

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

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BULLETIN TRIMESTRIEL

Digest of Maritime Jurisprudence on Maritime Law Conventions

Preface

Uniformity of interpretation of maritime law conventions is an essential part of actual uniformity. It has, therefore, been felt that it might be useful to know the manner in which the provisions of the maritime law conventions are interpreted in the various jurisdictions in the hope that it can thereby be possible to enhance uniformity of interpretation in the future.

With the approval of the Executive Council of the CMI, I have, therefore, asked the National Associations to let me have a summary of recent judgments on maritime law conventions and having so far received the summaries in respect of judgments delivered in 11 countries (Argentina, Australia, Canada, Federal Republic of Germany, France, Greece, Italy, Japan, Netherlands, United Kingdom and the United States), I thought that it would be worthwhile to publish this first Digest of Maritime Jurisprudence in the hope that this might encourage the National Associations next year to send summaries of national judgments with a view to publishing a Digest each year in the CMI Yearbook.

Genoa, 26th January 1990

Francesco Berlingieri

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List of Abbreviations

AMC	American Maritime Cases
B.C.L.R.	British Columbia Law Reports
C.L.R.	Commonwealth Law Reports
DMF	Droit Maritime Français
Dir. Mar.	Diritto Marittimo
Fed. Cas.	Federal Cases
F.2d	Federal Reporter, Second Series
F.T.R.	Federal Trial Reports
F. Supp.	Federal Supplement
J. Mar. L. & Com.	Journal of Maritime Law and Commerce
Lloyd's Rep.	Lloyd's Law Reports

N.R.	National Reporter
N.S.W.L.R.	New South Wales Law Reports
O.R.	Ontario Reports
V.R.	Victorian Reports

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1910 COLLISION CONVENTION:

SCOPE OF APPLICATION

France: The ramming of a sailing ship and subsequent violence done on board by fishermen who had established a blockade of the port of Cherbourg is not a collision governed by the 1910 Collision Convention and the liability of the tortfeasor must be governed by the general rules of civil law. Court d'Appel de Caen 19 October 1987, Joseph Chardon and Others v. Lucy Poett, 1988 DMF 743.

Greece: A collision on the high seas between two cargo vessels, the one under Greek flag and the other under Lebanese. Lebanon has not ratified the Brussels Convention 1910.

It was held that the *lex fori* should apply, as there was no other law proper to the case, and though the court was aware of the risk that the view accepted may favour forum shopping on the part of the plaintiff. Court of First Instance of Piraeus 1375/1986, *Epitheoresis Nautiliakou Dikaïou* (Shipping Law Review) 1987, 299.

Netherlands: The convention held not to apply in case of damage done by a fishing ship to a measuring cable drawn by a vessel on the grounds that such vessel was not a "seismic measuring ship" with built in measuring equipment: District Court of Leeuwarden 15.10.87, 1988 Schip and Schade, 30. Prakla Seismos GmbH v D.J. Koornstra

TIME LIMIT (PRESCRIPTION)

United Kingdom: Held by Q.B.-Adm. Ct. (Sheen, J.) that a judge who was invited to extend the time limit set by the Maritime Conventions Act, 1911, s. 8 should grant such extension if in all the circumstances of the case it appeared to him that there was good reason for doing so; the exercise of his discretion should not be confined only to those cases where there appeared to be exceptional or special circumstances. The "Zirje" (Q.B.-Adm. Ct.) 1989, 1 Lloyd's Rep. 493.

1910 SALVAGE CONVENTION:

CONSIDERATIONS

Italy: The general expenses of the salvor are not amongst the considerations set out in Article 8 of the Convention: Tribunal of Brindisi 14.12.87, F.lli Barretta v. Filikos Shipping Corporation, 1988, Dir. Mar., 833.

DANGER

Italy: For the purposes of the entitlement to a salvage award the danger does not necessarily need to be the danger of a total loss of the vessel; it is sufficient that the situation is such as to show the possible occurrence of a major accident. It is not even necessary that the danger has already materialized, it being sufficient that the accident is likely to occur: Arbitration Award 21.2.87 Reederei Marinus Smits v. Rimorchiatori Napoletani 1988 Dir. Mar., 516.

Italy: For the purposes of the salvage award a danger exists in case of distress threatening to cause future damage to the vessel even when the occurrence is imminent and the danger may not consist of the total loss: Tribunal of Brindisi 14.12.87, F.lli Barretta v. Filikos Shipping Corporation 1988 Dir. Mar., 190.

Italy: For the purposes of the salvage award a danger exists in case of a situation of distress, although the danger is not imminent or such as to imply the total loss of the vessel and to require the removal of the vessel from the situation in which she is at the material time: Tribunal of Brindisi 14.12.87, F.lli Barretta v. Filikos Shipping Corporation, 1988 Dir. Mar., 833.

LIABILITY SALVAGE

United States: The Convention does not recognize "liability salvage". (The court referred to the C.M.I. Montreal Draft Convention, as an effort to permit "liability salvage". Westar Marine Services v. Heerema Marine Contractors, 621 F. Supp. 1135, 1988 AMC 1122 (U.S. District Court, Northern District of California, 1985 and 1986).

PERSONS LIABLE

Italy: The owners of the salvaged property are not jointly liable for the payment of the salvage remuneration: Tribunal of Brindisi 14.12.87, F.lli Barretta v. Filikos Shipping Corporation, 1988 Dir. Mar., 833.

PILOTS

Italy: The pilots who are requested by the master of the vessel in danger to co-operate in the salvage operations perform an activity beyond that required of them and are, therefore, entitled to a salvage remuneration: Tribunal of Brindisi 14.12.87, F.lli Barretta v. Filikos Shipping Corporation, 1988 Dir. Mar., 833.

SCOPE OF APPLICATION

United States: The term "all persons interested", as used in Article 15 of the Convention, includes all defendants named in the action, and not merely defendants who have appeared in it; the Convention therefore applies to salvage services rendered in San Francisco Bay, where two of the defendants named in the action, but not served with process, were non-Americans. Westar Marine Services v. Heerema Marine Contractors, 621 F. Supp. 1135, 1988 AMC 1122 (U.S. District Court, Northern District of California, 1985 and 1986).

Netherlands: The convention does not apply when salvage is not rendered at sea: Arbitral award 18.4.86, 1987 Schip and Schade, 42. NN v. NN.

TIME BAR

United States: Section 5 of the 1912 Salvage Act, 46 U.S. Code § 737 (corresponding to Article 14 of the 1910 Salvage Convention), which excludes warships and government vessels engaged in public service from its coverage, relates only to salvage of government ships, and not to claims by a government for salvage services rendered to other vessels. Therefore, a claim by the U.S. government for salvage services by the U.S. Coast Guard was subject to the two-year time for suit provision of § 4 of the Salvage Act, 46 U.S. Code § 730 (corresponding to Article 10 of the Salvage Convention). DFDS Seacruise (Bahamas) Ltd. v. United States, 676 F. Supp. 1193, 1988 AMC 1530 (U.S. District Court, Southern District of Florida, 1987).

1924 BILL OF LADING CONVENTION (HAGUE RULES) AND 1968-1979 PROTOCOLS (HAGUE-VISBY RULES):

CARE OF THE CARGO

Australia: Article III, r.6 does not apply to personal actions in tort: Supreme Court of New South Wales 29 July 1977, J. Gadsden Pty Ltd. v. Australian Coastal Shipping Commission, [1977] 1 N.S.W.L.R. 575.

FRG: The shipper must have the knowledge of the particular qualities of the cargo required in order to evaluate the fitness of containers offered by the carrier. Therefore, the carrier is not liable for damage to the cargo if the shipper has failed to reject unsuitable containers.

Hanseatisches Oberlandesgericht (Court of Appeal) Hamburg, judgment of 26.2.1989 (6 U 158/87) = Transportrecht 1988, p. 238.

United Kingdom: Held by Q.B.-Adm. Ct. (Evans, J.) that the plaintiffs failed to prove that the damage in question occurred during the voyage, in particular they had not proved that the beans were not rain-wetted before shipment and their claim in respect of fresh-water damage to the cargo ex-vessel A.G. failed. The "Inowroclaw" (Q.B.-Adm. Ct.) 1989, 1 Lloyd's Rep. 498.

DECK CARGO

France: When the Paramount Clause inserted in the bill of lading provides that all articles of transport stowed on deck are subject to the same rules as those stowed under deck and that such rules are those of the Hague-Visby Rules, such Rules pursuant to Art. 10 thereof apply to the damage suffered by the goods laden on a trailer stowed on deck of a car ferry. Cour d'Appel de Paris 13 October 1986, Skandia Transport v. S.té des Chaussures Jean Biotteau, 1988 DMF 101.

Netherlands: The Convention does not apply to goods carried on deck in compliance with the terms of Article 1(c): District Court of Amsterdam 18.11.87, 1988 Schip and Schade, 52. Delta Lloyd Schadeverzenering v. Nilson & Nell.

DOCUMENTS TO WHICH THE RULES APPLY

United Kingdom: Held by Q.B.-Com. Ct. (Steyn, J.) that the purpose of s. 1(6)(b) of the 1971 Act was to confer on a voluntary contractual tie a statutory binding character; the shipowners could escape the application of the rules by issuing a notice to shippers that no bills of lading would be issued by them in a particular trade and s. 1(6)(b) could only be activated by contracting into the statutory regime in the appropriate contractual form.

S. 1(6)(b) could only apply if the receipt expressly provided that "the Rules are to govern the contract as if the receipt were a bill of lading" or contained similar wording; these words did not appear in the defendants' consignment note; the 1971 Act required that the receipt which was a non-negotiable document had to be marked as such and the contract had to provide expressly that the rules were to govern as if the receipt were a bill of lading; only if those formal requirements were complied with would s. 1(6)(b) confer on a voluntary contractual tie a statutory force.

There was no warrant to treat the words "as if the receipt were a bill of lading" as having no legislative force and the consignment note failed to comply with s. 1(6)(b).

It was not only when the receipt expressly provided that the whole Convention as amended by the Protocol was to govern the contract that s. 1(6)(b) came into operation; in enacting s. 1(6)(b) the legislation did not intend to override the agreement of the parties when the parties had freedom of choice whether or not to incorporate the rules into the contract; and the partial incorporation of the Hague-Visby Rules did not comply with s. 1(6)(b). Browner International Ltd. v. Monarch Shipping Co. Ltd. - The "European Enterprise", 1989 2 Lloyd's Rep. 985.

DUE DILIGENCE

Canada: The fact that a vessel has been inspected in accordance with the standards of the U.S.S.R. Register of Ships is not sufficient for the North Atlantic nor is it sufficient that a ship has been built by a reputable builder in order to prove due diligence under Article 3 paragraph 1 of the Hague Rules: Kruger Inc. v. Baltic Shipping Co. (1988) 1 Fed. Cas. 262.

United Kingdom: Held by Q.B.-Adm. Ct. (Evans, J.) that a substantial quantity of seawater entered No. 2 hold of vessel W. during the period of heavy weather, there was salt water damage to the coffee consignments discharged at Hamburg and on the evidence this was caused by the incursion of sea water during the voyage; the Hamburg consignments under bills of lading 1 and 3 were damaged by seawater which entered through hatch 2 and the hatch cover was either improperly maintained or improperly positioned when loading was completed; the failure to fix or maintain the hatch cover in place was negligence for which the defendants were liable and the plaintiffs were entitled to succeed on the first issue.

The evidence was overwhelming that the freshwater damage occurred during the voyage and that it was caused not by the failure to ventilate the cargo properly, but by the incursion of seawater for which the defendants were liable. The "Inowroclaw", (Q.B.-Adm. Ct.) 1989, 1 Lloyd's Rep. 498.

EVIDENTIARY VALUE OF THE BILL OF LADING

Clean Bill of Lading

Canada: A consignee rejected a cargo of pepper that was damaged by excessive moisture and took suit against the carrier. A clean bill of lading had been issued after the cargo had been stuffed into the container by the carrier. The trial judge concluded that the moisture damage was caused by improper stowage rather than an inherent defect due to improper drying of the pepper. The Federal Court of Appeal affirmed the lower court but noted that in certain cases, where damage is caused by an "unapparent condition", a clean bill of lading may not in itself be proof that the goods were received by the carrier in good

order and condition. Here, however, the Appeal Court decided that there was sufficient evidence to the effect that the pepper was not moist when stuffed into the container. Produits Alimentaires Grandma Ltée. v. Zim Israel Navigation Co. (1988) 86 N.R. 39 (Fed. Ct. of Appeal).

Proof Against Description of the Goods

Italy: Proof to the contrary, pursuant to Article 3 paragraph 4 of the Hague Rules is permitted also against an endorsee in good faith of the bill of lading: Court of Appeal of Genoa 20.6.87 Gilnavi S.p.A. di Navigazione v. Riunione Adriatica di Sicurtà S.p.A. 1988 Dir. Mar. 136.

Validity of Reservations

Argentina: Reservations such as "weight unknown" are valid only if specifically inserted in the bill of lading and if the reason why the reservation is inserted is stated in the document so to make it possible to ascertain that the statement could actually not be checked. Camera Nacional de Apelaciones en Law Civil y Comercial Federal, 26th April 1988.

Italy: Pursuant to Article 4 paragraph 4 of the Hague Rules, the carrier may prove that the condition of the goods differ from those described in the bill of lading also vis à vis an endorsee in good faith: C.A. of Genoa 20.6.87, Gilnavi v. Riunione Adriatica di Sicurtà, 1988 Dir. Mar. 780.

EXCEPTED PERILS

Acts of Public Enemies

France: Robbery on board a vessel anchored in Lagos Roads is not an act of public enemies and does not fall under the exemption of Art. 4 paragraph 2(f) of the Hague Rules. For the purpose of this provisions there must be an act of persons at war against the government or at war against the whole world, such as pirates. Cour d'Appel de Paris 7 October 1986, SCAC v. Europa Afrika Linie, 1988 DMF 457.

Latent Defects

Canada: Latent defect is a defect that an examination made, according to modern standards of the trade, would not reasonably disclose: Kruger Inc. v. Baltic Shipping Co. (1988) 1 Fed. Cas. 262.

Perils, Dangers and Accidents of the Sea

Australia: Loss or damage does not arise, or result, from perils of the sea when negligence is a concurrent cause. High Court of Australia 12 December 1980, Shipping Corporation of India Ltd. v. Gamlen Chemical Co. A/Asia Pty Ltd. (1980) 147 C.L.R. 142.

Australia: In a case where the loss or damage could have been prevented by the exercise of due care, the exemptions under Article IV, r. 2(c) of the Hague Rules, read in conjunction with Article III, do not exempt a carrier from liability for loss or damage caused to goods carried. High Court of Australia: 12 December 1980, Shipping Corporation of India Ltd. v. Gamlen Chemical Co. A/Asia Pty Ltd., (1980) 147 C.L.R. 142.

Canada: Even force 12 on the Beaufort Scale is not necessarily a peril of the sea under Article 4(2)(c) because it is to be expected in winter on the North Atlantic: Kruger Inc. v. Baltic Shipping Co. (1988) 1 Fed. Cas. 262.

France: It is not due to a peril of the sea the shifting of a trailer, with consequent damage to the cargo laden therein, caused by wind force 9 to 10 and strong swell. Cour d'Appel d'Aix en Provence 27 June 1986, Pien und Glasson GmbH v. S.A. Sud-Cargos, 1988 DMF 243.

France: The carrier is exempted from liability under Art. 4 paragraph 2(c) of the Hague Visby Rules if it is not proved that the damage to the goods is caused by defective stowage and the passage took place in very difficult weather conditions with wind force 10. Cour d'Appel de Paris 13 October 1986, Skandia Transport v. S.té des Chaussures Jean Biotteau, 1988 DMF 101.

France: The carrier may invoke the exemption from liability for perils of the sea when the vessel has encountered wind force 6-10 with heavy sea causing pitching and rolling and shifting of cargo when he proves that the cargo had been properly stowed and secured. Cour d'Appel de Paris 13 May 1988, S.té Armement SECAM v. Tugu Pratama Insurance Co. Ltd., 1989 DMF 245.

Italy: The carrier, in order to avail himself of the exception of perils, dangers and accidents of the sea in respect of damage caused by water entering into the holds through the hatches must prove that the structure of the hatches has been permanently damaged as a consequence of bad weather: Court of Appeal of Genoa 27.4.87 Tradax Export S.A. Panama v. Vergnano Lamiere S.p.A. 1988 Dir. Mar., 427.

IDENTITY OF THE CARRIER

Australia: The definition of "Carrier" under the Hague Rules is not exhaustive. A "Carrier" under the Hague Rules is a party to the Contract of Carriage covered by a Bill of Lading, or similar document: Supreme Court of New South Wales, 28 March 1980, Sidney Cooke Ltd. v. Hapag-Lloyd Aktiengesellschaft - The "Sydney Express", [1980] 2 N.S.W.L.R. 587.

FRG: When the owner has authorized the charterer to issue bills of lading including an Identity of the Carrier clause, the obligation to deliver the goods to the port of destination rests on the owner.

Hanseatisches Oberlandesgericht (Court of Appeal) Hamburg, judgment of 15.12.1988 (6 U 11/88) - MS "Planet I" - Transportrecht 1989, p. 70.

France: When the bill of lading does not bear any heading the owner of the vessel is deemed to be the carrier. Cour d'Appel d'Aix-en-Provence 19 February 1988, Mamitank Shipping Enterprises v. Shell Française, 1989 DMF 249.

INDEPENDENT CONTRACTORS

Australia: The carrier and ship are not liable for damage caused by independent contractors, and this includes the situation where total loss is caused by non-delivery: High Court of Australia: 26 June 1989: Nissho Iwai Australia Ltd. v. Malaysian International Shipping Corporation, Beihad - The "Bunga Teratai", (1988) 12 N.S.W.L.R. 730.

JURISDICTION AND ARBITRATION

United States: A bill of lading clause incorporated the terms of a voyage charter which provided for London arbitration of cargo claims and also contained a Clause Paramount incorporating the Hague Rules "where compulsory (sic) applicable". In an Iraqi consignee's action for damage to cargo shipped from Tampa to Aqaba, it was held that since there was no arbitration clause in the bill of lading, and no evidence that the consignee had actual notice of the charter party arbitration clause, COGSA § 3(8) (corresponding to Article III(8) of the Hague Rules) relieved the consignee of any obligation to arbitrate in a forum having no connection with the carriage, or with any of the parties. State Establishment for Agricultural Product Trading v. The Wesermunde, 838 F.2d 1576, 1988 AMC 2328 (U.S. Court of Appeals, 11th Cir., 1988).

