

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 1 - 1994

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

News from the CMI

XXXVth International Conference of the Comité Maritime International - Sydney, 2nd to 7th October 1994

Business Programme

Overview

The Business Programme for the Conference will consist primarily of three Committees meeting simultaneously on the topics detailed below. Delegates are asked to nominate on their Registration Form the Committee they wish to attend.

Committee 1 - Assessment of Claims for Pollution Damage

The Committee will consider a discussion paper and draft on the Assessment of Claims for Oil Pollution Damage. This topic involves consideration of the circumstances in which the recovery of pure economic loss, not consequential on property damage, can be made as well as whether or not claims for environmental damage should be restricted to the costs actually incurred in reinstating the damaged environment or should permit an assessment to be made of damages attributable to impairment of natural resources.

Committee 2 - Off-Shore Mobile Craft

This Committee will consider a draft international convention on Off-Shore Mobile Craft and, possibly, a working paper enlarging the scope of the draft convention to include off-shore craft while on location or fixed. The present draft convention extends traditional maritime conventions such as those relating to collisions, salvage, limitation and oil pollution to off-shore mobile craft.

Committee 3 - Review of the Law of General Average and York-Antwerp Rules 1974 (as amended 1990)

As the title suggests, this Committee will review the report and recommendations of the Sub-Committee which will recommend changes to the York-Antwerp Rules.

Working Group Reports and Marine Insurance Seminar - Tuesday 4th October 1994

Simultaneously with the three Committees, the following meetings will be taking place on Tuesday, 4th October only.

1. Working Group Report: Third Party Liability

The Third Party Liability Working Group which is monitoring the work of IMO in relation to the HNS Convention and a possible review of the Limitation Convention 1976 will report on developments.

2. Working Group Report: Classification Societies

The Working Group, which is involved in the joint international working group together with the International Association of Classification Societies, the International Group of P&I Clubs, International Union of Marine Insurers, Intercargo, International Chamber of Shipping and International Chamber of Commerce, will provide a report on the work completed to date.

3. Marine Insurance Seminar

The following panelists will participate in the discussion of the topic: "Marine Insurance — is the Doctrine of Utmost Good Faith Out of Date?"

- Mr. Patrick Griggs, senior partner Ince & Co., London
- The Hon. Justice Michael Kirby, AC CMG, President of the Court of Appeal of NSW
- Mr. Jean-Serge Rohart, partner, Villeneuve-Rohart-Simon & Associés, Paris
- Mr. Graydon Staring, partner, Lillick & Charles, San Francisco and Past President of the USMLA.

Venue

The Conference will be held from 2-8 October 1994 at Sydney's Sheraton Wentworth Hotel located in the central business district, close to Sydney Harbour and its surrounding attractions. Accommodation is available at the Sheraton Wentworth Hotel (headquarters) and the Hotel Inter-Continental Sydney (5 min. walk).

Registration

In order to attend the Conference, the Registration Form enclosed with the booklet must be completed and returned to the Secretariat in the envelope provided. Each delegate must fill in a separate form (photocopy for additional forms).

Registration Fee

All fees quoted are in Australian dollars	(A\$) Before 1 July 1994	After 1 July 1994
Delegate Registration Fee	A\$ 1,000.00	A\$ 1,100.00
Accompanying Guest Registration Fee	A\$ 400.00	A\$ 400.00
Delegate fee includes:	Accompanying Guest fee includes:	
- Participation at Business Sessions	- Opening Ceremony and Dinner Harbour Cruise	
- Morning and Afternoon Teas	- Cocktail Party, Maritime Museum	
- Opening Ceremony and Dinner Harbour Cruise	- Banquet, Sydney Town Hall	
- Cocktail Party, Art Gallery of NSW	- Coffee Cruise on Sydney Harbour	
- Cocktail Party, Maritime Museum		
- Cocktail Party, Art Gallery of NSW		
- Banquet, Sydney Town Hall		

Payment of Fees

Payment of fees must be made in Australian Dollars. No reservations will be confirmed until payment is received. Payment can be made either by:

- Bank draft in Australian Dollars
- Personal Cheque (if drawn on an Australian Bank)
- Mastercard Visa Bankcard

Cheques should be made payable to CMI 35th International Conference.

Cancellations and Refunds

Cancellations should be notified in writing to the Secretariat. Cancellations received prior to 1st September 1994 will receive a full refund less A\$ 50.00 cancellation fee. Refunds for cancellations received after 1st September 1994 will only be made in exceptional circumstances.

Acknowledgement

Registration will be acknowledged in writing with confirmation of the individual requirements according to each registration form.

The Conference Secretariat is:

CMI 35th International Conference Telephone: (61 2) 241 1478
GPO Box 2609 Facsimile: (61 2) 251 3552
Sydney NSW 2001 AUSTRALIA

Registration and Information Desks

The Registration Desk will be located on level 3 of the Sheraton Wentworth Hotel. Delegates should call at the desk as soon as possible after their arrival in Sydney. The Registration and Information Desks will be open during the following hours:

Sunday, 2nd October	1000-1600
Monday, 3rd October to Friday, 7th October	0800-1730
Saturday, 8th October	0900-1300

The staff at the Registration and Information Desks will be happy to assist Delegates in any way they can.

Voyage Charterparty Laytime Definitions 1993

The original English text of the Rules has been published in Issue No. 3 of 1993 of the CMI News Letter. The Association Française du Droit Maritime has kindly taken care of providing a French version of the Rules which is now published hereafter:

Règles d'interprétation du temps de planche 1993

- Charte-parties au voyage

Etablies conjointement par BIMCO-CMI-FONASBA et INTERCARGO.

Une nouvelle édition des définitions du temps de planche dans les charte-parties par (les mêmes) plus le Conseil Général du Shipping Britannique (GCBS) de Londres en 1980 a été préparée conjointement par BIMCO, CMI, FONASBA et INTERCARGO et a été approuvée par la Commission des Documents de la BIMCO et par INTERCARGO en mai 1993, par l'Assemblée du CMI en septembre 1993 et par l'Assemblée Générale Annuelle de FONASBA en Octobre 1993 sous le nouveau nom de "Règles d'interprétations du temps de planche pour les Charte-parties au Voyage".

Le texte des nouvelles règles est le suivant:

Préambule:

Les interprétations des mots et phrases utilisés dans une charte-partie, comme établi ci-dessous et les abréviations correspondantes, si utilisées habituellement s'appliqueront lorsqu'elles seront expressément incorporées dans la charte-partie, entièrement ou partiellement sauf dans le cas où elles seraient incohérentes avec toute disposition précise de celle-ci.

Lorsque le mot "charte-partie" est utilisé, il sera bien entendu qu'il s'appliquera à toute forme de contrat de transport ou d'affrètement, y compris les contrats couverts par connaissance.

Liste des Règles:

1. "Port"
2. "Poste"
3. "Accessible à l'arrivée" ou "Toujours accessible"
4. "Planche"
5. "Par panneau et par jour"
6. "Par panneau disponible et par jour"
ou "Par panneau travaillable et par jour" (WHD)
7. "Jour"
8. "Jours complets"
9. "Jour férié"
10. "Jours ouvrables" (WD)
11. "Jours courants ou consécutifs"
12. "Jours ouvrables temps permettant" (WWD)
ou "Jours ouvrables de 24 heures, temps permettant"
ou "Jours ouvrables de 24 heures consécutifs, temps permettant"
13. "Temps permettant" (WP)
14. "Excepté" ou "Exclus"
15. "Sauf commencé avant"
16. "A moins qu'utilisé" (UU)
17. "Temps de planche équilibré"
18. "Temps de planche réversible"
19. "Notice de prêt à charger"
20. "Par écrit"
21. "Temps perdu dans l'attente de poste comptant comme temps de chargement ou de déchargement"
22. "A poste ou non" (wibon) "A poste ou pas à poste"
23. "Navire ayant la libre pratique" et/ou "Ayant accompli l'entrée en douane"
24. "Surestaries"
25. "Despatch money" ou "Despatch"
26. "Despatch sur (tout) le temps ouvrable sauvé" (WTS) ou "Sur (tout) le temps de planche sauvé" (ATS)
28. "Grève".

Règles

1. "Port" signifie un secteur dans lequel les navires chargeant ou déchargeant leur cargaison que ce soit à poste, au mouillage, sur bouées, ou équivalent, qui comprendra également les endroits habituels où

les navires attendent leur tour ou reçoivent l'ordre ou sont obligés d'attendre leur tour, quelle que soit la distance de l'endroit. Si le mot "Port" n'est pas utilisé, mais que le port est (ou doit être) identifié par son nom propre, cette définition s'appliquera quand même.

2. "Poste" signifie l'endroit spécifique dans le port où le navire doit charger ou décharger. Si le mot "poste" n'est pas utilisé, mais que l'endroit spécifique est (ou doit être) identifié par nom, cette définition s'appliquera quand même.
3. "Accessible à son arrivée" ou "Toujours accessible" signifie que l'affrètement s'engage à fournir au navire, au chargement ou au déchargement, un poste disponible à son arrivée au port, qu'il peut atteindre en sécurité, sans délai en l'absence d'un événement anormal.
4. "Planche" signifie la période de temps agréé entre les parties pendant laquelle l'armateur mettra en garde le navire disponible pour charger ou décharger sans supplément de fret.
5. "Par panneau/jour" signifie que le temps de planche doit être calculé en divisant (a) la quantité de la cargaison par (b) le résultat de la multiplication de la cadence journalière convenue par panneau par le nombre de panneaux du navire, donc

$$\text{Temps de planche: } \frac{\text{quantité de marchandise}}{\text{cadence journalière} \times \text{nombre de panneaux}} = \text{jours}$$

Chaque prise de panneaux double parallèles comptera pour un panneau. Néanmoins, un panneau susceptible d'être travaillé par deux équipes simultanément comptera pour deux panneaux.

6. "Par panneau disponible et par jour" (WHD) ou "par panneau travaillable par jour" (WHI), signifie que le temps de planche doit être calculé en divisant (a) la quantité de marchandise de la cale la plus chargée par (b) le résultat de la multiplication de la cadence journalière convenue par panneau disponible ou travaillable par le nombre de panneaux desservant cette cale, donc:

$$\text{Temps de planche: } \frac{\text{quantité de la cale la plus chargée}}{\text{cadence journalière par panneau} \times \text{nombre de panneaux dressés dans cette cale}} = \text{jours}$$

Chaque paire de panneaux doubles parallèles comptera pour une cale. Néanmoins, un panneau susceptible d'être travaillé par deux équipes simultanément comptera pour deux panneaux.

7. "Jour" signifie une période de 24 heures consécutives, s'étalant de 0 heure à 24 heures. Toute partie d'un jour comptera au pro-rata.
8. "Jours complets" signifient journées consécutives commençant à 0 heure, le jour qui suit le jour où la notice est donnée et se terminant à 24 heures, le dernier du nombre de jours stipulés.
9. "Jour férié" signifie un jour autre qu'un jour de repos normal de la semaine, ou une partie de jour, où par loi ou coutume du pays, le travail durant les heures ouvrables habituelles n'est pas normalement exécuté.
10. "Jours ouvrables" (WD) signifient des jours qui ne seront pas expressément exclus du temps de planche.
11. "Jours courants ou consécutifs" signifient des jours qui se suivent les uns après les autres.
12. "Jours ouvrables temps permettant" (WWD) ou "Jours ouvrables de 24 heures consécutives, temps permettant", signifie un jour ouvrable de 24 heures consécutives, à l'exception de toute période où le temps empêche le chargement ou le déchargement du navire ou l'aurait empêché si le travail avait été en cours.
13. "Temps permettant" (WP) signifie que toute période où les intempéries empêchant le chargement ou le déchargement du navire ne comptera pas comme temps de planche.
14. "Excepté" ou "Exclus" signifie que les jours spécifiés ne comptent pas comme temps de planche même si le chargement ou le déchargement est effectué pendant ces périodes.
15. "Sauf commencé avant" signifie que si le temps de planche n'a pas commencé mais que le chargement ou le déchargement a été entrepris, le temps utilisé comptera comme temps de planche.
16. "A moins qu'utilisé" (UU) signifie que si le temps de planche a commencé, mais que le chargement ou le déchargement est effectué pendant des périodes exceptées, le temps comptera.
17. "Temps de planche équilibré" signifie que des calculs séparés doivent être effectués pour le chargement et le déchargement et que tout temps sauvé dans une opération doit être déduit du temps dépassé dans l'autre opération.
18. "Temps de planche réversible" signifie une option donnée à l'affrètement d'additionner ensemble le temps alloué pour le chargement et le déchargement. Lorsque l'option est levée le résultat est le même que le temps total spécifié pour couvrir les 2 opérations.
19. "Notice de prêt à charger" (NOR) signifie la notice à l'affrètement, chargeur, réceptionnaire ou autre per-

sonne désignée à la charte-partie que le navire est arrivé au port ou au poste, selon le cas, et est prêt à charger ou à décharger.

20. "Par écrit" signifie toute forme exprimée visiblement de reproduction de mots, le moyen de transmission comprenant les communications électroniques telles que radio et télécommunications.
21. "Temps perdu dans l'attente de poste comptant comme temps de chargement ou de déchargement" ou "comme temps de planche" signifie que si aucun poste de chargement ou déchargement n'est disponible et que le navire est dans l'impossibilité de donner sa notice à l'endroit d'attente, tout temps perdu pour le navire comptera comme si le temps de planche était commencé, ou comme surestaries si le temps de planche était expiré. Ce temps cessera de compter au moment où le poste deviendra disponible. Lorsque le navire atteint un endroit où il est en position de donner sa notice le temps de planche ou les surestaries reprendront après cette remise, conformément au temps de planche, à l'expiration de tout délai de notice prévu à la charte-partie.
22. "A poste ou non" (WIBON) ou "Poste ou pas poste" signifie que si aucun poste de chargement ou de déchargement n'est disponible à son arrivée, le navire en atteignant toute place usuelle d'attente dans ou en dehors du port, aura le droit de remettre la notice depuis cet endroit, et que le temps de planche commencera, conformément à la charte-partie. Le temps de planche ou les surestaries cesseront de compter au moment où le poste deviendra disponible et reprendra lorsque le navire sera prêt à charger ou décharger au poste.
23. "Navire ayant la libre pratique" ou "ayant accompli l'entrée en douane" signifie que l'accomplissement de ces formalités ne sera pas une condition pour la remise de la notice, mais que tout temps perdu du fait de retard dans l'accomplissement d'une de ces formalités ne comptera pas comme temps de planche ou de surestaries.
24. "Surestaries" signifie un montant convenu payable à l'armateur se rapportant au retard causé au navire au delà du temps de planche et pour lequel l'armateur n'est pas responsable. Les surestaries ne seront pas affectées par les périodes d'exception.
25. "Despatch money" ou "Despatch" signifie un montant convenu payable par l'armateur si le navire termine le chargement ou le déchargement avant l'expiration du temps de planche.
26. "Despatch sur (tout) le temps ouvrable sauvé" ou "sur (tout) temps de planche sauvé" signifie que l'argent du despatch sera payé pour le temps depuis la fin du chargement ou du déchargement jusqu'à l'expiration du temps de planche, à l'exclusion des périodes d'exception du temps de planche.
27. "Despatch sur tout temps sauvé" (ATS) signifie que l'argent du despatch sera payé pour le temps depuis la fin du chargement ou déchargement jusqu'à la fin du temps de planche y compris les périodes d'exception.
28. "Grève" signifie une action concertée des travailleurs d'une industrie entraînant un arrêt complet de leur travail qui se répercute directement sur les opérations du navire. Le refus de travailler en heures supplémentaires, grève perlée, ou grève du zèle ou toute action similaire ne constituant pas un arrêt complet ne sera pas considérée comme grève. Une grève sera réputée exclure ses effets lorsqu'elle sera finie, tels que congestion dans le port ou perturbation sur les moyens de transport apportant ou emportant la cargaison à destination ou en provenance du port.

News from intergovernmental and international organizations

IMO

IMO - Legal Committee - 70th Session

A. Introduction:

The Legal Committee, under the chairmanship of Mr A.H.E. Popp Q.C. (Canada), met at IMO Headquarters from 21st — 25th March, 1994. Delegates from 51 Member States attended, one Associate Member State attended and two States sent observers. As usual, numerous organisations (including CMI) sent observers.

B. HNS:

The principal task for delegates was to further consider the draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea

(to give it its full name). The Committee first considered a number of papers submitted since the 69th Session. Amongst these were:

LEG 70/4/6

submitted jointly by the UK and the Republic of Liberia. This document proposed a complex formula, whereby contributions from different types of HNS would be calculated by reference to the value ascribed to a unit of a particular type of HNS. This value would be calculated by multiplying the Hazard by the Quantity and Sector factors. The document suggested that it is generally recognised that different types of HNS should contribute on a basis which reflected the level of threat which they posed.

The unit valuation system proposed by the UK and the Republic of Liberia was attacked by OCIMF (in Leg70/4/5 and LEG 70/4/5corr.1), as being unnecessarily complex from an administrative point of view and inequitable in its results.

LEG 70/4/10

Submitted jointly by Australia, Canada and Norway, was the culmination of much hard work by these three delegations, and aimed at providing a comprehensive, workable solution to the problems associated with the development of a second, industry-funded, tier in the HNS scheme. The paper proposed that there should be a limited number of separate "accounts" to cover different types of HNS. The Report contains a carefully-argued proposal that the second tier should be funded by a levy payable by the importer/receiver rather than by the exporter/shipper. The rate levied for each sector would eventually be based on the historical records covering claims paid under the second tier.

