, S-101 28 Stockholm, Sweden
Tel.: 23.79.90 - Telex: 12430 Almqwik S.

l'Instituto Hispano-Luso-Americano dont le siège est établi à Lisbonne. Quelques problèmes ont surgi concernant l'observation de la loi nationale mais ils ont maintenant été résolus. La Marine Portugaise a apporté son soutien financier pendant la première année d'existence de l'Institut. Ce dernier est maintenant prêt à entamer ses activités.

Règles de Conduite Uniformes pour L'Echange de Données Commerciales par Télétransmission (UNCID)

La Chambre de Commerce Internationale (CCI) a établi des règles non-obligatoires offrant aux partenaires commerciaux communiquant entre eux au moyen d'un système d'échange électronique de données (EDI) une base à partir de laquelle ils peuvent établir un "accord de communication", un contrat les liant juridiquement.

Des exemplaires de ces règles (UNCID) en anglais et en français peuvent être obtenus sur demande auprès de la ICC PUBLISHING S.A., 38, Cours Albert Ier, F-75008 Paris, France.

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)

accession : Seychelles 12 avril 1988

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

accession : Seychelles 12 avril 1988

Prochaines Réunions

La prochaine réunion du Conseil Exécutif aura lieu à Londres le mercredi 7 septembre 1988.

Publications du CMI

RAPPEL

Nous rappelons aux intéressés et en particulier aux non-membres du CMI qu'il convient de s'adresser pour les publications du CMI et en particulier pour le nouveau recueil des CONVENTIONS INTERNATIONALES DE DROIT MARITIME (prix actuel: SEK.400.) ainsi que pour les abonnements aux CMI NEWS LETTER et ANNUAIRE à la maison d'édition :



CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

Summer (August) 1988 — COMITE MARITIME INTERNATIONAL — Eté (août) 1988

QUARTERLY

Afgiftekantoor: 2000 Antwerpen 1

BULLETIN TRIMESTRIEL

Important Advice

CHANGE OF ADDRESS

As from 1st.OCTOBER, 1988 the new address of CMI HEADQUARTERS and of the Administrative Officer will be :

Firme HENRY VOET-GENICOT
Mechelsesteenweg 203, B.6.,
B - 2018 ANTWERPEN (Belg.)

Tel.:(32)(3)-218.48.87 - Tlx:31.653 VOET.B. - FAX: (32)(3) - 218.67.21

Avis important

CHANGEMENT D'ADRESSE

A partir du 1er OCTOBRE 1988 la nouvelle adresse du SIEGE du CMI et du Conseiller Administratif sera :

Seminar on the Carriage of Goods by Sea — Lagos, Nigeria, April 1988

The Nigerian Maritime Law Association organized a Seminar on the Carriage of Goods by Sea under the auspices of the CMI and the assistance of the CMI Charitable Trust. The Seminar was held in Lagos from 25th to 29th April, 1988 under the joint chairmanship of the President of the CMI, Professor Francesco Berlingieri, and the President of the Nigerian Maritime Law Association, Chief Dr.C.O. Ogunbanjo O.F.R.

Papers written by the speakers covered the following topics :

- I. Introduction - Various types of contracts of carriage of goods by sea (F.Berlingieri)
- II. Charters by demise (J.Ramberg)
- III. Time Charters (F.Berlingieri)
- IV. Voyage charters (F.Berlingieri)
- V. Contracts of carriage in the liner trade (J.Ramberg)
- VI. Liability for loss of or damage to cargo: Several papers were presented on this subject, and more precisely, the following :
 1. Apportionment of risk between ship and cargo (W.Birch Reynardson)
 2. Negligence in maritime law with reference to liability to cargo during sea carriage (W.Birch Reynardson)
 3. Liability for loss of or damage to

Séminaire sur le Transport de Marchandises par Mer — Lagos, Nigeria, avril 1988

L'Association Nigérienne de Droit Maritime a organisé un séminaire sur le Transport de Marchandises par mer, sous les auspices du CMI et avec l'assistance du CMI Charitable Trust. Le Séminaire s'est tenu à Lagos du 25 au 29 avril 1988 sous la présidence conjointe du Président du CMI, le Professeur Francesco Berlingieri et du Président de la Nigerian Maritime Law Association, Chief Dr.C.O. Ogunbanjo O.F.R.

Les rapports préparés par les orateurs couvraient les points suivants :

- I. Introduction - Divers types de contrats de transport de marchandises par mer (F.Berlingieri)
- II. Affrètements coque nue (J.Ramberg)
- III. Affrètements à temps (F.Berlingieri)
- IV. Affrètements au voyage (F.Berlingieri)
- V. Contrats de transport par lignes régulières (J.Ramberg)
- VI. Responsabilité pour perte de ou dommage à la cargaison: différents exposés furent faits à ce sujet, plus particulièrement les suivants:
 1. Répartition du risque entre le navire et la cargaison (W.Birch Reynardson)
 2. Négligence en droit maritime en rapport avec la responsabilité à l'égard de la cargaison durant le transport par mer (W.Birch Reynardson)
 3. Responsabilité pour perte de ou

cargo (W.Birch Reynardson)

4. Analysis of the provisions regarding liability and the Hague Rules and Hague-Visby Rules (H.Kacic)
5. The provisions regarding the carrier's liability under the Hamburg Rules (H.Kacic)
6. Technological developments in transportation and the rules of carriage of goods (O.Adegbeyeni)
7. Carriage of goods by sea - The Nigerian Experience (F.Sasegbon)
8. The Hague/Visby versus the Hamburg Rules (L.N. Mbanefo).

VII. Transport documents (W.Birch Reynardson and J.Ramberg).

Speeches were also delivered by Dr. Ricardo Vigil, Chief, Maritime Legislation Section, UNCTAD, and by Mr. S.R. Katz, Legal Officer, International Trade Law Branch, Office of Legal Affairs, UNCITRAL.

After the opening address given by the Attorney-General of the Nigerian Federation and Minister of Justice Hon. Prince Bola Ajibola and the welcome address of the President of the Nigerian Maritime Law Association and a short presentation of the papers by the speakers, two workshop groups were formed with a view to considering separately bare-boat, time and voyage charter parties on the one hand and the liability of the carrier for loss of or damage to goods on the other hand.

Very lively discussions took place at the workshops, both of which were very well attended. Reports on the work of the two workshops were presented by the Chairmen, Prof. F. Berlingieri and Mr. W. Birch Reynardson, at the closing session of the Seminar.

The organization of the Seminar by the Nigerian Maritime Law Association was impeccable. The President of the Nigerian Association, Chief Dr. C.O. Ogunbanjo, the Vice-President, Mr. Fola Sasegbon, and the Secretary, Mr. L.N. Mbanefo have done a really splendid job. This is the first time the CMI has participated in the organization of a Seminar in Africa and the experience was very positive. The joint work before and during the Seminar has greatly strengthened the liaison between the CMI and the Nigerian Maritime Law Association. It is hoped that similar seminars may take place in the future in other African countries.

Francesco Berlingieri

New Members

At its 1988 regular annual meeting the Assembly of the C.M.I. has elected as new Members the following Associations :

dommage à la cargaison (W.Birch Reynardson)

4. Analyse des dispositions concernant la responsabilité et les Règles de La Haye et les Règles de La Haye-Visby (H.Kacic)
5. Les dispositions relatives à la responsabilité du transporteur sous l'empire des Règles de Hambourg (H.Kacic)
6. Développements techniques en matière de transport et les règlements concernant le transport des marchandises (O.Adegbeyeni)
7. Le transport de marchandises par mer - L'expérience nigérienne (F.Sasegbon)
8. Les Règles de La Haye/Visby par rapport aux Règles de Hambourg (L.N. Mbanefo).

VII. Documents de transport (W.Birch Reynardson et J.Ramberg).

Des exposés ont été également faits par le Dr. Ricardo Vigil, Chef de la Division Législation Maritime à la CNUCED et par Monsieur S.R. Katz, Legal Officer, International Trade Law Branch, Office of Legal Affairs à la CNUDCI.

Après le discours d'introduction prononcé par le Procureur Général de la Fédération du Nigéria et Ministre de la Justice, Hon. Prince Bola Ajibola et l'allocution de bienvenue du Président de la Nigerian Maritime Law Association et une courte présentation de leurs exposés par les conférenciers, deux groupes de travail furent constitués pour considérer séparément, d'une part les chartes parties coque nue, à temps et au voyage et, d'autre part la responsabilité du transporteur pour perte de et ou dommage à la cargaison.

Les groupes de travail, qui furent très suivis, ont été le théâtre de vives discussions. Des rapports sur les activités des deux groupes de travail furent soumis à la session de clôture du séminaire par le Professeur F. Berlingieri et par Monsieur W. Birch Reynardson.

L'organisation du séminaire par la Nigerian Maritime Law Association a été impeccable. Le Président de l'Association Nigérienne, Chief Dr. C.O. Ogunbanjo, le Vice-Président Monsieur Fola Sasegbon et le secrétaire, Monsieur L.N. Mbanefo ont réalisé un magnifique travail. C'est la première fois que le CMI participait à l'organisation d'un séminaire en Afrique et l'expérience fut très concluante. La collaboration dans le travail avant et pendant le séminaire a largement renforcé les liens entre le CMI et la Nigerian Maritime Law Association. Il est à espérer que des séminaires semblables puissent avoir lieu dans d'autres pays d'Afrique.

Francesco Berlingieri

Nouveaux Membres

A sa réunion statutaire annuelle de 1988 l'Assemblée du C.M.I. a élu comme nouveaux membres les Associations suivantes :

ASSOCIATION MAROCAINE DE DROIT MARITIME

30, Boulevard Mohammed V
Casablanca 01 - Maroc
Tél.: 27.19.41 - Telex: 21969

Membres du Bureau

Président : M.Mohammed MARGAOUI, Conseiller en droit Maritime.
Vice-Présidents : M.Mohammed LOUDGHIRI, Avocat.
M.Driss DAHAK, Docteur en Droit, Secrétaire Général de l'Organisation Arabe de Défense Sociale
M.Aziz BENKIRANE, Avocat.
M.Hamid BESRI, Directeur à la Société Centrale de Réassurances, Tour Atlas, Casablanca.
Secrétaire Général: M.Abdellatif MECHBAL, Président de Chambre près de la Cour d'Appel de Casablanca.
Secrétaires Généraux Adjoints : Mme Malika EL OTHMANI, Chef de division juridique à l'ODEP, Casablanca.
M.Farid HATIMY, Professeur à la Faculté de Droit à Fès.
Trésorier Général : M.Fouad AZZABI, Directeur juridique- Assurances à la Cie Marocaine de Navigation.
Trésorier Adjoint : M.Sif Eddine LAOUFIR, Juriste à Marphocean.
Assesseeurs : Mme Touria TAZI, Assureur Maritime, Sous-Directeur de la Cie Africaine d'Assurances.
M.Gérard PLOIX DE ROTROU, Expert maritime.
M.Abdelaziz MANTRACH, Armateur, Directeur de la Cie Cherifienne d'Armement.
M.Abdellatif GHAZZALI, Courtier maritime.
M.Abdellah BOUDAHRAIN, Professeur à la Faculté de Droit à Rabat.

THE MARITIME LAW ASSOCIATION OF HONG KONG

c/o INCE & CO., Solicitors and Notary Public
Mr.Christopher Moore
16th Floor, Tower II,
Admiralty Centre, 18 Harcourt Road, Hong Kong

Members

Mark Roberts	- Deacons
Raymond Wong	- Richards Hogg International
Anthony Dicks	-
Capt.Norman Lopez	- Hong Kong Polytechnic
Chris Howse	- Richards Butler
Alec Emmerson	- Clyde & Co.
Howard Miller	- Haight Gardner Poor & Havens
Nigel Taylor	- Sinclair Roche
Jon Zinke	- Walker & Corsa
Alvin Ng	- Lo Wong & Tsui
Philip Yang/James Moore	- Manley Stevens Ltd.
William Waung	-
Robin Healey	- Ince & Co.
Charles Haddon-Cave	-
Chris Potts	- Crump & Co.

Brussels Conventions

RIDER TO THE STATUS OF THE RATIFICATIONS
OF AND ACCESSIONS TO THE BRUSSELS INTER-
NATIONAL MARITIME LAW CONVENTIONS

ACCESSION BY THE REPUBLIC OF CYPRUS

On 19 July 1988 was registered with the
Ministère des Affaires étrangères, du
Commerce Extérieur et de la Coopération
au Développement de Belgique, the ins-
trument of accession by the Republic of
Cyprus of the following Convention :

INTERNATIONAL CONVENTION FOR THE
UNIFICATION OF CERTAIN RULES CONCER-
NING THE IMMUNITY OF STATE-OWNED SHIPS
OF 10 April, 1926 AND ADDITIONAL
PROTOCOL, SIGNED AT BRUSSELS ON 24
MAY, 1934.

