

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

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COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

NEWS FROM THE CMI

Meeting of the Executive Council

A meeting of the Executive Council of the CMI was held in Copenhagen on Saturday, 3rd April 1993. Amongst the matters considered during such meeting there were the following:

1. CMI Conference in Sydney 1994

- a. The President of the CMI attended a meeting of the MLA of Australia and New Zealand. On that occasion he discussed matters relating to the organization of the Conference in 1994 with the Organizing Committee. In his report to the Executive Council, the President said that the preparations are far advanced and that the venue of the Conference is well selected.

- b. The Executive Council agreed on the following programme for the Sydney Conference:

- i) York Antwerp Rules
- ii) Draft Convention on Offshore Mobile Craft
- iii) Assessment of Pollution Damage

In case of item (i) the Draft of a revised version of the York-Antwerp Rules which was drafted by an International Subcommittee will be submitted to the Conference for discussion and adoption.

An International Subcommittee is reviewing the Rio Draft on Offshore Mobile Craft (item ii). The Subcommittee has finished its work and it is expected that a revised Draft will be prepared by the end of the year. The new Draft will be put on the agenda of the Sydney Conference for final discussion and adoption. According to an agreement with IMO the final draft will be submitted to the Legal Committee of that Organization.

In the light of the results of the Seminar and Colloquium on Pollution in Genoa in September 1992 the Executive Council has decided to continue the work on

Reunion du Comité Exécutif

Une réunion du Comité exécutif du CMI s'est tenue Copenhague le Samedi 3 Avril 1993. Parmi les sujets évoqués lors de cette réunion, figuraient les suivants:

1. Conférence du CMI à Sydney 1994

- a. Le Président du CMI a assisté à une réunion de la Association du Droit Maritime d'Australie et de Nouvelle Zélande. A cette occasion, il a été débattu avec le Comité Organisateur des sujets relatifs à l'organisation de la Conférence de 1994. Dans son compte rendu au Comité Exécutif, le Président déclara que les travaux préparatoires de la Conférence se trouvaient bien avancés et que le lieu de la Conférence était bien choisi.

- b. Pour la Conférence de Sydney, le Comité Exécutif est tombé d'accord sur le programme suivant:

- i) Les Règles de York et d'Anvers
- ii) Le Projet de Convention sur les Unités Mobiles Offshore
- iii) Une estimation des dommages causés par la pollution

En ce qui concerne le point (i), le projet d'une version révisée des Règles de York et d'Anvers qui avait été rédigé par une Sous-Commission Internationale, sera soumis à la Conférence pour discussion et adoption.

Une Sous-Commission Internationale procède au réexamen du projet de Rio sur les Unités Mobiles pour les opérations Offshore (point ii). La Sous-Commission a terminé son travail et l'on s'attend d'ici la fin de l'année à ce qu'un projet "Révisé" voit le jour. La nouvelle version du projet sera inscrite à l'ordre du jour de la Conférence de Sydney pour y être finalement débattue et adoptée.

Conformément à un accord passé avec l'OMI, la version définitive du projet sera soumise au Comité Juridique de cette Organisation.

A la lueur des résultats du Séminaire et Colloque sur la

environmental law. The Council has now agreed that the Working Group and the International Subcommittee on Pollution should prepare a document on Assessment of Pollution Damage that can be considered by the Sydney Conference. According to a proposal of the Working Group on Pollution, the document should deal with certain items of the assessment of damage (economic loss, non-user-value of the environment) but should also include problems and proposals of the future development of the liability system.

- c. At the meeting in September 1993 the Executive Council will decide on the other possible subjects for the Sydney Conference (e.g. Maritime Agents).
- d. The Council agreed further on a supporting programme which should frame the formal meetings and events of the Sydney Conference. The programme should consist of the following items:
 - i) Lectures on insurance law
 - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?
 - Marine Insurance: Express Warranties; what should the penalties be for breach?
 - ii) Interim report by the Working Group on Third Party Liability.

2. Work in progress

The Executive Council considered under this item the subjects which are not on the agenda of the Sydney Conference.

a. Voyage Charterparty Laytime Interpretation Rules

The joint Working Group of BIMCO, CMI, FONASBA and INTERCARGO has finished its work and adopted a final draft. The Council decided to submit the draft to the Maritime Law Associations and to ask for their comments and opinions.

A decision on the position of the CMI should be taken at the meeting of the Assembly in September 1993.

b. Maritime Agents

An International Sub-Committee was set up and Prof. Francesco Berlingieri is the chairman. The first meeting will take place in June in Paris and should discuss whether it is feasible to work on the project and make recommendations to the Council.

c. Jurisdiction in Collision Cases

The CMI had recommended to the Legal Committee of IMO to put the Rio Draft of CMI on Jurisdiction in Collision Cases on the agenda of the short-term work programme. Due to the heavy work schedule this was not possible. The Executive Council decided not to pursue the subject for the time being.

d. Identification of State of Ship's Registry in case of Bareboat Chartered Ships Temporarily registered in the Register of Bareboat Charterers

pollution qui s'est tenu à Gênes au mois de Septembre 1992, le Comité Exécutif a décidé de poursuivre les travaux sur le droit de l'environnement.

Le Comité a donné son accord pour que soit préparé conjointement par le Groupe de travail et la Sous-Commission internationale chargée de la pollution, un document relatif à l'estimation des dommages causés par la pollution, qui pourrait être examiné lors de la Conférence de Sydney.

Selon la proposition du Groupe de travail chargé des questions de pollution, le document devrait traiter de certains éléments sur l'estimation des dommages (pertes économiques et atteintes à l'environnement) mais qui devrait également inclure les problèmes et les propositions du futur développement du procédé de responsabilité.

- c. A la Réunion du mois de Septembre 1993, le Comité Exécutif décidera des autres sujets susceptibles d'être débattus à la Conférence de Sydney (par ex : Les Agents Maritimes).
- d. De plus, le Comité s'est mis d'accord à l'appui d'un programme qui servirait de structure aux Réunions officielles ainsi qu'aux événements de la Conférence de Sydney. Le programme comprendrait les points suivants:
 - i) Cours sur le droit des Assurances
 - Assurance Maritime: la doctrine "uberrimae fidei" de l'extrême bonne foi, est-elle périmée?
 - Assurance Maritime: Quelles devraient être les sanctions applicables en cas de violation de garanties formelles.
 - ii) Un rapport intérimaire par le Groupe de travail sur la responsabilité des tiers.

2. Travail en cours

Le Comité Exécutif a évoqué, sous ce titre, les points qui ne figurent pas à l'ordre du jour de la Conférence de Sydney.

a. Règles d'interprétation du temps de planche dans la Charte-Partie au voyage

Le Groupe de travail commun comprenant: BIMCO, CMI, FONASBA ET INTERCARGO a achevé son travail et adopté une version définitive. Le Comité a décidé de soumettre le document aux Associations de Droit Maritime et demander leurs commentaires et leurs opinions.

Une décision quant à la position du CMI devrait intervenir lors de la Réunion de l'Assemblée de Septembre 1993.

b. Les Agents Maritimes

Une Sous-Commission Internationale a été mise en place, dont le Professeur Francesco Berlingieri est le Président. La première réunion se tiendra à Paris, au mois de Juin pour débattre si il est concevable de travailler sur le projet et de formuler des recommandations au Comité.

c. Jurisdiction dans les cas d'abordage

Le CMI avait recommandé au Comité Juridique de l'OMI d'inscrire à l'ordre du jour du programme de travail à court terme, le projet de Rio du CMI sur la Jurisdiction dans les cas d'abordage. Cela n'a pas été possible compte tenu d'un emploi du temps surchargé. Le Comité Exécutif a décidé de ne pas poursuivre ce sujet pour l'instant.

maritime Law Associations. However, due to a request from the Legal Committee of IMO, a first paper which should summarize the material available will be prepared for the September meeting of the Legal Committee of IMO.

3. Meetings of other International Organizations

The Council received reports from CMI representatives who attended meetings of other International Organizations:

- 68th Session of the Legal Committee of IMO (Dr. Norbert Trotz)
- The International Fund Conference on the Revision of the 1969 Civil Liability Convention and 1971 Fund Convention, London, November 1992 (Prof. Edgar Gold)
- UNIDROIT (Prof. Rolf Herber)

4. Nomination Committee Elected

In accordance with the Constitution, the Nomination Committee for the elections 1994 was elected. Members are:

Mr. Nicholas Healy (USA)
Mr. J. Niall McGovern (Ireland)
Mr. Jean Warot (France)

Ex officio Members:

President Professor Allan Philip
Immediate Past President Professor Francesco Berlingieri

5. EC Committee

The Council agreed to set up a special body which could follow the work of the European Community in the field of maritime law. The Council will discuss at its next meeting the organization and the terms of reference of such a body.

6. Membership

The Council discussed the application for membership of the MLA of South Africa and Slovenia. It was agreed to submit both applications to the meeting of the Assembly.

7. Next meeting

It was confirmed that the next meeting of the Assembly will take place on 25th September 1993.

Francesco Berlingieri O.B.E.

It was with the very greatest pleasure that I was invited by Professor Francesco Berlingieri to attend, on January 27th 1993, the presentation to him of the Most Excellent Order of the British Empire. The presentation was made by The Lord Chancellor, Lord MacKay. He read the following citation:

You have achieved great distinction in the field of maritime law over many years. This has been widely recognised in the appointments which you have held

navires dans le cas des navires affrétés coque nue inscrits temporairement au Registre des Affrêteurs "Coque-Nue".

Quelques réponses seulement ont été reçues des Associations de Droit Maritime. Cependant à la demande du Comité Juridique de l'OMI, un document qui est censé contenir l'ensemble des informations disponibles sur ce sujet, est en préparation pour la Réunion du Comité Juridique de l'OMI du mois de Septembre.

3. Réunions des Autres Organisations Internationales

Le Comité a reçu les Comptes-Rendus des Représentants du CMI qui ont pris part aux réunions des autres Organisations Internationales:

- 68ème session du Comité Juridique de l'IMO (Dr Norbert Trotz)
- Conférence de 1992 sur la révision des conventions sur la Responsabilité civile de 1969 et sur le Fond d'indemnisation de 1971 (Professeur Edgar Gold)
- UNIDROIT (Prof Rolf Herber)

4. Election de la Commission de Nomination

Conformément à la Constitution, les Membres de la Commission de Nomination pour les élections de 1994 ont été élus:

Mr. Nicholas Healy (USA)
Mr. J. Niall McGovern (Ireland)
Mr. Jean Warot (France)

Membres Ex. Officio: Professeur Allan Philip, Président
Professeur Francesco Berlingieri, Ancien Président.

5. Commission chargée des questions ayant trait à la Communauté Européenne

Le Comité s'est mis d'accord pour mettre en place un Organisme particulier qui serait à même de suivre le travail effectué par la Communauté Européenne, dans le cadre du Droit Maritime. Le Comité à la prochaine réunion discutera de l'organisation et des termes de référence d'un tel Organisme.

6. Membres

Le Comité a discuté de la candidature des Association de Droit Maritime d'Afrique du Sud et de Slovanie. Il a été convenu de soumettre les deux candidatures à la réunion de l'Assemblée.

7. Prochaine réunion

Il a été confirmé que la prochaine réunion de l'Assemblée aura lieu le 25 septembre 1993.

Francesco Berlingieri O.B.E.

C'est avec le plus grand plaisir que j'ai été invité par le Professeur Francesco Berlingieri à assister, le 27 janvier 1993, à la cérémonie où lui a été remis le Most Excellent Order of the British Empire. La cérémonie a été présidée par le Lord Chancelier, Lord MacKay. Celui-ci a lu la citation suivante:

Vous avez acquis, tout au long de nombreuses années, une grande distinction dans le domaine du droit maritime. Cela a été largement reconnu par toutes

in both national and international organizations connected with maritime law.

Your association for example with the Comité Maritime International dates back to the 1950s and you served as President for five successive terms from 1976.

Your contribution to maritime law has been recognized by other countries.

In 1977 you were elected an Honorary Member of the United States Maritime Law Association, in 1981 you were elected an Honorary Member of the Canadian Bar Association, and in 1984 you were made an Honorary Proctor in Admiralty by the Maritime Law Association of the United States.

Your association with this country is no less distinguished. You were elected a Member of the Commercial Court Users' Committee in 1977 and your service on that body has been greatly valued. It is in recognition of the valuable service rendered to British Maritime legal interests, Professor Francesco Berlingieri, that Her Majesty The Queen has appointed you to be an honorary officer of the Most Excellent Order of the British Empire. It is with great pleasure that, on her Majesty's behalf, I present you with the Badge of the Order. May I congratulate you and offer you my best wishes for continued success.

All members of the Comité Maritime International offer to our President ad Honorem our warmest congratulations.

W.R.A. Birch Reynardson

Revision of the Draft Convention on Off-shore Mobile Craft

The Draft Convention adopted at the CMI Rio Conference in 1977 is again on the CMI Agenda. The IMO Legal Committee which has it under review, has asked the CMI to consider whether, in light of off-shore developments in the ensuing 15 years, there are reasons for modifications of — or supplements to — the Draft Convention.

An International Sub Committee has been established by the CMI Executive Council to consider the matter. The topic of the Draft Convention on Offshore Mobile Craft will also be one to be discussed at the forthcoming CMI Conference in Sidney in October 1994.

The International Sub Committee has met twice, in Brussels in December 1992 and in Copenhagen in April 1993. Its deliberations have been based on Answers to Questionnaires submitted by 11 Member Associations and introductory working papers prepared by the Committee Chairman. The following tentative conclusions have been reached by the Sub Committee:

1. Having regard to the fact that the larger part of the life of an Off-shore Craft is spent working on location on a Continental Shelf and that only a limited time is spent moving between locations, some CMI Members have considered that a comprehensive legal regime should be established for all operation activities of such craft. The Sub Committee has felt that a recommendation should be made for the CMI to undertake work also on the drilling and production mode for the craft, but it will be both time consuming

les responsabilités que vous avez exercées dans les organisations tant nationales qu'internationales liées au droit maritime.

Par exemple, votre association au Comité Maritime International remonte aux années 1950, et vous avez servi comme Président pour cinq mandats successifs à partir de 1976.

Votre contribution au droit maritime a été reconnue par d'autres pays.

En 1977, vous avez été élu membre honoraire de l'United States Maritime Law Association, en 1981, vous avez été élu membre honoraire de la Canadian Bar Association, et en 1984 le titre de Honorary Proctor in Admiralty (Jurisconsulte d'Amirauté) vous a été décerné par l'Association de Droit Maritime des Etats Unis.

Votre association avec ce pays n'est pas moins distinguée. Vous avez été élu membre du Commercial Court User's Committee en 1977 et votre service dans cet organisme a été grandement apprécié.

C'est en reconnaissance des services appréciables rendus aux intérêts juridiques maritimes britanniques, Professeur Francesco Berlingieri, que Sa Majesté La Reine vous a élevé au grade de Membre Honoraire du Most Excellent Order of the British Empire. C'est avec un grand plaisir que, au nom de Sa Majesté, je vous remets l'insigne de l'Ordre. Puis-je vous féliciter et vous dire mes vœux les meilleurs pour la continuation de votre succès.

Tous les membres du Comité Maritime International offrent à notre Président d'honneur nos plus chaleureuses félicitations.

W.R.A. Birch Reynardson

Révision du projet de Convention concernant les engins mobiles offshore.

Le projet de convention adopté à la Conférence du CMI de RIO en 1977 est à nouveau sur l'agenda du CMI. Le Comité Juridique de l'OMI, qui a mis ce projet à l'étude, a demandé au CMI de s'interroger sur le point de savoir si, à la lumière des développements intervenus dans l'offshore durant les quinze dernières années, il ne convenait pas de modifier, ou de compléter le projet de convention.

Un Sous-Comité international a été mis en place par le Conseil exécutif du CMI pour étudier la question. Le projet de Convention concernant les engins mobiles offshore sera aussi l'un des sujets qui seront discutés à la prochaine Conférence de Sydney en Octobre 1994. Le Sous-Comité international s'est réuni deux fois, à Bruxelles en décembre 1992 et à Copenhague en avril 1993. Ses délibérations ont été basées sur les réponses fournies par onze associations membres et sur les documents de travail introductifs préparés par le président du Comité. Les conclusions provisoires suivantes ont été adaptées par le Sous-Comité.

1. Eu égard au fait que la plus grande partie de la vie d'un engin offshore se passe à un poste de travail déterminé sur une plate-forme continentale et que ce n'est qu'un temps limité qui est dépensé en déplacements entre différents postes, quelques uns des membres du CMI ont considéré qu'un régime juridique exhaustif devait être établi pour l'ensemble des activités d'un tel engin. Le Sous-Comité a pensé qu'une recommandation devait être faite au CMI

and entail so extensive preparations that it is neither feasible nor practical to include it in the Committee's ongoing work on the existing Draft Convention. The Sub Committee therefore proposes that it limits its work to consideration of the present Draft as a first step and that the Sidney Conference should debate the development of a second step to be undertaken by the CMI in extending a convention to cover drilling and ancillary activities while stationary on location.

2. The International Sub Committee has concluded that the Rio Draft Convention should remain the basis for consideration of a final convention by the IMO Legal Committee.
3. Some Member Associations have suggested that jack-up units should not be covered by the Draft Convention in as much as they appear not to be covered by the 1989 Salvage Convention, which in Art. 1 (b) has the following definition:
"Vessel mean any ship or craft, or any structure capable of navigation"
It has been maintained that a jack-up unit is not self-propulsed and thus not capable of navigation. However, the Sub Committee concluded that there is compelling reason to treat differently semisubmersible units and jack-up units and resolved to retain the inclusion of the jack-ups in the Convention.
4. The 1989 Salvage Convention in Art. 3 expressly excludes the application of the convention to off shore mobile craft while working on location. The reason is that these craft are so technologically complex, specialised and hazardous while in a drilling mode that non specialised salvors should not be encouraged to engage in salvage operations in such circumstances. The Committee felt that when that position has been taken in one IMO Convention the same position should be maintained in other IMO conventions and thus the reference to the 1989 Salvage Convention should be included in Art. 3 of the Draft Convention on Off-shore Mobile Craft.
5. The Sub Committee concluded that the 1910 Collision Convention should apply to off shore mobile craft also when engaged in drilling activities on location, thereby being applicable also in case of striking in as much as craft for such purpose are identified as "vessels".
6. It was decided to limit liability for oil pollution to oil escaping from craft and not from a subsea oil reservoir and to those instances of oil escape only as covered by the 1969 Oil Pollution Convention with subsequent Protocols.
7. The Sub Committee decided not to recommend the inclusion of provisions on wreck removal in the Draft Convention. If the IMO Members would feel the desirability to have uniform international rules on wreck removal, they should apply to vessels as well as to mobile off-shore craft and had better be made a subject of a separate convention.

pour entreprendre une étude sur les activités de forage et de production de ce type d'engin, mais la chose entraînerait à la fois une grande dépense de temps et des travaux si étendus qu'il n'est ni faisable ni pratique de l'inclure dans le présent travail prévu pour le Comité quant au projet existant de convention internationale. Le Sous-Comité propose donc de limiter son travail dans un premier temps à l'étude du présent projet, la Conférence de Sydney devant discuter du développement dans un second temps de l'extension d'une convention à la couverture des opérations de forage et opérations accessoires effectuées par un engin stationnant à un poste de travail.

