

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 1 - 1998
QUARTERLY

COMITE MARITIME INTERNATIONAL

BULLETIN TRIMESTRIEL

This Issue Contains:

News from the CMI

- The CMI and the National Associations
- Carriage of Passengers and their Luggage by Sea; The Athens Convention 1974 and its Protocols
- Salvage Convention 1989

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- News from IMO - IMO's 50th Anniversary
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Ratification of International Conventions

NEWS FROM THE CMI

The CMI and the National Associations

The next assembly of the CMI

The next Assembly of the CMI will take place at Trinity House, Trinity Square in London EC3 at 0900 on Friday May 15, 1998. It is hoped that as many National Associations as possible will send delegates.

Arrest of Ships

The Executive Council decided that the CMI should submit a Position Paper to the Diplomatic Conference, which will be convened probably in January, 1999, for the purpose of examining the Draft Articles of a new convention on arrest of ships prepared by the IMO/UNCTAD Joint Intergovernmental Group of Experts. The Executive Council appointed a working group consisting of Francesco Berlingieri, Allan Philip and Charles Goldie with the mandate to prepare a draft of such Position Paper. The Working Group met on January 9th, 1998. The draft Position Paper has been circulated in advance of the Assembly to the National Associations in order to enable them to come forward with their comments and suggestions. There is an April 15th deadline for comments.

Classification Societies

The final meeting of the Joint Working Group took place in London on December 14th. A further attempt was made to bridge the gap between the Societies and shipowners on the subject of liability and limits. It is hoped that a final agreement will be reached before the CMI Assembly meeting in May 1998.

Carriage of Goods by Sea

The draft report of the International Sub-Committee has been circulated to all National Associations for comment before April 15th. The final report will be put to the Assembly on May 15th.

Athens Convention 1974

A Questionnaire (the text of which appears elsewhere in this Newsletter) regarding the implementation of this Convention has been distributed to all National Associations with a May 31st deadline.

US Maritime Law Association; Fall Meeting, Palm Springs, California.

The President of the CMI was invited by the President of the US Maritime Law Association, Jim Moseley and his Board of Directors to attend their 1997 Fall Meeting. All the Association's Committees held meeting during the course of the week and the President of the CMI attended some of those sessions.

No less than six members of the CMI Executive Council were at the Conference and all of us attended the meeting of the Association's CMI Committee which was held on October 27th. The meeting was chaired by Charles Anderson and I took the opportunity of reporting on current CMI work projects and on the steps being taken by the Executive Council to respond to comments made regarding the role and work methods of the CMI at the Plenary Session which took place at the end of the Centenary Conference in Antwerp. It so happened that most of the members of the CMI International Working Group on Maritime Transportation were present in Palm Springs and the opportunity was taken of discussing the method of work which will be adopted in relation to this wide ranging project which the CMI is undertaking in conjunction with UNCITRAL. Once the plan of action has been completed National Associations will be informed. At the final session the opportunity was taken of thanking the US MLA for its enthusiastic support for the work of the CMI.

Swedish Maritime Law Association

On November 4th 1997 the President was invited to attend a meeting of the Swedish Maritime Law Association in Stockholm.

The meeting was held under the chairmanship of Professor Jan Sandstrom. The President was able to take members of the Association through the current work programme of the CMI with particular reference to the projects on which the CMI is co-operating with the Legal Committee of IMO. Members of the Association were particularly interested in the proposal that the operators of passenger ships should be required to carry insurance against liability to passengers or their dependants for loss of life or personal injury. A lively and wide-ranging discussion took place during and after the dinner, which followed the meeting.

ICC/IMAO

On November 13th 1997 the President travelled to Paris and attended a meeting hosted by ICC to discuss the future of the International Maritime Arbitration Organisation which is a joint ICC/CMI scheme to provide an arbitration service for determining maritime disputes. The Secretary General, Dr. Alexander von Ziegler and Executive Council Member Luis Cova Arria, also attended the meeting.

A wide-ranging discussion took place aimed at determining whether this 20-year project should be revived or terminated. Since its creation IMAO has only made nine appointments and most of the referred disputes have been settled before an award could be published. A further meeting is scheduled to take place in Paris on March 3rd 1998. Reports on this project will follow.

Canadian Maritime Law Association.

Judges Seminar

Nigel Frawley, President of the CMLA, invited the President to give the keynote lunchtime speech at this Seminar which is organised jointly with the Federal Court of Canada to review developments in international maritime law.

The President took the opportunity of outlining the CMI's history, current work programme and methods of work. He appealed to the lawyers attending to find time amongst the pressures of time sheets and billable hours to respond to CMI Questionnaires and generally work on CMI projects. He invited them to believe that work on CMI projects was important and time spent was not wasted in that it develops the lawyer's awareness of current legal issues and gives him the opportunity of contributing to new international instruments.

Bursary at Dalhousie University

The Canadian Maritime Law Association has created a bursary at Dalhousie University, Halifax, Nova Scotia, to commemorate the 100th Anniversary of the CMI. The first bursary of USD 1,000.00 Cdn. was presented to Ms. Mirsada Stasevic on February 13, 1998 by James E. Gould, Q.C., a Titulary Member of the CMI and a Vice-President of the Canadian Maritime Law Association. Ms. Stasevic, who emigrated from Bosnia in 1992 and came to Canada in June 1996 after working with a law firm in Malta, is a law student in graduate studies at Dalhousie University, with a particular interest in the carriage of hazardous and noxious substances.

The German Maritime Law Association

This Association will be celebrating the centenary of its foundation in the autumn of 1998.

China Maritime Law Association

The China Maritime Law Association is holding its third International Conference on maritime law in Beijing between September 21st and 24th 1998.

Australian/New Zealand Maritime Law Association

The Australian/New Zealand Maritime Law Association is organising a conference between September 26th and 30th 1998 in Cairns.

Belgian Maritime Law Association

On January 29th 1998 the President attended an evening meeting of the Belgian Maritime Law Association at the invitation of its new President, Maitre Wim Fransen.

Other Events

During 1998 the President hopes to attend other events organised by National Maritime Law Associations. The President and other members of the CMI Executive will attend a Conference in Barcelona on June 24th-27th organised by Asociacion Espanola de Arbitraje Maritimo. The subject matter of the conference is "Arbitration and Maritime Law".

A Marine Insurance Symposium is being organised in Oslo on June 4th-6th jointly by CMI, the Norwegian Maritime Law Association and the Scandinavian Institute of Maritime Law. The purpose of the Symposium is to identify with the help of speakers from many civil and common law jurisdictions, the current problems being experience in marine insurance cases. There will be particular emphasis on problems of breach of warranty, non-disclosure and misrepresentation. Full details of this Symposium will be circulated.

The French Maritime Law Association.

This Association will be holding a seminar in Lille in November 1998. Details will be published in due course.

The Iberoamerican Maritime Law Institute

The Institute has selected Mexico City as its new headquarters for 1998 and 1999. The Mexican members of the IIDM have elected Dr. Ignacio Melo-Ruiz as President, Dr. Roberto Ribera y Ribera as Vice-President, Licenciado Rafael Alfonso Guilabert, as Alternate Vice-President and Licenciado Agnes Celis Roca, as General Secretary. The ceremony to mark the transfer of the Presidency from Dr. Guillermo Sarmiento (Colombia) to Dr. Melo-Ruiz, took place on January 30th 1998.

Carriage of Passengers and their Luggage by Sea; The Athens Convention 1974 and its Protocols.

Following the resolution of the Executive Council at its 14-15 November 1997 meeting a working group consisting of the President, Professor Jan Ramberg and Karl Johan Gombrii prepared a questionnaire which has been circulated to the National Associations. The text of the questionnaire and of the accompanying letter is reproduced below.

The Presidents of all National Maritime Law Associations

Dear President

As has been reported in recent Newsletters, the Legal Committee of the IMO has resolved to consider the introduction of a requirement that the owners of ships which carry passengers should carry compulsory liability insurance or should produce other evidence of their ability to pay passenger claims.

At the present time the Athens Convention has only been ratified or acceded to by 24 nations though several nations have incorporated some of the terms of the Convention into their national law without taking the formal step of ratification.

The three undersigned members of the International Sub-Committee, with the acquiescence of the Chairman of the IMO Legal Committee Correspondence Group, wish to conduct a comprehensive review of the Athens Convention and you will find attached a copy of a Questionnaire for your attention.

We appreciate that considerable effort is required to provide answers to Questionnaires of this sort but we very much hope that you and the members of your Association will feel able to contribute their time and effort to this important project. The credibility of the CMI within the IMO depends upon a good response to this Questionnaire. Providing prompt and adequate compensation to passenger victims of maritime accidents is widely regarded as important. Your contribution will assist in the establishment of a regime, which is widely adopted and respected. Please note that the deadline for responses is May 31st 1998.

Patrick Griggs

Professor Jan Ramberg

Karl Johan Gombrii

Questionnaire

A. Background: Passenger Carrying Ships

- (1) The Legal Committee of IMO is currently looking at the possibility of amending or replacing the Athens Convention to achieve three main aims, namely:
 - (i) The carrier or performing carrier to accept strict liability for loss of life or personal injury to passengers.

- (ii) The carrier or performing carrier to be required to maintain evidence of ability to pay claims either by production of a certificate of insurance or by producing other evidence of financial responsibility.
- (iii) Passenger claimants to have the right to pursue their claims direct against the liability insurers or the person who has provided evidence of financial responsibility who would only have very limited defences available.
- (2) The Legal Committee is also looking at an alternative scheme which would involve amending or replacing the Athens Convention to require the carrier or performing carrier to take out Personal Accident Insurance for each passenger issuing an insurance certificate to each passenger giving direct insurance cover with a reputable insurer up to the maximum amount of the carriers contractual or statutory liability.
- (3) The CMI believes that more extensive amendments to the Athens Convention are required.

B. The Questionnaire

(1) Is the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and the 1976 and 1990 Protocols incorporated into the law in your country?

(2) If the answer to question B(1) is "Yes" please answer the following questions:

- (a) Have the limits of liability specified in Arts 7 and 8 been modified since the Convention came into force? Should they now be increased? If so, to what level?
- (b) Are these limits specified in Gold Francs or SDR?
- (c) Does the carrier or carrier's right to aggregate claims under Art. 12 apply to claims brought both in your own country and elsewhere?
- (d) In relation to Art. 16 does "action" include an arbitration?
- (e) Does the Convention apply to a contract which is not for reward?
- (f) Are carriers or performing carriers obliged to give notice to passengers of the terms of the Convention? What, if any, is the penalty for failing to give notice?
- (g) Does the Convention apply to non-seagoing as well as to seagoing ships?
- (h) Does the definition of "luggage" and "cabin luggage" give rise to problems in practice?
- (i) Article 3 of the Convention (a) makes the carrier liable for loss of life, personal injury or loss/damage to luggage if the incident which caused the damage occurred in the course of the carriage and was due to the fault of the carrier or his servants or agents (b) places the burden of proving the incident occurred in the course of the carriage and the extent of the resulting loss on the claimant (c) raises a rebuttable presumption of fault on the part of the carrier if the loss arose from a "ship wreck, collision, stranding, explosion or fire, or defect in the ship".

Would there be strong objection to modifying Art. 3 to impose strict liability of the carrier provided that the claimant proves that the incident occurred during the carriage and subject to the carriers right to prove contributory negligence? As an alternative would it be more acceptable to impose strict liability up to the limits specified in Arts. 7 and 8 but provide that liability would be unlimited if the claimant proves negligence on the part of the carrier, his servants or agents?

- (j) As currently worded Art. 3 covers claims by passengers and also claims by third parties for consequential losses. Should Art. 3 be redrafted so as to cover only claims from passengers (or their estate in death cases)?
- (k) Would there be any objection in principle to the introduction of a requirement that the carrier and/or performing carrier should carry on board a valid certificate of insurance or other evidence of ability to pay claims from passengers? Should these requirements be limited to loss of life and personal injury claims or should it be extended to luggage etc. claims? Are you aware of any cases in which a claimant has failed to receive compensation because the carrier or performing carrier was uninsured?
- (l) Is there any objection in principle to giving claimants the right to pursue claims direct against the insurer of the carrier or performing carrier's liability or other person providing the certificate of ability of pay bearing in mind that in the normal course of events (a) the claimant claims against the carrier (b) the carrier pays the claimant and (c) the insurer indemnifies the carrier.
- (m) If the claimant is given the right to pursue claims directly against the insurer or provider of evidence of ability to pay should the insurer or other provider be entitled to rely on the defences available by reason of the carriers breach of the terms of the contract of insurance or guarantee? Are you aware of any cases in which an insurer has refused to indemnify the carrier or performing carrier in reliance on policy defences?
- (n) Would there be any objection in principle to requiring the carrier in the alternative to provide direct personal accident insurance for each passenger?
- (o) Would the operation of the Convention be simplified if the distinction between "carrier" and "performing carrier" were removed? If so should the obligations and rights be placed exclusively upon the "performing carrier"?
- (p) Please give details of any cases in which the right to limit under the Convention has been exercised.

- (q) Does the exercise of the right to limit lead to delays in settling claims?
- (r) Do you know of any cases in which a passenger has been unable to recover damages through application of the Convention?
- (s) Would the operation of the Convention be improved if a provision was introduced requiring shipowners to make prompt payments on account of damages?
- (3) If the answer to question B(1) is "no" please answer the following questions:
 - a) Is there a domestic law in your country dealing with the carriage of passengers and their luggage by sea?
 - b) Is this law based, however loosely, upon the Athens Convention? If "yes" please describe the main similarities and the main differences.
 - c) If "no" to question 3(b) please provide a brief summary of the principal points of the domestic law.
 - d) If "no" to question 3(a) is there any reason why your country has chosen neither to adopt the Convention nor to enact a domestic law? Please elaborate in as much detail as possible.
 - e) Please answer as many of the questions in section B(2) as possible.