United States: A Felixstowe, U.K. - Port Everglades, Fla. bill of lading clause providing for the exclusive jurisdiction of the Finnish courts and the application of Finnish law was held invalid as in violation of COGSA § 3(8) (corresponding to Art. III(8) of the Convention). Conklin & Garrett, Ltd. v. The Finnrose, 826 F.2d 1441, 1988 AMC 318 (5th Cir. 1987), citing Indussa v. The Ranborg, 377 F.2d 200, 1967 AMC 589 (2d Cir. 1967), and distinguishing The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 1972 AMC 1407 (1972), which upheld a London jurisdiction clause in a towage contract between a German company and an American company.

United States: A bill of lading covering a shipment from Zhanjiang, China, to a U.S. port on a Chinese vessel provided for the exclusive jurisdiction of a Chinese forum. The court held that a general average dispute was subject to COGSA, in light of § 5 (corresponding to Art. 4 of the Convention), that the clause would diminish the carrier's obligations, and that it was therefore invalid under COGSA (apparently referring to § 3(8) (corresponding to Art. III (8) of the Convention)). The court therefore declined to recognize the assess-

ment of general average claim made by a Chinese agency to which the carrier's general average claim had been submitted for arbitration. Hughes Drilling Fluids v. The Luo Fu Shan, 852 F.2d 840, 1988 AMC 2848 (5th Cir. 1988).

United States: A Japan/Saipan bill of lading clause providing for exclusive jurisdiction of the Tokyo District Court was held valid and enforceable. American International Knitters Corp. v. Kawasaki Kisen Kaisha, 1988 AMC 434 (District Court, Northern Mariana Islands, 1987), citing The Bremen v. Zapata Off-Shore Co., *supra*.

United States: A Hamburg arbitration clause in a Bremen - New York bill of lading was upheld as not in conflict with COGSA. Travelers Indemnity Co. v. The Mediterranean Star, 1988 AMC 2483 (S.D.N.Y. 1988), distinguishing Indussa v. The Ranborg, 377 F.2d 200, 1967 AMC 589 (2d Cir. 1967 *en banc*), which invalidated a bill of lading clause providing for the exclusive jurisdiction of a foreign court.

United States: A London arbitration clause in a charter party incorporated by reference in a Brunswick, Georgia - Alexandria, Egypt bill of lading was held valid, as not in conflict with COGSA § 3(8) (corresponding to Art. III (8) of the Convention). The court noted that the Federal Arbitration Act, 9 U.S. Code §§ 1 *et seq.*, was enacted ten years after COGSA, and indicated that if there was any inconsistency between the two acts, the later statute should control. Mid South Feeds, Inc. v. The Aqua Marine, 1988 AMC 437 (S.D. Ga. 1986).

LETTER OF GUARANTEE

Italy: The carrier has the duty to check, to the extent that this is possible, the condition of the goods at the time of loading and must issue the bill of lading in conformity with such condition formulating, when this is required, the necessary reservations. The issuance by the carrier of a clean bill of lading against delivery by the shipper of a letter of guarantee implies a violation of such duty and a consequent liability of the carrier: Gilnavi S.p.A. di Navigazione v. Riunione Adriatica di Sicurtà S.p.A. 1988 Dir. Mar. 136.

LIMIT OF LIABILITY

Conversion of the limit

Australia: Held by N.S.W. Court of Appeal (Kirby, P., Hope and McHugh, JJ.A.) that art. IV r. 5 and art. IX had to be read together; the long era of stability with its reference to the gold standard, the serious and debilitating inflation which accompanied and followed the First World War and the concerted effort particularly of the International Trading Community to return to objective standards measured in gold all suggested that the reference in the opening words of art. IX was intended to apply to the limitation of "£100 sterling".

The currency of Australia was Australian dollars; the respondent had lawfully sued in the Supreme Court of New South Wales claiming a judgment expressed in that currency; there was nothing to require it to accept payment in pounds sterling and the appellants were not entitled to discharge its obligation under art. IV, r. 5 by tendering to the respondent £100 sterling in notes or the gold value of such sum in 1982 when the loss occurred.

The result of construing art. IV, r. 5 and art. IX together was to require (at least where conversion to another currency was necessary) the appellants to tender to the respondent the equivalent of £100 gold at present prices for each package or unit; the learned judge was right in his conclusion; the judgment of \$32,221.33 would be affirmed and the appeal dismissed. The "Nadezhda Krupskaya", Brown Boveri (Australia) Pty Ltd. v. Baltic Shipping Co., 1989, 1 Lloyd's Rep 518.

France: Since the United States has not ratified the 1968 Protocol, the carrier can benefit from the limit of 100 pounds gold value, converted in Special Drawing Rights at the date when the SDRs were created, in 1969. Cour d'Appel d'Aix-en-Provence 6 July 1987, Farrell Lines Inc. v. Commercial Union Insurance Ltd., 1988 DMF 390.

United Kingdom: Held by Q.B.-Adm. Ct. (Hobhouse, J.) that it was clear beyond doubt that the first sentence of art. IX was intended to qualify the reference to £100 sterling in art. IV r. 5; no other purpose was suggested and there was no reason to suppose that those words were not intended to have any effect; they were clearly intended to have the effect of expressing the sterling figure as a gold value figure.

Under the Coinage Act, 1971, it was possible to identify the monetary unit that was being referred to so that there was no uncertainty about or inability to ascertain what was the gold value which the parties were by their contract agreeing should be the limit of the carrier's liability.

The purpose of a gold clause was to escape from the principle of nominalism and the gold clause if it was to be effective for the purpose must be a gold value clause and not merely a gold payment clause; the function of art. IV, r. 5 was to provide the measure of the limit of liability of the carrier and the first sentence of art. IX expressly referred to gold value.

A reference to gold value was especially inserted in the Carriage of Goods by Sea Act, 1924, (which gave effect to the Hague Rules) even though it had not appeared in the draft Convention; this could only have been to emphasize the fact, as a matter of English law that what was being referred to in art. IV r. 5 was the gold value of sterling and not its nominal or paper value.

The purpose of the gold clause provision in art. IX was to provide a single and constant measure of value by reference to gold, not a fluctuating value; the gold value provision in art. IX was of sufficient clarity and was effective.

The plaintiffs were entitled to damages in the sum of Kenyan £6491.25. The "Rosa S.", (Q.B.-Adm. Ct.) 1988, 2 Lloyd's Rep. 574.

Declaration of Value

Argentina: The provision of Art. 4 §5 of the 1924 Brussels Convention whereby the limit of the carrier's liability does not apply when the value of the goods has been declared by the shipper and has been inserted in the bill of lading holds irrespective of the reason why the value has been inserted, and thus also when the value has been so inserted in compliance with the requirements of the conference tariff, according to which the freight is calculated as a percentage of the value of the cargo (Camera Nacional de Apolaciones 1.2.1988, Mendez Collado S.r.l. v. Captain of the "Nedlloyd Loire").

"Fair Opportunity" to Declare a Higher Value

United States: The conflict continues to grow among the various circuit courts of appeals concerning the type of notice which must be given to the shipper of his right, under COGSA § 4(5) (corresponding to Art. IV(5) of the Convention), to avoid the \$500 per package limitation by declaring a higher value. The Court of Appeals for the Fourth Circuit, sitting en banc, held, eight to two, that a short form bill of lading which incorporated by reference both COGSA and the carrier's long form bill, which in turn incorporated COGSA § 4(5), provided a shipper with a "fair opportunity" to avoid its limitation provision by declaring a value higher than \$500 per package. Cincinnati Milacron, Ltd. v. The American Legend, 804 F.2d 837, 1987 AMC 282 (4th Cir. 1986), adopting the opinion of the dissenting judge on the three-judge panel which first heard the appeal. See 784 F.2d at 1162, 1986 AMC at 2153.

Other recent decisions interpreting the "fair opportunity" requirement liberally include Mu, Inc. v. Puerto Rico Maritime Authority, 829 F.2d 1120, 1987 AMC 347 (4th Cir. 1987); General Electric Co. v. The Nedlloyd, 817 F.2d 1922, 1987 AMC 1817 (2d Cir. 1987); Ackwo International Steel Corp. v. Tokio Kaiun Kaisha, Ltd., 840 F.2d 1284, 1988 AMC 2922 (6th Cir. 1988), and Sony Magnetic Products, Inc. v. Mervinto O/Y, 688 F. Supp. 1505, 1988 AMC 718 (S.D. Ala. 1987), and Rockwell International Corp. v. The Coln Express, 1987 AMC 2537 (D. Md. 1987). In the last named case a Hamburg-Baltimore bill of lading provided that the carrier's liability would be limited as provided in

COGSA unless the Hague-Visby Rules were "compulsorily applicable" in the country of shipment. The carrier failed to prove that the Rules were "compulsorily applicable" in West Germany, and therefore limited liability to \$500 per package, in accordance with COGSA.

The Court of Appeals for the Fifth Circuit held that a bill of lading clause which merely stated that provisions of COGSA were to apply to the period between discharge and delivery did not amount to a statement that the carriage was subject to COGSA, so as to constitute constructive notice to the shipper of its right to declare a higher

value than \$500 per package. Couthino, Caro and Co. v. The Sava, 849 F.2d 166, 1988 AMC 2941 (5th Cir. 1988). (The Fifth Circuit's rule that constructive notice of the right to declare a higher value is sufficient was established in Brown & Root v. The Peisander, 648 F.2d 415, 1982 AMC 929 (5th Cir. 1981).

A much stricter view of "fair opportunity" prevails in the Ninth Circuit. See Pan American World Airways, Inc. v. California Stevedore and Ballast Co., 559 F.2d 1173, 1978 AMC 1839 (9th Cir. 1977). Recent cases holding that a "fair opportunity" had not been given include Royal Exchange Assurance v. The Hoegh Dene, 1988 AMC 868 (W.D. Wash. 1987); Insurance Company of North America v. The Zim Hong Kong, 1988 AMC 1047 (S.D.N.Y. 1987), and Tampella v. The Nordlandia, 1988 AMC 2730 (S.D. Ga. 1988). The North American and European jurisprudence is analyzed in depth in Sturley, The Fair Opportunity Requirement Under COGSA Section 4(5): A Case Study in the Misrepresentation of the Carriage of Goods by Sea Act, 19 J. Mar. L. & Com. 1, 167 (1988).

Inaccurate bill of lading

FRG: The per package-limitation provided for in §660 HGB (corresponding to Art. 4§5 of the Hague Rules) does not apply to the liability of the carrier for issuing on board a bill of lading in a case where the goods had never been loaded on the ship.

Bundesgerichtshof (Federal Court of Justice), judgment of 25.9.1986 (II R 26/86) - MS "Nopal Mascot".

Entscheidungen des Bundesgerichtshofes in Zivilsachen Vol. 98, p. 284 seq. = Transportrecht 1987, p. 29.

Limit - When Available

Greece: The carrier can only rely on the package limitation when the goods are packed in such a way as to make it impossible for him to ascertain the contents of the package and their value; he cannot rely on the limitation, if the contents of the package are described in the bill of lading in a manner showing clearly their nature and thus determining their value ("raw zinc"): Court of Appeal of Piraeus 718/1988 Epitheoresis Nautiliakou Dikaiou (Shipping Law Review) 1988, 308 - Epitheoresis Emporikou Dikaiou (Commercial Law Review) 1988, 662.

Greece: The carrier cannot rely on the package limitation when from a clear description of the goods in the bill of lading it results that the court value of each package exceeds drachmas 8.000: First Instance Court of Piraeus 681/1987 Epitheoresis Nautiliakou Dikaiou (Shipping Law Review) 1988, 17 - Epitheoresis Emporikou Dikaiou (Commercial Law Review) 1988, 665.

Limit of Liability for Palletized Goods

Argentina: When the number of packages stacked on a pallet is indicated in the bill of lading, the limit of the carrier's liability under the Hague Rules must be calculated on the basis of the packages. The provision of the Hague Rules must be interpreted taking into account the provision of Article 278 of the Ley de Navegacion and that of the Hague-Visby Rules.

In view of the fact that Art. 4 § 5 of the Hague Rules does not regulate the manner of calculation of the limit in respect of the containerized and palletized cargo, the provision of Art. 278 of the Ley de Navegacion and of Art. 4 § 5(c) of the Hague-Visby Rules must apply by analogy (Camera Nacional de Apelaciones 2.2.1988, El Sol de Buenos Aires Cia de Seguros S.A. v. Owners of the "Rio Carcarana"; Camera Nacional de Apelaciones 16.2.1988, La Ibero Platense Cia de Seguros v. Captain of the "Lucero del Mar"; Camera Nacional de Apelaciones 16.2.1988, Autotecnics S.A. and Others v. Captain of the "Rio Marapa").

Loss of the Right to Limit

Canada: When there is no gross negligence, the carrier can rely on the package limitation: Trent Rubber Services v. Polarctic (1987) 12 F.T.R. 140.

United Kingdom: It was held that the general view was that art. IV, r. 5(e) referred to the carrier himself and did not include his servants or agents except insofar as employees were to be regarded as

constituting part of the alter ego of the carrier and there was nothing to induce a change in that general view; the opening words of art. IV, r. 5(e) that "Neither the carrier nor the ship shall be entitled ..." must refer to the liability of the carrier himself; art. IV, r. 5(e) did not impose on a carrier a non-delegable duty and there were commercial arguments in favour of a restrictive meaning of "carrier".

The issues would be answered (a) the limitation provisions of par. 3 of the consignment note were not invalidated by s. 1(6)(b) of the 1971 Act and (b) art. IV, r. 5(e) referred only to the misconduct or recklessness of the carrier himself or his alter ego. Browner International Ltd. v. Monarch Shipping Co. Ltd. The "European Enterprise", (Q.B.-Com. Ct.) 1989, 2 Lloyd's Rep. 185.

Nullity of Clauses Reducing the Limit

Italy: A bill of lading clause whereby a package limit is fixed for an amount lower than 100 pounds gold is null and void pursuant to Article 3 paragraph 8 of the Hague Rules: Court of Cassation 18.7.86 No. 4632, Industria Italiana Caffè Medaglia d'Oro S.r.l. v. Lloyd Triestino S.p.A. 1987 Dir. Mar., 879.

Package

Australia: The word "package" when used to determine the limit of the carrier and ships liability means the unit in which the shipper packed the goods rather than the method utilized by the ship to contain the cargo: Supreme Court of New South Wales: 7 December 1988 P.S. Chelaram & Co. Limited v. China Ocean Shipping Co. - The "Zhi Jiang Kou" /1989/ 1 Lloyd's Rep. 413.

Australia: Reference to "packages" on a Bill of Lading refers to packages not within a container. Packages within a container are considered one "package": Supreme Court of New South Wales: 12 August 1987 Ace Imports Pty Ltd. v. Companhia De Navegacao Lloyd Brasileiro - The "Esmeralda I" /1988/ 1 Lloyd's Rep. 206.

NON-DELIVERY - WRONG DELIVERY

United Kingdom: Held by Q.B.-Com. Ct. (Hirst J.) that art. II of the rules described the various stages at which the carrier bore responsibilities and liabilities and was entitled to rights and immunities; this began with loading and ended with discharge with the intermediate stages of handling stowage and carriage custody and care in between; all these were functions of transportation and the "package" so described was inherently inapt to embrace delivery; delivery was therefore outside the scope of art. II and misdelivery of whatever kind was outside art. III r. 6 since the carrier was under no "liability" in that respect.

Even if wrong delivery was within the scope of the rules the Court would still have held that the theft by the carrier was not within the rules; very clear words would be necessary to cover theft by the carrier; no such clear words were to be found in the rules and there was no support to be found in the Stockholm discussions (which resulted in the Hague-Visby Rules) that such was the legislative intent; the plaintiffs' claim for a declaration failed. Compania Portorafi Commerciale S.A. v. Ultramar Panama Inc. and Others, (Q.B.-Com. Ct.) 1989 2 Lloyd's Rep. 63.

PARAMOUNT CLAUSE

France: When the Hague Rules are not applicable pursuant to Art. 10 thereof, the bill of lading having been issued in a non-contracting State, the Rules shall contractually apply pursuant to the Paramount Clause inserted in the bill of lading. Cour d'Appel de Montpellier, 4 December 1986, SECAM v. Sté Méridionale des Bois et Matériaux, 1988 DMF 376.

Italy: The Paramount Clause whereby the Hague Rules or a national enactment thereof is incorporated in a bill of lading has the effect of making the Hague Rules applicable on a contractual basis: Court of Appeal of Trieste 2.12.86 Adriatic Shipping Company v. Prudential S.p.A. 1987 Dir. Mar. 937.

Italy: The Paramount Clause in the "Asbatankvoy" form which provides for the application of the U.S. Carriage of Goods by Sea Act except when the bill of lading has been issued in a place where there is in force a law enacting the Hague Rules has the effect, when the bill of lading has been issued in a Contracting State, to make the convention, as enacted in such State, applicable to the bill of lading: Arbitration Award 20.3.87, Soc. Italiana Bunkeraggi S.r.l. v. Agip S.p.A., 1988 Dir. Mar., 526.

Italy: When a charter party contains a Paramount Clause in print and a reference to English law in type, the latter clause prevails: Arbitration Award 20.3.87, Soc. Italiana Bunkeraggi S.r.l. v. Agip S.p.A., 1988 Dir. Mar., 526.

Italy: A Paramount Clause incorporating the Hague Rules has the effect of making the contract of carriage subject to such Rules: Court of Appeal of Trieste 12.6.87, Adriatic Shipping Co. S.r.l. v. Neuchateloise Società Svizzera di Assicurazioni Generali, 1988 Dir. Mar. 132.

Italy: The Paramount Clause incorporating the Hague Rules has the effect of submitting the contract of carriage to the provisions thereof: C.A. Trieste 12.6.87, Adriatic Shipping Co. S.r.l. v. Neuchateloise Società Svizzera di Assicurazioni Generali, 1988 Dir. Mar. 776.