2. Le Sous-Comité international a conclu que le projet de convention de Rio devait demeurer la base à prendre en considération par le Comité Juridique de l'OMI pour une convention définitive.
3. Certaines Associations membres ont suggéré que les unités élévatrices (jack-up units) ne devraient pas être couvertes par le projet de convention dans la mesure où elles ne semblent pas couvertes par la Convention de 1989 sur l'assistance, laquelle dans son article 1 (b) donne la définition suivante:
"navire signifie tout bâtiment de mer, bateau ou engin, ou toute structure capable de naviguer".
Il a été observé qu'une unité élévatrice n'est pas auto-propulsée et dès lors n'est pas capable de naviguer. Toutefois, le Sous-Comité a conclu qu'il y a des raisons contraignantes pour traiter différemment les unités semi-submersibles et les unités élévatrices ; il a été décidé de retenir l'inclusion des unités élévatrices dans la Convention.
4. La Convention de 1989 sur l'assistance exclut expressément dans son article 3 son application aux engins mobiles offshore en travail à leur poste. La raison en est que ces engins sont si complexes d'un point de vue technologique, si spécialisés et si dangereux lorsqu'ils sont utilisés en forage que des assistants non spécialisés ne doivent pas être encouragés à s'engager dans des opérations d'assistance dans de telles circonstances. Le Comité a pensé que, lorsqu'une position a été adoptée dans une convention de l'OMI, la même position doit être maintenue dans les autres conventions de l'OMI et qu'ainsi la référence à la Convention de 1989 sur l'assistance doit être incluse dans le projet de convention sur les engins mobiles offshore.
5. Le Sous-Comité a conclu que la Convention de 1910 sur l'abordage doit aussi s'appliquer aux engins mobiles offshore quand ils sont engagés dans des activités de forage sur un poste, étant ainsi applicable aussi en cas de collision, dans la mesure où un engin est, de ce point de vue, considéré comme un "navire".
6. Il a été décidé de limiter la responsabilité pour pollution par hydrocarbures aux hydrocarbures s'échappant de l'engin, et non à ceux s'échappant d'un réservoir immergé, et seulement aux situations de fuite d'hydrocarbures couvertes par la Convention de 1969 sur la pollution et les Protocoles l'ayant modifiée.
7. Le Sous-Comité a décidé de ne pas recommander l'insertion de dispositions sur le relèvement des épaves dans le projet de convention. Si les membres

8. On the issue of Limitation of Liability the majority of the Sub Committee Members wanted the limitation to be based on the tonnage criterion rather than on a monetary value criterion. However, it was felt that the gross tonnage of a craft should be multiplied by a coefficient so as to get a ratio between tonnage and value more in line with what is the case in respect of ships.
9. The Sub Committee considered that Art. 6 of the Draft Convention covering Rights in Craft should include a reference also to the 1986 Convention on Registration of Ships and Art. 10 should include a reference to the new convention on Mortgages and Maritime Liens which is expected to be adopted in May 1993.

Fröde Ringdal

Revision of Charterparty Laytime Definitions 1980

In 1991 the four organizations originally sponsoring the Charterparty Laytime Definitions 1980, i.e. CMI, BIMCO, The General Council of British Shipping (now Chamber of Shipping) and FONASBA, agreed to establish a Joint Working Group to consider a revision of the Definitions with a view to trying to ensure a broader support and use of the Definitions and thereby, hopefully, assist in reducing the scope of disputes on interpretation of commonly used laytime expressions in voyage charterparties as was, indeed, also the overall aim when publishing the Definitions in 1980.

The Joint Working Group in which CMI is represented by Mr. Michael Summerskill, later assisted by Mr. K.J. Gombrii, has had altogether eight meetings and had been supplemented by a Representative of Intercargo (International Organization of Dry Cargo Shipowners) who had expressed an interest in actively participating in the work and eventually to sponsor the new Definitions.

In revising/up-dating the Definitions, the Joint Working Group has been conscious of the need to seek simplification whenever possible and, at the same time, also to ensure that developments in law which have taken place since the original Definitions were drafted in 1980 be duly reflected.

In recognition of the difficulties in drawing a clear line between "Definitions" and "Rules" already existing under the 1980 Definitions, the Joint Working Group has decided to recommend a change of the title so as to read "Voyage Charterparty Laytime Interpretation Rules 1993", Code Name: "VOYLAYRULES 93".

The Joint Working Group also recognised the importance of ensuring the broadest possible support in the use of the new "VOYLAYRULES" and will recommend that the Rules should appear as a self-standing document to which the commercial parties may resort for voluntary incorporation in charterparties. Moreover, an appeal to organizations engaged in the formulation of charterparties, notably BIMCO, to have the "VOYLAYRULES 93" incorporated by reference in new charterparties or when revising existing

de l'OMI estiment désirable qu'il existe des règles internationales uniformes sur le relèvement des épaves, celles-ci doivent s'appliquer aux navires aussi bien qu'aux engins mobiles offshore, et il est préférable d'en faire le sujet d'une convention séparée.

8. S'agissant du problème de la limitation de responsabilité, la majorité des membres du Sous-Comité souhaite que la limitation soit basée sur un critère de tonnage plutôt que sur un critère de valeur financière. Toutefois, il a été estimé que le tonnage d'un engin devrait être multiplié par un coefficient propre à obtenir un ratio entre tonnage et valeur plus proche de ce qui est le cas pour les navires.
9. Le Sous-Comité a considéré que l'article 6 du projet couvrant les droits sur les engins devrait aussi inclure une référence à la Convention de 1986 sur l'immatriculation des navires et que l'article 10 devrait inclure une référence à la nouvelle convention sur les hypothèques et privilèges maritimes qui devrait être adoptée en mai 1993.

Fröde Ringdal

Revision des définitions 1980

sur le temps de Planche dans les Chartes-Parties

En 1991 les quatre organisations patronnant à l'origine l'établissement des Définitions 1980 sur le temps de planche dans les Chartes-Parties, c'est-à-dire le CMI, la BIMCO, le Conseil général du British Shipping (maintenant Chambre of Shipping) et la FONASBA se mirent d'accord pour établir un Groupe de Travail Commun afin d'envisager une révision des Définitions dans le but d'essayer d'obtenir un soutien et un usage plus larges des Définitions et par là, si possible, d'aider à la réduction du champ des litiges sur l'interprétation des expressions utilisées habituellement pour le temps de planche dans les Chartes-Parties au voyage, ce qui était, en réalité, aussi le but d'ensemble quand les Définitions furent publiées en 1980.

Le Groupe de Travail commun, dans lequel le C.M.I. est représenté par M. Michael Summerskill, ensuite assisté de M. K.J. Gombrii a tenu en tout huit réunions et a été augmenté d'un représentant d'Intercargo (Organisation Internationale des Armateurs de Navires pour cargaisons sèches) qui a manifesté son intérêt à participer activement au travail et à patronner éventuellement les nouvelles Définitions. En procédant à la révision/mise à jour des Définitions, le Groupe de Travail Commun a été conscient de la nécessité de chercher la simplification partout où ce serait possible, et de s'assurer en même temps que les développements législatifs qu'on suivit l'élaboration des Définitions 1980 soient dûment pris en compte.

Reconnaissant la difficulté de tracer une ligne précise entre "Définitions" et "Règles" telles qu'elles existaient dans les Définitions 1980, le Groupe de Travail Commun a décidé de recommander un changement de titre qui se lisait "Règles 1993 pour l'interprétation des Clauses de Temps dans les Chartes-Parties au voyage" Nom de code: "VOYLAYRULES 1993".

Le Groupe de Travail Commun reconnaît aussi l'importance d'assurer le plus large soutien à l'usage des nouvelles "VOYLAYRULES" et recommandera que les Règles apparaissent comme un document auto-suffisant auquel les parties commerciales puissent avoir recours

charterparties should be made. As a novelty, the Joint Working Group will also recommend the incorporation of the "VOYLAYRULES 93" by reference in Sales Contracts; in this respect, the co-operation of organizations or associations representing charterers' interests should be invited.

Furthermore, in order to ensure a better understanding of the Rules, the Joint Working Group believes that the educational aspect is also very important, for which purpose the Joint Working Group may also wish to propose the preparation of a booklet or brochure in the English, French, German and Spanish languages for educational and promotional purposes.

Last, but not least, the Joint Working Group will recommend that great effort should be made to promote the Rules by way of lobbying, presentations at Seminars and Conferences as well as in the shipping press.

At the recent meeting held in London, the Joint Working Group succeeded in completing its drafting work and the final recommendations of the Joint Working Group with the title suggested above will now go forward to the various sponsoring organisations for approval, in the first place the Documentary Committee of BIMCO, which will convene in Singapore on 31st May 1993.

Jorgen Hojer

pour les incorporer volontairement dans les Chartes-Parties. Qui plus est, un appel devrait être lancé aux organisations qui sont impliquées dans la formation des Chartes-Parties, notamment la BIMCO afin qu'elles incorporent les "VOYLAYRULES 1993" en s'y référant dans les nouvelles Chartes-Parties ou lors des révisions des Chartes-Parties existantes. Comme nouveauté, le Groupe de Travail Commun recommandera également l'incorporation des "VOYLAYRULES 93" par référence dans les contrats de vente; dans ce but, la coopération des organisations ou associations représentant les intérêts des chargeurs devrait être sollicitée. En outre, pour assurer une meilleure compréhension des Règles, le Groupe de Travail Commun pense que l'aspect éducatif est aussi très important, et dans ce but, il pourrait aussi proposer la préparation d'un livret ou d'une brochure dans les langues Anglaise, Française, Allemande et Espagnole dans un but à la fois d'éducation et de promotion. Enfin, mais ce n'est pas le moins important, le Groupe de Travail Commun recommandera un grand effort de promotion par voie de "lobbying", présentation à des conférences et des séminaires, ainsi que par la presse maritime. A la récente réunion tenue à Londres, le Groupe de Travail Commun a réussi à terminer le travail de rédaction et ses recommandations finales, ainsi que le titre suggéré ci-dessus vont maintenant être présentées aux différentes organisations "Sponsors" pour approbation, d'abord au conseil des Documents de la BIMCO qui se réunit à Singapour le 31 Mai 1993.

Jorgen Hojer

News from National Associations Nouvelles des Associations Nationales

1. Brazil

The officers of the Brazilian Maritime Law Association elected for the term 1993-1995 are the following:

Les membres du bureau de l'Association de Droit Maritime Brésilienne élus pour la période 1993-1995 sont les suivants:

President:	Professor <i>Pedro Calmon Filho</i>
General Secretary:	Mr. <i>Jos Spangenberg Chaves</i>
Vice-Presidents:	Mr. <i>Alvaro Martinho Paes da Silva</i>
	Mr. <i>Gilson Fernandes Tavares</i>
	Judge <i>Maria Cristina de Oliveira Padilha</i>

2. France

The new officers of the Association Française du Droit Maritime elected at the General Assembly of 1st April 1993 are the following:

Les nouveaux membres du Comité Directeur de l'Association Française du Droit Maritime élus à l'Assemblée Générale du 1er Avril 1993 sont les suivants:

Président:	<i>Pierre Bonassies</i> , Professeur à la faculté de droit et de science politique d'Aix
President	Marseille
Président honoraires:	<i>Jean Warot</i> , Avocat à la Cour
Honorary Presidents:	<i>Pierre Latron</i> , Président de la Chambre Arbitrale Maritime de Paris
	<i>Claude Boquin</i> , Administrateur S.A. Louis-Dreyfus and Cie
Vice-Présidents:	<i>Françoise Moussu-Odier</i> , Directeur du service juridique
Vice-Présidents:	Comité Central des Armateurs de France
	<i>Pierre Emo</i> , Avocat
Secrétaire Général:	<i>Philippe Boisson</i> , Conseiller juridique Bureau Veritas
Secretary General	

Secrétaires généraux adjoints *Jean-Claude Bulber*, Vice-Président honoraire
 Deputy Secretaries General Conseil des chargeurs maritimes français
Pierre Dardelet, Président honoraire, Chambre syndicale des courtiers
 d'affrètement et de vente de navires

Trésorier: *Jean-Serge Robart*, Avocat la Cour
 Treasurer:

Membres: *Jacques Roy*, Directeur juridique La Réunion Européenne
 Members: *Thomas Duhamel*, Service juridique ELF Aquitaine
Geneviève Mattei Dawance, Avocat au Conseil
Patrice Rembauville-Nicollé, Avocat à la Cour
Pascale Allaire-Bourguin, Direction Juridique CAMAT
Yves Poupard, Direction juridique CGM
Jean-Philippe Block, Administrateur en chef des Affaires Maritimes
Xavier Nicot, Conseiller à la Cour de Cassation
Paule Bourion-Noirel, Direction juridique CNN Group WORMS
Yves Tassel, Professeur à la faculté de droit de Nantes
Sylvain Dumortier, Courtier d'Assurances
Claude Fouchard, Direction Affaires juridiques et Assurances Usinor/Sacilor
Pierre Lefebvre, Expert Maritime

Siège de l'Association: 47 rue de Monceau
 Address of the Association: 75008 Paris, France

Secrétariat de l'Association: Bureau Veritas
 Secretariat of the Association: 17 bis Place des Reflets
 Cedex 44
 92077 Paris-La Défense

News from Intergovernmental and International Organizations

IMO

The 68th Session of the Legal Committee — 15th to 19th March 1993

Draft of the HNS Convention

The reading of the first part of the Draft (first tier — liability of the shipowner) revealed that only relatively minor differences exist between the delegations in respect of this part.

In contrast to the agreement which prevails in respect of the first part of the Draft the second part (second tier — contribution of the cargo) is still controversial. One major problem which was discussed at this meeting is the type of list of hazardous substances which should be used for the convention. A number of delegations (Australia, Mexico, Italy, Indonesia, Brazil) favours a "free-standing" list, others support the application of existing lists (IMGD-Code, MARPOL).

The discussion on the so-called sector-factor (risk factor of a particular group of substances) has led to proposals that the fund which should collect the contributions of the cargo and pay compensation to victims should be divided into several "accounts" according to the sector factors of the contributing cargo. Several delegations are opposed to cross subsidisation between the various "accounts" (Japan has proposed the introduction of at least four different accounts). As a consequence of such a system there would be no "solidarity" among the different groups of cargo.

These and other problems could not be solved at the meeting, on the contrary, the controversy in respect of the main issues became even stronger. The Legal Committee decided, therefore, to suspend the discussion on the second tier and to refer the controversial issues to the Group of Technical Experts which should meet simultaneously with the Legal Committee. The Legal Committee itself will in the meantime (beginning with September 1993) discuss the revision of the Limitation Convention 1976. It has not yet been decided whether this revision should be restricted to the increase of the limitation amounts or whether it should be extended to other items. It is apparently the hope of some governments that increased limitation figures could offer an interim solution for HNS liability by making higher cover available in case of HNS damage.

In any event, the decision taken in respect of HNS means that the Draft Convention is put on ice until agreement is reached between the industries involved on the second tier. The view prevails now that a Conference on HNS cannot take place before the biennium 1996/1997.

Work Programme for the 1994 — 1995 Biennium

The Legal Committee agreed to include in its programme for the 1994-1995 biennium the following subjects:

- (a) work on the HNS convention (priority subject);
- (b) possible revision of the 1976 LLMC Convention (priority subject);
- (c) consideration of a draft convention on off-shore mobile craft;
- (d) work on the subject of arrest of ships, in the light of the results of the diplomatic conference on maritime liens and mortgages, scheduled for April-May 1993.
- (e) possible convention on wreck removal and related issues; and
- (f) draft convention on civil jurisdiction, choice of law, recognition and enforcement of judgments in matters of collision at sea, subject to interested delegations advancing the work on this subject through the submission of appropriate documents and recommendations.

Long-term Work Plan

The Legal Committee decided to retain in its long-term work plan for the period beyond 1994-1995 biennium the following subjects:

- (a) consideration of the legal status of novel types of craft, such as air-cushion vehicles operating in the marine environment;
- (b) a possible convention on the regime of vessels in foreign ports; and
- (c) possible revision of maritime law conventions in the light of proven need and subject to the directives in resolution A.500 (XII).

Slovenia joins IMO

Slovenia has become a member of the IMO. An instrument of acceptance of the IMO Convention by Slovenia was deposited in the U.N. in New York on 10th February 1993. Slovenia has thus become the 137th member of the International Maritime Organization.

X Current Concerns in Maritime Safety

At the end of 1992 the Secretary-General of IMO, Mr. William A. O'Neil, invited representatives of the non-governmental organizations (NGOs) in consultative status with IMO and representing various sectors of the maritime industry to meet informally for a 'round table' discussion of the broad subject of maritime safety and to consider whether there is a need for more co-ordination among the parties.

The meeting was held at IMO Headquarters in London on the morning of 19th January 1993. Present were the IMO Secretary-General and the Directors of the four major IMO Divisions (Marine Safety, Marine Environment, Legal/External and Technical Co-operation). In addition to the CMI, representatives were present from BIMCO (Baltic and International Maritime Conference), INTERTANKO (International Association of Independent Tanker Owners), IGP&I (International Group of Protection & Indemnity Clubs), ILU (Institute of London Underwriters), IUMI (International Union of Marine Insurance), ICS (International Chamber of Shipping), ISF (International Shipping Federation), ICC (International Chamber of Commerce), INTERCARGO (International Association of Dry Cargo Shipowners) and IACS (International Association of Classification Societies). At the request of the President of the CMI, Prof. Philip, Dr. Frank Wiswall attended the meeting on behalf of the CMI. The following are his general impressions gained from the meeting.

Particularly in the aftermath of the *Braer* incident — which occurred after this meeting was scheduled — IMO has been criticized by the media and some politicians for acting too slowly in being "ineffective" in preventing such casualties; however, it is the member governments of IMO themselves and not the Secretariat which decide what controls should be imposed and how forcefully IMO should act. IMO has in fact established a new Subcommittee of the Maritime Safety Committee on Flag State Enforcement of IMO Convention Requirements. This Subcommittee will monitor the capacity and performance by flag States of IMO standards, and those Administrations whose performance falls notably short of the mark will be publicly identified. In reality this is a major advance in enforcement for an organization which little more than a decade ago was "consultative" in name. The *Braer* case has also demonstrated once again how one vital interest, the owners of cargo, appears to distance itself from the other sectors of the industry over the issue of maritime safety, particularly following a casualty. Rather than joining with the rest of the industry in taking active measures to promote safety, the cargo interests appear to limit their concern to the cheapest possible rates for carriage while sharing none of the responsibility for a safe voyage.

An unpleasant truth of the present day is that there exists an active market for substandard ships, substandard managers and operators, substandard shipping administrations and substandard classification societies. There seems to be a consensus that the root of the most urgent maritime safety problems in the availability of cheap-rate substandard ships and the willingness of charterers to use them regardless of the consequences. It has become absolutely necessary to link higher safety standards to increased freight rates. The insurance sector has also acknowledged that overcapacity in the insurance market had resulted in little premium differentiation between good and bad operators. To the extent that insurers were now incurring substantial losses, there may be greater more scrutiny of the quality of insured operations.

A particular concern of the CMI has been the effect on maritime safety of the increasing exposure to liability and other issues concerning the ship classification societies. The CMI is organizing a study of these issues and possible solutions, which are largely a matter of private law within the particular competence of the Comité. IMO is also working together with IACS on the "quality audit" scheme for classification societies.

The problem of weakening IMO standards by the unilateral action of regions or States without regard to IMO standards was discussed, with the U.S. enactment of OPA-90 and the U.K. adoption of new requirements for all ro-ro ferries calling at U.K. ports cited as examples of the latter. There was general agreement that one of the greatest maritime safety problems at present is the lack of uniformity of law — as a matter of prime concern to the CMI for nearly a century.

One problem which must be urgently addressed is the human element, which is responsible for 90% of shipping casualties. Some current studies show that there will be a shortage of 50,000 qualified officers by the year 2000, and something must be done to assist the nautical training institutions in the developing countries supplying most seafarers. A system of validation of existing training courses in these countries is desperately needed; some current STCW certificates are of questionable value in terms of the real qualifications of the holders. The need for better training in basic and operational spoken English was becoming critical, as multinational crews are now the rule rather than the exception. IMO plans a thorough revision of the STCW Convention by 1997, with periodic renewal of certificates tied to upgrading of competence, including simulator training.

On the issue of flag State vs. port State control, the consensus seems to be that port State control is highly motivated, is increasing in geographical scope and efficiency, and is necessary for the present at least in order to monitor the effectiveness of flag State administrations as well as to directly weed out substandard ships. Mandatory position reporting by merchant ships and tracking by coastal installations appears now to be an inevitable development, and the case for it seems proven in the experience of the aviation industry.

