

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 1 - 1992

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTREL

News From the CMI

Assembly of the CMI

The 1992 Assembly of the CMI will be held on Saturday, 27th June 1992 in Genoa, at Palazzo Spinola, the former residence of Admiral Antonio D'Oria, a contemporary of the more famous Admiral Andrea D'Oria.

The Agenda of the Assembly is the following:

1. Proposals for new Member Associations
2. Proposals for new Titulary Members
3. Report of the President
4. Report of the Secretary General
5. Report of the Treasurer
6. Accounts for 1991
7. Budget for 1992
8. Contributions for 1992 and 1993
9. CMI Charitable Trust
10. Studies in progress
11. CMI Publications
12. Genoa Seminar and Colloquium 21st to 25th September 1992
13. Sydney Conference 1994
14. Revision of the Constitution 1981 (amended in 1990)

If necessary, the Assembly will continue on the morning of Sunday, 28th June.

International Conference on Current Issues in Maritime Transportation - Genoa, 25th and 26th June 1992.

The Third Circular and Final Programme of the Conference is now available and copies are being sent by the CMI Secretariat to the National Associations. Information can be obtained from the CMI Administrative Officer, Henri Voet, Comité Maritime International, Mechelsesteenweg 203 - bus 6, 2018 Antwerp, Belgium, telephone: (03) 218.7464, fax: (03) 218.6721, telex: 31653 Voet B, or from Ente Colombo '92, Via Sottoripa 5, Palazzo Serra Gerace, 16123 Genoa, Italy, telephone: (10) 284.111, fax: (10) 292693.

All information regarding registration, hotel accommodations and travelling can be obtained from Studio Ega, Viale Tiziano 19, 00196 Rome, telephone: (6) 322.1806, fax: (6) 322.2006, telex: 614357.

The Conference will be held on Thursday, 25th and Friday, 26th June under the Chairmanship of Professor Francesco Berlingieri and Professor Riccardo Monaco, the President of UNIDROIT.

Three subjects will be dealt with during the Conference:

Nouvelles du CMI

Assemblée du CMI

L'Assemblée 1992 du CMI se réunira le samedi 27 juin 1992 à Gênes, au Palazzo Spinola, anciennement la résidence de l'amiral Antonio D'Oria, un contemporain de l'amiral Andrea D'Oria dont la renommée est plus célèbre.

L'ordre du jour de l'Assemblée est le suivant:

1. Candidatures de nouvelles Associations Membres
2. Candidatures de nouveaux Membres Titulaires
3. Rapport du Président
4. Rapport du Secrétaire Général Exécutif
5. Rapport du Trésorier
6. Comptes de l'exercice 1991
7. Budget pour 1992
8. Cotisations pour 1992 et 1993
9. CMI Charitable Trust
10. Sujets à l'étude
11. Publications du CMI
12. Séminaire et Colloque de Gênes du 21 au 25 septembre 1992
13. Conférence de Sydney 1994
14. Révision des Statuts 1981 (modifiés en 1990).

Si nécessaire, la réunion de l'Assemblée se poursuivra pendant la matinée du dimanche 30 juin.

Conférence Internationale sur les Problèmes actuels en matière de Transport Maritime, Gênes 25 et 26 juin 1992.

La troisième circulaire et le programme définitif de la Conférence sont maintenant disponibles. Ils sont envoyés par le secrétariat du C.M.I. aux Associations Nationales. Des renseignements supplémentaires peuvent être obtenus auprès du Conseiller Administratif, Monsieur Henri Voet, Comité Maritime International, Mechelsesteenweg 203, bus 6, 2018 Antwerpen, Belgique, téléphone: (3) 218.48.87 - fax: (3) 218.67.21 telex: 31653 VOET B, ou de Ente Colombo '92, Via Sottoripa 5, Palazzo Serra Gerace, 16123 Genoa, Italy, telephone: (10) 274.111, fax: (10) 292693.

Tous renseignements concernant l'enregistrement, la réservation d'hôtel et le voyage, peuvent être obtenus auprès du "Studio Ega", Viale Tiziano 19, 00196 Rome, téléphone: (6) 322.1806, fax: (6) 322.2006, telex: 614357.

La Conférence se tiendra le jeudi 25 et le vendredi 26 juin sous la présidence du Professeur Francesco Berlingieri et du Professeur Riccardo Monaco, Président de Unidroit.

Les trois sujets à l'ordre du jour de la Conférence sont:

- International Carriage of Goods by Sea - Prospects for the 21st Century (Thursday, 25th June p.m.)
- New Trends and Developments in the Field of International Transport Law (Friday, 26th June a.m.)
- Some Questions relating to the Carriage of Goods by Charter Party (Friday, 26th June p.m.)

Seminar on Liability for Pollution Damage - Genoa, 21st - 24th September, 1992.

As already announced, the Seminar shall take place in Genoa, under the Chairmanship of Professor Francesco Berlingieri from Monday, 21st September to Thursday, 23rd September. The General Rapporteur will be Professor Norbert Trotz, Secretary General Executive of the CMI. The following subjects will be dealt with during the Seminar.

First Working Session: Monday, 21st September a.m.

- Protection of the Marine Environment - the Public Law Approach
- The Convention on Oil Pollution and Preparedness and Response
- MARPOL and the Regional Conventions - Regional Enforcement

Second Working Session: Monday, 21st September p.m.

- The International Conventions on Liability and Compensation for Oil Pollution Damage and the Activities of the International Oil Pollution Compensation Fund (IOPCF).
- Some case studies illustrating the functioning of the system established by the Conventions.
- Tovalop and Cristal.

Third Working Session: Tuesday, 22nd September a.m.

- The 1984 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention - A Development of the Liability System

Fourth Working Session: Tuesday, 22nd September p.m.

- North American Point of View
- The United States Approach
- Marine Insurance
- Charterer's Point of View

Fifth Working Session: Thursday, 24th September a.m.

- Liability and Compensation for Maritime Carriage of Hazardous and Noxious Substances (HNS)
- Hazardous Waste, Dumping Convention and Liability
- Pollution from Off-Shore Activities

Colloquium on Assessment of Damage to the Marine Environment - Genoa, 24th and 25th September 1992.

The Colloquium will take place in Genoa, immediately after the Seminar on Liability for Oil Pollution Damage, Thursday, 24th and Friday, 25th June under the Chairmanship of the President of the CMI, Professor Allan Philip.

- Transport International des marchandises par mer - Perspectives pour le 21ème siècle (jeudi 25 juin après-midi)
- Nouvelles tendances et évolutions dans le domaine du droit international du transport (vendredi 26 juin avant-midi)
- Certains problèmes concernant le transport des marchandises sous chartepartie (vendredi 26 juin après-midi)

Séminaire sur la responsabilité des dommages dus à la pollution - Gênes, du 21 au 24 septembre 1992.

Comme il a été annoncé antérieurement, le Séminaire se tiendra à Gênes sous la présidence du Professeur Francesco Berlingieri, du lundi 21 septembre au jeudi 24 septembre. Le Rapporteur général sera le Professeur Norbert Trotz, Secrétaire Général Exécutif du CMI.

Les sujets suivants seront traités lors de ce séminaire.

Première session de travail: lundi 21 septembre (avant-midi):

- Protection de l'environnement marin - considérations de droit public
- La Convention sur la préparation et la lutte en matière de pollution par les hydrocarbures
- MARPOL et les Conventions régionales - Entrée en vigueur régionale

Deuxième session de travail: lundi 21 septembre (après-midi)

- La Convention Internationale sur la Responsabilité Civile et l'Indemnisation pour les dommages dus à la pollution par les hydrocarbures, ainsi que les activités du Fonds International d'Indemnisation.
- L'examen de quelques cas qui illustrent le fonctionnement du système établi par les Conventions.
- Tovalop et Cristal.

Troisième session de travail: mardi 22 septembre (avant-midi)

- Les Protocoles de 1984 à la Convention de 1969 sur la responsabilité civile et la Convention de 1971 sur le Fonds d'Indemnisation. Examen des bases du système de responsabilité.

Quatrième session de travail: mardi 22 septembre (après-midi)

- Point de vue Nord-Américain
- Les approches des Etats-Unis
- Assurance maritime
- Point de vue des affréteurs

Cinquième session de travail: jeudi 24 septembre (avant-midi)

- Responsabilité et indemnisation dans le transport maritime de marchandises dangereuses et toxiques (HNS)
- Déchets dangereux, Convention en matière d'immersion et responsabilité
- Pollution provenant d'activités "Off-Shore".

Colloque sur la fixation des dommages à l'environnement marin — Gênes, 24 et 25 septembre 1992.

Le Colloque se tiendra à Gênes, immédiatement après le séminaire au sujet de la responsabilité pour les dommages dus à la pollution par les hydrocarbures, le jeudi 24 et le vendredi 25 septembre, sous la présidence du Professeur Allan Philip, Président du C.M.I.

The Colloquium will deal with the Assessment of Damage to the Marine Environment. In spite of the the unification of liability for pollution damage, the assessment of damage is still an area which attracts the attention of lawyers, governments, and the industry involved.

The Discussion at the Colloquium, to which it is hoped that a great many National Associations will send delegates, will take place on the basis of a report prepared by a Working Group of the CMI.

The report and the discussion will especially focus on:

- Costs of Preventive Measures and Clean-up Costs
- Costs of Restoration
- Financial Loss as a Consequence of Physical Loss and Loss of Use of the Environment.

Draft Convention on Off-Shore Mobile Craft

The IMO Legal Committee, at its 63rd Session held in September 1990, resolved to request the CMI to consider the text of the Draft Convention on Off-Shore Mobile Craft approved by the CMI Conference held at Rio de Janeiro in September, 1977 and report whether, in the light of developments since 1977, there is a need for updating or revising the draft. Following such request, the executive Council of the CMI requested Mr. Frode Ringdal, who had been the Chairman of the International Sub-Committee that prepared the initial draft submitted to the Rio Conference, to study the problem and, subsequently, to prepare a Report and a Questionnaire for distribution to the National Associations.

These documents (Doc. Off-Shore — 1/X — 91) were distributed in October 1991 and the National Associations were requested to send their replies to the CMI Secretariat by 31st December 1991. As at 15th April 1992, only the replies of the National Associations of Argentina, Italy, Japan, Netherlands, Switzerland and the United Kingdom had been received.

All the other National Associations are requested to send their replies as soon as possible in order to enable Mr. Ringdal to prepare a Report as comprehensive as possible for consideration by the CMI International Sub-Committee that should then be convened.

Review of the Law of General Average and the York-Antwerp Rules 1974 (As amended 1990).

At the CMI Assembly held in Paris after the Conference, it was resolved to commence the study of the law of General Average and the York-Antwerp Rules and, pursuant to such resolution, the Executive Council of the CMI appointed Mr. David Taylor as Chairman of an International Sub-Committee.

The subject of General Average was also placed on the agenda of UNCTAD and a report was prepared by the UNCTAD Secretariat on this subject (Document No. TD/B/C.4/ISL/58 of 19th August 1991).

A preliminary report and a questionnaire were prepared by Mr. Taylor (Document GENAV-1/VII-91) and were distributed to the CMI National Associations on 10th July 1991.

For the preparation of the preliminary report, Mr. Taylor has formed a working group consisting, in addition

Le Colloque traitera de la fixation des dommages à l'environnement marin. En dépit de l'uniformité de la responsabilité pour dommages dus à la pollution, la fixation des dommages demeure un domaine qui retient l'attention des juristes, des gouvernements et de l'industrie concernée.

Pendant le Colloque, auquel l'on espère que bon nombre d'Associations Nationales enverront des délégués, les débats se baseront sur un rapport qui aura été préparé par un groupe de travail du C.M.I.

Le rapport et la discussion s'axeront tout particulièrement sur:

- Les frais de mesures préventives et de nettoyage
- Les frais de remise en état
- Les pertes financières résultant de la perte physique et de l'inaccessibilité de l'environnement.

Projet de Convention pour les engins mobiles "Off-Shore".

Le Comité juridique de l'OMI, au cours de sa 63^{me} session en septembre 1990, a décidé de prier le CMI de reprendre l'examen du projet de convention sur les engins mobiles "Off-Shore", qui avait été approuvé au cours de la Conférence du CMI à Rio de Janeiro en septembre 1977, et de faire rapport sur le point de savoir si, compte tenu des progrès réalisés depuis 1977, il est nécessaire de mettre le projet à jour ou de le réviser. Suite à cette requête, le Conseil Exécutif du CMI a demandé à Monsieur Frode Ringdal, qui avait présidé la commission internationale qui avait rédigé le projet initial soumis à la Conférence de Rio, d'étudier la question et, par la suite, de rédiger un rapport et un questionnaire destinés à être distribués aux Associations Membres.

Ces documents (Off-Shore-1/X-91) furent distribués en octobre 1991 et les Associations membres furent priées d'envoyer leurs réponses au secrétariat du CMI au plus tard le 31 décembre 1991. Au 15 avril 1992 seules les réponses des Associations nationales de l'Argentine, de l'Italie, du Japon, des Pays-Bas, de la Suisse et du Royaume Uni avaient été reçues.

Il est donc demandé à toutes les autres Associations membres d'envoyer leurs réponses le plus tôt possible afin de permettre à Monsieur Ringdal de rédiger un rapport aussi compréhensif que possible qui est destiné à être soumis à l'examen de la commission internationale qui devrait alors se réunir.

Examen du droit de l'avarie commune et des Règles d'York et d'Anvers 1974 (modifiées en 1990)

A l'Assemblée du CMI tenue à Paris après la Conférence, il a été décidé d'entreprendre l'étude du droit de l'avarie commune et des Règles d'York et d'Anvers. A la suite de cette décision, le Conseil Exécutif du CMI a désigné Monsieur David Taylor comme Président d'une commission internationale.

Le sujet de l'avarie commune a figuré également à l'ordre du jour de CNUCED et un rapport a été préparé par le secrétariat de CNUCED à ce sujet (document No. TD/B/C.4/ISL/58 du 19 août 1991).

Un rapport préliminaire et un questionnaire (document GENAV-1/VII-91) ont été établis par Monsieur Taylor et distribués aux Associations membres du CMI le 10 juillet 1991.

Pour la préparation de ce rapport préliminaire Monsieur Taylor a formé un groupe de travail consistant, en de-

to himself, of Douglas Adams, Jaap Gerritzen, Kazuhiro Harada, Geoffrey Hudson, Bent Nielsen and Lloyd Watkins. After replies to the questionnaire had been received from over twenty Associations, Mr. Taylor has drawn up a report for consideration by the CMI International Sub-Committee, accompanied by an analysis of the replies to the questionnaire. This Report is being circulated to the National Associations and further copies may be obtained by the CMI Secretariat.

The first meeting of the International Sub-Committee will probably be held in London in December 1992.

Time-Barred Actions - New edition of the book by the late Kaj Pineus.

Lloyd's of London Press, who published the first edition of "Time-Barred Actions" edited by the late Kaj Pineus, Honorary Vice President of the CMI, requested the CMI to prepare a new edition of this book. The Executive Council of the CMI asked Professor Berlingieri to take the responsibility of such new edition and Professor Berlingieri prepared a questionnaire for distribution both to National Associations whose domestic laws are mentioned in the first edition of the book and to those whose laws are not mentioned. The Questionnaire (CMI Doc. TIME-BAR-1/I-92) was distributed in January 1992. Replies have been received by the Associations of Israel and Italy and have been announced by the Associations of Canada and Denmark. All other Associations are requested to send their replies not later than October 1992, so that the new edition of the book may be prepared, if possible, by the end of 1992.

Maritime Agents.

A Report and a Questionnaire on this subject have been prepared, following the request of the Executive Council, by Professor Berlingieri and have been circulated to National Associations in January 1992 (CMI Doc. MAR.AG.-1/I-92). National Associations are requested to send their replies as soon as convenient.

CMI Charitable Trust.

In the Autumn of 1991, the Trustees were approached by the IMO International Maritime Law Institute (Malta), with the request that the Trust should consider financing three lectures at the Institute in the Winter of 1992. The Trustees decided, after one of them had had a meeting in Oxford with the Director, Professor P. Birnie, that this was a project which should be supported. In consequence arrangements were made for the following lectures to be delivered on behalf of the CMI:

- Dr. F. Wiswall — Safety Regulations and General Average
- Mr. Niall McGovern — Towage, Salvage and Pilotage
- Monsieur Emanuel Fontaine — Charterparties (Demise, Time and Voyage).

The above lectures have reported very favourably on the Institute and Mr. Birch Reynardson, one of the Trustees, is paying a private visit to Malta in May when he will be visiting the Institute.

hors de lui-même, de Douglas Adams, Jaap Gerritzen, Kazuhiro Harada, Geoffrey Hudson, Bent Nielsen et Lloyd Watkins. Après que des réponses au questionnaire eurent été reçues de plus de vingt Associations, Monsieur Taylor a préparé un rapport destiné à être examiné par la commission internationale, accompagné d'une analyse des réponses au questionnaire. Ce rapport a été envoyé aux Associations membres et d'autres exemplaires peuvent être obtenus auprès du secrétariat du CMI. La première réunion de la commission internationale se tiendra probablement à Londres en décembre 1992.