United States: A Clause Paramount in a bill of lading covering carriage of a container from France to Chicago which provided that the Hague Rules "as adopted in the country of shipment" should apply was interpreted as incorporating the Visby Amendments, because they had been adopted by France. A clause in the bill of lading defining the container as the "package" was therefore held invalid, and each of the 41 packages shipped in the container was held to be a unit for limitation of liability purposes. Association Technique Internationale v. Cast Europe (1983) Limited, 662 F. Supp. 1443, 1988 AMC 305 (U.S. District Court, Northern District of Illinois, 1987).

PERIOD OF RESPONSIBILITY

Canada: The Ontario Court of Appeal affirmed a trial decision which held that a carrier cannot give an unnatural meaning to the word "package" in order to escape the minimum liability requirements in the Hague Rules. The carrier had defined "package" in the bill of lading as the entire contents of a container which had actually contained 527 individual packages and was so described on the bill of lading. Haverkate v. Toronto Harbour Commissioners et al. (1988) 62 O.R. 447 (Ont. Ct. of Appeal).

France: The Hague Rules apply only from the time of loading operations and these consist of taking the goods from alongside the vessel and lifting them onto the vessel. Cour d'Appel d'Aix-en-Provence 5 May 1987, Somotrans v. CIAM, 1988 DMF 384.

RIGHT TO SUE

FRG: The freight forwarder whose name appears in the bill of lading as the shipper of the goods followed by the qualification "as agents" cannot exercise any right nor is he subject to any obligation arising out of the bill of lading.

Hanseatisches Oberlandesgericht (Court of Appeal) Hamburg, judgment of 9.10.1987 (U U 82/87) = Transportrecht 1987, p. 69.

SCOPE OF APPLICATION

France: The Protocol of 1968 is applicable if ratified by the State where loading takes place, irrespective of whether or not it is in force in the State where discharge is effected. Cour d'Appel de Montpellier, 1 December 1987, Mediterranean Shipping CY France S.A. v. Sté Réunion Européenne S.A., 1988 DMF 250.

France: Since Art. 10 of the Hague-Visby Rules has not a compulsory character the provisions of the Rules do not have the force of law pursuant to a Paramount Clause. Cour de Cassation 5 July 1988, Sté Chaussures Jean Biotteau v. Skandia Transport, 1989 DMF 227.

STOWAGE

Japan: Chestnuts in sacks were stowed in the hold without adequate ventilation. This mode of stowage made the ship unseaworthy under article 3 para 1 of the Hague Rules: Tokyo District Court 24th September 1987, Taiseimaru Kaiun Co. Ltd. v. Continental Insurance Co. Ltd. (1987) 81 Kaijiho Kenkyu Kaishi 27.

United Kingdom: Held by Q.B.-Adm. Ct. (Bingham, J.) that the proper law of the contract was Italian and the Hague Rules in their unamended form applied; and it was common ground that a carrier could not validly contract to exclude liability for services which he was to perform and did perform; on a proper construction of cl. 5 and 24, the effect was to relieve the owners of their obligation to load or unload and to confer a mandate on them to appoint stevedores to carry out these functions on their behalf; however, the court was satisfied that the Italian court would not hold on all the facts of this case that the owners had effectively absolved themselves from all liability for negligent loading, stowage and unloading and there was a strong presumption that the owner, his servants and agents were responsible for the loading and unloading of that cargo; the Italian courts would therefore regard cl. 5 and 24 as repugnant to art. III r. 2 of the Hague Rules and thus invalid under art. III. r. 8 and owners would be liable for the operations carried out.

What the learned judge had to do was decide how an Italian court would treat cl. 5 and 24 having regard to the evidence which was put before him; an Italian court would regard cl. 5 and 24 as exempting clauses and not as clauses defining the services to be performed by the carrier; the Italian court would decide that they were to that extent void under art. III r. 8 and the appeal would be dismissed. The "Saudi Prince" (No. 2), (C.A.) 1988, 1 Lloyd's Rep. 1.

TIME LIMITATION (PRESCRIPTION)

Australia: Carrier and ship discharged from all liability if "suit" is not brought within one year. The word "suit" includes arbitration proceedings. Supreme Court of Victoria, 25 February 1987, Australian Shipping Commission v. Kooragang Cement Pty Ltd. - The "Lake Eyre" [1988] V.R. 29.

Australia: An action for indemnity by a shipowner against a third party shipowner, may be brought after the expiration of one year (if allowed by the Court seized of the case), even though the liability of the third party shipowner does not arise under the Hague-Visby Rules. Privy Council, 3 June 1978, China Ocean Shipping Co. v. The Owners of the Vessel "Andros" - The "Zingeheng" and the "Andros", [1987] 2 Lloyd's Rep. 210.

Australia: Carrier and ship discharged from all liability if "suit" is not brought within one year. The word "suit" includes arbitration proceedings. Supreme Court of Victoria, 25 February 1987, Australian Shipping Commission v. Kooragang Cement Pty Ltd. - The "Lake Eyre", [1988] V.R. 29.

Australia: A shipowner can only claim exemption from liability under the time bars of the Hague Rules if he is a party to the Contract of Carriage by Sea. Supreme Court of New South Wales, 29 July 1977, J. Gadsden Pty Ltd. v. Australian Coastal Shipping Commission, [1977] 1 N.S.W.L.R. 575.

Australia: A breach of a repudiatory character, entitling an innocent party to rescind, does not exclude the operation of the time bars under the Hague Rules. Privy Council - Appeal from High Court of Australia, 10 July 1980, Port Jackson Stevedoring Pty Ltd. v. Salmond & Spraggon (Aust.) Pty Ltd. - The "New York Star", (1980) 144 C.L.R. 300.

Australia: Article III, r.6 does not apply to personal actions in tort. Supreme Court of New South Wales, 29 July 1977, J. Gadsden Pty Ltd v. Australian Coastal Shipping Commission, [1977] 1 N.S.W.L.R. 575.

Australia: The Privy Council acknowledged the argument that exemptions under the Hague Rules do not apply where the action is brought in tort for negligence. However, the Court found the defendant not liable without dealing with this argument. Privy Council - Appeal from the High Court of Australia, 10 July 1980, Port Jackson Stevedoring Pty Ltd. v. Salmond & Spraggon (Aust.) Pty Ltd. - The "New York Star", (1980) 144 C.L.R. 300.

FRG: Where the carrier extends the one year time limit (§612 HGB corresponding to Art. 3§ 6 of the Hague Rules) in favour of the agent of the cargo insurer, such extension is valid for the benefit of the receiver only if it appears from the circumstances of the case that the agent of the cargo insurer acted also for the receiver.

Hanseatisches Oberlandesgericht (Court of Appeal) Hamburg, judgment of 30.7.1987 (6 U 262/86) Transportrecht 1988, p. 69.

Greece: The one-year term for any claims in respect of partial loss or damage to the cargo, which is set out in article 148 of the Code of Private Maritime Law, has the character of a term that on expiry brings about the extinction of the claim (according to the standard view held by the courts). The extinguished claim may not be set off against another claim. Areios Pagos (Court of Cassation) 1450/1988, Epitheoresis Emporikou Dikaïou (Commercial Law Review) 1988, 659.

Note: Article 148 of the Code of P.M.L. approximately corresponds to article III Paragraph 6 of the Hague Rules, the latter being wider in scope. Claims for total loss of the cargo do not come under article 148 but under article 289 par 4 of the same Code; they are subject to a one-year time limit of the ordinary kind, the time commencing to count from the end of the year within which the claim arose. There is a basic distinction in Greek law between an ordinary time limit to the enforcement of a claim (paragaphi) (Code of Civil Law, articles 248 to 278) and a strict term limiting or extinguishing the exercise of a right (aposvestiki prothesmia) (Code of Civil Law, articles 278 and 280). As opposed to the ordinary time limit, the strict or extinguishing term shall not be subject to waiver and shall be applied by the law court as by right, ex officio.

Italy: The one year prescription time limit provided for in Article 3 paragraph 6 of the Hague Rules applies only in case of loss of, damage or delay of the goods, but does not apply in case of wrong delivery: Tribunal of Leghorn 10.12.86 S.R.L. Spini v. Sea-Land Service Inc. 1987 Dir. Mar., 961.

Italy: Delivery of the goods to a terminal operator may be deemed to be delivery for the purposes of the one year time limit provided for by Article 3 paragraph 6 of the Hague Rules when the consignee has been put in a position to check the condition of the goods delivered to the terminal operator; failing this, the time limit commences to run from the time of the actual delivery of the goods to the consignee by the terminal operator: Court of Cassation 5.6.87 Gastaldi & C. S.p.A. v. Adriatica S.p.A. di Navigazione 1988 Dir. Mar., 100.

United Kingdom: Held by Q.B.-Com. Ct. (Saville, J.) that the loss or damage claimed by the charterers did not arise out of or relate to loss of or damage to the goods: the words of s. 3(6) of the United States Act applied a time limit by reference to when "the goods" were or should have been delivered; and as a matter of construction the parties could only have intended the time limit to apply to claims for loss or damage relating to the goods carried or to be carried; the charterers' claim was not barred by the United States Act. Interbulk Ltd. v. Ponte dei Sospiri Shipping Co. (Q.B.-Com.Ct.) (1988) 2 Lloyd's Rep. 159.

United Kingdom: Held by C.A. (Fox and Parker L. J.J.) that r. 8 had to be given a purposive construction; it was not within r.8 that an option clause such as cl. 10 should be struck down merely because the cargo claimant had failed to protect himself against the consequences of leaving open the carrier's possible election for arbitration; it would be the clause and not the rules which would enable timeous proceedings to be supplanted by time barred proceedings but the clause was only enabled to do so by the failure of the plaintiff either to take procedural steps or to commence arbitration proceedings in time; the clause did not lessen or relieve liability under art. III r. 8; what it did was to make, in certain circumstances, arbitration the only safe route to follow; the clause was not struck down by art. III r. 8.

The contracts expressly provided for the jurisdiction of the English Courts unless and until either party exercised a valid election for arbitration; neither party had done so when the writs were issued and the proceedings were therefore brought within time, if thereafter the proceedings as a result of election had to be restarted in arbitration, the suits would have been brought within time; r. 6 had to be given a purposive construction and it could not be within the purpose so to construe it to enable a defendant to set up a time bar when the

plaintiff had commenced the very suit which the parties had agreed on and the shift to arbitration resulted from the defendants' own contractual election. Government of Sierra Leone v. Marmaro Shipping Co. Ltd. Same v. Margaritis Marine Co. Ltd. The "Amazona" and "Yayamaria", (C.A.) 1989, 2 Lloyd's Rep. 130.

NOTE: Clause 10 of the bill of lading provided that the contract was governed by English law and further provided inter alia:

(B) ... either party may, by giving written notice of election to the other party, elect to have any such dispute referred to the arbitration of a single arbitrator in London in accordance with the provisions of the Arbitration Act 1950, or any statutory modification or re-enactment thereof for the time being in force.

A party shall lose its right to make such an election only if - (a) it received from the other party a written notice of dispute which - (i) states expressly that a dispute has arisen out of this Bill of Lading; (ii) specifies the nature of the dispute; and (iii) refers expressly to this Clause 10(B) and (b) it fails to give notice of the election to have the dispute referred to arbitration not later than 30 days from the date of receipt of the notice of dispute.

United States: Under a mortgage on a Greek vessel the owner assigned to a Panamanian mortgagee all its rights deriving from Article 13 of Greek Legislative Decree 2687/1953 and Ministerial Decision No. 54259/80, which provided that the mortgage would have priority over liens recognized by Article 205 of the Greek Civil Code of Maritime Law, by any other provisions of Greek law, "except only of (sic) the liens stated in Article 2 of the Brussels Convention". The court held that the mortgage was subordinated to liens arising under Article 2. Cantieri Navali Riuniti v. The Skyptron, 802 F.2d 160, 1987 AMC 463 (U.S. Court of Appeals, 5th Cir., 1986).

1926 CONVENTION ON MARITIME LIENS AND MORTGAGES

CLAIMS SECURED BY MARITIME LIENS

Preservation of the vessel after entry into last port (Art. 2 No. 1)

Greece: (Greece has not ratified the Convention but has included its provisions in the Private Maritime Law Code of 1958. The package limit is drachmas 8.000 only; this is the reason why Courts tend to set it aside.) The cost of modifications, renovation or maintenance of the class of the vessel and the expenses incurred for the operation of the vessel are not included in the expenses provided for in Article 2 para. 1 of the Convention. "Last port" is considered to be the port where the vessel entered and was seized in order to be auctioned. Court of Appeal of Piraeus 1719/1987 Epitheoresis Nautiliakou Dikaion (Shipping Law Review) 1988, 195.

Greece: Money payable to the Government as tax on the vessel's income (Law 27/1975), penalty for tax avoidance (Law 820/1978), consular harbour dues and tax imposed on crew wages are not included in the claims giving rise to liens according to article 2 para. 2 of the Convention. Court of Appeal of Thessaloniki 86/1988 Epitheoresis Nautiliakou Dikaion (Shipping Law Review) 1988, 260. Contra: As regards the vessel's income tax (Law 27/1975) First Instance Court of Piraeus 237/1988 Epitheoresis Nautiliakou Dikaion (Shipping Law Review) 1988, 263.

Preservation of the vessel and continuation of the voyage (Art. 2 No. 5)

Greece: (Greece has not ratified the Convention. However, Ministerial Orders issued in accordance with Legislative Decree 2687/1953 concerning Protection of Investments in Greece provide that art. 2 of the Convention shall in certain cases be applied to Greek ships; see Sotiropoulos, Liens for Necessaries and Arrest of Ships under Greek Law, Tulane Maritime Law Journal vol. 12 p. 308-310). Under art. 2 of the Convention social insurance contributions payable by the shipowner to the Seamen's Pension Fund shall not give rise to a maritime lien; however, under other statutory provisions (art. 86 para. 9 of Law 792/1978) a buyer of a ship (even one who acquires the ship in case of an enforced sale thereof at a public auction) shall be jointly and severally liable to the Fund for all such debts of the previous owners: Areios Pagos (Court of Cassation) 1145/1987 Epitheoresis

Emporikou Dikaïou (Commercial Law Review) 1987, 610 - Epitheoresis Nautiliakou Dikaïou (Shipping Law Review) 1988, 257.

Greece: Under art. 2 of the Convention the cost of preservation of the vessel from the time of her entry into the last port shall give rise to a maritime lien. "Cost of preservation" means cost of repairs effected in the last port, whether prior to or after the seizure of the vessel, provided that they are necessary to maintain the vessel in good condition and prevent her deterioration; it does not include expenses incurred in order to restructure the vessel and upgrade her condition: Court of Appeal of Athens 4373/1987 Epitheoresis Nautiliakou Dikaïou (Shipping Law Review) 1988, 496.

France: A claim for bunker supplies is not secured by a maritime lien if it is not proved that the supply was ordered by the master alone. Such a claim is instead secured by a maritime lien if the bunker is ordered by the chief engineer who acts on the basis of a power delegated to him by the master. Tribunal de Grande Instance de Rouen, 10 March 1987, Greyfin Corp. v. Sté African services and Others, 1988 DMP 109.

Italy: A condition for the existence of the maritime lien for disbursements incurred for the preservation of the vessel and the continuation of the voyage is that the claimant shows that the contract has actually been entered into or the act done by the master: Tribunal of Venice 22.1.87 Sud Marine Enterprises S.a.r.l. and Alsthom Atlantique S.A. v. Morgan Guaranty Trust Co. 1988 Dir. Mar. 230.

1926 CONVENTION ON IMMUNITY OF STATE-OWNED SHIPS

Netherlands: The Convention does not apply when the vessel, the arrest of which is requested, is owned by a State (Peru) that is not a party to the Convention: President of the District Court of Amsterdam 19.11.87, 1988 Schip and Schade, 69. Weijermuller Salvage B.V. v. ADM Naval Services.

1952 ARREST CONVENTION

CLAIM AGAINST A CHARTERER

Italy: The claimant may arrest a vessel as security for a claim in respect of bunker supplies even when such supplies were authorized by the time charterer: Tribunal of Ravenna 24.1.87 Trademar Conasa S.A. v. Line Island Marine Co. 1988 Dir. Mar. 159.

United States: Under Spanish law, which incorporated the 1952 Arrest of Ships Convention, there is no right to proceed in rem directly against a vessel on a maritime claim, but only a right to proceed against an owner or time charterer in personam, with a right to arrest the particular ship or another vessel belonging to the defendant, as security. Therefore, a P&I Club's letter of undertaking, given to secure payment of a judgment in rem, was held not to provide security in an in personam action against the owner. Perez & Compania (Cataluna) v. The Mexico 1, 826 F.2d 1449, 1987 AMC 1930 (U.S. Court of Appeals, 5th Cir., 1987).

JURISDICTION

Greece: A ship may only be arrested under the authority of a Court of the Contracting State in which the arrest is made (art. 4 of the Convention); nevertheless if under the rules of the Code of Civil Procedure Greek Courts have jurisdiction to deal with the merits of a claim, they may order the arrest of a foreign ship even though said ship is outside Greek territorial waters at the time the arrest order is issued; such arrest order shall only be enforced if and when the ship comes within Greek territorial waters (arrest of a Cypriot ship for debts arising from a contract entered into in Greece): Single Member First Instance Court of Piraeus 2716/1988 Epitheoresis Nautiliakou Dikaïou (Shipping Law Review) 1988, 293 - Epitheoresis Emporikou Dikaïou (Commercial Law Review) 1988, 504.

United Kingdom: Held by Q.B.-Adm. Ct. (Sheen, J.) that legislation which gave effect to the 1952 Arrest Convention gave a court jurisdiction over maritime claims; that jurisdiction was not affected by the 1968 Convention; and art. 21 of the 1968 Convention required a court to decline jurisdiction which appeared to mean "decline to exercise that jurisdiction".

The 1952 Arrest Convention did not contain any provisions which prescribed what should happen if two actions arising out of the same incident were commenced in different countries; art. 21 and 22 of the 1968 Convention did not affect the Arrest Convention and effect had to be given to one or other of the articles. The "Linda" (Q.B.) 1988 1 Lloyd's Rep. 1.