It is generally conceded that open vessel registries (flags of convenience) are a permanent feature of the industry, and that while relative economic advantage in taxation and crew costs was acceptable, greater efforts must be turned toward ensuring that a lower level of safety enforcement is not an inducement to register under a particular flag. Port State control and the new IMO Subcommittee on Flag State Enforcement will be the principal tools for this job.

"Grandfather" clauses in the safety and pollution conventions are now seen to be a significant problem. The 1990 and 1991 SOLAS amendments had begun the process of restricting grandfather clauses, but the likelihood remains that in the twilight years of permitted operation below current standard, these ships may be sold to substandard owners. There is evidence of this in the practice of reputable companies running down their ships and selling them to less reputable operators just prior to special survey rather than sending them to scrap. Yet on one argument, the principle of the grandfather clause needs to be supported in order to secure investment in new construction.

There will continue for some years to be an oversupply of old tonnage, and the only practical and acceptable answer to the problem posed by these ships seems to be to find means of moving the market towards higher rates for newer ships. To realign market forces in the direction of higher rates for better-maintained, better-operated and better-crewed ships will require the close cooperation of all segments of the industry, in informal consultation with IMO. The NGOs representing various sectors, being in consultative status, receive continuously updated information in IMO's activities, but IMO would need to be kept apprised of safety-directed activities by the NGOs. Despite the best intentions, regulation by IMO is a lengthy process and ultimately depends upon enforcement by governments; if realigned toward safety as an economic benefit, the force of the market would have almost instantaneous effect. This cannot happen, however, if the NGOs represented at the IMO 'round table' either refrain from acting or continue to act without coordination.

Frank J. Wiswall, Jr.

UNIDROIT

First Meeting (March 8-10, 1993) of the Study Group for the Preparation of Uniform Rules on Certain International Aspects of Security Interests in Mobile Equipment

The Study Group had, at its first meeting, a general discussion on the whole range of problems with which the intended international Convention would be faced.

There was agreement that the Convention should only deal with contractual security interests, but had to take into account legal charges on the equipment in order to give rules on the respective priority.

There was agreement that the Convention should create rights in rem of its own. The relation to liens under national law, however, remained unclear. It needs further discussion.

The conditions of creation of the new right in rem under the Convention were not settled. Whereas civil lawyers demanded the entry into a register as a condition for creation, the common law representatives were more inclined to make only the invocability of the right against third parties dependent on registry. For the same reason of differences in the main legal systems the Study Group did not settle the borderline to the right in rem governed by the Convention and the law applicable to the obligations which are secured by this international right, but for themselves left to national law.

The common law representatives were mostly of the view that the right in rem under the Convention should come into existence only if the goods charged actually cross a borderline between contracting States. This idea was opposed by civil lawyers who felt that there should be a definition of certain types of equipment which, by nature, is likely to move internationally.

Ships — at least registered ships — are likely to be excluded in the light of the discussions that took place during the meeting.

The negotiations will be continued next year (probably again in Spring).

Dr. Rolf Herber

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 for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels 25th August 1924.

Greece: Accession on 23rd March 1993

- Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed at Brussels 25th August 1924, Brussels 23rd February 1968 — Visby Rules

Greece: Accession on 23rd March 1993.

Japan: Ratification on 1st March 1993.

- Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 25th August 1924 as amended by the Protocol of 23rd February 1968, Brussels, 21st December 1979.

Greece: Accession on 23rd March 1993.

- Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974:

Malawi: Accession on 9th March 1993.

- Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974, done in London 19th November 1976.

Spain: Accession on 24th February 1993.

- Convention on Limitation of Liability for Maritime Claims, 1976:
Croatia: Accession on 2nd March 1993.
- International Convention on Salvage, 1989
Switzerland: Ratification on 12th March 1993.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 2 - 1993

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

News From the CMI

Maritime Agents

On 9th June 1993 the first meeting of the International Sub-Committee on Maritime Agents was held in Paris under the chairmanship of Professor Francesco Berlingieri. Mr. Jes Anker Mikkelsen was appointed as Rapporteur. During the meeting replies received from a number of National Associations to the Questionnaire prepared by the Chairman were examined and, on that basis, the more relevant issues relating to maritime agents were considered. These issues were the following: the activities performed by maritime agents; the question whether there is freedom of exercise of such activities; the question whether maritime agents are required to register; the duties and liabilities of maritime agents towards their principals and their liability towards third parties; the tariffs applicable, if any; the termination of the agency agreement; indemnity payable to maritime agents in case of termination and the question whether maritime agents may be sued in the name of their principals or service of proceedings may be effected to them.

The next meeting of the International Sub-Committee will be held in Paris on 3rd December 1993. A more detailed summary of the meeting will be published in the CMI Yearbook.

Nouvelles du CMI

Agents Maritimes

Le 9 juin a eu lieu à Paris la première réunion de la Sous-Commission Internationale sur les Agents Maritimes sous la présidence du Professor Francesco Berlingieri. M. Jes Anker Mikkelsen a été nommé rapporteur. Dans le cours de la réunion les réponses des Associations nationales au Questionnaire préparé par le Président ont été examinées et les questions les plus importantes relatives aux agents maritime ont été considérées. Ces questions étaient les suivantes: activités des agents maritimes; liberté d'exercice de ces activités; nécessité d'enregistrement des agents maritimes; obligations et responsabilité des agents envers leurs mandants; leur responsabilité envers les tiers; tarif applicables; résiliation du contrat et indemnité due aux agents maritimes dans le cas de résiliation; validité de l'assignation de l'armateur notifiée à l'agent.

La prochaine réunion de la Sous-Commission Internationale aura lieu à Paris le 3 décembre 1993. Un rapport plus détaillé sur la réunion du 9 juin paraîtra dans l'Annuaire du CMI.

NEWS FROM NATIONAL ASSOCIATIONS

Australia and New Zealand

The annual Conference of the Maritime Law Association of Australia and New Zealand will be held in Melbourne, Victoria from 6th to 11th November 1993.

Canada

Two new important acts have come into force on May 6, 1993, the Carriage of Goods by Water Act and the Marine Insurance Act.

The Carriage of Goods by Water Act is implementing immediately the Hague Rules as amended by the 1968 and the 1979 Protocols. It also provides that the Hamburg Rules, which are annexed to the Act as Annex 2, will come into force on a day to be fixed by order

NOUVELLES DES ASSOCIATIONS NATIONALES

Australie et Nouvelle Zelande

La Conférence annuelle de l'Association de Droite Maritime de l'Australie et Nouvelle Zelande se tiendra à Melbourne, Victoria du 6 au 11 novembre 1993.

Canada

Deux lois de grande importance sont entrées en vigueur le 6 Mai 1993, la loi sur le transport de marchandises par eau et la loi sur l'assurance maritime.

La loi sur le transport de marchandises par eau, S.C. 1993 Chap. 21, met immédiatement en vigueur les Règles de La Haye telles qu'amendées par les Protocoles de 1968 et de 1979. Elle prévoit aussi que les Règles de Hambourg, qui sont annexées à la loi comme Annexe II,

of the Governmental Counsel made on the recommendations by the Ministry of Transport. To this effect the Ministry of Transport, pursuant to Section 4 of the Act, shall, on or before December 31, 1999 and thereafter every five years, consider whether the Hague Visby Rules should be replaced by the Hamburg Rules. The Marine Insurance Act, S.C. 1993, Chap. 22, is based on all matters of substance on the British Marine Insurance Act 1906.

Venezuela

An International Conference on "The New Trends of Maritime Law facing the XXI Century" will be held in Puerto La Cruz in Venezuela from 13th to 16th October 1993. The Conference is organized by the Venezuelan Maritime Law Association jointly with the Faculty of Law of the University "Andres Bello" and the School of High Standards of the Venezuelan Merchant Marine.

entrent en vigueur sur recommandation du Ministre des Transports à la date fixée par décret du Gouvernement en conseil. A ce but, suivant l'article 4 de la loi, le Ministre des Transports doit, au plus tard le 31 décembre 1999, et par la suite à tous les cinq ans, examiner la possibilité de remplacer le Règles de la Haye-Visby par celles de Hambourg.

La loi sur l'assurance maritime, S.C. 1993 Chap. 22, est fondée pour toutes les questions de fond sur la Marine Insurance Act, 1906 anglais.

Venezuela

Une conférence internationale sur "The New Trends of Maritime Law Facing the XXI Century" se tiendra à Puerto La Cruz en Venezuela du 13 au 16 Octobre 1993. La conférence est organisée par l'Association du droit maritime du Venezuela, la Faculté de droit de l'Université "Andres Bello" et l'Ecole Supérieure de la Marine Marchande du Venezuela.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

News from IMO and UNCTAD

International Convention on Maritime Liens and Mortgages, 1993

Francesco Berlingieri

After the approval by the CMI Conference held in Lisbon in 1985 of a draft revision of the 1967 Brussels Convention on Maritime Liens and Mortgages (hereinafter called the "Lisbon Draft") and the submission of the draft to IMO and UNCTAD, who both had the review of the 1967 Convention on their work programme, these two Organizations decided to set up a joint working group. The mandate given to this group, called Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Matters (hereinafter called the "JIGE") was the following:

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

- (a) the review of the maritime liens and mortgages convention and related enforcement procedures, such as arrest;
- (b) the preparation of model laws or guidelines on maritime liens, mortgages and related enforcement procedures, such as arrest;
- (c) the feasibility of an international registry of maritime liens and mortgages."

After some initial discussion as to the manner in which the study of liens and mortgages should be undertaken, the JIGE decided by a large majority to commence its work with a detailed consideration of the existing regime, in particular, of the 1926 and 1967 Conventions and the Lisbon Draft (Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on its first session — Document TD/B/C.4/AC.8/4 of 23rd December 1986). The JIGE, who acted under the very able and competent chairmanship of Mr. George Ivanov, held a total of six sessions and at its last session which was held in September 1989, completed the final reading of the draft provisions and decided that the draft convention was sufficiently developed for submission to a Diplomatic Conference for adoption.

Here follows the text of the new Convention, accompanied by a brief analysis of the most relevant provisions.

Article 1

Recognition and enforcement of mortgages, "hypothèques" and charges.

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

- (a) *such mortgages, "hypothèques" and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;*

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

In the opening sentence the words (effected on seagoing vessels) "by their owners to secure payment of monies" that have been used in the Lisbon Draft with a view to ensuring that the other charges had the same nature and purpose of mortgages and "hypothèques" have been deleted by the JIGE. Such words had been adopted when the description of the charges was "similar registrable charges". After the replacement of such description with "charges of the same nature", they have become superfluous and, therefore, their deletion was correct. The text was left unaltered by the Conference.

Since it had been established that the requirement in article 1(c) of the 1967 Brussels Convention whereby the amount secured be mentioned in the register or in the instrument referred to in subparagraph (b) had been one of the reasons why the Convention had not been ratified by several States, at the Lisbon Conference of the CMI it was decided to delete it. During the sessions of the JIGE, strong objections were raised against such deletion on the ground that in certain jurisdictions the indication of the amount secured was a compulsory requisite.

The reference to the maximum amount secured was, therefore, reinstated by the JIGE, thus becoming a condition for the recognition in States Parties of mortgages, "hypothèques" or charges of the same nature in two different situations, viz:

- (i) if it is a requirement of the national law of the State of registration, or,
- (ii) if it is specified in the instrument creating the security.

The text was left unchanged by the Conference. The reference to the first situation was actually unnecessary, for under (a) it is already provided that the mortgages, "hypothèques" and charges must be effected and registered in accordance with the law of the State of registration. However, it does not have any negative effect. The reference to the second situation seems redundant. In fact, the condition in sub-paragraph (c) is that certain information must be specified *either* in the register *or* in the instruments referred to in sub-paragraph (b). With respect to such situation, sub-paragraph (c) would, therefore, require that the instrument creating the security must mention the maximum amount secured ... when it actually does so. But again, it has no negative effect.

Article 2

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

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

The text of the 1967 Convention has been left unaltered.

Article 3

Change of ownership or registration

This article regulates the change of registration of a vessel with the primary view to protecting the holders of "hypothèques", mortgages and charges. Paragraph 1 considers the deletion of a vessel from the register in which she is registered, whilst paragraph 2 regulates the subsequent reregistration of the vessel in the new register.

1. *With the exception of the cases provided for in articles 11 and 12, in all other cases that entail the deregistration of the vessel from the register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all registered mortgages, "hypothèques" or charges are previously deleted or the written consent of all holders of such mortgages, "hypothèques" or charges is obtained. However, where the deregistration of the vessel is obligatory in accordance with the law of a State Party, otherwise than as a result of a voluntary sale, the holders of registered mortgages, "hypothèques" or charges shall be notified of the pending deregistration in order to enable such holders*

to take appropriate action to protect their interest; unless the holders consent, the deregistration shall not be implemented earlier than after a lapse of a reasonable period of time which shall not be less than three months after the relevant notification to such holders.

In the 1967 Convention, Article 3 paragraph 1 provides that, subject to article 11, in which the forced sale is dealt with, deregistration shall not be permitted without the written consent of all holders of registered mortgages and "hypothèques". At the Lisbon Conference it was felt more appropriate to establish in an affirmative manner the scope of application of this rule and, therefore, reference was made to the case of voluntary change of ownership or registration, as opposed to that of forced sale regulated by article 11.

During the sessions of the JIGE, it was pointed out that the voluntary change of ownership or registration is relevant, for the purposes of this provision, only if it entailed the deregistration of the vessel and, therefore, an express reference to such situation was inserted.

Several comments were made on this rule.

The CMI pointed out that there are situations where the voluntary change of ownership may entail the deregistration of the vessel due to a requirement of the State of which the vessel has the nationality, rather than following a decision of the owner and that, therefore, the words "shall not permit the owner to deregister the vessel" did not cover all situations.

The Italian Delegation stated that deregistration is not necessarily the consequence of the voluntary sale of the vessel, but may take place on account of the owner lacking the nationality requirement prescribed by the law and, therefore, suggested to make reference to "cases that entail deregistration of the vessel".

The Delegations of Australia, Germany and Greece submitted a joint proposal with a view to specifically regulating the situation where the deregistration is obligatory under the law of the State of registration, pointing out that in such case it is not possible to make deregistration conditional to the consent of all holders of mortgages, "hypothèques" and charges, and that the solution is to give them sufficient advance notice in order to enable them to protect their interest.

This latter proposal was accepted and a new sentence was added to paragraph 1.

2. Without prejudice to article 12, paragraph 5, a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:

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

It has been pointed out that the scope of this paragraph goes beyond the purpose of the protection of holders of mortgages, "hypothèques" and charges, for it applies whether or not there are any registered charges and that, therefore, this provision is in conflict with that of article 11, paragraph 4 of the U.N. Convention on Conditions for Registration of Ships, 1986. Paragraph 2 was, however, left unaltered and the decision was very wise. In fact, whilst the potential conflict could exist even if paragraph 2 were limited to cases in which there are registered charges, the provision of the 1986 Convention, whose entry into force is uncertain, is not satisfactory, for it makes registration conditional to the previous deletion of the former registration, whilst in order to avoid the risk that a vessel may for some time remain unregistered, it was proper to consider, as has been done in the 1967 Convention and now in the new Convention, the alternative of an undertaking to deregister the vessel upon her registration in the new register.

As regards the text of the 1967 Convention, at the CMI Lisbon Conference it was thought that the wording used ("the vessel will be deregistered on the day when such new registration is effected") created some problems, since it may be difficult to ensure that deregistration and new registration take place on the same day. The words "on the day" were thus replaced by "when".

The difficulty of ensuring that deregistration and new registration take place simultaneously was appreciated by the JIGE, but it was felt that it was of prominent importance that the deregistration and the new registration have the same date. The text suggested by the JIGE, and approved by the Conference, consists of two parts. The first sets out the content of the certificate and, therewith, the obligation of the former State of registration to deregister the vessel, with immediate effect, at the time when the new registration is effected. The second sets out the obligation to carry out such registration on the date of deregistration.

Since the new registration takes place on the basis of the certificate issued by the former State, and at such time the deregistration has not yet taken place, in order that the date of such registration is the date of deregistration, the competent authorities of the two States must correspond between themselves. This is provided in Article 15.

Article 4

Maritime Liens.

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

The chapeau, suggested by the CMI at the Lisbon Conference, incorporates one of the characteristics of the maritime liens, formerly set out, in the 1967 Convention, in article 7.

Article 7 of the 1967 Convention in fact provided in its paragraph 1 that maritime liens arise "whether the claims secured by such liens are against the owner or against the demise or other charterer, manager or operator of the vessel". During the preparatory work of the CMI Lisbon Conference, it was pointed out by the British Association that consideration should be given to the deletion of the words "or other" before "charterer", explaining that it would thereby be possible to bring the Convention in line with the draft of a new Arrest Convention. Such suggestion was adopted by the Lisbon Conference and at the same time the principle laid down in article 7 paragraph 1, as amended, was moved to the chapeau of article 4.

As a consequence of the suppression of the reference to charterers other than the demise charterer claims against the time charterer are not secured by a maritime lien on the vessel. Amongst the claims that may arise against the time charterer there are those in respect of port, canal and other waterway dues and pilotage dues as well as those in respect of loss of life or of personal injury to passengers, when the carrier is the time charterer. The reason given for the restriction of the maritime liens to claims against the bareboat charterer, viz. to bring the Maritime Liens and Mortgages Convention in line with the Arrest Convention, is not persuasive. In fact, there remains a difference between the two Conventions — on the assumption that the Arrest Convention will be amended as suggested by the CMI Lisbon Conference — for under the Maritime Liens and Mortgages Convention also claims against the manager or operator are secured by a maritime lien. Moreover, the maritime claims are by far greater in number than the claims secured by maritime liens.

The reference to the operator of the vessel (in the French text the word used is "exploitant") may have been intended to cover situations where the operation of the vessel is undertaken on the basis of a legal relationship between the owner and a person other than a demise charterer. The more relevant example is that of a lease agreement.

It is instead more difficult to conceive cases of claims against the manager of a vessel, since the manager acts on behalf of his principal, the owner (or operator) and, therefore, the claims are not against him, but against his principal.

The individual claims secured by maritime liens will now be considered.

- (a) *Claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf.*

In the 1967 Convention the wording of this maritime lien was the following:

wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel.

When this wording was considered by the CMI International Sub-Committee prior to the Lisbon Conference, the question was raised whether social insurance contributions were included or not. Since different views were expressed, it was deemed convenient to insert an express reference to them. The extent to which social insurance contributions ought to be secured by a maritime lien was also discussed. It was agreed that the purpose of securing such claims should not be that of affording a better protection to social insurance institutions, but that, and only that, of protecting the interest of the vessel's complement, in case that part of the contribution due by it, and normally withheld by the owner when the salary is paid, is not paid by the owner to the social insurance institutions who, therefore, may have a claim against the members of the vessel's complement.

In order to restrict the maritime lien to that situation only, the words "including social insurance contributions payable on their behalf" were suggested and adopted by the International Sub-Committee and then by the CMI Lisbon Conference. This wording was also accepted by the JIGE and then by the Diplomatic Conference. The question was raised during the sessions of the JIGE whether the words "wages and other sums" were wide enough to cover the costs of repatriation and since doubts were expressed in this respect it was decided to insert a specific reference to such costs. Whilst the specific reference to a type of cost might in theory limit the scope of the general reference to "other sums", the advantage of such reference is to encourage third parties to pay the cost of repatriation on behalf of the vessel's complement.

The reason why reference is made to the vessel's complement rather than to the crew is that there may be employed on board persons, such as hotel personnel on a cruise ship, who may not be considered as members of the crew in a strict sense.

- (b) *Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel.*

The wording is the same as that of the 1967 Convention. The ranking instead differs. Whilst in fact in the 1967 Convention claims for port, canal and other waterway dues and pilotage dues were second in order of priority after claims for wages, the CMI Lisbon Conference decided to move them to the bottom of the list and, therefore, claims in respect of loss of life and personal injury were upgraded. The decision of the Lisbon Conference was accepted by the JIGE and adopted by the Diplomatic Conference.