Conventions de Bruxelles

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

ADHESION PAR LA REPUBLIQUE DE CHYPRE

Le 19 juillet 1988 a été déposé au Minis-
tère des Affaires étrangères, du Commer-
ce Extérieur et de la Coopération au
Développement de Belgique l'instrument
d'adhésion par la République de Chypre
de la Convention ci-dessous :

CONVENTION INTERNATIONALE POUR L'UNI-
FICATION DE CERTAINES REGLES CONCER-
NANT LES IMMUNITES DES NAVIRES D'ETAT,
SIGNEE A BRUXELLES LE 10 AVRIL 1926 ET
PROTOCOLE ADDITIONNEL, SIGNE A BRUXELLES
LE 24 MAI 1934

According to article 12 of the aforesaid Convention, it will enter into force regarding the Republic of Cyprus on 19 January, 1989.

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 : Qatar 2 June, 1988

PROTOCOL TO THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE (CLC PROT 1976)

- accession : Qatar 2 June, 1988

PROTOCOL OF 1984 TO AMEND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969 (CLC PROT 1984)

- accession : Australia 22 June, 1988

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

- accession : Qatar 2 June, 1988

Conformément à l'article 12 de la Convention précitée, celle-ci entrera en vigueur à l'égard de la République de Chypre le 19 janvier 1989.

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)

- adhésion : Qatar 2 juin 1988

PROTOCOLE A LA CONVENTION INTERNATIONALE SUR LA RESPONSABILITE CIVILE POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDROCARBURES (CLC PROT 1976)

- adhésion : Qatar 2 juin 1988

PROTOCOLE DE 1984 PORTANT MODIFICATION A LA CONVENTION INTERNATIONALE SUR LA RESPONSABILITE CIVILE POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDROCARBURES 1969 (CLC PROT 1984)

- adhésion : Australie 22 Juin 1988

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

- adhésion : Qatar 2 juin 1988.

Personalia

BELGIQUE BELGIE

The new Board of the BELGIAN MARITIME LAW ASSOCIATION is composed as follows :

Le nouveau Bureau de l'ASSOCIATION BELGE DE DROIT MARITIME est composé comme suit :

Président:	M. Roger ROLAND Antoon Van Dyckstraat 2- B.5, B-2018 Antwerpen.
Vice-Président:	M. Jozef VAN DEN HEUVEL Schermersstraat 30, B-2000 Antwerpen,
Trésorier :	M. Léon GYSELYNCK, Meir 48, B-2000 Antwerpen,
Secrétaire:	M. Henri VOET Jr., Mechelsesteenweg 203, B.6 B-2018 Antwerpen,
Secrétaire d'Administration:	Firme Henry Voet-Genicot PVBA., Mechelsesteenweg 203, B.6., B-2018 Antwerpen.

C A N A D A

The new Board of the CANADIAN MARITIME LAW ASSOCIATION is composed as follows:

Le nouveau Bureau de l'ASSOCIATION CANADIENNE DE DROIT MARITIME est composé comme suit :

President:	David BRANDER-SMITH, Q.C. Bull, Housser & Tupper, 3000 Royal Centre, P.O. Box 11130, 1055 West Georgia Street, Vancouver, B.C. V6E 3R3.
Immediate Past-President:	Jean BRISSET, Q.C., Brisset Bishop Davidson, 620 rue St. Jacques, Suite 600, Montreal, Quebec H3C 1C7.

Vice-Presidents: W.David ANGUS, Q.C., Stikeman,
 Elliott, 1155 Dorchester Blvd. West,
 Suite 3700, Montreal, Quebec H3B 3V2.
 A. Barry OLAND, P.O.Box 11547, 650
 West Georgia St., 2020 Vancouver
 Center, Vancouver, B.C. V6B 4N7.
 Nigel H. FRAWLEY, McMaster Meighen,
 Box 11, 11th floor, Merrill Lynch
 Canada Tower, Sun Life Centre, Toronto,
 Ontario M5H 3T4.
 John L. JOY, White, Ottenheimer & Green,
 P.O.Box 5457, 10th Floor, Royal Trust
 Bldg., Water Street, St. John's,
 Nfld. A1C 5W4.
 Professor Edgar GOLD, IITOPS, 5th
 Floor, Central Services Bldg., 1236
 Henry Street, Halifax, N.S. B3H 3J5.

Secretary & Treasurer: B.N. MALOTT, Transworld Shipping
 Ltd., 363 St. François-Xavier Street,
 Suite 300, Montreal, Quebec H2Y 3P9.

COLOMBIA

The new Board of the ASOCIACION COLOMBIANA DE ESTUDIOS MARITIMOS - "ACOLDEMAR" is composed as follows : Le nouveau Bureau de l'ASOCIACION COLOMBIANA DE ESTUDIOS MARITIMOS "ACOLDEMAR" est composé comme suit :

1. President : Dr. Juan Manuel Prieto.
2. Vice-President: Capitan Sigifredo Ramirez
3. Other members of the Executive Committee : Dr. Jorge Suescun Melo
 Principals: : Dr. Ricardo Sarmiento
 : Dr. Jorge Alberto R driguez
 Alternates: : Dr. Jaime Canal Rivas
 : Dr. Carlos Alfonso Ramirez
 : Dr. Rogelio Valencia
 Internal Auditor: Admiral (R) Hernando Camacho
 Alternate Auditor: Dr. Diego Muñoz
 Secretary : Dra. Narda Patricia Ramirez
4. Honorary Member : Dr. Guillermo Sarmiento.

the new mailing address of the Colombian Association being : la nouvelle adresse postale de l'Association Colombienne étant :
 Carrera 9, No. 74-08, Oficina 305, Bogota D.R.,
 Colombia. Telex: 41379 PVLAW CO, Telefax: 2171950,
 Telephone: (571) 2175055.

UNITED KINGDOM

The new address of the BRITISH MARITIME LAW ASSOCIATION is from now on : La nouvelle adresse de l'ASSOCIATION BRITANNIQUE DE DROIT MARITIME est dorénavant la suivante :
 3rd Floor, 78 Fenchurch Street,
 London EC3M 4BT
 Telephone: 702.9869 - Tlx: 884444 INT GP
 FAX : 702-1646

UNITED STATES OF AMERICA

The new Board of THE MARITIME LAW ASSOCIATION OF THE UNITED STATES is composed as follows Le nouveau Bureau de l'ASSOCIATION DE DROIT MARITIME DES ETATS-UNIS est composé comme suit :

- President: Richard W. PALMER, Esq.,
 c/o Palmer, Biezup & Henderson Esqs.
 Public Leger Building, 600 Chestnut
 Street, Philadelphia, Pennsylvania
 19106 - Tel: (215) 625-9900.
- First Vice-President: Kenneth H. VOLK, New York, NY.
- Second Vice-President: George W. HEALY, III, New Orleans, LA.
- Immediate Past-President: Francis J. O'BRIEN,
 New York, NY.
- Secretary : David W. MARTOWSKI, New York, NY.
- Treasurer : Marshall P. KEATING, New York, NY.
- Membership Secretary: Howard M. McCORMACK,
 New York, NY.

Lisbon Rules 1987

The Association for Maritime Law of the German Democratic Republic (DDR), has, in consultation with the Maritime Law Association of the Federal Republic of Germany, produced a translation in German of the Lisbon Rules 1987 together with the commentary of Mr. Jean Warot.

These translations are available to interested persons from the "Gesellschaft für Seerecht der DDR", Lagerstrasse 26, DDR.25.Rostock.

Seminar on Bare-Boat Charter Parties – Knokke 1989

The CMI will organize next year a Seminar on Bareboat Charter Parties at KNOCKE-ZOUTE, Belgium, a seaside resort at 75 minutes by IC-Trains from Brussels and about 120 km by motorways from Brussels Airport.

The Seminar will take place at Hotel "LA RESERVE", on Wednesday 5th and Thursday 6th April, 1989 and will be followed by the regular annual Assembly of the CMI on Friday 7th April, 1989. All participants are therefore expected to arrive at Knokke - Zoute in the afternoon of Tuesday 4th April 1989 to attend the welcome cocktail and dinner served on that evening.

Further detailed information on the programme of the Seminar will be circulated to Member Associations and published in due course in CMI NEWS LETTER but, for organization purposes, tentative reservations would already be welcomed.

Next meetings

The next meeting of the Executive Council shall take place in London on Wednesday 7 September, 1988.

The International Subcommittee on Sea-Waybills will meet in London on Thursday 13 October, 1988.

CMI Publications

REMINDER

We remind all interested persons and in particular non-members of the CMI that they should apply for CMI Publications and in particular for the new Compendium of INTERNATIONAL CONVENTIONS ON MARITIME LAW (current price: SEK.400.) as well as for the subscriptions to the CMI NEWS LETTER and YEARBOOK to the publishers :

The Almqvist & Wiksell Periodical Company
P.O.Box 638, S-101 28 Stockholm, Sweden
Tel.:23.79.90 - Telex: 12430 Almqwik S.

Règles de Lisbonne 1987

L'Association de Droit Maritime de la République Démocratique Allemande (DDR) a, en liaison avec l'Association de Droit Maritime de la République Fédérale d'Allemagne, fait une traduction en allemand des Règles de Lisbonne 1987 ainsi que du commentaire de M^{re} Jean Warot.

Les personnes intéressées par ces traductions peuvent les obtenir de la "Gesellschaft für Seerecht der DDR", Lagerstrasse 26, DDR.25 Rostock.

Séminaire sur les Chartes-Parties Coque nue – Knokke 1989

Le CMI organisera l'année prochaine un Séminaire sur l'affrètement coque nue à KNOCKE-ZOUTE, Belgique, une station balnéaire située à 75 minutes par train IC de Bruxelles et à 120 kilomètres par auto-route de l'aéroport de Bruxelles.

Le Séminaire aura lieu à l'Hôtel "LA RESERVE", le mercredi 5 et le jeudi 6 avril 1989 et sera suivi de l'Assemblée statutaire annuelle du CMI le vendredi 7 avril 1989. Les participants seront priés de rejoindre Knokke-Zoute dès 1' après-midi du mardi 4 avril 1989 pour assister au cocktail d'accueil et au dîner qui sera servi ensuite.

Des informations plus détaillées sur le programme du Séminaire seront communiquées aux Associations Membres et publiées en temps opportun dans la CMI NEWS LETTER mais, dans un but d'organisation, les réservations de principe sont dès maintenant les bienvenues.

Prochaines Réunions

La prochaine réunion du Conseil Exécutif aura lieu à Londres le mercredi 7 septembre 1988.

La Commission Internationale sur les Lettres de Transport Maritime se réunira à Londres le jeudi 13 octobre 1988.

Publications du CMI

RAPPEL

Nous rappelons aux intéressés et en particulier aux non-membres du CMI qu'il convient de s'adresser pour les publications du CMI et en particulier pour le nouveau recueil des CONVENTIONS INTERNATIONALES DE DROIT MARITIME (prix actuel: SEK.400.) ainsi que pour les abonnements aux CMI NEWS LETTER et ANNUAIRE à la maison d'édition :

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

Autumn (November) 1988 — COMITE MARITIME INTERNATIONAL — Automne (Novembre) 1988

QUARTERLY

Afgiftekantoor: 2000 Antwerpen 1

BULLETIN TRIMESTRIEL

Important Advice

CHANGE OF ADDRESS

Since 1st October, 1988 the new address of CMI HEADQUARTERS and of the Administrative Officer is :

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Avis Important

CHANGEMENT D'ADRESSE

Depuis le 1er OCTOBRE 1988 la nouvelle adresse du SIEGE du CMI et du Conseiller Administratif est :

Draft Convention on Maritime Liens and Mortgages

MARITIME LIENS AND MORTGAGES

THE WORK OF THE JOINT IMO AND UNCTAD INTERGOVERNMENTAL GROUP OF EXPERTS

by Francesco Berlingieri

After the fourth session of the Joint Intergovernmental Group of Experts, held in London from 16th to 20th May 1988, the Chairman, with the assistance of the IMO and UNCTAD Secretariats, prepared a revised set of draft articles for submission to the subsequent session of the Joint Group of Experts to be held in Geneva from 12th to 20th December 1988 (Document TD/B/C.4/AC.8/17 also circulated under IMO symbol LEG/MLM/17).

The best way to report on the progress of the work of the Joint Group of Experts is to publish herein, with the kind permission of the IMO and UNCTAD Secretariats, the aforesaid text of revised articles, with some short comments, where appropriate.

The notes that follow the text are notes prepared by the Chairman with the assistance of the IMO and UNCTAD Secretariats.