Salvage Convention 1989

1. The CMI working group (WG) met on November 13th, 1997, in London; attending were R. Wallis (host), G. Brice Q.C., Ch. Mawdsley, R.D. Thomas (replacing G. Koffeman, Smit International) and the reporter; as for further particulars see CMI News Letter 1996, No. 1, p. 4. The purpose of the meeting was to digest and consider all that on the above topic had been brought up and discussed during the panel session at the CMI Antwerp Centenary Conference (June 10th, 1997). However, at the WG meeting that intention proved somewhat outstripped by recent developments in the market.
2. Negotiations between P&I (and other) Underwriters and the International Salvage Union (ISU) are progressing towards a compromise on a number of issues arisen as to the application of the 1989 Convention, notably also in relation to the "special compensation" (art. 14) with its two presently controversial aspects: the scope of application (art. 1 sub d) and the principles of calculation (art. 14-3). A proposed Amendment to LOF 1995 has been circulated and is being studied by those involved in the subject (i.e. a special working group representing the various interests, along with their respective advisers). Comments are expected to come in soon and a final new regime, one anticipates, may well find agreement in the first or second quarter of 1998.
That regime is meant to apply everywhere without territorial distinction - which thus removes the geographic restriction (art. 1 sub d) for the applicability of the special compensation - as well as to apply in all cases whether or not there is clear evidence of a threat of damage to the environment. The new regime also intends to provide in advance for rates for equipment and personnel, thereby producing greater clarity than one now has under art. 14-3.
3. In the light of the foregoing, the WG - of which four members are participating in the current negotiations one way or another - unanimously recommends to wait for the outcome of the present developments:
 - the market is evidently overtaking the Convention, and if a revision thereof were thought advisable it would be wiser then to follow the track set out by the market rather than to invent and devise own new rules;
 - a separate revision of the Convention must be reckoned to re-open debates on more issues (i.e. not only on the two indicated under 2) and so to take some 4 to 5 years (as the Convention's history shows), but a revision at a later stage might enable one to succeed in keeping the operation (largely) reduced to an adoption of the new rules agreed by the market;
 - a revision at the present stage could endanger the growing uniformity which the Convention is now triggering (one may decide to postpone implementation until a revised text has been agreed); by such a standstill - to be feared for the long period of time that the consideration of a new Convention will be requiring - nothing can be gained, as in the end the Convention would seem bound to observe the goals of the market (at least CMI's principal aim is to take account of the views expressed by the interested parties concerned); in this latter respect one has to recognize that ultimate uniformity is less likely to result from a (new) Convention which does not fall to be in line with the rules of the market (because, in the event, the salvage and shipping industries with their insurers will oppose acceptance of departing Convention provisions since these would upset a preciously worked out balance of the respective parties' interests); so, once the market agreements have come about, an adapted new Convention may well at that stage require less revision efforts and time, probably not failing then to acquire a final adherence from the States now already and in the near future yet to become signatories to the 1989 Convention.
4. In Antwerp, at the panel discussion, some textual issues respectively questions of construction were raised with regard to articles 13-(2), 8 juncto 18, and 19 of the Convention; those points are set out in detail by R. Shaw, Lloyd's Maritime and Commercial Law Quarterly 1996, p. 216-217 and 225-227.
In the opinion of the WG, the observations made may look a little academic of nature; none of the points

would, in themselves, seem to justify a revision of the Convention as a proper application or interpretation thereof is not likely to be prevented. However, the issues in question could indeed be accounted for on the occasion of a later revision designed to adopt the market compromise.

5. The WG recommends as stated under (3) and (4).

ERIC JAPIKSE

December 1997/January 1998

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

IMO's 50th anniversary

The Convention establishing IMO was adopted at a Conference held under the auspices of the United Nations in Geneva on 6th March 1948.

In the 50 years of its life IMO has done a tremendous work in the area of maritime safety. The conventions and other standards developed by IMO have enormously improved shipping safety and have met with a great success since the vast majority of maritime countries have ratified the most important conventions, as the table below shows.

Convention	Number of Parties	% of world tonnage covered
Load Lines 1966	140	98.19
SOLAS 1974	136	98.27
STCW 1978	130	97.55
Collision Regulations 1972	130	96.20
Tonnage 1969	118	97.51
MARPOL 73/78	102	93.48

The CMI has had the privilege to work with IMO since 1967, when IMO's Legal Committee was established as an ad hoc body to deal with issues raised by the "Torrey Canyon" oil spill. Thirty years have elapsed, and during this time the relationship between IMO and the CMI has been constantly strengthened.

The CMI warmly congratulates with IMO for its great achievements.

FRANCESCO BERLINGIERI

NEWS FROM THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

m/v "Saiga" No. 2

On 13 January 1998 the International Tribunal for the Law of the Sea received its second case with the filing by Saint Vincent and the Grenadines of a request for the prescription of provisional measures in respect of the m/v *Saiga* with the Registrar of the Tribunal. The Request is for an injunction against Guinea not to interfere with the

freedom of navigation and related rights of Saint Vincent and the Grenadines. It is further requested that Guinea immediately comply with the Judgment of the Tribunal of 4 December 1997 (see News Letter No. 4/1997).

The Request now submitted for provisional measures states that subsequently, Saint Vincent and the Grenadines posted a United States Dollars 400,000 Bank Guarantee with the Agent of Guinea, but that Guinea did not accept the terms of the Bank Guarantee and requested changes to be made to them. The changes in the terms requested by Guinea were considered "unreasonable and either irrelevant or unacceptable" by Saint Vincent and the Grenadines.

Also according to the Request, Guinea in the meantime has proceeded to file criminal charges against the Master of the m/v *Saiga* resulting in a Guinean court imposing a fine of approximately United States Dollars 15 million while making Saint Vincent and the Grenadines civilly liable for the fine imposed upon the Master of the vessel. Following an agreement between the parties arrived at on 20 February 1998, Saint Vincent and the Grenadines and Guinea have submitted the merits of their dispute to the Tribunal. The dispute concerns the interpretation and application of the UN Convention of the Law of the Sea. The issues raised include bunkering of vessels at sea, freedom of navigation, enforcement of customs legislation, contiguous zone, right of hot pursuit.

On 11 March 1998 the Tribunal delivered an Order on the Request for the prescription of provisional measures. The Tribunal ordered the following provisional measure:

"Guinea shall refrain from taking or enforcing any judicial or administrative measure against the M/V "Saiga", its Master and the other members of the crew, its owners or operators, in connection with the incidents leading to the arrest and detention of the vessel on 28 October 1997 and to the subsequent prosecution and conviction of the Master".

The Tribunal, in its Order, recommended that, pending the decision on the merits, Saint Vincent and the Grenadines and Guinea should make every effort to avoid incidents similar to those which led to the arrest and detention of the m/v *Saiga* and its crew. The parties are to ensure that no action is taken that might aggravate or extend the dispute.

The Tribunal also ordered the parties each to submit an initial report on the steps they have taken, or propose to take, in order to ensure prompt compliance with the measures prescribed. The report is to be submitted as soon as possible, but not later than 30 April 1998.

RATIFICATION OF INTERNATIONAL CONVENTIONS

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

- Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969.

Croatia: 12 January 1998

Grenada: 7 January 1998

- Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

Croatia: 12 January 1998

Djibouti: 19 January 1998

- International Convention on Oil Pollution Preparedness, Response and Co-operation 1990

Croatia: 12 January 1998

Djibouti: 19 January 1998

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No. 2 - 1998

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

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News from the CMI

- Meeting of the Executive Council
- Assembly
- Classification Societies
- Issues of transport law

News from the National Associations

- News from the Malta Maritime Law Association

News from Intergovernmental and International Organizations

- News from IMO - 77th Session of the IMO Legal Committee
- News from the IOPC Funds - Meetings of the Executive Committee and Assembly
- News from UNIDROIT - The Preliminary Draft Unidroit Convention on International Interests in Mobile Equipment. Should ships be included?

Ratification of International Conventions

NEWS FROM THE CMI

Meeting of the Executive Council - London 14th May 1998

The CMI Executive Council met in London on 14th May 1998. The minutes of the meeting will be published in the next issue of the Newsletter.

Assembly of the CMI - London 15th May 1998

The Assembly of the CMI was held on 15th May 1998 with the following agenda:

- 1) Memorials
- 2) Approval of the Minutes of the Meeting of the Assembly held on June 14th 1997
- 3) Members
 - a) Titulary Members
 - b) Members Honoris Causa
 - c) Consultative Members
 - d) Associations of Maritime Law
 - e) New rules for Titulary and Provisional Members

Verbal report from David Angus and Frank Wiswall
- 4) Work in Progress:
 - a. Uniformity of the law relating to Maritime Transport:
 - i) Verbal report from Professor Francesco Berlingieri on Issues of Responsibility
 - Presentation of Report of International Sub-Committee
 - ii) Verbal report of Dr. Alexander von Ziegler on Issues of Transport Law. Presentation of Background paper
 - iii) Verbal report of Dr. Alexander von Ziegler: EDI

- b. Classification Societies
Verbal report from Dr. Frank Wiswall
 - c. Off-shore Structures
Reports from the Chairman of the International Sub-Committee, Richard Shaw
 - d. IMO - 77th Session of the Legal Committee
Verbal reports from Patrick Griggs and Hisashi Tanikawa
 - i) Wreck Removal
 - ii) Bunkers
 - iii) Financial Security
 - e. Maritime Safety
Verbal reports from Patrick Griggs (Maritime Safety; The Role of Cargo Owners/Shippers and Marine Insurers)
 - f. Salvage Convention
Verbal report from Professor Eric Japikse (Working Group Report Dec. 1997/January 1998)
 - g. IMAO - meetings with ICC
Verbal report from Dr. Alexander von Ziegler
 - h. EuroSection
Resignation of Professor Peter Wetterstein - Announcement of appointment of new Chairman
 - i. International Interests in Mobile Equipment
Verbal report from Dr. Thomas Remé (UNIDROIT report and draft Convention December 1997)
 - j. Civil Jurisdiction Convention
Verbal report from J. S. Rohart
 - k. Athens Convention 1974
Verbal report from P. Sotiropoulos
 - l. Arrest Convention
Verbal report from Professor Francesco Berlingieri
 - m. Marine Insurance
Verbal report from K. J. Gombrii
 - n. FONASBA - Time Charter Interpretation Code
Verbal report from J. S. Rohart
 - o. Piracy
Verbal report from Dr. Frank Wiswall
 - p. Status of Ratification of International Conventions
Verbal report from David Angus
- 5. Financial Matters
 - a) Accounts 1997
 - b) Budget 1998/1999
 - c) Contributions 1998
 - 6. Elections - Report from the Nominating Committee
 - 7. Next meeting
 - 8. Various

The minutes of the Assembly will be published in the next issue of the Newsletter.

Classification Societies

At the conclusion of the Centenary Conference in 1997, the Joint Working Group on a Study of Issues re Classification Societies reported to the Assembly that its work on a statement of "Principles of Conduct for Classification Societies" had been satisfactorily concluded, and that work on the "Model Clauses" had been completed with regard to agreements between the Societies and Governments that deal with survey and certification pursuant to international regulations. However, with regard to that part of the Model Clauses regarding agreements between the Societies and shipowners that deal with ship classification services – normally contained in the Rules of a Society – the Group had been unable to resolve three major issues: 1) the scope of liability (*i.e.*, for economic loss as opposed to physical damage); 2) the formula for calculation of the limit(s) of a Society's liability (*i.e.*, whether a tonnage-based or service-based formula); and 3) the quantum of the limit(s). Because it was felt within the Group that a further Session might be able to resolve these issues, the Executive Council authorized a further (14th) Session of the Group, which was held in London on Monday 8th December, 1997. At that Session it was agreed that as to issue 1), "in respect of any claim arising out of the performance of services pursuant to these Rules [*Classification Society*] shall be liable only for loss of use of the ship, or for loss of or damage to the ship, or for expenses incurred in mitigating loss of or damage to the ship." Issues 2) and 3) were discussed at length, and a tentative proposal as to 2) was agreed for consideration by the governing bodies of the International Chamber of Shipping (ICS) and the International Association of Classification Societies (IACS). Final agreement within the Group did not prove possible as to the amount of the limit of liability. The

Group concluded, however, that it would support such agreement as to formula and limit of liability with respect to classification services as could be reached in direct discussions between IACS and ICS. By the time of the recent Assembly in May of 1998, agreement had not been reached by ICS and IACS. Accordingly the Chairman of the Working Group, Dr. Wiswall, submitted the Model Clauses for approval by the Assembly with bracketed alternatives in Clause 9 as follows:

"The limit of liability of [*Classification Society*] in respect of [a single claim arising out of the performance of a service] [all claims arising out of a single incident attributable to the performance of a service] pursuant to these Rules shall not exceed [X million United States Dollars] [Y times the fee charged by [*Society*] for the service in question or X million United States Dollars, whichever is the lesser amount] [X million United States Dollars or Y times the fee charged by [*Society*] for the service in question, whichever is the greater amount]."

It was however stated on behalf of IACS and ICS that negotiations between them were actively underway and agreement on these issues was expected in the autumn of 1998; for that reason they requested that publication of the Model Clauses be forestalled for the time being. On this basis the Assembly adopted both the Principles of Conduct for Classification Societies and the Model Clauses effective 15th May 1998 provided, however, that if the Chairman of the Working Group reports to the Executive Council on 7th November 1998 that final agreement has been reached on the content of Clause 9, the Executive Council may substitute the agreed wording for Clause 9 in place of that set forth above and authorise publication of the Model Clauses in the agreed form.

DR. FRANK L. WISWALL, JR.

Issues of Transport Law

The first meeting of the "round table" on Issues of Transport Law was held at the London Underwriting Centre, 3 Minster Court, London, EC3 on 11th May 1998.

Present:	Mr. P.J.S. Griggs (President of the CMI),	Prof. G. J. Van der Ziel (CMI)
	Mr. Alexander von Ziegler (Secretary General of the CMI)	Mr. J. Sekolec (UNCITRAL)
	Dr. Frank L. Wiswall Jr. (Vice-President of the CMI)	Mr. Le Garrec (IAPH)
	Mr. George F. Chandler, III (CMI)	Ms. Sara Burgess (IGPI)
	Mr. S. N. Beare (CMI)	Ms. Kay Pysden (FIATA)
	Prof. Lars Gorton (CMI)	Ms. Linda Howlett (ICS)
	Prof. Avv. S. Zunarelli (CMI)	Mr. Søren Larsen (BIMCO)

1. Mr. Griggs welcomed everyone to the meeting and introduced the project. He emphasised that it was largely an information gathering exercise promoted by UNCITRAL. The CMI had not been charged to draft a new document. He went on to describe how the project would be handled within the CMI. The CMI Assembly had authorised the CMI to continue with the work and the Executive Council of the CMI, which would meet the following Thursday, would report to the Assembly at its annual meeting on Friday. The Executive Council had set up a Steering Committee to co-ordinate work on the project. The Steering Committee would be responsible for periodically convening round table meetings of the international organisations which would participate in the project. This was the first such meeting. The Steering Committee had set up an International Working Group to be responsible for the project and had appointed Mr. Stuart Beare as its Chairman. The Working Group had appointed Professor Sturley as its rapporteur. There was also in existence an EDI Working Group, which would continue to exist as a separate entity, as would the International Sub-Committee which was looking at issues of liability, but had not yet produced its report. Issues of liability were outside the terms of reference of the Working Group.

2. Mr. Von Ziegler spoke to the report of the Steering Committee, which had been circulated. He pointed out that this project was different from projects which the CMI had tackled in the past. The law needed unification in the light of modern logistics. The project arose out of UNCITRAL's work relating to electronic commerce and the law would need unification in this context. The CMI would not have access to all the necessary know-how and co-operation with the industry was essential. Whatever might emerge from the project would have to be based on consensus within the industry and had to be considered in the context of trade practice. It also had to be compatible with the electronic environment.

3. Mr. Beare introduced the members of the International Working Group who had met for the first time that morning. As an initial step it had been agreed that each member of the Working Group would prepare a preliminary study of one of the topics. These largely followed the topics referred to in Section III of the report of the Steering Committee, but there had been an element of redefinition. The work would be divided as follows:

- (1) Interfaces between carriage of goods and sales of goods - Mr. Beare
- (2) Relationships within the contract of carriage - Prof. van der Ziel
- (3) Transport documents (excluding bankability and the issues referred to under paragraph 2.2 of Section III of the Steering Committee's report) - Prof. Zunarelli

(4) Bankability - Prof. Gorton

(5) Ancillary Contracts - Mr. Koronka

(6) Issues not covered by existing international conventions - Prof. Sturley

These studies should be completed in September and the next meeting of the Working Group would be held on 22nd October 1998. The preliminary studies would be reviewed at this meeting and he hoped that the Working Group would then be able to begin to prepare an analysis of the areas in which it would request information and assistance from the International Organisations. The Working Group would also consider preparing a questionnaire for national associations within the CMI.