- (c) *Claims for reward for the salvage of the vessel.*

In the 1967 Convention a maritime lien was granted in respect of claims for salvage, wreck removal and contribution in general average. At the CMI Lisbon Conference it was decided to keep the wording unaltered, but to upgrade these claims so that they should follow the claims in respect of loss of life and personal injury. In the report of the Chairman of the CMI International Sub-Committee the following reasons were given for the maintenance of a maritime lien in respect of claims for wreck removal and contribution in general average (Lisboa I, p. 72):

The lien for salvage and general average, besides such services being useful also for the holder of a mortgage or "hypothèque", contributes to the safety of the ship in danger for it encourages salvors to render salvage services and also encourages general average sacrifice or expenditure. Although this is not the case in respect of the lien for the cost of wreck removal, there seem to be two good reasons for granting this lien, viz. that it inures also to the benefit of the holder of a mortgage or "hypothèque" and that if it were not provided, a right of retention would anyhow be granted in many countries and such right would be exercisable to the detriment of the holders of maritime liens.

In the JIGE the view instead prevailed that there was no sufficient justification for granting a lien in respect of claims for wreck removal and contribution in general average and, therefore, reference to these claims was deleted in the Draft Articles submitted to the Conference.

Whilst no objection was raised during the Diplomatic Conference in this respect save a reference to wreck removal in article 12, the problem was considered as to whether the maritime lien for salvage ought to include the special contribution mentioned in Article 14 of the 1989 Salvage Convention. The Conference decided that it should not be included and that it was necessary to use a wording such as to avoid any doubt that only a claim for the salvage of the vessel is secured by a maritime lien. Two suggestions were made, one to insert an express reference to the vessel; the other, to use the words "salvage reward", that in the 1989 Salvage Convention are used in article 13, in respect of the remuneration due for the salvage of the vessel. The final decision was to adopt both.

- (d) *Claims for port, canal, and other waterway dues and pilotage dues.*

This is the wording of the 1967 Convention, which was left unchanged by the Lisbon Conference and by the JIGE, and was finally adopted by the Diplomatic Conference.

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

In order to restrict property claims to claims not based on contract, it was felt necessary to specify that property claims are secured by a maritime lien if they are based on tort and are not capable of being based on contract. The link with the operation of the ship was ensured by stating that the claims secured by a maritime lien are those occurring, whether on land or on water, in direct connection with the operation of the vessel, using, therefore, the same wording used in respect of claims for loss of life or personal injury. The CMI Lisbon Conference thought that the wording used was too wide, since it also covered economic losses, whilst the words "not capable of being based on contract" would not wholly exclude claims in respect of loss of or damage to cargo carried on the vessel. The new wording adopted by the CMI at Lisbon was, therefore, the following:

Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.
This wording was accepted by the JIGE and was finally adopted by the Diplomatic Conference.

2. No maritime lien shall attach to a vessel to secure claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from:

- (a) *damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or*

- (b) *the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.*

Article 4 paragraph 2 of the 1967 Convention mentioned only nuclear fuel and radioactive products or waste. At the CMI Lisbon Conference, it was decided to also exclude claims in respect of pollution damage. This suggestion was accepted by the JIGE but in lieu of a general reference to oil pollution, it was deemed advisable to specifically mention the 1969 Civil Liability Convention. The observation made by the CMI that there was some inconsistency between a general reference to damage caused by nuclear fuel and radioactive products or waste and a specific reference to oil pollution damage for which compensation is payable under the 1969 CLC was accepted by the Diplomatic Conference and the reference to the 1969 CLC was deleted.

Article 5

Priority of maritime liens.

1. *The maritime liens set out in article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges which comply with the requirements of article 1, except as provided in paragraphs 3 and 4 of article 12.*

This provision originates from the 1967 Convention in which reference was made to article 6 paragraph 2 in which rights of retention were regulated. The text was left unchanged by the Lisbon Conference and by the JIGE. However, during the sixth session of the JIGE, the Chairman, in the light of the discussions of the Sessional Group, had suggested to regulate the relationship between holders of rights of retention and holders of maritime liens, mortgages, "hypothèques" and charges in article 11 (now article 12), by adding in such article a new paragraph and by deleting the first sentence of article 6 bis of the Draft Articles wherein the enforcement of rights of retention was regulated.

In view of the acceptance by the Diplomatic Conference of the proposal of the Chairman, the reference in article 5 paragraph 1 to article 6 bis (corresponding to article 6 paragraph 2 of the 1967 Convention) was replaced by a reference to article 12 (corresponding to article 11 of the 1967 Convention) paragraph 4, wherein the provision suggested by the Chairman was placed.

But once the rule governing the relationship between holders of rights of retention and holders of maritime liens, mortgages, "hypothèques" and charges was moved to the provision regulating the forced sale, there was no need to refer to such rule in article 5, for the provisions on forced sale override those relating to the priority of maritime liens, mortgages, "hypothèques" and charges. If this were not so, in article 5 paragraph 1 reference ought to also have been made to paragraph 2 of article 12 whereby other costs shall take precedence over maritime liens, mortgages, "hypothèques" and charges.

The same remark applies to the reference in article 5 paragraph 1 to costs for wreck removal. In fact, such costs, deleted from article 4, have been inserted by the Diplomatic Conference in article 12 amongst the claims payable prior to the distribution of the proceeds of sale amongst the holders of maritime liens, mortgages, hypothèques and charges if States Parties so provide in their domestic law

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

Paragraph 2 of article 5 of the 1967 Convention has been amended only by deleting the reference to claims for wreck removal and contribution in general average.

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

This provision has remained unchanged.

4. *The maritime liens securing claims for reward for the salvage of the vessel shall rank in the inverse order of the time when the claim secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.*

This provision has been modified, as respects the corresponding provision of the 1967 Convention, only by deleting the reference to claims for contribution in general average.

Article 6

Other maritime liens.

Each State Party may under its law grant other maritime liens on a vessel to secure claims, other than those referred to in article 4, against the owner, demise charterer, manager or operator of the vessel, provided that such liens:

- (a) *shall be subject to the provisions of articles 8, 10 and 12.*
(b) *shall be extinguished*

- (i) after a period of 6 months, from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or
- (ii) at the end of a period of 60 days following a sale to a bona fide purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale;

whichever period expires first; and

- (c) *shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1.*

Article 6 of the 1967 Convention only provides that States Parties "may grant liens and rights of retention to secure claims other than those referred to in article 4". It does not specify whether States may grant other maritime liens or only liens not having the characteristics of maritime liens. This problem was debated by the JIGE and different views were expressed.

The CMI expressed the view that it would be preferable to clarify this problem by expressly providing that States Parties may grant maritime liens, for this would have the advantage of submitting national maritime liens to the provisions of the Convention and would constitute a great incentive to ratification.

During the Diplomatic Conference this problem was debated in great depth. Whilst the views of the CMI were, in principle, accepted, objections were made to national maritime liens having the "droit de suite", for this would adversely affect the possibility of purchasing second hand vessels. When the U.S. Delegation, who had supported the express reference in article 6 to maritime liens, indicated that it might consider a shorter extinction period in case of voluntary sale to a bona fide purchaser for value, the observer for the CMI suggested that a short (thirty days were indicated) extinction period be provided in such case, running from the date of registration of the sale. The Norwegian Delegation in turn stated that in addition a general shorter extinction period should be provided for national maritime liens.

These proposals and suggestions were combined by the Chairman and the text proposed by him was accepted by the Conference.

Article 7

Rights of retention.

1. *Each State Party may grant under its law a right of retention in respect of a vessel in the possession of either:*
 - a. *a shipbuilder, to secure claims for the building of the vessel; or*
 - b. *a shiprepairer, to secure claims for repair, including reconstruction of the vessel, effected during such possession.*
2. *Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or shiprepairer, otherwise than in consequence of an arrest or seizure.*

As previously stated, in order to try to overcome the objections raised by several members of the JIGE to a provision regulating rights of retention, on the ground that their legal nature differed from that of maritime liens, the Chairman of the JIGE had suggested to move the sentence regulating the relationship between rights of retention and maritime liens, mortgages, "hypothèques" and charges to the article regulating the effects of forced sale.

The second sentence of paragraph 2 of article 6 bis of the Draft Articles, corresponding to paragraph 2 of article 6 of the Lisbon Draft, was, therefore, deleted and in the first sentence an exception was made to the general rule that rights of retention are extinguished when the possession of the vessel is lost, in case such loss follows the arrest or seizure of the vessel.

Article 8

Characteristics of Maritime Liens

Subject to the provisions of article 12, the maritime liens follow the vessel, notwithstanding any change of ownership or of registration or of flag.

The JIGE had deemed it convenient to insert a reference to the provision on the effects of forced sale, in order to make clear that the "droit de suite" ceased to exist in case of forced sale and this reference was maintained in the text adopted by the Diplomatic Conference.

Article 9

Extinction of maritime liens by lapse of time

1. *The maritime liens set out in article 4 shall be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale.*

The corresponding provision of the 1967 Convention mentioned only the arrest of the vessel. The reference to the case of seizure was added at the Lisbon Conference since the arrest, according to the definition in article 1 paragraph 2 of the 1952 Arrest Convention, is merely a security measure and does not include "the seizure of a ship in execution or satisfaction of a judgment". Such addition was accepted by the JIGE and now by the Diplomatic Conference.

The time when the extinction period commences to run, that in the 1967 Convention and in the Lisbon Draft was specified in this paragraph, has been moved to paragraph 2.

2. *The one-year period referred to in paragraph 1 shall commence:*

- (a) *with respect to the maritime lien set out in article 4, paragraph 1(a), upon the claimant's discharge from the vessel;*
- (b) *with respect to the maritime liens set out in article 4, paragraph 1(b) to (e), when the claims secured thereby arise;*

and shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the arrest or seizure of the vessel is not permitted by law.

A special rule has been adopted for claims for wages with respect to the time when the extinction period commences to run since it has been felt inappropriate that the time should commence to run when the crew is still on board the vessel.

The original paragraph 2 of the 1967 Convention has been modified as suggested by the Lisbon Conference, the words "legally prevented" having been replaced by "permitted by law". In the draft submitted to the 1965 New York Conference of the CMI, it was provided that the time does not run when the claimant is legally prevented to arrest the vessel "owing to it having been requisitioned or to the owner being bankrupt or being in compulsory liquidation". These words were deleted because it was felt that they would unduly restrict the cases in which the claimant may be legally prevented to arrest the vessel. The words "legally prevented" were changed by the CMI Conference at Lisbon to "not permitted by law" in order to cover situations such as that where a vessel already under arrest may not be arrested again by another claimant.

Article 10

Assignment and subrogation

1. *The assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien.*

The text of the 1967 Convention has been left unaltered.

2. *Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the vessel under an insurance contract.*

This paragraph is new. It has been added in order to protect the enforceability of the loss payable clause that holders of mortgages, "hypothèques" and charges usually insert in the mortgage covenants, by excluding the right of subrogation of the lienors to the insurance indemnity. A similar provision already existed in the 1926 Convention (article 4).

Article 11

Notice of forced sale

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

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

This paragraph corresponds to the text of article 10 of the 1967 Convention except that the notice period and the contents of the notice, regulated in greater detail, have been moved to a new paragraph 2 and the registered owner of the vessel has been added to the list of persons to whom the notice of the time and place of the forced sale must be given.

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

- a. the time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or,
- b. if the time and place of the forced sale cannot be determined with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.

If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known, but, in any event, not less than seven days prior to the forced sale.

The 1967 Convention provided for a minimum 30-day notice of the time and place of the forced sale. During the Sessional Group it was objected that it may not always be possible to state the precise date of the sale and an alternative was suggested to the requirement of the notice of the time and place of the sale. This paragraph was worded as follows:

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

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

Objections were raised against leaving to States Parties so wide a discretion and it was suggested to add a minimum seven-day advance notice of the actual time and place of the sale.

3. The notice specified in paragraph 2 of this article shall be in writing and either given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.

This paragraph was added by the JIGE in order to establish minimum requirements as to the manner in which the notice must be given. In the text drawn up by the JIGE it was provided that if the notice is given by post, it must be given by receipted post. During the Diplomatic Conference it was pointed out that the receipt may never be returned to the sender and that, therefore, the validity of the notice would depend on the diligence of the post office of the place of destination of the notice. It was agreed that whilst the notice given by electronic or other means must be such as to provide confirmation of receipt, it is sufficient that the notice given by mail be given by registered mail, which provides evidence that the notice has actually been delivered to the post office for mailing.

Article 12

Effects of forced sale

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

- a. at the time of the sale, the vessel is in the area of the jurisdiction of such State; and
- b. the sale has been effected in accordance with the law of the said State and the provisions of article 11 and this article.

Two minor changes have been made in the text of the first sentence of article 11 paragraph 1 of the 1967 Convention. First, the words "in the jurisdiction" have been replaced by "in the area of the jurisdiction". Secondly, the reference to the provisions of the Convention generally has been replaced by a reference to articles 11 and 12. The second sentence reading:

No charterparty or contract for the use of the vessel shall be deemed a lien or encumbrance for the purpose of this article

which was added at the Diplomatic Conference in 1967 on the proposal of the United States Delegation, an that had already been deleted by the Lisbon Conference, was not reinstated. The general understanding was that the validity of contracts for the use of the vessel vis-à-vis the purchaser must be established in accordance with the applicable national law.

2. *The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include inter alia the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1(a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants, the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.*

It has been deemed convenient to specify that the costs and expenses arising out of the arrest or seizure include certain costs and expenses incurred during the period of arrest or seizure, and more specifically the costs for the upkeep of the vessel and the crew and the wages and other sums mentioned in article 4 paragraph 1(a). To the rule on the distribution of the proceeds of sale among the claimants there has been added a probably superfluous provision whereby the residue of the proceeds, upon satisfaction of all claimants, must be paid to the owner and must be freely transferable. It may be worth mentioning that a general rule on the free transferability of the proceeds is set out in paragraph 6 of article 12.

3. *A State Party may provide in its law that, in the event of the forced sale of a stranded or sunken vessel, following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of sale, before all other claims secured by a maritime lien on the vessel.*

Following the deletion of the claims for costs of wreck removal from the list of maritime liens, the Delegation of the Netherlands made a proposal to the effect that such costs, in case the removal is made by a government, be paid out of the proceeds of the forced sale before the distribution among the claimants. It stated that a similar provision had been inserted in article 12 of Protocol No. 1 to the 1965 Convention on Registration of Inland Vessels.

The Conference agreed to permit States Parties to provide in their laws that in the event of the forced sale of a stranded or sunken vessel following its removal by a public authority, the relative costs be paid first out of the proceeds, but limited such possibility to a removal in the interest of safe navigation or the protection of the marine environment. Although nothing is said as respects the order of payment of such costs and of those mentioned in the preceding paragraph 2, the fact that it is provided in this paragraph that the costs of removal are paid "before all other claims secured by a maritime lien on the vessel" indicates that the costs mentioned in paragraph 2 must in all cases be paid first.

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

As mentioned under article 7, the addition of this new paragraph had been suggested by the chairman of the JIGE in the place of the first sentence of paragraph 2 of the then article 6 bis.

It was in fact more proper to regulate the powers of holders of rights of retention in the article on the effects of forced sale, for the primary purpose of the provision was that of providing that the right of retention of shipbuilders and shiprepairers should not be an obstacle to the forced sale, at the same time safeguarding the interest of shipbuilders and shiprepairers in the distribution of the proceeds of sale.

5. *When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1(a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.*

The Diplomatic Conference adopted the text of the Lisbon Draft.

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

The Diplomatic Conference adopted the text proposed by the JIGE.

Article 13

Scope of application

1. *Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party, provided that the latter's vessels are subject to the jurisdiction of the State Party.*

This provision, that already existed in the 1967 Convention, was essential in order to ensure as greater a uniformity as possible.

The objection raised by certain Delegations that an international convention can only bind States Parties was not in point, for this provision, once enacted in the domestic laws of States Parties, acquires the nature of a national rule which States Parties are free to adopt.

For the avoidance of doubt, it has been added that the provisions of the Convention apply in respect of vessels registered in a State which is not a State Party if they are subject to the jurisdiction of a State Party.

2. *Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned or operated by a State and used only on Government non-commercial service.*

This provision, albeit with a slightly different wording, existed in the 1967 Convention.

Article 14

Communication between States Parties

For the purpose of articles 3, 11 and 12, the competent authorities of the States Parties shall be authorized to correspond directly between themselves.

Also this provision already existed in the 1967 Convention.

Article 15

Conflict of conventions

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

This provision was inserted in the Lisbon Draft in view of the fact that under the 1957 and the 1976 Limitation Conventions the limitation fund is distributed in proportion to the respective claims with no regard to priorities.

Article 16

Temporary change of flag

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

- a. *For the purposes of this article, references in this Convention to the "State in which the vessel is registered" or to the "State of registration" shall be deemed to be references to the State in which the vessel was registered immediately prior to the change of flag, and references to "the authority in charge of the register" shall be deemed to be references to the authority in charge of the register in that State.*
- b. *The law of the State of registration shall be determinative for the purpose of recognition of registered mortgages, "hypothèques" and charges.*
- c. *The State of registration shall require a cross-reference entry in its register specifying the State whose flag the vessel is permitted to fly temporarily; likewise, the State whose flag the vessel is permitted to fly temporarily shall require that the authority in charge of the vessel's record specifies by a cross-reference in the record the State of registration.*
- d. *No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless all registered mortgages, "hypothèques", or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, "hypothèques" or charges has been obtained.*
- e. *The notice referred to in article 11 shall be given also to the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily.*

- f. Upon production of the certificate of deregistration referred to in article 12, paragraph 5, the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily shall, at the request of the purchaser, issue a certificate to the effect that the right to fly the flag of that State is revoked.
- g. Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to fly temporarily their flag or national vessels to fly temporarily a foreign flag.

This Article, which was drafted in the course of the fourth session of the JIGE, has been made necessary by the increasing number of States that allow the temporary suspension of the flag for vessels registered in their registers when they are bareboat chartered to a foreign charterer and are permitted to fly the flag of the charterer's State and conversely, allow foreign vessels bareboat chartered by nationals to fly temporarily the flag of such State. It was considered whether it would be proper to insert an additional provision covering this situation in all the relevant articles of the Convention, but it was decided that it would be by far preferable to deal with all the effects of the temporary change of flag in one article only, in order to allow the complete application of all other provisions to the normal situation of vessels flying the flag of the State of registration. Here follows a short analysis of the various provisions of this article.

- (a) It is necessary to clarify to which State and which registrar the provisions of the Convention apply in case of temporary suspension of the flag. There does not seem to be any doubt that such State and such registrar must be those of the permanent registration.
- (b) This choice of law rule was also necessary, for registerable charges continue to be registered in the permanent register.
- (c) Doubts have been expressed as to the use of the word "register" in relation to the book where the vessel is temporarily recorded, for the reason that that might imply that dual registration is permitted. This concern was understandable and the word "record" instead of "register" was adopted.
- (d) In this paragraph two alternatives are considered, viz:
 - (i) satisfaction of all registered charges, or
 - (ii) consent of the holders of such charges.
- (e) This requirement was necessary, for also the registrar of the State of temporary registration must be informed of the forced sale of the vessel.
- (f) Obviously, in case of forced sale also the temporary registration must be deleted.
- (g) This is only a clarification requested by the Delegations of States in which the system of temporary registration is not in existence.

Article 17

Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

No comment is required.

Article 18

Signature, ratification, acceptance, approval and accession

1. *This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1993 to 31 August 1994 and shall thereafter remain open for accession.*
2. *States may express their consent to be bound by this Convention by:*
 - a. *signature without reservation as to ratification, acceptance or approval; or*
 - b. *signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or*
 - c. *accession.*
3. *Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.*

This is a standard provision.