MARITIME CLAIMS

France: The claim for supplies to a vessel for the purpose of her maintenance or operation is a maritime claim covered by Art. 1 paragraph 1(k) of the 1952 Arrest Convention. Cour d'Appel de Montpellier 19 March 1987, Ocean Faith Shipping Ltd. v. Hutton & Co., 1988 DMF 539.

Italy: The claim for supply of bunkers even if not made in order to enable the vessel to continue her voyage is a maritime claim according to Article 1 paragraph 1(k) of the Arrest Convention: Tribunal of Ravenna 24.1.87 Trademar Conasa S.A. v. Line Island Marine Co. 1988 Dir. Mar., 159.

Netherlands: A claim arising out of disbursements made by an agent on behalf and for the account of a ship or her owner is a maritime claim: District Court of Rotterdam 13.3.87, 1987 Schip and Schade, 123. Turnbull et al. v. Comp. Nat. Algerenne de Navigation.

SCOPE OF APPLICATION

Italy: The 1952 Arrest Convention applies, pursuant to Article 5 paragraph 2, also to vessels having the nationality of a non-Contracting State: Tribunal of Ravenna 24.1.87 Trademar Conasa S.A. v. Line Island Marine Co. 1988 Dir. Mar., 159.

Italy: The 1952 Arrest Convention applies, pursuant to its Article 8 paragraph 2, also in respect of vessels having the nationality of a non-Contracting State: Tribunal of Ravenna 24.1.87, Trademar Conasa S.A. v. Line Island Marine Co. 1988 Dir. Mar., 804.

Netherlands: The owner of a vessel having a nationality of a non-Contracting State (Panama) cannot invoke the advantages of the convention: Court of the Hague 5.6.87, 1987 Schip and Schade, 121. Gatoil Anstalt v. Neptune Shipping.

SISTER SHIP

France: The provision of Art. 3 paragraph 1 does not allow the arrest of a vessel who is only owned as respects few shares by the owner of the vessel in respect of which the claim arose. Court d'Appel de Montpellier, 26 June 1986, Partrederiet Arktis Pride v. Downland Shipping Inc., 1988 DMF 534.

SUBSEQUENT ARREST

Netherlands: Unless the claimant can provide proof as of Article 3 paragraph 3, a subsequent arrest must be lifted: President of the District Court of Middleburg, 2.10.87, 1988 Schip and Schade, 49. Eurco Explorer et al. v. Peterson Rotterdam et al.

1957 LIMITATION CONVENTION

CLAIMS SUBJECT TO LIMITATION

Australia: Section 333 of the Navigation Act 1912 (Cth.) excludes Art. I(i)(c) of the Limitation Convention from operation in Australia. Article I(i)(b) and I(i)(c) are mutually exclusive so that Article I(i)(b) cannot be interpreted to include anything that falls within Article I(i)(c). Therefore the owners of a ship cannot limit their liability for costs incurred relating to a wreck under the Limitation Convention. Supreme Court of Queensland, 8 May 1987, Barrameda Enterprises Pty Ltd. v. O'Connor and K.F.V. Fisheries (Qld) Pty Ltd., The "Tiruna" and the "Pelorus", /1987/ 2 Lloyd's Rep. 666, /1987/ 1 Q.R. 359.

FAULT OR PRIVILEGE

FRG: The owner does not lose the right to invoke the benefit of limitation pursuant to Art. 1§1 of the Convention on account of his failure to give the master instructions in respect of the management

of the ship. He in fact may rely on the experience of the master.
Hanseatisches Oberlandesgericht (Court of Appeal) Hamburg, judgment of
26.5.1988 (6 U 187/87) - MS "Tyne Bridge" - Transportrecht 1988, p.
433.

1976 LIMITATION CONVENTION

CLAIMS SUBJECT TO LIMITATION

France: The claim for the refloating expenses of a vessel or the removal of a wreck are presently included in those subject to limitation. In fact, France, by indicating in the order of ratification that it reserves the right to exclude the application of Article 1 paragraph 1(d) and (e), intended to make clear that it reserved the right to have subsequent recourse to Article 18 of the Convention, authorizing the aforesaid exclusions. The costs incurred by a public entity such as the Port of Ruen in the firefighting operations and in order to combat pollution are included in the claims subject to limitation: C.A. of Bordeaux 8.9.87, Sinkyu Kisen v. Newcastle P & I Club, 1988 D.M.F. 591.

CLAIMS EXCEPTED FROM LIMITATION

France: The claims by servants of the shipowner excepted from limitation are those of the shipowner when constituting the limitation fund and not those of the creditor of the shipowner: C.A. of Bordeaux 8.9.87, Sinkyu Kisen v. Newcastle P & I Club, 1988 D.M.F. 591.

CONDUCT BARRING LIMITATION

France: Personal fault is a fault of the managers of the Company or of a person having similar powers, except those who have only limited powers, such as the master of a vessel, even though he represents the owner as respects the commercial management of the vessel. Cour d'Appel de Rennes, 30 March 1988, Comptoir Agricole Français v. Ove Skou, 1989 DMF 24.

IMO - International Convention on Salvage 1989

OMI - Convention Internationale de 1989 sur l'Assistance

CORRIGENDUM

CMI NEWS LETTER - Summer 1989 -

CMI NEWS LETTER - Eté 1989 -

Page 3 - Article 6: Salvage Contracts - par.2:
please read : "The Master.....".

Page 8 - Article 23: Limitation of Action - par.1:
please read : "Any action relating to payment under this
Convention shall be time-barred if judicial or arbitral
proceedings have not been instituted".

Albert Lilar Prize 1990

The Board of Directors of the Albert Lilar Foundation has fixed the 1990 Prize at an amount of Belgian Francs: 400.000.

Consideration will only be given to works of which three copies will have been received at the Registered Office of the Foundation c/o Henry Voet-Genicot Mechelsesteenweg 203, B.6, 2018 Antwerpen, before the 15th May, 1990.

The full text of the Rules for the awarding of the Prize has been copied on page 12 of the CMI NEWS LETTER-Autumn 1989.

Prix Albert Lilar 1990

Le Conseil d'Administration de la Fondation Albert Lilar a décidé de fixer le montant du Prix 1990 à Francs belges: 400.000.

Seront seuls pris en considération les ouvrages dont trois exemplaires seront parvenus au siège de la Fondation c/o Henry Voet-Genicot, Mechelsesteenweg 203, B.6, 2018 Antwerpen, avant le 15 mai 1990.

Le texte complet du Règlement pour l'attribution du prix a été reproduit à la page 12 du CMI NEWS LETTER-Automne 1989.

Personalia

ESPANA

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

Le nouveau Bureau de l'Association Espagnole de Droit Maritime est composé comme suit :

President: D.Alejandro GARCIA SEDANO

Vice-President: D.Enrique HELLMAN DE MENCHACA
D.Javier TIRADO SUAREZ

Secretary-General: D.José Maria SISTIAGA HERNANDO

Treasurer: D.Pelegrin de BENITO GONZALEZ

NORGE

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

Le nouveau Bureau de l'Association Norvégienne de Droit Maritime est composé comme suit :

President: Haakon STANG LUND

Members of the Board : Arne BECH
Mrs.Karin BRUZELIUS
Thor FALKANGER
Nicolas HAMBRO
Ole LUND
Havard POULSSON
Jan-Frederik RAFEN
Frode RINGDAL
Arne RIKHEIM
Erling SELVIG
Mrs.Nina FRISAK
Gunnar VEFLING

**XXXIVth International Conference of the C.M.I.
Paris June 1990**

PROGRAM

Sunday 24 June 1990 :
14:00 Opening of the Secretariat for the
registration of participants
"Grand Hotel"
18:00/20:30 Opening Ceremony and welcome
reception (lounge suit)
"Grand Hotel"

Monday 25 June 1990 :
9:30 and 14:30 meetings of the Conferen-
ce. "Grand Hotel"
19:00/21:00 Reception by the Order of
the Paris Bar.

Tuesday 26 June 1990 :
9:00 and 14:30 meetings of the Conferen-
ce. "Grand Hotel"
For accompanying persons only: excursion
to the Castle of Vaux-le-Vicomte.

19:00/21:00 For all participants:
reception offered by the French
Maritime Organizations at
"Cercle Interallié"

Wednesday 27 June 1990 :
All day excursion in Burgundy.

Thursday 28 June 1990 :
9:00 and 14:30 meetings of the Conferen-
ce. "Grand Hotel"

Friday 29 June 1990 :
9:00 and 14:30 meetings of the Conferen-
ce. "Grand Hotel"
19:00/23:00 Closing Ceremony and Gala
Dinner (black tie) at "La Conciergerie".

Further information can be obtained by
application to :

Secrétariat de la XXXIVe Conférence du CMI
76, avenue Marceau
75008 PARIS - Fax 47.20.38.04

Next Meetings

THE EXECUTIVE COUNCIL

The next meeting of the Executive Coun-
cil will be held on Sunday 24 June, 1990
at 16:30 - Grand Hôtel, Paris

ASSEMBLY OF THE C.M.I.

- Brief meeting on Monday 25 June 1990
from 9:00 to 9:30- Grand Hôtel, Paris
- Annual Regular Assembly on Saturday
30 June 1990 at 9:30-
Grand Hôtel, Paris.

**XXXIVème Conférence Internationale du C.M.I.
Paris juin 1990**

PROGRAMME

Dimanche 24 juin 1990 :
14:00 Ouverture du secrétariat pour l'
enregistrement des participants
"Grand Hotel"
18:00/20:30 Cérémonie d'inauguration et
réception d'accueil (toilette de
ville) "Grand Hotel"

Lundi 25 juin 1990 :
9:30 et 14:30 Réunions de la Conférence
"Grand Hotel"
19:00/21:00 Réception par le Barreau de
Paris.

Mardi 26 juin 1990 :
9:00 et 14:30 Réunions de la Conférence
"Grand Hotel"
Pour les personnes accompagnantes:
excursion au Château de Vaux- le-Vicomte

19:00/21:00 Pour tous les participants:
réception offerte par les Professions
maritimes françaises au "Cercle Inter-
allié".

Mercredi 27 juin 1990 :
Toute la journée: excursion en Bourgogne.

Jeudi 28 juin 1990 :
9:00 et 14:30 Réunions de la Conférence.
"Grand Hotel"

Vendredi 29 juin 1990 :
9:00 et 14:30 Réunions de la Conférence.
"Grand Hotel"
19:00/23:00 Cérémonie de clôture et di-
ner de gala à la "Conciergerie"
(tenue de soirée).

Des informations supplémentaires peuvent
être obtenues auprès du :

Prochaines Réunions

LE CONSEIL EXECUTIF

La prochaine réunion du Conseil Exécutif
se réunira le dimanche 24 juin 1990 à
16:30 Grand Hôtel, Paris.

ASSEMBLEE DU C.M.I.

- Brève réunion le lundi 25 juin 1990 de
9:00 à 9:30 Grand Hôtel, Paris.
- Assemblée statutaire le samedi 30 juin
1990 à 9:30
Grand Hôtel, Paris.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

Spring (April) 1990

— COMITE MARITIME INTERNATIONAL —

Printemps (avril) 1990

QUARTERLY

Afgiftekantoor: 2000 Antwerpen 1

BULLETIN TRIMESTRIEL

Maritime Liens and Mortgages and Related Matters

The Fifth and Sixth Sessions of the IMO and UNCTAD
Joint Intergovernmental Group of Experts on
Maritime Liens and Mortgages and Related Matters

Francesco Berlingieri

The Joint IMO and UNCTAD Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Matters (JIGE) held a fifth and sixth session respectively in Geneva from 12 to 20th December 1988 and in London from 26th to 29th September 1989. Here follows an account of the work done by the JIGE during such sessions, with information on the changes agreed as respects the draft articles prepared by the Chairman and the IMO and UNCTAD Secretariats after the fourth session (see the CMI News Letter of Autumn 1988).

Article 1 - Recognition and enforcement of mortgages, "hypothèques" and charges.

During the fifth session it was agreed to delete the square brackets around the words "effected on seagoing vessels" in the Preamble. After the CMI Observer explained that the words "to secure payment of monies" had been added in the Lisbon draft when reference was made in the Preamble to "registered charges of similar nature" in order to avoid too wide an interpretation of these words, then replaced by "registered charges of the same nature", it was agreed to delete them.

Paragraphs (a), (b) and (c) were left unaltered. Paragraph (d), the addition of which had been suggested in case the JIGE would decide to regulate the effects of a temporary change of flag, was moved to a separate article - Article 15 - together with the other provisions, the addition of which had been suggested (see Articles 3 bis, 10 and 11 of the text in the Autumn 1988 issue of the CMI News Letter).

The United Kingdom Delegation did not insist on the insertion of a provision covering the registration of charges in the companies' register.

Article 2 - Ranking and effects of mortgages, "hypothèques" and charges.

This article has been approved without any change.

Article 3 - Voluntary change of ownership or registration.

The suggestion to delete the reference to the voluntary character of the change of registration was rejected. The square brackets around the word "voluntary" in the title and around the words "or voluntary change of registration" in paragraph 1 were deleted. Paragraph 2, which had been placed in brackets, was accepted without any change (except the deletion of the reference to Article 3 bis, now moved to Article 15) and the brackets were deleted.

Article 4 - Maritime liens.

The following changes were agreed in paragraph 1 during the fifth session as respects the text prepared after the previous session:

- (i) A reference to the costs of repatriation has been included.
- (ii) The reference to general average has been deleted. During the sixth session attention was drawn to the question of whether claims for salvage would include the claims for special compensation pursuant to Article 14 of the new Salvage Convention.
- (iii) The square brackets were deleted.
- (iv) The lien for wreck removal claims was excluded from the list.
- (v) The square brackets were deleted. Roman numbers were replaced by letters.

In paragraph 2 the words "within the meaning of the International Convention, etc." were replaced, at the fifth session, by "within the scope of application of the International Convention, etc."

Article 5 - Priority of maritime lines.

Paragraph 1 has been left unaltered.

In paragraph 2 the reference to wreck removal and to contribution in general average has been deleted due to the suppression of these liens.

Similarly, paragraph 4 has been rewritten due to the suppression of the maritime lien in respect of claims for wreck removal, since now it refers only to salvage.

Article 6 - Other liens.

At the fifth session it was decided to separate the provisions relating to the creation and the ranking of other liens from those relating to the creation and the treatment of rights of retention. Thus, the former provisions remained in Article 6 and the latter provisions were moved to Article 6 bis.

The question whether States Parties should be permitted to create other maritime liens, with the same characteristics of the Convention maritime liens was heatedly debated. In view of the fact that no clear majority emerged one way or the other, the word "maritime" was placed in brackets.

Article 6 bis - Rights of retention.

Objections were again raised against the provision on rights of retention on the grounds that rights of retention have a legal nature totally different from that of maritime liens. Doubts were also expressed in respect of the interpretation of the provisions of paragraph 2 and more precisely as to the manner in which they would practically work. A proposal was then made from the Chair to replace the first sentence of paragraph 2 and the second sentence of Article 11 paragraph 2 with the following new paragraph to be inserted in Article 11 in order to clearly specify the manner of settlement of claims of holders of rights of retention:

"3 If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claim of holders of maritime liens mentioned in article 4."

The Chairman asked the Observer of the CMI, as he had done in other occasions, to explain the purpose of the suggested new provision which met with the approval in principle of the majority of the Delegations. It was, therefore, agreed to insert the proposal of the Chairman in the Report.

Article 7 - Characteristics of maritime liens.

The proposal of the Norwegian Delegation to insert at the beginning of this Article the words "Subject to the provisions of Article 11" was accepted. A reference to the liens set out in article 4 was inserted but placed in square brackets due to the disagreement on the question whether States Parties may create maritime liens.

Article 8 - Extinction of maritime liens by lapse of time.

In the title the word "lapse" was adopted.

The question whether, in case States Parties were authorized under Article 6 to create other maritime liens, the provisions on extinction of liens should apply also to national maritime liens was discussed. A large majority of the Delegations, probably for different reasons, favoured the present wording. An equally large majority was in favour of the one year period of extinction. The square brackets around the words "or seized" and "or seizure" were deleted after the observer of the CMI had explained the reasons of their addition.

In paragraph 2 the words "not permitted by law" were adopted and the alternative words "legally prevented" were deleted.

Article 9 - Assignment and subrogation.

The reference to Article 6 was deleted.

Article 10 - Notice of forced sale.

The alternative text suggested by the Delegation of the United States was adopted, subject to reconsideration of the wording of paragraphs 2(b) and 4 which, therefore, were placed in brackets.

Article 11 - Effects of forced sale.

Paragraph 1. In (a) the words "in the area of the jurisdiction" were adopted. In (b) the words "of this Convention" were replaced by "of Article 10 and of this Article".

Paragraph 2. At the fifth session it was suggested to simplify the provision on the distribution of the balance of the proceeds by merely stating that it should be made in accordance with the provisions of the Convention. At the sixth session the majority was in favour of this alternative. The addition of the words "to the extent necessary to satisfy the respective claims" was suggested and accepted.

Paragraph 3. At the fourth session the JIGE had decided, notwithstanding the explanations given by the observer of the CMI, to keep in the text the words "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, also, to add the words "and that these proceeds are actually available and freely transferable". The former words have now been deleted and the latter have been moved to a separate paragraph - paragraph 4 - so that the free transferability should not be a condition for the issuance of the certificate.

Paragraph 4. As stated above, the free transferability of the proceeds of sale is now an obligation of the States Parties.

Article 12 - Scope of application.

This article has been approved without any change.

Article 13 - Communication between States Parties.

This article has been approved without any change.

Article 14 - Conflict of conventions.

Also this article has been approved without any change.

Article 15 - Temporary change of flag.

The Chairman, who had suggested the text of this article during the previous session, requested the Observer of the CMI to illustrate its purpose. The need for the provisions of this article was recognized by all Delegations. Paragraph (a) and (b) were approved without any change. The text of paragraph (c) was suggested by the Delegation of the United States. The text of paragraphs (d), (e), (f) and (g) was left unchanged although some reservations were raised in respect of paragraph (f). It was, in fact, suggested that this provision should apply only as between States Parties.

Arrest of Ships.

After the Observer of the CMI, following a request of the Chairman, had explained the changes that would be required in the 1952 Convention on Arrest of Ships as a consequence of the adoption of a new convention on maritime liens and mortgages, the question whether these and other changes could be considered in an immediate future was discussed. A large majority of the Delegations was of the view that such discussion should be postponed until after the adoption of the Convention on Maritime Liens and Mortgages.