4. Mr. Sekolec outlined the background to the project and referred to the report of the Steering Committee. He said that delegates to UNCITRAL were quite aggravated by the situation prevailing in maritime law. UNCITRAL therefore had gone to the CMI in order to obtain a good picture of existing legal issues, and those which would arise in the future, and how they should be codified. This might be done by legislative action, such as a treaty, a model law or a legislative guide, or by a non-legislative text such as model contracts or model clauses. He was looking forward to the outcome of the study which would highlight the issues and indicate possible solutions. There was no need to hurry; UNCITRAL wanted the CMI to do a job which at the end of the day would command consensus. UNCITRAL wanted everyone on board and he encouraged all international organisations to put forward their views so that there would be no surprises. He believed that this project would evolve into a very important project and he appealed for co-operation.

5. Mr. Griggs then invited comments from those attending the meeting and suggestions as to any other inter-governmental or non-governmental bodies which should be invited to participate in the project.

6. Ms. Howlett said that the International Chamber of Shipping would take the matter up with Intertanko and Intercargo. These organisations would probably ask the International Chamber of Shipping to deal with it in order to avoid duplication.

7. Ms. Howlett questioned why it was proposed to invite the US Chamber of Shipping to participate, as the US Chamber was a member of the International Chamber of Shipping. Dr. Wiswall suggested that input from the US Chamber could be obtained through the US Maritime Law Association.

8. Mr. Von Ziegler concluded by introducing and circulating copies of the flow chart which he had prepared, with assistance from Mr. Chandler. He concluded by emphasising how much the input from the international organisations into the work of the Working Group would be appreciated.

9. There being no further comments, Mr. Griggs closed the meeting and thanked everyone for their attendance.

STUART BEARE

NEWS FROM THE NATIONAL ASSOCIATIONS

News from the Malta Maritime Law Association

At the Annual General Meeting of the Malta Maritime Law Association held on 14 July 1998 the following new Committee was elected:

President: Dr. Tonio FENECH, Fenech & Fenech, 198 Old Bakery Street, Valletta, Malta. Tel.: (356) 241.232 - Fax: (356) 221.893.

Vice-President: Dr. Francesco DEPASQUALE, Thake Desira Advocates, 11/5, Vincenti Buildings, Strait Street, Valletta, Malta. Tel.: (356) 238.900 - Fax (356) 246.300.

Secretary: Dr. David TONNA, Tonna, Camilleri & Vassallo, 52, Old Theatre Street, Valletta, Malta. Tel.: (356) 232.271 - Fax (356) 244.291.

Treasurer: Dr. Kevin DINGLI, Dingli & Dingli, 18/2, South Street, Valletta, Malta. Tel.: (356) 236.206 - Fax: (356) 240.321.

Members:

Dr. Max GANADO, Prof. J. M. Ganado, 171, St. Christopher Street, Valletta, Malta. Tel.: (356) 235.406 - Fax: (356) 240.550.

Dr. Ann FENECH, Fenech & Fenech, 198 Old Bakery Street, Valletta, Malta. Tel.: (356) 241.232 - Fax: (356) 221.893.

Dr. Malcolm MIFSUD, Fenech & Fenech, 198 Old Bakery Street, Valletta, Malta. Tel.: (356) 241.232 - Fax: (356) 221.893

The address of the Association is the following:

MALTA MARITIME LAW ASSOCIATION

c/o Fenech & Fenech Advocates - 198 Old Bakery Street, Valletta VLT 09, MALTA

Tel. (356) 241232 - Fax (356) 221893

NEWS FROM IMO

77th Session of the IMO Legal Committee

1. Introduction

This session of the Legal Committee was held at the IMO Headquarters in London from 20th – 24th April under the Chairmanship of Alfred Popp Q.C. In his introductory remarks the Secretary General of the IMO, Bill O'Neil, reminded the delegates that 1998 marks the 50th anniversary of the creation of the IMO. Despite its achievements in the first 50 years of its existence there was much, in his view, still to be done to make shipping safer and oceans cleaner.

He repeated his earlier call for the Legal Committee to concentrate on a limited number of new topics with a view to allowing more time for States to devote to implementation of existing instruments.

The Secretary General reported briefly on a recent inter-governmental meeting to discuss the implementation of the 1996 HNS Convention. He strongly encouraged co-operative effort whereby States shared ideas in relation to implementation of what was, undoubtedly, a complex Convention.

2. *Provision of Financial Security in respect of Passenger's Claims*

It will be recalled that at the 76th Session the Legal Committee resolved to split this subject into two sections. The first and primary concern was to develop an instrument which would guarantee payment of loss of life and personal injury claims for passengers.

At previous sessions this problem had been approached on the basis that the owners of passenger ships would be required to carry legal liability insurance or produce other evidence of ability to pay claims. At the 76th Session the CMI submitted a document (LEG 77/4/2) suggesting that the same result could be achieved much more simply if the owners of passenger ships were required to purchase Passenger Accident Insurance (PAI) for each individual passenger. In presenting the paper to the Legal Committee the President of the CMI drew delegate's attention to the fact that the PAI solution would solve a number of the legal and drafting problems, which had been discussed at previous Legal Committee meetings. In particular it would avoid the liability insurers having, yet again, to concede the "pay to be paid" principle which would be a consequence of allowing claimants the right to claim direct against the liability insurers. It would also avoid the problems caused by the liability insurer relying upon defences which might be available under the liability insurance due to the assured shipowner's misconduct or other breach of the terms of the policy of insurance.

The Japanese delegation submitted a proposal that in relation to passenger liability the IMO should follow the pattern of the revised Warsaw Convention relating to the Carriage of Passengers by Air whereby there should be a two tier liability system; the first tier, up to Athens Convention limits involving the shipowners absolute liability and the second tier, with unlimited liability, to which passenger claimants would have access unless the shipowner could show that the accident in question had arisen without his fault.

The Committee then proceeded to debate specific issues within the general topic of security for passenger claims.

(a) Nature of the Financial Security.

There was widespread agreement that the Committee should explore further the CMI's proposal of a PAI scheme as an alternative to compulsory financial security covering the carriers liability for passenger claims. The advantages of the scheme, outlined above, were recognised but the Committee called for a more detailed study of this option.

Specifically the Committee was concerned to know by whom claims would be assessed under the proposed PAI. Whether this would be by reference to a tariff or by reference to the levels of damages awarded by the courts in the relevant jurisdiction. The question of recourse needed to be examined; should the PA insurer be entitled to seek to recover sums paid to a passenger from the carrier. Issues of double insurance (several accident insurers) and the possibility of claims over against the carrier in the event of non-payment by the PA insurer also need to be studied.

It was noted that the CMI submission contained a reference to the possibility that the selling of personal accident insurance as part of the ticket price might fall foul of competition law.

The Legal Committee Correspondence Group, under the Chairmanship of Professor Erik Rosaeg, was instructed to investigate the whole PAI issue further in co-operation with the CMI and the insurance industry. In the meantime it was agreed that work should continue on a compulsory liability insurance or security scheme.

(b) Channelling Liability and Jurisdiction.

In relation the compulsory liability insurance scheme further discussions took place regarding the possibility of drafting onto the Athens Convention the Compulsory Liability Insurance scheme similar to that found in the CLC and HNS Conventions. This in its self led to a proposal from several delegates that such a Compulsory Insurance scheme could not be introduced without a comprehensive review of the Athens Convention. In this connection delegates were informed that the CMI was in the process of consulting its members regarding a

wide-ranging revision of the Athens Convention. The President of the CMI was able to confirm to delegates that the information obtained from this consultation exercise would be made available to the IMO should it prove to be of interest to them.

On the subject of channelling there was an inconclusive debate as to whether the obligation to carry third party liability insurance should be placed upon the carrier or the performing carrier. This remains an unresolved issue. The debate was renewed on the question of how State Parties would ascertain whether the insurer or provider of financial security was of good financial standing and therefore an acceptable provider. This debate also continues. Generally the question of responsibility for and the method of checking the standing of those providing security or insurance cover is proving difficult to resolve. Further studies will be undertaken. A number of delegates supported the proposal that the Athens Convention should be maintained in its present form as regards jurisdiction and channelling with the addition of an obligation on the carrier or performing carrier to provide security or insurance coupled with a right of direct action against the provider of security or insurance. This would avoid a complete revision of the Athens Convention.

(c) Basis of Liability.

A number of delegations were in favour of maintaining the liability regime contained in the Athens Convention and will oppose to the introduction of a strict liability system. Other delegations were strongly in favour of introducing strict liability.

Some consideration was given to the revised Warsaw system of liability involving an absolute liability tier up to a certain specified limit and a second tier of unlimited liability based on carrier negligence. Some delegates suggested that it was wrong to equate air and sea carriage on the basis that it is often impossible for a claimant to prove any negligence on the part of the air carrier.

Fears were expressed that a two tier system would encourage litigation with many claimants seeking access to the second tier of the liability.

Many delegates warned against the dangers of introducing unlimited liability backed by unlimited compulsory insurance on the basis that this could lead to problems of solvency in the insurance market and the proliferation of one ship companies as a way of evading payment of high figure claims.

(d) Crew Claims.

The ICFTU raised the question of the rights of crewmembers who may be injured whilst serving at sea. It was agreed that this was a topic in respect of which the ILO would have much to say and it was resolved to set up an ILO/IMO Working Group to consider the position of crew claims.

In summary it was agreed that there was still much work to be done on this subject and in particular the outcome of the debate on PAI was crucial. The Committee accepted the Chairman's proposal that it should aim at completing consideration of this subject at its first session in 1999.

3. *Provision of Financial Security in Respect of Other Claims*

As previously mentioned the subject of provision of financial security has been split into two sections. The first one dealing with passenger claims and the second one dealing with other types of maritime claim likely to arise out of ship operations.

In this wider context the UK delegation drew attention to the recent case of the "CITA" where, following a sinking, liability insurers had failed to respond to claims for loss of cargo and claims for the cost of pollution clean up operations (non oil). The UK delegation in document LEG 77/4/6 proposed the development of an IMO code setting out recommended minimum standards for marine insurance. The idea of such a code would be to specify the types of claim in respect of which all shipowners should carry insurance, which are not already covered by existing conventions such as CLC and HNS. There would be no suggestion of direct access to insurers by claimants but it would, it was suggested, assist governments and other potential claimants to know that a ship in possession of a certificate issued by a state which applies the code would be good evidence that the ship in question carried insurance against common maritime risks.

Though this proposal was generally welcomed, a number of delegations expressed concern that whilst a code would provide useful guidelines for the development of national legislation it should not be seen as an alternative to an internationally binding, mandatory system for the provision of liability insurance.

Some discussion took place regarding the best way of defining the risks which should be covered. One suggestion was that it would be convenient to adopt the types of claim, which are listed in article 2 of the LLMC 1976 as being claims in respect of which shipowners may limit liability.

The representative of the International Group of P & I Clubs expressed strong misgivings regarding a code of this nature. He strongly urged delegates to accept that the production of a certificate of entry with a P & I Club was still the best evidence of adequate liability insurance.

4. *Draft Convention on Wreck Removal*

This draft Convention has now reached a fairly advanced stage and delegates were invited to address a number of specific issues.

Some concern continues to be expressed regarding the conflict between this instrument and UNCLOS because the effect of the instrument is to extend the jurisdiction of coastal states.

There is not enough space in this report to deal with all the detailed points of principle which were discussed

nor the drafting issues. It is however worth recording that there still seems to be a desire that States should be allowed to intervene where wrecks threaten the environment as well as when they threaten safety of navigation. The Committee was unable to finally resolve the question of whether the Convention should cover wrecks both inside and outside territorial waters and if so whether the extension to territorial waters should be a matter of opting in or opting out. Further work is to be carried out by the Correspondence Group and the matter will be further discussed at the 78th Session of the Legal Committee.

5. Compensation for Pollution from Ships Bunkers

The debate continued as to whether this measure requires a free standing convention or whether it could be dealt with by way of Protocol to the CLC Convention. Draft instruments covering both forms, had been prepared and were considered by the Committee.

The Committee once again found itself discussing the question of whether it would be unduly burdensome for shipowners and their insurers to supply and carry on board certificates confirming that bunker pollution liability was covered. This issue remains unresolved.

Delegates proceeded to consider this subject and a number of sub headings.

(a) Form of the Instrument.

There seemed to be general support for a free standing convention rather than a Protocol. There was general agreement that any instrument produced should be restricted to pollution damage – there should be no extension to cover fire and explosion.

(b) Limits of Liability.

There was general agreement in the Committee that the limits of liability should be tied to those in the LLMC 1976 – there should be no separate fund for bunker pollution claims.

(c) Channelling of Liability.

There was heated debate on this subject. Channelling liability to an identifiable individual made the task of liability insurers easier. On the other hand to channel liability to, for example, the registered owner would not necessarily comply with the precept that the “polluter pays”. This issue requires further discussion.

(d) Administrative Burdens Associated with Compulsory Insurance.

Finding a workable solution will not be easy since the scheme, if it is to work, will need to cover virtually all trading ships whereas the CLC and HNS regimes, which require certificates, relate only to a limited number of ships.

(e) Basis of Liability.

Generally speaking strict liability was thought to be appropriate in relation to bunker claims.

6. Work Methods of the IMO Legal Committee

This discussion concentrated on the important IMO precept that before an instrument should be drafted it should be demonstrated that there was a “compelling need” for it. There was also some discussion regarding the relationship between the Legal Committee and other IMO Committees (such as MSC) who refer matters to the Legal Committee.

7. CLC Insurance Certificates

The United Kingdom raised this issue which concerns the acceptance of the validity of 1992 CLC certificates by State Parties to the 1969 CLC. All delegates agreed that a pragmatic solution would be for State Parties to the 1969 CLC to accept that a 1992 CLC certificate was sufficient evidence of the existence of adequate insurance. The Italian delegation indicated that such an “understanding” would not satisfy the needs of the Italian Government.

In the end it was resolved that the Legal Committee should issue a circular to all State Parties dealing with this issue.

8. Offshore Units and Structures

Richard Shaw, who is the Chairman of the CMI International Sub Committee on Offshore Units and Structures, reported progress on this subject in consultation with the offshore industries and advised that there would be a written submission on this subject available for delegates to consider at the next session of the Legal Committee.

PATRICK GRIGGS

NEWS FROM THE IOPC FUNDS

Meetings of the Executive Committee and Assembly

The 16th May was a date which dominated the debates at the meetings during the following week of the Executive Committee and the Assembly of the 1971 IOPC Fund and the Assembly of the 1992 Fund. On 16th May 16 States, including most of the E.C. plus Japan and Australia, will leave the 1971 Fund. Concern has been expressed that, based on attendance and voting patterns to date, there is unlikely to be a quorum at

the future meetings of the 1971 Fund Assembly, which will thus find itself unable to adopt a budget, settle major claims or even appoint a Director (who is due for re-election in 1999).

Unless the problem was resolved before the 16th May, the major contributing States would cease to have any say in the running of the 1971 Fund, even though they had ongoing obligations to contribute to claims falling on the 1971 Fund before 16th May.

It was readily agreed by all present that the 1992 Fund should continue to "run off" the 1971 Fund if an insufficient number of States sent representatives to ensure a quorum at the meetings. Such a procedure could not however be used to override decisions of a properly constituted meeting of the Executive Committee and/or Assembly of the 1971 Fund in an appropriate case. The designing of mechanism to implement these principles taxed the considerable ingenuity of the assembled delegates. It is certainly to be hoped that the resolutions adopted will achieve the desired result. Any attempt by a claimant or a State to sabotage these arrangements could call into question the functioning of the second tier industry-contributed compensation regime, and could leave innocent victims inadequately compensated.