Article 19

Entry into force

1. *This Convention shall enter into force six months following the date on which ten States have expressed their consent to be bound by it.*

2. *For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.*

It is worth noting that ten States Parties are required for the entry into force of the Convention. Five only were required by the 1967 Convention but whilst in the 1967 Convention reference was made to ratifications, in this Convention the wording is such that also acceptances, approvals and accessions are relevant.

Article 20

Revision and amendment

1. *A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.*

2. *Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.*

Article 21

Denunciation

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

2. *Denunciation shall be effected by the deposit of an instrument of denunciation with the depositary.*

3. *A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.*

Article 22

Languages

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

News from UNCTAD

UNCTAD/BIMCO Joint Educational Programme on Chartering

At its first meeting the New Committee on Services Development asked the UNCTAD Secretariat to conduct, in close collaboration with relevant organizations such as BIMCO, an educational programme on the subject of charter parties, with special emphasis on the use of clauses related to shipment of products of interest to developing countries.

In fulfilment of this mandate the UNCTAD Secretariat has been in touch with the representatives of BIMCO to design such a programme. Further co-operation from the UN Regional Commissions is envisaged as well as from the CMI and other relevant organizations.

The programme will be delivered once a year, starting in March 1994 in each of the UN Regional Commissions, if possible, beginning with the Economic Commission for Latin America and the Caribbean. The venue for the first delivery would be most probably in the Headquarters of ECLAC in Santiago, Chile, or, alternatively, in the sub-office in Mexico City. It will follow in South-East Asia in 1994, West Asia second half of 1995 and Africa in 1996.

The programme will cover the review of the law and practice on Bareboat Chartering and its linkage with Ship Finance, Time and Voyage Charter Parties, Box-Time and Slot Chartering. It will also address the general features affecting all types of charterparties such as general contractual provision, insurance, settlement of disputes, cost analysis and bunkering.

The first deliveries in each region are mainly addressed to chartering managers of shipping companies and from major commodity enterprises as well as lawyers, practitioners and shipowners. It would be eminently of a practical nature.

After the main deliveries the educational programme would be eventually transferred to the UNCTAD TRAINMAR network, which, on the material received and in the light of the outcome, would tailor make small practical courses of two-to-three days dealing specifically with any of the subjects of Charter Parties.

News from the IOPC Fund

IOPC Fund's 1992 Annual Report

The 1992 Annual Report of the International Oil Pollution Compensation Fund (IOPC Fund) contains a review of some of the main issues relating to the Organisation's activities during 1992. It summarises the decisions taken by the IOPC Fund's membership and the Fund's contacts with governments, intergovernmental organizations and interested circles. The Report includes a section on the International Conference held in November 1992 which adopted two Protocols amending the Civil Liability Convention and the Fund Convention in order to ensure the viability in the future of the system of compensation established by the Conventions. The finances of the IOPC Fund are also presented, in particular the payment of contributions.

A major part of the Report contains information on the settlement of claims for compensation against the IOPC Fund. Since its establishment in October 1978 the IOPC Fund has been involved in the settlement of claims for compensation arising out of 62 incidents. Thirty-three of these incidents occurred in Japan, whereas 20 incidents (leading in general to much larger claims) took place in European waters, one in Indonesia, one in Algeria, one in the Caribbean, four in Canada and two in the Persian Gulf. However, some of these incidents did not result in any payments of compensation by the IOPC Fund. The total amount of compensation and indemnification paid by the IOPC Fund up to 31st December 1992 was £. 51 million.

During 1992 only two incidents occurred that gave or will give rise to claims against the IOPC Fund, namely the "Fukkol Maru No. 12" incident which happened in Japan and the "Aegean Sea" incident which took place in Spain. The first of these incidents caused only very limited pollution whereas the latter caused serious pollution damage.

As at 31 December 1992 there were six incidents involving the IOPC Fund which had taken place in previous years and in respect of which final settlements had not been reached as regards the third party claims, namely the "Patmos", "Bonito", "Portfield", "Vistabella", "Agip Abruzzo" and "Haven" incidents.

The most serious case in which the IOPC Fund has been involved since its establishment is the "Haven" incident which occurred in Italy in April 1991. The incident caused extensive pollution damage in Italy, France and Monaco, and some 1,350 claims for compensation have been submitted for a total amount corresponding to approximately £. 715 million; however, a number of claims are duplications. The claims are being examined by the IOPC Fund Secretariat. The aggregate amount of the claims greatly exceeds the total amount of compensation available under the Civil Liability Convention and the Fund Convention, viz. 900 million (gold) francs, which in the IOPC Fund's view corresponds to 60 million Special Drawing Rights or Lit. 102,864,000,000 (£. 47 million). However, a judge in the Court of Genoa has fixed the maximum amount payable by the IOPC Fund at Lit. 771,397,947,400 (£. 350 million), calculated on the basis of the free market value of gold. The IOPC Fund has lodged opposition to the judge's decision.

Other important developments during 1992 related to the settlement of the Swedish Government's claim in respect of the "Bolgoneft 263" incident, of the remaining part of the Canadian Government's claim in respect of the "Rio Orinoco" incident, of all remaining claims arising out of the "Amazzone" incident and of all claims resulting from the "Kaiko Maru No. 86" incident.

During the last five years the number of IOPC Member States grew from 36 to 56, and according to the IOPC Fund, there are reasons to believe that a number of States will join the Fund in the near future. This continuing expansion of membership demonstrates in the IOPC Fund's view that the international community has found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one, providing rapid compensation to victims of oil pollution damage.

During discussions within the IOPC Fund as well as within IMO in the context of the elaboration of the 1992 Protocols to the Civil Liability Convention and the Fund Convention, Fund Member States expressed their strong support of the system of compensation established by these Conventions. The adoption of the 1992 Protocols shows that States attach great importance to the future development of the system, and wish to ensure its viability. In the light of statements made by a number of States at the 1992 International Conference, there is a great likelihood that the 1992 Protocols will enter into force in the near future.

News from UNIDROIT

Study Group for the Preparation of Uniform Rules on Certain International Aspects of Security in Mobile Equipment

During the period from 8th to 10th March 1993 a Unidroit Study Group on this subject, which was recently set up, held its first meeting in Rome.

Under the Chairmanship of Prof. Goods, Oxford, the group had a general exchange of view on the main features of a possible Convention.

The Study Group was in agreement that the Convention should only deal with contractual security interests, but had to take into account legal charges on the equipment in order to give rules on the respective priority. There was a further prevailing view that the Convention should create rights in rem of their own. The relationship of that international right in rem to liens existing under national law remained, however, unclear.

Entry into a public register seemed to be a generally accepted element of the international security interest. However, there was still some doubt whether or not the registration should be made a condition for the creation of the right in rem. Civil law representatives preferred such a solution, whereas representatives from common law countries were inclined not to ask for such a strict requirement. There was some connection of this question to that of whether the register should be filed for each security on the one hand or for a certain person holding rights in rem on that security on the other. Here again there was a division between civil law and common law, whereby the civil law representatives thought that a register reflecting all rights on a given asset was necessary.

This certainly would mean the need for a clear cut definition of moveables falling under the scope of the Convention in order to make it clear whether or not someone interested in security interests on mobile equipment has to consult the register to ascertain the existence of priority rights on an international basis.

There was a provisional agreement on an exclusion of registered ships. Doubts remain as to inland navigation craft. Aircraft, to the contrary, will be included because the existing international conventions did not enter into force.

Seatrade in any way might be affected by the Convention with respect to containers which form the most important example for the future Convention.

The CMI was again, as in the preparatory discussions, represented by Prof. Rolf Herber, Hamburg.

News from the European Institute of Maritime and Transport Law University of Antwerp

In February 1993, a European Institute of Maritime and Transport Law was established at Antwerp University. The Institute organizes post academic research on maritime, marine insurance and transport law. The Institute's governing body is composed of professors of Maritime Law from the Universities of Antwerp, Southampton, Rotterdam, Hamburg, Genoa and Paris. Delegates from the Belgian Association of Maritime Law, shipowners and the insurance sector, are also represented.

The European Institute of Maritime and Transport Law will hold its first international colloquium in November 1993, entitled "*The Hamburg Rules: a choice for the E.E.C.?*". On 18th and 19th November experts from Belgium and other countries will debate whether the Hamburg Rules can provide more uniformity for maritime transport within the E.E.C.

RATIFICATION OF INTERNATIONAL CONVENTIONS

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

- International Convention on Civil Liability for Oil Pollution Damage 1969
- Saudi Arabia: Accession 15th April 1993/Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1969, 19th November 1976.
- Saudi Arabia: Accession 15th April 1993

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

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COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

News from the CMI

The XXXVth Conference of the CMI - Sydney, October 1994

The Assembly of the CMI, held in Brussels on 25th September 1993, decided to place on the Agenda on the XXXVth Conference of the CMI which will be held in Sydney from Sunday, 2nd October to Friday, 7th October 1994, the following subjects:

- Assessment of Damages in Pollution Cases
- Revision of the York-Antwerp Rules
- Revision of the Draft Convention on Off-Shore Mobile Craft

In addition, lectures will be given on various aspects of Marine Insurance and reports will be presented on the problem of Third Party Liability and on Classification Societies.

General Average

The International Sub-Committee on General Average and York-Antwerp Rules will hold its next meeting on 24th and 25th November 1993 in Paris at the Comité Central des Armateurs de France, 47 rue de Monceau, 75008 Paris.

Maritime Agents

The International Sub-Committee on Maritime Agents will hold its next meeting on 3rd December 1993 at Comité Central des Armateurs de France, 47 rue de Monceau, 75008 Paris.

New Members of the CMI

Three new Maritime Law Associations, the Malaysian Maritime Law Association, the Slovene Maritime Law Association and the Maritime Law Association of the Republic of South Africa, have been admitted as members of the CMI by the Assembly held in Brussels on 25th September 1993.

Nouvelles du CMI

The XXXVème Conférence Internationale du CMI - Sydney, Octobre 1994

L'Assemblée du CMI, réunie à Bruxelles le 25 septembre 1993, a décidé de mettre à l'ordre du jour de la XXXVème Conférence Internationale du CMI qui se tiendra à Sydney du dimanche, 2 octobre au vendredi, 7 octobre 1994, les sujets suivants:

- Fixation des dommages-intérêts en matière de pollution
- Révision des Règles d'York et d'Anvers
- Révision du projet de convention sur les engins mobiles "Off-Shore"

En outre, des exposés seront faits sur différents aspects de l'assurance maritime et des rapports seront présentés sur le problème de la responsabilité de tiers et à propos des Sociétés de classification.

Avarie Commune

La prochaine réunion de la Commission Internationale sur l'Avarie Commune se tiendra le 24 et le 25 novembre 1993 à Paris dans les bureaux du Comité Central des Armateurs de France, 47 rue de Monceau, 75008 Paris.

Agents Maritimes

La prochaine réunion de la Commission Internationale sur les Agents Maritimes se tiendra, le 3 décembre 1993 à Paris dans les bureaux du Comité Central des Armateurs de France, 47 rue de Monceau, 75008 Paris.

Nouveaux Membres du CMI

Trois nouvelles Associations de droit maritime, l'Association de droit maritime de Malaisie, l'Association de droit maritime de Slovénie et l'Association de droit maritime de la République de l'Afrique du Sud ont été admises en qualité de membres du CMI par l'Assemblée réunie à Bruxelles le 25 septembre 1993.

Voyage Charterparty Laytime Interpretation Rules 1993

issued jointly by BIMCO, CMI, FONASBA and INTERCARGO

A new edition of the Charterparty Laytime Definitions issued jointly by the Baltim and International Maritime Conference (BIMCO) of Copenhagen, the CMI, the Federation of National Associations of Ship Brokers and Agents (FONASBA) of London and the General Council of British Shipping (GCBS) of London in December 1980 has been prepared jointly by BIMCO, the CMI, FONASBA and Intercargo and has been approved by BIMCO's Documentary Committee and by Intercargo in May 1993, by the CMI Assembly in September 1993 and FONASBA's Annual General Meeting in October 1993 under the new name of "Voyage Charterparty Laytime Interpretation Rules". The text of the new Rules follows:

Preamble

The interpretations of words and phrases used in a charterparty, as set out below, and the corresponding initials if customarily used, shall apply when expressly incorporated in the charterparty, wholly or partly, save only to the extent that they are inconsistent with any express provision of it. When the word "charterparty" is used, it shall be understood to extend to any form of contract of carriage or affreightment, including contracts evidenced by bills of lading.

List of Rules

1. "Port"
2. "Berth"
3. "Reachable on her arrival" or "always accessible"
4. "Laytime"
5. "Per hatch per day"
6. "Per working hatch per day" (WHD) or "Per workable hatch per day" (WHD)
7. "Day"
8. "Clear days"
9. "Holiday"
10. "Working day" (WD)
11. "Running days" or "Consecutive days"
12. "Weather working day" (WWD) or "Weather working day of 24 hours" or "Weather working day of 24 consecutive hours"
13. "Weather permitting" (WP)
14. "Excepted" or "Excluded"
15. "Unless sooner commenced"
16. "Unless used" (UU)
17. "To average laytime"
18. "Reversible laytime"
19. "Notice of readiness"
20. "In writing"
21. "Time lost waiting for berth to count as loading or discharging time" or "as laytime"
22. "Whether in berth or not" (WIBON) or "Berth or no berth"
23. "Vessel being in free pratique" and/or "Having been entered at the custom house"
24. "Demurrage"
25. "Despatch money" or "Despatch"
26. "Despatch on (all) working time saved" (WTS) or "On (all) laytime saved"
27. "Despatch on all time saved" (ATS)
28. "Strike"

Rules

1. "Port" shall mean an area, within which vessels load or discharge cargo whether at berths, anchorages, buoys, or the like, and shall also include the usual places where vessels wait for their turn or are ordered

or obliged to wait for their turn no matter the distance from that area. If the word "Port" is not used, but the port is (or is to be) identified by its name, this definition shall still apply.

2. "Berth" shall mean the specific place within a port where the vessel is to load or discharge. If the word "Berth" is not used, but the specific place is (or is to be) identified by its name, this definition shall still apply.
3. "Reachable on her arrival" or "Always accessible" shall mean that the charterer undertakes that an available loading or discharging berth be provided to the vessel on her arrival at the port which she can reach safely without delay in the absence of an abnormal occurrence.
4. "Laytime" shall mean the period of time agreed between the parties during which the owner will make and keep the vessel available for loading or discharging without payment additional to the freight.
5. "Per hatch per day" shall mean that the laytime is to be calculated by dividing (a), the quantity of cargo by (b), the result of multiplying the agreed daily rate per hatch by the number of the vessel's hatches. Thus:

$$\text{Laytime} = \frac{\text{quantity of cargo}}{\text{daily rate} \times \text{number of hatches}} = \text{days}$$

Each pair of parallel twin hatches shall count as one hatch. Nevertheless, a hatch that is capable of being worked by two gangs simultaneously shall be counted as two hatches.

6. "Per working hatch per day" (WHD) or "Per workable hatch per day" (WHD) shall mean that the laytime is to be calculated by dividing (a), the quantity of cargo in the hold with the largest quantity, by (b), the result of multiplying the agreed daily rate per working or workable hatch by the number of hatches serving that hold. Thus:

$$\text{Laytime} = \frac{\text{largest quantity in one hold}}{\text{daily rate per hatch} \times \text{number of hatches serving that hold}} = \text{days}$$

Each pair of parallel twin hatches shall count as one hatch. Nevertheless, a hatch that is capable of being worked by two gangs simultaneously shall be counted as two hatches.

7. "Day" shall mean a period of twenty-four consecutive hours running from 0000 hours to 2400 hours. Any part of a day shall be counted pro rata.
8. "Clear days" shall mean consecutive days commencing at 0000 hours on the day following that on which a notice is given and ending at 2400 hours on the last of the number of days stipulated.
9. "Holiday" shall mean a day other than the normal weekly day(s) of rest, or part thereof, when by local law or practice the relevant work during what would otherwise be ordinary working hours is not normally carried out.
10. "Working days" (WD) shall mean days not expressly excluded from laytime.
11. "Running days" or "Consecutive days" shall mean days which follow one immediately after the other.
12. "Weather working day" (WWD) or "Weather working day of 24 hours" or "Weather working day of 24 consecutive hours" shall mean a working day of 24 consecutive hours except for any time when weather prevents the loading or discharging of the vessel or would have prevented it, had work been in progress.
13. "Weather permitting" (WP) shall mean that any time when weather prevents the loading or discharging of the vessel shall not count as laytime.
14. "Excepted" or "Excluded" shall mean that the days specified do not count as laytime even if loading or discharging is carried out on them.
15. "Unless sooner commenced" shall mean that if laytime has not commenced but loading or discharging is carried out, time used shall count against laytime.

16. "Unless used" (UU) shall mean that if laytime has commenced but loading or discharging is carried out during periods excepted from it, such time shall count.
17. "To average laytime" shall mean that separate calculations are to be made for loading and discharging and that any time saved in one operation is to be set off against any excess time used in the other.
18. "Reversible laytime" shall mean an option given to the charterer to add together the time allowed for loading and discharging. Where the option is exercised the effect is the same as a total time being specified to cover both operations.
19. "Notice of readiness" (NOR) shall mean the notice to charterer, shipper, receiver or other person as required by the charterparty that the vessel has arrived at the port or berth, as the case may be, and is ready to load or discharge.
20. "In writing" shall mean any visibly expressed form of reproducing words; the medium of transmission shall include electronic communications such as radio communications and telecommunications.
21. "Time lost waiting for berth to count as loading or discharging time" or "as laytime", shall mean that if no loading or discharging berth is available and the vessel is unable to tender notice of readiness at the waiting place then any time lost to the vessel shall count as if laytime were running, or as time on demurrage if laytime has expired. Such time shall cease to count once the berth becomes available. When the vessel reaches a place where she is able to tender notice of readiness laytime or time on demurrage shall resume after such tender and, in respect of laytime, on expiry of any notice time provided in the charterparty.
22. "Whether in berth or not" (WIBON) or "Berth or no berth" shall mean that if no loading or discharging berth is available on her arrival, the vessel on reaching any usual waiting place at or off the port, shall be entitled to tender notice of readiness from it and laytime shall commence in accordance with the charterparty. Laytime or time on demurrage shall cease to count once the berth becomes available and shall resume when the vessel is ready to load or discharge at the berth.
23. "Vessel being in free pratique" and/or "Having been entered at the custom house" shall mean that the completion of these formalities shall not be a condition precedent to tendering notice of readiness, but any time lost by reason of delay in the vessel's completion of either of these formalities shall not count as laytime or time on demurrage.
24. "Demurrage" shall mean an agreed amount payable to the owner in respect of delay to the vessel beyond the laytime, for which the owner is not responsible. Demurrage shall not be subject to laytime exceptions.
25. "Despatch money" or "Despatch" shall mean an agreed amount payable by the owner if the vessel completes loading or discharging before the laytime has expired.
26. "Despatch on (all) working time saved" (WTS) or "on (all) laytime saved" shall mean that despatch money shall be payable for the time from the completion of loading or discharging to the expiry of the laytime excluding any periods excepted from the laytime.
27. "Despatch on all time saved" (ATS) shall mean that despatch money shall be payable for the time from the completion of loading or discharging to the expiry of the laytime including periods excepted from the laytime.
28. "Strike" shall mean a concerted industrial action by workmen causing a complete stoppage of their work which directly interferes with the working of the vessel. Refusal to work overtime, go-slow or working to rule and comparable actions not causing a complete stoppage shall not be considered a strike. A strike shall be understood to exclude its consequences when it has ended, such as congestion in the port or effects upon the means of transportation bringing or taking the cargo to or from the port.

IMO

The 69th Session of the Legal Committee of IMO

The 69th Session of the Legal Committee of IMO was held from the 27th of September to 1st of October 1993 in London. The Legal Committee dealt with two main items, the Draft Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) and the Revision of the Convention on Limitation of Liability for Maritime Claims.