Following the introduction of the various position papers, the Chairman encouraged delegates to consider four basic issues arising from the draft Convention, with the following results:

(i) Two-tier Convention

The committee unanimously adopted the proposition that the prospective HNS Convention should consist of a two-tier system in one instrument; the shipowner's liability being covered by the first tier and the second tier controlling contributions from cargo interests.

(ii) Post-Event Contributions:

There was almost unanimous support for a system involving the collection of contributions from cargo interests after the incident giving rise to pollution. Delegates noted that a similar post-event system had proved workable in the case of IOPC Fund.

(iii) Separate Accounts

There was unanimous agreement that there should be a limited number of separate accounts only, and that these should be named in the Convention. There was a preponderance of opinion in favour of having criteria for the establishment of further accounts in future, and for testing the viability of accounts explicitly set out in the Convention. Further work on the detail of this proposal is necessary. Under this head, some discussion took place regarding the viability of each separate account. Concern was expressed that there would be insufficient insurance capacity available to cover the obligations of cargo interests, bearing in mind that much of the available insurance capacity would be absorbed by shipowners insuring their liability under the first tier. Concerns were expressed about the bureaucratic aspects of collecting contributions from cargo interests and doubt was expressed as to whether an international management organisation to deal with second tier contributions and liabilities was justified. A small working group was set up to consider a number of these complicated issues.

(iv) Who Pays?

The majority of delegates agreed that careful consideration should be given to imposing the obligation to pay contributions upon the importer/receiver, rather than on the exporter/shipper. A small working group was established to consider this problem further.

Delegates then went on to consider a number of other controversial aspects of the draft Convention:

(i) Definition of HNS Substances — Existing Lists or a Free-standing List

The Chairman of the Working Group on this subject introduced Document LEG70/4/7 in which it was recommended that there should be a free-standing list of substances to be annexed to the Convention. The Working Group also recommended that there should be a tacit and rapid amendment procedure to allow the list to be updated and amended as new substances, deemed to be hazardous or noxious, came into existence. There was general support from delegates for the conclusions of the Working Group.

(ii) Nuclear Substances:

Document LEG/70/4/3, submitted by the United States, argued strongly that the HNS Convention should

not apply to damage caused by radioactive materials included in Class 7 of the International Maritime Dangerous Goods Code. Discussion revealed that this remained a controversial issue and the Chairman urged delegates to arrange informal meetings before the 71st Session of the Legal Committee in an effort to produce an acceptable solution.

(iii) Information with respect to Sea-Going trade of HNS Goods

The Chairman deplored the fact that all delegations, apart from Sweden, had failed to provide information regarding the movement of HNS cargoes and to advise on the problems of identifying those who would be required to contribute in respect of that cargo. The Chairman emphasised that much more information would be required before a decision could finally be made on the practicability of a post-event system of collecting contributions.

(iv) Dumping:

The Secretariat of the 1972 London Dumping Convention submitted a document (LEG/70/4/4) which drew attention to the possible conflict between the Draft HNS Convention and the London Dumping Convention. After some debate, it was agreed that whilst the actual dumping of waste would continue to be governed by the London Convention, accidental discharge of waste in transit to a dumping site would be covered by the HNS Convention.

(v) Domestic voyages:

It was decided after some debate that the scope of the Convention would be extended to cover domestic voyages. It was accepted by delegates that if domestic voyages were excluded, victims would get less compensation for damage caused in connection with domestic transport, than they would in cases involving international transport. This would be inequitable. A further special study was put in place of the problems of collecting contributions in respect of domestic voyages. John Wren of the Department of Transport in London will be the focal point of these further discussions.

C. Possible revision of the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976)

Whilst it was recognised that the 1976 Convention contains a number of provisions which could do with revision, the Committee agreed that it would confine the scope of revision to the levels of limitation and the procedures for changing them.

The Committee proceeded to consider a number of papers submitted by delegations. Amongst these were

LEG/70/5/2:

This document was introduced by the German delegation and drew attention to the fact that the real value of the limitation amounts had been eroded by inflation since they were set. It was pointed out that the limit in respect of passenger claims under the 1974 Athens Convention had been increased from 46,666 SDR to 175,000 SDR by the 1990 Protocol but that no similar increase had been introduced for the 1976 LLMC Convention. This should be attended to.

In this document it was also strongly urged upon the Committee that the limitation regime covering claims arising out of the transportation of HNS cargoes should be wholly separated from the limits under the 1976 LLMC Convention and should not simply sit on top of the LLMC limits.

LEG/70/5/3:

This document introduced jointly by Finland and the United Kingdom, also supported an increase in the passenger limit contained in Article 7 of the LLMC Convention to reflect the limits established in the 1990 Protocol to the Athens Convention. More controversially, this paper suggested that the 25,000,000 SDR ceiling per incident, should be removed. The document illustrated the anomalies which can arise under the current regime, where claims are subject both to the 1974 Athens Convention and the 1976 LLMC Convention.

LEG/70/5/4:

This document, submitted by Japan, proposed an amendment to Article 15 of the 1976 LLMC Convention to allow State Parties to increase limits of liability in respect of passenger claims by national law. Having considered the various documents submitted, the Committee unanimously agreed that the limit of compensation for the passenger claims under the 1976 LLMC Convention, should be increased to correspond with the limits contained in the 1990 Protocol to the Athens Convention. The Committee was unable to reach a conclusion regarding the removal of the 25,000,000 SDR ceiling. This was thought to be a political decision. In addition, it would be necessary to find out whether the necessary insurance cover would be obtainable if the ceiling was removed.

The Committee also agreed that further discussions would be necessary regarding "linkage" between the 1976 LLMC Convention and an HNS Convention. As currently drafted, the HNS Convention permits a State Party to link the HNS Convention with the 1976 LLMC Convention if it wished to do so.

Before deciding on the level of increase in limits, the IMO Secretariat was instructed to collect further information regarding the extent to which existing SDR limits had been eroded by inflation.

D. Wreck removal and related issues

- A draft Convention in relation to wreck removal is in the course of preparation. This is not a priority matter but remains in the medium-term work schedule.

Patrick J.S. Griggs

RATIFICATION OF INTERNATIONAL CONVENTIONS

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

- **International Convention on Limitation of Liability for Maritime Claims, 1976.**
New Zealand: Accession on 14th February 1994.
- **International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990.**
Spain: Ratification on 12th January 1994.
- **International Convention on Civil Liability for Oil Pollution Damage, 1969.**
Marshall Islands: Accession on 24th January 1994.

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Albert Lilar Prize 1993

The Board of Directors of the Albert Lilar Foundation at its meeting of 4th November 1993 resolved to award the Albert Lilar Prize for 1993 to Mr. Vincent Power, B.C.L. (N.V.I.), L.L.M. (Cantab.), B.L. (King's Inn) for his work "EC Shipping Law", published by Lloyd's of London Press in 1992.

Meeting of the Executive Council 13th May 1994

A meeting of the Executive Council of the Comité Maritime International was held at Adwell House, Oxfordshire, in the home of Mr. Birch Reynardson, Friday 13th May 1994.

Amongst the matters considered during such Meeting there were the following:

1. Sydney Conference

A) Executive Council Meeting

The Executive Council will meet on 2nd October at 10.00 a.m. Among other subjects the Council will deal with the preparation of the meeting of the Assembly and will discuss the budget and contributions for 1995.

B) Social Programme

Mr. Salter informed the Executive Council that the preparation of the Social Programme is within schedule. He reported on details.

C) Work Programme

a) Assessment of Claims for Pollution Damage

The report on the work of the Sub-Committee is ready. It includes Draft Guidelines for Assessment of Claims for Pollution Damage.

The Executive Council decided to appoint Mr. Norbert Trotz Chairman of the Committee of the Conference on Assessment of Claims for Pollution Damage.

Nouvelles du CMI

Prix Albert Lilar 1993

Le conseil d'administration de la Fondation Albert Lilar, en sa séance du 4 novembre 1993, a décidé d'attribuer le prix Albert Lilar 1993 à l'avocat Vincent Power, B.C.L. (N.V.I.), L.L.M. (Cantab.), B.L. (King's Inn) pour son ouvrage: "EC Shipping Law" publié par Lloyd's of London Press en 1992.

Réunion du Conseil Exécutif 13 Mai 1994

Une réunion du Conseil Exécutif du Comité Maritime International a eu lieu à Adwell House, dans la maison de M. William Birch Reynardson, vendredi 13 mai 1994.

Les questions mentionnées ci-dessous ont été parmi celles traitées dans le cours de cette réunion.

1. Conférence de Sydney

A) Réunion du Conseil Exécutif

Une réunion du Conseil Exécutif aura lieu le 2 octobre à 10 heures. Parmi les sujets, le Conseil Exécutif s'occupera de la préparation de l'Assemblée qui discutera le budget et les contributions pour 1995.

B) Programme Social

M. Salter a informé le Conseil Exécutif que la préparation du programme social a continué et a communiqué les détails du programme.

C) Ordre du Jour

a) Evaluation des dommages dus à la pollution

Le rapport de la Sous-Commission est prêt. Il contient un projet de lignes directrices pour l'évaluation des dommages dus à la pollution. Le Conseil Exécutif a décidé de nommer M. Norbert Trotz Président de la Commission de la Conférence pour l'Evaluation des dommages dus à la pollution.

b) Off-Shore Mobile Craft

The report on the work of the Sub-Committee is available. The Sub-Committee has limited its work to the review and up-dating of the Rio Draft on Off-Shore Mobile Craft in accordance with the request from IMO. Nevertheless, the Sub-Committee discussed the possibility to broaden the approach and to work on a comprehensive set of rules for Off-Shore Craft covering the production and drilling as well as the transit mode.

The Sub-Committee came to the conclusion that the work on the Rio Draft should be finished in any event and that the revised Draft should be submitted to the Sydney Conference. However, the Sub-Committee was prepared to discuss any document on a broader regime received from MLA's interested in the matter. It was the view of the Sub-Committee that such documents, if discussed and agreed upon by the Sub-Committee, should be submitted to the Sydney Conference as additional papers for consideration of future work on a broader regime. Since no document was received from interested MLA's, the Sub-Committee was not in the position to deal with the matter.

The Executive Council was informed that the MLA's of Canada and the USA will submit a document on a comprehensive regime to the Sydney Conference as a paper of their delegations. It was decided that the Committee of the Conference on Off-Shore Mobile Craft may discuss the paper in order to find out whether it is useful to continue the work. The Assembly may later decide whether a new Sub-Committee should be set up in order to work on a comprehensive regime on Off-Shore Craft.

The Executive Council appointed Mr. Frode Ringdal Chairman of the Committee of the Conference on Off-Shore Mobile Craft.

c) York/Antwerp Rules

The report on the work of the Sub-Committee is ready. The Executive Council appointed Mr. David Taylor Chairman of the Committee of the Conference on York/Antwerp Rules.

The Executive Council was informed that the MLA of Canada is interested in a discussion of the future of General Average. The discussion should take place when the present work on the revision of the York/Antwerp Rules is finished. The Council decided that the UNCTAD-report on General Average shall be distributed at the Conference for the purpose of information either as annex to the report of the Sub-Committee on York/Antwerp Rules, if technically possible, or as separate informal paper. Any further work on General Average as requested by the MLA of Canada depends on a decision to be taken by the Assembly.

d) Special Session on Tuesday Morning

The Executive Council appointed Mr. William Tetley Chairman of the Special Session of the Conference on Tuesday Morning.

The Special Session will deal with two items:

b) Unités Mobiles Off-Shore

Le rapport de la Sous-Commission est prêt. La Sous-Commission a limité son travail à la révision et à la mise à jour du Projet de Rio sur les Unités Mobiles Off-Shore en accord avec la demande de l'OMI. La Sous-Commission a toutefois pris en considération la possibilité d'élargir le sujet et d'entreprendre le travail de rédaction d'un projet de règles de plus grande ampleur, avec application à la production et au forage ainsi qu'à la navigation.

La Sous-Commission est parvenue à la conclusion que le travail sur le Projet de Rio doit en tous cas être achevé et qu'un projet révisé doit être soumis à la Conférence de Sydney. Toutefois la Sous-Commission était prête à discuter tout document relatif à une réglementation plus étendue reçu par les Associations intéressées au problème. La Sous-Commission était d'avis que si ce document avait pu être discuté et accepté par la Sous-Commission, il aurait dû être soumis à la Conférence de Sydney en qualité de document complémentaire au projet, au fin de le considérer dans sa base le travail futur relatif à une réglementation plus étendue du sujet. Etant donné toutefois que la Sous-Commission n'a reçu aucun document des Associations Nationales intéressées, elle n'a pu s'occuper de ce problème.

Le Conseil Exécutif a été informé que les Associations du Canada et des Etats Unis soumettront à la Conférence de Sydney un document relatif à une réglementation plus étendue. Il a été décidé que la Commission de la Conférence sur les Engins Mobiles Off-Shore pourra discuter ce document au fin de décider s'il sera convenable de continuer le travail. L'Assemblée pourra à la suite décider si une nouvelle Sous-Commission devra être constituée pour étudier cette réglementation plus étendue. Le Conseil Exécutif a décidé de nommer M. Frode Ringdal Président de la Commission de la Conférence sur les Engins Mobiles Off-Shore.

c) Règles de York et d'Anvers

Le rapport de la Sous-Commission est prêt.

Le Conseil Exécutif a nommé M. David Taylor Président de la Commission de la Conférence sur les Règles de York et d'Anvers.

Le Conseil Exécutif a été informé que l'Association du Canada est intéressée à discuter l'avenir de l'Avarie Commune. Cette discussion devrait avoir lieu quand les travaux sur la révision des Règles de York et d'Anvers seront terminés. Le Conseil Exécutif a décidé que le rapport de la CNUCED sur l'Avarie Commune sera distribué à la Conférence soit comme annexe au rapport de la Sous-Commission sur les Règles de York et d'Anvers, si cela sera possible, soit comme document séparé. Un travail additionnel sur l'Avarie Commune, comme il a été demandé par l'Association du Canada, dépend de la décision de l'Assemblée.

d) Session spéciale du mardi matin

Le Conseil Exécutif a nommé M. Bill Tetley Président de la Session Spéciale de la Conférence du mardi matin. Cette session traitera les deux sujets suivants:

i) Third Party Liability and Limitation.

ii) Classification Societies.

The report will be given by Mr. Jan Schultsz (item i) and Mr. Frank Wiswall (item ii).

In the light of the development of the discussion on the revision of the 1976 Limitation Convention in the IMO it was decided that time should be available for a detailed discussion at the Conference if necessary and useful. Facilities should be made available in order to move the special session on limitation from Tuesday morning to Monday afternoon. The time on Tuesday morning would then be available for the discussion of the report on Classification Societies.

Mr. Wiswall reported on the work of the Working Group on Classification Societies. There is a chance for an agreement on model clauses. According to his estimation the work of the Working Group can be finished in 1995 or even at the end of 1994.

e) Special Session on Tuesday Afternoon

The Executive Council appointed Mr. William Birch Reynardson Chairman of the Special Session on Tuesday afternoon.

The arrangements for Tuesday morning should be flexible enough in order to allow a Plenary meeting if the course of events do require such a meeting and the time for a meeting is available.

D) Assembly

The meeting of the Assembly will be convened for Saturday, 8th October at 10.00 a.m. For details see item 5.

E) Meeting of the Executive Council on Saturday 8th of October

The meeting of the Executive Council will follow the Assembly meeting.

F) Observers

The Executive Council confirmed the list of observers. It was agreed that observers will enjoy the same status as at previous Conferences.

2. Yearbook

Mr. Francesco Berlingieri informed the Executive Council that the reports of the Sub-Committees will be printed in the next issue of the Yearbook (sub-title: "Sydney I"). It was decided to print 3000 copies.

3. CMI News Letter

The next issue should if possible include a summary of the *Exxon Valdez* judgment and the Minutes of the meeting of the Executive Council.

The President thanked Mr. Henri Voet for the preparation of a Memorandum on CMI publications. The Council confirmed the conclusions of that Memorandum. It was especially agreed not to increase the price of the News Letter besides the adaptation of the price to the inflation rate and the increased mailing costs.

It was further decided to promote the sale of CMI Publications to non-members by advertisement in maritime publications and periodicals.

i) Responsabilité des tiers et limitation.

ii) Sociétés de Classification.

Un rapport sera présenté par M. Jan Schultsz (premier sujet) et par M. Frank Wiswall (deuxième sujet). A la suite du développement de la discussion sur la révision de la Convention de 1976 sur la limitation au sein de l'OMI il a été décidé qu'il faudra avoir pendant la Conférence le temps pour une discussion en profondeur, s'il en sera jugé nécessaire et utile. Les mesures nécessaires devront être adoptées pour faire tenir la Session Spéciale sur la limitation lundi après-midi au lieu que mardi matin. Le mardi matin serait dans ce cas disponible pour la discussion du rapport sur les Sociétés de Classification. M. Wiswall a présenté un rapport sur le travail du Groupe de Travail sur les Sociétés de Classification. Il y a la possibilité d'un accord sur des clauses types. M. Wiswall estime que le Groupe de Travail pourra terminer ses travaux en 1995 et peut-être même avant la fin de 1994.

e) Session Spéciale du mardi après-midi

Le Conseil Exécutif a nommé M. William Birch Reynardson Président de la Session Spéciale de mardi après-midi. L'organisation des séances du mardi matin devra être suffisamment flexible pour permettre une séance plénière si la situation est nécessaire et le temps disponible.