Prescriptions - Nouvelle édition du livre de feu Kaj Pineus.

Lloyd's of London Press, qui a publié la première édition de "Time-Barred Actions", l'oeuvre de feu Kaj Pineus, Vice-Président Honoraire du CMI, a prié le CMI de préparer une nouvelle édition de ce livre. Le Conseil Exécutif du CMI a demandé au Professeur Berlingieri de se charger de cette nouvelle édition. Le Professeur Berlingieri a rédigé un questionnaire à l'intention des Associations membres dont les lois nationales sont mentionnées dans la première édition du livre et des autres Associations dont les lois ne sont pas mentionnées. Le questionnaire (document CMI TIME-BAR-1/I-92) a été distribué en janvier 1992. Des réponses ont été reçues des Associations d'Israël et d'Italie et d'autres réponses ont été annoncées par les Associations du Canada et du Danemark. Toutes les autres Associations sont priées d'envoyer leurs réponses au plus tard avant octobre 1992 de façon à ce que la nouvelle édition du livre puisse être préparée, si possible, pour la fin de 1992.

Agents Maritimes

Un rapport et un questionnaire à ce sujet ont, à la demande du Conseil Exécutif, été préparés par le Professeur Berlingieri. Ils ont été adressés aux Associations membres en janvier 1992 (document CMI MAR.AG-1/I-92).

Les Associations membres sont priées d'envoyer leurs réponses aussitôt que possible.

CMI Charitable Trust

En automne 1991, le International Maritime Law Institute de l'OMI (Malte) approcha les administrateurs du Trust à propos du financement éventuel de trois conférences à présenter à l'Institut en l'hiver de 1992.

Après un entretien à Oxford par un des administrateurs avec le Directeur, le Professeur P. Birnie, les administrateurs ont décidé qu'il s'agissait d'un projet qui méritait d'être soutenu. Par conséquent, l'on procéda à l'organisation des conférences suivantes au nom du CMI:

- Dr. F. Wiswall — Safety Regulations and General Average (Règles de sécurité — Avarie Commune)
- Monsieur Niall McGovern — Towage, Salvage and Pilotage (Remorquage, Assistance et Pilotage)
- Monsieur Emanuel Fontaine — Charterparties (Demise, Time and Voyage) (Chartes-parties (Coque nue, à Temps et au Voyage)).

Les conférences précitées furent reçues très favorablement à l'Institut et Monsieur Birch Reynardson, l'un des administrateurs du Trust, se rendra à titre privé à Malte au mois de mai et y visitera l'Institut.

News from Intergovernmental and International Organizations

UNITED NATIONS

UN/IMO Conference on a draft convention on Maritime Liens and Mortgages

The UN/IMO Conference of Plenipotentiaries on a Draft Convention on Maritime Liens and Mortgages has been scheduled to be held from 19th April to 7th May 1993 in Geneva. The Draft Convention is being circulated to Governments, Intergovernmental and Non-Governmental Organizations for comment.

IMO

International Conference for the adoption of new Protocols to the Civil Liability Convention and the Fund Convention.

The IOPC Fund Assembly, at its 13th Session held in September 1990, decided to establish an Intersessional Working Group to consider the future development of the intergovernmental oil pollution liability and compensation system based on the 1969 Civil Liability Convention and the 1971 Fund Convention.

A report was submitted by the Working Group (Document FUND/WGR.6/12) to the IOPC Fund Assembly at its 14th Session (Document FUND/A.14/23) and the Assembly agreed with the conclusions of the Working Group and endorsed the draft text for new Protocols prepared by the Working Group, containing entry into force provisions differing from those of the 1984 Protocols. It decided to make a request to the Secretary General of IMO that an International Conference be convened as soon as possible to consider:

- (a) the draft protocols modifying the 1969 Civil Liability Convention and the 1971 Fund Convention set out in annexes 1.1 and 1.2 to the report;
- (b) the draft resolutions set out in annexes 1.3 and 1.4 to the report; and
- (c) whether there should be introduced in the Fund Convention a system setting a cap on contributions payable by oil receivers in any given State, along the lines set out in annex 2 to the report.

The IMO Council at its 16th Extraordinary Session of 25th October 1991, considered the request by the IOPC Fund Assembly and decided to make the necessary amendments to the draft work programme for the Biennium 1992-1993 in order to enable an international conference to be convened to consider the aforesaid provisions.

By Resolution A.729(17) adopted on 7th November 1991, the Assembly of IMO requested the Legal Committee to consider the problems set out in the Resolution of the IOPC Fund Assembly and, following such Resolution, provisions have been made for a conference to be held at IMO Headquarters from 23rd to 27th November 1992.

UNCTAD

UNCTAD VIII, held in Cartagena de Indias in February this year, decided to restructure the intergovernmental machinery of the organization with new terms of reference and work programme. To this end the Conference suspended all existing Committees, including the Committee on Shipping, and established four new Committees and some *ad hoc* Working Groups. The present terms of reference of the Committee on Shipping are to be included in that of the new Committee on Services. The current session of the Trade and Development Board is to prepare the terms of reference of the new Committees and Working Groups.

ESCAP

All the lectures given by CMI speakers in the four Seminars organized by ESCAP in China with the assistance of the CMI have been published by ESCAP in two volumes entitled "Essays on Maritime Legislation". The first volume includes the lectures given at the Seminars held at Dalian and Xiamen. The second volume includes the lectures given at the Seminars held at Qing Dao and Shanghai.

A Third Edition of the Guidelines for Maritime Legislation is presently under preparation. ESCAP convened a meeting of experts in Bangkok in October 1991 with a view to discussing the revision of the previous edition. Following the invitation of ESCAP, Mr. Patrick Griggs, a member of the CMI Executive Council, attended the meeting on behalf of the CMI. The CMI has cooperated from the very outset with ESCAP in this project and, indeed, the private maritime law section of the Guidelines was prepared by the CMI.

Two Regional Seminars were organized by ESCAP in Bangkok in June and December of 1991. Two of the speakers in the first of such Seminars were Professor Edgar Gold, Vice President of the Canadian Maritime Law Association, and Dr. Thomas Mensah, a Temporary Member of the CMI, who both spoke on the subject of Pollution. Three of the speakers in the second of the aforesaid Seminars were Professor Edgar Gold, Dr. Thomas Mensah and Mr. Richard Williams, a member of the British Maritime Law Association. The speakers covered a wide range of topics, with particular reference to the Hague Rules and the Hague-Visby Rules, Inter-modal Transport and cargo delays.

Mr. David L. Turner, Chief of the Transport and Communications Division of ESCAP stated in a letter written to Professor Berlingieri on 2nd January 1992:

The publication of the essays complete an area of co-operation between ESCAP and the Comité Maritime International which focused on the seminars in China. The publications spread the benefit of the lectures given in China to other parties in, and outside, our region.

It is fitting to recall how this series of seminars became so successful through the unrelenting support received from your good selves, as the then President of the CMI, and the staff in your office, and the enthusiastic input provided by the lecturers, some of them on more than one occasion. As you must be aware, the project on Maritime Legislation scored high marks in this region, but also in other parts of the world the benefits of the project are recognized and the publications requested and used.

I would like to take this opportunity to once again express our sincere gratitude to you, and to your organization, for all the assistance received in the past. We feel ourselves most privileged that your successor as President of the CMI, Professor Allan Philip, since his election has equally forcefully assisted us in our latest project activities.

UNIDROIT

Restricted Exploratory Working Group of UNIDROIT on Security Interests in Mobile Equipment.

Professor Rolf Herber acted as a representative of the CMI at the meeting of the aforesaid Working Group held in Rome and reported as follows:

The International Institute for the Unification of Private Law in Rome (UNIDROIT) had set up a restricted Exploratory Working Group to examine the feasibility of drawing up Uniform Rules on certain International Aspects of Security Interests in Mobile Equipment. The group met on March 9th — 11th in Rome under the chairmanship of Professor Goods (Oxford). It was composed of representatives mainly from the interested industries and law firms, as well as by academics.

UNIDROIT had sent out a questionnaire based on a report of Professor Cuming to interested circles. The answers to such questionnaire show a certain interest in the preparation of international rules on security interests in mobile equipment.

The group discussed the pros and cons of drawing up rules on security interests in mobile equipment.

This was discussed in the light of an earlier decision of UNCITRAL (in 1980) which, after having had before it studies on the subject, decided not to take any further action in this field. Nevertheless, the Group felt that it should suggest to the Governing Council of UNIDROIT to set up a group of experts.

It is, of course, too early to preview the possible shape of a future Convention. There was, however, a certain tendency to envisage the creation of an additional type of security interest in movables, modelled in substance by an international Convention and to be acknowledged by all Member States. The majority of the members of the group felt that this security interest had to be registered in one form or another. The common view was that rules of international private law had proved to be insufficient in this field; this opinion was shared in particular by the Secretary General of the Hague Conference, Mr. Droz.

The representative of the CMI explained the reasons why ships and their appurtenances should be excluded from the scope of the future convention. He underlined in particular that it would not be sufficient to exclude ships only to the extent that they are covered by existing conventions because the Brussels Conventions of 1926 and 1967 have not received many ratifications; mortgages as well as hypothèques and maritime liens, however,

are well-known and acknowledged in most legislations and, therefore, there is no need for additional rules and other securities in respect of ships. To the contrary, a UNIDROIT convention as envisaged, when encroaching with maritime conventions would adversely affect its own prospects of entry into force as well as the development of maritime law in the future.

The Exploratory Group, in principle, accepted the arguments of the CMI. The part of its report dealing with ships is worded as follows:

“The Working Group considered the question whether there were specific types of equipment to which the Convention should not apply, in particular ships and aircraft. In the case of ships, the Working Group felt that a strong argument for excluding ships might lie on the fact that there were existing Conventions and a proposed new Convention regulating the recognition and priority of security interests in ships and inland navigation vessels and appurtenances thereto. There was, in addition, a CMI draft regulating these questions in relation to the objects assimilated to ships. In that connection it would be necessary to consider not only ships to which the aforementioned Conventions were applicable, but also to those not affected by these Conventions, but governed by equivalent national legislation and ships not affected either by these Conventions or by national legislation.”

The existing Conventions mentioned in the Report are, of course, the 1926 and the 1967 Brussels Conventions on Maritime Liens and Mortgages and the new Convention is the draft Articles for a Convention on Maritime Liens and Mortgages prepared by the Joint IMO/UNCTAD Group of Experts on Maritime Liens and Mortgages and Related Matters.

The Group was rather reluctant in formulating a conclusion because it did not feel competent to exclude, already at this stage of the work, a large part of movables and, moreover, because there was some hesitation as to inland navigation craft possibly not covered by existing conventions and legislations (sporting boats).

Even if, according to this preliminary view, ships are excluded from the future convention altogether, the International Rules on Security Interests in Mobile Equipment will be of considerable interest for the transport industry in general. Maritime trade, in particular, will be interested in security interests in containers.

Law of the Sea Institute

The 26th Law of the Sea Institute Annual Conference will take place in Genoa from 22nd to 26th June under the joint Chairmanship of Professor Edward Miles and Professor Tullio Treves. The following subjects will be dealt with during the Conference:

- Contemporary Navigation Issues (Monday, 22nd June p.m.)
- The Protection of the Environment and the U.N. Conference on Environment and Development (Tuesday, 23rd June a.m.)
- The Mediterranean: Selected Issues (Tuesday, 23 June p.m.)
- The U.N. Law of the Sea Convention: Ten Years After Signature (Wednesday, 24th June a.m.)
- The European Economic Community and the Law of the Sea (Thursday, 25th June a.m.)

Ratifications of International Conventions

The instruments of ratification of the following Conventions and Protocols have been deposited with the depositary in March 1992:

- Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 25 August 1924 as amended by the Protocol of 23 February 1968, Brussels, December 21, 1979.
Japan: 13th March 1992 (signed subject to ratification).
- International Convention on Salvage, 1989
U.S.A.: 27th March 1992.

- International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990.
 - Sweden: 30th March 1992.
 - U.S.A.: 27th March 1992.

Important Judicial Decisions

CLC 1969 and Fund Convention of 1971.

In the limitation proceedings pending before the Tribunal of Genoa for the tanker "Haven", the judge in charge of the proceedings decided that the amount payable by the Fund as compensation in respect of the accident of the "Haven" which occurred in 1991 is still expressed in gold francs and must be converted into national currency of the State in which the proceedings have been instituted (in Italy) on the basis of the average market value of gold at the time of the constitution of the Fund. An appeal has been lodged by the Fund against this decision.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 2 - 1992

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTREL

News From the CMI

Assembly - 27th June 1992 Assemblée - 27 Juin 1992

Attending - Présents
Officers - Comité de Direction

President: Allan Philip
Président:

President of Honour: Francesco Berlingieri
Président d'Honneur:

Vice-Presidents: William Birch Reynardson
Vice-Présidents: Eugenio Cornejo
Anatoliy Kolodkin
Jan Ramberg
Ron Salter
Jan C. Schultz
William Tetley

Secretary General Executive: Norbert Trotz
Secrétaire Général Exécutif:

Secretary General Administrative and Treasurer: Henri Voet
Secrétaire Général Administratif et Trésorier:

Members of the Executive Council: José Luis Goni
Membres du Conseil Exécutif: Patrick Griggs
Etienne Gutt
Rolf Herber
Pierre Latron
Frank L. Wiswall, Jr.

Administrative Officer: Jan DeWacker
Conseiller Administratif: Hélène Schrynemakers
Andrée Philippart

Opening of the Assembly.

The Assembly was held in Genoa at Palazzo Doria Spinola and the room where the Assembly was held was kindly made available by the Prefetto of Genoa, Dr. Mario Zirilli, who addressed the Assembly with words of welcome.

Opening the Assembly, the President remembered Captain Marcel Antonorsi (Venezuela), Sverre Holt (Norway), Prof. Taslim Olawale Elias (Nigeria), Rudolf Th. Sarasin (Switzerland), Vasant J. Sheth (India) and Benjamin W. Yancey (U.S.A.).

Ouverture de l'Assemblée.

L'Assemblée s'est réunie à Gênes au Palazzo Doria Spinola. La salle de réunion avait été gracieusement mise à la disposition du CMI par le Préfet de Gênes, Dr. Mario Zirilli, qui accueillit l'Assemblée avec des paroles de bienvenue.

En ouvrant l'Assemblée le Président a rendu hommage à la mémoire du Capitaine Marcel Antonorsi (Venezuela), de M. Sverre Holt (Norvège), du Prof. Taslim Olawale Elias (Nigeria), de M. Rudolf Th. Sarasin (Suisse), de M. Vasant J. Sheth (Inde) et de M. Benjamin W. Yancey (Etats-Unis).

1. New Member Associations.

The Assembly admitted with acclamation the Maritime Law Association of Singapore as a Member of the CMI. The Assembly was informed that the Maritime Law Association of Yugoslavia was formally dissolved.

The Assembly then considered the application of the new Maritime Law Association of Croatia which was founded in 1991 and admitted the Association as a Member of CMI by acclamation.

The Assembly agreed not to take a decision on the application of the Maritime Law Association of South Africa at this meeting and to postpone the consideration of the application.

2. New Titulary Members and New Temporary Members.

- a. The following were approved as Titulary Members of the CMI with acclamation:

Japan: Mr. Mitsuo Abe
Mr. Taichi Haramo
Mr. Hidetaka Moriya
Mr. Masakazu Nakanishi
Mr. Yuichi Sakata
Mr. Tomonobu Yamashita

Senegal: Mr. Ibrahima Khalil Diallo
Mr. Aboubacar Fall

France: Mr. Yves Tassel

Croatia: The Assembly confirmed the Titulary Membership of Titulary Members who were Members of the former Maritime Law Association of Yugoslavia.

- b. The Assembly approved with acclamation temporary Membership for: Mr. Isaki Mbamvu (Zaire) and Mr. Nagarajah Muttiah (Malaysia)

3. Report of the President.

The President gave an overview on the co-operation of the CMI with other International Organizations like IMO, UNCTAD, UNCITRAL, UNIDROIT and others. He mentioned especially the support from the CMI Charitable Trust to the Maritime Law Institute of IMO in Malta.

The President drew the attention of the Assembly to the Draft Constitution which was on the agenda of the Meeting and emphasized the importance of its adoption. He then thanked Professor Francesco Berlingieri and the Italian Maritime Law Association for the excellent work done in organizing the CMI Seminar the day before the Assembly Meeting and for the efforts in preparing the CMI Seminar and Colloquium.

4. Report of the Secretary General Executive.

The Secretary General Executive reported on the preparation of the CMI Seminar and Colloquium in September and on the work in progress.
For details, reference is made to paragraphs 10 and 12.

1. Nouvelles Associations Membres.

L'Assemblée a admis à l'unanimité l'Association de Droit Maritime de Singapour en qualité de membre du CMI. L'Assemblée a été informée que l'Association de Droit Maritime de Yougoslavie avait été officiellement dissoute.