1. Draft HNS-Convention

The Legal Committee decided that efforts should be made to finalize the work as early as possible. It was agreed that 1996 is the "target date" for the Diplomatic Conference which should adopt the Convention. Thus, the Legal Committee has to finish its work on the Draft Convention early in 1995 in order to ensure that the Draft Convention can be submitted to governments in due time before the Conference. In the light of the conflict of views that prevailed at the 68th Session on the cargo contribution to compensation the Committee discussed again at this meeting certain approaches in order to reach agreement on basic issues. Three options were considered:

- a. Convention on exclusive liability of the shipowner for HNS-damage.
- b. Convention on exclusive liability of the shipowner for HNS-damage but with the understanding that an instrument on the obligation of cargo interests to pay supplementary compensation in cases where the damage exceeds the limits of liability of the shipowner should be adopted as soon as possible after adoption of the first instrument on the liability of the shipowner.
- c. Convention including provisions on liability of the shipowner as well as rules on supplementary contributions of the cargo interests.

The Draft Convention which is presently discussed in the Legal Committee is based on option c). The discussion of alternative options is apparently an indication of the lack of agreement with regard to the present draft. It turned out in the debate that no delegation supported option a). Both options b) and c) were supported by a number of delegations. It was the hope of most delegations who supported option b) or c) that the cargo contribution system could be simplified by restricting the obligation to pay contributions to "bulk" or "bulk plus" cargoes. The working group of technical experts was entrusted with the task to define the "bulk" and "bulk plus" approaches. For the time being the Committee agreed to proceed provisionally with its work on the basis of option c).

The discussion of certain fundamental details on the cargo contribution system revealed a complete conflict of views. That is so with regard to the "call system" (pre - or post - incident call and assessment system for the payments to be made by the cargo interests) and to the role of "sector factors" of the cargo involved. Several delegations are in favour of a "sector factor" system which would allow to differentiate the contributions of the various types of cargo according to the risk of damage that can be caused by the type of cargo in question. Within such a system the contributions of all types of cargo would be collected by a single fund. Other delegations have supported an "account" system. With this system every "type" or "group" of cargo with the same or similar "sector factor" would pay its contribution to a separate "account" of the fund. Compensation is then paid by an "account" only for damage caused by cargo that has contributed to the account in question. This approach would apparently result in a "mult-fund-system". No agreement was reached on the question whether exporters or importers should pay the cargo contribution.

In this context the definition of "shipper" was again discussed. Taking into account the conflicting views on the fundamental issues mentioned above, it appears that an agreement on a cargo contribution system is very far away. In the light of the target date for a Diplomatic Conference the Legal Committee may have no other choice than concentrating its further efforts on option b) in the hope

that an agreement can be reached in 1995 on the provisions on liability of the shipowner in order to meet the target date and to gain more time for the discussion of a solution in respect of cargo contributions which would then be adopted later.

2. Revision of the Convention on Limitation of Liability for Maritime Claims, 1976

Since the revision of the 1976 Limitation Convention depends to a certain extent on the solution finally adopted with regard to HNS the discussion of the possible revision of the Limitation Convention was overshadowed by the uncertainty which prevails in that regard.

In accordance with the present Draft HNS Convention the shipowner is primarily liable for the damage caused. The cargo interests have to pay compensation only for the damage which exceeds the limits of liability of the shipowner.

There are two alternatives in the Draft for the calculation of the limitation of liability of the shipowner. Art. 6 provides for a separate limitation system outside the 1976 Limitation Convention. However, States have according to Article 7 the right to declare that the limitation shall be determined by the 1976 Limitation Convention or any other limitation system which is applicable in the State concerned (e.g. 1957 Limitation Convention).

If the 1976 Limitation Convention or any other limitation system has to be applied according to the declaration made by a State and the HNS damage arising out of an incident exceeds the limits of liability of the shipowner, the shipowner is according to Art. 7 of the HNS Convention obliged to constitute a supplementary limitation fund ("second tier" of the limitation amount).

The maximum limit of the supplementary fund is determined by the difference between the amount available according to the 1976 Limitation Convention (or any other limitation rule applicable) and the maximum limits of liability established by the separate limitation rules according to Art. 6 of the HNS Convention. It is in any event the intention of the Draft to ensure that the same limits are applied regardless of whether a State opts for the alternative in Art. 6 (separate and independent limitation system) or the alternative in Art. 7 (limitation system based on existing limitation instruments).

Both alternatives would require the clarification of the relationship between the existing instruments (e.g. 1976 Limitation Convention) and the HNS Convention. In the case of Art. 6 of the HNS Convention (separate and independent limitation system) the clarification would comprise the exclusion of HNS damage from the scope of application of the 1976 Limitation Convention, or any other limitation provisions if these provisions, like the 1976 Limitation Convention cover presently damage caused by hazardous goods.

There is of course a third alternative which has not yet been discussed: the limits of liability, for instance in the 1976 Limitation Convention, are raised in general in order to cover the risk of damage posed by HNS cargo appropriately. This alternative would avoid treaty conflicts between the HNS Convention and the 1976 Limitation Convention.

The Delegation of the United Kingdom submitted for this session a proposal of revision of the 1976 Limitation Convention. The proposed revision is confined to the increase of the limitation figures and the inclusion of a simplified amendment procedure for future increase of the limitation amounts. However, no concrete figures were proposed.

No reference is made in the U.K. document to the HNS Convention. In the discussion of that proposal most delegations supported the increase of limitation figures in order to adapt the amounts to inflation. It was emphasized that the opportunity of the revision of limits should be used to clarify the relation between the HNS Convention and the 1976 Limitation Convention. However, a number of delegations indicated that they would be unable to take a decision on that issue before the outcome of the work on HNS can be overseen. It is obvious that the need for consequential changes in the 1976 Limitation Convention resulting from the HNS Convention is at the moment unpredictable.

In the light of the uncertainty with regard to the HNS Convention the Legal Committee came to the conclusion that a decision on a target date and on the subjects of the 1976 Limitation Convention that would need to be revised should be taken at the next session.

Norbert Trotz

UNCITRAL

Model Law on International Credit Transfers

The United Nations Commission on International Trade Law adopted at its twentyfifth session held from 4th to 22nd May 1992 a Model Law on International Credit Transfers. Following a resolution of the Commission, the Secretary General of UNCITRAL with letter dated 2nd August 1993 transmitted to Governments and other interested bodies the text of the Model law and other relevant materials.

Article 1 of the Model Law provides that the law applies to the credit transfers where any sending bank and its receiving bank are in different States. Article 2 contains a series of definitions, including those of "credit transfer", "payment order", "beneficiary", "sender", "receiving bank" and "intermediary bank". The obligations of the parties are set out in Chapter II, articles 5-12. The parties, the obligations of which are regulated in this chapter, are the Sender, the Receiving Bank and the Beneficiary's Bank. Special rules are set out in Article 12 in respect of the conditions and effects of revocation.

Chapter III regulates the consequences of failed, erroneous or delayed credit transfers.

Important Judicial Decisions

CLC 1969 and Fund Convention of 1971

The preliminary decision of the Judge in charge of the limitation proceedings for the "*Haven*" pending before the Tribunal of Genoa (CMI News Letter No. 1 of 1992) has been affirmed by the Tribunal of Genoa with judgment of 22nd July 1993 with respect to the 1969 CLC. The Tribunal held that where the Owner puts up a limitation fund by means of a bank guarantee, interest must be added at the mean rate applied by banks on deposits. It also held that the interest yields to the benefit of the creditors and does not contribute to the formation of the "amount of compensation actually paid", which, pursuant to Article 4 paragraph 4(a) of the Fund Convention, must be taken into account in determining the amount that the Fund must put at the disposal of the claimants.

With respect to the conversion into currency of payment of the sum that must be made available by the Fund to the persons suffering damages pursuant to Article 5 paragraph 1, the Tribunal held that since the 1976 Protocol to the Fund Convention had not yet entered into force and the gold parity had been abolished, the conversion of the limit determined in Poincaré francs into currency of payment must necessarily be made on the basis of the market value of gold. The Tribunal of Genoa also held: a) that the Resolution No. 1 of the IOPCF Assembly of November 1978, whereby the sums expressed in Poincaré francs should be converted into Special Drawing Rights at the ratio 15:1, is not effective vis-à-vis the persons and entities of States parties and, b) that the IOPCF resolution whereby the Fund ceiling was increased first to 675 million francs and then to 900 francs could not be annulled as purportedly due to mistake of law, because passed on the assumption that the limits would be converted into SDRs, since amongst the acts in respect of which annulment by mistake is permitted by Italian law, pursuant to Article 1324 of the Italian Civil Code, there are not included the deliberations of International Organizations.

Finally, the Tribunal of Genoa considered the question of how the contribution of the Fund to the owner under Article 5 paragraph 1 of the Fund Convention must be calculated and held that the only manner in which that provision could operate in respect of States Parties to the 1976 CLC Protocol was to consider the reference to the CLC in Article 5 of the Fund Convention as made to the foundation of the obligation of indemnity of the owner so that the contribution of the Fund to the owner must be equal to the difference between the limit of the owner's liability under the CLC converted into currency of payment and the lower sum set out in article 5(1)(a), equally converted into currency of payment.

The judgment of the Tribunal of Genoa has been appealed by the IOPCF and a decision of the Court of Appeal of Genoa is likely to be rendered in the course of next year.

Ratification of International Conventions

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

- **U.N. Convention on the Carriage of Goods by Sea, 1978**
Austria: Ratification on 29th July 1993.
- **Protocol of 1979 to the Convention Internationale pour l'Unification de Certaines Règles en Matière de Connaissance (Hague Rules)**
Australia: Accession on 16th July 1993.
- **International Convention on Oil Pollution Preparedness, Response and Cooperation 1990**
Finland: Approval on 21st July 1993
Pakistan: Accession on 21st July 1993

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 4 - 1993

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

New from the CMI

Assembly - 25th September 1993 Assemblée - 25 Septembre 1993

Attending - Présents
Officers - Comité de Direction

President: Allan Philip
Président:

President of Honour: Francesco Berlingieri
Président d'Honneur

Vice-Presidents: William Birch Reynardson, Anatoly Kolodkin
Vice-Présidents: Jan C. Schultsz, William Tetley

Secretary General: Norbert Trotz
Secrétaire Général:

Administrator and
Treasurer: Henri Voet
Administrateur et
Trésorier:

Executive Councillors: José Luis Goni, Patrick Griggs
Conseillers Exécutif: Etienne Gutt, Rolf Herber
Pierre Latron, Frank L. Wiswall, Jr.

Delegates - Délégués

AUSTRALIA & NEW ZEALAND	Stuart Hetherington	NETHERLANDS	Jan. C. Schultsz
BELGIQUE	Roger Roland, Leo Delwaide Geoffrey Fletcher (Titulary Member)	NORWAY	Frode Ringdal
CANADA	Nigel Frawley, W. David Angus	PORTUGAL	Mario Raposo
DENMARK	Jan Erlund	RUSSIA	Anatoly Kolodkin
FRANCE	Pierre Bonassies, Philippe Boisson Jean Serge Rohart	SPAIN	José Maria Alcantara
GERMANY	Rolf Herber	SWITZERLAND	Alexander von Ziegler
GREECE	Pavlos Avrameas	SWEDEN	Lars Boman
IRELAND	Niall McGovern	TURKEY	Oguz Teoman
ITALY	Francesco Berlingieri	UNITED KINGDOM	Patrick Griggs
JAPAN	Hisashi Tanikawa	UNITED STATES OF AMERICA	George W. Healy III, Chester Hooper, Jim Moseley, Reginald Hayden

1. Membership

a) Maritime Law Associations

The Assembly admitted by acclamation the Maritime Law Associations of:

Malaysia
Slovenia
South Africa

as members of the CMI.

The President reported that the application for membership was received from the Maritime Law Association of Ecuador. According to the information received so far the Association fulfils the conditions of membership. Since certain documents were still outstanding the Assembly took no final decision but entrusted the President with the task and the power to admit the MLA of Ecuador as Member of the CMI if all documents are received and fulfil the relevant conditions.

b) Titulary Members

The Assembly agreed to admit the following Titulary Members of the CMI:

MLA of the USA:	Mr. Howard McCormack Mr. Marshall Keating
MLA of Canada:	Mrs. Johanne Gauthier Mr. Nigel Frawley
MLA of Israel:	Mr. Tova Strassberg-Cohen

2. Proxy Voting

According to a decision of the 26th meeting of the Assembly in 1992 the Executive Council reconsidered the problem of proxy voting and submitted a report to the Assembly. In the report the Executive Council came to the conclusion that the relevant provision of the new constitution should be maintained without any change. However, the Executive Council proposed that the Assembly should be held from time to time in different parts of the world in order to make it easier for National Associations other than those of Europe to attend the Assembly. In order to keep the costs of such meetings as low as possible attempts should be made to combine them with other events. The Executive Council emphasized in its report that written submissions of Maritime Law Associations received duly in advance should be distributed to National Associations for consideration. Such submissions, if not supported by present members of the Assembly, should be specifically mentioned at the meeting before a decision is taken.

In the discussion of this report the representative of one MLA expressed the view that the report did not solve the problem of proxy voting. On behalf of his MLA he made the proposal to amend the constitution. According to that proposal proxy voting should be allowed in two cases: Amendment of the constitution; Election of officers.

Each MLA should only be allowed to hold one proxy vote.

1. Membres

a) Associations de droit maritime

L'Assemblée a admis par acclamation comme membres du CMI les associations de droit maritime de:

Malaisie
Slovénie
Afrique du Sud

Le Président expose qu'une candidature a été reçue de l'Association de droit maritime de l'Equateur. Selon les informations reçues cette association remplit les conditions pour être membre du CMI. Comme, toutefois, certains documents étaient encore manquants, l'Assemblée n'a pas pris de décision définitive, donnant mission et pouvoir au Président de décider de l'admission de l'association de l'Equateur, si tous les documents nécessaires sont reçus et remplissent les conditions exigées.

b) Membres titulaires

L'Assemblée a décidé d'admettre comme membres titulaires du CMI:

ETATS-UNIS	Mr. Howard McCormack Mr. Marshall Keating
CANADA	Mrs. Johanne Gauthier Mr. Nigel Frawley
ISRAEL	Mr. Tova Straasberg-Cohen

2. Vote par procuration

En application d'une décision prise lors de la 26ème réunion de l'Assemblée, le Conseil exécutif a reconsidéré le problème du vote par procuration et soumis son rapport à l'Assemblée. Dans ce rapport, le Conseil conclut que les dispositions concernées des nouveaux statuts doivent rester inchangées. Toutefois, le Conseil exécutif propose que l'Assemblée se réunisse de temps à autre dans d'autres régions du monde, pour rendre plus aisée la participation de certaines associations non européennes. Pour maintenir le coût de telles réunions aussi bas que possible, on devrait essayer de combiner ces réunions avec un autre événement. Le Conseil a souligné dans son rapport que les propositions écrites reçues des associations nationales suffisamment à l'avance devraient être distribuées aux autres associations pour être prises en considération. Si de telles propositions ne sont pas prises à leur compte par des membres présents à l'Assemblée, elles devraient néanmoins être spécialement portées à la connaissance de l'Assemblée avant toute prise de décision.

Lors de la discussion du rapport, le représentant d'une association nationale a exprimé l'opinion que le rapport ne résolvait pas le problème du vote par correspondance. Au nom de son association, il a proposé une modification des statuts. Selon sa proposition, le vote par correspondance devrait être admis dans deux cas : modification des statuts et élection des membres du bureau. Chaque association nationale ne pourrait toutefois disposer que d'une procuration.

Alternatively, the representative proposed that the constitution should be amended in order to allow written voting in the election of officers. The votes should be mailed to the president. In addition he proposed that voting should take place by secret ballot.

There was no support in the Assembly for the proposal or the alternative suggestion.

The Assembly accepted the report of the Executive Council on the issue of proxy voting.

3. Work in Progress

The Secretary General reported on the work in progress.

a) *Offshore Mobile Craft*

The Subcommittee was entrusted with the task to review the Rio Draft of the CMI on Offshore Mobile Craft as requested by the Legal Committee of IMO. The Subcommittee has finished this work and was able to adopt a revised version of the Draft Convention which is ready for submission to the Sydney Conference.

The MLAs of Canada and USA have proposed to widen the scope of work and to aim at a comprehensive set of rules for offshore craft covering the production and drilling as well as the transit mode. The Subcommittee agreed to hold another meeting in January in order to consider a document that will be submitted by the MLAs of Canada and USA. Such a document, if discussed and agreed upon by the Subcommittee, should be submitted to the Sydney Conference as a paper which can be discussed in addition to the revised draft on Offshore Mobile Craft. It will then be the task of the Conference to decide whether the CMI should work further on a comprehensive regime for offshore operations.

The Executive Council is of the opinion that the revised Draft Convention on Offshore Mobile Craft as adopted by the Subcommittee should be submitted to the Sydney Conference in order to comply with the request of the Legal Committee of IMO. As to the project of a broader regime for offshore operations the Council took the view that a document should be submitted to the Sydney Conference for discussion and decision on future work if the Subcommittee is able to finish the work on such a document at its meeting in January 1994. In the discussion of the Assembly support was voiced for further work on a broader regime.

b) *Assessment of Pollution Damage*

The meeting of the Subcommittee had agreed on the substantial part of the report and the guidelines on the issue of "pure economic loss". As to the damage to the marine environment the Subcommittee decided to concentrate in its further work on measures of restoration and to strengthen this approach. The next meeting of the Subcommittee will take place in January 1994 and it is intended to adopt the final report at that meeting. The report would then be ready for submission to the Sydney Conference.

The Executive Council recommended to put the item on the agenda of the Sydney Conference.

Alternativement, ce même délégué a proposé que les statuts soient amendés pour permettre le vote par correspondance pour l'élection des membres du bureau. Les votes seraient adressés au Président. Il a aussi proposé que le vote soit effectué au scrutin secret.

Aucun appui ne s'est manifesté dans l'Assemblée au soutien de ces propositions.

L'Assemblée a accepté le rapport du Conseil exécutif sur le vote par procuration.

3. Avancement des travaux en cours

Le Secrétaire Général a présenté un rapport sur l'avancement des travaux en cours.

a) *Engins mobiles offshore*

Le Sous-Comité sur le sujet a été chargé de revoir le projet de Rio du CMI, ainsi que demandé par le Comité juridique de l'OMI. Le Sous-Comité a achevé sa tâche et a pu adopter une version revue du projet de convention, version prête à être soumise à la Conférence de Sydney. Les associations du Canada et des Etats-Unis ont proposé d'élargir le domaine du projet et de tenter d'établir un ensemble de règles couvrant la production et le forage aussi bien que le transport. Le Sous-Comité a convenu de tenir une nouvelle réunion en janvier pour étudier le texte qui sera soumis par les associations du Canada et des Etats-Unis. Ce texte, après discussion et accord du Sous-Comité devrait être soumis à la Conférence de Sydney comme un document qui pourrait être discuté, en plus du projet revu sur les engins mobiles. Ce serait alors à la Conférence de décider si le CMI devrait continuer à travailler sur un régime couvrant l'ensemble des opérations offshore.

Le Conseil exécutif est d'avis que le projet de convention sur les engins mobiles offshore tel qu'adopté par le Sous-Comité devra être soumis à la Conférence de Sydney, ce pour répondre à la demande présentée par le Comité juridique de l'OMI. Quant au projet d'un régime plus large pour les opérations offshore, le Conseil est d'avis qu'un document devra être soumis à la Conférence de Sydney pour discussion et décision sur un travail futur, si toutefois le Sous-Comité à la possibilité de terminer son étude d'un tel document lors de sa réunion de janvier 1994. Lors de la discussion, un soutien à un travail futur pour l'étude d'un projet plus large s'est manifesté dans l'Assemblée.

b) *Evaluation des dommages de pollution*

La réunion du Sous-Comité avait abouti à un accord sur la part fondamentale du rapport et les lignes directrices relatives à la question du "dommage de nature purement économique". S'agissant des dommages causés à l'environnement, le Sous-Comité a décidé de focaliser sa réflexion prochaine sur les mesures de restauration de l'environnement et de renforcer cette approche. La prochaine réunion du Sous-Comité aura lieu en janvier 1994 et l'on pense que le rapport final sera adopté lors de cette réunion. Le rapport serait alors prêt pour être soumis à la Conférence de Sydney.