D) Assemblée

L'Assemblée sera convoquée pour le samedi 8 octobre à 10 heures. Pour plus de détails voir le paragraphe 5.

E) Réunion du Conseil Exécutif du samedi 8 octobre

La réunion du Conseil Exécutif suivra l'Assemblée.

F) Observateurs

Le Conseil Exécutif a confirmé la liste des observateurs. Il a été convenu que les observateurs jouiront du même statut qu'aux conférences précédentes.

2. Annuaire

M. Francesco Berlingieri a informé le Conseil Exécutif que tous les rapports des Sous-Commissions seront publiés dans la prochaine édition de l'Annuaire, dont le sous-titre sera: "Sydney I". Il a été décidé d'en imprimer 3000 exemplaires.

3. News Letter du CMI

Le prochain numéro devra, si possible, contenir un résumé du jugement dans l'affaire du *Exxon Valdez* et un sommaire de la réunion du Conseil Exécutif.

Le Président remercie M. Henri Voet pour la rédaction d'un Memorandum sur les publications du CMI. Le Conseil Exécutif ratifie les conclusions du Memorandum. En particulier il a été convenu de ne pas augmenter le prix de la News Letter sauf pour adapter le prix à l'inflation et à l'augmentation des frais de poste.

Il a aussi été décidé de développer la vente des publications aux tiers moyennant des annonces dans les publications maritimes.

The President was authorized to discuss matters relating to the present contract with University Press.

4. *Assembly*

- a) The President thanked Mr. Frank Wiswall for the preparation of a set of rules of procedure of the Assembly.

After discussion the Council came to the conclusion that an attempt should be made to shorten the draft. It was decided to postpone the matter and not to put the issue on the agenda of the next meeting of the Assembly.

- b) *Elections-Report from the Nominating Committee*

The President informed the Council that the Committee has finished its task and has prepared a list of candidates.

The Nominating Committee will submit the proposals to the Assembly.

- c) The main items of the agenda of the meeting of the Assembly will be:

- Decisions on the results of the Conference
- Elections
- Budget 1994 and 1995 and contributions in 1995
- Future work.

5. *Accounts and Budget*

Referring to the list of arrears of contributions Mr. Henri Voet reported that several Member Associations which have not yet paid their contributions are even not answering letters.

The present financial status allows to cover the running expenses. As to the forthcoming budgets it can be expected that the balance between income and expenses is retained.

The treasurer drew the attention to the special treatment of the income and expenses concerning International Conferences which were in the past kept apart from the ordinary budget. That procedure was confirmed and it was decided to provide in future for special Conference/Seminar accounts.

It was decided to propose to the Assembly to increase the contributions for 1995 by 2.5%.

The Council confirmed the documents prepared by the treasurer for the accounts of 1993 and the budgets for 1994 and 1995.

It was decided to set up a working group which should discuss the relation and co-operation between the CMI and CMI-Charitable Trust. Details will be discussed at a later meeting of the Council.

6. *Arrest Convention*

Mr. Francesco Berlingieri participated on behalf of the CMI to the meeting of the UNCTAD/IMO Joint Working Group.

He informed the Council that the Joint Working Group discussed two alternatives:

- a) Adaptation of the present Arrest Convention to the new Convention on Liens and Mortgages of 1993.

Le Président a été autorisé à discuter les problèmes relatifs au contrat avec University Press.

4. *Assemblée*

- a) Le Président a remercié M. Frank Wiswall pour la rédaction d'un projet de règles de procédure pour l'Assemblée.

Après discussion, le Conseil Exécutif a décidé qu'il faudrait essayer de réduire le projet et d'en renvoyer l'étude, sans mettre cette question à l'ordre du jour de la prochaine réunion de l'Assemblée.

- b) *Elections-Rapport du Comité de désignation*

Le Président a informé le Conseil que le Comité de désignation a terminé son travail et a préparé une liste des candidats.

Le Comité de désignation soumettra ses propositions à l'Assemblée.

- c) Les questions les plus importantes à l'ordre du jour de l'Assemblée seront:

- Décisions sur les résultats de la Conférence
- Elections
- Budgets 1994 et 1995 et contributions 1995
- Travaux futurs

5. *Comptes et Budget*

En se référant à la liste des Associations qui sont en retard dans le paiement des cotisations, M. Henri Voet a informé le Conseil que plusieurs d'entre elles ne répondent même pas aux lettres.

La situation financière actuelle permet de couvrir les frais courants. Pour ce qui a trait aux budgets futurs, il est probable que l'équilibre entre les revenus et les frais puisse être maintenu.

Le trésorier a attiré l'attention sur le traitement spécial des revenus et des frais relatifs aux Conférences Internationales qui dans le passé ont été considérés à part du budget ordinaire.

Cette procédure a été confirmée et il a été décidé pour l'avenir d'établir des comptes et des fonds spéciaux pour les conférences et les séminaires.

Il a été décidé de proposer à l'Assemblée une augmentation des cotisations pour 1995 du 2,5%.

Le Conseil Exécutif a approuvé les documents préparés par le trésorier pour les comptes de 1993 et les budgets de 1994 et 1995.

Il a été décidé d'établir un Groupe de Travail au fin de considérer la relation et la coopération entre le CMI et le CMI Charitable Trust. Les détails seront discutés lors d'une prochaine réunion du Conseil Exécutif.

6. *Convention sur la saisie des navires*

M. Francesco Berlingieri a participé pour le compte du CMI à la réunion du Groupe de Travail Conjoint CNUCED/OMI. M. Berlingieri a informé le Conseil que le Groupe de Travail a considéré deux alternatives:

- a) Adaptation de la Convention actuelle à la nouvelle Convention sur le Privilèges et les Hypothèques.

- b) Adoption of a new Arrest Convention like the Lisbon Draft of the CMI.

Even if alternative a) is adopted it can be expected that more than pure drafting work has to be done. The preparation of a document by the secretariats of IMO and UNCTAD will take place in co-operation with the CMI.

7. EU Legislation Committee

The President informed the Executive Council about the EU meeting the day before the meeting of the Executive Council.

At the meeting of the EU Committee agreement was reached that the working methods and the subjects of interest should be discussed further at a meeting in Sydney.

A paper on basic issues of future work should be prepared in order to support the discussion. The election of the Chairman of the EU Committee will take place at the meeting of the Committee in Sydney. The Secretary General was asked to act as Chairman ad interim.

8. Hamburg Rules / Hague-Visby Rules

UNCITRAL will hold a discussion on the future of the Hamburg Rules at its meeting in New York. Mr. Frank Wiswall was asked to represent the CMI at that meeting. The Executive Council came to the conclusion that the present international development and the discussion on the regime for the carriage of goods by sea require the attention of the CMI. It was, therefore, decided to set up a Working Group. The following members were appointed:

Mr. Bill Tetley
Mr. Rolf Herber
Mr. Jan Ramberg
Mr. Francesco Berlingieri

The Working Group was asked to prepare a "preliminary report" for the meeting of the Executive Council in Sydney.

9. International Aspects of Security Interests in Mobile Craft

The Executive Council had received a written report of Mr. Rolf Herber on the work of UNIDROIT on Security Interests in Mobile Craft. The Council thanked Mr. Herber for the work done so far and asked him to continue to represent the CMI at the meetings of the Working Group of UNIDROIT dealing with the matter.

10. IMLI

Mr. Birch Reynardson informed the Executive Council that the CMI Charitable Trust financially supported lectures at the IMLI at Malta given by 4 CMI lecturers. The CMI Charitable Trust will continue to support the work of IMLI by paying for the expenses of CMI lecturers. It is intended to make 8500 £ available for that purpose.

11. UNCTAD. Seminar in Santiago

Mr. José Domingo Ray will represent the CMI at the UNCTAD Seminar on chartering and ship finance.

- b) Adoption d'une nouvelle Convention suivant le projet de Lisbonne du CMI.

Même si la première alternative est adoptée, il est probable que le travail à faire ne sera pas seulement un travail de rédaction. Un document sera préparé par le Secrétariat de CNUCED et OMI en coopération avec le CMI.

7. Comité sur la législation de la Communauté Européenne

Le Président a informé le Conseil Exécutif que le jour précédent a eu lieu une réunion du Comité sur la législation de la C.E. Au cours de cette réunion il a été convenu que les méthodes de travail et les sujets d'intérêt devraient être discutés lors d'une prochaine réunion à Sydney.

Un rapport sur les problèmes les plus importants relatifs au travail futur du Comité sera rédigé comme base de la discussion. L'élection du Président du Comité C.E. aura lieu à Sydney. Le Secrétaire Général a été prié d'agir entre-temps comme Président par interim.

8. Règles de Hambourg/Règles de La Haye-Visby

La CNUDCI discutera le problème du futur des Règles de Hambourg lors de sa prochaine réunion à New York. M. Wiswall a été prié de représenter le CMI à cette réunion.

Le Conseil Exécutif a décidé que les développements internationaux et la discussion relative au régime du transport de marchandises exigeaient l'attention du CMI. Il a été décidé par conséquent de constituer un Groupe de Travail constitué par

- M. Bill Tetley
- M. Rolf Herber
- M. Jan Ramberg
- M. Francesco Berlingieri

Le Conseil Exécutif a demandé à ce Groupe de Travail de préparer un rapport préliminaire pour la réunion de Sydney du Conseil Exécutif.

9. Aspects internationaux des "Security Interests in Mobile Craft"

Le Conseil Exécutif a reçu un rapport de M. Rolf Herber sur le travail de l'UNIDROIT relatif aux "Security Interests in Mobile Craft". Le Conseil Exécutif a remercié M. Herber pour son travail et lui a demandé de continuer à représenter le CMI aux réunions du Groupe de Travail de l'UNIDROIT sur ce sujet.

10. IMLI

M. Birch Reynardson a informé le Conseil Exécutif que le CMI Charitable Trust a donné une contribution financière aux conférences faites à l'IMLI à Malte par 4 personnalités du CMI. Le CMI Charitable Trust continuera à donner son soutien au travail de IMLI en payant les frais de conférenciers du CMI. Il est envisagé de mettre à disposition dans ce but une somme de 8.500 livres anglaises.

11. Séminaire du CNUDCI à Santiago

M. José Domingo Ray sera le représentant du CMI au Séminaire du CNUDCI sur l'affrètement et le financement maritime

12. IMAO

The President informed the Executive Council that the arbitration activities of IMAO should be promoted. The members of the Council received several documents in that regard.

13. Centenary

It was agreed that the Centenary meetings and events should take place in Antwerp.

The Conference will deal with the following subjects:

- Hamburg Rules / Hague-Visby Rules
- Limitation of the liability of the shipowner.

In addition a "Festschrift" should be prepared which may form the basis for an academic discussion at the Conference.

Mr. Francesco Berlingieri was asked to prepare a list of subjects for a "Festschrift" for the meeting of the Executive Council in Sydney.

14. Other Activities

The Council was informed that legal issues of wreck removal are apparently still a subject of interest for certain delegations within the Legal Committee of IMO. The Council agreed that the CMI should contact the secretariat of IMO in order to offer the assistance of the CMI.

Mr. Bent Nielsen might be available for that work.

12. IMAO

Le Président a informé le Conseil Exécutif qu'il faudrait encourager les arbitrages de l'IMAO. Les membres du Conseil Exécutif ont reçu plusieurs documents à cet égard.

13. Centenaire

Il a été convenu que la réunion du Centenaire se tiendra à Anvers. La Conférence s'occupera des sujets suivants:

- Règles de Hambourg/Règles de La Haye-Visby.
- Limitation de la responsabilité de l'armateur.

Il faudra aussi préparer une série d'études pour célébrer le centenaire. Les études pourraient constituer la base d'une discussion académique pendant la Conférence. Le Conseil Exécutif a prié M. Berlingieri de préparer une liste des sujets pour les études en question qui sera examinée à l'occasion de la réunion de Sydney.

14. Autres activités

Le Conseil Exécutif a appris que les problèmes juridiques concernant l'enlèvement des épaves intéressent certains membres du Comité Juridique de l'OMI. Le Conseil Exécutif a décidé que le CMI devra approcher le Secrétariat de l'OMI pour offrir l'assistance du CMI.

M. Bent Nielsen peut se rendre disponible dans ce but.

Maritime and Shipping Agents

The following Questionnaire was circulated to the National Associations on 3rd February 1994:

1. *Please state who is performing in your country each of the following functions. Please indicate the name under which such functions, or a part of them, are performed. Names should be indicated in the language used in your country and accompanied by a translation into English or French.*
 - a. *Negotiating and accomplishing the sale or purchase of a ship.*
 - b. *Negotiating and supervising the charter of a ship.*
 - c. *Collection of freight and/or charter hire where appropriate and all related financial matters.*
 - d. *Arrangements for customs or cargo documentation and forwarding of cargo and, more specifically, in respect of:*
 - (i) *Ship's clearance.*
 - (ii) *Cargo clearance.*
 - (iii) *Cargo documentation.*
 - (iv) *On-forwarding or pre-forwarding of cargo.*
 - e. *Arrangements for procuring, processing the documentation and performing all activities required to dispatch cargo.*
 - f. *Organizing arrival or departure arrangements for the ship.*
 - g. *Arranging for the supply of services to a ship while in port.*
 - h. *Cargo solicitation, marketing and advertising.*
 - i. *Container monitoring.*
 - j. *Claims notification.*
 - k. *Claims handling.*
2. *Please state whether official qualifications such as passing exams organized under the supervision of Governmental agencies, are required in order to perform any of the functions listed in paragraph (1) above.*
3. *Please state whether the persons carrying out any of the functions listed in paragraph (1) above must be registered in a public register.*

4. Please state whether there are in your country professional associations of which the persons performing any of the functions listed in paragraph (1) above normally are members.
5. Please state:
 - a. Whether such associations require professional or other qualifications from their members in respect of:
 - (i) education and professional expertise,
 - (ii) financial capability,
 - (iii) professional conduct.
 - b. To whom they are granted, in case the agent is a legal entity, i.e. whether to such entity or to individuals forming part of its organization.
6. Please state whether statutory rules or rules of law are applicable to the persons performing any of the functions listed in paragraph (1) above.
7. If so, please describe generally such rules.
8. In particular, please state whether there are rules dealing with:
 - a. the duties and liabilities of the agent towards his principal.
 - b. the rights of the agent against his principal, in particular, in respect of:
 - (i) the payment of his remuneration and of his disbursements;
 - (ii) the termination of the agreement;
 - (iii) the indemnity, if any, payable to the agent upon termination of the agreement.
 - c. the liability of the agent towards third parties and, in particular, in respect of:
 - (i) customs duties;
 - (ii) port dues;
 - (iii) crew wages;
 - (iv) contracts for supplies, repairs, etc.
9. Please state whether any of the existing rules are of a mandatory nature.
10. Please state whether the remuneration payable in respect of the functions listed in paragraph (1) above, or any of them, may be freely negotiated by the parties or tariffs are applicable and, if so, whether such tariffs are mandatory.
11. Please state whether service of proceedings against the principal may be effected to the agent.

Replies to the Questionnaire have been received so far by the Maritime Law Associations of Argentina, Canada, China, Germany, Italy, Norway, Portugal and Spain. In order to enable the Chairman of the International Sub-Committee to prepare a comparative law report on this subject, it is necessary that as many National Associations as possible send their replies to the Questionnaire before the end of this year.

International Maritime Law Institute

For the last three years the CMI Charitable Trust has supported the Institute by financing lectures given by CMI representatives on an ad hoc basis.

After discussion between the CMI Trustees and the Institute, it was agreed that, anyway for this year, it would be more valuable for the lecture programme to be rather more structured and to last four days. Accordingly, a team of lecturers organized by Mr. William Birch Reynardson, one of the CMI Trustees, attended at the Institute from April 11th to 15th. The lecturers and the subjects they covered were:

- Dr. Frank Wiswall (Collision)
- Dr. Alexander von Ziegler (Arrest, Mortgages & Liens)
- Mr. Claes Palme (Pilotage and Pollution)
- Mr. Colin de la Rue (Salvage, General Average, Pollution)
- Mr. William Birch Reynardson (P&I Insurance, General and Detailed risks covered)

Mr. Birch Reynardson reports that the programme was successful and that the lectures were well attended. He has received letters of thanks from Mr. David Attard, the Director of the Institute, and from Professor P.K. Mukharjee, the Senior Deputy Director.

The students came to London at the conclusion of the course in the third week in June. They visited the Law Courts, I.M.O., Lloyds, Messrs. Ince & Co. and Messrs. Thomas R. Miller & Son (Managers of the U.K. P&I Club), where they heard presentations on the practical issues involved in Oil Pollution Cases (the Conventions, Cristal, Tovalop, etc.).

The visit ended with a River Trip on the evening of June 23rd, hosted by Millers and attended by William O'Neill, the Secretary General of IMO, and Professor Patricia Birnie,

W.R.A. Birch Reynardson

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

IMO

Entry into force of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990.

The 15th instrument of ratification or accession was deposited with the Secretary-General of IMO on 13 May 1994 and, therefore, the Convention will enter into force on 13 May 1995.