These problems underline the importance that States who remain parties to the 1971 Fund Convention should recognise the potential problems which they face, both in terms of the attendance at meetings at which decisions on the management of the Fund are taken, and also regarding the contributions which they will be called upon to make in the event of a major casualty.

Countries such as Japan (which imports more than 27% of all oil carried by sea) have effectively guaranteed the success to date of the 1971 Fund. When Japan and the EC Countries leave that Fund on the 16th May 1998, the levies issued by the Secretariat in the event of a major casualty will have to be met by a smaller number of States, with significantly smaller economies. This should, it is hoped, encourage them to switch to the 1992 Fund regime and denounce the 1971 Convention.

Members of the CMI whose governments have not yet made this switch, are urged to use their contacts with their governments to point out these facts and to urge that appropriate action is taken as soon as possible.

RICHARD SHAW

NEWS FROM UNIDROIT

The Preliminary Draft Unidroit Convention on International Interests in Mobile Equipment. Should ships be included?

1. Introduction

A Preliminary Draft Convention on International Interests in Mobile Equipment has been established by the Study Group created by the International Institute for the Unification of Private Law-UNIDROIT at the conclusion of its fourth session, held in Rome in November 1997.

The work of the Study Group has been followed by the CMI because since the beginning amongst the "mobile equipment" to which the future convention would apply reference was made to registered ships. And in the Preliminary Draft established in November 1997 reference to ships may still be found, although in square brackets, in Article 3.

The purpose of this paper is to consider whether the inclusion of ships in the sphere of application of this Convention would be in conflict with existing maritime conventions relating to ships and whether, in any event, the provisions of this Convention could apply in respect of ships.

The structure of the Draft Convention is different from that of most other conventions. The draft in fact contains, as clarified by Mr. Stanford in his paper entitled *Preliminary Draft Unidroit Convention on International Interests in Mobile Equipment-Basic Features*, "a core of rules which may be universally applied across the whole spectrum of equipment intended to be covered by the Convention" to be complemented by rules "corresponding to the special characteristics of each specific category of equipment" contained in separate protocols. Article X of Chapter X (Final Provisions) provides that the Convention shall enter into force as regards a category of object (a) at the time of entry into force of the protocol (relating to that category of object); (b) subject to the terms of that protocol; and (c) as between Contracting Parties to that protocol.

At present only one preliminary draft protocol has been prepared on matters specific to aircraft equipment. If that draft protocol is taken as an example, it appears that each individual protocol may not only supplement the convention but also amend it, by deleting some of its provisions or replacing some others with different provisions⁽¹⁾.

Nevertheless, what is described by Mr. Stanford as "core of rules" must be substantially preserved, otherwise there would be no "core" at all and each protocol would become an independent convention, almost entirely unrelated to the other protocols. If this were the ultimate result, the very purpose of this exercise would

(1) Inter alia new default remedies are added (article XI(1) of the Preliminary Draft Protocol on Matters Specific to Aircraft Equipment), article 9(2), which provides that the remedies must be exercised in a commercially reasonable manner, is deleted (article XI(2) of the Preliminary Draft Protocol), and replaced by a new article (article XI(7)).

obviously be defeated. To which extent, however, the provisions of the Convention may be amended or deleted without affecting the unity is difficult to say.

For the stated purpose of this paper it seems legitimate to consider the rules of the draft Convention as rules applicable to any kind of "object" and, therefore, also to registered ships: provided always that a specific protocol applicable to ships is prepared and agreed and enters into force.

In the following paragraphs, an attempt will be made to compare the system created by the Draft Convention with that created by the maritime conventions covering the same matters. The maritime conventions that will be considered are the 1993 Maritime Liens and Mortgages Convention and the 1952 Arrest Convention, together with the Draft Articles for a Convention on Arrest of Ships that will be submitted to a Diplomatic Conference convened by the United Nations in the first two weeks of March, 1999.

For the purposes of such comparison the following questions and issues will be considered:

- the structure of the conventions
- the rationale of the conventions
- the relationship between national and international registration
- the relationship between registered charges and secret charges
- the enforcement of the claims
- jurisdictional issues
- whether there is any need for a global system
- the effects of a convention based on the Unidroit draft on the existing maritime conventions.

2. *The structure of the conventions*

In maritime law the uniformity of the rules on security rights have been kept separate from those on "conserving" measures. Although this originally was due to the different time when attempts to reach uniformity were first made, the question whether security rights (i.e. mortgages and "hypothèques" and maritime liens) and arrest could be covered by one global convention was raised when the revision of the 1926 and 1967 Maritime Liens and Mortgages Conventions and of the 1952 Arrest Convention was considered first by the CMI and then by the IMO/UNCTAD Intergovernmental Group of Experts and was in both instances turned down. It was felt, in fact, that it would have been significantly more difficult to obtain a wide international consensus on all issues covered by such conventions if they were dealt with together in one global convention only.

Such attempt is now made, even on a much larger scale, by the Unidroit Draft, in which not only the substance of security rights is regulated (reference is made in this respect to the very detailed rules on default remedies), but a much larger area is covered, both from the standpoint of the type of security and of the objects. At the same time an area of great importance in maritime law, that of the securities arising out of operation of law, is left out because maritime liens are not registrable.

3. *The rationale of the Conventions*

The rationale behind the MLM Convention has been to unify those aspects of the securities on which common rules were more likely to be accepted by a large number of maritime nations and in respect of which, at the same time, uniformity is much needed. The approach has been, therefore, pragmatic and not academic.

It was thus thought that in respect of registrable (and registered) charges it was important to ensure the recognition by as large a number of maritime countries as possible, rather than to attempt to regulate the substance of the different types of charges. It was then considered that in order to create an incentive to ships financing, it was important to reduce as much as possible the number of secret charges (the maritime liens) taking priority over mortgages and "hypothèques". Lastly, it was thought that uniform rules were required in order to prevent that a ship may be deregistered from one country's register and re-registered in another country's register without the prior satisfaction of the claims secured by registered charges and that a minimum of uniform rules on the forced sale of ships, its effects on the securities and on the distribution of the proceeds of sale would be very useful.

The rationale behind the Arrest Convention has been to reach uniformity in respect of the claims for which a ship may be arrested, of the ships that may be arrested and on the jurisdictional issues.

The rationale behind the Draft Convention is much more ambitious: to lay down uniform rules applicable to a variety of mobile objects, to regulate substantive matters in relation to securities and to create an international registration system.

4. *The relationship between national and international registration*

The Draft Convention does not consider the interrelationship between registration of mobile objects and registration of "interests" therein. Nor does it consider registration of mobile objects and rights thereon at a national level. Since it is unreasonable to think that States would abandon their national registration systems, because registration – at least in so far as ships are concerned – is required not only for private, but also for public purposes, the effects (so far somewhat nebulous) of an international registration system on the national systems should be seriously considered. It is thought that the following questions, *inter alia*, need to be answered:

- (i) would registration of ships in the International Registry be voluntary or compulsory?
- (ii) should title to the ship be registered in the International Registry?
- (iii) if so (and it must be so in order to enable registration of charges), how would a conflict between

- registrations be solved? Would the status of registration in the International Registry prevail over that in the national registry?
- (iv) should judicial orders affecting property be registered also in the International Registry?
 - (v) would charges (i.e. mortgages and "hypothèques") be considered as effectively registered if registered only in the International Registry or would national registration also be required?
 - (vi) would the order of registration of several "interests" in the International Registry prevail over the order of registration in the national registry, if different?
 - (vii) what evidence should be supplied to the Registrar?
 - (viii) could a ship be deleted from the International Registry whilst it continues to be registered in the national registry and viceversa?
 - (ix) what is the effect of registration of a ship in the International Registry on nationality, if any?
- It may be said that all these and other questions should be answered by appropriate provisions of the relevant protocol. Those in charge of the preparation of such protocol would have a very difficult task indeed. Suffice it to say that within the European Union the project of creating an European ships registry has been abandoned.

5. *The relationship between registered charges (mortgages and "hypothèques") and secret charges (maritime liens).*

In the laws of all maritime nations there are charges – the maritime liens – that arise out of operation of law and are secret, in the sense that they are normally unregistrable and in any event their effectiveness does not depend on registration. Some – if not all – such charges take priority over registered charges. In the Draft Convention maritime liens come under the expression "non-consensual rights and interests". Article 38(2) of the Draft Convention provides that in proceedings before the courts of a Contracting State a (non-registrable) non-consensual right or interest which under the law of that State would have priority over an interest in the object equivalent to that held by the holder of the international interest has priority over the international interest to the extent set out by that State in any instrument deposited with the depositary prior to the time when the registration of the international interest takes effect and to the extent that the non-consensual right or interest would under the national law of that State have priority over a registered interest of the same type as the international interest.

Let us assume that France, Italy and Spain (all of which are at present parties to the 1926 MLM Convention) will ratify the 1993 MLM Convention and that such Convention will come into force.

If the Italian holder of a Convention maritime lien on a Spanish ship will enforce the lien by arresting that ship in France, in case of forced sale of the ship he will be entitled to payment of his claim with priority over a registered "hypothèque". If France will ratify the future Convention on International Interest on Mobile Equipment and its protocol relating to ships but will neglect to deposit with the depositary of such Convention the instrument mentioned in article 38(2)(a) of the Draft, the Italian claimant will not obtain the satisfaction of his claim, since the "hypothèque" will have priority over it. There would arise, therefore, a conflict between the two Conventions. But the situation would be even more complicated if the State where the ship is arrested is only a party to the future Convention on International Interest on Mobile Equipment. In such a case that State could not give the notice required by article 38(2)(a) and, if by its private international law rules its courts would apply the law of the State where the maritime lien has arisen⁽²⁾, they would not be able to apply it.

In any event it is difficult to assess the practical benefits of the system created by article 38. The fact that the depositary is notified by Contracting States that certain maritime liens take priority over mortgages and "hypothèques", even if made known (how, it is not clear) to holders of international interests would not yield any practical advantage to them. In fact, exactly as at present, it would not be possible to predict where a maritime lien will be enforced. Therefore holders of international interests, no matter what the Convention will say, will – as mortgagees and holders of "hypothèques" do at present – take into account that maritime liens may take priority.

Attention must then be paid to the fact that article 38 is confined to priorities between holders of securities and does not deal with another feature of maritime liens: the right of the holders thereof to enforce the lien also after the ship has been sold to a bona fide purchaser for value. This fundamental character of maritime liens is in conflict with article 38(3) of the Draft Convention, according to which the buyer of an object acquires its interest in it free from an unregistered interest (even if it has actual knowledge of such an interest).

6. *The enforcement of claims*

Chapter III of the Draft Convention, titled "Default Remedies" regulates the enforcement of claims. Article 9 provides that in the event of default in the performance of a secured obligation, the chargee may (a) take possession or control of any object charged to it, (b) sell or grant a lease of any such object, (c) collect or receive any income.

Article 15 provides that a Contracting State shall ensure that an obligee who adduces prima facie evidence of default by the obligor may, pending final determination of its claim, obtain speedy judicial relief in the form,

(2) This is so in the United States.

(3) In the French text of the 1952 Arrest Convention arrest (saisie) is defined as "l'immobilisation d'un navire".

inter alia, of an order of "immobilisation of the object". "Immobilisation" is a term which should, it is thought, include arrest⁽³⁾. If this is the case, the requirement of a "prima facie evidence of default" is almost certainly in conflict with the provision of article 1(4) of the 1952 Arrest Convention which defines "claimant" as a person "who alleges that a maritime claim exists in his favour"⁽⁴⁾.

7. *Jurisdictional issues*

Article 15(3) of the Draft Convention provides that a Court of a Contracting State has jurisdiction to grant judicial relief under paragraph (1) when the object is within the territory of that State, one of the parties is located within the territory, or the parties have agreed to submit to the jurisdiction of that Court. Since paragraph (1) includes, amongst the types of judicial relief, the immobilisation of the object, the second and third links mentioned in paragraph (3) are in conflict with article 4 of the 1952 Arrest Convention and with article 2(1) of the Draft Articles, according to which the Courts of the Contracting State in which the arrest is made have exclusive jurisdiction to grant the arrest.

8. *Is there any need for a global convention?*

It is difficult to understand for which reasons there should be a global convention containing the basic rules on matters as different from one another as charges, leases and sales in respect of objects as different from one another as aircraft and helicopters, ships, oil rigs, containers, railway rolling stock, space property and any other object. This entails the necessity of very substantial special rules for each single category of objects as the draft protocol "on matters specific to aircraft equipment" shows.

Globalisation is very fashionable nowadays, but it is felt that, at least in this case, it would only create confusion and would hardly succeed.

Of course it may be objected that by mentioning ships (and oil rigs) as one of the categories to which the Convention would apply no harm would be caused, because the Convention would enter into force as regards ships (and oil rigs) only if and when the relevant protocol will have been agreed and will enter into force. But the very fact of including ships could prevent – or render more difficult – future efforts of unification of maritime law in the areas covered by the Draft Convention.

FRANCESCO BERLINGIERI

RATIFICATION OF INTERNATIONAL CONVENTIONS

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

- **Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969**

<i>Ireland:</i> 15 May 1997	<i>Singapore:</i> 18 September 1997
<i>Korea (Republic of):</i> 7 March 1997	<i>Tunisia:</i> 29 January 1997
<i>Monaco:</i> 8 November 1996	<i>Uruguay:</i> 9 July 1997
- **International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971**

<i>Colombia:</i> 13 March 1997	
<i>China:</i> *	
- **Protocol of 1976 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971**

<i>China:</i> *	
<i>Colombia:</i> 13 March 1997	
- **Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971**

<i>Korea (Republic of):</i> 7 March 1997	<i>Philippines:</i> 7 August 1997
<i>Ireland:</i> 15 May 1997	<i>Tunisia:</i> 29 January 1997
<i>Monaco:</i> 8 November 1996	<i>Uruguay:</i> 9 July 1997
<i>Netherlands:</i> 15 November 1996	

(4) In article 1(4) of the Draft Articles claimant is defined as "any person asserting a maritime claim".