L'Assemblée a alors examiné la candidature de l'Association de Droit Maritime de Croatie, qui avait été créée en 1991, et l'a admise à l'unanimité en qualité de membre du CMI.

L'Assemblée s'accorda à ne pas prendre de décision au cours de cette réunion en ce qui concerne la candidature de l'Association de Droit Maritime de l'Afrique du Sud et de reporter à plus tard l'examen de cette candidature.

2. Nouveaux Membres Titulaires et nouveaux Membres Provisoires.

- a. Les personnes suivantes ont été nommées à l'unanimité Membres Titulaires du CMI:

Japon: Mr. Mitsuo Abe
Mr. Taichi Haramo
Mr. Hidetaka Moriya
Mr. Masakazu Nakanishi
Mr. Yuichi Sakata
Mr. Tomonobu Yamashita

Senegal: Mr. Ibrahima Khalil Diallo
Mr. Aboubacar Fall

France: M. Yves Tassel

Croatie: L'Assemblée a confirmé en leur qualité les Membres Titulaires qui étaient naguère membres de l'Association de Droit Maritime de Yougoslavie.

- b. L'Assemblée a admis comme Membres Provisoires:
M. Nagarajah Muttiah - Malaisie
M. Isaki Mbamvu - Zaire

3. Rapport du Président.

Le Président passa en revue la collaboration du CMI avec d'autres organisations internationales telles que OMI, CNUCED, CNUDCI, UNIDROIT et autres. Il mentionna tout particulièrement le soutien fourni par le CMI Charitable Trust à l'Institut de Droit Maritime de OMI à Malte.

Le Président attira l'attention de l'Assemblée sur le projet de statuts qui était à l'ordre du jour de la réunion et mit l'accent sur l'importance de son adoption.

Il remercia ensuite le Prof. Francesco Berlingieri et l'Association italienne de droit maritime pour l'excellent travail accompli dans l'organisation du séminaire du CMI le jour précédant la réunion de l'Assemblée et pour ses efforts dans la préparation du Séminaire CMI et du Colloque en septembre.

4. Rapport du Secrétaire Général Exécutif.

Le Secrétaire Général Exécutif fit rapport sur la préparation du Séminaire CMI et du Colloque en septembre et sur l'avancement des travaux.
Pour plus de détails prière de se référer aux chapitres 10 et 12 ci-après.

5. Report of the Treasurer.

The Treasurer referred to the report he had prepared and circulated with his letter of 31st January 1992 to the President and Officers of the CMI and to the Presidents of Member Associations. He has received no comments nor written questions from the Member Associations regarding this report.

He insisted on the deplorable situation that had developed as a consequence of the failure by numerous Member Associations to pay their contribution to the CMI for the year 1991. Only 26 Member Associations had fulfilled their obligations by 15th June 1992 and only BEF 5,831,034 and Dollars 2,004 — had been collected. Thank to the efforts made in respect of painful savings, it has been possible to face the expenses pertaining to the past year and to the first six months of the current year. In the circumstances, the Treasurer made an appeal to the 22 Member Associations, which had hitherto paid nothing, that they should not delay further the fulfilment of their obligations.

6. Accounts of 1991.

The Treasurer made the presentation of the accounts for the year 1991. These show a considerable excess of the amount of expenses over the amount of receipts for which the reasons mentioned in his report under reference are chiefly responsible.

The Assembly approved the accounts for the year 1991 and granted release to the Treasurer.

7. Budget for 1992.

The Treasurer made the presentation of a draft budget for 1992, a copy of which was already attached to his circular letter of 31st January 1992.

In that budget due consideration has been given to the increase in the travelling costs and to the deficit due to the circumstance that the receipts of the sale of the CMI publications fall considerably short of the cost of editing, printing and distributing these publications.

On the other hand, regarding the receipts, the amount of interest to be collected on the accounts will be trifling by comparison with the preceding years not only because the interest rates are now lower but also because there will not be considerable amounts available to be placed into deposit accounts as a consequence of the failure of almost half of the Member Associations to pay their contribution for the year 1991.

The draft of the budget has been approved by the Assembly.

8. Contributions for the years 1992/1993.

The President informed the Assembly that following a decision of the Executive Council, it was proposed to maintain for the year 1992 the contributions of Member Associations and of Titulary Members as at the level fixed for 1991 without any change. It was then proposed to increase the contribution for the year 1993 by 6%.

Following interventions by several delegates of the Member Associations concerning mainly the increase of the contributions, the Assembly accepted the proposal of the Executive Council.

9. CMI Charitable Trust.

Mr. Birch Reynardson informed the Assembly that the

5. Rapport du trésorier.

Le trésorier fit référence au rapport qu'il avait établi en date du 31 janvier 1992 et qu'il avait fait parvenir à l'époque au Président et aux membres du Conseil de Direction du CMI ainsi qu'aux Présidents des Associations Membres. Il n'a reçu aucun commentaire ni aucune question écrite de la part des Associations Membres à propos de ce rapport. Il insista sur la déplorable situation qui résulte du défaut de paiement par de nombreuses Associations Membres de leur cotisation pour l'année 1991. Seules 26 Associations Membres se sont acquittées de leurs obligations à la date du 15 juin 1992 pour un total de Francs Belges 5.831.034 et dollars 2.004,-. Ce n'est que grâce à des efforts pénibles d'économie que les dépenses afférentes à l'année écoulée et au premier semestre de l'année en cours ont pu être couvertes. Il a donc lancé un appel pressant aux 22 Associations Membres qui n'avaient rien payé, pour qu'elles ne tardent pas davantage à le faire.

6. Comptes de l'exercice 1991.

Le trésorier présenta les comptes de l'exercice 1991 qui se clôturent malheureusement par un dépassement important des dépenses sur les recettes et ce principalement pour les motifs auxquels il s'est référé dans son rapport. L'Assemblée a approuvé les comptes pour l'exercice 1991 et a donné décharge au trésorier.

7. Budget pour 1992.

Le trésorier a présenté un projet de budget pour 1992 dont un exemplaire avait déjà été joint à sa lettre précitée du 31 janvier 1992.

Il a été tenu compte dans ce budget de l'accroissement du coût des voyages et du déficit qui résulte de ce que les recettes de la vente des publications du CMI sont de loin inférieures au coût de la rédaction, de l'impression et de la distribution de celles-ci.

Par ailleurs, dans les recettes le montant des intérêts sur les comptes sera minime par comparaison aux années précédentes non seulement parce que les taux d'intérêts ont baissé mais surtout parce qu'il n'y a pas de montants assez importants disponibles pour être placés à terme suite au défaut de paiement de leur cotisation 1991 par près de la moitié des Associations Membres.

Le projet de budget a été approuvé par l'Assemblée.

8. Fixation des cotisations pour les exercices 1992/1993.

Le Président a informé l'Assemblée que suite à une délibération au sein du Conseil Exécutif il était proposé pour l'exercice 1992 de maintenir sans changement par rapport à celles qui avaient été fixées pour l'exercice 1991 les cotisations des Associations Membres et des Membres Titulaires. Il était également proposé une augmentation à concurrence de 6% pour les cotisations de l'exercice 1993. Après des interventions de la part de plusieurs délégués des Associations Membres visant en ordre principal un accroissement des cotisations, l'Assemblée accepta les propositions du Conseil Exécutif.

9. CMI Charitable Trust.

Monsieur Birch Reynardson a informé l'Assemblée de

total assets of the Trust are more than £246,000 and the income is about £21,500.

The Trust spent the amount of £8,600 in the year ending 31st March 1992. Out of this total, £4,750 was incurred in connection with the ESCAP lectures (research, printing, etc.). Following a request received from the Director of the IMO Institute of Maritime Law (Malta), Professor Patricia Birnie, the CMI Charitable Trust provided finance for three lecturers to visit the Institute. A total of £3,411 were incurred for this purpose. Furthermore, the trustees discussed the possibility of setting up a CMI scholarship, to be awarded annually, to benefit young maritime lawyers.

They also agreed that it would be desirable to support appropriate research projects brought to their attention.

10. Studies in progress.

Environmental Law Issues.

It was proposed by the Executive Council to work further on environmental law issues. A small Working Group was set up to study the matter. It is now clear that further work has to be done on assessment of pollution damage. However, the subject should be extended and even include consideration in respect of an HNS-Convention. Since the HNS Convention would interfere with the limitation of liability of the shipowner (in particular with the 1976 Limitation Convention) the Working Group should also study the question of a revision of the 1976 Limitation Convention. Furthermore, it was proposed that this opportunity should be used for a review of the Conventions on Liability and Limitation. This review would be a subject for the long-term work programme.

York Antwerp Rules.

The Working Group on General Average and York-Antwerp Rules has finished a preliminary report that is being circulated to all National Associations. The report will be discussed at the first meeting of the Sub-Committee in December 1992.

UNCTAD is also working on General Average. At the last meeting of the Working Group on Shipping Legislation of UNCTAD it was decided to undertake, in co-operation with the CMI, investigations in the insurance industry in order to find out whether there are insurance methods which can lead to a simplification of General Average. Mr. David Taylor, the Chairman of the CMI Sub-Committee, is working on the matter in close contact with UNCTAD, IUMI, the Institute of London Underwriters and others.

Offshore Mobile Craft.

Reference was made to the CMI News Letter No. 1/1992 wherein a report is given.

The replies to the Questionnaire come in very slowly and many National Associations have never sent their replies. It was emphasized that the subject is an important part of the co-operation of CMI with IMO. All National Associations are requested to send their replies as soon as possible. The Executive Council has recommended to convene a meeting of the Sub-Committee in December this year.

ce que les avoirs du Trust s'élèvent au total à un peu plus de GBP 246,000 et ses revenus à environ GBP 21,500.

Au cours de l'année se terminant le 31 mars 1992 le Trust a dépensé GBP 8.600. Comprise dans cette somme une dépense de GBP 4.750 se rapporte aux conférences ESCAP (recherches, impression, etc.). Par ailleurs, pour donner suite à une demande émanant de la directrice de l'Institut de Droit Maritime de l'OMI à Malte, Professeur Patricia Birnie, le Trust a consacré une somme de GBP 3.411 au financement de la visite de trois conférenciers à l'Institut.

Les Trustees ont, en outre, échangé des vues quant à la possibilité de créer une bourse CMI, qui serait attribuée annuellement en faveur de jeunes juristes maritimes. Ils ont également convenu qu'il serait souhaitable d'apporter leur soutien à des projets appropriés de recherche portés à leur connaissance.

10. Sujets à l'étude.

Problèmes de droit en rapport avec l'environnement.

Le Conseil Exécutif ayant pris la décision de poursuivre les études sur les problèmes de droit en rapport avec l'environnement, un groupe de travail restreint a été institué pour se pencher sur la question. Il est apparu qu'il était nécessaire d'œuvrer davantage sur la fixation des dommages par pollution. Toutefois, le sujet devrait être étendu et même comprendre un examen en rapport avec la convention HNS. Comme la convention HNS pourrait avoir des répercussions sur la limitation de la responsabilité des propriétaires de navires (en particulier en rapport avec la convention sur la limitation de 1976) il convenait que le groupe de travail étudie également la question de la révision de la dite convention. Au surplus, il a été proposé que l'on saisisse l'occasion pour passer en revue les conventions sur la responsabilité et la limitation. Pareille étude pourrait faire l'objet d'un programme de travail à long terme.

Règles d'York et d'Anvers.

Le groupe de travail s'occupant de l'avarie commune et des Règles d'York et d'Anvers a établi un rapport préliminaire qui a été mis en circulation auprès des Associations Membres. Ce rapport fera l'objet de discussions au cours d'une première réunion de la Commission Internationale en décembre 1992.

CNUCED s'active également à propos de l'avarie commune. Au cours de la dernière réunion du groupe de travail sur la législation maritime de CNUCED il a été décidé d'entreprendre, en collaboration avec le CMI, une enquête auprès de l'industrie de l'assurance en vue de rechercher s'il existait des méthodes d'assurance susceptibles de simplifier l'avarie commune. Mr. David Taylor, qui est le président de la Commission Internationale, s'occupe de cette matière en étroite liaison avec CNUCED, IUMI, Institute of London Underwriters et d'autres.

Engins mobiles "offshore".

Il a été renvoyé à CMI Newsletter No. 1/1992 dans lequel figure un rapport.

Les réponses au questionnaire sont parvenues avec retard. L'accent a été mis sur l'importance de ce sujet dans la collaboration entre le CMI et l'OMI. Toutes les Associations Membres sont invitées à envoyer leur réponse le plus tôt possible. Le Conseil Exécutif a recommandé de réunir la Commission en décembre de cette année.

Security Interests in Mobile Equipment.

UNIDROIT is working on Security Interests in Mobile Equipment as a possible subject of a Convention. A report about the meeting of the UNIDROIT — Working Group was included in the CMI News Letter No. 1/1992. Professor Herber acted as a representative of the CMI at the meeting of the Working Group.

Bareboat Charter Registration.

In connection with the responsibility of States of Registry to issue and to control Certificates in respect of insurance cover as provided for in the 1969 Civil Liability Convention the question may arise which State bears the responsibility when the ship is registered not only in the register of ownership, but also entered into a Charter Register of another State.

Professor Francesco Berlingieri had prepared a paper on this problem which was submitted to IMO and considered by the 66th meeting of the Legal Committee. The Legal Committee came to the conclusion that no serious problems have arisen yet on this issue but may arise in the future. The view prevailed that more information was needed on the actual practice of States. Therefore, the CMI was invited to study the matter further and to submit the results to the Legal Committee of IMO.

The Executive Council of the CMI has asked Professor Berlingieri to continue with his work on the matter.

Charterparties/Laytime Definitions.

A first draft of Voyage Charterparty Interpretation rules has been adopted by a Working Group set up by BIMCO, CMI, FONASBA, INTERCARGO and The Chamber of Shipping. The CMI had already adopted at the 1977 Conference in Rio laytime definitions. The draft which has now been issued has widened the subject and included other voyage charterparty terms than laytime definition. It was issued as "Voyage Charterparty Interpretation Rules 1992" (code name: VOY-RULES 92). The National Associations of CMI are requested to send their comments to the Secretariat as early as possible but not later than 15th October 1992.

At the Meeting of the Assembly it was proposed to consider the possibility of work on other law issues of charterparties and to put the work in a broader context. The Executive Council was asked to discuss this matter to undertake the necessary studies and to report back to the Assembly.

11. CMI Publications.

Following the request of the Executive Council, Professor Berlingieri had accepted to consider the reorganization of the CMI publications and, more specifically, of the News Letter and of the Yearbook. He also had accepted to provisionally take care of both publications in Genoa.

Professor Berlingieri reported that his first suggestion would be to re-organize the News Letter so that it should provide information in a brief form of events concerning the CMI and on events concerning intergovernmental organizations interested in the development and unification of maritime law. This format has already been

Sûretés grevant du matériel mobile.

UNIDROIT a entamé l'étude de ce sujet qui pourrait éventuellement faire l'objet d'une convention.

CMI Newsletter No. 1/1992 contient un rapport au sujet de la réunion du groupe de travail UNIDROIT. Le Prof. Herber représentait le CMI à cette réunion.

Immatriculation des navires frétés coque nue.

En rapport avec la responsabilité des Etats d'immatriculation concernant l'émission et le contrôle des certificats attestant l'assurance, ainsi qu'il est prévu dans la convention de 1969 sur la responsabilité civile, la question peut se poser de savoir quels Etats sont responsables lorsque le navire est immatriculé non seulement dans le registre des propriétaires de navires mais également dans un registre pour les affrètements dans un autre Etat. Le Prof. Francesco Berlingieri a rédigé un mémoire à ce propos qui a été remis à OMI et examiné par son Comité Juridique au cours de sa 66ème réunion.

Le Comité Juridique est arrivé à la conclusion que jusqu'à présent aucun problème sérieux n'a surgi à ce propos mais peut surgir à l'avenir. L'opinion a prévalu que plus d'information était nécessaire sur la pratique actuelle des Etats. C'est pourquoi le CMI a été invité à poursuivre l'étude et à soumettre les résultats au Comité Juridique de l'OMI.

Le Conseil Exécutif du CMI a prié le Prof. Berlingieri de poursuivre ses travaux en la matière.

Définitions en matière de chartes-parties/staries.

Un premier projet de règles d'interprétation des chartes-parties au voyage a été adopté par un groupe de travail créé par BIMCO, CMI, FONASBA, INTERCARGO et la Chamber of Shipping. Le CMI avait déjà adopté à la conférence de Rio en 1977 des définitions en matière de surestaries. Le projet qui a maintenant vu le jour a étendu le sujet pour inclure des définitions de termes de chartes-parties au voyage autres que pour les surestaries. Le projet a reçu l'appellation: "Règles d'interprétation 1992 pour les chartes-parties au voyage" (nom de code: VOYRULES 1992). Les Associations Membres du CMI sont priées de faire parvenir leurs commentaires au secrétariat aussitôt que possible et pas plus tard que le 15 octobre 1992.