IMO's Marine Environment Protection Committee (MEPC) has established an OPRC Working Group open to representatives from all IMO Members, UN organizations and intergovernmental organizations and non-governmental organizations in consultative status with IMO. The Working Group reports to the MEPC and meets in conjunction with MEPC meetings held approximately every eight months at IMO Headquarters. The current work plan includes:

- Developing guidelines for the preparation of oil pollution emergency plans for offshore units, sea ports and oil handling facilities;

- Updating those sections of the IMO Manual on Oil and Chemical Pollution related to marine pollution preparedness and response, the Guidelines on Oil Spill Dispersants and assigning priorities accordingly on preparing a new section V — Administrative / Legal Aspects of the Manual on Oil Pollution;

- Examining means of enhancing the co-ordination function of IMO when international assistance is needed to respond to an oil pollution incident;

- Preparing operational guidelines and recommendations on facilitating response to an oil pollution incident;

- Promoting research and development relating to oil pollution preparedness and response;

- Developing model training courses;

- Reviewing existing non-governmental oil pollution combating equipment stockpiling and their accessibility;

- Considering measures to facilitate the application of the OPRC Convention to hazardous and noxious substances pending the adoption of an instrument to cover these substances;

- Developing an appropriate instrument to expand the scope of the OPRC Convention to apply in whole or in part to pollution incidents by hazardous substances;

- Recommending ways and means to improve the involvement of industry (oil, shipping, oil spill clean-up) in the implementation of the OPRC Convention

(reproduced from "IMO Briefing" of 4th July 1994 with the kind permission of the IMO Secretariat)

Wreck removal

From the Report of the Legal Committee of IMO on the Work of its seventieth Session (Document LEG70/10 of 29th March 1994) it appears that a draft Convention on wreck removal and related issues is presently under preparation. Such draft was actually made available to the participants in the Legal Committee by the sponsoring delegations and was annexed to the Report.

The geographical scope of the Convention is, according to Article II of the Draft, confined to wrecks located beyond the territorial sea of State Parties. Article III provides generally an obligation of any person who has knowledge of a casualty to report immediately to the nearest communications facilities and specifically an obligation of the owner of the ship who has suffered the casualty to supply the information specified therein to the State of registry, to the nearest State Party and to IMO.

The determination whether a hazard exists is, according to Article V, within the responsibility of the State whose interests are the most directly threatened by the ship or wreck. The identification of such State is made, according to the definition contained in Article I, on a geographical basis, the State in question being that from whose territory the wreck lies the least distance. Article V then sets out the criteria that must be taken into consideration in determining whether a hazard exists.

Two alternative versions of Article VII are proposed as respects the rights and obligations to remove hazardous wrecks. According to the first of such versions the owner may undertake the removal and the State whose interests are the most directly threatened may only intervene to the extent necessary to ensure the expeditious removal and may set a deadline within which the owner may undertake the removal. According to the second version, the removal must be undertaken by the State and the owner may do so only if he provides financial security. When the removal is undertaken by the State, the State is empowered to sell the wreck in order to recover its costs and may also recover from the owner any unsettled balance.

Article VIII regulates the financial liability for locating, marking and removing a wreck or ship and provides that the owner shall be liable for all such costs unless it is proven that the casualty resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or, also, was wholly caused by an act or omission done with the intent to cause damage by a third party. These provisions are taken from the 1969 C.L.C.

It is worth noting that there seems to be still some uncertainty as to the description of the subject matter of the removal. In fact in certain provisions reference is only made to wrecks, in other to ships and wrecks, in still other provisions the word "ships" is placed in square brackets.

IMO/UNCTAD

Revision of the 1952 Brussels Convention on Arrest of Ships

The United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages convened at Geneva from 19th April to 6th May 1993 adopted a resolution entitled "The Consideration of Possible Review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952".

In the Resolution the Conference recommends that the relevant bodies of UNCTAD and IMO reconvene the IMO/UNCTAD Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects (JIGE) with a view to examining the possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships 1952.

The Resolution also invites the Secretariats of UNCTAD and IMO "in consultation with relevant non-governmental organizations such as the Comité Maritime International, to prepare the necessary documentation for the meetings of the Group".

This recommendation was endorsed by the Trade and Development Board of UNCTAD at its fourth session on 13th September 1993, and by the Council of IMO at its 17th extraordinary session on 22nd October 1993.

Following this endorsement, provisions have been made for the JIGE to be reconvened at Geneva from 5 to 9 December 1994. Invitations will be sent by the Secretaries-General of IMO and UNCTAD to members of both organizations, United Nations and specialized agencies, intergovernmental organizations, non-governmental organizations in consultative status and Liberation movements.

UNIDROIT

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

The International Institute for the Unification of Private Law (UNIDROIT) in Rome has set up a Sub-Committee for the Preparation of a first draft on Uniform Rules on Certain International Aspects of Security Interests in Mobile Equipment. The Sub-Committee, under the chairmanship of Prof. Goode (Oxford) met for its first session on February 14-16, 1994 in Rome. It was composed of Prof. Cuming (University of Saskatchewan), Mr. Kouyoshinov (Moscow), Prof. Kreuzer (University of Wuerzburg), Prof. Mooney (University of Pennsylvania), Prof. Synvet (University of Paris II), Mr. Whalen (Washington D.C.). Further represented were the European Bank for Reconstruction and Development, The Hague Conference on Private International Law, the European Federation of Equipment Leasing Company Associations, the European Federation of Finance House Associations, the International Bar Association and the Comité Maritime International. The CMI was represented by Prof. Rolf Herber, Hamburg.

The work of the Study Group was prepared by a basic study undertaken by Prof. Cuming and a meeting of a Preparatory Group which had answered the question of feasibility in the affirmative (cf. CMI News Letter No. 1/93, page 11).

The Sub-Committee first discussed the scope of the future Convention. There was a general view that the Convention should have a broad field of application starting with general clauses followed by special exemptions. It should cover mobile equipment only for business use. The possibility to extend it to items of greater value for private use at a later stage, however, was left open.

The main decision of interest for the CMI, whether or not ships should be included in the Draft Convention, was not yet taken. There was, originally, a proposal to exclude ships beyond a certain size. This idea could be changed by the argument of the representative of the CMI that ships should be included at least to the extent they are subject to registry under any legislation, the reason being that such ships are the object of special security interests such as mortgages and maritime liens established by international maritime conventions and national maritime laws. Nevertheless, the choice to include ships even subject to these special maritime régimes was still left open.

The reason for this decision and for many other uncertainties still prevailing was a basic disagreement of the participants as to the purpose of the future convention. Whereas the representative of common law countries seemed to advocate a concept covering all security interests already existing under national law in order to extend their validity by means of the Convention on the international level, the civil law representatives mostly favoured the idea of creating a new type of security interest based on the international convention and recognized in all Member States. The second solution met with objections mostly for the reason that one had to define and clarify priority rules in respect of the new international security interests in relation to existing national securities.

If one followed the first approach, it certainly makes sense to broaden by means of the new Convention as well as the recognition of maritime liens and mortgages in ships beyond the circle of Member States of the maritime Conventions which is, at present, rather limited. If one created, however, a new link under the new Convention, it would encroach with the existing maritime laws and conventions. So the decision as to including or not ships is depending to a large extent on the choice between these two concepts not yet taken. The same goes for aircraft the interest of which were as well represented at the UNIDROIT meeting.

Even if ships were taken out of the future convention — envisaged by the Preparatory Group earlier — maritime trade might be interested in the Rules because of their application to containers and probably small, non registered ships as well as inland navigation craft.

The Sub-Committee discussed, at its first meeting, other possible characteristics of the rules. Among them were the concept of common law which attributes a right of possession in case the debtor does not conform with his obligations; this right was not considered acceptable by the representatives of the civil law who believed that the holder of a security interest could be brought in possession of the goods only by means of a judgment or arrest.

The representative of the European Bank for Reconstruction and Development pointed out that the Bank has worked out a model law for Eastern European countries on security interests which in the meantime has been presented at the Third Annual Meeting of the Bank in St. Petersburg in April 1994. The Sub-Committee, after some hesitation, felt, however, that the work of the European Bank would not make superfluous the envisaged future Convention, mainly because the model law of the European Bank is primarily directed to Eastern European countries and tailored according to their special requirements. The Convention envisaged, to the contrary, was mainly destined to serve the security interests of the creditors in industrialized countries.

Rolf Herber

RATIFICATION OF INTERNATIONAL CONVENTIONS

Entry into force of the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990.

The Convention will enter into force on 13 May 1995.

The Contracting States as at 19 July 1994 are the following:

	<i>Date of deposit of instrument</i>
Argentina (ratification)	13 July 1994
Australia (accession)	6 July 1992
Canada (accession)	7 March 1994
Egypt (ratification)	29 June 1992
Finland (approval)	21 June 1993
France (approval)	21 July 1993
Iceland (ratification)	6 November 1992
Mexico (accession)	13 May 1994
Nigeria (accession)	25 May 1993
Norway (ratification)	8 March 1994
Pakistan (accession)	21 July 1993
Senegal (ratification)	24 March 1994
Seychelles (accession)	26 June 1992
Spain (ratification)	12 January 1994
Sweden (ratification)	30 March 1992
United States (ratification)	27 March 1992

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

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COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

NEWS FROM THE CMI

XXXVth Conference of the Comité Maritime International Sydney, 2nd to 8th October 1994

The XXXVth Conference of the CMI was held in Sydney from 2nd to 8th October 1994.

Three committees were formed for the consideration of the three subjects on the Agenda:

- Committee I under the Chairmanship of Professor Norbert Trotz, discussed the subject of the Admissibility and Assessment of Claims for Pollution Damage;
- Committee II under the Chairmanship of Mr. Frode Ringdal, reviewed the Draft Convention on Off-Shore Mobile Craft; and
- Committee III under the Chairmanship of Mr. David Taylor, discussed and approved the Revision of the York-Antwerp Rules 1974 as amended 1990.

The following additional subjects were considered during the Conference:

- Classification Societies;
- Marine Insurance;
- Third Party Liability.

I. ADMISSIBILITY AND ASSESSMENT OF CLAIMS FOR POLLUTION DAMAGE.

Committee I met under the chairmanship of Professor Norbert Trotz to consider three aspects of this subject: (1) economic loss; (2) damage to the environment and restoration; and (3) clean-up and preventive measures. The documents prepared for the Conference included a Discussion Paper outlining the present law on these subjects and the problems involved.

In relation to economic loss, the problem facing the Committee was the familiar difficulty involved in drawing a reasonably clear line of demarcation between claims which should be paid and those which are too indirect or remote. The traditional "bright line" rule, disallowing claims for "pure economic loss", was widely regarded as too restrictive in the context of pollution claims. However, the task remained of devising some alternative test which would strike the right balance between the competing demands of certainty and flexibility in practice. On the subject of claims for environmental damage the Discussion Paper reviewed the contrasting systems which now apply inside and outside the United States, and noted the widespread support for the position set out in the 1992 Protocols to the Civil Liability and Fund Conventions, *i.e.* for the costs of reasonable measures of reinstatement to be taken as the proper measure and appropriate limit of recovery. So far as preventive and clean-up measures were concerned, the Paper noted various points on which a considerable degree of consensus was apparent from the replies received to the CMI questionnaire circulated in 1991.

The Committee devoted most of its attention to draft Guidelines which were appended to the Discussion Paper, and which were suggested as the most constructive way in which the CMI could promote a uniform treatment internationally of claims for oil pollution damage. In essence it was proposed that claims for pure economic loss should be subject to a test of reasonable proximity, to be ascertained by reference to various stated criteria; it was also proposed that the concepts of restoration and reinstatement be reinforced by guidelines on the factors to be taken into account in determining the reasonableness or otherwise of the measures taken by the claimant.

It was noted that the same subject had been under examination by a Working Group of the IOPC Fund, and that it was desirable to avoid unnecessary discrepancies between the guidelines and criteria developed in the two Organizations.

At the conclusion of its sessions, Committee 1 agreed on the text of Guidelines substantially in accordance with the basic draft, though subject to various detailed amendments. This text was later adopted at the Plenary session with unanimous support from all delegations voting, and with only four abstentions. The CMI Guidelines on Oil Pollution Damage do not alter legal rights in any way, but have been drawn up in the belief that many national courts will strive, when applying laws based on international conventions, to do so in a manner which is consistent with the approach taken in other countries. In that context it is hoped that when they are faced with the task of determining difficult issues in this field, or of enunciating new principles of law, they may derive some assistance from the formulations which have evolved from the CMI's work.

The Conference also adopted a Resolution recommending the wide dissemination and application of the Guidelines. The Guidelines together with a report based on the Discussion Paper prepared for the Conference will be published in the CMI Yearbook 1994. The Guidelines will also be available in a separate booklet from the CMI Secretariat.

II. UPDATING OF THE RIO DRAFT CONVENTION ON OFF-SHORE MOBILE CRAFT.

In response to a request by the IMO Legal Committee in November 1990 the Conference unanimously adopted an updated version of the Rio Draft Convention and decided to submit it to IMO as completed in accordance with the IMO terms of reference. The changes made in the Rio Draft Convention have been set out and explained in the CMI Yearbook 1993 pages 194-201. No additional changes were made at the Sydney Conference. The new Draft Convention will be published, together with a French translation, in the CMI Yearbook 1994.

III. REVISION OF THE LAW OF GENERAL AVERAGE AND THE YORK-ANTWERP RULES 1974 AS AMENDED 1990.

The following Resolution was unanimously approved by the Conference

The Maritime Law Association of Australia and New Zealand as the host Association proposes with pleasure that the delegates representing the National Associations of Maritime Law of the States listed hereunder:

1. *Having noted with approval the amendments which have been made to the York-Antwerp Rules, 1974, as amended 1990.*
2. *Propose that the new text be referred to as the York-Antwerp Rules, 1994.*
3. *Recommend that the York-Antwerp Rules, 1994 should be applied in the adjustment of claims in General Average as soon as practicable after 31st December 1994.*

Argentina	Greece	Peru
Australia & New Zealand	Hong Kong	Philippines
Belgium	Ireland	Poland
Brazil	Italy	Portugal
Canada	Japan	Russian Federation
Chile	Korea	Singapore
China	Malaysia	South Africa
Colombia	Mexico	Spain
Croatia	Morocco	Sweden
Denmark	Netherlands	Switzerland
Finland	Nigeria	United Kingdom
France	Norway	United States of America
Germany	Panama	Venezuela

York-Antwerp Rules 1994

Rule of Interpretation

In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.

Rule Paramount

In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.

Rule A

There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.

Rule B

There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

A vessel is not in common peril with another vessel or vessels if by simply disconnecting from the other vessel or vessels she is in safety; but if the disconnection is itself a general average act the common maritime adventure continues.

Rule C

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.

Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be admitted as general average.

Rule D

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure; but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

Rule E

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

All parties claiming in general average shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution within 12 months of the date of the termination of the common maritime adventure.

Failing such notification, or if within 12 months of a request for the same any of the parties shall fail to supply evidence in support of a notified claim, or particulars of value in respect of a contributory interest, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which estimate may be challenged only on the ground that it is manifestly incorrect.

Rule F

Any additional expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

Rule G

General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.

The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall not exceed the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense.

Rule I — Jettison of Cargo

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

Rule II — Loss or Damage by Sacrifices for the Common Safety

Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

Rule III — Extinguishing Fire on Shipboard

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage by smoke however caused or by heat of the fire.

Rule IV — Cutting away Wreck

Loss or damage sustained by cutting away wreck or parts of the ship which have previously been carried away or are effectively lost by accident shall not be made good as general average.

Rule V — Voluntary Stranding

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the property involved in the common maritime adventure shall be allowed in general average.

Rule VI — Salvage Remuneration

- (a) Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure.
Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment such as is referred to in Art.13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.
- (b) Special compensation payable to a salvor by the shipowner under Art.14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance shall not be allowed in general average.

Rule VII — Damage to Machinery and Boilers

Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be made good as general average.

Rule VIII — Expenses lightening a Ship when Ashore, and Consequent Damage

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be admitted as general average.

Rule IX — Cargo, Ship's Materials and Stores used for Fuel

Cargo, ship's materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril shall be admitted as general average, but when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.

Rule X — Expenses at Port of Refuge, etc.

- (a) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be admitted as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

- (b) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average, when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.

The cost of handling on board or discharging cargo, fuel or stores shall not be admissible as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.

- (c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average. The provisions of Rule XI shall be applied to the extra period of detention occasioned by such reloading or restowing.

But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

Rule XI — Wages and Maintenance of Crew and other expenses bearing up for and in a port of refuge, etc.

- (a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

- (b) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be admissible as general average, even if the repairs are necessary for the safe prosecution of the voyage.

When the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the master, officers and crew and fuel and stores consumed and port charges shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

- (c) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.
- (d) The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:
 - (i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;
 - (ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);

- x.1 (6)
- (iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule X(a), provided that when there is an actual escape or release of pollutant substances the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;
 - (iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is admissible as general average.

Rule XII — Damage to Cargo in Discharging, etc.

Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

Rule XIII — Deduction from Cost of Repairs

Repairs to be allowed in general average shall not be subject to deductions in respect of "new for old" where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship.

No deduction shall be made in respect of provisions, stores, anchors and chain cables.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the twelve months preceding the date of the general average act in which case one half of such costs shall be allowed.

Rule XIV — Temporary Repairs

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

Rule XV — Loss of Freight

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

Rule XVI — Amount to be made good for Cargo Lost or Damaged by Sacrifice

The amount to be made good as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.

When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

Rule XVII — Contributory Values

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value.

The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

To these values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Art.14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.

In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.

Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount made good as general average.

Mails, passengers' luggage, personal effects and accompanied private motor vehicles shall not contribute in general average.

Rule XVIII — Damage to Ship

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

(a) When repaired or replaced,

The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

(b) When not repaired or replaced,

The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

Rule XIX — Undeclared or Wrongfully Declared Cargo

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

Rule XX — Provision of Funds

A commission of 2 per cent on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average. The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.