ARTICLE 1

Recognition and enforcement of mortgages

"hypothèques" and charges

Mortgages, "hypothèques" and registrable charges of the same nature, which registerable charges of the same nature will be

Projet de Convention sur les Privilèges et Hypothèques Maritimes

referred to hereafter as "charges", [effected on seagoing vessels] [to secure payment of monies] shall be enforceable in States Parties provided that:

- (a) Such mortgages, "hypothèques" and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;
- (b) The register and any instruments required to be deposited with the registrar in accordance with the law of the State where the vessel is registered are open to public inspection, and that extracts of the register and copies of such instruments are obtainable from the registrar; and,
- (c) Either the register or any instruments referred to in sub-paragraph (b) specifies at least the name and address of the person in whose favour the mortgage, "hypothèque" or charge has been effected or that it has been issued to bearer, the maximum amount secured, if that is a requirement of the national law of the State of registration, or, otherwise, if that amount is specified in the instrument creating the mortgage, "hypothèque" and charge, and the date and other particulars which, according to the law of the State of registration, determine the rank as respects other registered mortgages, "hypothèques" and charges.

[(d)¹]

[(e)²]

1. If it is decided that the Draft Convention should deal with bareboat charter registration, it might be appropriate to insert an additional sub-paragraph which will read as follows:

"(d) If a vessel registered in one State is permitted to temporarily fly the flag of another State, the register of the former State specifies the State whose flag the vessel is permitted to fly and the register of that State specifies the State of original registration."

2. The delegation of the United Kingdom indicated that it would submit a new text concerning the cases of simultaneous multiple registration in a single State. See paragraph 11 of the report of the Sessional Group at its 4th session, JIGE (IV)/5.

It will be recalled that at Lisbon it was decided to suggest the deletion in Article 1(e) of the words "the amount secured", because the requirement of such information as a condition for the recognition and enforcement of mortgages and hypothèques would have created difficulties in respect of current account mortgages. The deletion of the aforesaid words was opposed by the delegations of several civil law countries on the grounds that the amount secured is information required under their domestic laws. In an attempt to solve this difficulty, it was suggested to re-insert those words and to add "if that is a requirement of the national law of the State of registration, or otherwise, if that amount is specified in the instrument creating the mortgage, hypothèque or charge".

The suggestion to add a paragraph (d) reading as per the text appearing in Note 1 is undoubtedly correct. If, in fact, the Joint Group of Experts will decide to regulate in the draft, to the extent that that may have a bearing on the mortgages and hypothèques, the effects of temporary change of flag following a bareboat charter, it will be of great importance to require that mention be made in the original register of the change of flag in order to bring it to the knowledge of any interested party. Conversely, the original register of the vessel should be mentioned in the new register, which is that immediately consulted by third parties who, save for any such indication in the flag register, would find it difficult to identify the original register. The easy identification of the original register is particularly important where, as is normally the case, mortgages and hypothèques continue to be registered in the original register.

The original text proposed by the United Kingdom delegation, reference to which is made in Note 3, had met with some criticisms. Such text was as follows:

If the law of the State in which a company owning a ship is registered requires registration of a charge on that ship in a separate companies or other register, registration of the charge pursuant to this article is without prejudice to such a requirement.

Ranking and effects of mortgages, "hypothèques", and charges

The ranking of registered mortgages, "hypothèques" or charges, as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

The text of this article is that approved by the CMI at Lisbon.

ARTICLE 3

(Voluntary) change of ownership or registration

1. In the event that a voluntary change of ownership (or voluntary change of registration) entails the deregistration of the vessel from the national register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all mortgages, "hypothèques" or charges are previously deregistered or the written consent of all holders of such mortgages, "hypothèques" or charges is obtained.

2. (Without prejudice (to article 3 bis and) to article 11.3) a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:

- (a) a certificate has been issued by the former State to the effect that the vessel has been deregistered, or
- (b) a certificate has been issued by the former State to the effect that the vessel will be deregistered with immediate effect at such time as the new registration is effected. The date of registration shall be the date of deregistration of the vessel by the former State.)

The wording of paragraph 1 has been changed because it was pointed out that the change of ownership does not necessarily entail the change of registration.

Paragraph 2 is in square brackets because it was objected by some delegations that it attempts to regulate matters which are outside the scope of a convention on mortgages and hypothèques and which are at present regulated in the U.N. Convention on Conditions for Registration of Ships - Article 11(4). Those who wanted to keep the provision pointed out, inter alia, that it is vital for the holders of mortgages

and hypothèques that the vessel is not registered in the register of another State unless after deregistration from the former register. For this reason, paragraph 2 of Article 3 is a necessary complement of paragraph 1. It was added that the U.N. Convention on Conditions for Registration of Ships is not yet in force and, when it will be in force, may not necessarily have the same contracting parties as the convention on maritime liens and mortgages.

In order to avoid a gap between deregistration from the former register and registration in the new register, paragraph 2(b) has been amended by replacing the words "when such new registration is effected" with the words "with immediate effect at such time as the new registration is effected" and by adding the last sentence.

ARTICLE 3 BIS

Temporary change of flag

1. No State Party shall consent that a vessel registered in that State be permitted to fly temporarily the flag of another State unless all registered mortgages, "hypothèques" or charges on that vessel have been previously deregistered or the written consent of the holders of all such mortgages, "hypothèques" or charges has been obtained.

[2.1.7]

NOTE

1. If it is decided that the Draft Convention should deal with bareboat charter registration, it might be appropriate to insert an additional sub-paragraph which will read as follows:

"2. No State Party shall consent that a vessel registered in another State Party be permitted to temporarily fly its flag unless a certificate has been issued by that State to the effect that the vessel is permitted to temporarily fly the flag of another State.

After discussion of the problem of regulating, in the draft convention, bareboat charter registration, the Chairman suggested that an informal Working Group should be set up with the object of finding an acceptable solution. The Working Group prepared this Article 3 Bis and the Rule of Interpretation which appears at the end of the text. There was no time, however, during the fourth session to consider these texts which will, therefore, be examined during the December 1988 Session.

The Chairman of the Working Group in introducing the above draft, explained that no reference had been made to bareboat chartering since the Working Group had thought that it was preferable to avoid a specific reference to the type of contract in connection with which a vessel may be permitted to temporarily fly the flag of a State other than the State of registration for the reason that such type may not necessarily be the same in all countries, or its name may not be the same. He added that in drafting the above provision as well as the

Rules of Interpretation the Working Group had tried, as far as it could, to adopt a neutral approach and a wording which would not be in conflict with any legal system presently in force. He also made clear that the provisions which had been suggested were not meant to impose any obligation to States Parties to introduce legislation permitting foreign vessels to temporarily fly their flag or national vessels to temporarily fly a foreign flag.

The draft appearing in the Note is a useful complement to the provision suggested by the Working Group since it would be harmful for the holders of registered mortgages and hypothèques if the vessel could be temporarily registered in another register without their consent, which is the condition precedent to the permission by the State of permanent registration to the vessel flying another flag. The provision has the same purpose of Art. 3 paragraph 2 and, therefore, should be adopted if Art. 3 paragraph 2 is maintained but would not be justified if Art. 3 paragraph 2 is deleted.

ARTICLE 4

Maritime Liens

1. Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:

(i) wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including social insurance contributions payable on their behalf;

(ii) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(iii) claims for salvage (and contribution in general average);

[(iv) port, canal, and other waterway dues and pilotage dues];

[(v) Claims for wreck removal];

[(vi) Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel].

The principle that the number of maritime liens ranking ahead of mortgages and hypothèques should be reduced as much as possible met with the general approval of the delegations. Not only no suggestion was made to increase the number of maritime liens listed in Art. 4 paragraph 1 of the 1967 Convention, as amended in Lisbon, but also it was suggested by several delegations that it should be reduced.

It was questioned whether a maritime lien should be granted to secure claims for contribution in general average. It will be recalled that this problem was also discussed at Lisbon and that finally the lien was maintained because the sacrifice of the cargo which gives right to the claim against the vessel for contribution yields to the advantage of all claimants. A difference, however, exists between the claim of the salvor and that of the owner of the cargo for contribution in General Average. Although, in fact, the general average sacrifice of the cargo, which gives rise to a claim of the cargo owners against the shipowner for general average contribution, contributes to the common safety similarly to salvage services, the element of the incentive to the performance of such services does not exist in the case of the general average sacrifice that is decided by the master, and not by the cargo owner. Therefore, the existence of a maritime lien does not in any manner influence the decision.

Objections were raised to the lien in respect of claims for port, canal and other waterways dues and pilotage dues on the grounds that such claims could be secured by a possessory lien. It is possible that port authorities are entitled to detain a vessel until port dues are paid and this would be allowed under Art. 2 of the 1952 Arrest Convention; but the exercise of a right of detention may be more difficult for authorities in charge of canals and other waterways. In any event, for all such authorities the exercise of such a right might be impractical and would require a sort of police control on the movements of all vessels. The suppression of this lien, which traditionally has always been recognized, might adversely affect the wide ratification of the convention. Moreover, it would appear that this lien has been invoked relatively seldom, and that the amount of the claims would not normally be of such a magnitude to materially reduce the recovery of claims secured by mortgages or hypothèques.

As regards pilotage dues, the position is different. In the first place, pilot services are often provided by private entities, and therefore, the public policy reasons which have been put forward as a reason for the preservation of the lien for port, canal and other waterway dues do not apply to pilotage. In the second place, pilotage is a service very similar in nature to other services, and more specifically to towage and, therefore, it may be difficult to justify a more favourable treatment to pilots compared with tug owners.

It will be noted that whilst in the 1967 Convention this lien ranks immediately below that for wages (in the 1926 Convention it ranks before wages), it has now been postponed to claims in respect of loss of life and personal injury and to claims for salvage and contribution in general average. In this respect, there has been a wide consensus.

The lien in favour of claims for wreck removal was challenged on different and more theoretical grounds by several delegations from civil law countries. It was, in fact, objected that since maritime liens are, pursuant to the preamble of Art. 4, granted on vessels, it is inconsistent with the scope of application of the Convention to secure with a maritime lien claims on a wreck. However, there are

various considerations in support of such lien. In the first place, it is very likely, if not certain, that if this lien is deleted, States would grant a right of retention in favour of the salvor. In the second place, there may be the need to remove a ship which is sunk and is not a wreck, for it may be repaired. In the third place, the fact that a ship becomes a wreck should not in itself cause the extinction of the existing maritime liens and, therefore, may not exclude the creation of a maritime lien. Nor can the reasons invoked within the IMO's Legal Committee for the deletion in Art. 1 paragraph 1(b) of the draft Salvage Convention of the words "including a ship which is stranded, left by its crew or sunk" support the view that this lien is misconceived. In fact, although the reasons advanced for the deletion are not at all persuasive, it may be justified by the reason that salvage is designed to prevent a major disaster to a ship, whilst this is not the reason which justifies all maritime liens and the lien for wreck removal expenses in particular.

Different and opposite views were expressed regarding the lien for tort claims in respect of physical loss or damage to property. Some delegations were in favour of the deletion of this lien; one delegation felt that the provision was too restrictive; another delegation was of the view that it should be given a higher priority. It will be recalled that similar conflicting views were expressed prior to and at the Lisbon Conference and that a suggestion had been made to restrict the lien to loss or damage caused by collision. However, at Lisbon it was decided by a large majority not to reduce the scope of the lien, but to extend it to economic loss arising out of physical loss or damage by replacing the words "in respect of loss of or damage to property" with "arising out of physical loss or damage".

2. No maritime lien shall attach to a vessel to secure the claims as set out in sub-paragraphs (ii) and (vi) of paragraph 1 which arise out of or result from oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, 1969 or of any amendments or protocol thereto which is in force, or the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties or nuclear fuel or of radioactive product or waste.

The wording of this paragraph differs from that adopted at Lisbon in that an express reference to the 1969 CLC has been inserted.

ARTICLE 5

Priority of maritime liens

1. The maritime liens set out in Article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges which comply with the requirements of Article 1, except as provided in paragraph 2 of Article 6.

2. The maritime liens set out in Article 4 shall rank in the order listed, provided, however, that maritime liens securing claims for salvage, [wreck removal] and [contribution in general average] shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said lien were performed.
3. The maritime liens set out in each of sub-paragraphs (i), (ii), [(iv)] and (vi)] of paragraph 1 of article 4 shall rank pari passu as between themselves.
4. The maritime liens set out in sub-paragraphs (iii) [and (v)] of paragraph 1 of Article 4 shall rank in the inverse order of the time when the claim secured thereby accrued. [Claims for contribution in general average shall be deemed to have accrued on the date on which the general average act was performed]; Claims for salvage shall be deemed to have accrued on the date on which the salvage operation was terminated.

The text of this Article corresponds to that of the 1967 Convention (which had not been altered at Lisbon) save for the square brackets inserted as a consequence of those appearing in Art. 4 paragraph 1(iii), (iv), (v) and (vi).

ARTICLE 6

[Maritime or] other liens and rights of retention

1. Each State Party may grant [maritime or] other liens or rights of retention to secure claims other than those referred to in Article 4. Such liens shall rank after the maritime liens set out in Article 4 and after registered mortgages, "hypothèques" or charges which comply with the provisions of Article 1, and such rights of retention shall not prejudice the enforcement of maritime liens set out in Article 4 or registered mortgages, "hypothèques" or charges which comply with the provisions of Article 1, nor the delivery of the vessel to the purchaser in connection with such enforcement.
2. If a lien or right of retention is granted in respect of a vessel in possession of either:
 - (a) a shipbuilder, to secure claims for the building of the vessel, or
 - (b) a ship repairer, to secure claims for repair, including reconstruction of the vessel effected during such possession,

such lien shall be postponed to, and such right of retention shall not prejudice the enforcement of, all maritime liens set

out in Article 4, but may take priority over registered mortgages, "hypothèques" or charges on, or be exercisable against, the vessel. Such lien or right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or ship repairer, otherwise than in consequence of an arrest or seizure.