At the end of the Sixth Session, the final report which is published hereafter was adopted by the JIGE (IMO Document LEG/MLM/27; UNCTAD Document TD/B/C.4/AC.8/27). The annex to the report consists of the Draft Articles for a Convention on Maritime Liens and Mortgages.

FINAL REPORT OF THE JOINT INTERGOVERNMENTAL GROUP OF
EXPERTS ON MARITIME LIENS AND MORTGAGES AND
RELATED SUBJECTS

- 1 The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects was established by the United Nations Conference on Trade and Development (UNCTAD) and the International Maritime Organization (IMO), pursuant to the recommendation contained in resolution 6(XI) of the Working Group on International Shipping Legislation of UNCTAD, endorsed by the Trade and Development Board at its thirty-second session, and pursuant to the recommendation of the Legal Committee of IMO, endorsed by the Council of IMO at its fifty-sixth session.
- 2 The mandate of the Joint Intergovernmental Group of Experts, as approved by the two organs, was to:

"Examine the subject of maritime liens and mortgages, including the possible consideration of:

 - (a) the review of the maritime liens and mortgages convention and related enforcement procedures, such as arrest;
 - (b) the preparation of model laws or guidelines on maritime liens, mortgages and related enforcement procedures, such as arrest;
 - (c) the feasibility of an international registry of maritime liens and mortgages."
- 3 The Committee on Shipping of UNCTAD, in its resolution 61(XIII), paragraph 15, however, urged the Joint Group to complete its work during 1989 and to present its final report for consideration by the Committee on Shipping at its fourteenth session. The Legal Committee of IMO, at its fifty-sixth session, recommended that the report of the Joint Group should be submitted to the Council of IMO through the Legal Committee. This recommendation was approved by the Council, at its fifty-sixth session.
- 4 The Joint Group held six sessions, alternately in Geneva and London, using the time and resources allocated to the Working Group on International Shipping Legislation of UNCTAD and the Legal Committee of IMO.
- 5 During the six sessions, the Joint Group reviewed the existing international instruments on maritime liens and mortgages. The Joint Group also gave consideration to the remaining items in its terms of reference. The results of the work of the Joint Group on the various matters raised with terms of reference are summarized below.

Maritime liens and mortgages

- 6 In reviewing the international legal regime on maritime liens and mortgages, the Joint Group gave detailed consideration to:

- the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967;
- the International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, 1926; and
- the Draft Revision of the 1967 Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages prepared by the Comité Maritime International (CMI).

7 In the light of the results of this review, the Joint Group agreed to prepare the draft provisions for a convention on maritime liens and mortgages. For this purpose, the Joint Group gave detailed consideration to a number of proposals put forward by Government delegations and observer delegations, with a view to producing a text which would receive wide acceptance by Governments and the shipping community.

8 At its sixth session, the Joint Group completed the final reading of the draft provisions. The draft articles agreed by the Joint Group are reproduced in the annex to this report.

9 The Joint Group decided that the draft convention was sufficiently developed for submission to a diplomatic conference for adoption. (See recommendations, paragraph 16.)

Review of enforcement procedures such as arrest

10 The Joint Group held an exchange of views concerning the possible review of the International Convention Relating to the Arrest of Seagoing Ships of 1952. The Joint Group agreed that it might be necessary to amend this convention in the light of the decisions taken by a diplomatic conference in respect of the draft maritime liens and mortgages convention. It was, however, felt that in view of the close relationship between the Arrest Convention and a future Convention on Maritime Liens and Mortgages, preparation of any such amendments would be premature at this stage and had to be postponed until after the adoption of the Convention on Maritime Liens and Mortgages by a diplomatic conference.

Preparation of model laws or guidelines on maritime liens and mortgages and related enforcement procedures, such as arrest

11 At its fifth session, the Joint Group reached the conclusion that the preparation of model laws or guidelines on maritime liens and mortgages and related subjects could be properly undertaken only after completion of the work on the relevant conventions. The Joint Group accordingly agreed that it would be premature to take a decision on the preparation of such model laws and guidelines at this stage.^{1/}

^{1/} See the report of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, on its fifth session. Document JIGE(V)/4, annex 1, paragraph 217.

Feasibility of an international registry of maritime liens and mortgages

12 In a preliminary exchange of views on the question, at the first session of the Joint Group,^{2/} many delegations stated that they doubt if the registration of maritime liens was desirable or even possible. In this context, particular reference was made to the difficulty of registering certain types of claims, such as crews' wages. It was, however, the view of some delegations that, with the greatly improved systems of communication currently available, the registration of certain maritime liens would be feasible and, accordingly, that the matter merited further consideration, taking into account the possible costs of such a system. These delegations suggested that a system of international registration of maritime liens and mortgages would lead to a desirable increase in commercial confidence in maritime transactions in general, and also to a reduction in the number of "hidden maritime liens".

13 At its fifth session, the Joint Group agreed that work on an international register for maritime liens and mortgages and related subjects should not be taken up at this stage.^{3/}

Expression of appreciation

14 The Joint Group expressed its appreciation to the Secretariats of IMO and UNCTAD for the efficient way in which they had serviced the meetings of the Joint Group and the useful documentation which they had prepared to assist the work of the Joint Group.

15 The Joint Group decided to record its gratitude to the Chairman of the Joint Group for the able manner in which he has presided over and guided the deliberations of the Joint Group at all its sessions. The Joint Group also expressed its appreciation to the Vice-Chairman and Rapporteur.

Recommendations

16 At its sixth session, the Joint Group agreed to the following recommendations:

- I The Group of Experts recommends to the UNCTAD Committee on Shipping and the IMO Legal Committee to consider favourably, in the light of the useful work achieved by the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, the convening of a diplomatic conference on the review of the draft maritime liens and mortgages convention so as to allow the UNCTAD Trade and Development Board and the IMO Council to suggest such a conference to the relevant United Nations bodies.
- II With regard to arrest, the Joint Group recommends that consideration of any further work be postponed until after the adoption of the final text of the Convention on Maritime Liens and Mortgages by a diplomatic conference.

The Joint Group recommends that the relevant bodies of UNCTAD and IMO consider making provision for further meetings of the Joint Group, in the light of the results of the diplomatic conference.

^{2/} See the report of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, on its first session. Document JIGE(I)/4, annex 1, paragraphs 53-56.

^{3/} See the report of the Joint Group on its fifth session. Document JIGE(V)/4, paragraph 218.

ANNEX

PART A

DRAFT ARTICLES FOR A CONVENTION ON MARITIME LIENS AND MORTGAGES

Article 1

Recognition and enforcement of mortgages,
"hypothèques" and charges

Mortgages, "hypothèques" and registerable charges of the same nature, which registerable charges of the same nature will be referred to hereafter as "charges", effected on seagoing vessels shall be recognized and enforceable in States Parties provided that:

- (a) such mortgages, "hypothèques" and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;
- (b) the register and any instruments required to be deposited with the register in accordance with the law of the State in which 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 subparagraph (b) specifies at least the name and address of the person in whose favour the mortgage, "hypothèque" or charge has been effected or that it has been issued to bearer, the maximum amount secured, if that is a requirement of the 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.

Article 2

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

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

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 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.

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:

- (a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
- (b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
- (c) claims for salvage;
- (d) claims for port, canal, and other waterway dues and pilotage dues;
- (e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

2 No maritime lien shall attach to a vessel to secure the claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from oil pollution damage for which compensation is payable to the claimants pursuant to 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.

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 article 6bis.

2 The maritime liens set out in article 4 shall rank in the order listed, provided however that maritime liens securing claims for salvage shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

3 The maritime liens set out in each of subparagraphs (a), (b), (d) and (e) of paragraph 1 of article 4 shall rank pari passu as between themselves.

4 The maritime liens securing claims for salvage set out in subparagraph (c) of paragraph 1 of article 4 shall rank in the inverse order of the time when the claim secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

Article 6

Other liens

Each State Party may grant [maritime liens or] other liens 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.

[Article 6bis

Rights of retention

1 Each State Party may grant [under national law] a right of retention in respect of a vessel in possession of either:

(a) a shipbuilder, to secure claims for the building of the vessel; or

(b) a shiprepairer, to secure claims for repair, including reconstruction of the vessel effected during such possession,

2 Such right of retention shall not prejudice the enforcement of the maritime liens set out in article 4, but may be exercisable against the vessel, notwithstanding the existence of any registered mortgages, "hypothèques" or charges^{1/}. Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or shiprepairer, otherwise than in consequence of an arrest or seizure.]

^{1/} In the light of the discussions of the Sessional Group during the sixth session of the Joint Intergovernmental Group of Experts, the Chairman suggested that in article 11, after paragraph 2, the following text be inserted as a new paragraph 3:

"3 If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claim of holders of maritime liens mentioned in article 4."

This text should be accompanied by the following consequential changes:

- present paragraph 3 would become paragraph 4;
- in paragraph 2, the sentence in the first brackets and the brackets around the last sentence should be deleted;
- in article 6bis, paragraph 2, the first sentence should be deleted."

(See JIGE(VI)/7, paragraphs 50 to 57.)

Article 7

Characteristics of maritime liens

Subject to the provisions of article 11, the maritime liens [set out in article 4] follow the vessel, notwithstanding any change of ownership or of registration or of flag.

Article 8

Extinction of maritime liens by lapse of time

1 The maritime liens set out in article 4 shall be extinguished after a period of one year 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.

Article 9

Assignment and subrogation

The assignment of or subrogation to a claim secured by a maritime lien set out in article 4 entails the simultaneous assignment of or subrogation to such maritime liens.

Article 10

Notice of forced sale

1 Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:

- (a) the authority in charge of the register in the State of registration;
- (b) all holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer; and
- (c) all holders of registered mortgages, "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims.

2 Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:

- (a) the time and place of the forced sale; or
- [(b) such particulars concerning the forced sale or the proceedings leading to the forced sale as the State conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.]

3 In addition to any notice by publication which may be required by the national law of the State conducting the forced sale, the notice specified in paragraph (2) of this article shall be written and may be given by receipted post or by any electronic or other appropriate means which provide confirmation of receipt.

[4 If permitted by the national law of the State conducting the proceedings, any person entitled to receive notice in accordance with this article may waive such notice.]

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 the area of the jurisdiction of such State,
- (b) the sale has been effected in accordance with the law of the said State and the provisions of article 10 and this article of this Convention.

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 or seizure 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 in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims.

3 When a vessel registered in a 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. 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.

4 States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.

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.

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.

Article 13

Communication between States Parties

For the purpose of articles 3, 10 and 11, 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

Temporary change of flag

If a seagoing vessel registered in one State is permitted to fly temporarily the flag of another State, the following shall apply:

- (a) References in this Convention to the "State in which the vessel is registered" or to the "State of registration" shall be deemed to be references to the State in which the vessel was registered immediately prior to the change of flag, and references to the "competent authorities in charge of the register" shall be deemed to be references to the competent authority in charge of the register in that State.
- (b) The law of the State of registration shall be determinative for the purpose of recognition of mortgages, "hypothèques" and charges.
- (c) The State of registration shall require a cross-reference entry in its register specifying the State whose flag the vessel is permitted to fly temporarily; likewise, the State whose flag the vessel is permitted to fly temporarily shall require a cross-reference entry in its register^{2/} specifying the State of registration.
- (d) No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless all registered mortgages, "hypothèques" or charges on that vessel have been

^{2/} At the fifth session, a number of delegations emphasized that the new convention should not in any way contain provisions which would allow dual registration. Accordingly, some delegations proposed to use the term "recorded in" in relation to vessels permitted to fly temporarily another flag without reference to "registration" so as to make it clear that only one registration existed. (See JIGE (V)/4, paragraphs 183 and 184.)

At the sixth session, concern was expressed over the use of the word "register" in relation to the recording of the temporary change of flag. It was therefore proposed to use the term "vessel's record" since the phrase had been used in other paragraphs of article 15. (See JIGE (VI)/7, paragraph 114.)

previously satisfied or the written consent of the holders of all such mortgages, "hypothèques" or charges has been obtained^{3/}.

- (e) The notice referred to in article 10 shall be given also to the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily.
- (f) Upon production of the certificate of deregistration referred to in paragraph 3 of article 11, the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily shall, at the request of the purchaser, issue a certificate to the effect that the right to fly the flag of that State is revoked.
- (g) Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to fly temporarily their flag or national vessels to fly temporarily a foreign flag.

Personalia

BUNDESREPUBLIK DEUTSCHLAND

The new Board of the Deutscher Verein für Internationales Seerecht, Hamburg, is composed as follows :

Le nouveau Bureau du Deutscher Verein für Internationales Seerecht, Hambourg, est composé comme suit :

President: Dr.Hans-Christian ALBRECHT
Vice-President: Dr.Thomas M.REMÉ
Members: Assessor Wolfgang DEHN
Professor Dr.Rolf HERBER
Mr.Heiner LANGE
Dr.Bernd KRÖGER

I N D I A

The new address of The Maritime Law Association of India is as follows:

La nouvelle adresse de l'Association Indienne de Droit Maritime est comme suit :

C/O The Great Eastern Shipping Co.Ltd.
3, Rajdoot Marg, Chanakyapuri
NEW DELHI - 110021 INDIA
Telephone: 3016908

POLSKA

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

Le nouveau Bureau de l'Association Polonaise de Droit Maritime est composé comme suit:

President: Professor dr.hab.iur Zdzislaw BRODECKI
Gdansk University
Vice-Presidents: Mr.Jerzy FIGARSKI, Legal Adviser
Sea Fisheries Institute, Gdynia
Mr.Michal RZESZEWICZ, LL.M., Polish Ocean
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Institute in Gdansk, Head of Maritime Law
Department
Treasurer: Mr.Tomasz ZANIEWSKI, LL.M, Legal Adviser,
Polish Ocean Lines, Gdynia.

^{3/} One delegation proposed to amend paragraph (d) by deleting the words "all registered mortgages, 'hypothèques' or charges on the vessel have been previously satisfied". This proposal received support from many delegations, but it was noted that the draft proposed would require further amendment in the light of the discussions in the Sessional Group. (See JIGE (VI)/7, paragraphs 115 and 116.)

XXXIVth International Conference
of the C.M.I.
Paris June 1990

XXXIVème Conférence Internationale
du C.M.I.
Paris juin 1990

Secretariat of the Conference:

Secretariat de la Conférence:

SECRETARIAT DE LA 34e CONFERENCE DU C.M.I.
76, avenue Marceau 75008 PARIS
Tel.: (1)47.20.43.32. - Telex 290664 UNIMPORF
FAX : 47.20.38.04.

Host Association

Association invitante :

ASSOCIATION FRANCAISE DU DROIT MARITIME
73, boulevard Haussmann - F.75008 Paris
Adresser toutes communications à M.Philippe BOISSON
Conseiller Juridique, Bureau Veritas, Cedex 44, 92077 Paris La Defense
Telex: 612440 FBVDSM - Téléphone: (1)42.91.52.71
Année de fondation : 1897

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Maritimes Français, MINFOS, 131, boulevard Malesherbes, 75017 Paris.
Tél.:47.66.03.59.
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Rouen, Tél.:35.71.05.72.

M. Emmanuel FONTAINE, Avocat à la Cour, GIDE, LOYRETTE, NOUEL, 26, Cours Albert 1er, 75008 Paris. Tél. : 40.75.60.00.
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Membres de l'Association : 320
Collectivités Associées : 48
Membres Correspondants : 19

Membres Titulaires du CMI

MM. Paul BERNARD, Prof. BONASSIES, Pierre BOULOY, Prof. Michel de JUGLART, Michel DUBOSC, Emmanuel du PONTAVICE, Cdt. Pierre HOUSSIN, Prof. JAMBU-MERLIN, Pierre LATRON, Melle Claire LEGENDRE, Mme F. MOUSSU-ODIER, Roger PARENTHOU, André PIERRON, Jacques POTIER, P. REMBAUVILLE-NICOLLE, Gérard TATIN, Jacques VILLENEAU, Jean WAROT.

C.M.I. Yearbook 1989/1990

Annuaire du C.M.I. 1989/1990

Corrigendum

Page 32: The Board of the French Maritime Law Association is composed as mentioned above.

Page 145: PAL PROT 1976 entered into force on 10 April, 1989.

Page 146: LLMC 1976- Accession of Egypt 30 March, 1988.

Page 33: Le Comité de Direction de l'Association Française du Droit Maritime est composé comme mentionné ci-dessus.

Page 145: PAL PROT 1976 entré en vigueur le 10 avril 1989.

Page 146: LLMC 1976- Adhésion de l'Egypte 30 mars 1988.

Albert Lilar Prize 1990

The Board of Directors of the Albert Lilar Foundation has fixed the 1990 Prize at an amount of Belgian Francs: 400.000.

Consideration will only be given to works of which three copies will have been received at the Registered Office of the Foundation c/o Henry Voet-Genicot Mechelsesteenweg 203, B.6, 2018 Antwerpen, before the 15th May, 1990.

The full text of the Rules for the awarding of the Prize has been copied on page 12 of the CMI NEWS LETTER-Autumn 1989.

Additional information may be obtained on application to the seat of the Foundation c/o Henry Voet-Genicot, 203 Mechelsesteenweg b.6-B.2018, Antwerpen Belgium.

Prix Albert Lilar 1990

Le Conseil d'Administration de la Fondation Albert Lilar a décidé de fixer le montant du Prix 1990 à Francs belges: 400.000.

Seront seuls pris en considération les ouvrages dont trois exemplaires seront parvenus au siège de la Fondation c/o Henry Voet-Genicot, Mechelsesteenweg 203, B.6, 2018 Antwerpen, avant le 15 mai 1990.

Le texte complet du Règlement pour l'attribution du prix a été reproduit à la page 12 du CMI NEWS LETTER-Automne 1989.

Des renseignements complémentaires peuvent être obtenus au siège de la Fondation c/o Henry Voet-Genicot, Mechelsesteenweg 203, b.6, B-2018 Antwerpen, Belgique.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

Summer (September) 1990 — COMITE MARITIME INTERNATIONAL — Été (septembre) 1990

QUARTERLY

Afgiftekantoor: 2000 Antwerpen 1

BULLETIN TRIMESTRIEL

CMI Assembly - 25th June, 1990

At its meeting in Paris, prior to the XXXIVth International Conference, the CMI Assembly decided unanimously that the subject relating to the revision of Rule VI of the York/Antwerp Rules 1974 should be added to the discussion topics already on the agenda of that Conference.