The cost of insuring general average disbursements shall also be admitted in general average.

Rule XXI — Interest on Losses made good in General Average

Interest shall be allowed on expenditure, sacrifices and allowances in general average at the rate of 7 per cent per annum, until three months after the date of issue of the general average adjustment, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.

Rule XXII — Treatment of Cash Deposits

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a

bank to be approved by both. The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect to which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

The York - Antwerp Rules are also available in a separate booklet from the CMI Secretariat.

***Commentary upon the York-Antwerp Rules 1994
by David Taylor, Chairman of Committee III***

1. Rule of Interpretation — Rule Paramount

The new Rule Paramount is a provision to reflect that some specific numbered rules refer in the concept of reasonableness. The amendment in the Rule Paramount introduces "reasonableness" extensively throughout the Rules.

Lettered Rules

2. Rule A

The operative part of the Rule had previously been expressed in Rule B. The amendment now brings both Rules together.

3. Rule B — Tug and Tow

This is an entirely new provision. The space vacated in Rule B by the shift to Rule A has now been filled by this new Rule which is intended to be applicable at the option of parties to a convoy or flotilla.

4. Rule C

There are two changes. The first change is to clarify the exclusion of demurrage, loss of market and loss or damage sustained or expense incurred by reason of delay. The second amendment is very important and concerns pollution liabilities. This is covered by the, now, second paragraph of Rule C which reads "In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment ...". The United States delegation had some concern that this wording did not, with absolute certainty, exclude liabilities. Accordingly, they made a formal statement in the Plenary Session which is not part of the Rules, but will form part of the report to the effect that it is their understanding that this Rule excludes pollution liabilities. This provision is part of the "pollution packages", the second part of which appears in Rule XI(d).

5. Rule E

The amendments to this paragraph introduce two new paragraphs. Paragraph 1 remains as before. Paragraphs 2 and 3 contain provisos designed to speed up the provision of evidence so as to enable average adjustment to be produced more efficiently.

6. Rule F

There is no change of substance to Rule F. The amendment involves a minor clarification.

7. Rule G

New Rule G introduces the standard form of non-separation agreement into the Rules. In other words, the additional paragraph to Rule G provides for the case of cargo being forwarded to destination by other means. This is believed to be in line with previous practice where the agreement of the parties had to be obtained. Obtaining this agreement was thought to be time-consuming. The procedures introduced by the amendment are thought to be considerably simplified.

Numbered Rules

8. Rule II

The amendments to this Rule and to Rules 5 and 8 (identical amendments) seek to make it absolutely clear that pollution liabilities are excluded.

9. Rule III

This involves only a minor clarification.

10. *Rule V*

See Rule II above.

11. *Rule VI*

While there is no change to Rule VI which was amended significantly in 1990, the fact that there is no change indicates an extensive acceptance by the commercial community of the 1990 Paris amendment concerning Articles 13 and 14 of the 1989 Salvage Convention.

12. *Rule VIII*

See Rule II above.

13. *Rule IX*

This is considered to be an important amendment in terms of principle. It is recognised, however, that allowances under this Rule will not arise very frequently.

14. *Rule X (a)*

The amendment simply involves the removal of two commas from the 1974 Rules. The amendment brings the English text perfectly into line with the French text.

15. *Rule X*

The amendments to Rule X involve no change of substance. There was, however, an important debate on Rule X as to whether allowances under this Rule should be limited. There was a consensus that they should stay as they are.

16. *Rule XI*

The opportunity was taken to set out the provisions of this Rule in a more orderly sequence.

17. *So far as Rule XI(d)*

is concerned, this is a very important new Rule. It is part of the "pollution package" referred to above under Rule C. The provisions in Rule XI(d) are complementary to the additions made to Rule C to avoid the admission of liabilities for damage to the environment or the effect of pollution. This is the quid pro quo accepted by property underwriters as well as commercial interests whereby pollution avoidance measures will be accepted in general average when they form part of a General Average Act performed for the common safety. The hope is expressed that these new provisions will avoid the possibility which has worried both ship and cargo interests for many years, namely that a ship in danger will be declared "a maritime leper" and prevent it from obtaining a Port or place of safety.

18. *Rule XII*

This amendment is merely a minor drafting amendment.

19. *Rule XVII*

The amendment here recognises that there is a lacuna regarding the assessment of the contributory value of the ship which has been subject to a charge for special compensation under Article XIV (this effect was not appreciated in Paris in 1990 when Article VI was amended). The situation has now been corrected. The amendment to the last paragraph of XVII is seen as a sensible, up-to-date provision exempting mails, passengers' luggage, personal effects and accompanied private motor vehicles from an obligation to contribute in General Average.

20. *Rule XX*

Essentially this amendment concerns only a simplification of drafting.

21. *Rule XXI*

This is a relatively small change to make provision for interest to be charged. The intention is to encourage quicker settlement of adjustments.

IV. CLASSIFICATION SOCIETIES.

On the morning of Tuesday, 4th October, a Report was presented to the Conference by Dr. Frank Wiswall concerning the progress made by the Joint Working Group on a Study of Issues re: Classification Societies (CSJWG), which was formed upon an initiative of the Executive Council in June of 1992. The principle upon

which this effort proceeds is that a solution to the problems of the Societies reached by co-operative efforts within the maritime industry is preferable to any solution which might be recommended or imposed by governments. The issues under consideration centre upon the legal rights, duties and liabilities of the Classification Societies.

The CSJWG has now held six working sessions, and the organizations participating in the work are CMI, the International Association of Classification Societies (IACS), the International Group of P&I Clubs, International Chamber of Shipping (ICS), the International Chamber of Commerce (ICC), the International Association of Dry Cargo Shipowners (INTERCARGO), and the International Maritime Organization (IMO). Some of these organizations are "full participants" and others are "observers", but all have had an unrestricted opportunity to contribute to the discussion and the work of the CSJWG. Dr. Wiswall has served as Chairman, and the CMI has provided the secretariat services for the Group.

In the view of some participants, the most immediate problem is the increasing frequency of suit against the Classification Societies by third parties, whose complaint usually lies primarily against the shipowner, but who also proceed against the Classification Society as an additional "deep pocket" defendant. If this increase in the exposure of the Societies continues unchecked, the Societies could be forced to withdraw some of their traditional services — the result being a deterioration in maritime safety. Since the problem revolves around maritime private litigation of civil liability, the CMI is felt to be better equipped than any of the intergovernmental organizations to organize a study of the issues and to formulate recommendations.

Some of the participants hold the view that the ultimate answer to the Societies' exposure to civil liability can only be to attack the problem at its roots in a preventive manner. The problem is not simply one of clever lawyers looking to the Societies as an additional "deep pocket" for recovery of claims; the problem is also that what the Societies do, and how and on whose behalf they do it, is not expressed in any uniform way or in words which the general public can understand. Demonstrated adherence to published standards — provided they were adopted by a fairly broad representation of the shipping industry as a whole and not merely by the Societies themselves — would be prima facie evidence that the Society concerned had not been negligent, and a claimant would then have to prove either that the Society had not complied with the published standards or that the standards were so obviously deficient in the material respect that the Society could not reasonably have relied upon it.

The CSJWG is currently formulating a draft Statement of Principles of Conduct, which will set forth standards which could be used to measure the conduct of a Society in a given case. The Statement of Principles of Conduct will cover the activities of the Societies with respect to statutory as well as classification surveys, work performed by agents of the Societies such as non-exclusive surveyors as well as work performed by persons directly employed by the Societies. In order to achieve broad application the Principles of Conduct should apply to all Classification Societies, whether or not members of IACS. Likewise the Statement must apply equally to those Societies organized as privately-owned corporations and those owned by Governments and organized as public corporations or otherwise structured.

The CSJWG is also working on a draft of contractual clauses which define, and on a contingent basis also regulate and limit the liability of Classification Societies. In the form ultimately presented by the Group to its constituent organizations, the clauses will stand as recommended models for use by individual Classification Societies, which could modify them as might be advisable in accordance with commercial practice or as required by particular national law or regulation.

The Joint Working Group hopes to conclude this phase of its work in 1995 and to submit the Model Clauses and the Statement of Principles of Conduct to the governing bodies of the participating organizations for approval. Following the Report on the work of the CSJWG, four panellists presented papers:

Dr. Philippe Boisson, Legal Adviser, Bureau Veritas, Paris: *Classification Society Liability: Maritime law principles must they be questioned?*

Mr. Lars Lindfelt, Managing Director, The Swedish Club, Gothenburg: *A Future for Classification Societies.*

Richard M. Leslie, Esq., Shutts & Bowen, Miami, Florida (Counsel for American Bureau of Shipping in the SUNDANCER case): *Civil Liability Responsibilities of Vessel Owners and Classification Societies.*

Brian D. Starer, Esq., Haight Gardner Poor & Havens, New York (Counsel for the shipowner in the SUNDANCER case): *Liability, is it Just Around the Corner? An Advocate's view of a Classification Society and its Duty.*

After the papers were given an open discussion took place, with questions from and comments by the panellists and the audience.

The Report and the four papers of the panellists will be printed in the 1994 Yearbook as SYDNEY II documents.

V. MARINE INSURANCE.

Papers were presented during the course of the Seminar on Marine Insurance on the subject "Is the Doctrine of Utmost Good Faith Out of Date?" by Patrick J.S. Griggs, the Honourable Justice M.D. Kirby, Jean-Serge Rohart and Graydon Staring.

VI. THIRD PARTY LIABILITY.

At the end of the meeting of the Working Group which was held on 3rd October 1994, it was resolved by those attending the meeting to recommend to the Assembly and to the Executive Council that an International Sub-Committee should be set up to consider:

- i. The revision of the 1976 Limitation of Liability Convention to take account of other liability issues; and
- ii. The revision of the long-term possibility of introducing a single maritime liability and limitation convention to cover all aspects of maritime activity.

All papers and reports will be published in the CMI Yearbook 1994.

Assembly of the CMI.

The Assembly of the CMI was held in Sydney on 9th October 1994 and the new members of the Executive Council were unanimously elected by the Assembly. They are the following:

President:	Allan Philip
Vice Presidents:	W.R.A. Birch Reynardson Hisashi Tanikawa
Secretary General:	Norbert Trotz
Secretary General Administrative:	Leo Delwaide
Treasurer:	Henri Voet
Executive Councillors:	Luis Cova Arria Patrick J.S. Griggs Rolf Herber Frank L. Wiswall, Jr. Ron Salter David Angus Karl Johan Gombrii Jean-Serge Rohart

Future Work

CARRIAGE OF GOODS BY SEA

The Executive Council decided to seek the views of the National Associations on the problem of the unification of the law relating to the carriage of goods by sea and to circulate to the National Associations the Introductory Report and the Questionnaire published hereafter. The National Associations will also receive an annex to the Questionnaire setting forth a digest of the present variations of the law of the carriage of goods by sea.

Questionnaire for the Member National Associations concerning the Hague-Visby Rules / Hamburg Rules

The process of unification of the law relating to liability arising out of the carriage of goods by sea, which was begun by the CMI as long ago as 1907, continued satisfactorily until the Visby Protocol of amendment to the Hague Rules was adopted in 1968. At that time there were 73 States parties to the 1924 Convention, including most of the major maritime nations of the world. Some other had introduced the provisions of the Hague Rules into their domestic legislation without ratifying the Convention. With the entry into force of the Visby Protocol in 1977, the uniform system began to fracture, as only a limited number of the States parties to the Convention became parties to the Protocol. Presently there are 83 States parties to the Convention, but only 20 States have become parties to the Visby Protocol. Moreover, although about 8 States simultaneously ratified the Protocol and denounced the unamended Convention, about 12 other States have ratified the 1968 Visby Protocol without denouncing the original 1924 Convention.

After the 1979 SDR Protocol entered into force in 1984, the fracture widened, though confined to the issue of limits of liability. At present only 14 States are parties to the SDR Protocol, of which 12 were already parties to the Visby Protocol but 2 were not.

Therefore, prior to the entry into force of the Hamburg Rules in 1992, the maritime world was divided into six areas, viz.:

1. Where the Hague Rules as amended by the two Protocols were in force — 14 States.
2. Where the Hague Rules as amended only by the Visby Protocol were in force — about 7 States.
3. Where the Hague Rules were in force without any amendment — about 63 States.
4. Where the provisions of the Hague Rules have been enacted into national legislation without ratification of the Convention — several States.
5. Where the provisions of the 1968 or 1979 Protocols have been enacted into national legislation without ratification of the Protocols — several other States.
6. Where the Hague Rules have not been enacted in any form, with the consequence that domestic law applies unless private international law (conflicts) rules provide otherwise — many States, including most of South America and Africa.

After the Hamburg Rules entered into force, the pace of disunification increased. Of the 22 States at present parties to the Hamburg Rules, 10 were parties to the 1924 Convention and 12 were not. As a consequence the States parties to the unamended Hague Rules are or soon will be reduced to about 53 States. Moreover, several States that were not parties to the Hague Rules have enacted or are moving toward enactment of domestic legislation incorporating features of both the Hague Rules and the Hamburg Rules as well as unilateral innovations.

Today, two areas must be added to the six previously described:

7. Where the Hamburg Rules are in force.
8. Where national law combines various provisions of the Hague Rules unamended, the Visby and SDR Protocols, and the Hamburg Rules, in addition to other non-uniform domestic provisions.

In the view of the Executive Council of the CMI, the time has come to consider whether an attempt should be made to halt this disintegration of uniformity of the law of carriage of goods by sea and, to the extent possible, reverse the process and achieve once again a high degree of uniformity. Several alternatives may be considered, including the following:

- a. To refrain from taking action so as not to interfere with the ongoing process of selection, in hopes that the best system will ultimately prevail.
- b. To promote widespread ratification of the Hamburg Rules.
- c. To suggest amendments to the Hamburg Rules which are designed to overcome real commercial problems and to clarify ambiguities, thereby making the Hamburg regime more broadly acceptable.
- d. To suggest amendments to the Hague-Visby Rules in order to modernize and broaden a regime which is already widely accepted.
- e. To prepare a new convention which would include, inter alia, those provisions of the Hague-Visby Rules and of the Hamburg Rules which have been shown to be both commercially viable and politically acceptable.

The Executive Council has decided that it is appropriate to solicit the views of the National Associations immediately. To that end it directed, at its meeting in Sydney on 2nd October 1994, that the Working Group of Executive Council members previously appointed at its meeting in Oxford on 13th May 1994 should prepare this Questionnaire, and at its meeting of 8th October 1994 directed that it should be sent as quickly as possible to the Member Associations. The Annex following the Questionnaire sets forth a digest of the present variations in the law of carriage of goods by sea.

It is considered imperative that the Member Associations make their responses to the Questionnaire as quickly as possible, and direct such responses to the Administrator of the CMI, Baron Leo Delwaide, with a copy to the Chairman of the Executive Council's Working Group, Professor Francesco Berlingieri.

On the basis of the replies received by the end of January 1995, and after appropriate consultation with the concerned intergovernmental organizations, it will be decided what further action, if any, is advisable.

Questions

1. Do you consider that the current proliferation of different legal regimes relating to the liability of the carrier of goods by sea is an acceptable situation?
2. If you consider that this is unacceptable, are you of the view that some efforts should be made by the CMI to remedy the situation?

3. Should action be limited to urging straightforward acceptance of the Hamburg Rules? If not, please state why in general terms, and then specify which of the provisions of the Hamburg Rules you consider to cause unacceptable commercial difficulties or serious problems of interpretation. Please illustrate such difficulties and/or problems by example.
4. Should action be taken to amend the Hamburg Rules? If so, what basic changes do you suggest be made to the Hamburg Rules?
5. Should action be taken to modernize the Hague-Visby Rules? If so, what basic changes do you suggest be made to the Hague-Visby Rules?
6. Should a new convention be drafted? If so, what provisions from the Hague-Visby Rules and Hamburg Rules, respectively, do you suggest for inclusion in a new convention? What provisions not found in either of the present conventions do you suggest for inclusion in a new convention?
7. Do you consider that some efforts other than those suggested above should be undertaken in order to reverse the current disintegration of uniformity? If so, what actions(s) do you suggest?

OFF-SHORE STRUCTURES

After the approval of the new draft Convention on Off-Shore Mobile Craft, the Conference also resolved unanimously that "the CMI establish a working group for the further study and development where appropriate of an international convention on offshore units and related matters". The resolution was based on a Canadian background paper submitted to the Conference advocating that an offshore convention should cover not only craft in the transit and mobile mode, but also all other offshore activities including the exploration of petroleum and seabed mineral resources by units permanently fixed to the seabed. At its meeting in Sydney on 9 October 1994 the Executive Council appointed a working group consisting of Mr. Richard Shaw, United Kingdom as Chairman and Professor Edgar Gold, Canada and Professor Hisashi Tanikawa, Japan as members to look further into the matter.

THIRD PARTY LIABILITY

Following the Resolution of the Working Group previously referred to, the Executive Council decided to appoint a Working Group consisting of Mr. Patrick Griggs, Mr. Karl Johan Gombrii, Prof. Jan Ramberg and Prof. Norbert Trotz with the task of considering the recommendations made during the Conference.

CLASSIFICATION SOCIETIES

The Executive Council appointed a Working Group consisting of Mr. William Birch Reynardson, Mr Jorgen Bredholt, Mr. Karl Johan Gombrii and Dr. Frank Wiswall with the task of continuing the work on this subject, together with the representatives of the other Organizations that have so far participated in such work.