During the New York Conference of the CMI in 1965, the problem as to whether possessory liens and rights of retention may be exercisable against holders of maritime liens and of mortgages and hypothèques was debated at some length. In a comparative law analysis of the problem it was in fact ascertained that the future convention made no provision on this point, no international uniformity would have been achieved. The reason for this is that the question whether the holder of a possessory lien or of a right of retention can refuse to surrender possession until he is paid even in case of an arrest leading to a forced sale or in that of bankruptcy is not answered similarly in the domestic legislation of all maritime countries. However, in a great many of them, the holder of a possessory lien or of a right of retention could refuse to surrender possession, so that, in practice, his claim was satisfied before the vessel could be sold and its price distributed among the creditors.

Several delegations were of the view that this rule was in conflict with the policy of ensuring that certain maritime liens should be granted the highest priority and that, except for those liens, holders of mortgages and hypothèques should rank ahead of all other claims. Other delegations, however, stated that there was little hope of their countries ratifying a convention which provided that possessory liens and rights of retention could not be exercised against holders of maritime liens and of mortgages and hypothèques.

As a compromise, it was ultimately agreed not to positively regulate possessory liens and rights of retention in the convention, but to allow States Parties to provide in their domestic law that certain possessory liens and rights of retention (and no other) could be exercised against holders of mortgages and hypothèques, but not against holders of maritime liens.

This solution was not touched upon at Lisbon, since it was felt that, though not entirely satisfactory, it might ensure a wider acceptance of the Convention. The only change was to make clear that repairs included major repairs as well as the reconstruction of a vessel.

During the last two sessions of the Joint Intergovernmental Group of Experts, objections were raised by several delegations in respect of Art. 6. Some delegations (mostly from civil law countries) stated that the legal nature of rights of retention was totally different from that of maritime liens as well as of mortgages and hypothèques and that, therefore, it was totally misconceived to attempt to regulate the relationship between them. Other delegations were of the view that instead of leaving to national law the possibility of creating other maritime or possessory liens, an attempt should be made

to reach global international uniformity and, therefore, to list in the Convention the liens ranking after mortgages or hypothèques.

Other delegations, however, were of the view that the compromise adopted in the 1967 Convention should be left untouched and, since this appeared to be the majority view, Art. 6 has not been changed, save for the addition in square brackets of the word "maritime" (or other) before "liens", to make clear that State Parties may also create maritime liens other than those set out in Art. 4. Whether this is a sound rule may be open to doubts. In fact, maritime liens are secret charges which adversely affect the free transfer of title to a vessel and, therefore, even if they do not prevent the enforcement of maritime liens and mortgages or hypothèques ranking ahead of them, they are an obstacle to the sale of second hand vessels; the greater the number of maritime liens which may be attached to a vessel, the more difficult it is for a prospective buyer to find out whether any such liens exist on the vessel.

ARTICLE 7

Characteristics of maritime liens

The maritime liens follow the vessel notwithstanding any change of ownership or of registration or of flag.

The words "set out in Article 4" which appear in the 1967 Convention and in the Lisbon draft after "maritime liens" have been deleted so as to make the characteristics set out in Art. 7 apply also to "national" maritime liens. This change is connected with the addition in Art. 6 paragraph 1 of the word "maritime" before "liens" so as to make clear that States Parties are free to create also other maritime liens, provided, of course, that they rank after those set out in Art. 4 and after mortgages or hypothèques. Some may consider it undesirable for only one characteristic of a maritime lien to be regulated internationally. The other characteristic, which was set out in Art. 7 paragraph 1 of the 1967 Convention, has now been inserted (with the deletion of the reference to charterers other than the demise charterer), in the preamble of Art. 4. It follows, therefore, that only one - but not the other - characteristic of maritime liens would apply to national maritime liens. Moreover, other relevant provisions, such as that on the extinction of maritime liens, apply only to the maritime liens set out in Art. 4. Similarly, in Art. 10 reference is made only to the maritime liens set out in Art. 4.

ARTICLE 8

Extinction of maritime liens by [passage] [lapse] of time

1. The maritime liens set out in Article 4 shall be extinguished after a period of one year from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested [or seized], such arrest [or seizure] leading to a forced sale.

2. The one-year period referred to in the preceding paragraph shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the [arrest or seizure of the vessel is not permitted by law] [lienor is legally prevented from arresting the vessel].

An alternative text had been drafted, following the request of several delegations, designed to cover causes of extinction of maritime liens arising from the extinction of the claim secured by such lien. However, during the last session of the Joint Intergovernmental Group of Experts, the view of regulating only the extinction by lapse of time as in the 1967 Convention prevailed. The reference to seizure, in addition to arrest, as one of the means of preventing the extinction of maritime liens, was put in square brackets. It will be recalled that the reference to seizure was added in Lisbon, in view of the distinction drawn between arrest and seizure by the 1952 Arrest Convention, Article 1 paragraph 2 of which states that "arrest" does not include the seizure of a ship in execution or satisfaction of a judgment.

ARTICLE 9

Assignment and subrogation

The assignment of or subrogation to a claim secured by a maritime lien set out in [Article 4] [and in Article 6] [this Convention] entails the simultaneous assignment of or subrogation to such maritime liens.

The reference to Art. 4 has been placed in square brackets and a reference to the Convention has been inserted, equally in square brackets; alternatively, a reference to Art. 6 has been added, still in square brackets. These additions have been made in order to apply the provision on assignment and subrogation also to "national" maritime liens, should the view that States Parties must be permitted to create other maritime liens be ultimately adopted. As stated before, the advisability of extending the provisions of the Convention to "national" maritime liens is open to doubt. In any event, should this view prevail, Art. 7 ought also to apply to such liens.

ARTICLE 10

Notice of forced sale

Prior to the forced sale of a vessel in a State Party the competent authority of such State shall give, or cause to be given, at least 30 days written notice of the time and place of such sale to:

- (a) the competent authority in charge of the register in the State in which the vessel is registered.¹
- (b) all holders of registered mortgages, "hypothèques", or charges which have not been issued to bearer;

- (c) such holders of registered mortgages, "hypothèques" and charges issued to bearer and to such holders of maritime liens set out in Article 4 whose claims have been notified to the said authority.

NOTE

1. If it is decided that the Draft Convention should deal with bareboat charter registration, it might be appropriate to amend the sub-paragraph (a) to read as follows:

"(a) The competent authority in charge of the register in the State in which the vessel is registered and, if the vessel is temporarily flying the flag of another State, the competent authority in charge of the register in that State."

One delegation suggested that the text of the 1967 Convention should be replaced by an alternative one wherein the length of the notice period was left to the discretion of the court conducting the sale, or, if this was deemed preferable, that the notice periods be shortened and referred to the commencement of proceedings. The great majority of the delegates supported the 1967 text. The words "the registrar of the register" were replaced by "the competent authority in charge of the register in the State".

The amendment of sub-paragraph (a), suggested in the footnote, is certainly advisable in case it will be decided that the Convention should deal with bareboat charter registration.

ARTICLE 11

Effects of forced sale

1. In the event of the forced sale of the vessel in a State Party all mortgages, "hypothèques" or charges, except those assumed by the purchaser with the consent of the holders and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided, however, that:

(a) at the time of the sale, the vessel is [in/ under/ in the area of] the jurisdiction [in the territory] of such State, and

(b) the sale has been effected in accordance with the law of the said State and all provisions of this Convention have been observed.

This paragraph is the same as in the Lisbon draft, save that in sub-paragraph (a) various alternatives have been suggested to indicate the requirement of the vessel being within the jurisdiction of the State wherein the judicial sale is effected. The wording adopted in other conventions should be taken into consideration when considering the merits of such alternatives. For example, in the 1952 Arrest Convention, Art. 5 in order to identify the authority which may permit the release of the vessel makes reference to the court or other

appropriate judicial authority "within whose jurisdiction the ship has been arrested". Art. 6 states that all question relating to liability in damages for the arrest of a ship shall be determined "by the law of the Contracting State in whose jurisdiction the arrest was made or applied for". The same language may be found in Art. 7 paragraph 2.

2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel including the costs incurred for the upkeep of the vessel from the time of arrest [and the costs of repatriation of the crew], and of the distribution of the proceeds shall be paid first out of the proceeds of sale. The balance of the proceeds shall be distributed among the holders of maritime liens, liens and rights of retention mentioned in paragraph 2 of Article 6 and registered mortgages, "hypothèques" or charges, in accordance with the provisions of this Convention to the extent necessary to satisfy their claims.

It will be recalled that, following a suggestion of the Drafting Group, the words "and expenses" were added at Lisbon in order to avoid the danger of a restricted interpretation of the words "costs", such as to exclude the expenses of maintenance of the vessel after her arrest or seizure (Report of the CMI on the Draft Revision of the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, in Lisboa II, p. 104). The Joint Group of Experts was, however, of the view that such an addition was not sufficiently clear and decided to add the words "including the costs incurred for the upkeep of the vessel from the time of the arrest". A further clarification was suggested in respect of the costs of repatriation of the crew, but since its need was doubtful, it was placed in square brackets. The specific reference to the costs of upkeep of the vessel is, beyond doubt, an improvement.

The second sentence of this paragraph provides that the balance of the proceeds shall be distributed among the holders of maritime liens, liens and rights of retention mentioned in paragraph 2 of Article 6 and registered mortgages, hypothèques or charges in accordance with the provisions of the Convention. When this text was drafted the only maritime liens referred to in the Convention were those listed in Article 4; it was thought, therefore, that a specific reference to that article was not necessary, whilst a reference was deemed appropriate to paragraph 2 of Art. 6 in respect of the (possessory) liens or rights of retention mentioned therein. A danger of confusion could arise if in paragraph 1 of Art. 6 the word "liens" is replaced by "maritime or other liens": a doubt, in fact, may arise as to what maritime liens reference is made in paragraph 2 of Art. 11, although it is then stated therein that the proceeds of the sale shall be distributed "in accordance with the provisions of this Convention".

3. When a vessel registered in State Party has been the object of a forced sale in a State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all mortgages,

"hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances provided that the requirements set out in paragraphs 1(a) and (b) have been complied with/and that the proceeds of such forced sale have been deposited with the authority that is competent under the law of the place of sale and that these proceeds are actually available and freely transferrable. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of reregistration, as the case may be.

The observer of the CMI explained the reasons for the deletion, at Lisbon, of the words "and that the proceeds of such forced sale have been distributed in compliance with paragraph 2 of this Article or have been deposited with the authority that is competent under the law of the place of the sale" which appear at the end of the first sentence of this paragraph. The Joint Group of Experts agreed that it was correct to eliminate the words "the proceeds of such forced sale have been distributed in compliance with paragraph 2 of this Article", so that the issuance of the certificate which enables the buyer to obtain the deletion of all registered encumbrances and to have the vessel registered in his name or to obtain its deregistration is not made conditional on the actual distribution of the proceeds of the sale. It decided, however, to retain the requirement of the proceeds being deposited "with the authority that is competent under the law of the place of the sale" and to add the words "and that these proceeds are actually available and freely transferable" in order to ensure that the holders of maritime liens, liens and rights of retention and of mortgages, "hypothèques" or charges will actually be satisfied out of the proceeds of sale.

(4.1.)

NOTE

If it is decided that the Draft Convention should deal with bareboat charter registration, it might be appropriate to insert an additional sub-paragraph which will read as follows:

"4. If at the time of the sale the vessel is temporarily flying the flag of a State Party other than the State of registration, the competent authority in charge of the register in the State whose flag the vessel is temporarily permitted to fly shall, upon production of the certificate mentioned in paragraph 3, issue a certificate to the effect that the right to fly the flag of that State is revoked."

The additional provision added in the footnote was suggested by the Working Group and would be a necessary complement of those now existing in the draft, in case it will be decided to deal in the Convention with temporary registration of bareboat chartered vessels.

ARTICLE 12

Scope of application

1. Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party.

Some delegations expressed reservations about the extension of the scope of the Convention to vessels registered in States not Parties to the Convention. Strong doubts were expressed in respect of the possibility of actually implementing this provision in procedural matters such as those involved in the notification of proceedings leading to forced sale to the competent authorities of States not Parties. Article 14 of the 1926 Convention was consequently considered as more appropriate. The views of the CMI at the time of the preparation of the 1967 Convention, were just opposite. It was, in fact, thought that Art. 14 of the 1926 Convention, whereby the provisions of such Convention applied when "the vessel to which the claim relates belongs to a Contracting State", left too wide an area outside the scope of the Convention and did not satisfactorily protect nationals of States Parties whose claims would be secured by a maritime lien under the Convention. Such claimants would, in fact, have to find out what the governing law was and the priority of their claim might, in cases where the law of the flag would apply, depend on the nationality of the vessel. If, on the contrary, in all States Parties the provisions of the Convention apply in all cases, certainty, in addition to uniformity, would be obtained.