Assemblée du CMI - 25 juin 1990

Au cours de sa réunion à Paris, préalablement à la XXXIVème Conférence Internationale, l'Assemblée a décidé à l'unanimité d'ajouter à l'ordre du jour de cette conférence le sujet relatif à la révision de la Règle VI des Règles d'York et d'Anvers de 1974.

The 1990 regular CMI Assembly held in Paris on the 30th June 1990

L'Assemblée statutaire du CMI 1990 tenue à Paris le 30 juin 1990

Attending - Présents

OFFICERS - MEMBRES DU BUREAU

Président:	Francesco BERLINGIERI
President:	
Vice-Présidents:	William BIRCH REYNARDSON
Vice-Presidents:	Nicholas J. HEALY
	J. Niall McGOVERN
	Anatoliy KOLODKIN
	Allan PHILIP
	Jan SCHULTSZ
	José Domingo RAY
	Jean WAROT
Secrétaire Général Exécutif:	Jan RAMBERG
Secretary General Executive:	
Conseil Exécutif:	José Luis GONI
Executive Council:	William TETLEY
	Lionel TRICOT
	Norbert TROTZ
	Frank L. WISWALL Jr.
Secrétaire Général Administratif et Trésorier:	Henri F. VOET
Secretary General Administrative and Treasurer:	

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AUSTRALIA & NEW ZEALAND	Ron Salter Justice Carruthers Stuart Hetherington
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CHINA	Liu Shujian Meng Yugun Zhu Yubo
COLOMBIA	Sigifredo Ramirez
CZECHO-SLOVAKIA	Ms.Pavla Henzlova
DENMARK	Allan Philip (*)
BUNDESREPUBLIK DEUTSCHLAND	Hans-Heinrich Nöll
DEUTSCHE DEMOKRATISCHE REPUBLIK	Ralf Richter Norbert Trotz (**)
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IRELAND	J.Niall McGovern (*) Mrs.Mary Spollen
ISRAEL	R.Wolfson
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JAPAN	Hisashi Tanikawa Seiichi Ochiai Kenjiro Egashira
JUGOSLAVIJA	Velimir Filipovic
KOREA	Byong-Tai Bai
MAROC	Mohammed Margaoui
MEXICO	Ignacio Melo Luis Onga
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NIGERIA	Fola Sasegbon L.N.Mbanefo
NORGE	Mrs.N.Frisak
POLSKA	Michal Rzeszewicz
PORTUGAL	Carlos Machado E Moura Guilherme Conceição Silva
SUISSE	Rudolf Th.Sarasin A. von Ziegler Th.Burckhardt
SVERIGE	Lars Boman
UNITED KINGDOM	D.J.Lloyd Watkins
UNITED STATES	Kenneth H.Volk Francis J.O'Brien Richard W.Palmer John C.Moore George Healy III
U.S.S.R.	Anatoliy Kolodkin (*)
VENEZUELA	Wagner Ulloa Luis Cova Arria Carlos Matheus

(*) Déjà mentionné comme Vice-Président

(*) Already mentioned as Vice-President

(**) Déjà mentionné comme membre du Conseil Exécutif

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

1. Amendment of the Constitution

The proposal of the Maritime Law Association of the United States to amend Article 3.2 of the Constitution as follows " Individual members of Associations may be appointed by the Assembly as Titulary Members of the C.M.I. upon the proposal of the Association concerned to the maximum number of twenty-one per Member Association".

was unanimously accepted.

2. Titulary Members

As Titulary Members of the CMI were elected with acclamation:

ARGENTINA

AUSTRALIA and
NEW ZEALAND

BELGIQUE

CANADA

ESPANA

FRANCE

ITALIA

JAPAN

JUGOSLAVIJA

MAROC

PERU

SUISSE

UNITED KINGDOM

U.S.A.

VENEZUELA

1. Modification des Status

La proposition de l'Association de Droit Maritime des Etats Unis d'Amérique de modifier comme suit l'Article 3.2 des Status

" Des membres individuels d'Associations Membres visées dans la première partie de cet Article peuvent être nommés Membres Titulaires du CMI par l'Assemblée sur proposition de l'Association Membre intéressée, à raison de vingt et un au maximum par Association Membre" a été acceptée à l'unanimité.

2. Membres Titulaires

Ont été élus par acclamation comme Membres Titulaires :

Dr.F.Romero Carranza
Dra H.S.Talavera
Francisco Weil

The Honourable Mr.Justice
Kenneth John Carruthers
Ian Munro Mackay

Herman Lange

Alfred H.E.Popp, Q.C.

Alvaro Delgado Garzon
Luis Figaredo Perez
Juan Luis Iglesias Prada

Alain Tinayre
Jean-Serge Rohart
Philippe Godin
Patrice Rembauville-Nicolle

Sergio Turci
Francesco Siccardi

Kimio Miyaoka

Mrs.Dr.Ljerka Mintas Hodak

Mohammed Margaoui

Fr.Arca Patinos

Stefan Cueni
Alexander von Ziegler

Stuart Beare
Antholy Bessemer-Clark
Patrick Griggs
David Taylor

Chester D.Hooper
Elliot B.Nixon

Dr.Omar Franco O.
Dr.Rafael Reyero A.
Peter F.Schröder-de S.Kollontanyi

3. Action to be taken on the basis of the outcome of the Conference.
The CMI XXXIVth International Conference had on 29 June 1990 adopted the following :

a) CMI Uniform Rules for Sea Waybills

3.Actions découlant des résultats de la Conférence

La XXXIVème Conférence Internationale du CMI a adopté le 29 juin 1990:

a) des Règles Uniformes du CMI relatives aux lettres de transport maritime.

b) Paris Declaration and the attached study on the Uniformity of the Law of the Carriage of Goods by Sea in the 1990's - Problems of the Hague/Visby Rules and possible Solutions.

c) CMI Rules for Electronic Bills of Lading

d) A revised Rule VI of the York/Antwerp Rules 1974.

The Assembly unanimously approved the adoption of the above mentioned documents.

4. Next CMI International Conference (XXXVth) - in Australia

Mr. Ron Salter, President of The Maritime Law Association of Australia and New Zealand, invited the CMI to hold its XXXVth Conference in Australia. The Assembly accepted this invitation with thanks and acclamation.

5. Genoa 1992 Colloquium on Pollution

The President informed that in connection with the celebration of the 500th Anniversary of Christopher Columbus' discovery of America, a CMI Colloquium had been planned for 21-24 September 1992 in Genoa. The theme for the Colloquium had tentatively been suggested as "Liability for Oil Pollution Damages". In the discussion was suggested to consider the possibility to broaden the scope of the Colloquium to include other damage to the marine environment and matters relating to public maritime law. The Assembly accepted with thanks the President's initiative to arrange the above-mentioned Colloquium in Genoa and authorized the Executive Council to consider the exact theme for the Colloquium and its further organization.

6. Work in progress

a) Digest of maritime jurisprudence on maritime law conventions.

The above-mentioned Digest appears in the CMI NEWS LETTER March 1990. The Assembly approved with thanks to the President the initiative to elaborate the Digest which generally was considered a worth-while project but with some difficulties to implement on a world-wide level. Mr. Birch Reynardson suggested that every Association should appoint a correspondent in order to assist in the editing of the Digest which suggestion was agreed.

b) Further revision of York/Antwerp Rules 1974

The President informed that time might now be right for a further revision of the York/Antwerp Rules. The Assembly referred the matter for further consideration by the Executive Council.

c) The meeting of IMO 19 November 1990 on Liability for Oil Pollution

The Assembly decided that the CMI should take part in the above-mentioned meeting with one or two observers and authorized

b) une Déclaration de Paris et une étude sur l'Uniformisation de la Loi sur les Transports de marchandises par mer dans les années 1990 - Problèmes en rapport avec les Règles de La Haye/Visby et solutions possibles.

c) des Règles du CMI relatives aux connaissements électroniques.

d) une nouvelle Règle VI des Règles d'York et d'Anvers 1974.

L'Assemblée a approuvé à l'unanimité l'adoption des projets ci-dessus.

4. Prochaine Conférence Internationale du CMI (XXXVème) en Australie

M. Ron Salter, Président de l'Association de Droit Maritime d'Australie et de Nouvelle Zélande, a invité le CMI à tenir sa XXXVème Conférence en Australie. L'Assemblée a accepté cette invitation avec remerciement et par acclamation.

5. Colloque de Gênes en 1992 sur la Pollution

Le Président a informé qu'en relation avec le 500ème anniversaire de la découverte de l'Amérique par Christophe Colomb un Colloque du CMI est prévu à Gênes du 21 au 24 septembre 1992. La "Responsabilité pour les dommages dus aux hydrocarbures" a été envisagé comme thème pour ce Colloque. Au cours de la discussion il a été suggéré d'étendre la portée du Colloque pour y inclure les autres dommages causés à l'environnement maritime ainsi que des matières relatives au droit maritime public. L'Assemblée a accepté avec remerciements l'initiative du Président d'organiser à Gênes le Colloque en question et a autorisé le Conseil Exécutif à décider du thème exact du Colloque et de son organisation.

6. Travaux en cours

a) Recueil de jurisprudence maritime en matière de conventions de droit maritime

Le "Digest" en question a été publié dans le CMI NEWS LETTER de mars 1990. L'Assemblée a approuvé et a remercié le Président pour son initiative d'élaborer ce recueil qui, d'une manière générale, a été considéré comme un projet valable même si son développement à l'échelle mondiale peut présenter certaines difficultés. M. Birch Reynardson a suggéré que chaque Association désigne un correspondant pour contribuer à l'édition du "Digest"; cette suggestion a été acceptée.

b) Révision des Règles d'York et d'Anvers 1974

Le Président a fait savoir que le moment était probablement venu pour une nouvelle révision des Règles d'York et d'Anvers. L'Assemblée a renvoyé ce sujet au Conseil Exécutif pour plus ample examen.

c) Réunion de l'OMI du 19 novembre 1990 sur la responsabilité pour la pollution par les hydrocarbures.

L'Assemblée a décidé que le CMI devait participer à la réunion en question avec un ou deux observateurs et a autorisé le

the Executive Council to provide the observer(s) with appropriate terms of reference.

d) Suggested study on letters of indemnity and subjects for the next Conference

Mr. Tricot reminded the Assembly of the earlier proposal by the Belgian Maritime Law Association to study matters relating to letters of indemnity and Mr. Alcantara stressed the need to consider well in advance subjects for the XXXVth Conference of the CMI and suggested that, for this purpose, the Secretariat should invite suggestions from the Maritime Law Associations.

7. Accounts for 1989 and Budget for 1990

The report of the Treasurer on the accounts for 1989 was approved with thanks and acclamation. The Assembly unanimously approved the Treasurer's budget for 1990. The Treasurer also observed that in order to account for the inflation over the last years, the contributions might have to be increased as from 1991.

8. Resolution on the 1984 Oil Protocols

Professor Allan Philip reminded the Assembly of the fact that the non-ratification by the United States of the 1984 Protocols to the 1969 CLC and the 1971 FUND Conventions may cause grave problems in practice. The Maritime Law Association of the United States had suggested the following resolution by the Assembly:

"The Comité Maritime International - mindful of the grave and worldwide environmental pollution liability problems brought into sharp focus by the EXXON VALDEZ grounding and other recent oil pollution disasters,

Convinced that the international framework set forth in the 1984 Oil Pollution Protocols is far superior to any unilateral approach to this international environmental problem.

Strongly urges all maritime nations - and in particular the United States, which assumed a leading rôle in the development and negotiation of the 1984 Protocol - to move quickly to ratify the Protocols so that they may enter into force on a truly international basis."

The Assembly unanimously approved the proposed resolution.

9. Additional Rule for the election of the President of the C.M.I.

The President had announced that he would not be available for re-election at the

Conseil Exécutif à définir la mission de ces observateurs.

d) Etude proposée sur les lettres de garantie et sujets pour la prochaine Conférence.

Mtre Tricot a rappelé à l'Assemblée la proposition faite précédemment par l'Association Belge de Droit Maritime d'étudier les questions relatives aux lettres de garantie. Mtre Alcantara, de son côté, a insisté sur la nécessité de considérer longtemps à l'avance des sujets pour la XXXVème Conférence et a proposé que, dans ce but, le Secrétariat invite les Associations membres à faire des suggestions.

7. Comptes de 1989 et budget pour 1990.

Le rapport du trésorier sur les comptes de 1989 a été approuvé par acclamation et avec remerciements. L'Assemblée a approuvé à l'unanimité le budget du trésorier pour 1990. Le trésorier fit observer que pour tenir compte de l'inflation au cours des dernières années il devra être envisagé d'accroître les cotisations à partir de 1991.

8. Résolutions à l'égard des Protocoles de 1984 sur les hydrocarbures.

Le Professeur Alan PHILIP a rappelé à l'Assemblée le fait que la non-ratification par les Etats-Unis des Protocoles de 1984 aux conventions CLC 1969 et FUND 1971 peut présenter de graves problèmes dans la pratique. L'Association de Droit Maritime des Etats-Unis a soumis la résolution suivante à l'appréciation de l'Assemblée :

"Le Comité Maritime International - conscient des problèmes graves et de portée universelle en rapport avec la responsabilité due à la pollution de l'environnement, problèmes qui ont été particulièrement mis en lumière par l'échouement du EXXON VALDEZ et par d'autres désastres récents dus à la pollution par les hydrocarbures,

Convaincu que le cadre international établi dans les Protocoles de 1984 sur la pollution par les hydrocarbures est de loin supérieur à toute approche unilatérale du problème international de l'environnement,

Incite énergiquement toutes les nations maritimes - et en particulier les Etats-Unis qui ont assumé un rôle majeur dans la réalisation et la négociation des Protocoles de 1984 - à ratifier rapidement ces Protocoles afin qu'ils puissent entrer en vigueur sur une base réellement internationale."

L'Assemblée a approuvé à l'unanimité cette résolution ainsi proposée.

9. Règle additionnelle relative à l'élection du Président du C.M.I.

Le Président avait annoncé qu'il ne se présenterait pas pour une réélection à

1991 CMI Assembly when his term and the terms of the other Officers as well as the Members of the Executive Council expired. The Assembly had previously agreed on Rules for the election of the Officers of the CMI and of the Members of the Executive Council but there was no rule for the election of the President of the CMI. The President had therefore requested the delegates of the Maritime Law Associations to consider which procedure should be adopted for the election. Following such request the following rule was suggested:

"Candidates for the election by the Assembly as President are to be proposed at the Assembly by a Nominating Committee appointed by the Assembly preceding the Assembly at which the election takes place. The Member Associations shall be requested to suggest to that Nominating Committee each one candidate.

(A - D of the present Rules to be maintained and re-named B - E)."

It appeared from the discussion that several delegations favoured to maintain the present situation and thus not to accept the suggested additional rule. Instead, the Assembly decided that the following procedure should be used for the election of the new President of the C.M.I.:

a) The President should consult all Maritime Law Associations and their replies should be given before 30 October 1990.

b) The Executive Council should act as Nominating Committee.

c) It is left to the Nominating Committee to decide whether one or several candidates should be suggested for election at the next Assembly of the CMI.

10. Other matters

Mr. Cova Arria read a statement concerning a project on maritime legislation in Venezuela. The matter was referred to the Executive Council.

11. Closing of the Conference

The President warmly thanked the French Maritime Law Association for the excellent organization of the Conference and Mr. Kolodkin, on behalf of all delegations, expressed great satisfaction for the impressive and efficient work which had been made for this Conference by the President Francesco Berlingieri, the two Secretaries General and the Secretariat as well as the French host Association.

XXXIVth International Conference of the C.M.I., Paris 1990

The Conference which was held in Paris from 24th to 30th June 1990 proved to be very successful with an attendance of 453 participants and 8 observers from 41 countries.

l'Assemblée du CMI de 1991, quand son terme de même que celui des autres membres du Bureau et du Conseil Exécutif viendront à expiration. L'Assemblée avait précédemment agréé des règles pour l'élection des Membres du Bureau et du Conseil Exécutif, mais il n'y a pas de règle pour l'élection du Président du CMI. Le Président avait dès lors demandé aux délégués des Associations de Droit Maritime de prendre en considération quelle procédure devrait être adoptée pour l'élection. Suite à cette demande la règle suivante a été proposée :

"Les candidatures à l'élection du Président par l'Assemblée doivent être proposées à l'Assemblée par une commission de présentation désignée par l'Assemblée précédant celle à laquelle l'élection a lieu. Les Associations Membres seront priées de présenter chacune un candidat à cette commission de présentation.

(Les Règles actuelles A - D sont maintenues mais désignées B - E) ".

Il est apparu de la discussion que diverses délégations étaient en faveur du maintien de la situation actuelle et donc de ne pas accepter la règle additionnelle. Au contraire, l'Assemblée a décidé que la procédure suivante devrait être adoptée pour l'élection du nouveau Président du C.M.I.:

a) Le Président devrait consulter toutes les Associations de Droit Maritime dont les réponses devraient être fournies avant le 30 octobre 1990.

b) Le Conseil Exécutif devrait agir en qualité de commission de présentation.

c) La commission de présentation est libre de décider s'il convient qu'un ou plusieurs candidats soient proposés à l'élection à la prochaine Assemblée du CMI

10. Divers

M. Cova Arria a lu une déclaration concernant un projet de législation maritime au Venezuela. Cette matière a été renvoyée au Conseil Exécutif pour examen.

11. Clôture de la Conférence

Le Président a chaleureusement remercié l'Association Française du Droit Maritime pour l'excellente organisation de la Conférence tandis que M. Kolodkin, au nom de toutes les délégations, exprimait sa grande satisfaction pour le travail impressionnant et efficace fourni à l'occasion de cette Conférence par le Président Francesco Berlingieri, les deux Secrétaires Généraux et le secrétariat ainsi que par l'Association Française invitante.

XXXIVème Conférence Internationale du C.M.I. - Paris 1990

La Conférence qui s'est tenue à Paris du 24 au 30 juin 1990 a été un plein succès avec la présence de 453 participants et 8 observateurs provenant de 41 pays.