WRECK REMOVAL

In connection with the decision of the IMO Legal Committee to place on its middle-term work schedule the possible preparation of a convention on wreck removal (see Issue No. 1/94 of CMI News Letter, p. 8) the Executive Council decided to set up a Working Group consisting of Prof. Patricia Birnie, Prof. Eric Japikse and Mr. Bent Nielsen with the task of considering this subject and provide IMO's legal Committee with any assistance it might wish to have.

CMI Yearbook 1993

A number of bound copies of the CMI Yearbook 1993 are available at a price of USD 15 per copy. Those who might wish to purchase them should approach the CMI Secretariat.

Centenary of the CMI

The Executive Council decided to hold a special conference in order to celebrate the Centenary of the formation of the CMI. Following the kind offer of the Belgian Maritime Law Association, the Centenary Conference will be held in Antwerp in the late Spring of 1997.

It is the intention of the Executive Council to publish a book on the history of the CMI and its accomplishments. Members of the National Associations who have interesting old documents relating to the work of the CMI and its history including photographs, are requested to kindly inform Prof. Francesco Berlingieri.

NEWS FROM NATIONAL ASSOCIATIONS

International Conference on Maritime Law — Shanghai 10th to 14th October 1994

During the week following the Conference of the CMI in Sydney, the China Maritime Law Association held an International Conference on Maritime Law in Shanghai. The Conference had about 300 participants of which about 50 were foreign guests. Guests of Honour at the Conference were the President of the CMI and its Honourary Vice President, Professor Nicholas J. Healy. Professor Allan Philip held the opening speech and Professor Nicholas J. Healy the closing speech. The subject of the Conference was the new Chinese Maritime Code, which came into force on July 1, 1993. A number of the Chinese and foreign participants, among which Herbert M. Lord and Professor David J. Sharpe, gave talks comparing the Code with foreign, in particular, English and American maritime law. The Code exists in an English edition. All the lectures were published in a book available at the Conference.

RATIFICATION OF INTERNATIONAL CONVENTIONS

Entry into force of the U.N. Convention on the law of the Sea.

The U.N. Convention on the law of the Sea will enter into force on 16th November 1994 in accordance with its Article 308. Here follows a list of ratifications, accessions and successions.

<i>State</i>	<i>Date of ratification / accession / succession</i>
Angola	5th December 1990
Antigua and Barbuda	2nd February 1989
Bahamas	29th July 1983
Bahrain	30th May 1985
Barbados	12th October 1993
Belize	13th August 1983
Brazil	22nd December 1988
Bosnia and Herzegovina	12th January 1994 (s)
Botswana	2nd May 1990
Cameroon	19th November 1985
Cape Verde	10th August 1987
Costa Rica	21st September 1992
Côte d'Ivoire	26th March 1984
Cuba	15th August 1984
Cyprus	12th December 1988
Djibouti	8th October 1991
Dominica	24th October 1991
Egypt	26th August 1983
Fiji	10th December 1982
Gambia	22nd May 1984
Ghana	7th June 1983
Grenada	25th April 1991
Guinea	6th September 1985
Guinea-Bissau	25th August 1986
Guyana	16th November 1993
Honduras	5th October 1993
Iceland	21st June 1985
Indonesia	3rd February 1986
Iraq	30th July 1985
Jamaica	21st March 1983
Kenya	2nd March 1989
Kuwait	2nd May 1986
Mali	16th July 1985
Malta	20th May 1993

Marshall Islands	9th August 1991
Mexico	18th March 1983
Micronesia (Federated States of)	29th April 1991
Namibia	18th April 1983
Nigeria	14th August 1986
Oman	17th August 1989
Paraguay	26th September 1986
Philippines	8th May 1984
Saint Lucia	27th March 1985
Sao Tomo and Principe	3rd November 1987
Senegal	25th October 1984
Seychelles	16th September 1991
Somalia	24th July 1989
St. Kitts and Nevis	7th January 1993
St. Vincent and the Grenadines	1st October 1993
Sudan	23rd January 1985
Togo	16th April 1985
Trinidad and Tobago	25th April 1986
Tunisia	24th April 1985
Uganda	9th November 1990
United Republic of Tanzania	30th September 1985
Uruguay	10th December 1992
Yemen	21st July 1987
Yugoslavia	5th May 1986
Zaire	17th February 1989
Zambia	7th March 1983
Zimbabwe	24th February 1993

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

- Protocol amending 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.

Mexico: Accession on 20th May 1994.

- International Convention on Civil Liability for Oil Pollution Damage, 29th November 1969.

Mexico: Accession on 20th May 1994.

- Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 19th November 1969, as amended 19th November 1976.

Mexico: Accession on 20th May 1994.

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

Mexico: Accession on 20th May 1994.

- Convention on Limitation of Liability for Maritime Claims, 1976.

Mexico: Accession on 20th May 1994.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 4 - 1994

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

IN MEMORIAM

Me. Jean Warot

J'ai connu Jean Warot à la Conférence du CMI de Naples, en septembre 1951. La première pour moi, mais pas pour lui, qui avait déjà participé à la Conférence d'Amsterdam en 1949. Jean avait déjà acquis une expérience considérable sur le travail du CMI, car à Amsterdam il avait été nommé Secrétaire de la Conférence en même temps que Carlo van der Bosch, Jan Asser, le Baron van der Feltz, Oscar Houston et Léopold Dor.

A Naples, où il était venu avec deux parmi les plus grandes personnalités du CMI, Georges Ripert et Jean de Grandmaison, nous sommes devenus immédiatement amis. Et cette amitié a crû le long des années, et a duré pour 41 ans, jusqu'à quand Jean nous a laissés.

C'est difficile parler de lui dans quelques lignes. Jean Warot était un grand avocat, qui aimait sa profession et la pratiquait avec une honnêteté intellectuelle absolue. Il était un juriste très fin et comme juriste il a travaillé avec tout le dévouement dont il était capable pour l'Association Française du Droit Maritime et pour le Comité Maritime Internationale. Il a participé à toutes les conférences du CMI, depuis Amsterdam en 1949 jusqu'à Paris en 1990. Il avait été élu Membre Titulaire du CMI en 1955 et Vice-Président en 1979. En 1991 il a été élu Vice-Président Honoraire.

Il a donné beaucoup au CMI et il a contribué en manière considérable au travail pour l'unification du droit maritime. Il avait le don d'exprimer son point de vue sur les problèmes juridiques en discussion dans une manière concise mais en même temps très claire, très nette et complète. Personne ne pouvait s'ennuyer en l'écoutant.

Jean était toujours courtois et je ne l'ai jamais vu s'inquiéter. Il était un gentleman et le CMI a perdu avec lui un de ses membres les plus illustres. Moi, j'ai perdu un ami sincère auquel j'étais profondément attaché.

A son épouse et à ses filles les condoléances émues du CMI et de moi même.

Francesco Berlingieri

Prof. Jan Schultz

Wide circles of jurists were gravely shocked by the sudden death of Jan Christoffel Schultz on the 12th September last year. Both in The Netherlands and abroad, Jan enjoyed a great esteem in many fields of the law, notably most in that of private international law (p.i.l.).

At the remarkably young age of 35 years, he was officially appointed a member of the Dutch State Council for p.i.l., an authoritative advisory body, of which he became the chairman some 10 years later. Simultaneously, after having served as the secretary to the President of The Hague International Conference since 1951, this international organisation welcomed Jan as a member, who here again assumed the presidency in 1976. In those functions he contributed considerably towards uniformity of law on a variety of subjects embodied in a number of well-known conventions which attracted a substantial adherence.

In retrospect, Jan's broad education would seem to have forecast such a career in an international context. Once he had taken his law degree at the Amsterdam University, extensive studies followed in Paris (Henri Battifol and René David) as well as Oxford (F.H. Lawson). His academic qualifications then opened the way to the actual practice, when in 1955 he joined the reputable Asser law firm (Amsterdam). Yet, a professional command of the law could not indefinitely stop him from at least a partly academic route: as from 1970 profes-

sortes were held at the Rotterdam Erasmus University (until 1980) and subsequently at his own old Amsterdam University (until 1992). He lectured p.i.l. respectively the law of transport and combined the second professorship with a return to the legal profession, where more particularly international and national arbitrations kept him busy.

'Fully in line with the above trend of Jan's life, and thus quite of nature, the CMI work crossed his path. Member and later President of the Netherlands Maritime Law Association, he was successively elected a member and Vice-President of the CMI Executive Council. For many a year sub-committees and working groups were chaired or attended by him, whilst also seminars and colloquia in various places of the world benefitted from his active participation. Jan has indeed displayed a great deal of cooperation to serve the CMI's objectives in a fruitful manner.

One can continue for a long time to get anywhere near a complete picture of Jan's admirable range of abilities and efforts as an international as well as national jurist. One feature towers above all: he has worked exceedingly hard, and this almost incessantly without much room for pause and relaxation. Those who were permitted to look behind the façade know the sores with which, as a sensitive character, he had to cope on top of all the pressure ensuing from his vast involvement in the cause of the Law. They have also discovered, however, what a most aimable and erudite man he was to talk with on ordinary and human matters in quiet moments. While left with an immense respect for an impressively meritorious life (including his optimal engagement as a husband and father), one no less feels that Jan's - may we say: premature? - death has struck many as a severe and sad personal loss.

R.E. Japikse

NEWS FROM THE CMI

Baron Leo Delwaide is taking up his functions as Administrator

During its 1994 regular session, the Assembly of the Comité Maritime International has elected Professor Leo Delwaide to be the Administrator for the next four years. His address is as follows:

Baron Leo Delwaide	Tel:	32-3 227.3526
Markgravestraat 9	Fax	32-3 227.3528
2000 Antwerpen	Telex:	31653 Voet B
Belgium		

He will take up his functions as of 2nd January 1995.

Henri Voet has been re-elected to serve as Treasurer. His address is unchanged.

Assembly - 8th October 1994

Attending

Officers

President	Allan Philip
President ad Honorem	Francesco Berlingieri
Vice-Presidents	William Birch-Reynardson Eugenio Cornejo Anatoly Kolodkin Jan Ramberg Ron Salter William Tetley
Secretary General	Norbert Trotz
Administrator and Treasurer	Henri Voet
Executive Councillors	José Luis Goñi Patrick Griggs Rolf Herber Frank L. Wiswall, Jr.

Delegates

ARGENTINA	José Domingo Ray	JAPAN	Hishashi Tanikawa Tomonobu Jamashita Noboru Kobayashi
AUTRALIA & NEW ZEALAND	Stuart Hetherington Ms.A.I. Philippides D.S.James	KOREA	Lee-Sik Chai
BELGIUM	Roger Roland Harry Fordham Eric Van Hooydonk	MALAYSIA	Nagarajah Muttiah
BRAZIL	Calmon Filho Gomes Pereira	MEXICO	Ignacio Melo
CANADA	Mrs. J. Gauthier Edgar Gold David Angus Bart Malott John Joy	NETHERLANDS	R.E. Japikse
CHILE	Eugenio Cornejo ¹ N. Genskowsky	NORWAY	Karl-Johan Gombrii Emil Gamborg B. Kjos
COLOMBIA	Luis Gonzalo Morales	PHILIPPINES	Ruben Del Rosario
CROATIA	Velimir Filipovic Vosjlav Borcic	POLAND	W. Adamczack
DENMARK	Jan Erlund	PORTUGAL	Manuel P. Barrocas
FINLAND	Peter Wetterstein Hannu Honka Jan Aminoff	RUSSIA	Anatoly Kolodkin ³
FRANCE	Jean Serge Rohart Patric Rembauville-Nicolle	SINGAPORE	Chandran Arul Peter S.K. Koh
GERMANY	Eduard Dettmers Bernd Kröger Hans-Heinrich Nöll	SOUTH AFRICA	John E. Hare Michael W. H. Posemann
GREECE	Deucalion Rediadis	SPAIN	José-Maria Alcantara José Luis Goñi ⁴ Francisco Goñi
INDONESIA	Mrs. Chandra Motik Mrs. Rinie Amaluddim Mrs. Mrih Haryami	SWITZERLAND	Alexander von Ziegler Jean Hulliger
IRELAND	J. Niall McGovern Ms. Mary Spollen	SWEDEN	Lave Beck-Friis Claës Palme (loco J. Sandström)
ITALY	Francesco Berlingieri ² Mario Riccomagno	UNITED KINGDOM	William Birch-Reynardson ³ Patrick Griggs ⁴ Colin de la Rue
		UNITED STATES OF AMERICA	Chester D. Hooper James F. Moseley Howard McCormack Nicolas J. Healy
		VENEZUELA	Julio Sanchez-Vegas Luis Cova-Arria

1. Memorials

Deceased Titulary Members:

George Daniolos
Nicolaos A. Deloukas
Patrick Arthur Devlin
Antonio Polo Díaz
Neil M. Gordon
Charles M. Keller

Greece
Greece
United Kingdom
Spain
United Kingdom
Switzerland

¹ Also mentioned as Vice President.

² Also mentioned as President ad Honorem.

³ Also mentioned as Vice President

⁴ Also mentioned as member of the Executive Council.

Elliot B. Nixon	U.S.A.
Phocion G. Potamianos	Greece
Olof Riska	Finland
Jan C. Schultsz	Netherlands
Rolf Stödter	Germany
Jean Warot	France
Lorenz Zetterman	Sweden

Titulary members who have retired:

William Baatz	Canada
D.José Luis Estava de la Torre	Spain
José Maria Garibi Undabárrena	Spain

2. Approval of the Minutes of the Meeting of the Assembly on 25 September 1993

The Assembly approved the Minutes.

3. Members

a) Admission of Associations of Maritime Law

The Assembly admitted by Acclamation the Maritime Law Association of Malta as member of the CMI.

b) Titulary Members

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

Australia	Ron Salter	Spain	Eduardo Albors Mendez Luis de San Simon Cortabitarte Guillermo Gimenez de la Cuadra
Canada	John Joy Sean Harrington Vincent Prager		Rodolfo Gonzalez Lebrero Francisco Gofí José Luis Rodriguez Carrion Fernando Ruiz Galves
Croatia	Drago Pavic	Switzerland	Thomas Burckhardt Jean Hulliger Annibale Rossi
Denmark	Anders Ulrik Henrik Thal Jantzen Michael Villadsen	United Kingdom	Colin de la Rue Richard S. Shaw
Ireland	Eamonn A. Magee Paul Gill	Venezuela	Freddy Belisario-Capella Luis Correa-Perez Alberto Lovera-Viana Julio Sanchez Vegas
Netherlands	Vincent M. de Brauw		

4. Resolutions following the Sydney Conference

a) York Antwerp Rules

The Assembly approved the text of the revised York Antwerp Rules as adopted by the Conference.

It was agreed that the a wide distribution of the revised Rules by appropriate publication is desirable (Yearbook of the CMI "Sydney II" and special off-print of the Yearbook).

b) Admissibility and Assessment of Claims for Pollution Damage

The Assembly approved the text of the Guidelines on Admissibility and Assessment of Claims for Pollution Damage as adopted by the Conference.

In compliance with the Resolution adopted by the Conference the Assembly recommended the wide dissemination and application of the Guidelines and instructed the Executive Council to publish the Guidelines and the Resolution as appropriate (Yearbook of the CMI "Sydney II" and special off-print of the Yearbook).

The Delegations of the Maritime Law Associations of Belgium and France referred to their statement delivered at the Conference on the reservation of these Delegations in respect of the Guidelines.

c) Draft Convention on Offshore Mobile Craft

The Assembly approved the text of the Draft Convention on Offshore Mobile Craft as adopted by the Conference. It was decided that the Draft should be published in an appropriate manner. There was agreement that the Draft should be submitted to IMO in response to the request from that Organization to up-date the CMI Draft Convention adopted originally at the Conference in Rio in 1977.

The Assembly took note of the discussion at the Conference on future work on a broader regime for offshore operations covering mobile and fixed installations as well. The Executive Council was asked to discuss the matter further and to take the necessary decisions for the work on the subject.

d) Special Sessions of the Conference

i) General

It was the general view that the special sessions of the Conference on Insurance Law, Third Party Liability and Classification Societies were very valuable and interesting. The programme of future Conferences should provide for similar events which offer discussions or lectures in addition to the main topics. However, in deciding on the number and on the procedure of these special meetings it should be taken into account that smaller delegations have difficulties in attending meetings which are convened simultaneously.

ii) Third Party Liability

The Assembly agreed to continue the work on Third Party Liability. Since the IMO is preparing a revision of the 1976 Limitation Convention, the Working Group was asked to concentrate first on this item. However, the Assembly was aware of the difficult timing because IMO has the intention of convening a Diplomatic Conference in 1996. It was, therefore, left to the Executive Council to decide whether a document of the CMI should be prepared for the Diplomatic Conference or earlier for a meeting of the Legal Committee. The Executive Council may also decide whether the formation of a Subcommittee is useful at a certain stage of work. The Maritime Law Associations were asked to respond promptly in case a Questionnaire is sent out.

iii) Classification Societies

The Assembly agreed that the work on "Classification Societies" should continue. It was again emphasized that the work is done in co-operation with other Organizations. Before any decision can be taken on the results of the work all Organizations involved in the joint activity have to consider the documents and material.

iv) Other matters

It was proposed that for the next Conference information on the maritime law of the host country should be made available prior to the Conference. This proposal was received with sympathy and an appeal was made to submit suggestions on methods and the procedure to execute the proposal.