It has been pointed out that a Convention cannot bind States who are not parties to such Convention. This is certainly correct, but the provision on the scope of application of a Convention is similar in nature to a rule of private international law which, where enacted in the States Parties, has the effect of making the provisions of the Conventions, as enacted in such States applicable in all cases set out by such rule. The rule on the scope of application is, therefore, directed only to States Parties who, upon enacting the rule, decide, in their full sovereign freedom, upon the scope of application of the uniform rules as they would in respect of other rules of a purely domestic origin. There are States where maritime liens are always governed by the lex fori and no one has ever doubted that this rule is legitimate.

There is an increasing trend to extend the scope of application of international conventions as much as possible, in order to ensure as wide a uniformity as possible. Reference may be made in this respect to the 1969 Convention on Civil Liability for Oil Pollution Damage, the 1976 Convention on Limitation of Liability for Maritime Claims and to the 1978 Convention on the Carriage of Goods by Sea.

In order to verify what inconveniences may occur if the scope of the Convention is that set out in paragraph 1 of Art. 12, it may be useful to divide the provisions of the Convention into four categories: 1)

private international rules; (ii) substantive rules of administrative law; (iii) substantive rules of private law; (iv) procedural rules.

(i) Private International Rules

Articles 1 and 2 belong to this category.

Article 1 sets out the conditions on the basis of which States Parties are bound to enforce foreign mortgages, "hypothèques" or charges, whether or not on vessels registered in States Parties. There does not seem to be any possible inconvenience in making this provision applicable also to vessels registered in States not parties to the Convention.

Article 2 identifies the proper law in respect of the ranking of mortgages, "hypothèques" and charges as between themselves and in respect of the procedure of enforcement. It would be quite surprising if in any State there were two different provisions, according to whether or not a vessel is registered in a State Party.

(ii) Substantive Rules of Administrative Law.

Article 3 and 3 Bis belong to this category.

Paragraph 1 of Article 3 and paragraph 1 of Article 3 Bis are binding only on States Parties. Paragraphs 2 of both such Articles apply only between States Parties. No problem may, therefore, arise.

(iii) Substantive Rules of Private Law.

The provisions that belong to this category are those of Article 4 to 9. Each State has full freedom to decide which law or laws apply within its territory. Therefore, once the provisions of the Convention on maritime liens have been implemented, each State Party is entirely free, whether on its own initiative or pursuant to an obligation arising out of the ratification of or accession to the Convention, to apply such provisions to all vessels whether registered in States Parties or not.

Article 6 is addressed to States Parties only, for obviously a Convention may not set out what States not parties may or may not do. Of course, each State Party may then decide what the scope of application is of the provisions enacted pursuant to this Article. It is logical, however, that they have the same scope of application as the provision of an international origin.

(iv) Procedural Rules.

Such rules are those of Articles 10 and 11.

Article 10 provides that prior to the forced sale of a vessel in a State Party, the competent authority shall give notice of the

time and place of the sale to the persons listed in such Article. The implementation of this provision will probably entail a change in certain rules of procedure of the States Parties, although the principle that prior notice of the forced sale must be given to the interested parties may be found in the great majority of national laws. Whether it exists or not, it is quite logical that the rules of procedure concerning the forced sale of vessels are the same, whatever the nationality of the vessel may be. Therefore, it is really difficult to conceive any obstacle to the compliance with this provision when a vessel is registered in a State not party to the Convention. At present, there are certainly a great many States not parties to the 1967 Convention which already have provisions similar to those set out in this Article and, therefore, thereunder notices are given to foreign registrars without the existence of any bilateral or plurilateral agreement.

Article 11 regulates in its paragraphs 1 and 2 the extinction of liens, mortgages "hypothèques" or charges as a consequence of the forced sale and the distribution of the proceeds of sale. These provisions apply only in respect of States Parties and, therefore, cannot give rise to any problem.

Paragraph 3 of Article 11 is equally applicable, in its first part, only to States Parties. The provision whereby the registrar is bound to delete all registered mortgages, "hypothèques" or charges and to register the vessel in the name of the purchaser or to issue a certificate of deregistration is not expressly addressed to States Parties, but in fact it is so addressed, for the Convention cannot bind States not parties.

From the above analysis, it appears, therefore, that paragraph 1 of Article 12 as presently drafted would ensure wider uniformity without creating any particular problem.

2. Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned, operated or chartered by a State and appropriated to public non-commercial services.^{1.}

NOTE

1. During the second session of the JIGE, one delegation proposed the addition of a further paragraph which would read as follows:

"3. Nothing in this Convention shall enable rights on maritime liens to be enforced against a vessel owned by a State and used for commercial purposes if the vessel carried a certificate issued by the appropriate authorities of the State of the vessel's registry stating that the vessel is owned by that State and that the vessel's liability under the claims enumerated in Article 4 is covered."

The question of the application of the Convention to vessels owned by States and used for commercial purposes had already been considered at Lisbon, where a provision similar to that appearing in the note was put forward, but, since it had no support at that time, was not submitted to a vote.

ARTICLE 13

Communication between States Parties

For the purpose of Articles 3, 10 and 11 of this Convention, the competent authorities of the States Parties shall be authorized to correspond directly between themselves.

ARTICLE 14

Conflict of conventions

Nothing in this Convention shall affect the application of an international convention providing for limitation of liability or of national legislation giving effect thereto.

ARTICLE 15

Rule of interpretation

If a vessel registered in one State is permitted to fly temporarily the flag of another State, references in this Convention to the "State where the vessel is registered" or to the "State of

registration" shall be deemed to be references to the first mentioned State and references to the "competent authorities in charge of the register" shall be deemed to be references to the competent authority in charge of the register in the first mentioned State.]

This is the second provision suggested by the Group of Experts referred to in the comments on Article 1. The Group of Experts thought, in fact, that all references in the convention to the State where the vessel is registered or to the State of registration should, in case of the vessel being temporarily permitted to fly another flag, be deemed to be references to the State of original registration, for it is normal practice that mortgages, hypothèques or charges, continue to be registered in the register kept in that State. In order to avoid a repeated clarification, which would necessarily make the relevant provisions heavier, it was thought that a general provision could have been preferable.

International Conference on Salvage

An International Conference on Salvage has been convened by IMO to consider and adopt a new Convention on Salvage on the basis of the draft prepared by the IMO's Legal Committee (Doc.LEG/CONF. 7/3) of 1st July, 1988. The draft has been published in the 1987 Winter issue of the CMI NEWS LETTER.

New Subcommittees

At its last meeting on 7 September, 1988 the Executive Council of the CMI has decided to set up two new committees :

- 1) Transfer of Title of Goods in transit by Electronic Data interchange -
Chairman: Professor Jan Ramberg.
- 2) Uniformity of the Law of Carriage of Goods by Sea in the 1990's -
Chairman: President Berlingieri.

IMO Conventions

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

PROTOCOL OF 1984 TO AMEND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969, (CLC PROT 1984)

- Ratification by the Federal Republic of Germany, 18 October, 1988

PROTOCOL OF 1984 TO AMEND THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE (FUND PROT 1984)

- Ratification by the Federal Republic of Germany, 18 October, 1988.

Conférence Internationale sur l'Assistance

Une Conférence Internationale sur l'assistance a été convoquée par l'OMI pour prendre en considération et adopter une nouvelle convention sur l'assistance basée sur le projet préparé par le Comité Juridique de l'OMI (Doc.LEG/CONF.7/3) du 1er juillet 1988. Le projet a été publié dans l'édition Hiver 1987 de la CMI NEWS LETTER.

Nouvelles Commissions

En sa dernière réunion le 7 septembre 1988 le Conseil Exécutif du CMI a décidé la création de deux nouvelles commissions :

- 1) Transfert du titre de propriété de la marchandise en cours de transport par échange de données électroniques -
Président: le Professeur Jan Ramberg.
- 2) Uniformité du droit du transport de marchandises par mer dans les années quatre vingt dix -
Président: le Président du C.M.I.
Francesco Berlingieri.

Conventions OMI

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

PROTOCOLE DE 1984 PORTANT MODIFICATION A LA CONVENTION INTERNATIONALE SUR LA RESPONSABILITE CIVILE POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDRO-CARBURES (CLC PROT 1984)

- Ratification par la République Fédérale d'Allemagne, 18 octobre 1988

PROTOCOLE DE 1984 PORTANT MODIFICATION A LA CONVENTION INTERNATIONALE PORTANT SUR LA CREATION D'UN FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDRO-CARBURES (FUND PROT 1984)

- Ratification par la République Fédérale d'Allemagne, 18 octobre 1988.

Personalia

Australia and New Zealand

The new Board of The Maritime Law Association of Australia and New Zealand is composed as follows :

President: R.SALTER, c/o Philips Fox, 461 Bourke Street, (DX 147) Melbourne, Vic.3000
 Vice-President: S.HETHERINGTON, Ebsworth & Ebsworth, 2 Castlereach Street, Sydney, N.S.Wales.
 New Zealand Vice-President: Colin CARRUTHERS (Barrister), Wellington, New Zealand.
 Executive Secretary : David LOADMAN, c/o Abbott Tout Russel Kennedy, 11th Floor, 469 La Trobe Street, Melbourne, Vic.3000.
 Assistant Secretary : D.ROYLANCE, Middletons Oswald Burt, 20th Floor, 140 William Street, (DX 405), Melbourne, Vic.,3000.
 Treasurer: Ian MAITLAND, Finlaysons, S.G.I.C. Building, 211 Victoria Square, Adelaide, S.A.,5000.

Australie et Nouvelle Zélande

Le nouveau Bureau de l'Association de Droit Maritime d'Australie et de Nouvelle Zélande est composé comme suit :

Belgium

In the SUMMER 1988 issue of the CMI NEWS LETTER it has unfortunately been omitted to mention in his capacity as Vice-President of the Belgian Maritime Law Association :

Mtre Jean COENS, Avocat
 Frankrijklei 115, - B.2000 Antwerpen
 Tél:03/233.97.97/96 - Telex: 72748 EULAWB

Belgique

A l'occasion de l'édition ETE 1988 de la CMI NEWS LETTER il a malencontreusement été omis de mentionner en sa qualité de Vice-Président de l'Association Belge de Droit Maritime :

Uruguay

We have been advised by the Asociación Uruguaya de Derecho Marítimo that its Presidency is occupied until July 1989 by :

Mr.Erling Rolf SCHANDY

Uruguay

Nous avons été informés par l'Asociación Uruguaya de Derecho Marítimo que sa Présidence sera exercée jusqu'en juillet 1989 par :

Venezuela

The new Board of the Maritime Law Association of Venezuela is composed as follows :

President : Dr.Wagner ULLOA F., Torre Banco Lara, Piso 11, Ofc.A-B, Esquina de Mijares, Caracas 1010, Venezuela.
 Telex: 27245 Mulex VC - Fax:(02)838119

Vice-Presidents:
 Executive : Dr.Luis COVA A.
 Maritime Legislation: Dr. Carlos A.MATHEUS
 Institutional Relations: Dr.Armando TORRES PARTIDAS
 Shipping Affairs: Dr.Capt.Marcel ANTONORSI
 Insurance Affairs: Dr.Rafael REYERO A.
 Publications and Events: Dr.José MORENO PARTIDA

Directors:
 Mr.Peter F. SCHRÖDER, Dr.Tulio ALVATEZ LEDO
 Capt. Saul PICARDI, Dr.Omar FRANCO,
 Dr.Jesus NOGUERA MORA.

Substitutes:
 Mr.Victor SELINGER, Dr.Gilberto VILLALBA,
 Capt.Ivan DE ANGELIS, Dr.Andres REVERON,
 Dra. Ileana ARIAS

Secretary General: Capt. German VIERMA,
 Substitute Secretary General: Capt.Lelis GONZALEZ
 Assistant Secretary-General: Capt.Antonio COLOMES
 Substitute: Dr. Jesus ROHAS G.
 Treasurer: Dr. Guillermo BASTARDO
 Substitute Treasurer: Dr.Luis ACUNA.

Venezuela

Le nouveau Bureau de l'Asociación Venezolana de Derecho Marítimo est composé comme suit:

Next Meetings

MARITIME LIENS AND MORTGAGES

The work within the Joint IMO/UNCTAD Group of Experts will be dealt with in a meeting of the International preparatory Group on 12/16 December and 19/20 December, 1988.

CARRIAGE OF GOODS BY SEA

An International Subcommittee dealing with the Uniformity of the Law on the Carriage of Goods by Sea in the Nineties will meet at Knokke (Belgium) on Tuesday 4 April, 1989.

SALVAGE

The Diplomatic Conference on the Draft Convention on Salvage will be held in London on 17/28 April, 1989.