- Athens Convention relating to the Carriage of passengers and their luggage by sea, 1974
Guyana: 10 December 1997
- Convention on Limitation of Liability for Maritime Claims, 1976
China: *
Guyana: 10 December 1997
United Arab Emirates: 19 November 1997
- ~~Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976~~
Australia: 8 January 1997
Guyana: 10 December 1997
Netherlands: 10 December 1997
- International Convention on Oil Pollution Preparedness, Response and Co-operation 1990.
Chile: 15 October 1997
United Kingdom: 16 September 1997
- Unidroit Convention on International financial leasing 1988 (Entered into force: 1 May 1995)
France: 23 September 1991
Hungary: 7 May 1996
Italy: 29 November 1993
Latvia: 6 August 1997
Nigeria: 25 October 1994
Panama: 26 March 1997

Denunciations of and withdrawal from the following conventions have been communicated to the depositary**:

- International Convention on Civil Liability for Oil Pollution Damage, 1969

<i>Australia</i> : 15 May 1998 <i>Bahamas</i> : 15 May 1998 <i>Bahrain</i> : 15 May 1998 <i>Cyprus</i> : 15 May 1998 <i>Denmark</i> : 15 May 1998 <i>Finland</i> : 15 May 1998 <i>France</i> : 15 May 1998 <i>Germany</i> : 15 May 1998 <i>Greece</i> : 15 May 1998 <i>Ireland</i> : 15 May 1998 <i>Japan</i> : 15 May 1998 <i>Liberia</i> : 15 May 1998 <i>Marshall Islands</i> : 15 May 1998	<i>Mexico</i> : 15 May 1998 <i>Monaco</i> : 15 May 1998 <i>Netherlands</i> : 15 May 1998 <i>Norway</i> : 15 May 1998 <i>Oman</i> : 15 May 1998 <i>Republic of Korea</i> : 15 May 1998 <i>Singapore</i> : 31 December 1998 <i>Spain</i> : 15 May 1998 <i>Sweden</i> : 15 May 1998 <i>Switzerland</i> : 15 May 1998 <i>Tunisia</i> : 15 May 1998 <i>United Kingdom</i> : 15 May 1998
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- Protocol of 1976 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
Ireland: 15 May 1997
United Kingdom: 15 May 1998

* Applies only to the Hong Kong Special Administrative Region

** The dates are the effective dates of the denunciations

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 3 - 1998

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

This Issue Contains:

News from the CMI

- Minutes of the meeting of the Executive Council held in London on 14 May 1998
- Minutes of the Assembly held in London on 15 May 1998
- Fifth Session of the International Sub-Committee on Uniformity of the Law of Carriage of Goods by Sea
- Issues of Transport Law
- CMI Publications

News from the National Associations

- News from the Italian Maritime Law Association - Centenary Symposium of *Il Diritto Marittimo*
- News from the Spanish Maritime Law Association - International Conference on Arbitration and Maritime Law, Barcelona 24-28 June 1998

News from Intergovernmental and International Organizations

- News from UNIDROIT

Ratification of International Conventions

NEWS FROM THE CMI

MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL 14 MAY 1998

Attending

President:	Patrick GRIGGS
Vice-Presidents:	Hisashi TANIKAWA Frank L. WISWALL, Jr.
Councillors:	David ANGUS Luis COVA ARRIA Karl-Johan GOMBRII Eric JAPIKSE Thomas REMÉ Jean-Serge ROHART Ron SALTER Panayotis SOTIROPOULOS
Secretary General:	Alexander VON ZIEGLER
Treasurer:	Paul GOEMANS
Assistant Administrator:	Pascale STERCKX
Past President:	Allan PHILIP
Publication Officer:	Francesco BERLINGIERI

The Executive Council met in London on 14 May 1998, 09.00. The meeting was closed at 16.00. Patrick Griggs, President of CMI, opened the Executive Council session and received the approval from the meeting to proceed pursuant to the agenda submitted to the Executive Council prior to the meeting.

1. Approval of the Minutes of the Executive Council meetings held in London 14/15 November 1997

The Minutes of the Executive Council meeting held in London were approved by the Council.

2. Work in progress

a) Uniformity of the law relating to maritime transport

i) Verbal report from Prof. Francesco Berlingieri on issues of responsibility.

F. Berlingieri reported on the work done since the Antwerp conference with regard to finalisation of the work done by the International Sub-Committee. It was decided that the work should continue in order to finalise the position of CMI and could -where advisable - even contain some draft provisions. For that purpose the draft should be circulated amongst the National Associations and one more meeting held to finalise the document. This document could then wait until the time when it becomes advisable to resume work in the context of the project on issues of transport law.

ii) Verbal report of Dr. Alexander von Ziegler on issues of transport law.

The Secretary General reported on the work done by the Steering Committee and on the formation of the Working Group on issues of transport law. The Working Group is chaired by Stuart Beare (UK). The following individuals are members of this Working Group: Prof. M. Sturley (USA)/Reporter of the Working Group); P. Koronka (UK); Prof. Lars Gorton (Sweden); Prof. S. Zunarelli (Italy); Prof. G. van der Ziel (NL). Mr. J. Secolec was invited as a permanent observer in this Working Group (UNCITRAL).

b) Classification Societies

Frank Wiswall, Jr., Chairman of the International Working Group reported on developments in relation to the model contract clauses for use by classification societies. So far it had proved impossible to reach a consensus between the shipowners (ICS) and the classification societies (IACS). It was decided to (1) submit this document to the Assembly, (2) to have the model rules published in the Newsletter and (3) to make them available to the media (N.B.: *this decision was modified during the Assembly*).

c) Off-Shore Structure

Richard Shaw will report to the CMI Assembly.

d) The IMO-77th Session of the legal Committee

Patrick Griggs advised on the outcome of the 77th Session and referred to his special report on Personal Accident Insurance distributed during the meeting. Particular emphasis was placed on the discussion in the context of the Athens Convention and to the "provisions on financial security".

e) Maritime Safety

Patrick Griggs introduced the report made by Erik Nordström.

f) Salvage

Eric Japiske advised on the situation in respect of the Salvage Convention and the report of the Working Group. In this context Patrick Griggs mentioned that the London market is working on an agreement in form of the so called SCIOPIEC-Clause in the context of LOF. The Working Group was asked to investigate whether there is a role for CMI to propose a revised article after the results have been finalised by the international shipping industry.

g) The IMAO meetings with ICC

The Secretary General reported on the meetings held in Paris. ICC is looking at CMI to answer the crucial question whether the international shipping community needs a supranational maritime arbitration system and whether this system should be provided by co-operation between CMI and ICC. The Secretary General will issue a questionnaire which will be distributed amongst the National Associations of CMI. Prof. Allan Philip will assist Alexander von Ziegler in this task. In general it was felt that if there is a possibility to co-operate with ICC this would be of great advantage since CMI could most probably not embark on a independent arbitration venture on its own. Furthermore arbitration is, at least in our days, very commercial. The CMI should not get involved in what could be seen as a promotional or commercial activity.

h) EuroSection

The meeting was informed of the resignation of Prof. Wetterstein. It was decided that Patrick Griggs will speak with Peter Wetterstein in order to find out whether he had a particularly view on the successor. It was agreed to experiment with suspending the work of the EuroSection and relying on a monitoring exercise on the activities

of the European Commission with direct reporting to the President. P. Griggs will report back at the next Executive Council meeting.

i) International Interest in Mobile Equipment

F. Berlingieri suggested that he should publish an article in the CMI Newsletter pointing out the problems an international register of securities on ships would create. F. Berlingieri will take up the drafting of such an article and circulate it within the Executive Council. Thomas Remé advised on the new developments. Apparently it is envisaged to have the main rules in a draft convention. Then, the special equipment will be regulated in protocols appended to this draft convention. The first of those protocols will be established for aircraft.

j) Civil Jurisdiction Convention

Jean-Serge Rohart briefly advised on the situation regarding the Civil Jurisdiction Convention. He concluded that nothing has changed since the last meeting and therefore this issue could most probably rest. Allan Philip advised that the Hague Conference on International Law is looking into drafting a convention which will deal with issues of jurisdiction on a global scale. It was decided that Allan Philip should contact the Hague Conference in order to provide them with the work done so far by CMI in this area.

k) Athens Convention 1974

P. Sotiropoulos advised that so far he had only received one answer in relation to the Athens Convention. He will collect all answers and compile a report for the Executive Council.

l) Arrest Convention

F. Berlingieri submitted his draft Position Paper which he intends also to submit to the Assembly. He will ask the Assembly for approval so that he can submit it in the name of CMI to the IMO/UNCTAD Conference in Geneva. He had received numerous replies by National Associations and prepared summary of such comments. Some issues remain still open and require further discussion by the Assembly. He will inform the Assembly on those open issues and ask for views.

The composition of the CMI delegation in Geneva will be discussed among F. Berlingieri, Allan Philip and Charles Goldie.

m) Marine Insurance

K. J. Gombrii advised on the upcoming Marine Insurance Symposium in Oslo (4-6 June 1998). It is intended that from the outcome of that Symposium a possible basis for work of CMI in this area could emerge.

n) FONASBA (Time Charter Interpretation Code)

Jean-Serge Rohart reported that CMI was invited to participate in the work relating to a common interpretation of time-charterparty clauses. The purpose is not to standardise contractual clauses but to assist trade in providing "unified interpretation". It can be questioned whether it is a project in which CMI should be involved. On 31 June 1998 there will be a meeting and Jean-Serge Rohart will be participating together with Pierre Dardelet. He will report back to the Executive Council.

o) Piracy

Frank Wiswall reported on a possible project regarding piracy. The international organisations he had contacted are enthusiastic on this new approach. Prof. Menafee of the United States has made progress in drafting a model law on piracy. Depending on the decision of the Executive Council, CMI could present a report together with a draft model law to the Singapore Conference. The following organisations could become involved: IMB, BIMCO, ICS, IMO, ILO and eventually INTERPOL. After discussion within the Council it was decided that Frank Wiswall should report back to the Executive Council after the first meeting due to take place on 8 July 1998. In particular it is expected to receive clarification on the question whether or not such a model law would in effect be an advantage and is likely to bring some positive changes as regards piracy. Frank Wiswall will report back to the Executive Council.

p) Status of Ratification of International Convention

Francesco Berlingieri referred to his report and in particular to the table prepared regarding the Collision Convention of 1910. What concerns the contracting States and Governments it was decided to base the further studies on the list of countries of IMO. It was suggested to start with selected conventions and in particular, as for now, with the Limitation Convention of 1976.

3. Finances

a) Accounts and Budget

P. Goemans paid tribute to Henry Voet who had been the custodian (among other responsibilities within CMI) for the CMI finances for a very long time. The Executive Committee wholeheartedly agreed with him and wished that the thanks to Mr. Voet be registered in the Minutes.

Looking at the 1997 balance sheet he pointed out that a substantial part of CMI's assets are arrears on 1993, 1994 and 1995 contributions.

b) Contributions

P. Griggs suggested that one of the problems in negotiating a better response if not a raise in contributions is closely linked to the problem that many National Associations have a very small membership base. Only very few members are controlling if not monopolising the Association limiting thereby the sources for the contributions.

It was decided to submit the findings of the Contributions Committee to the Assembly and to suggest a 3% increase in Contributions/for 1999.

4. Next meetings of Executive Council

7th November 1998: Meeting in London
6th May 1999: Meeting in New York
7th November 1999: Meeting in London

5. Assembly 1999.

The 1999 Assembly will be held in New York on 8th May 1999.

6. Nominating Committee

W. Birch Reynardson, chairman of the Nominating Committee joined the meeting and reported on the work of his Committee. Based on the numerous suggestions received by national member Associations the Committee nominates Prof. H. Tanikawa, J. S. Rohart and Leo Delwaide, who are eligible for re-election pursuant to the CMI Constitution. P. Griggs thanked W. Birch Reynardson. It was decided to suggest to the Assembly to follow the nominations made by the Nominating Committee.

For the future, P. Griggs, expressed his opinion that there was not sufficient movement within the membership of the Executive Committee. Therefore, one will have to reconsider the practice that all Councillors automatically run for re-election.

7. CMI Charitable Trust

A. Philip referred to the documents presented to the Meeting on the financial situation of the CMI Charitable Trust.

8. Publications

a) LLP - Marketing of CMI Publications

A. von Ziegler reported on the arrangements with LLP to market the "Travaux Préparatoires" and the "History of CMI". He will prepare a flyer which will be included in the LLP mailing.

b) Publications. Budget and "float"

F. Berlingieri made a study reflecting the publications costs and the respective income through the sales. Based on this table it was decided that the prices shown in Table II would be applied.

A. Philip will prepare a proposal regarding the billing and distribution of the CMI Publications (Newsletter and Yearbook) in cases where a National Association fails to pay contributions or where a National Association is itself unable to collect the contributions of subscribers or Titulary Members.

F. Berlingieri will arrange with Paul Goemans a "float" budget for publications, on the basis of which he will be reimbursed for publication costs.

c) Maritime Conventions (CD-ROM) / CMI Archives; publications on CD ROM

It is planned to have a CD ROM with the content of the "Maritime Law Handbook" which will be sold for 65 US\$/ copy. There will be an annual supplement.

F. Wiswall then reported on the possibility to have the CMI archives collected and included on a CD ROM. It was decided to investigate this possibility further and study the feasibility, the costs and the administration of such a project. The view was expressed to concentrate on the published documents of CMI.

d) E-Mail and Internet

The E-mail of CMI is now functioning.

F. Wiswall will make inquiries regarding an independent production of a Website.

e) CMI Brochure

P. Griggs will continue his efforts to produce a CMI brochure.

9. Various

a) *New and revived National Associations; Pakistan, Gulf, Hong Kong and Nigeria*

The applications of the Association of Pakistan and the Gulf States have been received by CMI. They will be submitted to the Assembly.

b) *Legal and tax statute of CMI*

This item was put to the Agenda of the next EC Meeting.

c) *New rules for Titulary and Provisional Members*

F. Wiswall submitted the revised text of the CMI Constitution as well as guidelines regarding the election of Titulary Members of CMI. They will be submitted to the Assembly (N.B.: *the Assembly decided to postpone the decision for the next Assembly*).

d) *President Office*

It was decided to pay £ 1,500 bonus for 1997 to the Secretary of the President.

10. Any other business

Frank Wiswall and Patrick Griggs will work on a report on the reimbursement of travel and subsistence expenses by CMI.

Ron Salter reported on his discussion in Singapore in relation to the upcoming conference in the year 2001. David Angus advised that in 2001 the Canadian Association will have its 50th anniversary and in this context Canada would be happy to organise a CMI conference if it became apparent that Singapore was not in a position to organise the Singapore Conference in 2001. Such a conference could be either held in Vancouver or Montreal.

MINUTES OF THE ASSEMBLY 15 MAY 1998

Attending:

President:	Patrick GRIGGS
Past President:	Allan PHILIP
Vice-Presidents:	Hisashi TANIKAWA Frank L. WISWALL, Jr.
Secretary General:	Alexander VON ZIEGLER
Assistant Administrator:	Pascale STERCKX
Treasurer:	Paul GOEMANS
Publication Officer:	Francesco BERLINGIERI
Councillors:	Luis COVA ARRIA Karl-Johan GOMBRII Eric JAPIKSE Thomas REMÉ Jean-Serge ROHART Ron SALTER Panayotis SOTIROPOULOS

Member Associations:

The following Delegates have attended the assembly:

AUSTRALIA & NEW ZEALAND:	Ron Salter
BELGIUM:	Wim Fransen
BRAZIL:	R. L. Gomes Pereira Pedro Calmon Filho
CANADA:	Sean Harrington Nigel H. Frawley
CROATIA:	Voislav Borcic Velimir Filipovic
DENMARK:	Allan Philip
FINLAND:	Henrik Gahmberg
FRANCE:	Jean Serge Rohart Philippe Boisson
GERMANY:	Thomas M. Reme
GREECE:	Panayotis Sotiropoulos
IRELAND:	J. Niall McGovern
ITALY:	Francesco Berlingieri
JAPAN:	Noboru Kobayashi Hisashi Tanikawa
MAROC:	Farid Hatimy
NETHERLANDS:	R. Eric Japikse Gertjan van der Ziel
NORWAY:	Karl-Johan Gombrii
PAKISTAN:	Zulfiqar Ahmed Khan
SLOVENIA:	Cap. Tomaz M. Yamnik
SOUTH AFRICA:	Johan Swart
SPAIN:	José M. Alcantara
SWEDEN:	Claes Palme
SWITZERLAND:	Alexander von Ziegler
UNITED KINGDOM:	Geoffrey Hudson Richard Shaw N. Gaskell R. Jackson
U.S.A.:	Howard M. McCormack William R. Dorsey Raymond P. Hayden Frank L. Wiswall, Jr.
VENEZUELA:	Luis Cova Arria

The Assembly met on 15 May 1998 at Trinity House in London at 0900. The Assembly was closed at 1315.

1. Memorials

The President opened the Assembly by reminding the Assembly that Mr. Carlos da Rocha Guimarães, Brasil; Dr. Antonio Mathé, Argentina; Mr. Kimio Miyaoka, Japan and Mr. Donald Waesche, USA, have passed away since the last Assembly. He asked the Assembly to rise in the honour of the deceased Members of CMI.