5. Report on the work of the Executive Council

a) Hague-Visby Rules/Hamburg Rules

The President informed the Assembly that at its meeting of 13th May 1994, the Executive Council decided that the present international development of the regime for the carriage of goods by sea required the attendance of the CMI and set up a Working Group consisting of Professor Tetley, Professor Herber, Professor Ramberg and Professor Berlingieri, suggesting that the Working Group prepare a preliminary report for the meeting of the Council to be held in Sydney.

The Working Group submitted its report to the Council at the meeting held in Sydney on 2nd October 1994 and on the basis of such report, the Council considered that the proliferation of international and national regimes was seriously affecting unification of the law relating to the liability arising out of the carriage of goods by sea and that the CMI should take the initiative of considering which remedies might be adopted to ensure actual unification.

The Council then instructed the Working Group to consider the possible preparation of a Questionnaire for distribution to National Associations and to submit such draft to the Council on the occasion of its subsequent meeting.

The Council will then decide upon the distribution of the Questionnaire and upon the following action to be taken by the CMI in co-operation with all the concerned Intergovernmental Organizations.

b) Arrest Convention

The President informed the Assembly that the IMO/UNCTAD Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects (JIGE) is meeting to consider a possible revision of the Arrest Convention and that the CMI is assisting in this work. At present it is not yet clear whether the work will lead to a new Convention or whether it will be preferred to limit the work to a revision of the existing Convention with the aim to adapt the Arrest Convention to the Convention on Maritime Liens and Mortgages of 1993. In the course of further work of the JIGE on the Arrest Convention it might be decided that the Lisbon Draft of the CMI will be taken as basis for discussion.

c) Wreck Removal

The President reported that it is very likely that the subject "Wreck Removal" will be put on the agenda of the Legal Committee of IMO. The Executive Council had not yet taken a decision whether the CMI should begin with the work on this item.

The Assembly supported the work on this item and encouraged the Executive Council to take the necessary decisions.

d) European Section

The Chairman of the European Section, Professor Peter Wetterstein of Finland, reported on the first meeting of the Section. He informed the Assembly that the Section discussed the Draft of a Statement on its policy and work and on its future activities. No final decision had been taken.

The Assembly took note of this information.

e) International Conferences

The President referred to the various invitations received by the CMI to attend Conferences and Meetings of other Organizations. As a matter of general policy it was proposed that in case it is decided that the CMI should participate, persons from local Associations will be asked to attend the Conference or Meeting on behalf of the CMI.

The Assembly endorsed that policy.

f) Malta Institute

Mr. Birch-Reynardson reported that the CMI Charitable Trust financed the travelling expenses of four CMI lecturers who gave lectures in April 1994 at the International Maritime Law Institute in Malta (Dr. Frank Wiswall, Alexander von Ziegler, Claes Palme, Colin de la Rue).

Mr. Birch-Reynardson also informed the Assembly that the Charitable Trust is, in addition to the payment for the lectures, supporting a fellowship (Fiji) at the International Maritime Law Institute for the academic year 1994/1995.

Furthermore, the Trust is supporting a scholarship at the University of Southampton.

g) Relation to the United Nations

The President informed the Assembly that talks have taken place with the Secretariat of UNCITRAL on a consultative status of the CMI with the United Nations.

The Assembly agreed that the Executive Council should take the necessary steps in order to apply for consultative status of the CMI in the UN.

h) Centenary

The President of the MLA of Belgium, Mr. Roland, invited the CMI to hold the International Conference in 1997 to celebrate the Centenary of the CMI in Belgium. The MLA of Belgium is prepared to convene and to organize the Conference. The President thanked the MLA of Belgium for the invitation. The Assembly confirmed that the CMI-Conference in 1997 will take place in Belgium.

The President informed the Assembly that the Executive Council had already started discussions of the programme of the Conference but no decisions were taken so far. Information on details will be given at a later stage. However, the President mentioned as one possible activity the preparation of a "Festschrift" on the history of the CMI supplemented by articles on major subjects of private maritime law.

The delegation of Singapore proposed to discuss the question of the Street of Malacca.

There was agreement that the programme of the Conference in Antwerp has still to be discussed by the Council.

The delegation of Spain invited the CMI to hold in Spain the Conference after the Conference in Antwerp. The delegation of Singapore stated in this context that the Conference after the Centenary should be held outside Europe. No decision was taken.

6. Financial Matters

a) Report of the Treasurer and Accounts of 1993

The Treasurer, Mr. Henri Voet, introduced his written report and the document on the accounts of 1993.

The Assembly approved the report and the accounts of 1993.

b) Budget for 1995

The Assembly approved the budget as proposed and submitted by the Treasurer.

c) Contributions in 1995

The Assembly agreed to raise the contributions for 1995 by 2.5% as proposed by the Executive Council.

The delegation of Spain expressed the view that the CMI should look for other sources of income beside contributions.

The delegation of Canada asked the question whether sufficient efforts are made to collect the contributions in arrears before the increase of contributions is proposed.

The President assured the Assembly that the rules of the Constitution in respect of Member Associations which have not paid their contributions within the time required is in effect and will be enforced by the Executive Council.

7. Election

The Assembly had received the nominations submitted by the Nomination Committee. No other proposals or nominations were made.

The Assembly elected by acclamation the following officers:

President:	Allan Philip
Vice-President for a two-year term:	William R.A. Birch Reynardson
Vice-President for a four-year term:	Hisashi Tanikawa
Secretary General:	Norbert Trotz
Treasurer:	Henri Voet
Administrator:	Leo Delwaide

For Membership on the Executive Council:

For one-year terms:	Luis Cova Arria Rolf Herber
For two-year terms:	Patrick Griggs Ron Salter
For three-year terms:	W. David Angus Karl-Johan Gombrii
For four-year terms:	Jean-Serge Rohart Frank L. Wiswall, Jr.

8. Honneurs

The President informed the Assembly that a number of officers have not been re-elected due to the new rules of the Constitution. He stated further that he regrets this result of the new Constitution because all these officers have served for so many years and have actively supported the work of the CMI. The President expressed the hope that these friends will still be available for further work within the CMI.

The President thanked especially the past members of the Council

José Luis Goni
Etienne Gutt
Pierre Latron

He further expressed thanks to the past Vice-Presidents

Eugenio Cornejo
Anatoli Kolodkin
Tsuneo Ohtori
Jan Ramberg
William Tetley

and proposed to elect them Honorary Vice-Presidents of CMI. The Assembly elected them Honorary Vice-Presidents as proposed by the President by acclamation.

The President informed the Assembly with regret that Ms. Schrynemakers who has served for many years in the office of the CMI in Antwerp has retired. He thanked Ms. Schrynemakers for her work devoted to the CMI.

9. Other matters

The delegations of Belgium and South Africa voiced the thanks of the Assembly to the President for his work and efforts to conduct the Conference and Assembly successfully.

Patrice Rembauville-Nicolle, in his capacity as Titulary Member of the CMI, made a statement, which was subsequently supported by the French Association of Maritime Law, relating to the use of the French language by the CMI. The statement of Mr. Rembauville-Nicolle is annexed to the Minutes of the Assembly.

10. Next Meeting

The next meeting of the Assembly is convened for the 20th May 1995 in Brussels.

Déclaration de Me. Patrice Rembauville-Nicolle, Membre de l'AFDM, Membre Titulaire du CMI

A titre personnel mais en ma qualité de Membre Titulaire, je tiens à déclarer que je déplore vivement qu'il n'ait pas été laissé, à la langue française, à l'occasion de la 35ème Conférence Internationale du CMI, la place qui lui revient de droit, à égalité, avec la langue anglaise.

La langue est le véhicule indispensable de la pensée. Depuis la création du CMI, le français a joué un rôle déterminant dans la promotion des principes de droit civil qui, mêlés aux concepts des droits de la common law, ont contribué à l'unification du droit maritime international. Il est essentiel que se perpétue cette double et fertile inspiration. Je forme par conséquent le vœu que soit restaurée la position de la langue française au sein du CMI.

Nombreux sont les délégués de pays francophones ou simplement francophiles, présents à Sydney, qui m'ont fait part, à titre personnel, de leur regret de la mise à l'écart du français. Leur préoccupation légitime doit être prise en grande considération.

Je me permets donc de compter sur nos amis belges pour redonner au français, lors de la 36ème conférence internationale du CMI, la place qui est la sienne.

Je dédie cette déclaration à Jean Warot, qui après quelque hésitation due seulement à sa courtoisie, m'avait donné son accord de principe pour que j'exprime en quelques mots cette défense de la langue française. Je demande qu'elle soit annexée au compte rendu de l'Assemblée Générale.

Meeting of the Executive Council - 2nd October 1994

Summary

The Executive Council met on 2nd October at the Sheraton Hotel in Sydney.

The Council took note of a document on a comprehensive regime for offshore operations submitted by the MLA of Canada. The Council came to the conclusion that the Canadian document should be discussed by the Conference Committee on Offshore Mobile Craft after the Committee has finished the discussion on the Draft Convention on Offshore Mobile Craft. The Committee was asked to consider future work on the proposed comprehensive regime on the basis of the Canadian paper. It was the opinion of the Council that in case of further work on a comprehensive regime a new Subcommittee should be set up.

The Council agreed to propose to the Plenary the formation of a Bureau of the Conference with the following members:

President

Prof. Allan Philip

Vice-Presidents

Mr. Stuart Hetherington

Mr. Tom Broadmore

Secretaries

Mr. Norbert Trotz

The Honourable Justice R.E. Cooper

Mr. Christopher Quennell

Mr. Frode Ringdal

Mr. David Taylor

It was agreed that the Chairmen of the Working Groups on Classification Societies and on Third Party Liability should give a report at the Plenary.

The Council decided further to appoint Mr. Patrick Griggs Chairman of the Working Group on Third Party Liability to replace the late Jan Schultzs. Mr. Griggs was asked to give the report on Third Party Liability at the Plenary.

Elections

In addition to the proposal of the Nominating Committee, the Member Associations can make proposals. The deadline for proposals is the 7th of October 1994. In the future nominations by the MLA's can be submitted until the day before the Assembly.

Membership

The Council agreed that the MLA of Malta fulfils the conditions for membership. It was, therefore, decided to submit the application of the MLA of Malta to the Assembly.

Next Meeting

The next meeting of the Assembly in Brussels should be convened for the 20th of May 1995 in Brussels.

Future Work

The Council tentatively discussed several aspects of future work and decided to continue the discussion at the next meeting on 8th October.

Third Party Liability

The Council noted that within a short time a revision of the 1976 Limitation Convention can be expected. The extent of the revision is still open. It was agreed that the Working Group on Third Party Liability should discuss the following alternatives for a revision:

- 1) Minimum revision restricted to the increase of the present limitation amounts;
- 2) Broader changes in connection with the adoption of a HNS-Convention.

It was agreed that the existing Working Group should continue its work. Mr. Patrick Griggs was asked to act as Chairman.

The decision as to whether a subcommittee should be set up was postponed until the next meeting. However, the Council agreed, in case of the establishment of a subcommittee, to appoint Mr. Patrick Griggs Chairman of the committee.

Hague-Visby Rules / Hamburg Rules

Professor Tetley presented the report of the Working Group appointed by the Council at its last meeting.

The Council agreed that the proliferation of international and national regimes was seriously affecting unification of the law relating to the liability arising out of the carriage of goods by sea and that the CMI should take the initiative of considering which remedies might be adopted to ensure actual unification.

It was agreed that the Working Group should consider the possible preparation of a Questionnaire for distribution to National Associations and, if this is deemed feasible, should submit a draft of the Questionnaire to the next meeting of the Council scheduled for Saturday, 8th October.

Work in Progress

Classification Societies

The President referred to the report on the work of the Working Group and thanked Mr. Frank Wiswall for the work done so far.

Arrest Convention

Professor Francesco Berlingieri reported that the Secretariats of UNCTAD and IMO prepared a preliminary report on a new or revised Arrest Convention. The CMI supported the work of the Secretariats of both Organizations.

In the course of further work of UNCTAD and IMO on the Arrest Convention it might be decided that the Lisbon Draft of the CMI will be taken as basis for discussion.

Security Interests in Mobile Equipment

The Council received a written report from Professor Herber who represented the CMI at the meeting of the UNIDROIT Working Group on Security Interest on Mobile Equipment. According to this report it has not yet been decided whether or not ships should be covered by a future Convention on Security Interests in Mobile Equipment. The Council stressed the position of the CMI that ships should be excluded from a future international regime.

Centenary and Next Conference

The Council agreed to formally submit formally the request to the MLA of Belgium to organise the Centenary and 1997 Conference in Brussels. The President will send an official letter to that Association.

It was decided that a "Festschrift" should be prepared for the Conference. The "Festschrift" should deal with the history of the work of the CMI and should be supplemented by articles on major subjects of private maritime law.

It was decided to set up a Board of Editors consisting of the following members:

Allan Philip
Francesco Berlingieri
Patrick Griggs
Frank Wiswall

The Council further discussed the preparation of an Exhibition or a booklet with photographs and documents on the history of the CMI. No decision was taken on this point.

Malta

Mr. Birch Reynardson reported that the CMI Charitable Trust financed the travelling expenses of four CMI lecturers (Alexander von Ziegler, Frank Wiswall, Claës Palme, Colin de la Rue) who gave lectures in April 1994 at the International Maritime Law Institute.

EU Committee

The Council decided to appoint Professor Peter Wetterstein Chairman of the EU Committee.

Charitable Trust

Mr. Birch Reynardson informed the Council that the Trust is, in addition to the payment made for the lectures at the International Maritime Law Institute, supporting a fellowship (Fiji) at IMLI for the academic year 1994/1995.

Furthermore, the Trust is supporting a bursaryship at the University of Southampton. The present income of the Charitable Trust is now about £ 20.000 per year.

UN Consultative Status

The Council agreed to recommend to the Assembly that the CMI should apply for consultative status in the UN.

Publications

The Council agreed that the present format and contents of the News Letter are very satisfactory. In principle, they should be kept as they are at present.

The President thanked Professor Francesco Berlingieri for his work as editor of both publications.

Meeting of the Executive Council

8th October 1994

Summary

The Executive Council met on 8th October at the Sheraton Hotel in Sydney.

Action on the Resolutions of the Assembly

York-Antwerp Rules and Guidelines on Assessment of Pollution Damage

It was decided that the revised version of the York-Antwerp Rules and the Guidelines on Assessment of Pollution Damage should be published in booklets (special off-prints of Sydney II).

Offshore Mobile Craft

The President will send officially the Draft Convention on Offshore Mobile Craft as adopted by the Conference and confirmed by the Assembly to the Secretary General of IMO.

As decided by the Conference and confirmed by the Assembly, the work on a broader regime on offshore operations will continue. The Council agreed to set up a Working Group under the Chairmanship of Richard Shaw. Members of the Working Group are: Professor Edgar Gold of Canada and Professor Tanikawa of Japan.

The Working Group should prepare a preliminary report for the meeting of the Council on 19th May 1995.

Special Sessions of Conferences

The Special sessions of the Conference (Insurance Law, Third Party Liability, Classification Societies) have been very attractive to the participants of the Conference. However, there was a risk of overlapping and overloading the agenda. The Council agreed, therefore, that in the future special sessions (seminars etc.), in addition to the meetings on the main subjects, should only be organized at a Conference if the main subjects and the circumstances allow for simultaneous meetings on special items.

Future Work

Third Party Liability

The Working Group will continue its work with the following members: Patrick Griggs (Chairman), Karl-Johan Gombrii, Jan Ramberg and Norbert Trotz.

The Working Group was asked to prepare a paper on the effect of the HNS-Convention on the 1976 Limitation Convention. Before its submission to IMO (if possible before March 1995) the paper should be sent to the National Associations.

A Subcommittee will be set up only if a document is later prepared for submission to the Diplomatic Conference of IMO on HNS and the Revision of the 1976 Limitation Convention.

Classification Societies

The work of the Working Group will continue.

Hague-Visby Rules / Hamburg Rules

The Working Group submitted to the Council a draft of the Questionnaire for circulation to National Associations as well as a draft of an explanatory note and of an Annex to the Questionnaire.

It was agreed to send to the National Associations the Questionnaire drafted by the Working Group. On the basis of the replies received from the Associations the Council will take a decision on future work at its meeting on 19th May 1995.

The Council agreed to set up a Working Group with the following members: Francesco Berlingieri (Chairman), David Angus, Jean-Serge Rohart, Ron Salter and Frank Wiswall.

Wreck Removal

The Council decided to set up a Working Group and appointed the following members: Bent Nielsen (Chairman), Erik Japikse and Patricia Birnie.

Nominating Committee

The new Nominating Committee was elected:

Nicholas Healy	- Chairman elected by all Members of the Council
Niall McGovern	- elected by the Vice-Presidents
Jan Ramberg	- elected by the remaining members of the Council

ex officio members:

Allan Philip	- as President
Francesco Berlingieri	- as past President

Other matters

The next Conference (Centenary) will take place in 1997. Depending on the circumstances of the organization the Conference should be convened in early June of 1997. The President will inform the MLA of Belgium officially.

Next Meetings

The next meeting of the Council will take place in Brussels on 19th May 1995. It was tentatively agreed to hold another meeting at the end of November or at the beginning of December 1995. The date has still to be agreed.

Publications

The Council confirmed that the News Letter should only be published in English.

It was further decided that in the Yearbook "Sydney II" the documents should, in addition to the English original version, be published in an unofficial French translation. The reports, however, will only be published in English.