A la réunion de l'Assemblée il a été proposé d'examiner s'il était possible de s'occuper d'autres problèmes de droit relatifs aux chartes-parties et de placer les travaux dans un contexte plus large. Le Conseil Exécutif a été prié d'échanger des vues à ce propos, d'entreprendre les études nécessaires et de faire rapport à l'Assemblée.

11. Publications du CMI.

A la suite d'une demande du Conseil Exécutif le Prof. Berlingieri a accepté d'examiner la réorganisation des publications CMI et, en particulier, du Newsletter et de l'Annuaire. Il a également accepté, à titre temporaire, de prendre soin de ces deux publications à Gênes. Dans son rapport le Prof. Berlingieri a suggéré en premier lieu que le Newsletter soit réorganisé de telle manière à fournir de brèves informations sur les événements qui concernent le CMI et sur ceux qui se rapportent aux organisations internationales intergouvernementales et non gouvernementales à propos du développement et de l'unification du droit maritime. Cette inno-

adopted in Issue No. 1/1992.

As regards the Yearbook, Professor Berlingieri suggested to insert therein a new section relating to the work accomplished by the CMI in the course of a year so that the studies in progress within the CMI might be easily accessible to all subscribers to the Yearbook. This will be the format of the Yearbook 1992 which will be published in the next few months.

12. Genoa Seminar and Colloquium.

The Seminar and Colloquium will take place according to the programme published in the CMI News Letter No. 1/1992.

The Colloquium will deal with the Assessment of Damage to the Marine Environment. In the light of the discussion at the Colloquium decision may be taken about the future work on this subject. Therefore, it is to be hoped that all National Associations will participate in the Colloquium.

13. Sydney Conference 1994.

Mr. Salter, who attended the meeting as a delegate of the Maritime Law Association of Australia and New Zealand, informed about the preparation of the CMI Sydney Conference 1994. All necessary measures are taken for the preparation and the work is on schedule. The President of the CMI, Professor Allan Philip, informed the meeting that the Executive Council is considering the following subjects as suitable items for the Conference:

- York-Antwerp Rules
- Off-shore Mobile Craft
- Environment Law
- Maritime Agents

14. Revision of the Constitution 1981 (amended in 1990)

With only few changes which were agreed in the course of the debate the proposed revision of the Constitution, including some amendments put forward by the Executive Council in the light of the written comments and suggestions submitted by member Associations, was unanimously adopted.

Debate chiefly centered upon Article 6 and the proposal of two of the Members Associations to allow voting by proxy upon various issues and under various circumstances. It was pointed out that proxy voting was not permitted under the present (1981/1990) Constitution, so that the introduction of this concept would be a substantive change requiring the affirmative vote of a majority of Member Associations for adoption.

Upon the adoption of Article 6, it was agreed that the Executive Council would give further consideration to the subject of proxy voting and would in due course report to the Assembly concerning these considerations.

15. Other matters.

Mr. Alcantara representing the Maritime Law Association of Spain submitted a formal invitation of that Association to the CMI to hold the next Conference after the Sydney Conference in Spain.

The President of the CMI, Professor Allan Philip, drew the attention of all Member Associations to the Centenary of the CMI in 1997 and informed that within the Executive Council some preliminary views were exchanged about the celebration.

vation a déjà été mise en oeuvre dans l'édition N° 1/92. En ce qui concerne l'Annuaire le Prof. Berlingieri a proposé d'insérer une nouvelle section relative au travail accompli par le CMI au courant de l'année de manière à rendre accessible à tous les abonnés de l'Annuaire les études entreprises au sein du CMI. Tel sera le contenu de l'Annuaire 1992 qui sortira de presse dans les prochains mois.

12. Séminaire et Colloque à Gênes.

Le Séminaire et le Colloque se dérouleront conformément au programme publié dans CMI Newsletter No. 1/1992.

Le Colloque s'occupera de la fixation des dommages à l'environnement maritime. A la lumière de la discussion au cours du Colloque des décisions pourront être prises concernant le travail futur sur ce sujet. C'est pourquoi on espère que toutes les Associations Membres participeront au Colloque.

13. Conférence de Sydney 1994.

M. Salter qui représente l'Association de Droit Maritime de l'Australie et de la Nouvelle-Zélande a mis l'Assemblée au courant des préparatifs de la Conférence CMI de Sydney 1994. Toutes les dispositions utiles ont été prises pour la préparation et les travaux progressent conformément au programme.

Le Président a informé l'Assemblée que le Conseil Exécutif examine les sujets suivants susceptibles de convenir pour la Conférence:

- Règles d'York et d'Anvers
- Engins mobiles offshore
- Droit sur l'environnement
- Agents maritimes.

14. Révision des statuts 1981 (modifiés en 1990).

La révision proposée des statuts, y compris quelques amendements présentés par le Conseil Exécutif à la lumière des commentaires écrits et des suggestions présentés par des Associations Membres, a été adoptée à l'unanimité, à l'exception de quelques changements qui furent convenus au cours des débats.

Les discussions ont porté principalement sur l'article 6 et sur la proposition de deux Associations Membres visant à permettre le vote par procuration à propos de certains problèmes et dans des circonstances données. On a fait valoir que le vote par procuration n'était pas permis sous l'empire des statuts 1981/1990 actuels.

Après l'adoption de l'article 6, il a été convenu que le Conseil Exécutif poursuivrait l'examen du sujet du vote par procuration et ferait rapport à l'Assemblée en temps utile concernant ses considérations.

15. Divers.

M. Alcantara, représentant l'Association de Droit Maritime de l'Espagne, a présenté une invitation officielle de cette Association au CMI en vue de tenir en Espagne la prochaine Conférence, après celle de Sydney. Le Président a attiré l'attention de toutes les Associations Membres sur le centenaire du CMI en 1997 et a informé l'Assemblée qu'au sein du Conseil Exécutif des échanges de vues ont lieu à propos de la célébration.

Le 8 mai 1992, l'Université d'Anvers a, au cours d'une cérémonie imposante, décerné des diplômes de docteurs honoris causa à cinq personnalités dont le prestige international est considérable.

Parmi celles-ci: le président d'honneur du Comité Maritime International Francesco Berlingieri.

Cette distinction fut accordée à Francesco Berlingieri en raison de son rôle primordial à la tête du CMI et de la valeur scientifique de ses nombreux ouvrages.

Etant la ville où le Comité Maritime International a son siège depuis son origine, où quatre conférences internationales du CMI ont tenu leurs assises et dont les présidents Louis Franck et Albert Lilar étaient d'illustres citoyens, Anvers se devait de reconnaître les mérites exceptionnels de Francesco Berlingieri. L'Académie Royale de Marine de Belgique avait déjà entendu honorer Francesco Berlingieri en l'élevant membre correspondant étranger.

Maintenant, c'est le monde universitaire anversoïse qui lui accorde la plus haute distinction qu'il puisse dispenser.

L'Association belge de Droit Maritime, présidée actuellement par Maître Roger Roland, se réjouit de l'hommage qui a ainsi été rendu au président d'honneur de la prestigieuse institution dont elle a le mérite d'avoir été un des membres fondateurs.

Lionel Tricot

**International Conference on Current Issues in Maritime Transportation -
Genoa, 25th and 26th June 1992**

Here follows a complete list of the papers presented during the Conference on each of the three subjects:

International Carriage of Goods by Sea - Prospects for the 21st Century

Present Trends about the Scope of Application and the Effects of the Uniform Law on the Carriage of Goods, Sergio M. Carbone, University of Genoa.

Towards the Harmonization of Carrier's Liability Régimes? Rolf Herber, University of Hamburg.

The Uniform Régime Governing the Liability of Maritime Carriers, Joseph C. Sweeney, Fordham Law School, New York.

Limitation of Liability in Maritime Law and in Inland Navigation, Beate Czerwenka, Ministry of Justice, Federal Republic of Germany.

Liability for Damages Caused During Carriage by Sea of Dangerous Goods, Robert Cleton, Ministry of Justice, The Netherlands.

New Trends and Developments in the Field of International Transport Law

Liability for Damages Caused During Carriage by Land of Dangerous Goods, Malcolm Evans, Secretary-General, UNIDROIT.

Uniform Rules Relating to International Carriage by Air, Gustavo Romanelli, University of Rome "La Sapienza".

Uniform Rules Relating to International Carriage by Land, Roland Loewe, University of Salzburg.

The UN Convention on the Liability of Operators of Transport Terminals, Jernej Sekolec, UNCITRAL.

Liability of Terminal Operators and Insurance Cover, Patrick J. Falvey, Special Counsel to the Port Authority of New York and New Jersey.

**Conference Internationale sur les Problemes Actuels Concernant le Transport Maritime -
Gênes, 25 et 26 Juin 1992**

La liste complète des mémoires présentés au cours de la conférence sur chacun des trois sujets est renseignée ci-après:

Transport international de marchandises par mer - Perspectives pour le XXIème siècle

Present Trends about the Scope of Application and the Effects of the Uniform Law on the Carriage of Goods, Sergio M. Carbone, Université de Genes.

Towards the Harmonization of Carrier's Liability Régimes? Rolf Herber, Université de Hambourg.

The Uniform Régime Governing the Liability of Maritime Carriers, Joseph C. Sweeney, Fordham Law School, New York.

Limitation of Liability in Maritime Law and in Inland Navigation, Beate Czerwenka, Ministère de la Justice, République Fédérale d'Allemagne.

Liability for Damages Caused During Carriage by Sea of Dangerous Goods, Robert Cleton, Ministère de la Justice, Pays-Bas.

Nouveaux développements et tendances dans le domaine du droit international du transport

Liability for Damages Caused During Carriage by Land of Dangerous Goods, Malcolm Evans, Secrétaire-Général, UNIDROIT.

Uniform Rules Relating to International Carriage by Air, Gustavo Romanelli, Université de Rome "La Sapienza".

Uniform Rules Relating to International Carriage by Land, Roland Loewe, Université de Salzbourg.

The UN Convention on the Liability of Operators of Transport Terminals, Jernej Sekolec, CNUDCI.

Liability of Terminal Operators and Insurance Cover, Patrick J. Falvey, Conseiller Spécial de l'Autorité Portuaire de New York et New Jersey.

Some Questions Relating to the Carriage of Goods by Charter Party.

Charterparties: Freedom of Contract or Mandatory Legislation? Jan Ramberg, President of the Swedish Maritime Law Association.

Time Charterparties: Is the Owner a Carrier? Francis M.B. Reynolds, Worcester College, Oxford.

Liability of the Owner for Damage to or Loss of the Goods Carried, Francesco Berlingieri, President of Honour of CMI.

Paramount Clauses in Charterparties, Michael Wilford, Clyde & Co., London.

Charterparties and Choice of Law, William Tetley, Vice President of the CMI.

The papers on the third subject, all of which were very well received, will be published in *Il Diritto Marittimo* and will be available on demand.

Voyage Charterparty Interpretation Rules

Upon the initiative of BIMCO, a Working Group has been set up with a view to considering the revision of the Charterparty Laytime Definitions prepared in 1980 by BIMCO, the CMI, FONASBA, and the General Council of British Shipping. The Honourable Michael Summerskill represented the CMI in the Joint Working Group. At the last meeting held in London 4th April 1992, the Joint Working Group agreed to extend the scope of the definitions and consequently to amend the title to "Voyage Charterparty Interpretation Rules". A further meeting of the Joint Working Group will be held in London on 23rd September 1992 for the purpose of reconsidering the draft prepared at the previous meeting.

Time-Barred Actions - New Edition of the book by the late Kaj Pineus.

As of 31st August, replies have been received from the Maritime Law Associations of Australia, China, Denmark, Federal Republic of Germany, France, Ireland, Israel, Italy, Malta, the United States and the United Kingdom.

It is hoped that many other Associations will send their replies by the end of October 1992, or, at the very latest, by the end of the year. The manuscript of the new edition should, in fact, be handed over to Lloyd's of London Press by Professor Francesco Berlingieri by 28th February 1993.

Maritime Agents.

As of 31st August, replies to the questionnaire have been received from the Maritime Law Associations of Argentina, Australia, China, France, Ireland, Italy and the Netherlands. It is hoped that other replies will be forthcoming since this is one of the potential subjects for the Sydney Conference and a decision in this respect must be based on the information received from as many National Associations as possible.

Quelques questions en relation avec le transport de marchandises sous l'empire d'une charte-partie.

Charterparties: Freedom of Contract or Mandatory Legislation? Jan Ramberg, Président de l'Association Suédoise de Droit Maritime.

Time Charterparties: Is the Owner a Carrier? Francis M.B. Reynolds, Worcester College, Oxford.

Liability of the Owner for Damage to or Loss of the Goods Carried, Francesco Berlingieri, Président d'Honneur du CMI.

Paramount Clauses in Charterparties, Michael Wilford, Clyde & Co., London.

Charterparties and Choice of Law, William Tetley, Vice Président du CMI.

Les mémoires traitant du troisième sujet, qui furent tous bien accueillis, seront publiés dans *Il Diritto Marittimo* et seront disponibles sur demande.

Règles d'Interpretation des Chartes-Parties au Voyage

A l'initiative de BIMCO un groupe de travail a été créé dans le but d'examiner la révision des définitions en matière de staries dans les chartes-parties qui avaient été rédigées en 1980 par BIMCO, CMI, FONASBA et General Council of British Shipping. Monsieur Michael Summerskill a représenté le CMI dans le groupe de travail commun. Au cours de la dernière réunion, tenue à Londres le 4 avril 1992, le groupe de travail commun s'est mis d'accord pour étendre le champ des définitions et par conséquent de modifier le titre en "Règles d'interprétation en matière de chartes-parties au voyage".

Une nouvelle réunion du groupe de travail commun se tiendra à Londres le 23 septembre 1992 dans le but de réexaminer le projet rédigé au cours de la réunion précédente.

"Time-Barred Actions" - Nouvelle Edition du Livre de Feu Kaj Pineus.

A la date du 31 août des réponses ont été reçues de la part des associations de droit maritime d'Australie, de Chine, du Danemark, de la République Fédérale d'Allemagne, de France, de l'Irlande, d'Israël, de l'Italie, de Malte, du Royaume Uni et des Etats-Unis d'Amérique.

Il est à espérer que pour la fin du mois d'octobre 1992, ou, au plus tard, pour la fin de l'année le plus grand nombre possible parmi les autres associations enverront leurs réponses. Le manuscrit de la nouvelle édition devrait, effectivement, être remis à Lloyd's of London Press par le Professeur Francesco Berlingieri au 28 février 1993.

Agents Maritimes.

A la date du 31 août 1992 des réponses au questionnaire avaient été reçues de la part des associations de droit maritime de l'Argentine, de l'Australie, de la Chine, de la France, de l'Irlande, de l'Italie et des Pays-Bas. Il est à espérer que d'autres réponses parviendront bientôt parce que le sujet est un de ceux qui sont susceptibles d'être traités au cours de la Conférence de Sydney et une décision à cet égard doit être basée sur l'information reçue d'un aussi grand nombre d'associations nationales que possible.

IMO

Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992.

A convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992, has been signed at Helsinki on 9th April 1992 by the Czech and Slovak Federal Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the Federal Republic of Germany, the Republic of Latvia, the Republic of Lithuania, the Kingdom of Norway, the Republic of Poland, the Russian Federation, the Kingdom of Sweden, the Ukraine and the European Economic Community.

The Convention will apply to the protection of the marine environment of the Baltic Sea Area which comprises the water-body and the seabed, including their living resources and other forms of marine life. It provides as one of its fundamental principles that the contracting parties shall individually or jointly take all appropriate legislative, administrative or other relevant measures to prevent and eliminate pollution in order to promote the ecological restoration of the Baltic Sea Area and the preservation of its ecological balance.

The Convention covers a number of important subjects such as the prevention of pollution from ships (Article 8), the prohibition of incineration (Article 10), the prevention of dumping (Article 11) and the obligation of the contracting parties to take measures in order to prevent pollution of the marine environment of the Baltic Sea Area resulting from exploration or exploitation of the seabed and the subsoil.

The convention will enter into force, pursuant to Article 35, two months after the deposit of the instruments of ratification or approval by all signatory States bordering the Baltic Sea and by the European Economic Community.

UNCTAD

The Cartagena Commitment — Establishment of a new Standing Committee on Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries.

Pursuant to General Assembly resolution 1995 (xix), as amended, and to "A New Partnership for Development: The Cartagena Commitment" adopted at the eight session of the United Nations Conference on Trade and Development, the existing Committees of the Trade and Development Board, including the Committee on Shipping, have been suspended and five new Committees have been established, amongst which a "Standing Committee on Developing Services Sectors: Fostering Competitive Services". Paragraph 72 of "A New Partnership for Development: the Cartagena Commitment" provides that the present terms of reference of the Committee on Shipping and of the Committee on Finance and Invisibles related to Trade (Insurance) should be included in that of the "Standing Committee on Fostering Competitive Services" sectors in developing countries.