Seminar on Bare-Boat Charter Parties – Knokke 1989

The CMI will organize next year a Seminar on Bareboat Charter Parties at KNOCKE-ZOUTE, Belgium, a seaside resort at 75 minutes by IC-Trains from Brussels and about 120 km by motorways from Brussels Airport.

The Seminar will take place at Hotel "LA RESERVE", on Wednesday 5th and Thursday 6th April, 1989 and will be followed by the regular annual Assembly of the CMI on Friday 7th April, 1989. All participants are therefore expected to arrive at Knokke - Zoute in the afternoon of Tuesday 4th April 1989 to attend the welcome cocktail and dinner served on that evening.

Further detailed information on the programme of the Seminar will be circulated to Member Associations and published in due course in CMI NEWS LETTER but, for organization purposes, tentative reservations would already be welcomed.

Paris Conference 1990

The next and XXXIVth International Conference of the C.M.I. convened by the French Maritime Law Association will take place from 1 to 6 July, 1990 at the GRAND HOTEL in Paris.

CMI Publications

REMINDER

We remind all interested persons and in particular non-members of the CMI that they should apply for CMI Publications and in particular for the new Compendium of INTERNATIONAL CONVENTIONS ON MARITIME LAW (current price: SEK.400.) as well as for the subscriptions to the CMI NEWS LETTER and YEARBOOK to the publishers:

The Almqvist & Wiksell Periodical Company
P.O.Box 638, S-101 28 Stockholm, Sweden
Tel.: 23.79.90 - Telex: 12430 Almqwik S.

Prochaines Réunions

PRIVILEGES ET HYPOTHEQUES MARITIMES

Les travaux du Groupe d'experts OMI/CNUCED seront examinés lors d'une réunion du Groupe préparatoire international les 12/16 décembre et 19/20 décembre 1988.

TRANSPORT PAR MER DE MARCHANDISES

Une Commission internationale s'occupant de l'uniformité du droit du transport de marchandises par mer dans les années quatre-vingt dix, se réunira à Knokke (Belgique) le mardi 4 avril 1989.

ASSISTANCE

La Conférence diplomatique sur le Projet de Convention sur l'assistance se tiendra à Londres les 17/28 avril 1989.

Séminaire sur les Chartes-Parties Coque nue – Knokke 1989

Le CMI organisera l'année prochaine un Séminaire sur l'affrètement coque nue à KNOCKE-ZOUTE, Belgique, une station balnéaire située à 75 minutes par train IC de Bruxelles et à 120 kilomètres par auto-route de l'aéroport de Bruxelles.

Le Séminaire aura lieu à l'Hôtel "LA RESERVE", le mercredi 5 et le jeudi 6 avril 1989 et sera suivi de l'Assemblée statutaire annuelle du CMI le vendredi 7 avril 1989. Les participants seront priés de rejoindre Knokke-Zoute dès l'après-midi du mardi 4 avril 1989 pour assister au cocktail d'accueil et au dîner qui sera servi ensuite.

Des informations plus détaillées sur le programme du Séminaire seront communiquées aux Associations Membres et publiées en temps opportun dans la CMI NEWS LETTER mais, dans un but d'organisation, les réservations de principe sont dès maintenant les bienvenues.

Conférence de Paris 1990

La prochaine et XXXIVème Conférence Internationale du C.M.I. organisée par l'Association Française du Droit Maritime se tiendra du 1er au 6 juillet 1990 au GRAND HOTEL à Paris.

Publications du CMI

RAPPEL

Nous rappelons aux intéressés et en particulier aux non-membres du CMI qu'il convient de s'adresser pour les publications du CMI et en particulier pour le nouveau recueil des CONVENTIONS INTERNATIONALES DE DROIT MARITIME (prix actuel: SEK.400.) ainsi que pour les abonnements aux CMI NEWS LETTER et ANNUAIRE à la maison d'édition:



CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

Winter 1988 (January 89) — COMITE MARITIME INTERNATIONAL — Hiver 1988 (Janvier 89)

QUARTERLY

Afgiftekantoor: 2000 Antwerpen 1

BULLETIN TRIMESTRIEL

In Memoriam

Dr. Nagendra Singh

Dr. Nagendra Singh, President of the Indian Maritime Law Association and one of the Vice Presidents of the CMI, died in The Hague on 11th December 1988. Nagendra Singh has been a Vice President of the CMI since 1974 and has always been a great supporter of the CMI. He believed in the mission of the CMI in today's world and assisted the CMI with his wisdom and his advice in the performance of such mission.

Dr. Nagendra Singh was born in Dungarpour, Rajasthan on 18th March 1914 and was the son of His Highness Maharawal Bijawa Singhji, K.C.I.E. He made a long, brilliant career in serving his country and many international organizations. It is most almost impossible to cite all the services he performed, but it may suffice to indicate some. He was the Secretary of the Ministry of Defence in India in 1955, Directory General of Maritime Transport from 1956 to 1964, Secretary of the Ministry of Transport in India in 1965, Secretary to the President of the Republic of India from 1966 to 1971. On the international scene he represented India in many international conferences as the head of the Indian delegation and he was President of the Assembly of IMCO from 1963 to 1965. He also performed brilliant services in the judiciary. He was elected judge of the International Court of Justice for nine years on 6th February 1973 and was reelected for a further nine years on 6th February 1982. He was Vice President of the International Court of Justice from 1976 to 1979 and President of the International Court of Justice from 1985 to 1988.

The CMI has lost with Dr. Nagendra Singh one of its most authoritative members.

Francesco Berlingieri,
President of CMI

Mr. Donald O'May

Donald O'May, the senior partner of Ince & Co., died on 30th December 1988. He was Chairman of the Sub-Committee and of the Executive Committee of the British Maritime Law Association, and in such capacity, he has greatly contributed to the work of the CMI. He was current Chairman of the Steering Committee of the European Users' Council of the London Court of International Arbitration; a member of the Commercial Court Users' Committee, the Technical & Clauses Committee of the Institute of London Underwriters, where he was one of those responsible for the drafting of the new Institute Clauses, adviser to the London Market at the UNCTAD working groups in Geneva on Marine Hull and Cargo insurance model clauses.

Donald O'May was the co-author of the Admiralty title in Halsbury's Laws of England, and was working on the last stages of a major book on marine insurance at the time of his death.

The death of Donald O'May has been a great loss for the CMI.

Francesco Berlingieri
President of CMI

Convention on Financial Leasing

By Allan Philip

1. A diplomatic conference held in Ottawa in May of 1988 under the auspices of Unidroit has adopted a convention on international financial leasing. Only at a very late stage of the preparatory work on the Convention which has lasted for many years was the CMI consulted on the draft and asked to send an observer to the conference. The Assembly of the CMI in April 1988 adopted a report on the Convention prepared by a CMI working group. This report was submitted to Unidroit and Unidroit was advised against the inclusion of ships into the Convention. Likewise, during the conference in which I participated as observer for CMI, I submitted a position paper to the same effect. However, the final text of the Convention does include ships within its scope although minor corrections of some rules of the Convention were made as a result of the intervention by the CMI. The operative part of the Convention is reprinted in the annex. Below I shall briefly describe the main principles of the Convention as they apply to ships.

2. The Convention governs international financial leasing transactions. It is a condition for its application that there are three parties to such a transaction: the supplier, the lessor and the lessee, and that there is a supply agreement between the supplier (the ship yard) and the lessor and a leasing agreement between the lessor (owner) and the lessee (demise charterer). It is also a condition that the supply agreement is made with a supplier selected by the lessee on the basis of specifications and other conditions provided or approved by the lessee, that the supplier knows that the owner has entered into or will enter into a leasing agreement with the lessee, and that the rentals which are payable under the leasing agreement are calculated with the principal purpose of ensuring amortisation of the purchase sum.

The Convention applies whether the lessee has an option to buy or not. It does not apply to consumer transactions. It

applies to subleases, thus also to subcharters. It is only applicable when the lessor and the lessee have their places of business in different States, when these States as well as the State where the supplier has its place of business are parties to the Convention and when both the supply agreement and the leasing agreement are governed by the law of a Contracting State.

The parties may exclude the application of the Convention only if all three of them agree upon it. However, if the parties to one of the two agreements include a choice of law clause in the agreement providing for the application of the law of a non-contracting State then that will bring the agreement outside the scope of the Convention.

Where the Convention is applicable most of its provisions may be derogated from in the contracts. That, however, is not possible with respect to 1) warranties of title, 2) the protection of the lessee against payment of excessive damages or 3) acceleration of payment of future rentals in case of default by the lessee.

3. The Convention contains a number of rules regulating the relationship between the three parties to the supply and leasing agreements.

The lessor is relieved of any liability in his capacity of lessor towards the lessee or third parties for any defects in the ship if as foreseen by the Convention he has left it to the lessee to select the supplier and provide the specifications. He is, however, not relieved of any liability he may have under the applicable law in any other capacity, e.g. as owner.

On the other hand, the lessee has the same rights against the supplier as if the supply agreement were an agreement made directly between the supplier and the lessee.

In case of delay or non-delivery or non-conformity of the ship with the specifications the lessee may terminate the

leasing agreement. However, the lessor has a right to remedy any defects as if the lessee had bought the ship under the terms of the supply agreement. The lessee has no other claims against the lessor for non-delivery except recovery of any rentals he has paid. These rules are very broadly formulated and must be understood on the background of the otherwise applicable law.

The lessee has a duty to take proper care of the equipment. If he defaults in payment of rentals the lessor may terminate the agreement and may obtain damages for the loss he has incurred.

The lessor is free to transfer his rights to the ship and his rights under the leasing agreement. The lessee may only transfer the lease or any rights under the lease with the consent of the lessor. A sublessee is then put in the same position as the lessee himself under the Convention.

4. The Convention also contains rules regulating the relationship between the lessor and the creditors of the lessee and persons having liens or other rights on the leased property, for our purpose on the ship (article 7).

It is first stated that the lessor's real rights in the ship are valid against the lessee's creditors and his trustee in bankruptcy. Real rights are supposed to mean the right of ownership, property rights and other rights in rem. The lessor will usually be the owner of the ship but even if in some legal system his rights in the ship are construed differently, they are, in principle, protected against the lessee's creditors.

However, in certain countries even real rights, ownership rights etc. are protected against creditors of the apparent owner only if certain rules as to public notice are complied with. With respect to ships that may be true with respect to registration in the ship registry.

Where under the applicable law such public notice requirements exist which require registration or other public notice to be effected in order for the lessor's real rights to be protected against the lessee's creditors, such public notice requirements must be complied with. Otherwise the lessor's rights are not valid as against the lessee's creditors.

This rule is probably only of relevance in respect of ships under legal systems where the lessee is regarded as owner or is registered as such or in situations where the lessor has not yet had his ownership registered and the ship yard is registered as owner but relinquishes any rights in the ship because it has obtained payment of the purchase sum.

The question as to which law is the applicable law for this purpose is regulated in the Convention. Usually, the law of the situs is the applicable law. Special rules are given with respect to registered ships, aircraft and certain other equipment.

With respect to ships the applicable law is the law of the State in which the ship is registered. In case the vessel is temporarily registered in the country of the bareboat charterer, but remains registered in the country of the owner, this latter registration is decisive.

Further, the Article provides that its rules do not affect the recognition of the lessor's rights under any other treaty, nor do they affect the rights of lien holders or of holders of other security interests otherwise than by virtue of attachment or execution or rights of arrest or detention.

5. Although the rules of the Convention only regulate a limited number of problems and in these respects seem to be rather harmless it is unfortunate that ships have been included into the Convention. The Convention only regulates that type of bareboat chartering which can be characterized as financial leasing and only covers very few problems of any significance in respect of bareboats charters. It would have

been preferable if any future legislative regulation of bareboat chartering could cover all types of bareboat charters and all problems arising in respect of such charters. Any future work in this field will, if the Convention is ratified by a significant number of States, have to take its rules into consideration and may thus be hampered by the existence of the Convention. Such work is under way both in the CMI and in the international organisations under the United Nations involved in shipping legislation, particularly U.N.C.T.A.D.

In connection with financing of shipbuilding the rules of the Convention seem not to create many problems for those who are aware of its existence. Contracts and charters can without much difficulty be adapted to its rules and only few of its rules are mandatory. A study of the rules of scope of application of the Convention also makes it rather easy, at least for a long time to come, to exclude its application. Only where the parties to a financial ship-lease are unaware of the existence of the Convention they may be taken by surprise. At the time of writing, however, no country has ratified the Convention.