ERRATUM

York-Antwerp Rules 1994

In the text of the Rules published in Issue No. 3/1994 of the News Letter, in Rule XI(d)(iii) line 1 (page 6 line 1), replace "Rule X(a)" with "Rule XI(b)".

In the brochure containing the Rules, in Rule XI(b) last paragraph (page 11, line 1 of the brochure) after "and crew and fuel and stores consumed and port charges" insert "shall" (be admitted, etc.) and in Rule XI(d)(iii) line 2, replace "Rule X(b)" with "Rule XI(b)".

NEWS FROM INTERGOVERNMENTAL ORGANIZATIONS

News from IMO and UNCTAD

Revision of the 1952 Arrest Convention

1. The XXXIIIrd Conference of the CMI held in Lisbon in September 1985 approved a revision of the 1967 Brussels Convention on Maritime Liens and Mortgages and the draft of a new Convention on Arrest of Ships intended to replace the 1952 Brussels Convention. Both drafts were submitted to UNCTAD and IMO. The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, established jointly by UNCTAD and IMO, took the 1967 Convention on Maritime Liens and Mortgages as amended in Lisbon as a basis of its work on the preparation of the draft of a new convention on maritime liens and mortgages.

In May 1993 the United Nations/IMO Conference, having adopted the new Convention on Maritime Liens and Mortgages on the basis of the draft prepared by the JIGE, approved a resolution in which it recommended that "the relevant bodies of UNCTAD and IMO, in the light of the outcome of the Conference, reconvene the Joint Intergovernmental Group with a view to examining the possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952".

Following such resolution, a note was prepared by the UNCTAD and IMO Secretariats in consultation with the CMI (UNCTAD Document TD/B/CN.4/GE.2/2 of 9th August 1994), wherein some of the changes to the Arrest Convention on Maritime Liens and Mortgages were highlighted. It was stated in the note that the JIGE should take a decision on the scope of the revision of the 1952 Arrest Convention, which might be confined to drafting amendments consequential upon the adoption of the 1993 MLM Convention, or consist of a thorough revision of the Arrest Convention.

2. The seventh session of JIGE (the first to deal with the arrest of ships) was held in Geneva, from 5th to 9th December 1994 under the chairmanship of Mr. George Ivanov. JIGE decided to take as a basis of its work the Draft of a new Arrest Convention approved by the Lisbon Conference of the CMI and commenced its work with reference to the issues discussed in the Note previously referred to. It is, however, felt more convenient to report on the work of JIGE with reference to the articles of the Lisbon Draft.

Article 1 - Definitions

The solution approved by the CMI at Lisbon, to adopt an open-ended list of maritime claims, was approved by a large majority of the Delegations. The list of the maritime claims was maintained almost unaltered except drafting changes necessary to bring the text in line with the 1993 MLM Convention. The sub-paragraphs of paragraph 1 in which such changes were made are sub-paragraphs (a), which was reworded on the basis of Article 4(1)(e) of the MLM Convention; (b), which now reproduces Article 4(1)(b); (c), which now reproduces Article 4(1)(a). Since pilotage was included in sub-paragraph (n), sub-paragraph (k) of the Lisbon draft was deleted and, as a consequence, all letters after (j) had to be changed.

A much debated issue was whether the special compensation referred to in Article 14 of the 1989 Salvage Convention should be qualified as a maritime claim, even if it is not secured by a maritime lien under the 1993 MLM Convention. It was pointed out by the CMI observer that there is no reason why it should not, in particular since preventive measures to avoid pollution are included in the list of maritime claims under sub-paragraph (d) of the Lisbon Draft. One last change was the replacement in sub-paragraphs (q) and (r) of the Lisbon Draft of the term "bareboat charterer" with "demise charterer", this latter term being used in Article 4(1) of the MLM Convention.

No change was made in paragraphs (2) to (5) of Article 1.

Article 2 - Powers of Arrest

No change was made to this article.

Article 3 - Exercise of right of arrest

Paragraph (1) of this article gave rise to a long and heated debate. The U.S. Delegation stated that the reference in paragraph (1)(a) only to the maritime liens listed in Article 4(1) of the MLM Convention and the provision in paragraph (1)(d) that the arrest of a ship in respect of claims other than those covered in sub-paragraphs (a), (b) and (c) is permissible only if the person who owned the ship at the time when the claim arose is personally liable and is still owner of the ship when the arrest is effected, would prevent the enforcement of national maritime liens in case of sale of the ship. The U.S. Delegation stated that the compromise arrived at with respect to Article 6 of the MLM Convention was not confined to the possibility for States Parties to create other maritime liens provided that they ranked after the mortgages, "hypothèques" or other registrable charges, but implied the obligation of other States Parties to recognize such maritime liens. It added that this was implied in the acceptance of a shorter extinction period (six months) and of an even shorter extinction period (60 days) in case of voluntary sale. The observer for the CMI stated that no obligation of the States Parties to recognize national maritime liens created pursuant to Article 6 of the MLM Convention had ever been provided, either expressly or impliedly, and that the addition in Article 3(1)(a) of a reference to national maritime liens would have created a problem of choice of law, whilst one of the very purposes of substantive unification was to avoid such problem.

A compromise solution was suggested by the observer of the CMI and adopted by the Chairman of the working group created by JIGE, to the effect that each State Party could allow the enforcement of national maritime liens in the same manner as those listed in Article 3(1)(a) in case of arrest of a vessel within its jurisdiction. To this effect a new sub-paragraph (b) should be inserted in Article 3(1) reading as follows: "the claim is secured by a maritime lien granted by the law of the State where the arrest is requested pursuant to the provisions of Article 6 of the International Convention on Maritime Liens and Mortgages, 1993".

When the U.S. Delegation, supported by the Delegations of Liberia and Greece, submitted the proposal to delete in Article 3(1)(a) the list of the maritime liens and refer generally to claims secured by a maritime lien, a large majority supported the Lisbon Draft, subject to drafting. However, the text of the Lisbon Draft, as well as that proposed by the U.S. Delegation and that quoted above were all placed in square brackets as three alternatives for further consideration.

In paragraphs 1(d) and 2 the words "bareboat charterer" were replaced by "demise charterer" always in order to adopt the terminology of the MLM Convention. It remains to be decided whether, for the same purpose, reference ought to be made also to the manager or operator of the vessel, as in the opening sentence of Article 4(1) of the MLM Convention.

In Article 3 paragraph 2 of the Lisbon Draft it is stated that the arrest of sister ships is not permissible for claims in respect of ownership or possession of a ship. The 1952 Arrest Convention instead denies the arrest of sister ships also for claims in respect of disputes between co-owners as to ownership, possession, employment or earnings of a ship and in respect of mortgages or "hypothèques". The reason why no reference has been made to the disputes between co-owners as to ownership or possession is that such disputes are already included in the general reference to claims in respect of ownership or possession of a ship. The reason why no reference has been made to disputes between co-owners in respect of employment or earnings of a ship is instead that such disputes are similar in nature to those in respect of agreements relating to the use or hire of a ship, to which reference is made in Article (1)(f). Finally, the reason why disputes in respect of mortgages or "hypothèques" have not been excluded is that the prohibition for the holders of mortgages or "hypothèques" to secure their claims also by arresting other assets of their debtor is not justified, even if they may not obtain any priority in the distribution of the proceeds of sale.

Article 4 - Release from arrest

No change was made to this article. A proposal of excluding the provision whereby the security cannot exceed the value of the ship was rejected.

Article 5 - Right of re-arrest and multiple arrest

Objections were raised by some Delegations to the provisions on the right of re-arrest, on the ground that the re-arrest of a ship would cause unjustified damages to her owner.

A proposal was made by the U.S. Delegation to limit the right of re-arrest to cases of fraud or material misrepresentation. The observer of the CMI explained that the provision of the 1952 Convention, whereby a ship which is re-arrested in respect of the same maritime claim must be released unless the security has been released or if "there is other good cause for maintaining the arrest" was considered to be too vague, besides the fact that it only dealt with the case where a second arrest has been granted, but not with the case where it is applied for. Having been invited to give some examples of the three exceptions to the prohibition of re-arrest set out in paragraph 1, the observer of the CMI mentioned, with respect to the exception under (a) - inadequacy of the security - the case of a collision, where the actual damage suffered by each of the ships may later result when the ship is inspected in drydock, to be much greater than originally estimated.

With respect to the exception mentioned under (c) he referred to the situation where the claimant agrees to

release the ship without security with a view to avoiding a substantial loss to her owner, e.g. for the loss of a cancelling date.

The great majority of the Delegations supported the Lisbon Draft, though expressing doubts in respect of the exception under (c). The Chairman found consequently that the U.S. proposal had not received any support and, therefore, would not be included in the draft.

Article 6 - Protection of owners and bareboat charterers of arrested ships
No change was suggested.

Article 7 - Jurisdiction on the merits of the case
The text of the Lisbon Draft was supported by a large majority of the Delegations.

Article 8 - Application
No change was suggested. It may, however, be questioned whether paragraph 3, which provides that nothing in the Convention shall be construed as creating a maritime lien, is properly placed.

Article 9 - Reservations
No comment was made in respect of this article.

3. The eighth session of JIGE will take place, probably at IMO in London, from 9th to 11th October 1995.

Francesco Berlingieri

News from UNIDROIT

Security Interests in Mobile Equipment - A difficult topic discussed in UNIDROIT

As already mentioned earlier (CMI News Letter 1994, No. 2 p. 10) the Institute for the Unification of International Private Law (UNIDROIT) in Rome has set up a Study Group on Security Interest in Mobile Equipment. After preliminary discussions this Study Group, in the course of another meeting from 29th November to 1st December 1994, continued its work on the basis of a predraft for the first five articles and could clarify - for this stage of the work - some basic principles on which the possible future Convention should be based.

Since the preliminary draft articles set up by the Secretariat together with the Chairman (Prof. Roy Goode, Oxford) and the rapporteur (Prof. Donald Cuming, Saskatchewan) was changed considerably it does not seem, for the moment, useful to reprint it here. The draft did in fact only serve as a medium to agree on basic decisions which shall lead to a redraft to be discussed at the next meeting probably in fall this year.

The basic principles which have been fixed, with all reservation as to the necessary flexibility during the future work, have been:

1. The envisaged Convention shall not confine itself to matters of choice of law, but create a separate international right *in rem* (which is defined as security interest).

2. This security interest shall be available for mobile equipment. For the moment it is undecided whether the definition technically shall be given by an exclusive list of articles subject to the charge or by a general clause or by a combination of an open list by examples and a general clause. The underlying idea is that articles should be covered by the Convention which are normally used for international movement such as e.g. lorries, aircraft, ships, containers.

Whether or not ships should be included is still an open question: the representative of the CMI was rather reluctant in this respect because of the fact that the 1993 Maritime Liens and Mortgages Convention may sufficiently solve the problem of international recognition of mortgages in ships: however, he reserved his position with a view to the possibility of strengthening the position of holders of mortgages in ships by the new convention if the latter one would fit into the system exercised with respect of maritime mortgages at present.

It needs mentioning that the air industry was - contrary to their previous position - very much in favour of the inclusion of aircraft into the Convention; moreover, the representatives of the Boeing Air Corporation represented as observers at the meeting expressed the wish and hope that the Convention might be worked out and enter into force as soon as possible because the air industry, after the failure of the 1948 Convention on Rights in Aircraft, urgently needed an international instrument to this purpose.

3. The security interest shall be filed in a register which has to be made out against any asset. So someone who is willing to give credit to the debtor in exchange of a charge on mobile equipment may find out whether or not there is already a security interest in existence with respect to that item. There have been discussions, however, whether registers against the debtor should be admitted. In spite of the fact that these registers have

been envisaged only as additional ones it seemed doubtful to many members of the group whether they should be instituted: The security interest should be filed in one single register in order to avoid divergencies between various filings.

4. The security interest filed in the register shall take priority over all prior interests not filed and over later interests whether or not filed. This priority rule raises the difficult problem of priority towards security interests based on local law. What kind of solution could be given to this difficult problem is still under discussion. There is a firm view, mainly held by civil law representatives, that securities under national law may not take priority unless registered. This makes it necessary, however, to admit filing of local security interests as well, if one would not like to exclude any national interest in these movables. Another condition of such a rule is the possibility to reliably inform the public about charges on a certain asset.

5. The above-mentioned principles require the institution of an international register. After some discussion there was agreement that the technicalities of the register should be discussed by a separate group of experts in this field. In this regard it certainly will be of interest that UNCITRAL is working on questions of international registration in a more general context; the United Nations in this respect may rely on the expertise of the World Intellectual Property Organization (WIPO) in Geneva in filing patents.

6. It was in principle accepted that the Convention should cover not only security interests created in the context of a credit operation, but as well rights for retention of title. Leases shall be included, at least if they are long-term leases. However, the inclusion of the concept of retention of title causes considerable difficulties. In most countries the holder of such a right is considered as real owner with all legal consequences, not only as holder of a security interest. Moreover, inclusion of this type of security would enlarge the scope of prospective objects falling under the Convention: goods which have been sold and the property of which is withheld by the seller do not necessarily and not in most cases represent mobile equipment in the sense of the idea of the Convention: the movement of these goods is just caused by the fact that they are subject to an international sale. Because of these differences it was lastly decided to envisage the inclusion of retention of title but to leave it aside for the moment as long as the basic structure of the Convention has not been sufficiently shaped.

7. Another problem still unsolved and raising great difficulties because of divergencies in civil law countries and in common law countries was the question which requirements should be fixed for enforcement of the security interest. In civil law countries a judgment or at least an enforceable special document is needed whereas in some common law countries the holder may put himself in possession of the goods after the debt secured has not been paid. There was a medium solution envisaged that national law should decide on the requirements of enforcement but that certain maximum requirements might be stated by the Convention. These principles are far from being complete but they do show a certain shape of what could be this security interest created by the Convention. The unsolved problems touch, it is true, on elements which may be of great importance for the practicability of an international security interest. But some principles, mainly due to basic differences in civil law and common law, have at least been bridged to enable the Study Group to present a draft. It is the intention to present such a preliminary draft in about one year.

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It may be mentioned here that before the meeting of the Study Group UNIDROIT invited to a Symposium on "Current Trends in the Modernisation of the Law Governing Personal Property Security". The speakers who mostly took part as well in the work of the Study Group presented aspects of national and international law related to the work of the Study Group. The representative of the CMI, Rolf Herber, delivered a paper on the Maritime Liens and Mortgages Convention of 1993. He pointed out the basic contents and problems of this Convention and stressed that security interests in ships in the form of mortgages had a tradition not only in the international field, but, in particular, in all national laws as well. Their creation and enforcement was granted to a large extent, endangered, however, by the existence of invisible maritime liens taking priority over mortgages. This problem of maritime liens, however, did not encroach with the security interest envisaged by UNIDROIT which had to be restricted on registered rights in rem. So the Geneva Convention – and earlier conventions and national laws in this field in the maritime sector – could well serve as a pattern for the UNIDROIT Convention on other mobile equipment. On the other hand, maritime trade could perhaps make use of the possibility of proliferation and wider acceptance of maritime mortgages by the new convention.

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Lastly to mention is that there was a meeting of various international organizations present during these deliberations in Rome on co-ordination work done in connection with the subject of security interests in mobile equipment. Main aspects to be mentioned from these discussions are that the International Bar Association in its Capital Market Forum, is, at the moment, discussing fundamental issues in modernizing national laws on property and pledges, that other studies are undertaken by the International Bar Association as well and that IBA plans a Congress in Paris in September 1995.

UNCITRAL will, at its next meeting in May 1995, discuss some preliminary rules on "receivable financing". The main problem in this respect is to bridge the divergencies in national laws regarding assignment of receivables. This work may, at a later stage, have some influence on security interest as well. There was, however, agreement between UNIDROIT and UNCITRAL that the two Organizations should narrowly work together and that UNCITRAL should base its work on the Montreal Factoring Convention worked out under the auspices of UNIDROIT. UNCITRAL is dealing as well with an international registration system which may be of use for the UNIDROIT Draft Convention as well and which has been mentioned above.

Prof. Dr. Rolf Herber

RATIFICATION OF INTERNATIONAL CONVENTIONS

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

- **Convention Internationale pour l'Unification de Certaines Règles en Matière d'Abordage, 1910.**
China: Accession on 28th July 1994.
- **International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952.**
Republic of Guinea: Accession 12th December 1994.
Norway: Accession 1st November 1994.
- **International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision, 1952.**
Cyprus: Accession 17th March 1994.
- **International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation, 1952.**
Cyprus: Accession 17th March 1994.
- **International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, 1957.**
Lebanon: Accession on 23rd December 1994.
- **International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.**
Belgium: Ratification on 1st December 1994.
- **Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1976.**
Belgium: Accession on 1st December 1994.
- **Protocol to Amend the International Convention for the Unification of Certain Rules Relating to Bills of Lading as Modified by the Amending Protocol of 23rd February 1968, 1979.**
New Zealand: Accession on 20th December 1994.
- **International Convention on Oil Pollution Preparedness, Response and Co-operation 1990.**
Netherlands: Ratification on 1st December 1994.
Venezuela: Ratification on 12th December 1994.

Denunciations of the following conventions have been communicated to the depositary.

- **Convention pour l'Unification de certaines Règles en matière d'Assistance et de Sauvetage Maritimes, 1910**
Canada: Denunciation communicated to the Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement on 22nd November 1994.
United Kingdom: Denunciation on 12th december 1994(*)

(*) The denunciation will be effective also in respect of Falkland Islands, Montserrat, South Georgia and South Sandwich Islands.