2. Approval of the Minutes of the Meeting of the Assembly on 14 June 1997

The Assembly approved the Minutes of the Meeting of the Assembly held in Antwerp on 14 June 1997.

3. Members

a) *Titulary Members*

The Assembly elected the following Titulary Members:

- nominated by the Maritime Law of Japan:
 - Mr. Kentaro Kawamura
- nominated by the Maritime Law Association of the United States:
 - Mr. Charles B. Anderson
 - Mr. Raymond P. Hayden

The President referred to the decision of the Assembly in 1997 to establish guidelines and a structure of

procedures for the election of Titulary Members. He asked F. Wiswall to introduce the suggested changes. F. Wiswall referred to the draft guidelines and proposed changes in the Constitution. The intention is to remove the limitation in the number of Titulary Members from each National Association, and confirmation of the practice that the application of Titulary Membership should be reviewed by the Executive Council. Further, the restriction that the nomination must come from a National Association, should be removed. The criteria for election of Titulary Members should be a direct contribution to the work of CMI or its goals and evidence of this should be produced.

Regarding Provisional Members there should be a time limitation. The status of each Provisional Member would be reviewed every three years.

The discussion following the presentation of the suggestions made by F. Wiswall showed that the basis for a decision by the Assembly was not yet mature and therefore the President proposed to postpone the decision and asked the Administration to circulate the draft guidelines and the proposed changes in the constitution among the National Associations for further comments.

b) Associations of Maritime Law

The application for membership from the Maritime Law Association of Pakistan was unanimously approved. Mr. Khan expressed his gratitude for the fact that his Association can join CMI.

The President then advised of the formation of a regional Association in the Gulf. The Assembly approved the membership of this Association subject to production of a satisfactory constitution of the Association.

4. Reports on the Results from the Work of the Conference and on the various subjects CMI has been working on

a) Issues of Transport Law

After a short introduction by the Secretary General (based on the Report of the Steering Committee) the Chairman of the Working Group, S. Beare, described the progress made within that body. He introduced the structure in which the Working Group intends to continue its work and gave some indications on the time scale of the project. The Secretary General then advised on the meeting held on 11th May 1998 together with representatives of invited International Organisations and in particular with J. Secolec, representative for UNCITRAL.

F. Berlingieri advised on the progress made in the International Sub-Committee on the Unification of the Law on Carriage of Goods by Sea. It was decided that the work will be concluded in form of a CMI Study summarising the position of CMI and where appropriate suggesting possible wordings of a draft text. In the context of the broader work of CMI on issues of transport law it is quite possible that the questions of liability will be affected to a degree which is still unknown at present. There will be one more meeting of the International Sub-Committee in which the Report will be finalised, ready, if it was decided in the future that it would be advisable to resume the work on the issues of liability in the context of reviewing other issues of transport law. The meeting was set for the 9th and 10th of November 1998 in London.

b) Classification Societies

F. Wiswall reported on the developments of the CMI clauses covering the liability of Classification Societies. No agreement could be reached so far by the shipping industry (IACS and ICS) on the only remaining open question of the amount of the limitation of liability to be provided in the CMI Model Contractual Clauses. Ph. Boisson, on behalf of IACS, emphasised that it takes a long time within IACS and within ICS to develop negotiation positions. He stressed that the IACS' view is that all CMI documents form a package and that no agreement would be offered by IACS on the CMI documents as long as they did not contain acceptable limitation figures.

After discussions it was decided that the publication of the documents will be deferred to the next Executive Council meeting in November. One more meeting of the Working Group will be necessary. The Assembly unanimously adopted the Texts of the Model Contractual Clauses (with the limitation figure left blank of the time being) as well as the Principles of Conduct.

c) Off-shore Operations

R. Shaw reported that his Working Group will draw from the papers of the Antwerp Conference a basis for a Report which is intended to be submitted to the IMO Legal Committee. The International Sub-Committee will meet on 14th / 15th October in Houston / US.

d) IMO-77th Session of the Legal Committee

P. Griggs reported that he had attended as representative of CMI the 77th Session of the IMO Legal Committee. He referred to his Report circulated in the Assembly and to be published in the next CMI-Newsletter.

e) Maritime Safety

P. Griggs then referred to the document called "Maritime Safety", which was prepared by E. Nordström (appointed by the Swedish Maritime Administration). The proposal in this report is that Cargo interest and Insurers should take some responsibility as regards the safety of the ships on which they load their cargo or which they insure.

f) Salvage Convention

E. Japiske referred to the Report of the Working Group and advised on the newest developments within the international shipping community. As it seems there could be a consensus in the form of a new clause for the LOF. It was decided that further work should be done on this subject and that it could be advisable to look at the solution worked out by the shipping industry and possibly formulate a draft clause for the Salvage Convention. In this context it was suggested that CMI should contact the market and offer its assistance in the discussion on a new LOF clause.

g) IMAO - meetings with ICC

The Secretary General reported on the meetings held between ICC and CMI investigating the possibilities to revise the IMAO Rules on an International Maritime Arbitration. The plan is to establish and circulate a questionnaire asking the shipping community about the needs and the expectations of such a supranational maritime arbitration system.

h) EuroSection

After the resignation of P. Wetterstein as president, P. Griggs will further investigate into the question of his succession as chairman of the Eurosection. It was decided to consult the National Associations being members of the Eurosection.

i) International Interests in Mobile Equipment

F. Berlingieri will publish an article in the CMI-Newsletter pointing out the problems a international register of securities on ships would pose. Thomas Remé advised on the new developments and the plan to have the main rules in a draft convention and special equipment to be regulated in protocol amending this draft convention. The first of those protocols has been drafted for aircraft.

j) Civil Jurisdiction Convention

No particular report was made under this item. (*Reference is made to the Minutes of the Executive Council*).

k) Athens Convention 1974

P. Sotiropoulos advised on the background of the project. In light of a broader discussion within IMO it was important to gather information on the reasons why some states have so far not ratified the Athens Convention of 1974. He encouraged all National Associations to submit their replies to the questionnaire as soon as possible.

l) Arrest Convention

F. Berlingieri submitted his draft position paper as well as the report on the replies received so far from National Associations. He addressed the issues where there seem to be some differences among the CMI membership. In a long and fruitful discussion the outstanding issues in the position paper were clarified and F. Berlingieri and the Working Group were entrusted to revise the paper before its submission to the IMO/UNCTAD Diplomatic Conference (1-12 March 1999 in Geneva). Reference is therefore made to the (revised) position paper which will shortly be circulated by the CMI Working Group.

CMI will be represented during the first week of the Geneva Conference by F. Berlingieri. The two of other members of the Working Group (Allan Philip and Charles Goldie) will cover the second week.

m) Marine Insurance

K.J. Gombrii advised on the Symposium on Marine Insurance to be held in Oslo, Norway, on 4 - 6 June 1998. It is envisaged that the results of the discussions will form a basis for further work of CMI on issues of Marine Insurance Law.

n) FONASBA; Time Charter Interpretation Code

Jean-Serge Rohart reported that CMI was invited to participate in the work relating to a common interpretation of time-charterparty-clauses. The purpose is not to standardise contractual clauses but to provide "uniform interpretation" of existing clauses. It can be questioned whether it is a project in which CMI should be involved. On 31 June 1998 there will be a meeting and Jean-Serge Rohart will be participating together with Pierre Dardelet. He will report back to the Assembly.

It was decided that a report of the outcome of this meeting shall be circulated among the National Associations.

o) Piracy

F. Wiswall introduced this new subject to the Assembly and advised on a planned meeting for a small group consisting of representatives of international organisations interested in a project assisting the enforcement of measures against piracy. A report of the outcome of this meeting will be presented at the November 1998 Executive Council Meeting.

p) Status of Ratification of International Conventions

F. Berlingieri advised on the status of the work done so far relating to an assessment of ratifications of International Conventions. It is planned to start with the 1976 Limitation Convention as well as the 1996 Protocol. F. Berlingieri will draft a questionnaire and P. Sotiropoulos will then prepare a synopsis of the replies.

5. Financial Matters

a) Accounts 1997

The accounts of 1997 were approved by the Assembly.

b) Budget 1998-99

The Budget 1998-99 was approved by the Assembly.

c) Contributions 1999

The Assembly approved the proposed raise of the contribution by 3 %.

P. Griggs reported on his efforts in collecting unpaid dues and in negotiating changes in the contribution category among many National Associations. He referred to the Report of the Contribution Committee to the Executive Council. The Assembly discussed different aspects of the contribution system in CMI. J. M. Alcantara, Spain, informed the Assembly that Spain withdrew from its earlier request of a reduction of their contributions. N. Frawley, Canada, made clear that his Association never requested a reduction of its contribution.

6. Elections

The Proposals made by the Nominating Committee were approved by acclamation. Thereby J.S. Rohart was re-elected member of the Executive Council; H. Tanikawa was re-elected Vice-President and L. Delwaide Administrator of CMI. All these gentlemen are therefore serving for a second term.

7. Next Meetings/Conferences/Seminars

It was decided to hold the next Executive Council meetings on 7th November 1998 in London and on 6th May 1999 in New York. The Assembly will take place on 8th May 1999 in New York (in conjunction with the centenary of the USMLA).

The fall meeting of the Executive Council will be held on 7th November 1999 in London.

8. Publications

Mrs. Nagano of Mathew Benders advised on the progress in publishing the CMI Handbook on International Maritime Conventions and on the CD-Rom produced at the same time. All members will be informed on the release of this publication.

Regarding the "classic" CMI Publications (Newsletter and Yearbook) a survey submitted by F. Berlingieri made clear that CMI subsidises these publications to a large extent. It was decided to increase the costs as suggested by F. Berlingieri. Further work would have to be done on the figures in order to take into account the contributions towards the publications received by the Titulary Members.

It was also stressed that more National Associations should subscribe to these Publications and distribute them among their members. It was also suggested that there should be done an E-mail version of the CMI-Newsletter in order to save mailing costs and speed distribution within the member's countries. The Executive Council will have to solve the issue of fees before such a E-mail version could be offered.

9. Various

F. Wiswall reported on the registration of CMI at the United Nations, where CMI enjoys "consultative status". P. Griggs referred to his letter to the Presidents of the National Associations regarding the steps taken in relation to the discussions held on the "Future of CMI".

UNIFORMITY OF THE LAW OF CARRIAGE OF GOODS BY SEA

At the Centenary Conference in Antwerp it was decided to complete the work on the basis of the terms of reference given to the International Sub-Committee. It was also decided that, whenever changes to the existing rules were deemed advisable, texts should be drafted.

Pursuant to that decision, and to the subsequent instructions of the Executive Council, the Working Group prepared a draft report in which it tried to summarise the views expressed during the four sessions of the International Sub-Committee and in particular those that appeared to be supported by the majority of the delegates and, also, included some texts. This document was circulated to the National Associations as an annex to a letter of the Chairman of the International Sub-Committee dated 27th January 1998.

Comments have been received from the Associations of Argentina, Australia and New Zealand, Denmark, Germany, Japan and the United Kingdom. These comments have been incorporated in the draft report circulated to all National Associations.

The Assembly of the CMI held on 15th May 1998 decided that a further session should be held in London on Monday 9 and Tuesday 10 November 1998. The meeting will be held at the offices of Richards Butler, (Beaufort House, 15 St. Botolph Street, London EC3A 7EE, Tel. 171-2476555, Fax 171-2475091) in the Dome Room and will commence Monday 9 November at 9:30 hours.

The report should then be the subject of further consideration when the study on issues of transport law, which has just started, will have reached a stage at which it will be possible to establish whether and to which extent the solution of such issues may influence the liability regime.

ISSUES OF TRANSPORT LAW

The International Working Group agreed at its first meeting on 11th May 1998 that, as an initial step, each member would prepare a preliminary study of one aspect of the work. These studies have been substantially completed. They will be reviewed at the Working Group's next meeting on 22nd October 1998, when the Working Group will consider how its work should be progressed.

CMI PUBLICATIONS

Newsletter and Yearbook

In his report to the CMI Assembly held on 15 May 1998 the Editor of the CMI publication, Prof. Berlingieri, indicated that the present charge for the subscription to the Newsletter and the Yearbook was so low that the CMI was compelled to subsidize over 70% of the cost of the publications. Two different alternatives were considered, one according to which the charge should be such as to cover entirely the cost of the publications and the other according to which the CMI should continue to subsidize a part of the cost, but not in excess of 25% of the global cost.

This latter alternative was approved by the Assembly and as a consequence the charge of the publications commencing from 1st January 1999 will be as follows:

- | | | |
|---|-------------------|----------|
| 1. For the subscription of 1 to 20 copies: | USD 12 or BEF 450 | per copy |
| 2. For the subscription of additional copies: | | |
| a) from 21 to 100 copies: | USD 9 or BEF 340 | per copy |
| b) from 101 to 200 copies: | USD 8 or BEF 300 | per copy |
| c) any additional copy in excess of 200: | USD 6 or BEF 225 | per copy |

The subscription charge does not include the mailing cost, an estimate of which may be obtained from the Editor of the CMI Publications, Prof. Francesco Berlingieri, Via Roma 10, 16121 Genoa, Italy - Tel. 010-586441 - Fax 010-594805 - E-mail dirmar@tn.village.it.

Travaux Préparatoires

The Travaux Préparatoires of the 1924 Bills of Lading Convention, as amended by the 1958 and the 1979 Protocols (Hague-Visby Rules) and the Travaux Préparatoires of the 1910 Collision Convention and of the 1952 Arrest Convention may be purchased at the CMI Secretariat for a global price of 4,200 Belgian Francs including the CD-Rom.

NEWS FROM THE NATIONAL ASSOCIATIONS

NEWS FROM THE ITALIAN MARITIME LAW ASSOCIATION

The Italian Maritime Law Association is sponsoring the Centenary Symposium of the Journal *Il Diritto Marittimo* edited by Prof. Francesco Berlingieri.

The Symposium will take place in Genoa on Friday 22 and Saturday 23 January, 1999 and the subject will be: "One hundred years of work for the unification of maritime law". The panellists will include Ignacio Arroyo, Francesco Berlingieri, Pierre Bonassies, Patrick Griggs, Rolf Herber, Lord Lloyd of Berwick, Martine Rémond-Gouilloud, Alexander von Ziegler and Frank Wiswall.

NEWS FROM THE SPANISH MARITIME LAW ASSOCIATION

International Conference on Arbitration and Maritime Law, Barcelona, 24–28 June 1998.

Speech of the President of the CMI, Patrick Griggs

I am told by President Alcantara that there are 150 speakers and delegates here in Barcelona for this conference, organized by the Spanish Maritime Law Association jointly with the Spanish Association of Maritime Arbitrators (IMARCO) and the Barcelona Arbitration Court "Consulat de Mar". How is it that the subject of maritime arbitration can attract so many lawyers and non-lawyers from behind their desks in 31 countries to come to Barcelona at the end of June? One answer may be that the end of June is a rather special time of the year to be in Barcelona. You may want to catch up with old friends in the maritime law field. The most likely explanation is that, maritime arbitration and dispute resolution are an important part of your business. Whatever your reason for being here I'm delighted to welcome you to this conference.

What is Maritime Arbitration and why is it so interesting and important to all of us? If the organisers of this conference had changed the topic to "Court Procedures in Civil Disputes" the chances are that the list of delegates would be extremely short. Only lawyers are interested in the procedure in their own Courts. Arbitration, therefore, has a much more universal appeal and I ask myself why that should be.