UNIDROIT Convention on International Financial Leasing

THE STATES PARTIES TO THIS CONVENTION,

RECOGNISING the importance of removing certain legal impediments to the international financial leasing of equipment, while maintaining a fair balance of interests between the different parties to the transaction,

AWARE of the need to make international financial leasing more available,

CONSCIOUS of the fact that the rules of law governing the traditional contract of hire need to be adapted to the distinctive triangular relationship created by the financial leasing transaction,

RECOGNISING therefore the desirability of formulating certain uniform rules relating primarily to the civil and commercial law aspects of international financial leasing,

HAVE AGREED as follows :

CHAPTER I — SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

1.- This Convention governs a financial leasing transaction as described in paragraph 2 in which one party (the lessor),

(a) on the specifications of another party (the lessee), enters into an agreement (the supply agreement) with a third party (the supplier) under which the lessor acquires plant, capital goods or other equipment (the equipment) on terms approved by the lessee so far as they concern its interests, and

(b) enters into an agreement (the leasing agreement) with the lessee, granting to the lessee the right to use the equipment in return for the payment of rentals.

2.- The financial leasing transaction referred to in the previous paragraph is a transaction which includes the following characteristics :

(a) the lessee specifies the equipment and selects the supplier without relying primarily on the skill and judgment of the lessor;

(b) the equipment is acquired by the lessor in connection with a leasing agreement which, to the knowledge of the supplier, either has been made or is to be made between the lessor and the lessee; and

(c) the rentals payable under the leasing agreement are calculated so as to take into account in particular the amortisation of the whole or a substantial part of the cost of the equipment.

3.- This Convention applies whether or not the lessee has or subsequently acquires the option to buy the equipment or to hold it on lease for a further period, and whether or not for a nominal price or rental.

4.- This Convention applies to financial leasing transactions in relation to all equipment save that which is to be used primarily for the lessee's personal, family or household purposes.

Article 2

In the case of one or more sub-leasing transactions involving the same equipment, this Convention applies to each transaction which is a financial leasing transaction and is otherwise subject to this Convention as if the person from whom the first lessor (as defined in paragraph 1 of the previous article) acquired the equipment were the supplier and as if the agreement under which the equipment was so acquired were the supply agreement.

Article 3

1.- This Convention applies when the lessor and the lessee have their places of business in different States and :

(a) those States and the State in which the supplier has its place of business are Contracting States; or

(b) both the supply agreement and the leasing agreement are governed by the law of a Contracting State.

2.- A reference in this Convention to a party's place of business shall, if it has more than one place of business, mean the place of business which has the closest relationship to the relevant agreement and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of that agreement.

Article 4

1.- The provisions of this Convention shall not cease to apply merely because the equipment has become a fixture to or incorporated in land.

2.- Any question whether or not the equipment has become a fixture to or incorporated in land, and if so the effect on the rights *inter se* of the lessor and a person having real rights in the land, shall be determined by the law of the State where the land is situated.

Article 5

1.- The application of this Convention may be excluded only if each of the parties to the supply agreement and each of the parties to the leasing agreement agree to exclude it.

2.- Where the application of this Convention has not been excluded in accordance with the previous paragraph, the parties may, in their relations with each other, derogate from or vary the effect of any of its provisions except as stated in Articles 8(3) and 13(3)(b) and (4).

Article 6

1.- In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2.- Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

CHAPTER II – RIGHTS AND DUTIES OF THE PARTIES

Article 7

1.- (a) The lessor's real rights in the equipment shall be valid against the lessee's trustee in bankruptcy and creditors, including creditors who have obtained an attachment or execution.

(b) For the purposes of this paragraph « trustee in bankruptcy » includes a liquidator, administrator or other person appointed to administer the lessee's estate for the benefit of the general body of creditors.

2.- Where by the applicable law the lessor's real rights in the equipment are valid against a person referred to in the previous paragraph only on compliance with rules as to public notice, those rights shall be valid against that person only if there has been compliance with such rules.

3.- For the purposes of the previous paragraph the applicable law is the law of the State which, at the time when a person referred to in paragraph 1 becomes entitled to invoke the rules referred to in the previous paragraph, is :

(a) in the case of a registered ship, the State in which it is registered in the name of the owner (for the purposes of this sub-paragraph a bareboat charterer is deemed not to be the owner);

(b) in the case of an aircraft which is registered pursuant to the Convention on International Civil Aviation done at Chicago on 7 December 1944, the State in which it is so registered;

(c) in the case of all other equipment of a kind normally moved from one State to another, including an aircraft engine, the State in which the lessee has its principal place of business;

(d) in the case of all other equipment, the State in which the equipment is situated.

4.- Paragraph 2 shall not affect the provisions of any other treaty under which the lessor's real rights in the equipment are required to be recognised.

5. This article shall not affect the priority of any creditor having :

(a) a consensual or non-consensual lien or security interest in the equipment arising otherwise than by virtue of an attachment or execution, or

(b) any right of arrest, detention or disposition conferred specifically in relation to ships or aircraft under the law applicable by virtue of the rules of private international law.

Article 8

1.- (a) Except as otherwise provided by this Convention or stated in the leasing agreement, the lessor shall not incur any liability to the lessee in respect of the equipment save to the extent that the lessee has suffered loss as the result of its reliance on the lessor's skill and judgment and of the lessor's intervention in the selection of the supplier or the specifications of the equipment.

(b) The lessor shall not, in its capacity of lessor, be liable to third parties for death, personal injury or damage to property caused by the equipment.

(c) The above provisions of this paragraph shall not govern any liability of the lessor in any other capacity, for example as owner.

2.- The lessor warrants that the lessee's quiet possession will not be disturbed by a person who has a superior title or right, or who claims a superior title or right and acts under the authority of a court, where such title, right or claim is not derived from an act or omission of the lessee.

3.- The parties may not derogate from or vary the effect of the provisions of the previous paragraph in so far as the superior title, right or claim is derived from an intentional or grossly negligent act or omission of the lessor.

4.- The provisions of paragraphs 2 and 3 shall not affect any broader warranty of quiet possession by the lessor which is mandatory under the law applicable by virtue of the rules of private international law.

Article 9

1.- The lessee shall take proper care of the equipment, use it in a reasonable manner and keep it in the condition in which it was delivered, subject to fair wear and tear and to any modification of the equipment agreed by the parties.

2.- When the leasing agreement comes to an end the lessee, unless exercising a right to buy the equipment or to hold the equipment on lease for a further period, shall return the equipment to the lessor in the condition specified in the previous paragraph.

Article 10

1.- The duties of the supplier under the supply agreement shall also be owed to the lessee as if it were a party to that agreement and as if the equipment were to be supplied directly to the lessee. However, the supplier shall not be liable to both the lessor and the lessee in respect of the same damage.

2.- Nothing in this article shall entitle the lessee to terminate or rescind the supply agreement without the consent of the lessor.

Article 11

The lessee's rights derived from the supply agreement under this Convention shall not be affected by a variation of any term of the supply agreement previously approved by the lessee unless it consented to that variation.

Article 12

1.- Where the equipment is not delivered or is delivered late or fails to conform to the supply agreement :

(a) the lessee has the right as against the lessor to reject the equipment or to terminate the leasing agreement; and

(b) the lessor has the right to remedy its failure to tender equipment in conformity with the supply agreement,

as if the lessee had agreed to buy the equipment from the lessor under the same terms as those of the supply agreement.

2.- A right conferred by the previous paragraph shall be exercisable in the same manner and shall be lost in the same circumstances as if the lessee had agreed to buy the equipment from the lessor under the same terms as those of the supply agreement.

3.- The lessee shall be entitled to withhold rentals payable under the leasing agreement until the lessor has remedied its failure to tender equipment in conformity with the supply agreement or the lessee has lost the right to reject the equipment.

4.- Where the lessee has exercised a right to terminate the leasing agreement, the lessee shall be entitled to recover any rentals and other sums paid in advance, less a reasonable sum for any benefit the lessee has derived from the equipment.

5.- The lessee shall have no other claim against the lessor for non-delivery, delay in delivery or delivery of non-conforming equipment except to the extent to which this results from the act or omission of the lessor.

6.- Nothing in this article shall affect the lessee's rights against the supplier under Article 10.

Article 13

1.- In the event of default by the lessee, the lessor may recover accrued unpaid rentals, together with interest and damages.

2.- Where the lessee's default is substantial, then subject to paragraph 5 the lessor may also require accelerated payment of the value of the future rentals, where the leasing agreement so provides, or may terminate the leasing agreement and after such termination :

(a) recover possession of the equipment; and

(b) recover such damages as will place the lessor in the position in which it would have been had the lessee performed the leasing agreement in accordance with its terms.

3.- (a) The leasing agreement may provide for the manner in which the damages recoverable under paragraph 2 (b) are to be computed.

(b) Such provision shall be enforceable between the parties unless it would result in damages substantially in excess of those provided for under paragraph 2 (b). The parties may not derogate from or vary the effect of the provisions of the present sub-paragraph.

4.- Where the lessor has terminated the leasing agreement, it shall not be entitled to enforce a term of that agreement providing for acceleration of payment of future rentals, but the value of such rentals may be taken into account in computing damages under paragraphs 2 (b) and 3. The parties may not derogate from or vary the effect of the provisions of the present paragraph.

5.- The lessor shall not be entitled to exercise its right of acceleration or its right of termination under paragraph 2 unless it has by notice given the lessee a reasonable opportunity of remedying the default so far as the same may be remedied.

6.- The lessor shall not be entitled to recover damages to the extent that it has failed to take all reasonable steps to mitigate its loss.

Article 14

1.- The lessor may transfer or otherwise deal with all or any of its rights in the equipment or under the leasing agreement. Such as transfer shall not relieve the lessor of any of its duties under the leasing agreement or alter either the nature of the leasing agreement or its legal treatment as provided in this Convention.

2. The lessee may transfer the right to the use of the equipment or any other rights under the leasing agreement only with the consent of the lessor and subject to the rights of third parties.

CHAPTER III — FINAL PROVISIONS

Article 15

1.- This Convention is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Unidroit Conventions on International Factoring and International Financial Leasing and will remain open for signature by all States at Ottawa until 31 December 1990.

2.- This Convention is subject to ratification, acceptance or approval by States which have signed it.

3.- This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

4.- Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.

Article 16

1. This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

2.- For each State that ratifies, accepts, approves, or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 17

This Convention does not prevail over any treaty which has already been or may be entered into; in particular it shall not affect any liability imposed on any person by existing or future treaties.

Article 18

1.- If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may substitute its declaration by another declaration at any time.

2.- These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3.- If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

4.- If a Contracting State makes no declaration under paragraph 1, the Convention is to extend to all territorial units of that State.

Article 19

1.- Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply where the supplier, the lessor and the lessee have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

2.- A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply where the supplier, the lessor and the lessee have their places of business in those States.

3.- If a State which is the object of a declaration under the previous paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph 1, provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 20

A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will substitute its domestic law for Article 8 (3) if its domestic law does not permit the lessor to exclude its liability for its default or negligence.

Article 21

1.- Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives normal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under Article 19 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

4. Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

5.- A withdrawal of a declaration made under Article 19 renders inoperative in relation to the withdrawing State, as from the date on which the withdrawal takes effect, any joint or reciprocal unilateral declaration made by another State under that article.

Article 22

No reservations are permitted except those expressly authorised in this Convention.

Article 23

This Convention applies to a financial leasing transaction when the leasing agreement and the supply agreement are both concluded on or after the date on which the Convention enters into force in respect of the Contracting States referred to in Article 3 (1)(a), or of the Contracting State of States referred to in paragraph 1 (b) of that article.

Article 24

1.- This Convention may be denounced by any Contracting State at any time after the date on which it enters into force for that State.

2.- Denunciation is effected by the deposit of an instrument to that effect with the depositary.

3.- A denunciation takes effect on the first day of the month following the expiration of six months after the deposit of the instrument of denunciation with the depositary. Where a longer period for the denunciation to take effect is specified in the instrument of denunciation it takes effect upon the expiration of such longer period after its deposit with the depositary.

Article 25

1.- This Convention shall be deposited with the Government of Canada.

2. -The Government of Canada shall :

(a) inform all States which have signed or acceded to this Convention and the President of the International Institute for the Unification of Private Law (Unidroit) of :

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) each declaration made under Articles 18, 19 and 20;

(iii) the withdrawal of any declaration made under Article 21 (4);

(iv) the date of entry into force of this Convention;

(v) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;

(b) transmit certified true copies of this Convention to all signatory States, to all States acceding to the Convention and to the President of the International Institute for the Unification of Private Law (Unidroit).

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised by their respective Governments, have signed this Convention.

DONE at Ottawa, this twenty-eight day of May, one thousand nine hundred and eighty-eight, in a single original, of which the English and French texts are equally authentic.

Personalia

CHINA

The People's Republic of China was so far participating to the activities of the CMI through the "China Council for the Promotion of International Trade-CCPIT-".

On 15 November, 1988 the CHINA MARITIME LAW ASSOCIATION was set up at Beijing which will in the future take over China's Membership to the CMI..

TURKEY

A Turkish Maritime Law Association has been set up on 4 November, 1988 at Istanbul.

CHINE

Jusqu'à présent la République Populaire de Chine participait aux activités du CMI par le "China Council for the Promotion of International Trade - CCPIT-".

En date du 15 novembre 1988 a été fondée à Beijing l'Association Chinoise de Droit Maritime, qui reprendra l'affiliation de la Chine au CMI.