The terms of reference of the new Standing Committee are, with respect to paragraph 72 of the Cartagena Commitment, set out as follows:

3. (i) With reference to paragraph 72 of the Cartagena Commitment, the main tasks of the Committee in the field of shipping, ports and multimodal transport should be as outlined above, and particularly focus on:
 - (a) review of shipping policies so as to identify elements leading to the development of competitive shipping sectors, in order to enhance the participation of developing countries in world shipping;
 - (b) consideration of conditions facilitating intraregional and interregional co-operation;
 - (c) exchange of information on infrastructure development, including port infrastructure;
 - (d) identification of human resources development needs, including on-the-job training;
 - (e) exchange and dissemination of information on developments in the shipping sector;
 - (f) the efficient conduct of multimodal transport processes, bearing in mind economic, commercial and legal aspects;
 - (g) review of technological developments that affect maritime transport;
 - (h) considering various aspects of port management operations, with a view to increasing efficiency.

For a complete understanding of such terms of reference, the outline referred to, contained in the preceding paragraphs 1 and 2, is quoted below:

1. To analyse and assist, as appropriate, in the formulation of national policies aimed at strengthening the production, export and technological capacity of services sectors taking into account their level of development in different countries, with a view to contributing to development and thus increasing the participation of developing countries in world trade in services. The Committee should focus on:

- (a) review of the development of services sectors in developing countries and comparative analysis of policies, including identification of domestic weaknesses and capabilities, aimed at creating the conditions necessary for the development of competitive service sectors and export of services;
- (b) policies aimed at developing and strengthening the institutional, technological, and physical infrastructure relating to services;
- (c) policies aimed at human resources development, the development of knowledge-intensive services, and producer services related to primary and manufacturing sectors and telecommunications;
- (d) improving the capacity of individual countries, in particular, developing countries, to benefit from information related to services production, trade and technology;
- (e) identifying sector-specific policy options, with a view to developing competitive services sectors;
- (f) analysing issues relating to access to information networks and distribution channels for services.

2. The Committee should also focus on:

- (a) examining difficulties particularly faced by developing countries in enhancing exports of services thereby increasing their participation in world trade in services;
- (b) the impact of progressive liberalization in the development of competitive service sectors;
- (c) policies aimed at enhancing co-operation with other countries, at regional, subregional, and interregional level, including mutual trade liberalization, pooling capabilities to improve skills, distribution networks and infrastructure development;
- (d) promoting efficient marketing of export-competitive industries and domestic labour skills;
- (e) increasing knowledge of laws and regulations concerning the services sector with a view, *inter alia* to adapting them to the requirements of increasing globalization of services, promoting transparency and mutual knowledge of the pertinent regulations;
- (f) collecting and disseminating statistics on trade in services in areas where such collection or dissemination is not being undertaken by other international organizations, and defining ways to improve such collection and dissemination.

UNCTAD AND ICC

The 1991 UNCTAD/ICC Rules for Multimodal Transport Documents

Although the Hamburg Rules and the MT-Convention contribute to harmonize the law of the different modes of transport, the removal of the particularities of maritime law has not so far been favourably received by the shipping market. This explains why UNCTAD, in conformity with the resolution by its Committee on Shipping, has decided to co-operate with other international organizations and to set up a Working Group jointly with ICC in order to create Rules for voluntary adoption. It has been particularly interesting for me to have served as the Chairman of that Working Group as it constitutes a most important innovation in the method of international co-operation between governmental and non-governmental organizations. If the resulting UNCTAD/ICC Rules will be favourably received by the shipping market, it may well be that this new approach to the difficult problem of reaching international consensus will be followed in the future. Here follows the summary of the general principles of the UNCTAD/ICC Rules.

Applicability.

The Rules do not apply when they are not referred to. Therefore, the present Rules do not reproduce the principle of the previous ICC Rule 1 a (see ICC publ. 298) that the Rules apply by their mere existence (*ex proprio vigore*). Instead, they only apply when they have been referred to in the MT-contract.

It should be possible to refer to the Rules even for port to port traffic and when unimodal transport is intended. The text of the previous ICC Rule 1 a, which declared that the Rules applied also for single mode carriage when the transport had been performed "contrary to the intentions of the contracting parties" was deemed inappropriate, since it could engage the carrier in liability for unlawful deviation. Consequently, that principle has not been reproduced in the present Rules.

Parties having referred to the Rules, and thereby incorporated the Rules into their contract, must avoid inserting stipulations which derogate from the Rules and which thus would be contradictory. Therefore, it is intended that, in such cases, the Rules would override anything which has been stated to the contrary.

The network liability principle and Hague-Visby limits retained.

The Rules have taken into account the existing MT-documents (the FIATA negotiable Combined Transport Document, and the BIMCO/INSA Combidoc). These documents reflect the main principles of the so-called

TCM-draft, which was elaborated in Round Table Conferences under the auspices of UNIDROIT mainly on the basis of a previous draft from the CMI 1969 Tokyo Conference (the so-called Tokyo Rules). It is important to note that all these previous draft conventions, unlike the 1980 MT-convention, apply the network liability principle to the effect that the multimodal transport operator (hereafter "MTO"), and not only the consignor, may invoke the mandatory liability rules of international conventions and national law, which would have applied if a separate and direct contract had been made for the particular stage of the transport, where the loss or damage occurred.

The MT-convention only contains a remainder of the network liability principle insofar as the consignor is entitled to benefit from any *higher limitation* amount, which may apply for the mode of the transport to which the loss or damage could be localized, while the MTO does not benefit from any *lower limitation amount*, which in the same manner could apply for the particular mode of transport (e.g. when loss or damage could be localized to carriage of goods by sea). The Rules have not followed the system of the MT-convention in this respect, but rather maintained the network liability principle as it appears in the present combined transport documents. This has been achieved by replacing the word "higher" of article 19 of the MT-convention with the word "another" (see Rule 6.4). Also in other respects the ICC/UNCTAD Rules preserve the principle of the network liability to the benefit of the consignor as well as the MTO, but in a less complicated manner than the previous ICC Rules 11-13.

First, the general basis of liability is expressed in Rule 5.1 and, as has already been said, as a liability for *presumed fault or neglect* including such fault on the part of the MTO's "servants or agents or any other person of whose services he makes use for the performance of the contract" (cf. Rule 4.2; so called vicarious liability).

Second, the particular defences for carriage by sea or inland waterways appear in a separate Rule 5.4 to the effect that the MTO shall not be responsible for loss, damage or delay in delivery caused by

- act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or the management of the ship;
- fire unless caused by the actual fault or privity of the carrier.

However, when loss or damage has resulted from unseaworthiness of the ship, the MTO is only relieved from liability if he can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage.

It should be noted that the previous partial reproduction of defences, which appear in the so-called catalogue of defences from the Hague Rules art. IV c-p, has not been reproduced as in the previous ICC Rule 12, the reason being that the injection of particular provisions from the law of unimodal transports would make the Rules too complicated. For all practical purposes, the Hague/Visby Rules reflect the general principle of a liability for presumed fault or neglect, but modified by the particular exemptions from liability just mentioned. If, however, a particular operator would prefer to list the defences according to the Hague/Visby "catalogue" - wholly or partly - this would not be contrary to the Rules in the sense mentioned in Rule 1.2 provided the text and principle of Rule 5.1 is maintained (cf. ICC publ. 481 p. 8).

Third, the limitation of liability under the Hague/Visby Rules (666.67 SDR per package or unit or 2 SDR per kilo in the claimant's option and the so-called "container formula") has been retained.

The declaration of interest in timely delivery.

It should further be noted that the previous ICC Rules did not contain a Rule stipulating liability for delay but rather, in rule 14, a restriction of such liability to cases where the stage of transport where delay occurred was known and, further, only where under any international or national law mandatory liability for delay would have applied to that stage. However, such a Rule is workable, since — as between the contracting parties — delay can only be established in MT-operations at the moment when the whole carriage ought to have been performed. A liability for "delay in stages" is only possible where the parties to an MT-contract have agreed that the carriage should be performed in stages which they seldom do. Nevertheless, it is certainly possible to ascertain from the previous ICC Rules that the operators were keen to reduce their exposure to a liability for delay. In the course of the work within the Working Group, the issue of a liability for delay amounted to a so-called "deal-breaker" in that particularly the International Chamber of Shipping made the right to disclaim liability for delay a condition for their acceptance of the Rules. The resulting compromise appears from Rule 5.1 where it is stated that "the MTO shall not be liable for loss following from delay in delivery unless the consignor has made a declaration of interest in timely delivery which has been accepted by the MTO". Summing up, the above brief presentation of the origin and main principles of the UNCTAD/ICC Rules will have shown that, in this extremely complicated area of the law of carriage of goods, a workable international consensus has been reached by UNCTAD representing worldwide the interests of trade and development and ICC as the main non-governmental business organization.

Jan Ramberg
Vice President of the CMI

RATIFICATION OF INTERNATIONAL CONVENTIONS

Instruments of ratification of and accessions to the following conventions have been deposited with the depositary and the denunciation of the following conventions has been communicated to the depositary:

- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990.
Australia: Accession on 6th July 1992.
- International Convention on Civil Liability for Oil Pollution Damage, 1969.
Latvia: Accession on 10th July 1992.
- Convention Internationale pour l'Unification de Certaines Règles en Matière de Connaissance, 1924.
Japan: Denunciation effective 1st June 1993.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

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COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTREL

NEWS FROM THE CMI

Seminar on Liability for Pollution Damage and Colloquium on Assessment of Environmental Damage Genoa, 21st to 25th September 1992

During the last week of September the CMI held a seminar and colloquium in Genoa devoted to the Liability for Pollution Damage and the Legal Assessment of Damage to the Marine Environment.

Pollution has become the important subject, economically, politically and within many academic disciplines, in the last 10 to 15 years and will remain on the agenda for another decade at least.

In the CMI it has been felt that there is a need to stop for a moment to take stock and get an overview of the present situation and to be sure that we are working on common ground before we continue our work in the field. That was the purpose of the seminar. Our secretary-general, Professor Norbert Trotz, has provided the following summary of the speeches that were given during the Seminar. It is my hope that it may give an impression of the extremely interesting content of the Seminar. The full text of the lectures will be published early next year by Lloyd's of London Press, under the auspices of the CMI.*

Following the Seminar a Colloquium was held on assessment of damage for pollution claims.

Even that was very interesting and useful, not least the confrontation between the IMO regime and the American OPA regime. The above-mentioned publication will also contain a report from the Colloquium.

The Genoa Seminar and Colloquium will form the basis of continued work within the CMI. An international sub-committee under the chairmanship of Norbert Trotz will soon be called to study the subject of Damage Assessment with a view to the formulation of a set of guidelines for discussion at the Sydney Conference. A draft will be sent to the National Associations for comments in the Spring of 1993.

Allan Philip

Seminar on Liability for Oil Pollution Damage Summary of the Papers

P. Birnie in her paper on "Protection of the Marine Environment: The Public International Law Approach" outlines that the public international law is of vital importance for the establishment of a comprehensive regime for the protection and preservation of the marine environment. The obligations and responsibilities of States are highlighted by analysing the emergent regime (concepts of "harm", "damage", "pollution" and the polluter pay principle) and existing Conventions (UN Convention on the Law of the Sea 1958 — 1982, MARPOL, Intervention Convention 1969, Salvage Convention 1989). Responsibility and liability of States is an important means of enforcement of obligations of States. However, the inter-state-claims procedure is weak and difficult to handle. There is a lack of international fora in which to bring claims; there is no compulsory jurisdiction and it is difficult to identify the precise nature of international obligations breached in order to establish responsibility and liability. States are negotiating therefore "channelling" liability convention (as civil law liability instruments). The view is submitted that States do not discharge their own responsibility for marine environmental damage by entering into "channelling" conventions. The ambiguities in the international concept of States' responsibility have led States to resort to the regulatory role of international law, adopting a large number of conventions which clarify the obligations of States. In this concept alternative measures of enforcement are used, like monitoring, reporting and inspection.

W.A. O'Neil speaking on "The Convention on Oil Pollution Preparedness and Response" explains in his lecture that the Convention fills a gap in the international framework of treaties dealing with marine pollution.

* For further information contact Nicola Whyke, Lloyd's of London Press, Singer Street, London EC2A 4LQ, England (Tel.: 071-250 1500).

It will play a particularly important role in facilitating international co-operation at the global level as well as in enforcing regional arrangements and national oil pollution preparedness and response strategies. A key element is the commitment of the parties to co-operate and to provide assistance to others who request help to deal with oil spills. Even though the Convention had not entered into force, the oil spill disaster in the Persian Gulf in connection with the Gulf war provided an early opportunity to test the provisions of the Convention and the decision of Governments to help a country faced with a major marine pollution problem beyond its capacity to respond and its neighbours' ability to assist. In this connection, as envisaged in the Convention, IMO functioned as a "clearing house" for detailed requests for assistance and offers of help from donor States. A coordination centre, staffed by personnel seconded by France, Japan and the United States, has been established at IMO Headquarters in London to carry out the aforementioned functions assigned to IMO under the OPRC Convention.

A. Kolodkin, V. Kiselev, N. Koroleva in their paper on **"Some New Trends in the Legislation of the Russian Federation and its Attitude Towards Conventions with Regard to Marine Pollution"** describe the present state of legislation in respect of protection of the marine environment in the Russian Federation. The legislation on pollution prevention within the exclusive economic zone is, to great extent, in line with the UN Convention on the Law of Sea 1982. However, the legislation does not refer to "generally accepted international rules and standards" as required by the UNCLOS. In 1991 a new "Act on the Protection of the Environment" was adopted which provides for an unlimited liability for damage to the marine environment. At the same time several "Instructions" and "Regulations" for assessment of pollution damage are still in force and may lead to a cumulation of claims without any limitation. In particular the Regulation of 1983 which provides for an abstract mathematical calculation method is still applicable. It is submitted that these rules are in contradiction with the membership of the Russian Federation in the 1969 Civil Liability Convention and the 1971 Fund Convention.

Wang Mao Shen, Lio Shu Jian, Shen Maru Tang submitted a paper **"On Normal Procedure of Assessment of Damage to the Marine Environment in Chinese Judicial Practice"**.

The paper briefly outlines the stages of assessment of pollution damage in China. The procedure starts with a "general survey" after the incident and the preparation of an initial report. It continues with the "selection of factors" to be taken into account (quantity of pollutants, their properties and the potential harm caused). The "detailed evaluation" which follows determines the actual consequences for the marine environment, the measures to be taken and is concluded by a judgment of the impact to the environment.

M. Jacobsson in his presentation on **"The International Conventions on Liability and Compensation for Oil Pollution Damage and the Activities of the IOPC Fund"** explains that liability and compensation for pollution damage caused by oil spills from laden tankers is governed by two international Conventions: the 1969 Civil Liability Convention and the 1971 Fund Convention. The Civil Liability Convention establishes a system of strict liability for tanker owners and introduces compulsory liability insurance. The Fund Convention creates a system of supplementary compensation administered by an intergovernmental organisation, the International Oil Pollution Compensation Fund (IOPC Fund), which at present has 48 Member States. The IOPC Fund pays compensation to victims of oil pollution in Member States when the compensation available from the shipowner and his insurer is insufficient.

The IOPC Fund co-operates closely with the P & I Clubs, employing experienced experts. Over the years, the IOPC Fund has been involved in 61 incidents and has paid US \$ 92 million to victims. Only three of these incidents have been taken to court, whereas in all other cases claims have been settled out of court. The IOPC Fund has developed a policy on the admissibility of claims covering clean-up costs, preventive measures, damage to property and economic loss.

I.C. White delivered a paper on **"The Voluntary Oil Spill Compensation Agreement - TOVALOP and CRISTAL"**. In the paper the author describes the nature and the functioning of TOVALOP, the voluntary agreement of tanker owners or bare boat charterers to compensate oil pollution damage, and CRISTAL, the private agreement of owners of oil cargo. The version of TOVALOP before the revision in 1987 (TOVALOP Standing Agreement) provides for a maximum amount of liability of US \$ 160 per limitation ton or 16.8 \$ million US \$ whichever is the less. The TOVALOP Standing Agreement is only applicable where no liability is imposed under the terms of the Civil Liability Convention 1969 (CLC). TOVALOP as revised in 1987 (TOVALOP Supplement) and CRISTAL are designed to apply world wide whenever a tanker involved in an incident is carrying a cargo owned by a party to CRISTAL. In States where the CLC or the CLC and the International Fund Convention, 1971 is in force TOVALOP Supplement and CRISTAL provide for compensation on top of the amounts available under the Conventions. However, the payments made under CLC or the Fund Convention are taken into account in calculating the compensation under TOVALOP.