One essential element is that if you seek to resolve disputes by submitting the matter to a court you are surrendering control to a procedure which, in the case of an international dispute, is alien to at least one of the parties. One party will probably be surrendering jurisdiction in circumstances when they would rather not do so.

Why is arbitration different? Indeed is it different? In *Robertson's History of Arbitration* it is stated that: "Honest men dread arbitration more than they dread lawsuits".

That may once have been the situation but I dare to suggest that it is no longer the case. For the essence of arbitration is that a dispute is being referred on a voluntary basis by the parties to a tribunal of their own choosing. My assumption is (though I have no authority for this) that people have been submitting their disputes to forms of arbitration for longer than they have been submitting to Court for judgment. Many of you will know the story in the Bible of the so called Judgment of Solomon. When faced with two women arguing over their rights to a child, Solomon called for a sword and suggested that the child should be divided in two as a way of resolving the dispute. This quickly established who was the true mother. Was this the first example of ADR?

Let me offer you another explanation why arbitration is popular. Our last but one Prime Minister, Maggie Thatcher, was a great advocate of private enterprise. She felt that there were certain services which are better provided by private enterprise than by the state. The arbitration services offered in so many centres around the world are good examples of private enterprise, offering an alternative to state funded court proceedings.

There is a general feeling that something which is run by the people for the people is likely to be more efficient and to give better value for money than something which is organised by the state and funded by the tax payer. This brings me to the present international state of this essentially privatised business.

Arbitration in England, when I started in the City of London 40 years ago, was generally a simple affair. If a dispute arose between two parties to a shipping contract they would choose an individual, whom they both respected, to look at the papers and resolve the argument that had arisen. The UK government had felt it necessary in 1950 to lay down basic ground rules in the form of the 1950 Arbitration Act. This Act determined the extent to which the conduct and decisions of Arbitrators were subject to review by the Courts. Where disputes were more complex the parties might take the opinion of a solicitor or barrister and use his arguments in their submissions to the arbitrator. The solicitor or barrister would be very unlikely to appear before the arbitrator. Oral hearings were rare.

From simple beginnings has developed an industry and we now have a new and elaborate Arbitration Act 1996 which has further reduced the role of the Courts. There are cost penalties in all this. What was once a cheap and quick method of resolving a dispute has now, in many cases, become an elaborate and expensive determination of the issues by a quasi-judicial body involving solicitors, barristers, pleadings, discovery of documents and oral hearings. To be fair, England has followed other arbitration jurisdictions in seeking to devise a quick cheap form of arbitration for use in disputes where the amount at stake does not justify a full blown commercial arbitration. I'm not sure how popular that is – cheap and quick can be wrong and frustrating. Striking a balance is all important.

I hope that during our discussions here in Barcelona we will find some time to ask ourselves whether the current arbitration services in whatever country and whether they be institutionalised (as for example ICC) or ad hoc under some set of agreed rules, still serve the needs of our clients. Charles Dickens, to my mind the best writer in the English language after Shakespeare, pointed out in *Bleak House*, his famous book about interminable litigation, that lawyers have the ability to take a simple matter and complicate it thus ensuring a continuing demand for their services. Maybe that is a little too close to the truth for comfort.

I very much look forward to our discussions between now and the end of the week but whilst we each promote (or defend) the system of arbitration offered in our own country, let us remember that arbitration should not be designed for the benefit of lawyers; but for the benefit of the clients.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM UNIDROIT

Unidroit on Internet

The Unidroit News Bulletin has been replaced by an electronic newsletter, available on the Unidroit Internet World Wide Web site, entirely bilingual in French and English at <<http://www.unidroit.org>>. It comprises one home page and seven main pages introducing the following sections:

- *Presentation of Unidroit*, providing general information on the Institute: its purpose, membership, current work programme - its scientific activities as well as those associated with the unification of law - and a list of past achievements;
- *Unidroit News*, providing information on the current activities of Unidroit;
- *Unidroit Conventions*, providing the texts of six Unidroit Conventions: International Convention on Travel Contracts (Brussels, 1970); Convention providing a Uniform Law on the Form of an International Will (Washington, 1973); Convention on Agency in the International Sale of Goods (Geneva, 1983); Unidroit Convention on International Financial Leasing (Ottawa, 1988); Unidroit Convention on International Factoring (Ottawa, 1998); Unidroit Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995);
- *Implementation of Conventions drawn up by Unidroit and approved at diplomatic conferences convened by member States of Unidroit*, containing up to date charts of ratification of (and accessions to) those Conventions;
- *Unidroit Principles of International Commercial Contracts*, containing a brief presentation of the Unidroit Principles, the complete version of the Unidroit Principles (black letter rules and comments), a select bibliography, the Questionnaire on the Unidroit Principles prepared by the Secretariat and a first report on the replies received;
- *Unidroit Publications*, providing a catalogue of all Unidroit publications: the new *Uniform Law Review* (including a presentation of the Review, the table of contents and the leading article of each issue); *Unidroit Proceedings and Papers* (including the table of contents as of 1996); the *Digest of Legal Activities of International Organisations*, the acts and proceedings of Unidroit Congresses and of diplomatic conferences for the adoption of Unidroit conventions; the *Unidroit Principles of International Commercial Contracts*; the *Unidroit Guide to International Master Franchise Arrangements*;
- *Unidroit Library*, providing a brief overview of the collection and facilities.

RATIFICATION OF INTERNATIONAL CONVENTIONS

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

- **International Convention on Salvage, 1989**
Australia: 8 January 1997
Guyana: 10 December 1997
Netherlands: 10 December 1997
- **Convention on Limitation of Liability for Maritime Claims, 1976**
Ireland (a): 24 February 1998
Turkey (a): 24 March 1998
- **Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976**
Reference to the ratification of this Protocol by Australia, Guyana and Netherlands made in Newsletter no. 2/98 at p. 12 is due to an error. As of today, this Protocol does not appear to have been ratified by any State.

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 4 - 1998

COMITE MARITIME INTERNATIONAL

QUARTERLY

BULLETIN TRIMESTRIEL

This Issue Contains:

News from the CMI

- Minutes of the meeting of the Executive Council held in London on 7th November 1998
- Speech of Patrick J. S. Griggs to the Hong Kong Shipowners Association and the Singapore Shipping Association
- Issues of Transport Law
- Offshore Units
- Time Charter Interpretation Code
- CMI Handbook of Maritime Conventions

News from the National Associations

- Seminar at Margarita Island, Venezuela

News from Intergovernmental and International Organizations

- News from IMO - Seventy-eight Session of the IMO Legal Committee
- News from IOPC Fund - Meetings of IOPC Fund
- News from the International Tribunal for the Law of the Sea
 - Entry into force of the Relationship Agreement with the United Nations
 - Level of costs likely to be involved in bringing cases before the International Tribunal
- News from FONASBA

Ratification of International Conventions

NEWS FROM THE CMI

MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL
17TH NOVEMBER 1998

Attending

President:	Patrick GRIGGS
Vice-Presidents:	Hisashi TANIKAWA Frank L. WISWALL, Jr.
Councillors:	David ANGUS Luis COVA ARRIA Karl-Johan GOMBRII Eric JAPIKSE Thomas REMÉ Jean-Serge ROHART Ron SALTER Panayotis SOTIROPOULOS
Secretary General:	Alexander VON ZIEGLER
Treasurer:	Paul GOEMANS
Administrator:	Leo DELWAIDE
Assistant Administrator:	Pascale STERCKX
Past President:	Allan PHILIP
Publication Officer:	Francesco BERLINGIERI

The Executive Council met in London on 7th November 1998, 09.00 am. The meeting was closed at 4.00 pm. Patrick Griggs, President of CMI, opened the Executive Council session and received the approval from the meeting to proceed pursuant to the agenda submitted to the Executive Council prior to the meeting. The President asked that thanks to Clyde & Co be recorded for making available their conference room at short notice for the meeting.

1. Approval of the Minutes of the Executive Council meeting held in London on May 14th 1998

The Minutes of the Executive Council meeting held in London were approved by the Council.

2. To note the Minutes of the Assembly meeting held in London on May 15th 1998

On the question of the publishing of the Minutes P. Griggs, Alexander von Ziegler and F. Berlingieri will discuss a way of avoiding duplication of information when both Minutes of the Executive Council and the Assembly are reproduced in the Newsletter.

3. Finances

P. Griggs asked P. Goemans to explain the current status of the CMI finances.

a) Accounts

P. Goemans reported on the difficulties encountered in invoicing the contributions 1998. He submitted financial figures showing total receipts of £132,123.00 and expenses of £113,382.10, leaving at Nov. 98 a net increase of assets since January 1998 of £18,740.

Regarding the continuing discussion with Mr. D. van Riel regarding his Centenary Conference bonus it was decided to round up the bonus from BF 135,000 to BF 200,000 on condition that the balance is returned to CMI by end of the year.

For future Conferences the amounts to be retained by the organisers must be negotiated in advance.

b) Contributions

i) 1998; Status

A table prepared by the Assistant Administrator Ms. P. Sterckx, lists the contributions of 1998 indicating the date of invoicing and payment.

ii) 1999; Prospects

The President referred to the changes in contribution for 1999, including the one off 5% increase accepted by some Associations and the 3 % increase for all others.

iii) Action on non-payment

In relation to non-payment of dues the President suggested that Art. 21 of the Constitution should be enforced in conjunction with Art. 7 enabling the Assembly to terminate membership. The President will send a letter to the MLAS concerned (cc to Titulary Members) and notice of this action will be given in the next Newsletter.

4. The Future of CMI

The President turned to the subject of the future of CMI.

First he reported on the continuing successful co-operation with IMO and other International Organisations. The contribution of CMI is valued and welcomed.

The volume of responses to Questionnaires has improved.

Some criticisms had been received from the Canadian MLA. These were discussed point by point by the council and the President confirmed he had responded to the CMLA.

5. Nominating Committee; Impending Vacancies on the Executive Council; Geographical Balance

W.R.A. Birch Reynardson had indicated to the President that he intends to resign as Chairman of the Nominating Committee. N. Frawley, Canada, was selected to replace him, subject to his acceptance. The President will write to him.

It should be made clear by the Nominating Committee to the National Maritime Law Associations that they may nominate individuals even where the retiring Executive Councillor is eligible for a further term.

6. Next meetings of Executive Council and Assembly

6th May 1999: Meeting of the Executive Council (New York)

8th May 1999: Assembly (New York)

12/13th November 1999: Meeting of the Executive Council (London)

12th May 2000: Executive Council (London)

13th May 2000: Assembly (London)

7. Singapore 2001

The President visited Singapore in September this year and discussed with the President of the MLA of Singapore (C. Arul) the support which the Association needed from the Singapore Shipping Association if they were to host the Conference in 2001. He has received the assurance that this support is in place. The Conference will take place in February 2001. It is planned to fix it in the last week in February.

8. Publications

a) *Marketing of CMI Publications; Flyer*

The Secretary General reported on the progress relating to the Flyer for the "Travaux Préparatoires". He together with P. Griggs and F. Berlingieri, will complete the text and send it to Lloyd's for distribution. F. Wiswall distributed copies of the Handbook of Maritime Conventions which will be sold through Matthew Bender. The Council thanked F. Wiswall for his substantial work leading to the completion of this publication.

b) *Financing of Publications*

The President reported that the reviewed charges for publications (involving 25% subsidy from central funds) would come into force in 1999.

c) *CMI Archives*

The idea is first to prepare an inventory of the CMI archives, bring the documents under one roof and then scan them onto a CD Rom. P. Griggs will try to find a place in London for the archives; L. Delwaide will find an individual who could assist in cataloguing the archive documents in Antwerp.

d) *CMI and the Internet; Proposal to create Website for Newsletter etc.*

F. Berlingieri submitted the proposal to publish the Newsletter and part I and III of the Year Book via Internet/Website. The rest of the Yearbook would for the time being be published in hard copy. In this context the Website could be split in parts openly accessible and others accessible only with keys.

It was decided to establish a Website but to wait for the change of the mode of publication from paper to homepage until this has been properly investigated and the MLAS have been consulted. The matter will be put on the agenda for the 1999 Assembly.

The President will write to the MLAS who requested publication by Internet advising of the latest position.

e) *CMI Brochure*

The President reported that no progress had been made with this project which might, in any event, be overtaken by the proposed Website.

9. Work in Progress

a) *Uniformity of the law relating to maritime transport*

Francesco Berlingieri reported on the preparations for the International Subcommittee meeting scheduled for November 9th/10th 1998. It appears that some delegations will object to the plan of discussing actual wordings as was directed by the Assembly. It was decided to strive for a foundation document, recording the current status of consensus and disagreement among the MLAS, to form the basics for further work at the time when this subject is taken in the context of the wider review of transport law. The President asked to record CMI's thanks for the extraordinary work of F. Berlingieri.

It was agreed that publicity should be given to the work being undertaken by CMI in conjunction with UNCITRAL on the wider issues of transport law.

The President concluded by restating the Role of the Steering Committee.

b) *Classification Societies*

F. Wiswall advised on the current status in negotiating the figures for limitation amounts to be included in the standard conditions drafted by the CMI. Both ICS and IATA should be told that we expect an agreement very shortly.

c) *Off-shore structures*

Hisashi Tanikawa reported on the outcome of IMO Legal Committee meeting. National delegations have received the CMI report and will discuss further action at the next Legal Committee meeting in April '99. The USMLA as well as IADC have expressed opposition to the project and they consider that there is no need for any new convention. There remain different views on the scope of the project. The President thanked R. Shaw and his International Sub-Committee for the work done.

d) *IMO - 78th Session of Legal Committee*

The President submitted his written report which will appear in the CMI Newsletter. The question of compelling need for any of those Conventions has not been addressed by the Legal Committee.

e) *Maritime Safety*

The President reported on moves amongst European Governments to make quality of ships the responsibility of other interests like cargo owners insurers and finance providers. He warned on the dangers of this development.

f) *Salvage Convention; UNESCO Convention; Underwater Cultural Heritage*

The International Working Group on Salvage is now looking at the impact of the UNESCO project on Underwater Cultural Heritage. One solution could be a protocol to the Salvage Convention. Progress with this draft will be monitored and action taken as necessary.

g) *IMAO*

The Secretary General reported on the outcome of his meetings with ICC and on the response received to his

Questionnaire: There appeared to be a number of options:

- i) change to an ad hoc System reducing involvement of Secretariat to bare minimum (will not be accepted by ICC)
- ii) CMI Arbitration (No, administration / commercial image)
- iii) marketing (No, since IMAO currently not saleable)
- iv) Suspend IMAO (No, legally not possible)
- v) do nothing and allow IMAO to die a natural death.

Even if we make radical change we have to face the fact that contracts exist which contain an IMAO arbitration clause under the current system.

The Council concluded that option (v) was appropriate. There was very little evidence to suggest that re-packaging would work and little scope for a separate CMI ad hoc arbitration system.

h) Euro Section

The President reported that he has asked the President of the Belgian MLA to identify a member in Brussels who could monitor EU activities and report to CMI.

i) International Interest in Mobile Equipment

The CMI has been invited to send an observer to an Intergovernmental Conference organised by UNIDROIT and to be held between February 1st–12th 1999. It was agreed that CMI would not attend but that a letter would be written to UNIDROIT objecting to the inclusion of „registered ships“ in the draft Convention.

j) Athens Convention 1974: Review

Panayotis Sotiropoulos reported on the status of replies to his Questionnaire.