The Conference adopted:

- a) CMI Uniform Rules for Sea Waybills;
- b) A Paris Declaration and a Study on Uniformity of the Law of Carriage of Goods by Sea in the 1990's;
- c) CMI Rules for Electronic Bills of Lading
- d) A revised Rule VI of the York/Antwerp Rules 1974;

which will be subject of a booklet "PARIS II" to be published in a near future.

Amendment 1990 of the CMI Constitution

Following a decision taken at the Assembly meeting of 30th June 1990, Article 3.2 of the CMI Constitution has been amended as follows :

- " Individual members of Member Associations may be appointed by the Assembly as Titulary Members of the CMI upon the proposal of the Member Association concerned to the maximum number of **twenty-one** per Member Association".

La Conférence a adopté :

- a) des Règles Uniformes du CMI relatives aux lettres de transport maritime;
- b) une Déclaration de Paris et une Etude sur l'Uniformisation de la Loi sur le Transport de marchandises par mer dans les années 1990;
- c) des Règles du CMI pour connaissements électroniques;
- d) une nouvelle Règle VI des Règles d'York et d'Anvers 1974;

qui feront l'objet d'un opusculé "PARIS II", qui sera publié prochainement.

Modification 1990 des Status du CMI

A la suite d'une décision prise à l'Assemblée du 30 juin 1990, l'Article 3.2 des Statuts du CMI a été modifié comme suit :

- " Des membres individuels d'Associations Membres visées dans la première partie de cet Article peuvent être nommés membres titulaires du CMI par l'Assemblée sur proposition de l'Association Membre intéressée, à raison de **vingt et un** au maximum par Association Membre."

Increase of the Limits of Liability in the Carriage of Passengers and their Luggage by sea

Accroissement des limites de responsabilité relatives au transport par mer de passagers et de leurs bagages

The limits of liability of the 1974 Athens Convention were considered by many to be too low and probably this has been one of the reasons of the limited number of ratifications and accessions to the Convention and its 1976 Protocol.

The Legal Committee of the IMO therefore recommended an increase of the limits and prepared a draft Protocol which was submitted to the International Conference on the Revision of the 1974 Athens Convention convened in London from 26th to 29th March 1990. (*)

In Annex 3 to a Note by the Secretariat of 22nd March 1990 entitled "Limitation Amounts Discussed in the Legal Committee" 1 Doc. Leg/Conf 8/7 the following table was provided indicating the range of limitation amounts proposed on the basis of a comparison between the amounts of the 1974 Convention and those of other Conventions or national legislation.

(*) the text of the PROT PAL 1990 is copied hereafter in this News Letter

Les limites de responsabilité de la Convention d'Athènes de 1974 ont été considérées comme étant trop basses par de nombreuses personnes et il faut peut-être y voir la raison du nombre réduit de ratifications et assessions à cette Convention et au Protocole de 1976.

Le Comité juridique de l'OMI a donc recommandé une majoration de ces limites et a préparé un projet de Protocole qui a été soumis à la Conférence Internationale portant sur la révision de la Convention d'Athènes réunie à Londres du 26 au 29 mars 1990. (*)

(*) le texte du PROT PAL 1990 est reproduit ci-après dans cette News Letter

L'annexe 3 à une note du Secrétariat du 22 mars 1990, intitulée "Montants des limitations discutées au Comité Juridique" 1 Doc.Leg/Conf 8/7 fournissait le tableau suivant indiquant une liste des limitations proposées sur base d'une comparaison entre les montants de la Convention de 1974 et ceux d'autres Conventions ou de lois nationales.

	1974 Athens Convention (with 1976 Protocol) SDRs DTS. Convention d'Athènes 1974	Comparable amounts in national legisla- tion or international treaties SDRd DTS Montants comparables dans des lois nationa- les ou des traités in- ternationaux	Amounts suggested in the legal Committee SDRs DTS Montants préconisés au Comité Juridique
Death or personal injury Décès ou blessures	46,666	133,000 (national legislation) (lois nationales) 125,000 (Warsaw Convention) (Convention de Varsovie) No. 3 Montreal Protocol)	150,000 100,000 (minimum)
Damage to vehicles Dommages aux véhi- cules	3,333	6,650 (national legislation) (lois nationales) 8,000 (national legislation) (lois nationales)	10,000
Cabin luggage Bagage de cabine	833	1,666 (national legislation) (lois nationales) 1,300 (national legislation) (lois nationales)	2,000
Other luggage	1,200	2,000 (national legislation) (lois nationales)	2,500
Deductibles : Vehicles Other luggage			
Franchises : Véhicules	117	-	-
Autres bagages:	13	-	-

The amounts that appear in the Protocol do not vary significantly from those suggested by the Legal Committee, the greater increase being in respect of death or personal injury claims, for which the amount is 175,000 SDRs.

Les montants fixés au Protocole ne varient pas considérablement par rapport à ceux préconisés par le Comité juridique, l'augmentation la plus importante étant celle relative aux cas de décès et blessures, pour lesquels le montant est fixé à 175,000 DTS.

Francesco Berlingieri

**Protocol of 1990 to amend the 1974
IMO Athens Convention relating to the
Carriage of Passengers and their
Luggage by Sea (PAL PROT 1990)**

**Protocole de 1990 modifiant la
Convention OMI d'Athènes de 1974
relative au Transport par mer de
Passagers et de leurs Bagages (PAL
PROT 1990)**

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13 December 1974, to provide for enhanced compensation and to establish a simplified procedure for updating the limitation amounts,

HAVE AGREED as follows :

Article I

For the purpose of this Protocol:

- 1 "Convention" means the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. For States Parties to the Protocol of 1976 to the Convention, such reference shall be deemed to include the Convention as amended by that Protocol.
- 2 "Organization" means the International Maritime Organization.
- 3 "Secretary-General" means the Secretary-General of the Organization.

Article II

(1) Article 1, paragraph 10 of the Convention is replaced by the following text:

- 10 "Organization" means the International Maritime Organization.

(2) Article 7, paragraph 1 of the Convention is replaced by the following text:

- 1 The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 175,000 units of account per carriage. Where, in accordance with the law of the court seized of the case, damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

(3) Article 8 of the Convention is replaced by the following text:

- 1 The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 1,800 units of account per passenger, per carriage.
 - 2 The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 10,000 units of account per vehicle, per carriage.
 - 3 The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraph 1 and 2 of this article shall in no case exceed 2,700 units of account per passenger, per carriage.
 - 4 The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 300 units of account in the case of damage to a vehicle and not exceeding 135 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.
- (4) Article 9 of the Convention and its title are replaced by the following:

Unit of Account and conversion

- 1 The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The

amounts mentioned in article 7, paragraph 1, and article 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2 Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of ratification, acceptance, approval or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

3 The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the States Parties, as far as possible, the same real value for the amounts in article 7, paragraph 1, and article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval or accession to this Convention and whenever there is a change in either.

Article III

1 The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. A State which is a Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention.

3 Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Convention and to this Protocol with respect to a State which is a Party to the Convention but not a Party to this Protocol.

FINAL CLAUSES

Article IV

Signature, ratification, etc.

1 This Protocol shall be open for signature at the Headquarters of the Organization from 1 June 1990 to 31 May 1991 by all States.

2 Any State may express its consent to be bound by this Protocol by :

- (a) signature without reservation as to ratification, acceptance or approval;
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.

7 Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one fourth of the States that were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8 An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

Article V Entry into Force

1 This Protocol shall enter into force 90 days following the date on which 10 States have expressed their consent to be bound by it.

2 For any State which expresses its consent to be bound by this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force 90 days following the date of expression of such consent.

Article VI Denunciation

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

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 A denunciation shall take effect 12 months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4 As between the State Parties to this Protocol, denunciation by any of them of the Convention in accordance with article 25 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article VII Revision and amendment

1 A Conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2 The Organization shall convene a Conference of Contracting States to this Protocol for revising or amending it at the request of not less than one third of the Contracting States.

Article VIII Amendment of limits

1 Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits, including the deductibles, specified in article 7, paragraph 1, and article 8 of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (hereinafter referred to as "the Legal Committee") for consideration at a date at least six months after the date of its circulation.

3 All Contracting States to the Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4 Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as amended by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States to the Convention as amended by this Protocol shall be present at the time of voting.

5 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents, and in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

6 (a) No amendment of the limits under this article may be considered less than five years from the date on which this Protocol was opened for signature not less than five years from the date of entry into force of a previous amendment under this article.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by

9 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of Article VI at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10 When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article IX Depositary

1 This Protocol and any amendments accepted under article VIII shall be deposited with the Secretary-General.

2 The Secretary-General shall :

(a) inform all States which have signed or acceded to this Protocol of:

- (i) each new signature or deposit of an instrument together with the date thereof;
- (ii) each declaration and communication under article 9, paragraph 2 and 3, of the Convention as amended by this Protocol;
- (iii) the date of entry into force of this Protocol;
- (iv) any proposal to amend limits which has been made in accordance with article VII, paragraph 1;
- (v) any amendment which has been adopted in accordance with article VIII, paragraph 4;
- (vi) any amendment deemed to have been accepted under article VIII, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraph 8 and 9 of that article;
- (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all States and to all States which accede to this Protocol.

3 As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretary General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article X
Languages

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

DONE AT LONDON this twenty-ninth day of March, one thousand nine hundred and ninety.

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

LES PARTIES AU PRESENT PROTOCOLE,

CONSIDERANT qu'il est souhaitable de modifier la Convention d'Athènes relative au transport par mer de passagers et de leurs bagages, faite à Athènes le 13 décembre 1974, afin d'offrir une indemnisation accrue et d'instaurer une procédure simplifiée pour la mise à jour des limites qui y sont prévues,

SONT CONVENUES de ce qui suit :

Article I

Aux fins du présent Protocole :

- 1 "Convention" désigne la Convention d'Athènes de 1974 relative au transport par mer de passagers et de leurs bagages. Pour les Etats Parties au Protocole de 1976 de la Convention, cette expression désigne la Convention, telle que modifiée par ce Protocole.
- 2 "Organisation" désigne l'Organisation maritime internationale.
- 3 "Secrétaire général" désigne le Secrétaire général de l'Organisation.

Article II

(1) Le paragraphe 10 de l'article 1 de la Convention est remplacé par le texte suivant :

- 10 "Organisation" désigne l'Organisation maritime internationale

(2) Le paragraphe 1 de l'article 7 de la Convention est remplacé par le texte suivant :

- 1 La responsabilité du transporteur en cas de mort ou de lésions corporelles d'un passager est limitée, dans tous les cas, à 175.000 unités de compte par transport. Si, d'après la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite.

(3) L'article 8 de la Convention est remplacé par le texte suivant:

- 1 La responsabilité du transporteur en cas de perte ou de dommages survenus aux bagages de cabine est limitée, dans tous les cas, à 1800 unités de compte par passager et par transport.

- 2 La responsabilité du transporteur en cas de perte ou de dommages survenus aux véhicules, y compris tous les bagages transportés dans le véhicule ou sur celui-ci, est limitée, dans tous les cas, à 10.000 unités de compte par véhicule et par transport.

- 3 La responsabilité du transporteur, en cas de perte ou de dommages survenus aux bagages autres que ceux visés aux paragraphes 1 et 2 du présent article, est limitée, dans tous les cas, à 2.700 unités de compte par passager et par transport.

- 4 Le transporteur et le passager peuvent convenir que la responsabilité du transporteur ne sera engagée que sous déduction d'une franchise qui ne dépassera pas 300 unités de compte en cas de dommages survenus à d'autres bagages. Cette somme sera déduite du montant de la perte ou du dommage.

(4) L'article 9 de la Convention et son titre sont remplacés par ce qui suit :

Unité de compte et conversion

1 L'unité de compte mentionnée dans la présente Convention est le droit de tirage spécial, tel que défini par le Fonds monétaire international. Les montants mentionnés au paragraphe 1 de l'article 7 et à l'article 8 sont convertis dans la monnaie nationale de l'Etat dont relève le tribunal saisi du litige sur la base de la valeur de cette monnaie par rapport au droit de tirage spécial, à la date du jugement ou à la date adoptée d'un commun accord par les parties. La valeur, en droits de tirage spéciaux, de la monnaie nationale d'un Etat Partie qui est membre du Fonds monétaire international, est calculée selon la méthode d'évaluation appliquée par le Fonds monétaire international à la date en question pour ses propres opérations et transactions. La valeur, en droits de tirage spéciaux, de la monnaie nationale d'un Etat Partie, qui n'est pas membre du Fonds monétaire international, est calculée de la façon déterminée par cet Etat Partie.

2 Toutefois, un Etat qui n'est pas membre du Fonds monétaire international et dont la législation ne permet pas d'appliquer les dispositions du Paragraphe 1 du présent article peut, au moment de la ratification, de l'acceptation ou de l'approbation de la présente Convention ou de l'adhésion à celle-ci ou encore à tout moment par la suite, déclarer que l'unité de compte visée au paragraphe 1 est égale à 15 francs or. Le Franc or visé dans le présent paragraphe correspond à 65 milligrammes et demi d'or au titre de neuf cents millièmes de fin. La conversion du franc or en monnaie nationale s'effectue conformément à la législation de l'Etat en cause.

3 Le calcul mentionné à la dernière phrase du paragraphe 1 et la conversion mentionnée au paragraphe 2 sont faits de façon à exprimer en monnaie nationale de l'Etat Partie la même valeur réelle, dans la mesure du possible, pour les montants prévus au paragraphe 1 de l'article 7 et à l'article 8 que celle qui découlerait de l'application des trois premières phrases du paragraphe 1. Les Etats communiquent au Secrétaire général leur méthode de calcul conformément au paragraphe 1 ou les résultats de la convention conformément au paragraphe 2, selon le cas, lors du dépôt de leur instrument de ratification, d'acceptation ou d'approbation de la présente Convention ou d'adhésion à celle-ci et chaque fois qu'un changement se produit dans cette méthode de calcul ou dans ces résultats.

Article III

1 La Convention et le présent Protocole sont, entre les Parties au présent Protocole, considérés et interprétés comme formant un seul instrument.

2 Un état qui est Partie au présent Protocole mais n'est pas Partie à la Convention est lié par les dispositions de la Convention, telle que modifiée par le Présent Protocole, à l'égard des autres Etats Parties au Protocole, mais n'est pas lié par les dispositions de la Convention à l'égard des Etats Parties à cette seule convention.

3 Rien dans le présent Protocole ne modifie les obligations d'un Etat qui est Partie à la fois à la Convention et au présent Protocole à l'égard d'un Etat qui est Partie à la Convention mais qui n'est pas Partie au présent Protocole.

CLAUSES FINALES

Article IV

Signature, ratification, etc.

1 Le présent Protocole est ouvert à la signature de tous les Etats au Siège de l'Organisation du 1er juin 1990 au 31 mai 1991.

2 Tout Etat peut exprimer son consentement à être lié par le présent Protocole par :

- (a) signature sans réserve quant à la ratification, l'acceptation ou l'approbation
- (b) signature sous réserve de ratification, d'acceptation ou d'approbation, suivie de ratification, acceptation ou approbation; ou
- (c) adhésion.

3 La ratification, l'acceptation, l'approbation ou l'adhésion s'effectuent par le dépôt d'un instrument à cet effet auprès du Secrétaire général.

4 Tout instrument de ratification, d'acceptation, d'approbation ou d'adhésion, déposé après l'entrée en vigueur d'un amendement à la Convention, telle que modifiée par le présent Protocole, est réputé s'appliquer à la Convention ainsi modifiée et telle que modifiée par ledit amendement.

Article V Entrée en vigueur

1 Le présent Protocole entre en vigueur 90 jours après la date à laquelle dix Etats ont exprimé leur consentement à être liés par lui.

2 Pour tout Etat qui exprime son consentement à être lié par le présent Protocole après que les conditions d'entrée en vigueur prévues au paragraphe 1 ont été remplies, le présent Protocole entre en vigueur 90 jours après la date où ce consentement a été exprimé.

Article VI Dénonciation

1 Le présent Protocole peut être dénoncé par l'un quelconque des Etats Parties à tout moment à compter de la date à laquelle il entre en vigueur à l'égard de cet Etat Partie.

2 La dénonciation s'effectue par le dépôt d'un instrument de dénonciation auprès du Secrétaire général.

3 La dénonciation prend effet 12 mois après la date du dépôt de l'instrument de dénonciation auprès du Secrétaire général ou à l'expiration de toute période plus longue qui pourrait être spécifiée dans cet instrument.

4 Entre les Etats Parties au présent Protocole, la dénonciation de la Convention par l'une quelconque d'entre elles en vertu de l'article 25 de ladite Convention n'est en aucun cas interprétée comme une dénonciation de la Convention, telle que modifiée par le présent Protocole.

Article VII Révision et modification

1 L'Organisation peut convoquer une conférence ayant pour objet de réviser ou de modifier le présent Protocole.

2 L'Organisation convoque une conférence des Etats contractants au présent Protocole ayant pour objet de le réviser ou de le modifier à la demande du tiers au moins des Etats contractants.

Article VIII Modification des limites

1 A la demande d'au moins la moitié, et en tout cas d'un minimum de six des Etats Parties au présent Protocole, toute proposition visant à modifier les limites, y compris les franchises, prévues au paragraphe 1 de l'article 7 et à l'article 8 de la Convention, telle que modifiée par le présent Protocole, est diffusée par le Secrétaire Général à tous les Membres de l'Organisation et à tous les Etats contractants.

2 Tout amendement proposé et diffusé suivant la procédure ci-dessus est soumis au Comité juridique de l'organisation (ci-après dénommé "le Comité juridique") pour que ce dernier l'examine six mois au moins après la date à laquelle il a été diffusé.

3 Tous les Etats contractants à la Convention, telle que modifiée par le présent Protocole, qu'ils soient ou non Membres de l'Organisation, sont autorisés à participer aux délibérations du Comité juridique en vue d'examiner ou d'adopter les amendements.

4 Les amendements sont adoptés à la majorité des deux tiers des Etats contractants à la Convention, telle que modifiée par le présent Protocole, présents et votants au sein du Comité juridique, élargi conformément au paragraphe 3, à condition que la moitié au moins des Etats contractants à la Convention, telle que modifiée par le présent Protocole, soient présents au moment du vote.