E. Fontaine in his paper on **"The French Experience: TANIO and AMOCO CADIZ incidents compared"** compares the payment of compensation in the AMOCO CADIZ and TANIO case. The AMOCO CADIZ case

litigation took place in the USA. The claimants benefited from the advantages offered by the discovery proceeding in American courts. On the other hand, it was an extremely difficult task to prove the loss and damage. The proceedings consumed 13 years and hundreds of experts, civil servant and lawyers were involved, a burden that only the French State as claimant could sustain but not small claimants. The TANIO case was settled under the Convention on Civil Liability for Oil Pollution Damage, 1969 and the Fund Convention, 1971 by the International Oil Pollution Compensation Fund (IOPC-Fund). Negotiations between the claimants and the IOPC-Fund resulted in a quick settlement of the substantial part of the claims within 3 to 5 years. The balance was largely covered by a compromise settlement reached 2 years later. The settlement of claims in the Tanio case clearly demonstrates the advantage of an institutionalized compensation system such as the IOPC-Fund.

M. Göransson submitted a paper on **"The 1984 Protocols on the Civil Liability Convention 1969 and the Fund Convention, 1971, and the proposed 1992 Protocols thereto"**. The author analyzes the reasons for the lack of success of the 1984 Protocols to CLC, 1969, and the Fund Convention, 1971, in so far as they have not yet entered into force.

The paper intimates that the problem goes back to the fact that the conditions for entry into force of the protocols in practice were based on the assumption that the United States would become Party thereto. When, after the adoption of OPA 90, it became clear that this was not possible, it became equally clear that there were no real prospects for entry into force of the Protocols although the Protocols do not pose any major problems for most countries. Therefore, it is obvious that with lower conditions for entry into force, as foreseen during the preparations for the new 1992 Protocols, the new Protocols ought to be able to attract a sufficient number of States with sufficiently large tanker fleets and receiving a sufficiently large quantity of oil to meet the new conditions for entry into force.

M. Remond-Gouilloud analyzes in her paper on **"The Future of the Compensation System of the International Conventions"** the usefulness of the revision of the Protocols 1984 in the light of the experiences made since 1984 when the Protocols were adopted. It was the main concern of the revision in 1984 to re-establish the balance of the financial burden between the oil industry and the shipowners. It appears that in this regard the year 1992 is in no way a better time for revision than the year 1984. The present system is in any event a useful system which is needed in future. The system is flexible and effective. Nevertheless it can be improved by revision. It should be the aim of a revision to prevent unreasonable interpretations of the liability rules especially of the damage definition and to exclude initiatives of Governments for new legislation. Although there is a need for certain flexibility the new questions which arise in connection with damage assessment should find a clear answer in order to safeguard unification. Abstract models of calculation of environmental damage should be the last resort. There are other questions which should be reconsidered, for instance the issue of the liable persons. It seems not to be reasonable to exclude charterers or operators from the liability in accordance with the Convention.

A. Popp in his paper on **"A North American View of Liability and Compensation"**, explains that Canada after having been outside the Convention for almost 20 years, has rallied to the international scheme contained in the Civil Liability Convention and the Fund Convention. The United States, on the other hand, with the adoption of the Oil Pollution Act of 1990 (OPA 90), has elected to stay outside the international scheme. This is bound, eventually, to lead to difficulties. In the first place, shipowners will be unable to consolidate all claims in a transfrontier spill between Canada and the United States in one jurisdiction against one limitation fund. Furthermore, public authorities may be hampered in their efforts to respond to incidents because of the differences in recovery and costing. Most preoccupying, however, are the large discrepancies in compensation which could put the Canadian scheme, based on the international system, under tremendous pressure.

C. B. Kende deals with the US legislation in his paper on **"The United States Approach"**. After analyzing the legislation and jurisprudence prior to the Oil Pollution Act 1990 (OPA) the author has discussed in his paper the essential elements of the new Act and the new Oil Spill Liability Trust Fund ("Fund") which is part of the compensation system. The new legislation has in particular an impact on the damage assessment because it introduces far reaching rules on assessment of resource damage and recognizes "pure economic loss" (loss of use of the environment which is not the consequence of physical damage to property). Furthermore OPA contains severe civil and criminal sanctions for unauthorized discharge. The author comes to the conclusion that the proposed regulations on vessel contingency plans will cost the shipping industry in the range of US \$ 1.27 billion between 1993 and 2005. OPA does not preempt Coastal State Legislation which went already beyond OPA and will do so in future. OPA has dramatically affected the cost of carrying petroleum products and created tremendous problems, particularly for foreign carriers who may be unable to obtain insurance.

R.O. Philips in his paper on **"Charterers Point of View"** explains the position of charterers towards oil pollution liability. He takes the view that as a result of post-Exxon Valdez developments the prospects for a unified

world wide approach to marine pollution liability has essentially gone. Whilst charterers and shipowners supported the ratification of the Civil Liability Convention 1969 and Fund Convention 1971 there was growing disagreement before the conference in 1984 between both parties with respect to the relative burden each party should bear. It is submitted that the limits of liability of shipowners set forth in the Protocol to the Civil Liability Convention 1969 adopted in 1984 are too low with the consequence that charterers have to bear an unreasonably high burden. The Oil Pollution Act (OPA) of the United States, on the other side, creates an uncertainty in respect of the right to limit liability because the limitation provisions are so weak as to be nearly meaningless. Since OPA failed to pre-empt State legislation charterers face individual liability in several States of the USA although they have already to contribute to compensation in accordance with OPA. The Coast Guard Regulations on financial responsibility requirements are criticized as not being a viable approach to fulfill the objectives of OPA. In any event charterers consider the reduction of the possibility of operational spills as an integral part of the marine pollution liability issue. It is suggested that the tanker standards should be kept on a high level. Classification societies should play a major role in this regard together with hull insurers and P & I Clubs.

N.J. Colton submitted a paper on "**The Underwriting of Oil Pollution Risks**". The paper analyzes the cover available for oil pollution damage and the spread of the risk in the market. In addition to the US \$ 500 million layer which the market writes by way of reinsurance of the P & I Clubs there is a separate layer for US \$ 200 million. Excess of US \$ 700 million there is a certain amount of capacity available. It can be assumed, although it is not entirely clear, that some major U.S. fleets have US \$ 1 billion of pollution cover. The risk is mainly placed with the London Market (78% of the first layer; 85% of the second layer). The contract price this year is three times that which was paid in 1991. Since the capacity of the London Market will shrink next year the placement will be even more difficult than in 1992. However, there will always be underwriters who are prepared to take a particular risk provided the price is adequate.

R. Cleton in the paper on "**Liability and Compensation for Maritime Carriage of Hazardous and Noxious Substances (HNS)**" analyzes the work of the Legal Committee on the HNS Convention. The present Draft is based on a two-tier-approach. According to the Draft the shipowner is primary liable for damage caused by HNS substances on board the vessel. For any damage exceeding the limitation of the shipowner the cargo owner is liable to pay compensation up to a certain limit which is not yet fixed. The compensation is paid through an "International Scheme" which collects contributions from the cargo owners. Contributions to the "Scheme" should be made through insurance certificates which the cargo owners are obliged to buy. The certificates are sold on behalf of the "Scheme" by "issuing agents". In the debate it became obvious that the proposed solution on the second tier is highly complex. The complexity may hamper implementation of the regime. It is, therefore, proposed to limit in the first instance the HNS Convention to the first tier (liability of the shipowner). A second tier should be considered at a later stage and should simplify the contribution system by restricting the number of contributing substances.

F. L. Wiswall in his paper on "**Hazardous Waste, Dumping Convention and Liability**" compares the scope of application and the liability regime of the London Dumping Convention 1972, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 and the Draft Convention on the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention). Whilst the Dumping Convention and the Basel Convention define the activities with regard to hazardous waste which are prohibited, permitted without conditions or permitted under certain conditions, both conventions do not provide for a liability regime. The Draft HNS Convention, on the other hand, does not prohibit or permit anything in the sense of the Basel Convention or the Dumping Convention but places certain requirements upon the shipment of hazardous waste. Unlike the other two Conventions it provides for a liability regime. The investigation of the potential relationship between the three Conventions shows that in case of hazardous waste loaded for dumping at sea and carried on a voyage across the maritime boundaries of two or more States all three Conventions may become relevant. That may cause legal implications. However, there are areas where none of these Conventions offer a solution.

E. Gold submitted a paper on "**Pollution from Offshore Activities - An overview of the Operational, Legal and Environmental Aspects**". The paper provides an overview of the offshore operations sector, concentrating on its technical, operational, environmental and legal aspects. The Overview proves that the offshore sector has so far not had the benefit of a wide-ranging international legal regime. Whilst the UN Law of the Sea Convention provides for an international legal directive on a high level, a number of international or regional attempts to adopt rules and provisions on offshore operations have failed or did not receive sufficient support. The international efforts and discussions have chiefly concentrated on the question whether certain "structures" are ships or not in order to decide then on the applicability of maritime law. It is suggested that the unproductive debate whether an offshore structure is a ship or not should not be continued but the offshore installations should be acknowledged as a new and distinct legal entity which needs a regime of its own. This legal regime

should include every type of installation, vessel or artificial island. The IMO Code for Construction and Equipment of Mobile Offshore Drilling Units (1989 MODU Code) may serve as example but would, at the same time, form an important part of a comprehensive regime. Before the application of existing maritime law is recommended, the interface between offshore operations and traditional shipping practice should be carefully analysed.

S.-H. Svensen in his paper on "**Pollution from Offshore Activities Liability**" gave an overview on legal and contractual regulation of liability for pollution damage caused by offshore activities. The author concentrates his review on the legislation of Norway, the United Kingdom and the United States for the US Sector in the Gulf and highlights the role of offshore contracts as means to allocate the risk between contractor and operator. The legislation differs in every country and within a legislation the various types of installations are treated in a different manner. In the UK there is no specific legislation addressing offshore pollution liability. Instead, there exists a voluntary strict liability agreement called "Offshore Pollution Liability Agreement" (OLPOL). As a consequence of the differences between the legal regimes the insurance against pollution liability incurred by offshore activities is placed under quite different types of insurance. In conclusion it can be said that uniformity would be of great assistance although mobile offshore units do not move around as much as ships.

Colloquium on Assessment of Environmental Damage Summary of the Discussion

The discussion at the Colloquium took place on the basis of a "Discussion Paper" prepared by Colin de la Rue, also to be published by Lloyd's of London Press. Two issues were mainly discussed, "economic loss" and "natural resource damage assessment, in particular non-pecuniary loss".

It was noted that **liability in tort for economic loss** had for many years been guided in common law jurisdictions by a rule which compensates financial loss sustained in consequence of physical damage to the plaintiff's property, but disallows "pure economic loss" sustained in the absence of such damage. The question was considered how far this so-called "bright line" rule had been abrogated by the 1984 Protocols and by US legislation. In relation to the Protocols it was questioned whether the revised definition of "pollution damage" did in fact allow recovery of pure economic loss, or whether compensation for lost profits was payable only to claimants with a proprietary interest in the polluted environment. It was generally agreed that the revised definition was not a model for clarity but that claims for pure loss of profits were intended to be recoverable. It was observed that questions of economic loss had not hitherto posed serious problems for the IOPC Fund, but concern was expressed that the issue could be problematic in future. Speakers from the United States also confirmed that the Oil Pollution Act 1990 had in their view abrogated the "bright line" rule in relation to claims resulting from oil pollution damage, thereby creating a vacuum in which a new test would need to be found to define the allowable scope of recovery. It was generally agreed that the search for a new test would be a significant challenge for national courts both in the United States, and in due course elsewhere around the world.

On the subject of possible new test for recovery, speakers from the US pointed out that OPA 90 had not abrogated the usual requirement that the loss should be proximately caused by the incident, and it was noted that "proximity" had in recent years found favour in other common law countries. Speakers from countries with a civil law tradition confirmed that in some states, at least, the relevant requirement was that the incident should be the direct and immediate cause of the loss. It was suggested that the 1984 Protocols were not necessarily the last word on the subject, and that their text could be improved by introducing a requirement of directness. There were however one or two speakers who expressed concern that any universal test of this nature might be more restrictive than certain national laws, and thus prove unacceptable in the countries concerned. Areas of disagreement centred however to a large extent on matters of jurisprudential theory.

The discussion of **non-pecuniary losses** echoed the controversy surrounding the allowance of such claims by OPA, and the development of **Natural Resource Damage Assessment regulations** currently in preparation. The proposition that some form of compensation should be paid for such damage did have some supporters at the Colloquium. A comparison was made with the law of salvage, in which an enhanced award may be payable to salvors whose efforts succeed not only in saving property, but also in averting damage to the environment. It was observed that in support of such claims, salvors were increasingly presenting evidence designed to place a financial value on the environmental damage avoided by their endeavours. Some speakers found it illogical that such an award could be made where the damage is avoided, but that where the damage is in fact sustained no similar evaluation could be made of any damages payable for polluting the environment.

Most participants however expressed concern that there were serious problems inherent in any system for paying claims of this sort. It was suggested that such a system did not focus sufficiently on the actual loss sustained by any party with standing to put forward a claim, with the result that damages acquired a more punitive and less compensatory character. Concerns were also expressed that such claims were readily inflated by intractable issues of quantification, particularly in relation to so-called "non-use" values, and their assessment after an incident by Contingent Valuation Methodology. When the available compensation would always be subject to finite

limits, the prospect existed that the acceptance of such claims would unreasonably reduce the compensation available to other parties suffering more tangible losses. Accordingly, most participants were of the view that claims of this type could not be reconciled with a viable international system for compensating pollution damage.

Concluding Statement

Whilst the seminar put the liability issue in a broader context in discussing the different sources and types of pollution in conjunction with compensation for pollution damage the discussion at the Colloquium concentrated on the assessment of pollution damage in cases where civil liability exists.

Assessment of pollution damage has different aspects. It may be considered, on the one hand, as key issue of environmental policy in general because it is a measure to which extent the polluted environment should be restored in terms of environmental policy goals. On the other hand, it is the way to determine to which extent damage can be compensated under civil liability taking into account the principles and rules prevailing within any civil liability system. Civil liability, in addition, requires insurance cover for individuals potentially liable. It is obvious that tensions exist between the public goals of environmental policy, and the rules of civil liability which require the availability of insurance cover. These "tensions" have been reflected in the discussion of the paper on assessment of pollution damage which is summarized above. The question of the "non-user value" of the environment may serve as an example.

Furthermore, the application of well established rules and principles of civil liability becomes more and more critical in the light of the new dimension of damage and its consequences to persons who suffer damage. It is especially the problem of economic loss, which is not the consequence of physical damage but the result of loss of use of the environment (fishermen), that has caused difficulties for the application of liability rules. It appears that the problem of attribution of this type of damage to an individual act or incident which causes the damage exists in all national legislations under common law and civil law. However, the national liability systems provide for different methods or even different solutions due to their legal principles or traditions which prevail. This was clearly demonstrated in the discussion of the paper on damage assessment.

Liability rules on oil pollution damage are internationally unified by the Civil Liability Convention, 1969. The problem of different political goals in respect of restoration of the environment and their influence on national regulations as well as the different legal views on new issues (like "pure economic loss") should be regarded as an alarming sign for the stability and further development of unification. Even the new definition of pollution damage in the 1984 Protocol to the Civil Liability Convention does not solve these problems. It would be even more correct to say that a general definition can only reflect principles and is, therefore, not the proper means to deal with detailed questions of damage assessment which may newly arise every day.

The CMI has set up a Subcommittee on environmental damage assessment. A Working Group of this Subcommittee had prepared the Discussion Paper which was discussed at the Colloquium. The discussion and the conclusions have shown that environmental damage assessment is a subject that does not only play a major role for the unification of civil liability but which, at the same time, puts unification at risk due to the gaps in the present damage definition of unified law and the influence of national environmental policy and national legal views and jurisprudence.

Norbert Trotz

Meetings of the Executive Council

Two meetings of the Executive Council of the CMI were held in Genoa on 20th and 26th September 1992. Amongst the matters considered during such meetings, there were the following:

Adoption of the Constitution by the Assembly and consideration of Proxy Voting

The meeting of the Assembly of 27th June 1992 adopted a revised version of the Constitution. Upon the adoption of Article 6 it was agreed that the Executive Council would give further consideration to the subject of proxy voting and would in due course report to the Assembly concerning these considerations.

Accordingly, the Executive Council discussed the matter at this meeting. It was decided that further considerations should take place on the basis of a report. The result of these considerations should be submitted to the next meeting of the Assembly. Dr. Frank Wiswall kindly agreed to prepare the report for the next meeting of the Executive Council.

Representation of the CMI in International Meetings

The Executive Council appointed representatives for the following meetings:

IOPC - Fund Assembly September 1992

- Mr. Colin de la Rue (BMLA)

Legal Committee of IMO September 1992

- Mr. N. Healy (USMLA)

- Dr. F. Wiswall (USMLA)

International Conference on the Revision of the 1984 Protocols to the 1969 CLC and the 1971 Fund Convention, November 1992

- Mr. Patrick Griggs (BMLA)

- Professor Edgar Gold (CMLA)

Diplomatic Conference on the Convention on Liens and Mortgages 1993

- Professor Francesco Berlingieri, President ad honorem

Work in Progress

Offshore Mobile Craft

The Executive Council agreed that the work should continue on the basis of a two-step approach. The Subcommittee should next take up the Rio Draft Convention in order to fulfil the request of IMO. However, the scope of the work should then be extended and include installations not covered by the Rio Draft.