Le Conseil exécutif a recommandé d'inclure cette question à l'ordre du jour de la Conférence de Sydney.

c) York/Antwerp Rules

It is intended to finish the work of the Subcommittee and to adopt the final report at a two or three-day meeting in November in Paris (24th and 25th November with the possibility to extend the meeting to the 26th November).

In the discussion of the Assembly it was clarified that the work of the CMI is confined to the revision of the York/Antwerp Rules. UNCTAD has started to review General Average in general. The CMI has participated as observer in the discussion that took place so far and has closely co-operated with UNCTAD. There is agreement between UNCTAD and CMI that the revision of the York/Antwerp Rules by the CMI is useful and remains untouched by the further discussion of the subject in UNCTAD.

The Executive Council has recommended to put that item on the agenda of the Sydney Conference.

d) Third Party Liability

The Chairman of the Working Group, Professor Jan Schultzs, informed the Council that the Working Group has reviewed the present work of the Legal Committee of IMO on the revision of the Limitation Convention 1976 and on HNS. There was agreement in the Working Group that certain political decisions have to be taken first in the IMO before the CMI could discuss approaches, alternatives or solutions in respect of both Conventions or even before conclusions could be drawn regarding the further development. Since the meeting of the Working Group took place prior to the meeting of the Legal Committee of IMO it was decided to wait for the outcome of that meeting and to hold another meeting of the Working Group in December. Nevertheless, the Working Group agreed that a report on the present development can be given at the Conference in Sydney.

The Executive Council has recommended to add a report on Third Party Liability to the programme of the Sydney Conference.

e) Registration of bare-boat-chartered ships in connection with CLC 69

Professor Berlingieri has reported to the Council that a synopsis of the replies received was prepared. However, there are still a number of replies from national associations outstanding. An appeal was made to all MLAs who have not yet replied to submit their reports.

In this context Mr. Birch-Reynardson mentioned the possibility that the Charitable Trust of the CMI could contribute to the work of national associations by paying for a lawyer who has the task to prepare studies/replies to be made by a MLA in order to respond to a request from CMI.

f) Maritime Agents

A first meeting of the Subcommittee was held under the chairmanship of Professor Francesco Berlingieri in June in Paris. A second meeting is convened for the 3rd of December. The material available and the discussion that took place so far allows the conclusion that a study on the subject would be the appropriate result of the work.

c) Règles d'York et d'Anvers

Il est prévu d'achever le travail du Sous-Comité et d'adopter un rapport final à l'occasion d'une réunion de deux ou trois jours en novembre (24 et 25 novembre si possible, avec la faculté de l'étendre au 26 novembre). Au cours du débat en Assemblée générale, il a été précisé que le travail du CMI est limité à la révision des Règles d'York et d'Anvers. La CNUCED a commencé une révision générale de l'avarie commune. Le CMI a participé en qualité d'observateur à la discussion qui a pris place et a étroitement coopéré avec la CNUCED. La CNUCED et le CMI sont d'accord pour estimer que la révision des Règles d'York et d'Anvers par le CMI est utile et n'est pas atteinte par la future discussion du sujet par la CNUCED.

Le Comité exécutif a recommandé d'inclure cette question à l'ordre du jour de la Conférence de Sydney.

d) Responsabilité des tiers

Le Président du Groupe de travail, le Professeur Jan Schultzs, a informé le Conseil que le Groupe de travail avait revu le travail accompli par le Comité juridique de l'OMI concernant la révision de la Convention sur la limitation de responsabilité de 1976 et de la Convention HNS. Le Groupe de travail a été d'accord pour admettre que certaines décisions de nature politique doivent d'abord être prises au sein de l'OMI avant que le CMI puisse discuter des approches, des propositions alternatives et des solutions à retenir concernant ces deux Conventions ou même avant que des conclusions puissent être tirées s'agissant des développements futurs. Compte tenu de ce que la réunion du Groupe de travail a eu lieu antérieurement à celle du Comité juridique de l'OMI, il a été décidé d'attendre la tenue de cette réunion et que le Groupe de travail se réunissent à nouveau en décembre. Cependant, le Groupe de travail considère qu'un rapport sur la réflexion actuelle peut être présenté à la Conférence de Sydney.

Le Conseil exécutif a recommandé d'ajouter un rapport sur la responsabilité des tiers au programme de la Conférence de Sydney.

e) Immatriculation des navires affrétés coque-nue en relation avec la CLC 69

Le Professeur Berlingieri a indiqué au Conseil qu'une présentation synoptique des réponses reçues était en préparation. Cependant, un certain nombre de réponses des Associations nationales n'ont pas encore été reçues. Un appel a été lancé à toutes les Associations nationales qui n'ont pas encore répondu pour qu'elles le fassent. Compte tenu de cette information, M. Birch-Raynardson a évoqué la possibilité que le CMI Charitable Trust contribue au travail des Associations nationales en rétribuant un juriste qui aurait la charge de préparer une étude ou une réponse à faire au projet d'une Association nationale afin de satisfaire à la demande du CMI.

f) Agents maritimes

Une première réunion du Sous-Comité s'est tenue sous la présidence du Professeur Francesco Berlingieri au mois de juin, à Paris. Une seconde réunion est prévue le 3 décembre. Des documents disponibles et de la discussion qui a suivi, il est ressorti qu'une étude du sujet devrait être entreprise.

In the discussion Professor Berlingieri offered the view that the work of the Subcommittee could even go further and result in recommendations.

b) Arrest Convention

Arrest is on the agenda of IMO and UNCTAD. Both organizations will again set up a Joint Working Group. It can be expected that the CMI Draft on Arrest will play a rôle in the work of the Joint Working Group. No action or decision was required at this stage.

4. Classification Societies

The chairman of the Working Group, Dr. Frank Wiswall, informed the Assembly that the 3rd meeting of the Working Group took place on 5th July in London. The following organizations were represented: CMI, IACS, IUMI, ICS, INTERCARGO, OCIMF, ICC and IMO. The discussion focussed on liability issues and the relationship of the societies to other sectors of the industry as well as standards in the performance of service. The Working Group will consider in its future discussion specific wording of model provisions. Two further meetings are scheduled for December 1993 and February 1994.

The chairman of the Working Group recommended that a discussion paper on liability issues in respect of statutory surveys and the relationship of the Societies to shipowners and insurers should be submitted to the Sydney Conference for consideration and comments but no action should be taken by the Conference. Any action in respect of the subject can only be taken by the governing bodies of the organizations participating in the work.

5. Sydney Conference - Programme

In introducing this item the President of the CMI proposed that the Conference should discuss and adopt papers and documents in respect of the following subjects:

- York/Antwerp Rules (Draft of a revised version);
- Assessment of Pollution Damage (Draft of Guidelines);
- Offshore Mobile Craft (Draft of a Convention and, depending on the results of the work of the Subcommittee, a document on future work of the CMI on a comprehensive regime regarding offshore operations).

As usual the Conference will set up Committees for each of the items on the agenda. The Subcommittees as working bodies of the Conference will submit their results to the Plenary of the Conference for discussion and decision.

In addition to the formal programme of the Conference two special sessions of the Plenary should take place. One session should deal with special issues of marine insurance law. Another session should be convened in order to discuss reports on issues of interest:

- Classification Societies;
- Developments in respect of Third Party Liability.

The Assembly adopted the proposals made by the President.

Au cours du débat, le Professeur Berlingieri a émis l'idée que le travail du Sous-Comité pourrait aller au delà et aboutir à proposer des recommandations.

g) Convention sur la saisie des navires

La saisie des navires figure dans l'agenda de l'OMI et de la CNUCED. Ces deux organisations vont de nouveau constituer un Groupe de travail mixte. On peut penser que le projet du CMI sur la saisie sera pris en compte dans la réflexion de ce Groupe de travail mixte. Aucune action ni décision n'était requise à ce moment.

4. Sociétés de classification

Le Président du Groupe de travail, le Docteur Frank Wiswall, a informé l'Assemblée que la 3ème réunion du Groupe de travail s'est tenue à Londres, le 5 juillet. Les organisations suivantes étaient représentées : CMI, IACS, IUMI, ICS, INTERCARGO, OCIMF, ICC et IMO. La discussion a été centrée sur les questions de responsabilité et la relation que les sociétés de classification entretiennent avec les autres secteurs de l'industrie, ainsi que sur les standards des prestations fournies. Le Groupe de travail étudiera lors de ses prochaines réunions, l'élaboration de dispositions type. Deux rencontres sont programmées en décembre 1993 et en février 1994.

Le Président du Groupe de travail a recommandé qu'une communication relative à la responsabilité des sociétés de classification concernant les visites obligatoires et aux relations de ces sociétés avec les propriétaires de navires et les assureurs soit soumise à la Conférence de Sydney pour examen et commentaires, sans qu'aucune action ne soit décidée par cette Conférence. Une action sur ces sujets ne peut être entreprise que par les responsables de ces sociétés.

5. Conférence de Sydney - Ordre du jour

En introduisant ce point, le Président du CMI a proposé que la Conférence examine et prenne position sur les sujets suivants:

- Règles d'York et d'Anvers (Projet de révision);
- Evaluation des dommages dus à la pollution (Projet de lignes directrices);
- Unités mobiles offshore (Projet d'une Convention et, selon le résultat du travail du Sous-Comité, document concernant le prochain travail du CMI sur un régime relatif aux opérations offshore).

Comme à son habitude, la Conférence créera des Comités pour chaque sujet. Les Sous-Comités comme les groupes de travail de la Conférence soumettront le résultat de leurs travaux à l'Assemblée générale de la Conférence pour discussion et décision.

En complément de l'ordre du jour de la Conférence, deux sessions spéciales de l'Assemblée générale se tiendront. L'une d'elles s'intéressera à des questions particulières de droit des assurances maritimes. L'autre discutera des rapports concernant:

- les sociétés de classification;
- certains développements relatifs à la responsabilité des tiers.

The President of the MLA of Australia and New Zealand gave a report on the organization of the Conference and the preparation of the side programme and social events. The President thanked the MLA of Australia and New Zealand for their efforts and work in organizing the Conference.

6. Voylayrules 93

The Executive Council had submitted the Voyage Charterparty Laytime Interpretation Rules 1993 (Code name: VOYLAYRULES 93).

The President introduced the document and explained that the first draft of the rules was already sent to the national associations in 1992. The comments which were received from the associations have been submitted to the Working Group (BIMCO, CMI, FONASBA, INTERCARGO) which prepared a revised draft of the rules. This draft was again submitted to the national associations of the CMI. According to the replies received the majority of associations are able to agree with the present draft. Certain objections or reservations were made by the MLA of Japan and the BMLA.

The President informed the Assembly that the governing bodies of BIMCO and INTERCARGO had already adopted the Rules.

In the discussion the representative of the MLA of Japan explained that his association has still some problems with the present draft which is, according to the view of that association, not entirely clear in all parts. He mentioned as example the use of the terms "workable hatch per day..." and "working hatch per day...". The two terms have a different meaning.

No further discussion took place. The Assembly adopted the text of the rules as submitted.

The MLA of Japan reserved its position.

The President emphasised the need to make the rules known to the market. BIMCO is willing to take steps in that regard. The CMI will in any event publish the rules.

7. E.C. Legislation Committee

The President introduced this item and referred to a document on the formation of a special E.C. Legislation Committee which was before the Assembly.

He explained the need to monitor the activities of the E.C. Commission which are of interest to the work of the CMI and to take action if necessary. The CMI has been given consultative status by the E.C. Commission. Activities and decisions of the E.C. Commission on subjects within the sphere of interest of CMI are important to other parts of the world and to all national associations. This is the reason why the CMI as a global organization has to watch and, if necessary, to react to the activities of the E.C. Commission. In this context the President emphasised that the CMI should not form regional groups or introduce a regional structure. However, the E.C. Commission is only prepared to accept European organizations or bodies in respect of input given to its discussion or work. It is only for this rea-

L'Assemblée a adopté les propositions faites par le Président.

Le Président de l'Association d'Australie et Nouvelle Zélande fit un rapport sur l'organisation de la conférence et sur la préparation du programme d'accompagnement et des festivités.

Le Président remercia l'Association d'Australie et de Nouvelle Zélande pour les travaux d'organisation de la Conférence.

6. Voylayrules 93

Le Conseil exécutif a soumis les Voyage charterparty laytime interpretation Rules 1993 (Nom de Code VOYLAYRULES 93).

Le Président a présenté le document et a expliqué que le premier projet de ces Règles a déjà été envoyé aux Associations nationales en 1992. Les commentaires reçus des Associations ont été soumis au Groupe de travail (BIMCO, CMI, FONASBA, INTERCARGO) qui a préparé un projet modifié de ces Règles. Ce projet a été à nouveau soumis aux Associations nationales du CMI. Compte tenu des réponses reçues, la majorité des Associations serait d'accord avec le présent projet. Certaines objections ou réserves ont été présentées par l'Association du Japon et celle du Royaume Uni.

Le Président a informé l'Assemblée que les entités dirigeantes de la BIMCO et d'INTERCARGO avaient déjà adopté les Règles.

Au cours de la discussion, le Représentant de l'Association du Japon expliqua que son association a eu quelques difficultés avec le projet actuel qui, selon cette association, n'est pas entièrement clair dans toutes ses parties. Il mentionna par exemple l'utilisation des termes "workable hatch per day ..." et "working hatch per day ...". Les deux termes ont une signification différente.

Il n'y eut pas d'autres interventions. L'Assemblée adopta le texte des Règles telles que soumises.

L'Association du Japon réserva sa position.

Le Président souligna la nécessité de faire connaître les Règles sur le marché. BIMCO est disposé à faire des actions en ce sens. Le CMI, en tout état de cause, publiera les Règles.

7. Comité de législation européenne

Le Président a introduit ce chapitre et s'est référé à un document relatif à la création d'un Comité spécial chargé de suivre la législation des C.E. ; document remis à l'Assemblée.

Il a expliqué la nécessité de suivre les activités de la Commission des C.E. se rapportant aux travaux du CMI, pour entreprendre des actions si nécessaire. Le CMI a obtenu le statut consultatif auprès des C.E.

Les activités et les décisions de la Commission des C.E. dans les domaines liés à la sphère d'intérêt du CMI sont importantes pour les autres parties du monde et pour toutes les associations nationales. C'est la raison pour laquelle le CMI, en sa qualité d'organisation mondiale, doit surveiller et éventuellement réagir aux activités de la Commission des C.E. Dans ce contexte, le Président

son that a special entity of the CMI should be formed in order to fulfil the task of monitoring the work of the E.C. Commission and to establish the necessary contacts for channelling comments and proposals to the E.C. Commission.

The new CMI E.C. Legislation Committee would only work and act within the framework and under the authorization of the CMI and should only have the competence and organizational basis which is necessary to fulfil its task. Any substantial decision should be taken by the CMI.

The President informed the Assembly that he had contacted the European MLAs in advance on this matter. No contacted MLA has reacted negatively.

In the discussion it was underlined that the CMI should avoid to create a regional structure. Whilst it was generally accepted that activities and decisions of the E.C. Commission in respect of shipping or maritime law may be of interest in other parts of the world it was the general view that the activities of the CMI and the organizational arrangements to be made should be restricted to those measures which are strictly necessary in order to fulfil the requirement of the E.C. Commission on the one hand and to handle the matter within the CMI properly in accordance with the instructions and decisions of the Assembly on the other hand. It was stressed that the E.C. Legislation Committee should have the minimum organizational characteristics and the terms of reference which would enable the Committee to fulfil the tasks and duties entrusted to it.

Against this background the Assembly agreed to set up the Committee and adopted the document on the organization of work and terms of reference of the E.C. Legislation Committee with some small amendments.

8. Accounts 1992

The Treasurer introduced his report on the accounts for the year 1992. He referred to his letter-report dated 29th January, 1993. No comments nor questions had been received from any of the Member Associations.

The surplus of receipts over expenses in 1992 made good the loss that had been experienced in 1991. Also the assets had increased. This favorable situation had developed to a large extent as a consequence of a considerable saving for the CMI in travelling and other expenses ancillary to the CMI Conference, seminar and Colloquium at Genova in June and September 1992. This saving resulted from the generosity of Ente Colombo in taking care of the reimbursement of most of these expenses. The collection of the considerable arrears on the 1991 contributions of the Member Associations had made good progress. Unfortunately, as far as the 1992 contributions were concerned, deplorable delays in the payments by the Members have again occurred.

The Assembly approved the accounts for the year 1992 and granted release to the Treasurer.

The Assembly also approved the proposal of the Executive Council to confer to the president, the secretary general and the treasurer full authority to take appropri-

souligna que le CMI ne devrait pas constituer de groupes régionaux ou introduire une structure régionale. Cependant, la Commission des C.E. n'est disposée à accepter que des organisations européennes ou des groupements susceptibles de donner une impulsion à ses discussions ou à son travail. C'est seulement pour cette raison qu'une entité spéciale du CMI devrait être constituée en vue d'assumer la tâche de suivre le travail de la Commission des C.E. et d'établir les contacts nécessaires pour canaliser les commentaires et les propositions en direction de la Commission des C.E.

Le nouveau Comité de législation CMI/C.E. devrait uniquement travailler et agir dans le cadre du CMI et avec son autorisation et devrait uniquement avoir la compétence et la structure nécessaire pour accomplir sa tâche. Toute décision importante devrait être prise par le CMI. Le Président a informé l'Assemblée qu'il avait contacté les Associations européennes de Droit Maritime sur cette question. Aucune association contactée n'a réagi négativement. Dans la discussion, il fut souligné que le CMI devrait éviter de créer une structure régionale.

Il a été admis, d'une manière générale, que les activités et les décisions de la Commission des C.E. dans le domaine du shipping ou du droit maritime pourraient être intéressantes pour les autres parties du monde. Ce fut l'opinion générale que les activités du CMI et les modalités d'organisation qui seraient trouvées devraient être limitées aux mesures strictement nécessaires pour, d'une part, satisfaire les demandes de la Commission des C.E. et pour d'autre part, s'occuper du problème avec le CMI, conformément aux instructions et aux décisions de l'Assemblée. Il a été souligné que le Comité de législation européenne devrait avoir les caractéristiques d'organisation minimum et les termes de référence qui devrait permettre au Comité de remplir les tâches qui lui seraient confiées.

En fonction de ces éléments, l'Assemblée accepta la mise en place du Comité et adopta le document relatif à l'organisation du travail et à l'ordre du jour du Comité sur la législation communautaire, avec de légers amendements.

8. Comptes 1992

Le trésorier présenta son rapport sur les comptes pour l'année 1992. Il se référa à sa lettre du 29 janvier 1993. Aucun commentaire ou questions n'ayant été reçu de qui que ce soit parmi les associations membres.

L'excédent de recettes sur les dépenses en 1992 réduit la perte enregistrée en 1991. Les assiettes ont également augmenté. Cette situation favorable est la conséquence des économies qui ont été faites par le CMI sur les dépenses de voyages et autres organisations matérielles lors des séminaires et colloques à Gênes en juin et septembre 1992. Ces économies sont aussi dues à la générosité de l'organisation de Cristophe Colomb qui a remboursé la plupart des dépenses.

Le recouvrement des retards considérables des contributions pour 1991 des associations membres a fait des progrès. Malheureusement en ce qui concerne les contributions pour 1992 des retards déplorables dans les paiements ont encore été enregistrés.

ate decisions on the treatment of the arrears due by Member Associations which currently experience difficulties for collecting money from their members or for exporting funds out of their countries. However, regarding arrears in general the provisions of Article 21 of the current CMI Constitution should be strictly applied.

9. Budget and Contributions

The treasurer referred to the drafts of the budgets for the years 1993 and 1994 that he had prepared and of which he had informed the Member Associations with his letter dated 29th January 1993.