TURQUIE

Une Association Turque de Droit Maritime a été constituée à Istanbul le 4 novembre 1988.

Next Meetings

CARRIAGE OF GOODS BY SEA

The International Subcommittee on the Uniformity of the Law on the Carriage of Goods by Sea in the Nineteen Nineties will meet at Knokke (Belgium) on Tuesday 4 April, 1989.

The EXECUTIVE COUNCIL

The next meeting of the Executive Council will be held on Thursday 6 April, 1989 and will start at 19h00 at "La Réserve", Knokke (Belgium).

The ASSEMBLY

The 1989 regular meeting of the Assembly will be held on Friday 7 April, 1989. The venue will be "La Réserve", Elisabethlaan 160, B-8300 Knokke -Belgium, (Tel.: (50)61.06.06. - Tlx:81.657. - Fax:32-50.60.37.06.

Arrangements have been made with "La Réserve" for a block reservation of rooms for the delegates at a reduced price.

Hence, when the delegates effect their bookings with "La Réserve", they should mention that they are attending the CMI Assembly meeting.

SALVAGE

The Diplomatic Conference on the Draft Convention on Salvage will be held in London on 17/28 April, 1989.

XXXIVth INTERNATIONAL CONFERENCE OF THE CMI - Paris 1990

The next International Conference of the CMI convened by the French Maritime Law Association will take place from 1 to 6 July, 1990 at the "GRAND HOTEL" in Paris. It is anticipated to publish the agenda of the Conference in the next issue of CMI NEWS LETTER.

Prochaines Réunions

TRANSPORT PAR MER DE MARCHANDISES

La Commission internationale sur l'uniformité du droit du transport de marchandises par mer dans les années quatre-vingt dix, se réunira à Knokke (Belgique) le mardi 4 avril 1989.

Le CONSEIL EXECUTIF

La prochaine réunion du Conseil Exécutif se tiendra le jeudi 6 avril 1989 à 19h00 à "La Réserve", Knokke, Belgique.

L'ASSEMBLEE

La réunion statutaire 1989 de l'Assemblée aura lieu le vendredi 7 avril 1989 à l'Hôtel "La Réserve", Elisabethlaan 160, B-8300 Knokke, Belgique (Tél.:32(50)61.06.06. - Tlx:81.657. - Fax:32(50)60.37.06)

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

ASSISTANCE

La Conférence Diplomatique sur le Projet de Convention sur l'assistance se tiendra à Londres du 17 au 28 avril 1989.

XXXIVème CONFERENCE INTERNATIONALE DU CMI - Paris 1990

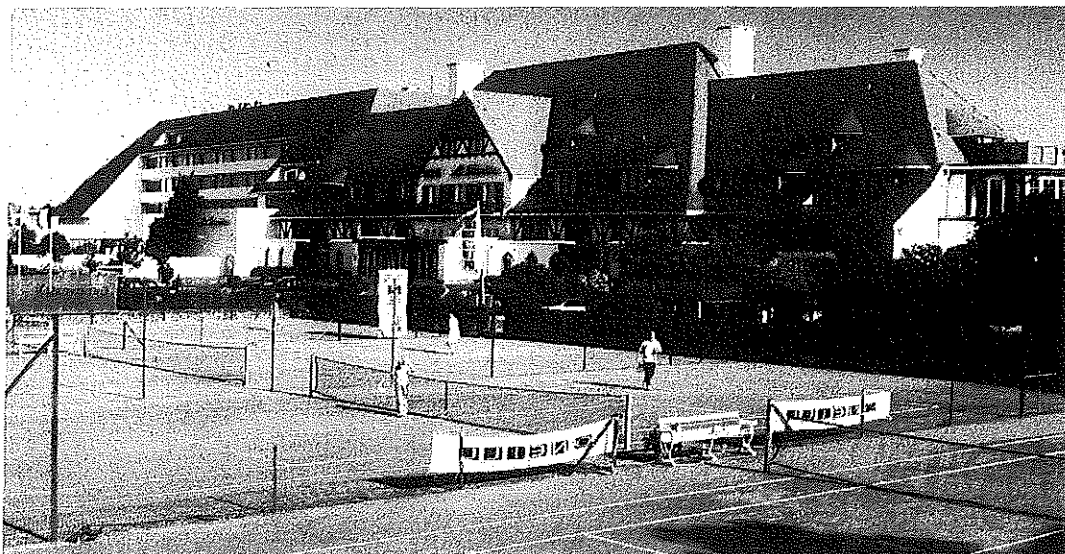
La prochaine Conférence Internationale du CMI, organisée par l'Association Française du Droit Maritime, se tiendra du 1er au 6 juillet 1990 au GRAND HOTEL à Paris. Il est prévu de publier l'ordre du jour de la Conférence dans la prochaine édition de CMI NEWS LETTER.

Seminar on Bareboat Charterparties

— Knokke 5 and 6 April, 1989

Séminaire sur les Chartes-Parties Coque nue

— Knokke 5 et 6 avril 1989



During the last few years there has been a growing interest in bareboat charterparties. This interest arises in particular in the context of the financing of ship building. It is for this reason that the Executive Council of the C.M.I. has decided to hold this Seminar in Belgium in the spring of 1989.

The purpose of the Seminar is threefold:

1. To inform participants of the various aspects of bareboat chartering;
2. To provide a forum for discussion of the subject;
3. To gauge whether, in the light of this discussion, the subject is appropriate as an item for the agenda of the Paris Conference of the C.M.I. in 1990.

Durant ces dernières années s'est révélé un intérêt croissant pour les chartes-parties coque nue, ceci apparaissant, en particulier, dans le contexte du financement de la construction des navires. C'est pour cette raison que le Conseil Exécutif du C.M.I. a décidé de tenir ce Séminaire en Belgique au printemps 1989.

L'objet du Séminaire est triple :

1. Informer les participants des différents aspects de l'affrètement coque nue;
2. Offrir un forum de discussion de ce sujet;
3. Estimer, à la lumière de cette discussion, si le sujet se prête à figurer à l'ordre de jour de la Conférence du C.M.I. à Paris en 1990.

— It is proposed that, in advance of the Seminar, documentation in two parts should be made available to participants as follows:—

1. General Papers These will be prepared by those who will be presenting papers at the Seminar. They will be sent to participants before the commencement of the Seminar. They will cover the subjects below:—

1. Purpose for which the bareboat charter party is used.
 - a. Greater control by charterer of ship during employment, as compared with time charter.
 - b. Hire-purchase.
 - c. Financial leasing.
 - d. Cases where it is not possible or desired to appear as registered owners of a ship, whilst retaining, as bareboat charterers, the full operational control of the ship.
 - e. Acquisition of a fleet without the substantial investment required for the purchase of ships.
2. Rights and Obligations.
 - a. Delivery of ship in class and in seaworthy condition.
 - b. Maintenance of the ship in class and in seaworthy condition during contract.
 - c. Use of the ship.
 - d. Payment of hire.
 - e. Redelivery of the ship.
 - f. Consequences of the breach of a contractual obligation.

3. Allocation of Risks and Costs.

A. Risks

- a. Loss of ship.
- b. Damage to ship.
- c. Inability to perform.
- d. Requisition.
- e. War.
- f. Lack of employment.
- g. Responsibility in connection with employment (liability in contract and in tort).

B. Costs

- a. Crew (wages, victualling, insurance, etc.).
- b. Extraordinary maintenance.
- c. Ordinary maintenance.
- d. Fuel and lubricating oil.
- e. Port and canal expenses.
- f. Agency.
- g. Insurance.

4. Bareboat Charter for New Building.

- a. Inspection during construction.
- b. Changes and extras.
- c. Discharge of terms of contract and acceptance of delivery.
- d. Seaworthiness at delivery.
- e. Maintenance after delivery.

5. Bareboat charter for trading ship.

- a. Maintenance of class and seaworthiness of vessel on delivery and during period of charter.
- b. Right of charterer to disposition of vessel.

6. Analysis of contract clauses.

- a. Clauses on condition of vessel at delivery.
- b. Maintenance clauses.
- c. Insurance clauses.
- d. Off-hire clauses.
- e. War clauses.
- f. Requisition clauses.
- g. Clauses on passing of title.

II. Special Papers These have been prepared by a number of authors nominated by Professor Berlingieri. These papers will cover the subjects below and will reflect the law of the country of each of the authors. These papers will be sent to participants in early 1989.

- a. Law applicable to bareboat charterparties.
- b. The main characteristics of bareboat charterparties.
- c. The main purposes for which such characteristics are used.
- d. Standard forms of bareboat charters and special forms of such charters.
- e. The possibility of ships being bareboat chartered-out to foreign charterers, of such ships flying the flag of the country of the charterer and being registered in such country and the consequences thereof, particularly as respects registered mortgages, hypothèques or other charges.
- f. The possibility of foreign flag ships being chartered-in and the consequences thereof.
- g. The law regarding:
 - (i) the nationality of crew members;
 - (ii) the country where the ship is insured.
- h. Where the charterer has the option to purchase at conclusion of charter period the law regarding:
 - (i) de-registration of ships;
 - (ii) inclusion in the hire of the purchase price.
- i. Who is the party liable (owner or charterer) in respect of damage done by the vessel to third parties.
- j. Whether and to what extent claims against the bareboat charterer can be enforced against the ship (maritime and possessory liens, right of arrest, etc.).

GENERAL

(A) Full documentation, including the Seminar programme and a list of Speakers will be made available to participants before the beginning of the Seminar.

(B) It has been possible to negotiate with the management of the Hotel "La Réserve" a special rate for accommodation at the hotel over the Seminar. The participation fee is BEF:27,000. and BEF:11,000. for an accompanying person, equivalent, at the prevailing rate of exchange, to US\$.750. and US\$.305. respectively. The fee is including of:

a) accommodation for two nights including breakfast.

b) Dinners on 4 and 5 April 1989 and lunches on 5 and 6 April 1989.

c) Two excursions for ladies on 5 April in the morning to the "Zwin" (an ornithology research station) and in the afternoon a boat trip at Bruges.

(C) A special arrangement has also been negotiated with the hotel in favour of those participants who would wish to stay overnight until 7 April, 1989. On payment of a supplement of BEF:4,700. and BEF:3,100. for an accompanying person, they will be provided with dinner on 6 April, accommodation for one night and breakfast on 7 April 1989.

(D) It has been decided that in view of the nature of the Seminar, the number of those participating should be limited. All those wishing to participate should make an early application using the attached enrolment form and sending it to :

GENERALITES

(A) Une documentation complète, comprenant le programme du séminaire et la liste des conférenciers sera remise aux participants avant le début du séminaire.

(B) Il a été possible d'obtenir de la Direction de l'hôtel "La Réserve" des conditions spéciales pour le logement à l'hôtel pendant le séminaire. Le montant de la participation s'élève à BEF:27.000. et à BEF:11.000. pour la personne accompagnante, ce qui équivaut au cours actuel du change, à \$US.750.- et \$US.305. respectivement. Ces montants comprennent :

a) Le logement pour deux nuits avec petit déjeuner.

b) Le dîner les 4 et 5 avril et le lunch les 5 et 6 avril 1989.

c) Deux excursions pour les dames le jeudi 5 avril; le matin visite de la réserve ornithologique du Zwin et l'après-midi tour en barques à Bruges.

(C) Un arrangement spécial a été convenu avec l'hôtel "La Réserve" pour ceux des participants qui souhaiteraient séjourner encore jusqu'au 7 avril. Moyennant paiement d'un supplément de BEF:4.700. et BEF:3.100. pour une personne accompagnante, ils pourront dîner et loger à l'hôtel le 6 avril et y prendre le petit déjeuner le 7 avril 1989.

(D) Etant donné la nature du séminaire, il a été décidé que le nombre de participants serait limité. Il est donc recommandé à ceux que la participation à ce séminaire intéresse, d'adresser au plus tôt leur demande d'inscription en utilisant le formulaire ci-après et en l'envoyant à :

Mr. Henri VOET
C/O HENRY VOET-GENICOT
Mechelsesteenweg 203 (B.6)
B - 2018 ANTWERPEN - BELGIUM

SEMINAR ON BAREBOAT CHARTERPARTIES
HOTEL LA RESERVE, KNOKKE-ZOUTE, BELGIUM
5TH AND 6TH APRIL, 1989.

ENROLMENT FORM — BLOCK CAPITALS PLEASE

NAME (MR/MRS/MISS)

ACCOMPANIED/UNACCOMPANIED
ADDRESS:

TELEPHONE NUMBER:

TELEX NUMBER:

I wish to attend the Seminar.

I enclose cheque/draft for BEF 27,000 (plus BEF 11,000 for accompanying Person,
if applicable) (or \$750 and \$305) payable to C.M.I./KNOKKE SEMINAR
ACCOUNT NO. 220-0710-338-43 at the Generale Bank at Antwerp.

SIGNED.....

1. PLEASE RETURN THE COMPLETED FORM TOGETHER WITH
YOUR REMITTANCE TO:

DR. HENRI VOET,
c/o HENRY VOET-GENICOT,
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