Third Party Liability

The Executive Council had received a report of the Working Group dealing with this issue.

As to HNS the Working Group recommended that at the present stage the CMI should not work on this item.

The Executive Council agreed that the results of the next meeting of the Legal Committee of IMO should be considered before a decision on further work is taken.

The Council confirmed that the work of the Working Group on the 1976 Limitation Convention and other liability conventions should continue on a long-term basis. At the Sydney Conference, the Working Group should give a report about its work.

Classification Societies

The Executive Council has authorized the formation of a working group to examine various issues affecting the ship Classification Societies. It is hoped that a preliminary report can be given to the Executive Council in April 1993.

Insurance Law

The President discussed the possibility of a subject from Marine Insurance Law to be discussed in Sydney as proposed by the Australian Branch with the Secretary General of IUMI, Mr. Alexander von Ziegler, on the basis of the Salter Report. After discussion, the Executive Council came to the conclusion that it was not possible to find a subject of sufficiently broad interest to be put on the agenda of the Sydney Conference. However, the Executive Council discussed the possibility of asking a knowledgeable person in the field of Marine Insurance Law to give a lecture at the Sydney Conference. Mr. Birch Reynardson and Mr. Griggs agreed to examine this issue further and to report to the President.

Assessment of Pollution Damage

The Council agreed to put this subject on the agenda of the Sydney Conference. The Working Group and Subcommittee are asked to draft a set of rules on the subject.

Co-operation with BIMCO

The President reported that he was contacted by Mr. Hoyer of BIMCO who has asked whether the CMI would be interested in co-operating with BIMCO on the following subjects:

- Standard contract for wreck removal
- Standard liner agency agreement
- Container leasing agreement.

Next meetings

The next meeting of the Executive Council will take place in Copenhagen beginning April 2 in the afternoon and continuing on April 3. The next meeting of the Assembly is scheduled for the 25th September 1993 in Brussels (with a meeting of the Executive Council in the evening of the 24th September).

The Assembly in 1994 will be convened in Sydney.

Albert Lilar Prize

The Albert Lilar Prize will be awarded in 1993. The amount of the Prize is Belgian Francs 400,000. A copy of the regulations for the award may be obtained upon request from the CMI Secretariat.

Prix Albert Lilar

Le Prix Albert Lilar sera attribué en 1993. Son montant a été fixé à Francs belges 400.000. Une copie du Règlement d'attribution du Prix peut être obtenue sur demande auprès du secrétariat du CMI.

Chinese Maritime Code

The Chinese Maritime Code was adopted on 7th November 1992 by the Standing Committee of the Seventh China People's Congress and will enter into force on the 1st July 1993. An English translation of the Code is under preparation.

The Table of Contents of the Code is the following:

- Chapter I - General Provisions
- Chapter II - Vessels
 - Section 1 Ownership of the Vessel
 - 2 Mortgage of the Vessel
 - 3 Maritime Liens
- Chapter III - Crew
 - Section 1 Guidelines
 - 2 Ship Master
- Chapter IV - Contract of Carriage of Goods by Sea
 - Section 1 Guidelines
 - 2 Liability of the Carrier
 - 3 Liability of the Shipper
 - 4 Transport Documents
 - 5 Delivery of the Goods
 - 6 Cancellation of Contracts
 - 7 Special Provisions Regarding Voyage Charter Party
 - 8 Special Provisions regarding Multimodal Transport Contracts
- Chapter V - Contract of Carriage of Passengers by Sea
- Chapter VI - Charter Parties
 - Section 1 Guidelines
 - 2 Time Charter Party
 - 3 Bareboat Charter Party
- Chapter VII - Contract of Sea Towage
- Chapter VIII - Collision of Ships
- Chapter IX - Salvage at Sea
- Chapter X - General Average
- Chapter XI - Limitation of Liability for Maritime Claims
- Chapter XII - Contract of Marine Insurance
 - Section 1 Guidelines
 - 2 Conclusion, Termination and Assignment of Contract
 - 3 Obligations of the Insured
 - 4 Liability of the Insurer
 - 5 Loss of and Damage to the Subject Matters Insured and Abandonment
 - 6 Payment of Indemnities

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

IMO

New Protocols to the CLC and Fund Conventions

The IMO Conference held from 23rd to 27th November 1992 adopted new Protocols to the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. The new Protocols have amended the conditions for the entry into force of the 1984 Protocols to the aforesaid Conventions.

The 1984 Protocol to the Civil Liability Convention will now enter into force twelve months after being accepted by ten States, including four with not less than one million units of gross tanker tonnage (pursuant to the 1984 Protocol the number of States with not less than one million tanker tonnage was six). The 1984 Protocol to the Fund Convention will enter into force after being accepted by eight States that have imported 450 million (in lieu of 600 million) tons of contributing oil.

IMO Work Programme for 1993

At its 67th Session held from 28th September to 2nd October 1992 under the Chairmanship of Professor Robert Cleton, the Legal Committee agreed that the subjects on its work programme during 1993 would be the following:

- (i) convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention) as the priority item;
- (ii) possible revision of the 1976 LLMC Convention (subject to decisions taken on the HNS Convention);
- (iii) convention on offshore mobile craft (to be considered when the CMI report is submitted);
- (iv) arrest of ships (subject to decisions taken at the proposed diplomatic conference to consider the adoption of a revised convention on maritime liens and mortgages).

Consideration of the CMI Draft Convention on Jurisdiction, Choice of Law and Recognition and Enforcement of Judgments in Matters of Collision

A presentation of the above draft Convention, approved at the Rio de Janeiro CMI Conference in 1977, was made by the Honorary Vice President of the CMI, Mr. Nicholas J. Healy, during the 67th Session of the Legal Committee. Mr. Healy explained that the draft convention was intended to meet what many felt were deficiencies in the 1952 Convention on Civil Jurisdiction in Matters of Collision which did not cover choice of law or recognition and enforcement of judgments and did not apply to government-owned merchant vessels.

The Committee expressed its appreciation for the presentation made by the representative of the CMI and agreed to study the draft convention and the CMI report contained in documents LEG XXXIV/6(c) and LEG XXXIV/6(c)/Add. 1 respectively and decide at its next session whether it would be included in the work programme for 1993.

UNCTAD

UNCTAD Work Programme for 1993

The work programme of UNCTAD, in the field of maritime legislation includes the following:

1. Complete the on-going work of the UNCTAD secretariat on general average, in close collaboration with the relevant international commercial organizations including CMI, IUMI and AIDE;

2. Study possible amendment of the 1952 Convention on Arrest of Ships jointly with IMO subject to the agreement by the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects and following UN/IMO Conference of Plenipotentiaries on Maritime Liens and Mortgages;
3. Analyse legal aspects of ship leasing in developing countries, including problems faced by these countries;
4. Monitor the implementation of international shipping instruments adopted under the auspices of the United Nations currently in force.

In addition, the UNCTAD secretariat was requested to:

5. Conduct, in close collaboration with the relevant organizations such as BIMCO, an educational programme on the subject of charterparties, with special emphasis on the use of clauses related to shipment of products of interest to developing countries.

INTERNATIONAL GROUP OF P&I CLUBS

Entry into Force of the Hamburg Rules

A circular has been issued by the International Group of P&I Clubs last September, wherein, after a summary of the most relevant aspects of the Hamburg Rules and of the more significant changes effected by them as respects the present uniform legislation, comments and suggestions are made with respect to the documents for the competing regimes and the cover for the Hamburg Rules. It may be convenient, in view of the importance of the problem, to publish hereafter, with the kind permission of the Secretary of the International Group of P&I Clubs, this part of the circular.

"4. Documentation for the Competing Regimes.

The Hamburg Rules are of wide scope and, where they are applicable, they have altered a number of the fundamental assumptions which underlie the drafting of existing shipping documents. This circular does not attempt to address these wider considerations, because for the majority of Members the Hamburg Rules will be of limited application. However, Members whose trade will involve them extensively with the Hamburg Rules may wish to consider a more fundamental reappraisal of their documents. For the majority of Members, it is probably sufficient at present to consider using the clause paramount set out in Form A and the attached form of over stamping for cargo to be carried on deck with the agreement of the shipper under the Hamburg Rules.

Form A

This form is recommended for Members who wish to adopt the Hague or Hague/Visby Rules in preference to the Hamburg Rules where possible, with the result that where one of these regimes would be applicable on its own terms by reason of the location of the port of shipment (or in a few states by reason of the port of discharge), it has been preferred. Members should be aware, however, that there can be no guarantee that proceedings will be commenced in a state that is not a contracting party to the Hamburg Rules and any cargo claimant may have the right to bring separate proceedings in the courts of a State party to the Hamburg Rules in a case where the Hague or Hague/Visby Rules have been applied in preference to the Hamburg Rules.

Form B

This clause has been drafted solely with a view to compliance with Articles 23(3) and (4) of the Hamburg Rules. For this reason it should only be used when the carriage by sea is between two States that are contracting parties to the Hamburg Rules.

In recommending the use of the clauses, we draw attention to the following points:

- (i) For the reasons stated, mere adoption of a Clause Paramount is not of itself enough to render shipping documents entirely appropriate for use on voyages to which the Hamburg Rules apply.
- (ii) The clauses have been designed primarily for use in connection with Bills of Lading which are subject to an English proper law clause and with a view to English jurisdiction. Those of our Members whose Bills are subject to the law of a state other than the United Kingdom should seek advice from lawyers in that state as to whether the clauses meet the requirements of local law. This applies in particular to Members whose Bills of Lading are subject to the jurisdiction of the United States, as the Courts of the United States will construe any ambiguity in a Bill against the carrier.
- (iii) Members who may contemplate adopting the clauses for insertion in their Bills of Lading should seek confirmation from the Association's Managers that the clause is suitable for adoption by them before making any amendments.

“5. Cover for the Hamburg Rules

Members are reminded that, subject to a discretion being exercised otherwise in accordance with the Rules, liabilities, costs or expenses arising from the carriage of cargo on terms less favourable than those of the Hague or Hague/Visby Rules will not be covered. However, where the carriage of cargo is on such terms solely because of the compulsory application by operation of law of the Hamburg Rules to the contract of carriage, cover will be available. If a Member voluntarily adopts the Hamburg Rules for a voyage to which the Rules do not compulsorily apply, his cover will be prejudiced.

RATIFICATIONS OF INTERNATIONAL CONVENTIONS

The instruments of ratifications of or accessions to the following Conventions and Protocols have been deposited with the depositary on the date indicated below:

Convention on Limitation of Liability for Maritime Claims, 1976

Vanuatu: Accession on 14th September 1992

International Convention on Civil Liability for Oil Pollution Damage, 1969

Brunei Darussalam: Accession on 29th September 1992

Ireland: Ratification on 19th November 1992

Slovenia: Succession to Yugoslavia notified on 26th November 1992

Protocol of 1976 to the International Convention on Civil Liability for Oil Pollution Damage, 1969

Brunei Darussalam: Accession on 29th September 1992

Ireland: Accession on 19th November 1992

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

Brunei Darussalam: Accession on 29th September 1992

Ireland: Ratification on 19th November 1992

Slovenia: Succession to Yugoslavia notified on 26th November 1992

Protocol of 1976 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

Ireland: Accession on 19th November 1992.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 4 - 1992

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

NEWS FROM THE CMI

International Sub-Committee on Off-Shore Mobile Craft

On 8th December 1992, the first meeting of the International Sub-Committee on Off-Shore Mobile Craft was held in Brussels under the Chairmanship of Mr. Frode Ringdal. Mr. Lund was appointed as Rapporteur. The second meeting of the International Sub-Committee will be held in Copenhagen on Friday, 2nd April 1993 in the office of the President of the CMI, Professor Allan Philip. A summary of the meetings will be published in the next issue of the News Letter.

International Sub-Committee on General Average

The first meeting of the International Sub-Committee on the "Review of the Law of General Average and the York-Antwerp Rules 1974 (as amended 1990)" was held in Brussels on 3rd and 4th December 1992. Mr. Bent Nielsen was appointed Rapporteur. A summary of the meeting will also be published in the next issue of the News Letter.

Time-Barred Actions - A New Edition of the Book by the Late Kaj Pineus

Replies to the questionnaire have been received from the Maritime Law Associations of:

Argentina	Greece	Norway
Australia	Hong Kong	Poland
Canada	Ireland	Portugal
Chile	Israel	Spain
China	Italy	Sweden
Croatia	Japan	Switzerland
Denmark	Korea	Turkey
France	Malta	United Kingdom
Germany	Netherlands	United States

The typescript of the second edition will be delivered by Professor Francesco Berlingieri to Lloyd's of London Press Ltd. in early March 1993.

Maritime Agents

Replies to the questionnaire have been received from the Maritime Law Associations of:

Argentina	France	Netherlands
Australia	Germany	Spain
Canada	Greece	Switzerland
China	Ireland	United Kingdom
Croatia	Italy	United States
Denmark	Japan	

The Chairman of the International Sub-Committee, Professor Francesco Berlingieri, will convene the first meeting of the International Sub-Committee in Paris on 9th June 1993. A notice with further details will be sent to all National Associations accompanied by a synopsis of the replies that will have been received at the time when the notice will have been circulated.

News from the Iberoamericano Institute of Maritime Law

The second international conference organized by the Iberoamericano Institute will be held in Santo Domingo, Dominican Republic, from 17th to 20th October 1993 on the subject of "Charterparties, Carriage of Goods by Sea and Insurance — An Overall Perspective".

Amongst the main topics there will be the following:

1. The allocation of risks in maritime transport under The Hague-Visby and The Hamburg Rules (a paper will be presented by Prof. William Tetley).
2. The liability of carriers and shippers. Its regime under The Hamburg Rules (a paper will be presented by Dr. Mahin Faghfour).
3. The development of maritime transport legislation in the context of international sales of goods. Interrelated effects (a paper will be presented by Dr. Martine Rémond-Gouilloud).
4. Cargo, liability and loss of profits insurance on the verge of the recent changes in the regulation of sea transport. Economic interaction and contractual remedies to balance interests of the parties (a paper will be presented by Dr. Antonio R. Mathé).

News from National Associations

1. Australia and New Zealand

The new address of Mr. Ron Salter, Vice-President of the Association of Australia and New Zealand is given below:

Mr. Ron Salter
c/o Phillips Fox, Solicitors
120 Collins Street
Melbourne VIC 3000
Australia
Tel. (3) 274.5000 - Fax. (3) 274.5111

2. Belgium

The new address of Mr. Paul Goemans, Titulary Member of the CMI is the following:

Mr. Paul Goemans
Nationalestraat 5 - bus 30
2000 Antwerp
Belgium

3. China

The Officers of the Chinese Maritime Law Association are, as of 25th November 1992, the following:

President:	Mr. CHEN Zhongbiao
Vice Presidents:	Mr. FU Xumei
	Mr. GAO Zhunlai
	Mr. GUO Dechun
	Mr. LE Tianxiang
	Mr. LEI Hai
	Mr. ZHANG Zhongye
Secretary General:	Mr. LIU Shujian
Deputy Secretaries-General:	Mrs. CHEN Zhenying
	Mr. MENG Yuqun
	Mr. QU Zhiguang
	Mr. WANG Jian
	Mr. YAN Chunhou
	Mr. YU Tianwen
	Mr. ZHU Jianxin

4. Croatia

The new address of Prof. Dr. Vojslav Borcic, Titulary Member of the CMI, is the following:

Prof. Dr. Vojslav Borcic
c/o Jadroagent Ltd.
Koblerov trg 2
51000 Rijeka
Croatia
Tel. (051) 214-444 - Fax. (051) 213-616

5. *Finland*

The new address of the Finnish Maritime Law Association is as follows:

Finnish Maritime Law Association CMI
c/o Mr. N-G. Palmgren, President
Neptun Juridica Co. Ltd.
Bulevardi 1 A
00100 Helsinki
Finland

6. *France*

The new address of Mr. Jean Warot, honorary Vice-President and Titulary Member of the CMI, is the following:

Mr. Jean Warot
Warot & Associés
91 rue Jouffroy d'Abbans
75017 Paris
France
Tel. (1) 4227.0404
Fax. (1) 4227.1578
Telex: 640803 WARJAN

7. *Japan*

The new fax number of the Japanese Maritime Law Association is (3) 3265-0873.

8. *Peru*

The new telephone numbers of the Asociacion Peruana de Derecho Maritimo are

Tel.: (14) 401246 or 224101 or 227593
Fax: (14) 401246

9. *Senegal*

The new address of Mr. Aboubacar Fall, Titulary Member of the CMI, is the following:

Mr. Aboubacar Fall
c/o Niang-Fall-Seye
13 Rue Parchappe
P.O. Box 21310
Dakar
Senegal
Tel.: (221) 22.92.80 / 21.43.25
Fax. (221) 22.11.44 / 21.21.51

10. *Spain*

Mr. Rodolfo A. Gonzalez-Lebrero resigned from the Board and the Committee of the Spanish Maritime Law Association.