In the draft budget for the year 1994 no estimation appears concerning the CMI publications because, pending final decisions as to the cost and the price of these publications, neither the amount of receipts out of subscriptions etc. nor the amount of expenses can be appropriately calculated.

In the same draft no mention has been made of the Sydney International Conference, because traditionally the receipts and expenses attaching to CMI international conferences have been kept separately from the "ordinary" budget and are supposed or at least expected to balance. This matter is being examined in close cooperation between the CMI and the host Association.

The Assembly adopted the draft budgets for the years 1993 and 1994.

The President proposed to raise the contribution of the national associations for the year 1994 by 6 percent. This proposal was made after consideration of the index of retail prices and of cost of labour in Belgium by the Executive Council.

The Assembly adopted the proposal with 14 votes in favour, 3 against and one abstention.

10. Next Assembly Meeting

The next meeting of the Assembly will take place on 8th of October 1994 in Sydney.

11. Nominating Committee

The President informed the Assembly that the Nominating Committee for the forthcoming elections had been set up. Members are:

Mr. Nicolas J. Healy (USA)	Chairman, elected by the Council
Mr. J. Niall McGovern (Ireland)	elected by the Vice Presidents
Mr. Jean Warot (France)	elected by the Council (Council excluding any office holders)

Ex officio Members:

President Professor Allan Philip

Past President Professor Francesco Berlingieri

The national Associations will be asked to submit their proposals for candidates.

L'Assemblée approuve les comptes pour 1992 et donne quitus au trésorier.

L'Assemblée approuve également la proposition du Conseil exécutif de conférer au Président, au Secrétaire général et au Trésorier, l'autorité absolue pour prendre les décisions appropriées sur le traitement des arriérés dus pour recueillir les fonds auprès de leurs membres ou pour transférer les fonds à l'étranger.

Cependant, à l'égard des retards de paiement en général, les dispositions de l'article 21 de la constitution du CMI devraient être appliquées à la lettre.

9. Budgets et Contributions

Le trésorier se réfère aux projets de budget pour 1993 et 1994 qu'il a préparés et dont il a informé les Associations par sa lettre du 29 janvier 1993.

Dans le projet de budget pour l'année 1994, aucun montant prévisionnel n'apparaît concernant les publications du CMI car, dans l'attente des décisions définitives concernant le coût et le prix de vente de ces publications, ni le montant des abonnements etc ... ni le montant des dépenses ne peuvent être calculés avec précision.

Dans le même projet, il n'a pas plus été fait mention de la Conférence internationale de Sydney. En effet, il est d'usage de traiter les recettes et les dépenses concernant les conférences internationales du CMI en dehors du budget "ordinaire", elles sont supposées ou au moins prévues s'équilibrer. Cette question est à l'étude en étroite coopération entre le CMI et l'Association qui accueille. L'Assemblée a adopté les projets de budget pour les années 1993 et 1994.

Le Président a proposé d'augmenter de 6% la cotisation des associations nationales pour l'année 1994. Cette proposition a été faite après examen par le Conseil exécutif de l'index des prix de détail et du coût de la main d'oeuvre en Belgique. L'Assemblée a adopté la proposition par 14 voix pour, 3 voix contre et une abstention.

10. Prochaine réunion de l'Assemblée

La prochaine réunion de l'Assemblée se tiendra le 8 octobre 1994 à Sydney.

11. Comité de présentation

Le Président a informé l'Assemblée que le Comité de présentation pour les prochaines élections a été constitué. Les membres sont:

M. Nicolas J. HEALY (USA)	Président, élu par le Conseil
M.J. NIAL McGOVERN (Irlande)	Elu par les Vice-Présidents
M. Jean WAROT (France)	Elu par le Conseil (Conseil excluant tous les dirigeants)

Membres statutaires:

Président: Professeur Allan Philip

Ancien président: Professeur Francesco Berlingieri

Il est demandé aux Associations nationales de soumettre leurs propositions de candidats.

Meeting of the Executive Council
24th September 1993

Summary

1. Membership

a) Maritime Law Associations

In accordance with the decision taken at the meeting of the Executive Council in April the Council agreed to submit the application of the MLA of South Africa to the Assembly.

After examination of the documents received from the MLA of Malaysia and the MLA of Slovenia, the Council agreed that both MLAs fulfil the conditions set out by the constitution and decided to submit the applications to the Assembly accordingly.

According to the information received from the MLA of Ecuador this MLA fulfils the conditions for membership. Since the documents concerned were not yet available at the time of the meeting the Council agreed to propose to the Assembly to entrust the President, the Administrator and the Secretary General with the task and the power of admitting the MLA of Ecuador to CMI Membership if the documents are available and fulfil the relevant conditions.

b) Titulary Members

The Council decided to submit the following applications to the Assembly:

MLA of the USA:	Mr. Howard McCormack Mr. Marshall Keating
MLA of Canada:	Mrs. Johanne Gauthier Mr. Nigel Frawley
MLA of Israel:	Mr. Tova Strassberg-Cohen

2. Work in Progress

The Council received written reports on the following subjects:

- Maritime Agents
- York/Antwerp Rules
- Classification Societies
- Pollution Damage Assessment
- Offshore Mobile Craft
- Third Party Liability

3. Arrest Convention

Arrest is on the agenda of IMO and UNCTAD. Both organizations will again set up a Joint Working Group. It can be expected that the CMI draft on Arrest will play a rôle in the work of the Joint Working Group. No decision was required at this stage.

4. UNCTAD

UNCTAD has asked the CMI to support the educational programme of UNCTAD on charter parties. The programme is arranged for 1994 (end of August and beginning of September) in Santiago de Chile. It was decided to support the educational programme of UNCTAD.

Réunion du Conseil Exécutif
24 Septembre 1993

Résumé

1. Membres du CMI

a) Associations de droit maritime

Conformément aux décisions prises lors de la réunion du Conseil exécutif en avril, celui-ci a décidé de soumettre à l'Assemblée Générale l'adhésion de l'Association de l'Afrique du Sud.

Après examen des documents reçus des Associations de la Malaisie et de la Slovaquie, le Conseil a jugé que ces deux Associations remplissent les conditions exigées par les statuts du CMI et a décidé de soumettre leur adhésion à l'Assemblée.

Compte tenu des informations reçues de l'Association de l'Equateur, cette Association remplit les conditions pour devenir membre. Etant donné que les documents nécessaires ne sont pas encore parvenus au moment où se tient la réunion, le Conseil est d'accord pour proposer à l'Assemblée, de faire confiance au Président, à l'Administrateur et au Secrétaire Général, en leur donnant les pouvoirs d'appréciation nécessaires pour admettre l'Equateur en qualité de membre du CMI, si les documents produits remplissent les conditions requises pour une telle admission.

b) Membres titulaires

Le Conseil a décidé d'admettre les candidatures suivantes à l'Assemblée:

Association des USA	Mr. Howard McCormack Mr. Marshall Keating
Association du CANADA	Mrs. Johanne Gauthier Mr. Nigel Frawley
Association d'ISRAEL	Mr. Tova Straasberg-Cohen

2. Travaux en cours

Le Conseil a reçu des rapports écrits sur les sujets qui suivent:

- Agents maritimes
- Règles d'York et d'Anvers
- Sociétés de classification
- Fixation et étendue des dommages de pollution
- Engins mobiles "Offshore"
- Responsabilité à l'égard des tiers.

3. Convention sur la saisie

La saisie est inscrite à l'ordre du jour des travaux de l'OMI et de la CNUCED. Chacune de ces organisations installera un groupe de travail commun. Il peut être escompté que le projet du CMI sur la saisie jouera un rôle dans les travaux de ce groupe de travail commun. A ce stade, aucune décision ne doit être prise.

4. CNUCED

La CNUCED a demandé au CMI d'apporter son aide et son concours au programme de formation de la CNUCED sur les chartes-parties. Le programme pour 1994 se déroulera à Santiago du Chili, fin août/début septembre. Il a été décidé que le CMI apportera son concours à la CNUCED.

5. Sydney Conference

The Council agreed to propose the following programme to the Assembly:

Agenda:

- 1) Draft Convention on Offshore Mobile Craft and related issues
- 2) Revision of the York/Antwerp Rules
- 3) Assessment of Pollution Damage.

The Council agreed further that reports on the following issues should be given and discussed at special meetings of the plenary:

- 1) Classification Societies
- 2) Third Party Liability.

In addition a session on insurance law will take place. The following topics will be discussed: express warranties and utmost good faith.

A final decision as to who the Chairman of the session and who the speakers will be still has to be taken.

The special sessions are scheduled for Tuesday. In the morning session the reports on Classification Societies and on Third Party Liability should be given. At the afternoon session the insurance law issues should be discussed.

6. E.C. Legislation Committee

The Council agreed to submit to the Assembly a proposal to set up an E.C. Legislation Committee. A draft text of a document on the organization of work and on the terms of reference was agreed upon and it was decided to submit that draft to the Assembly.

7. Accounts, Budget and Contributions

- a) The Council discussed the situation of arrears of annual contribution and agreed to ask the Assembly to confer to the President, the Secretary General and the Treasurer the authority to decide upon the treatment of arrears of Member Associations who have difficulties to collecting contributions from their members or to export funds from their countries. Regarding arrears in general the Executive Council agreed that Article 21 of the CMI Constitution should be strictly applied.
- b) After consideration of the index of retail prices and of cost of labour in Belgium the Executive Council decided to propose to the Assembly to increase the contributions by 6% for the year 1994.

8. Publication

- a) Professor Berlingieri informed the Council that in the next issue of the News Letter a report on HNS and on the discussion of the Legal Committee of IMO on the Revision of the Limitation Convention 1976 will be published together with the Minutes of the Assembly.

5. Conférence de Sydney

Le Conseil exécutif a décidé de proposer à l'Assemblée Générale le programme suivant:

- 1) Projet de Convention sur les Engins mobiles "Offshore" et leurs accessoires
- 2) Révision des Règles d'York et d'Anvers
- 3) Fixation des dommages de pollution.

De plus, le Conseil a accepté que des rapports sur les sujets qui suivent, soient établis et discutés lors d'une réunion spéciale de l'Assemblée plénière:

- 1) Les sociétés de classification
- 2) La responsabilité à l'égard des tiers.

En outre, une session consacrée à la loi sur l'assurance maritime aura lieu. Les sujets suivants y seront discutés: les engagements formels de l'assuré et la notion de bonne foi la plus absolue.

Une décision définitive quant au choix du président et des orateurs de la session interviendra plus tard. La session spéciale est prévue pour le mardi. Le matin, les rapports sur les sociétés de classification et sur la responsabilité à l'égard des tiers seront présentés. A la session de l'après-midi, les questions relatives à la loi sur l'assurance maritime seront discutées.

6. Comité sur la législation de la Communauté Européenne

Le Conseil exécutif a donné son accord pour soumettre à l'Assemblée générale une proposition tendant à mettre en place un Comité chargé de suivre la législation de la Communauté européenne. Un projet de texte portant sur l'organisation du travail et l'activité du Comité a été mis au point. Il a été décidé de soumettre ce projet à l'Assemblée Générale.

7. Comptes de l'exercice, Budget de contributions

- a) Le Conseil a examiné l'état des arriérés de la contribution annuelle et décidé de demander à l'Assemblée d'accorder au Président, au Secrétaire Général et au Trésorier le pouvoir de décider du sort des arriérés des Associations membres qui rencontrent des difficultés dans la collecte des contributions auprès de leurs membres ou pour sortir de leurs pays des devises. En ce qui concerne les arriérés, le Conseil exécutif est, en principe, d'accord pour appliquer strictement l'article 21 des Statuts du CMI.
- b) Prenant en compte l'évolution de l'indice des prix en Belgique, le Conseil a décidé de proposer à l'Assemblée une augmentation de six pour cent du montant de la contribution.

8. Publication

- a) Le Professeur Berlingieri a informé le Conseil que dans le prochain numéro des News Letter, un rapport sur les HNS et sur les discussions au sein du Comité Juridique de l'OMI concernant la révision de la Convention de 1976 sur la Limitation sera publié simultanément avec le procès verbal de l'Assemblée.

- b) In respect of the Yearbook Professor Berlingieri proposed the following format:
1. Information on MLAs
 2. Reports on the work of the CMI during the given year
 3. List of Conventions and ratifications.

The proposal was accepted by the Council.

It was decided that in the Yearbook 1993 the preparatory documents for the Sydney Conference should be published. The sub-title "Sydney I" should be added. The results of the Sydney Conference will be published in the Yearbook 1994 with the sub-title "Sydney II".

9. Centenary

The Council discussed the organization of the Centenary of the CMI in 1997.

It was decided that in 1997 a Conference should be convened in Antwerp.

10. Nominating Committee

The Council was informed that the Nominating Committee for the election in 1994 started with its activities. The President drew the attention of the Exco to the provisions of the constitution limiting the number of terms and the need to review membership of the Executive Council in order to ensure continuity in the long run.

11. Next Meetings

- The next meeting of the Council will take place on the 13th of May 1994 either in London or in Oxford.
- In Sydney a meeting of the Council will be convened for the 2nd of October 1994.
- The next meeting of the Assembly will take place on 8th October 1994 with a possible meeting of the Council
- Dr. Frank Wiswall submitted to the Council draft rules of procedure for the Assembly which will be put on the agenda of the next meeting of the Executive Council.

Maritime and Shipping Agents

On 3rd December 1993, the second meeting of the International Sub-Committee on Maritime Agents was held in Paris under the Chairmanship of Professor Francesco Berlingieri.

Mrs. Mahin Faghfoury attended the meeting in her capacity as Observer for UNCTAD.

The Committee considered the draft report prepared by the Chairman, and, on the basis of the replies received from the National Associations to the questionnaire, realized that the notion of Maritime Agents differed in the various jurisdictions and that even the names used varied as did the functions vary from country to country.

The Committee, therefore, deemed it proper, taking also

- b) En ce qui concerne l'annuaire du CMI, le Professeur Berlingieri a proposé les matières suivantes:

1. Informations sur les Associations nationales.
2. Rapport sur les travaux du CMI pendant l'année écoulée.
3. Liste des Conventions et état des ratifications.

Ces suggestions sont acceptées par le Conseil.

Il a été décidé que dans l'annuaire 1993, les documents préparatoires de la Conférence de Sydney seraient insérés. Le Sous-titre "Sydney I" serait ajouté. Les décisions prises à la Conférence de Sydney seraient publiées dans l'annuaire 1994, avec le Sous-titre "Sydney II".

9. Centenaire

Le Conseil a discuté de l'organisation du Centenaire du CMI en 1997. Il a été décidé qu'une conférence se tiendrait, à cette date, à Anvers.

10. Comité de désignation

Le Conseil est informé que le Comité de désignation a commencé ses travaux, en ce qui concerne les élections de 1994.

Le Président souligne les dispositions des Statuts limitant le nombre des mandats et la nécessité de considérer la composition du Conseil exécutif afin d'assurer une continuité à long terme.

11. Prochaines réunions

- La prochaine réunion du Conseil aura lieu le 13 mai 1994, soit à Londres, soit à Oxford.
- Une réunion du Conseil sera organisée le 2 octobre 1994 à Sydney.
- La prochaine réunion de l'Assemblée se tiendra le 8 octobre 1994, avec une réunion possible du Conseil.
- Le Dr Frank WISWALL a soumis au Conseil un projet de "Règles de Procédure" concernant l'Assemblée. Elles seront mises à l'ordre du jour de la prochaine réunion du Conseil exécutif.

Agents Maritimes et de Navires

La deuxième réunion de la Commission internationale traitant des agents maritimes s'est tenue à Paris le 3 décembre 1993 sous la présidence du Professeur Francesco Berlingieri.

Madame Mahin Faghfoury a assisté à cette réunion en sa capacité d'observatrice pour CNUCED.

La Commission a examiné le projet de rapport rédigé par le Président et, sur la base des réponses au questionnaire reçues de la part des Associations Nationales, a réalisé que la notion d'agent maritime était différente dans les diverses juridictions et que même les dénominations en usage autant que les fonctions variaient d'un pays à l'autre.

C'est pourquoi, la Commission a estimé qu'il convenait de

into account the comparative study of standards applied to shipping agents prepared by the UNCTAD Secretariat, to prepare a new questionnaire.

The questionnaire will be circulated to all National Associations and it is hoped that replies may be forthcoming in the very near future.

The decision of the Sub-Committee was to prepare a study on maritime and shipping agents based on the replies to the first questionnaire and to the forthcoming replies to the second questionnaire.

News from National Associations

1. Norway

Mr. Karl-Johan Gombrii has been elected President of the Norwegian MLA. The new address of the Association is the following:

Nordisk Skipsrederforening
P.O. Box 3033 Elisenberg N-0207 Oslo Norway
Tel. (+ 47) 22 55 47 20 Fax (+ 47) 22 43 00 35

2. Panama

The new Board of Directors of the Panamanian MLA for 1993-1994 consists of the following:

Dámaso Díaz Ducasa — President
Ramón Franco — Vice President
Cecilia A. de Gonzalez Ruiz — Treasurer
Maria Teresa Díaz G. — Secretary
Ramón Arias Bell — Assistant Treasurer
Victoria E. Myers — Assistant Secretary

rédiger un nouveau questionnaire qui tiendrait compte de l'étude comparative entreprise par le secrétariat de CNUCED à propos des normes d'application pour les agents maritimes.

Le questionnaire sera mis en circulation auprès de toutes les Associations Nationales et l'espoir est formulé que les réponses ne tarderont pas.

En conclusion, la Commission a décidé d'entreprendre une étude sur les agents maritimes et de navires qui sera basée sur les réponses au premier questionnaire et sur les réponses à venir au second questionnaire.

Nouvelles des Associations Nationales

1. Norvège

L'avocat Karl-Johan Gombrii a été élu Président de l'Association Norvégienne de Droit Maritime. La nouvelle adresse de l'Association est la suivante:

Nordisk Skipsrederforening
P.O.BOX 3033 Elisenberg N-0207 Oslo Norvège
Tél. (+ 47) 22.55.47.20 Fax (+ 47) 22.43.00.35

2. Panama

Le nouveau Bureau de l'Association de Droit Maritime du Panama pour l'exercice 1993/1994 se compose comme suit:

Dámaso Díaz Ducasa — Président
Ramon Franco — Vice-Président
Cecilia A. de Gonzalez Ruiz — Trésorière
Maria Teresa Díaz G. — Secrétaire
Ramon Arias Bell — Trésorier adjoint
Victoria E. Myers — Secrétaire adjoint.

Ratification of International Conventions

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

- **Convention Internationale pour l'Unification de Certaines Règles en Matière d'Abordage 1910.**
Slovenia. Succession to Yugoslavia as of 25th June 1991 pursuant to notice given to the Ministry of Foreign Affairs of Belgium on 13th October 1993.
- **Convention pour l'Unification de Certaines Règles en Matière d'Assistance et de Sauvetage Maritimes, 1910.**
Slovenia. Succession to Yugoslavia as of 25th June 1991 pursuant to notice given to the Ministry of Foreign Affairs of Belgium on 13th October 1993.
- **Protocole (Bruxelles, 27 Mai 1967) Portant Modification de la Convention pour l'Unification de Certaines Règles en Matière d'Assistance et de Sauvetage Maritimes, 1910.**
Slovenia. Succession to Yugoslavia as of 25th June 1991 pursuant to notice given to the Ministry of Foreign Affairs of Belgium on 13th October 1993.
- **International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision, 1952.**
Slovenia. Succession to Yugoslavia as of 25th June 1991 pursuant to notice given to the Ministry of Foreign Affairs of Belgium on 13th October 1993.
- **International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation, 1952.**
Slovenia. Succession to Yugoslavia as of 25th June 1991 pursuant to notice given to the Ministry of Foreign Affairs of Belgium on 13th October 1993.
- **International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952.**
Slovenia. Succession to Yugoslavia as of 25th June 1991 pursuant to notice given to the Ministry of Foreign Affairs of Belgium on 13th October 1993.