5 Lorsqu'il se prononce sur une proposition visant à modifier les limites, la Comité juridique tient compte de l'expérience acquise en matière d'événements et, en particulier, du montant des dommages en résultant, des fluctuations de la valeur des monnaies et de l'incidence de l'amendement proposé sur le coût des assurances.

6 (a) Aucun amendement visant à modifier les limites en vertu du présent article ne peut être examiné avant l'expiration d'un délai de cinq ans à compter de la date à laquelle le présent Protocole a été ouvert à la signature ni d'un délai de cinq ans à compter de la date d'entrée en vigueur d'un amendement antérieur adopté en vertu du présent article.

(b) Aucune limite ne peut être relevée au point de dépasser un montant correspondant à la limite fixée dans la Convention, telle que modifiée par le présent Protocole, majoré de 6 p. 100 par an, en intérêt composé, à compter de la date à laquelle le présent Protocole a été ouvert à la signature.

(c) Aucune limite ne peut être relevée au point de dépasser un montant correspondant au triple de la limite fixée dans la Convention, telle que modifiée par le présent Protocole.

7 Tout amendement adopté conformément au paragraphe 4 est notifié par l'Organisation à tous les Etats contractants. L'amendement est réputé avoir été accepté à l'expiration d'un délai de dix-huit mois après la date de sa notification, à moins que, durant cette période, un quart au moins des Etats contractants au moment de l'adoption de l'amendement ne fassent savoir au Secrétaire Général qu'ils ne l'acceptent pas, auquel cas l'amendement est rejeté et n'a pas d'effet.

8 Un amendement réputé avoir été accepté conformément au paragraphe 7 entre en vigueur dix huit mois après son acceptation.

9 Tous les états contractants sont liés par l'amendement, à moins qu'ils ne dénoncent le présent Protocole, conformément aux paragraphes 1 et 2 de l'article VI, six mois au moins avant l'entrée en vigueur de cet amendement. Cette dénonciation prend effet lorsque l'amendement entre en vigueur.

10 Lorsqu'un amendement a été adopté mais que le délai d'acceptation de dix huit mois n'a pas encore expiré, tout Etat devenant Etat contractant durant cette période est lié par l'amendement si celui-ci entre en vigueur. Un Etat qui devient Etat contractant après expiration de ce délai est lié par tout amendement qui a été accepté conformément au paragraphe 7. Dans les cas visés par le présent paragraphe, un Etat est lié par un amendement à compter de la date d'entrée en vigueur de l'amendement ou de la date d'entrée en vigueur du présent Protocole pour cet Etat, si cette dernière date est postérieure.

Article IX Dépositaire

1 Le présent Protocole et tous les amendements acceptés en vertu de l'article VIII sont déposés auprès du Secrétaire Général.

2 Le Secrétaire Général :

- (a) informe tous les Etats qui ont signé le présent Protocole ou y ont adhéré :
 - (i) de toute signature nouvelle ou de toute dépôt d'instrument nouveau, et de la date à laquelle cette signature ou ce dépôt sont intervenus;
 - (ii) de toute déclaration et communication effectuées en vertu des paragraphes 2 et 3 de l'article 9 de la Convention, telle que modifiée par le présent Protocole;
 - (iii) de la date d'entrée en vigueur du présent Protocole;
 - (iv) de toute proposition visant à modifier les limites, qui a été présentée conformément au paragraphe 1 de l'article VIII.
 - (v) de tout amendement qui a été adopté conformément au paragraphe 4 de l'article VIII;

(vi) de tout amendement qui est réputé avoir été accepté en vertu du paragraphe 7 de l'article VIII ainsi que de la date à laquelle l'amendement entre en vigueur, conformément aux paragraphes 8 et 9 de cet article;

(vii) du dépôt de tout instrument de dénonciation du présent Protocole, ainsi que de la date à laquelle ce dépôt est intervenu et de la date à laquelle la dénonciation prend effet;

(b) transmet des copies certifiées conformes du présent Protocole à tous les Etats signataires et à tous les Etats qui y adhèrent.

3 Dès l'entrée en vigueur du présent Protocole, le Secrétaire Général en transmet le texte au Secrétaire Général de l'Organisation des Nations Unies en vue de son enregistrement et de la publication conformément à l'Article 102 de la Charte des Nations Unies.

Article X Langues

Le présent Protocole est établi en un seul exemplaire original en langues anglaise, arabe, chinoise, espagnole, française et russe, tous les textes faisant également foi.

Fait à LONDRES ce vingt neuf mars mil-neuf cent quatre vingt dix.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs gouvernements respectifs, ont signé le présent Protocole.

Brussels Conventions

RIDERS TO THE STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

EXTENSION TO SAINT LUCIA

1. International Convention for the Unification of certain Rules of Law relating to Collision between Vessels and Protocol of signature, Brussels 23rd September 1910

2. International Convention for the Unification of certain Rules of Law relating to Assistance and Salvage at Sea and Protocol of signature, Brussels 23rd September 1910.

3. International Convention for the Unification of certain Rules relating to Civil Jurisdiction in matters of Collision, Brussels 10th May 1952.

4. International Convention for the Unification of certain Rules relating to Penal Jurisdiction in matters of Collision or other incidents of navigation, Brussels 10th May 1952.

5. International Convention for the Unification of certain Rules relating to Arrest of Sea-going Ships, Brussels 10th May 1952.

On 21st March 1990 was received at the Ministère des Affaires Etrangères du commerce extérieur et de la coopération au développement de Belgique a declaration dated 9th March 1990 notifying that following a Declaration of 4th March 1979, made by the Prime-Minister of St. Lucia to the Secretary General of the United Nations, St. Lucia considers itself as bound by the afore mentioned Interna-

Conventions de Bruxelles

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

EXTENSION A SAINTE LUCIE

1. Convention Internationale pour l'Unification de certaines Règles en matière d'Abordage et Protocole de signature, Bruxelles 23 septembre 1910

2. Convention Internationale pour l'Unification de certaines Règles en matière d'Assistance et de Sauvetage maritimes et Protocole de signature, Bruxelles 23 septembre 1910

3. Convention Internationale pour l'Unification de certaines Règles relatives à la Compétence civile en matière d'Abordage, Bruxelles 10 mai 1952

4. Convention Internationale pour l'Unification de certaines Règles relatives à la Compétence pénale en matière d'Abordage et autres événements de navigation, Bruxelles 10 mai 1952

5. Convention Internationale pour l'Unification de certaines Règles sur la Saisie conservatoire des navires de mer, Bruxelles 10 mai 1952

Le 21 mars 1990 a été reçue au Ministère des Affaires Etrangères, du commerce extérieur et de la coopération au développement de Belgique, une Déclaration datée du 9 mars 1990 notifiant que, suite à une Déclaration du 14 mars 1979 faite par le Premier Ministre de Sainte Lucie au Secrétaire général des Nations Unies, Sainte Lucie se considère liée par les actes internationaux précités qui avaient

tional Conventions which had been extended to its territory by the United Kingdom of Great-Britain and Northern Ireland.

The Conventions referred to under sub)1. and 2. had been extended to St.Lucia on 3rd March 1913 and the Conventions referred to under sub)3, 4 and 5. had been extended to ST.Lucia on 12th May 1965.

DENUNCIATION BY AUSTRALIA

On 30th May 1990 was registered with the Ministère des Affaires Etrangères, du commerce extérieur et de la coopération au développement de Belgique, an instrument notifying the denunciation by Australia of the following Convention :

International Convention relating to the Liability of Owners of Sea-going Ships and Protocol of signature signed at Brussels on October 10, 1957

According to the provisions of Article 13 of the Convention, the denunciation will apply with regard to Australia on 30th May 1991.

ACCESSION BY MOROCCO

On 11th July 1990 were deposited with the Ministère des Affaires Etrangères, du commerce extérieur et de la coopération au développement de Belgique, the instruments of accession of Morocco to the following International Conventions:

1. International Convention for the Unification of certain Rules relating to Civil Jurisdiction in matters of Collision, signed at Brussels on 10th May 1952

2. International Convention for the Unification of certain Rules relating to Penal Jurisdiction in matters of Collision, signed at Brussels on 10th May 1952

3. International Convention for the Unification of certain Rules relating to Arrest of Sea-going Ships, signed at Brussels on 10th May 1952

According to Article 13 of the Convention under sub.1, to Article 9 of the Convention under sub.2 and to Article 15 of the Convention under sub.3 respectively these Conventions will, with regard to Morocco, enter into force on 11 January 1991.

IMO Conventions

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

International Convention on Civil Liability for Oil Pollution Damage, signed at Brussels 29 November 1969 (CLC 1969)

Accession: Colombia 26 March 1990
Djibouti 1 March 1990

International Convention on the Establishment of an International Fund for Compensation

été étendus à son territoire par le Royaume Uni de Grande-Bretagne et d'Irlande du Nord.

Les Conventions citées sub)1. et sub)2 avaient été étendues à Sainte-Lucie le 3 mars 1913 et les Conventions citées sub)3, 4, et 5. avaient été étendues à Sainte Lucie le 12 mai 1965.

DENONCIATION PAR L'AUSTRALIE

Le 30 mai 1990 a été enregistré auprès du Ministère des Affaires Etrangères, du commerce extérieur et de la coopération au développement de Belgique l'instrument de dénonciation par l'Australie de la Convention ci-après :

Convention Internationale sur la Limitation de la Responsabilité des Propriétaires de navires de mer et Protocole de signature, signés à Bruxelles le 10 octobre 1957.

Conformément aux dispositions de l'Article 13 de la Convention, la dénonciation produira ses effets à l'égard de l'Australie le 31 mai 1991.

ADHESION PAR LE MAROC

Le 11 juillet 1990 ont été déposés auprès du Ministère des Affaires Etrangères, du commerce extérieur et de la coopération au développement de Belgique, les instruments d'adhésion du Maroc aux Conventions Internationales ci-après :

1. Convention Internationale pour l'Unification de certaines Règles relatives à la compétence Civile en matière d'Abordage, signée à Bruxelles le 10 mai 1952

2. Convention Internationale pour l'Unification de certaines Règles relatives à la compétence Pénale en matière d'Abordage, signée à Bruxelles le 10 mai 1952

3. Convention Internationale pour l'Unification de certaines Règles sur la Saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952.

Conformément à l'article 13 de la Convention citée sub)1, à l'article 9 de la Convention citée sub)2 et à l'article 15 de la Convention citée sub)3, respectivement, ces Conventions entreront en vigueur à l'égard du Maroc le 11 janvier 1991.

Conventions OMI

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

Convention Internationale sur la Responsabilité Civile pour les Dommages dus à la Pollution par les Hydrocarbures, signée à Bruxelles le 29 novembre 1969 (CLC 1969)

Adhésion: Djibouti 1 mars 1990
Colombie 26 mars 1990

Convention Internationale portant Création d'un Fonds International d'indemnisation

sation for Oil Pollution Damage, signed
at Brussels 18 December 1971 (**FUND 1971**)
Accession: Djibouti 1 March 1990
India 10 July 1990

Protocol to the International Convention
on Civil Liability for Oil Pollution
Damage, signed at London 19 November 1976
(**CLC PROT 1976**)
Accession: Colombia 26 March 1990

International Convention on Limitation of
Liability for Maritime Claims, signed at
London 19 November 1976 (**LLMC 1976**)
Accession: Egypt 30 March 1988
Netherlands 15 May 1990

Protocol to the International Convention
on the Establishment of an International
Fund for Compensation for Oil Pollution
Damage, signed at London 19 November
1976 (**FUND PROT 1976**)
Accession: India 10 July 1990

pour les Dommages dus à la Pollution par
les Hydrocarbures, signée à Bruxelles le
18 décembre 1971 (**FUND 1971**)
Adhésion: Djibouti 1 mars 1990
Inde 10 juillet 1990

Protocole à la Convention Internationale
sur la Responsabilité Civile pour les
Dommages dus à la Pollution par les Hy-
drocarbures, signé à Londres le 19 novem-
bre 1976 (**CLC PROT 1976**)
Adhésion: Colombie 26 mars 1990

Convention Internationale sur la Limitation
de la Responsabilité en matière de Créances
Maritimes, signée à Londres le 19 novembre
1976 (**LLMC 1976**)
Adhésion: Egypte 30 mars 1988
Pays-Bas 15 mai 1990

Protocole à la Convention Internationale
portant création d'un Fonds International
d'Indemnisation pour les Dommages dus à
la Pollution par les Hydrocarbures, signé
à Londres le 19 novembre 1976 (**FUND PROT
1976**)
Adhésion: Inde 10 juillet 1990

Personalia

JUGOSLAVIJA

The new Board of the Yugoslav Maritime
Law Association, Zagreb, is composed as
follows:

Le nouveau Bureau de l'Association You-
goslave de Droit Maritime, Zagreb, est
composé comme suit :

President: Mr.Velimir FILIPOVIC, Professor of Maritime and Transport
Law at the University of Zagreb, Trg M.Tita 3, 41000 Zagreb.
Vice-President: Mr.Pedrag STANKOVIC, Professor University of
Rijeka, 51000 Rijeka, Studentska 2.
Secretaries: Mr.Vojislav BORCIC, Professor University of Rijeka, Legal
Council of Jadroagent, Trg I. Koblera 2, 51000 Rijeka.
Mrs.Ljerka MINTAS HODAK, Member of the Institute for Mari-
time Law, Opaticka 18, 41000 Zagreb.
Treasurer: Mr.Vinko HLACA, Associate Professor University of Rijeka,
Hahlic 6, 51000 Rijeka.

UNITED STATES OF AMERICA

The new Board of The Maritime Law Asso-
ciation of the United States is composed
as follows :

Le nouveau Bureau de l'Association Améri-
caine de Droit Maritime est composé
comme suit :

Officers

President : Kenneth H.Volk
First Vice President: George W.Healy, III
Second Vice President: Chester D.Hooper
Secretary: Howard M. McCormack
Treasurer: Marshall P.Keating
Membership Secretary : Theodore S.Cunningham

Executive Committee

Immediate Past President: Richard W.Palmer

Term Expiring 1991: James Hanemann, Jr.
Raymond P.Hayden
Raymond T.Letulle
Paul N. Wonacott

Term Expiring 1992: Waverley Lee Berkley, III
Reginald M.Hayden, Jr.
Warren J.Marwedel
Ben L.Reynolds

Term Expiring 1993: John T.Biezup
John D.Kimball
John R.Peters, Jr.
Frederick W. Wentker, Jr.

BULGARIYA

The new Board of the Bulgarian Maritime Law Association, Sofia, is composed as follows :

Le nouveau Bureau de l'Association Bulgare de Droit Maritime, Sofia, est composé comme suit :

President: Professor Ivan Vladimirov Ivanov
Vice-Presidents: Bratoev, Ivan Lazarov and Liuben Gorbanov
Secretary General: Vladimir Jivodinov.

Members: Prof. Slava Stephanova, Bojidar Hristov,
Dicho Uzunov, Angel Shishkov, Georgi Bogdanov,
Simeon Bojanov, Marin Slavchev, Evgeni Charakchiev, Zaven Chilian and Hristo Tepavicharov

PANAMA

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

Le nouveau Bureau de l'Association Panaméenne de Droit Maritime est composée comme suit:

President: Damasco Diaz Ducasa
Vice-President: Joel Medina
Treasurer: Cecilia de Gonzalez-Ruiz
Assistant-Secretary: Ramon Franco

Albert Lilar Prize

The 1990 Albert Lilar Prize has been awarded to two laureates: Dr. Leo Delwaide of Antwerp for his work "SCHEEPSBESLAG" published in 1988 by "Kluwer, Antwerpen" and Dr. Clive Van Aerde, of Brugge for his work "ZEESCHEPEN ONDER BEWAREND BESLAG" published in 1988 by "De Keure, Brugge".

The prizes have been handed to the laureates by the President of the CMI during the recent CMI International Conference in Paris.

Next Meetings

The Executive Council

The Executive Council of the CMI will meet at London on 7 December 1990.

1992 Colloquium on Oil Pollution Damage

In connection with the celebration of the 500th Anniversary of Christopher Columbus' discovery of America, a CMI Colloquium will be arranged in Genoa from 21st to 24th September 1992. The suggested theme for the Colloquium is "Liability for Oil Pollution Damages". At a later stage and depending on circumstances, the scope of the Colloquium may be broadened to include other damage to the marine environment and matters relating to public maritime law.

Annual Conference of The Maritime Law Association of Australia and New Zealand

The annual Conference of The M.L.A. of Australia and New Zealand will be held this year in Auckland, New Zealand from 14th until 18th October 1990. Overseas members from such countries as Hong-Kong, Singapore, United Kingdom and Papua New Guinea are expected to attend the Conference.

Prix Albert Lilar

Le Prix Albert Lilar 1990 a été attribué à deux lauréats: Mtre Leo Delwaide d'Anvers pour son ouvrage "SCHEEPSBESLAG" publié en 1988 par "Kluwer, Antwerpen" et Mtre Clive Van Aerde de Bruges pour son ouvrage "ZEESCHEPEN ONDER BEWAREND BESLAG" publié en 1988 par "Die Keure, Brugge".

Les prix ont été remis aux lauréats par le Président du CMI au cours de la récente conférence internationale du CMI à Paris.

Prochaines Réunions

Le Conseil Exécutif

Le Conseil Exécutif se réunira à Londres le 7 décembre 1990.

Colloque de Gênes en 1992 sur la Pollution

En relation avec le 500ème anniversaire de la découverte de l'Amérique par Christophe Colomb, un Colloque du CMI sera organisé à Gênes du 21 au 24 septembre 1992. Le thème proposé pour ce Colloque est "La responsabilité pour les dommages dus à la pollution par les hydrocarbures". Ultérieurement, ce thème pourra, s'il y a lieu, être étendu à d'autres dommages causés à l'environnement maritime ainsi qu'à des matières relatives au droit maritime public.

Conférence annuelle de l'Association de Droit Maritime d'Australie et de Nouvelle Zélande

La Conférence annuelle de l'A.D.M. d'Australie et Nouvelle Zélande se tiendra cette année à Auckland, Nouvelle Zélande, du 14 au 18 octobre 1990. Des participants en provenance de pays d'outre-mer tels que Hong-Kong, Singapour, Royaume-Uni et Papouasie Nouvelle Guinée sont attendus à cette Conférence.