11. *Sweden*

The new address of Mrs. Kristina Nedholm-Ewerstrand, Treasurer of the Swedish Maritime Law Association, is the following:

Mrs. Kristina Nedholm-Ewerstrand
c/o Stena
Insurance Department
S-40519 Goteborg
Sweden
Tel. 46.31.85.50.00
Fax. 46.31.12.39.76
Telex: 2559 STENA S

12. *Switzerland*

The Swiss Maritime Law Association informed with regret that Mr. Charles M. Keller, Titulary Member of the CMI, has passed away on 3rd November 1992.

13. *United Kingdom*

The new address of Mr. David Taylor, Titulary Member of the CMI, is the following:

Mr. David Taylor
c/o Clifford Chance
200 Aldersgate Street
London EC1A 4JJ
United Kingdom
Tel. 44.71.600.1000
Fax. 44.71.956.0161 or 71.600.5555
Telex: 895.9997 CCSHIP or 887847 LEGIS G

14. *United States*

The U.S.M.L.A. regretfully informs that Mr. Elliott B. Nixon, Titulary Member of the CMI and Editor of *American Maritime Cases*, passed away on 10th November 1992.

The new addresses of Mr. Frank Wiswall, member of the Executive Council and Titulary Member of the CMI and of Mr. Kenneth H. Volk, immediate past President of the U.S.M.L.A. and Titulary Member of the CMI, are the following:

Mr. Frank L. Wiswall, Jr.

P.O. Box 201

Castine ME 04421-0201

Office Tel: (207) 326-9460

Home Tel: (207) 326-4243

Fax: (207) 326-9178

Mr. Kenneth H. Volk

c/o McLane, Graf, Raulerson & Middleton

Forty Congress Street

P.O. Box 4316

Portsmouth N.H. 03802-4316

U.S.A.

Tel.: (603) 436.2818

Fax: (603) 436.5672

Albert Lilar Prize

The prize of the Albert Lilar Foundation will be awarded in 1990 for the fifth time.

The rules for the awarding of the prize are the following:

Article 1:

The Albert Lilar prize will, as of the year 1978, be awarded every three years by the Board of Directors of the Foundation, instituted as selection committee.

The amount of the prize is fixed by the Board of Directors. It is minimum Belgian francs 200.000.

Article 2:

The prize is destined to reward the author or the authors of an outstanding scientific work being of a nature as to promote the unification of maritime law respectively the study of comparative maritime law.

Its main object is to encourage young authors of talent.

Article 3:

Consideration will only be given to works of which three copies will have been received at the Registered Office of the Foundation before the 15th May of the year during which the prize will be awarded or that have been issued before that date.

Article 4:

It is permitted to the selection committee to pay attention only to the works brought out in book form and, as such, put at the disposal of the public less than five years prior to the 15th May of the year during which the prize will be awarded.

Articles in reviews, studies having a magnitude not greater than that of an article, dissertations or other analogous works will be disregarded.

Article 5:

The works that have been submitted or proposed must be written in one of the following languages: French, Dutch, German, English.

Prix Albert Lilar

Le prix de la Fondation Albert Lilar sera attribué en 1990 pour la cinquième fois.

Le règlement d'attribution du prix est le suivant:

Article 1:

Le prix Albert Lilar est attribué tous les trois ans à partir de l'année 1978 par le conseil d'administration de la Fondation, constitué en jury.

Le montant du prix est déterminé par le conseil d'administration. Il est au minimum de 200.000 francs.

Article 2:

Il est destiné à récompenser l'auteur ou les auteurs d'un ouvrage scientifique de grand mérite et de nature à promouvoir l'unification du droit maritime ou l'étude du droit maritime comparé.

Son but est d'encourager principalement de jeunes auteurs de talent.

Article 3:

Seront seuls pris en considération les ouvrages dont trois exemplaires seront parvenus au siège de la Fondation avant le 15 mai de l'année au cours de laquelle le prix sera attribué ou qui auront été publiés avant cette date.

Article 4:

Le jury ne pourra retenir que les ouvrages publiés en librairie et, comme tels, mis à la disposition du public moins de cinq ans avant le 15 mai de l'année au cours de laquelle le prix sera attribué.

Ne seront retenus les articles de revues ni les études n'ayant pas une ampleur plus grande que celle d'un article, ni les mémoires ou autres travaux analogues.

Article 5:

Les ouvrages présentés ou proposés devront être rédigés dans une des langues suivantes: français, néerlandais, allemand, anglais.

A work written in another language will only be given consideration provided at least two members of the selection committee have a sufficient knowledge of that language.

Article 6:

The selection committee is sovereign in its appreciation of the merits of the works under consideration. It may choose either one of the works that have been submitted or a work to which it is given consideration by its own initiative and that complies with the requirements provided in Articles 2 to 5 of these rules. It reserves the right not to award the Prize.

Un ouvrage rédigé dans une autre langue ne pourra être pris en considération que si deux membres du jury au moins possèdent une connaissance suffisante de cette langue.

Article 6:

Le jury apprécie souverainement la valeur des ouvrages présentés. Il peut porter son choix tant sur l'un des ouvrages présentés que sur une oeuvre retenue de sa propre initiative et répondant aux conditions prévues aux articles 2 à 5 du présent règlement. Il se réserve le droit de ne pas attribuer la prix.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

IMO

The International Conference on the Revision of the 1969 Civil Liability and 1971 Fund Conventions, London November 1992

1. On 27th November 1992 a one-week Diplomatic Conference, held by the International Maritime Organization (IMO) in London completed very significant work in the area of liability and compensation for oil pollution. 55 States, and one associate member state of IMO, participated in the conference and two inter-governmental and ten non-governmental organizations, including the CMI, participated as observers. Quite significantly, when the Conference's Final Act was opened for signature on the last day of the meeting, 49 States signed at once. The results of the Conference were the "Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969", and the "Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971." In addition, five Resolutions, designed to facilitate interpretation and entry into force of the new 1992 Protocols, were also passed.
2. This is, of course, the second time that the IMO has succeeded in completing Protocols to the CLC and Fund Conventions. Just over eight years ago, in 1984, similar Protocols were completed after considerable preparation and negotiation. The 1984 Protocols were achieved in response to concerns by a number of States that the compensation limits in the CLC and Fund Conventions were no longer adequate and thus required substantial upward adjustment. This view was especially strongly endorsed by the United States of America. As a result, during the 1984 IMO Conference, the limits were raised drastically. However, given the fact that fund contributions are based on the amount of oil received, it was clear that the Fund Protocol could only enter into force if the two largest oil receivers, the U.S. and Japan were parties to it. The U.S., after achieving everything they desired in the negotiations, assured the Conference that ratification would follow swiftly. On the other hand, Japan had serious reservations about the costs of the new, higher limits and only agreed to accommodate the U.S. and a number of other Western states after considerable pressure.
3. During the period subsequent to the completion of the 1984 Protocols, it quickly became apparent that the U.S. commitment would not be met. Firstly, due to the very complex U.S. political division of powers system, there was no obligation to honour the U.S. commitment given at the IMO by one sector of the U.S. Government. As a result, some internal, political problems delayed U.S. acceptance of the Protocols. Secondly, environmental interests, which demanded absolute liability under an avowed "polluter-pays" principle, opposed the limitation ceilings in the Protocols. Finally, the Exxon Valdez disaster in 1989 ensured that the U.S. would turn its back on the carefully-agreed international solution. In fact, when the U.S. produced the Oil Pollution Act of 1990 (OPA), which laid out a very different, unilateral liability system, it became quite clear that the U.S. would never accept the 1984 Protocols and that, consequently, they could not enter into force.
4. There was, nevertheless, considerable interest by many states in what the 1984 Protocols had to offer -- i.e. much higher compensation limits for serious pollution incidents. As a result, it was suggested that the Protocols could be saved if the entry-into-force provisions would be altered. However, as these complex provisions had been carefully negotiated in 1984, a new Diplomatic Conference, with preparation by the IMO Legal Commit-

tee, was required. This work proceeded with remarkable speed and led to the 1992 Protocols, which not only re-establish the 1984 Protocols but, in a number of ways, actually improve them. The road to this achievement was, however, not without difficulties.

5. As already indicated, Japan had serious misgivings about the cost implications of the 1984 Protocols and accepted these only reluctantly and based, very much, on the belief that the U.S. would be parties. However, when faced with the 1992 Protocols, Japan realized that unless there were a considerable number of States which would quickly accede to the CLC and FUND Conventions and the new Protocols, Japan would be the largest contributor to the fund. This realization was based on the actual payments by Japan to the fund during the period 1978-91 which amounted to over 32 per cent of all claims paid. Given that the new Protocols had considerably raised compensation limits, Japan felt that its oil industry would thus be faced with contributions, which it considered not only very high, but also unfair.

6. As a result, Japan introduced a request that its contributions should be "capped" at 25 per cent of total contributions to the International Oil Pollution Claims Fund (IOPC Fund) if the total quantity of contributing oil received in all contracting States during a given calendar year were less than the required 750 million tonnes. This caused a problem in terms of principle as well as a very serious one in terms of Fund operation. Fund contributions had always been based on a principle of equality, purely in terms of oil received by each contracting State. In other words, and in environmental terms, this was to cover oil at risk at sea. Japan now requested to be treated differently, although for reasons which were received with considerable sympathy. On the other hand, without Japan there would be no workable Fund Protocol and the new, much-needed higher compensation limits at the highest fourth level, would not be available.

7. Nevertheless, a number of States had problems with the Japanese position and there was considerable apprehension about this when the conference commenced. However, once again, the value of international compromise, which has always worked so well at the IMO, was clearly apparent. Under the skilled direction of the chairman of the Conference's Committee of the Whole, Alfred Popp, Q.C. of Canada, a generally acceptable compromise was hammered out. The principle of capping, advanced by Japan, was accepted, but at the level of 27.5 per cent. However, this figure had two conditions attached to it. Firstly, a Conference Resolution emphasized that "such a capping system has been accepted in the light of the very special situation that existed in the early years after the entry into force of the 1971 Fund Convention" and that the "introduction of such a capping system should not be interpreted as setting a precedent in respect of any existing or future convention".

8. Secondly, the "capping" provisions are only operational until the total quantity of contributing oil received by all contracting States in a calendar year has either reached 750 million tonnes or until a period of five years after the entry into force of the 1992 Protocol has elapsed, whichever occurs earlier. This latter time limit was considered to be a very definite improvement over the earlier Protocol, as it would provide an added incentive for States to become parties to the new 1992 Protocol. Furthermore, documentation provided by IOPC Fund appeared to indicate that a number of pending ratifications "in the pipeline" might boost the amount of contributing oil at an early stage.

9. A further improvement achieved by the Conference is an important reduction in requirements in the entry-into-force provisions of the CLC Protocol. The Protocol can now enter into force 12 months after ten States, including four States, each with not less than one million GRT tanker tonnage, have ratified. This will ensure earlier entry into force of the new 1992 CLC Protocol. This is especially important as the 1992 Fund Protocols cannot enter into force prior to the entry into force of the amended 1992 CLC Convention.

10. The new regime, therefore, effectively more than doubles the limitation amounts available under the old system, from about USD 83 million to USD 187 million. (These figures are approximate as the limits are all expressed in 'units of account', based on the "Special Drawing Rights" of the International Monetary Fund). Under the 1992 CLC Protocol vessels under 5,000 GRT are liable for 3 million units of account, whilst vessels over this tonnage are liable for 420 units of account per GRT up to the upper limit of 59.7 million units of account. Under the 1992 FUND Protocol the upper limit is raised to 135 million units of account. In theory, this limit could be raised to 200 million units of account requiring, however, that three contracting States receive more than 600 million tons of contributing oil. Given that the world's major oil receiver, the U.S. will not be a party, it is unlikely that this total can be reached.

11. The new upper limits are, without question, a significant improvement over the old regime and will provide oil pollution liability coverage for all but the most catastrophic incidents. However, this was of concern to the Italian delegation, which, in an informational document and an intervention, drew the Conference's attention to the recent "Haven" case. That case had not only resulted in damage far beyond even the new limits, but had also raised serious questions about the realistic definition and assessment of environmental damage. This subject was discussed at the September 1992 CMI Genoa Seminar and will be further studied by a CMI International Sub-Committee with a view for formal deliberations at the 1994 CMI Conference in Australia. There is no question that the CMI could perform a real service for the international community generally and the IMO and the IOPC Fund specifically, in this area.

12. The two new Protocols are open for signature from 15 January 1993. There appeared to be considerable optimism that they might be in force by 1994-5. Obviously, for the marine environment an additional safeguard has been created. However, the IMO has, once again, shown its ability to rally the international maritime community in a unified manner despite some of the real differences which appeared to exist at the beginning of the negotiations. Unfortunately, the United States, the world's largest oil importer, continues to turn its back on the IMO's system and is, at this stage, probably more isolated than ever. The 1992 CLC and Fund negotiations have shown that the shipping industry and the pollution liability insurance sector are able to deal with very high liability limits in a reasonably constructive manner. On the other hand, the U.S. "absolute liability" limit, as enshrined in the Oil Pollution Act of 1990, will continue to present the shipping industry and its insurers with unattainable limits. As a result, the 1992 Protocols are a good deal which illustrates that, given an important subject and sufficient unity, the global maritime community can succeed even if it is the second time around and eight years later!

Edgar Gold
President, Canadian Maritime Law Association
Representative of the CMI at the IMO Diplomatic Conference

Establishment by IMO of a Sub-Committee on Flag-State Implementation

The new Sub-Committee on Flag State Implementation will be a subsidiary body of IMO's two senior technical committees, the Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC). Its primary task will be to identify measures necessary to ensure the effective and consistent implementation of the convention, codes and other regulations that have been adopted by IMO.

The Secretary-General of IMO, Mr. O'Neil, so stated in respect of the new Sub-Committee:

We think that the new Sub-Committee will play a major role in our concentration on the global implementation of IMO standards, and we are hoping that as many of our 136 Member Governments as possible will attend the first session, which will be held at IMO headquarters from 19 to 23 April 1993.

On the basis of information received from IMO (IMO Briefing 11th January 1993), it appears that during the April session it is expected that the new Sub-Committee will establish three working groups to consider matters that are regarded as especially important. They are:

- *The development of guidelines for Flag State administration.* These will cover such matters as the delegation of authority to classification societies; the training of staff assigned to implementing IMO measures; and the establishment of minimum standards for classification societies and other acting on behalf of flag States.
- *Port State activities.* Although the chief responsibility for implementing IMO standards rests with flag States port State authorities have the right to inspect foreign-flag ships visiting their ports to make sure that they meet IMO convention requirements. If deficiencies are found, ships can be prevented from sailing until they are corrected. In some areas port States have formed regional agreements which have proved very effective in co-ordinating port State control measures. IMO is anxious to extend these measures to other areas.
- *Casualty statistics.* Although IMO has a Steering Group on Casualty Statistics, its ability to make the best possible use of the information available has been hindered by financial difficulties. It is hoped that proper statistical analysis will, in future, help IMO to identify issues before they become a major problem and to adopt the best possible counter-measures.

Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992.

A convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992, has been signed at Helsinki on 9th April 1992 by the Czech and Slovak Federal Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the Federal Republic of Germany, the Republic of Latvia, the Republic of Lithuania, the Kingdom of Norway, the Republic of Poland, the Russian Federation, the Kingdom of Sweden, the Ukraine and the European Economic Community.

The Convention will apply to the protection of the marine environment of the Baltic Sea Area which comprises the water-body and the seabed, including their living resources and other forms of marine life. It provides as one of its fundamental principles that the contracting parties shall individually or jointly take all appropriate legislative, administrative or other relevant measures to prevent and eliminate pollution in order to promote the ecological restoration of the Baltic Sea Area and the preservation of its ecological balance.

The Convention covers a number of important subjects such as the prevention of pollution from ships (Article 8), the prohibition of incineration (Article 10), the prevention of dumping (Article 11) and the obligation of the contracting parties to take measures in order to prevent pollution of the marine environment of the Baltic Sea Area resulting from exploration or exploitation of the seabed and the subsoil.

The Convention will enter into force, pursuant to Article 35, two months after the deposit of the instruments of ratification or approval by all signatory States bordering the Baltic Sea and by the European Economic Community.

RATIFICATIONS OF INTERNATIONAL CONVENTIONS

Instruments of ratification of and accessions to the following conventions have been deposited with the depositary and the denunciation of the following conventions has been communicated to the depositary:

- International Convention on Civil Liability for Oil Pollution Damage, 1969
Estonia: Accession on 1st December 1992
Kenya: Accession on 15th December 1992
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
Estonia: Accession on 1st December 1992
Kenya: Accession on 15th December 1992
Korea, Republic of: Accession on 8th December 1992
Morocco: Accession on 31st December 1992
- Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1971
Korea, Republic of: Accession on 8th December 1992
- Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1984
Morocco: Accession on 31st December 1992
- Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1976
Morocco: Accession on 31st December 1992
- Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984
Morocco: Accession on 31st December 1992