Only a minority suggested an increase of the limit. The majority is against the introduction of strict liability. Regarding direct action against insurers there is a majority for the introduction of such a right; there is a majority against a personal accident insurance system.

In this context the President asked for views on the way we could increase the number of responses to the CMI questionnaires. It was agreed that financial assistance with research might be made available through the CMI Charitable Trust.

k) Arrest Convention

F. Berlingieri referred to the CMI position paper. There are some nations which are expected to object to the draft. F. Berlingieri was asked to present the CMI position during the Diplomatic Conference based upon the position paper which had already been lodged with UNCTAD.

l) Issues of Marine Insurance

Karl Gombrii and the President reported on the outcome of the Oslo Colloquium. An International Working Group will organise a comparative study of national law on selected topics with the aim of offering eventually some assistance to governments wanting to change their law by way of preferred solutions.

The issues to be studied will be selected from the Presidents summing-up at the Colloquium.

m) FONASBA: Time Charter Interpretation Code

J.S. Rohart reported on the work done within FONASBA on the interpretation of often disputed Charterparty terms. The goal is to have a Code of Interpretation for judges or practitioners rather than model clauses. The outcome of this project is not clear yet.

n) Piracy

Frank Wiswall referred to his reports on the initial work of this Joint International Working Group on Uniformity of the Law of Piracy.

A Model Law with a system of reporting crimes will aim to unify the treatment of cases of piracy. Prof. Menafee is currently drafting a text. F. Wiswall was asked to ensure that this group investigates the likely effects of international efforts against piracy.

o) LLMC 1976: Implementation

F. Berlingieri has received interesting replies which show the different methods of implementation and the enactment of procedural provisions. They bring to light some widely differing solutions to problems arising from the text of the Convention. A possible product is a guideline for the implementation of the LMC 1976.

10. Various

a) New and revived associations; Latvia, Hong Kong

Latvia's application to join CMI will be dealt with at the 1999 Assembly. The Council will recommend acceptance.

The Hong Kong Association is back on its feet and growing fast.

b) Legal and tax status of CMI

Leo Delwaide will come back to the Council responding on the question of the formalities relating to the tax and legal status of CMI.

c) Titulary and provisional members; new rules, consultation exercise

F. Wiswall introduced the slightly revised text of the proposal for the amendment of Art. 3 of the Constitution.

F. Wiswall was asked to organise the circulation of that document to all National Associations well in advance of the 1999 Assembly.

d) Unrepresentative MLAS. How to tackle

It was decided to break down the world into regions and appoint a responsible Councillor to investigate the membership structure of the MLAS and their activities.

e) IMLI and CMI

CMI continues to supply lecturers to IMLI with the CMI Charitable Trust funding travel expenses. This year the Trust made a substantial donation towards the support of students.

f) Travel expenses and subsistence

The President presented a paper containing guidelines on recoverable expenses. This document was welcomed as clarifying the position on expenses.

g) Distribution of working documents to Executive Council members

An effort will be made to be selective in what is sent out.

h) Centre for Seafarers' Rights.

Ron Salter will investigate into the request made by the Centre for Seafarers' Rights and report back. This relates to ways of ensuring that the rights of Seafarers to be repatriated are recognised and accepted by Charterers, Cargo Owners, Banks etc.

i) US COGSA.

The Council agreed that the CMI could not get directly involved in the discussion regarding the draft US COGSA. It was agreed that the CMI's role was to work towards harmonisation of international maritime law but it could not interfere with the legislative process of member states.

**SPEECH OF PATRICK J. S. GRIGGS, PRESIDENT OF THE CMI TO HONG KONG
SHIPOWNERS ASSOCIATION SEPTEMBER 24TH 1998 AND TO SINGAPORE SHIPPING
ASSOCIATION, SEPTEMBER 28TH 1998**

History, Role and current work of the CMI

The Comité Maritime International was founded in Belgium in 1897. The Founders of the Comité stated that the aim of the Organisation was to take the initiative in the international unification of maritime law. In defining its method of work the founders of the Comité stated that no maritime law should be promulgated which did not have input from shipowners, merchants, underwriters, average adjusters, bankers and other persons interested in maritime trade. Once those in the trade had expressed their views it was then the duty of the maritime lawyers to determine what the consensus was and devise an instrument which would achieve uniformity.

The CMI recommended and encouraged the creation of National Maritime Law Associations in the maritime nations and it is these National Maritime Law Associations which are the constituent members of the CMI. Over the years membership of the CMI has fluctuated but National MLAs from 55 different states are now affiliated to the CMI.

The CMI's method of work has always been much the same. The subject is identified, a small International Working Group is appointed by the Executive Council to work on the project. This IWG produces a Questionnaire which is circulated to all member Associations seeking advice on the national law regarding the topic under examination. From the responses received the IWG will prepare a draft instrument and an International Sub-Committee will be set up and will hold a series of meetings to which every national MLA is invited to send a representative. Ultimately the work of the International Sub-Committee, in the form of a draft convention or code, will be debated at a full CMI Conference and a final text will be produced.

In the early years of its existence it was recognised that a text devised by a group of maritime lawyers, however distinguished, would carry little weight. The Belgian government was approached and agreed to organise and host Diplomatic Conferences at which the governments of all maritime nations would be represented and a final text of the instrument would be approved. It would then be the responsibility of the governments represented at the Diplomatic Conference to take the approved text back to their own country and incorporate it in their own domestic law.

This system accounts for the fact that in the early part of this century most of the maritime law conventions bear the prefix "Brussels".

Amongst these early CMI Conventions can be found the Salvage and Collision Conventions 1910, the Limitation Conventions of 1924 & 1957 the Hague Rules of 1924 the Hague/Visby Rules of 1957 and the Arrest Convention of 1952 to mention but a few.

Following the creation of the IMO in 1948 and the formation of its Legal Committee in 1967 in the wake of the Torrey Canyon disaster, the primary responsibility for private international maritime law conventions was assumed by the IMO. However the CMI has continued to produce preliminary drafts of conventions (see for example the latest Arrest Convention which is due to go to a Diplomatic Conference in Geneva in March 1999 and is based on a draft finalised by the CMI at its Lisbon Conference in 1985).

In addition to its drafting role the CMI continues to act as a consultant to the IMO Legal Committee and also works with other intergovernmental agencies such as UNCITRAL, UNCTAD and UNIDROIT on harmonisation of international maritime law.

The CMI continues to take the initiative in a number of areas which are not covered by other international bodies. CMI is currently working on standard conditions and principles of conduct for Classification Societies, Offshore Structures, Issues of Marine Insurance, Piracy, further revision of the York-Antwerp Rules on General Average and a major project to consider wider Issues of Transport Law other than those already covered by existing conventions.

With emphasis at a intergovernmental level turning more towards implementation of existing Conventions rather than creation of new ones the CMI is conducting its own review of a number of existing Conventions which have not attracted a significant number of ratifications. The current target Convention is the 1976 Limitation Convention. National MLA's have all received a questionnaire as part of this exercise.

The CMI has therefore an important role to play at the start of the second 100 years of its existence. This work can only be successfully achieved if member National Maritime Law Associations respond to the Questionnaires which the CMI issues. It is vital that any document which the CMI produces or advice which it gives, to those who consult it, is based on a broad knowledge of existing national laws.

Current work of the CMI.

Enough of history – I am sure you would like to hear what is in the pipeline in relation to uniformity of international maritime law. After all, every international convention or code is almost bound to add further complications to the life of ship owners, operators and insurers.

At a diplomatic conference held at the IMO in 1996 the final touches were put to a new convention to deal with issues of liability, compensation and limitation in relation to claims for damage caused by the escape of Hazardous and Noxious Substances from ships. This will make up to 250m SDR (approximately US\$330M) available to the victims of an HNS disaster. More importantly the limit for even the smallest chemical carrier will be 10m SDR (equivalent of US\$13M). Increased insurance cover will be needed by shipowners.

This convention follows the structure of the CLC 1969 and Fund 1971 Conventions in that the shipowner is responsible up to a limit dictated by the tonnage of his vessel and any claims exceeding that limit will be paid out of a fund levied on those who import HNS cargo. The compensation scheme is thus funded jointly by the owners/operators of ships and those who own the cargo which they carry.

This is an exceptionally complex Convention and because of the complicated system which will need to be set up to create the industry's fund there will need to be close cooperation between ratifying states to work out the best way to incorporate the convention into domestic legislation.

The HNS Convention will not come into force internationally until 12 States with substantial fleets and substantial imports of HNS cargoes have ratified.

It is likely to be some time before this Convention receives the necessary number of ratifications to bring it into force internationally. For what it is worth the UK government has already passed primary legislation which will enable them to bring this Convention into force at the appropriate time simply by publication of a Statutory Instrument.

At the same IMO Diplomatic Conference in London in 1996 a Protocol to the 1976 Limitation of Liability Convention was agreed.

Those of you in the shipowning and insurance business will want to know how this will effect your exposure to third party claims if the Protocol is ratified and comes into force. You should remember that the right of a shipowner to limit is generally determined by the law applicable in the country where the accident occurs not by the law of the flag. What the flag state does about the Protocol will generally be irrelevant.

To start with it will be worth noting that the minimum limitation fund for the smallest type of vessel for loss of life, personal injury and property damage claim will be 3m SDR (equivalent of US\$ 4m). For the small vessel owner this will in fact represent a 6 fold increase in exposure to claims when compared with the position under the 1976 Convention. Those of you involved in the passenger trade and concerned about the global liability funds for passenger claims under the 1976 Limitation Convention may be a little concerned to hear that the 1996 Protocol increases the global liability in respect of claims to a figure calculated by multiplying 175,000 SDR (equivalent to US\$230,000) by the number of passengers which the ship is authorised to carry. Article 7 of the 1976 LLMC which contains this provision also contains a ceiling setting the maximum liability for passenger claims at 25m SDR (equivalent to US\$33M). This cap will now be removed and if your cruise liner carries 1,000 passengers, the maximum exposure for which you will need insurance would increase to 175m SDR (equivalent to US\$230M).

In this context passenger claims are more commonly dealt with under the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974. This will continue to be the case in countries which have adopted that Convention. Limitation under the Athens Convention is on a per passenger basis rather than a global basis.

The CMI was strongly represented at the 1996 Diplomatic Conference and was able to offer neutral, practical advice to the government delegates attending the conference.

Having got the HNS Convention and 1996 Protocol off its desk the Legal Committee of IMO turned to three other matters which had been awaiting attention during the negotiation of the HNS Convention.

These three subjects have now been debated at 4 successive IMO Legal Committee meetings and I would like to bring you up to date.

The first topic became known as Evidence of Financial Responsibility. This was originally a proposal for a

requirement that all shipowners should carry evidence of adequate third party liability insurance to meet all likely claims. Not only would shipowners require to be insured but they would also need to carry a certificate from the flag state confirming that the insurance was placed with a financially sound insurance company. A more disturbing feature of this original proposal from the point of view of liability insurers was that the claimant should have a direct cause of action against the insurer and it would not therefore be necessary for him to sue first the shipowner in order to recover.

There was a strong resistance from the International Group of P&I Clubs to this whole project. The Clubs insisted that all reputable shipowners were entered with P&I Clubs or had other adequate insurance arrangements and they challenged the governments who had proposed this scheme to identify a single case in which claims were not paid solely by reason of lack of insurance cover.

Such was the opposition to this scheme that the Chairman of the Legal Committee suggested an alternative and less ambitious scheme. This would require the operators of passenger ships to carry evidence of third party liability insurance. Liability insurers and the International Chamber of Shipping remain opposed to the scheme but find it more acceptable than the wider scheme previously explained.

In an effort to find a solution acceptable to all parties the CMI at the last meeting of the Legal Committee suggested an alternative scheme whereby the owners of passenger carrying vessels would buy personal accident insurance for each passenger. It is envisaged that shipowners would buy a block policy and, with the authority of the insurers, issue a certificate of insurance together with the ticket issued to each passenger. This would put the passenger in a direct contractual relationship with the insurer and would get round the Club's objection to a claimant having direct access to liability underwriters.

The CMI is currently working with insurers to devise a scheme and the matter will be debated at the next Legal Committee meeting in October this year.

The other projects receiving attention by the IMO Legal Committee are a draft convention to deal with problems of wreck removal and a draft convention to deal with issues of liability and compensation for pollution from ship bunkers.

As regards the wreck removal convention this is a scheme sponsored by the Dutch and German governments who are particularly plagued by wrecks in areas just outside their territorial waters which, nonetheless, affect access to their ports and may cause problems of pollution. The Convention, as currently drafted, will therefore give governments extra-territorial rights to direct owners to remove wrecks. As drafted, a state which may decide to ratify the Convention, may opt to apply the same rules to wrecks within their own territorial waters as well as outside. There has been an indication from a number of delegates to the Legal Committee of IMO that their governments might choose this option in order to tidy up their own domestic wreck removal law.

The final project in hand relates to bunker pollution. As you may be aware neither the CLC nor the HNS Convention deal with oil pollution arising from bunker spills. In relation to the CLC and Fund regime the reason for this is that responsibility for bunker spills is exclusively that of shipowners and there would be no basis upon which the industry based Fund could be asked to contribute to compensation payable in relation to the escape of the shipowner's bunkers.

As the International Group of P&I Clubs has pointed out at regular intervals, all bunker spills are covered by a P&I Club entry and claims are, traditionally, paid. A number of delegates to the IMO Legal Committee meetings have responded, however, that if these claims are paid in practice there should be no reason why a legal obligation to pay should not be incorporated in a widely adopted convention. I cannot tell you how this draft convention is likely to develop. But it is regarded by IMO as the least urgent of the three projects in hand.

Let me finally tell you about two of the major projects on which the CMI is currently taking the initiative.

The CMI has for some time been concerned at the proliferation of different national and regional laws relating to liability for the Carriage of Goods by Sea. With the Hague and subsequent Hague-Visby Rules a degree of uniformity had been achieved. Since then we have the Hamburg Rules which have been adopted by approximately 22 countries and a number of regional solutions in, for example, Scandinavia and Australia/New Zealand. The US is currently trying to pass a COGSA bill through Congress. This will be yet another variation on the theme.

The CMI in conjunction with UNCITRAL is now embarking upon an extensive review of all aspects of the Carriage of Goods by Sea. It is hoped that at some distant future date it might be possible to create a new comprehensive convention which would deal with all aspects of the transportation of goods with a new liability regime tailored to suit.

Additionally the CMI is now tackling a number of issues of marine insurance which are creating problems in various marine insurance markets.

For many years now there has been widespread dissatisfaction with the law relating to the obligation of the assured to disclose information to the underwriter at the time of taking out the insurance policy. Equally, many owners are distressed by the harsh effect of the breach of a warranty contained in the policy. Whether the breach causes the loss or not the insured may have his claim turned down because of the breach.

These and other issues will be the subject of an international study. The hope is that it might be possible to design some guidelines so that those responsible for drafting and amending marine insurance legislation may have a set of guidelines for finding their own solutions to the various identified problems. This is more about harmonisation than uniformity.

I have now said enough to demonstrate that the CMI both in its independent role and in its role as expert adviser to the UN agencies has an enormous amount to contribute. We have no axe to grind and the advice which we give is based on a careful analysis of the law on the subject under discussion in the member states. You cannot have satisfactory international legislation unless it is firmly based on an analysis of the relevant law in a substantial number of countries. That has been the CMI's method of work since its inception. It is a method that

has stood the test of time and will, I hope, carry us through the second 100 years of our existence.

May I close by emphasising the importance of your local Maritime Law Association. Not only does it have a domestic role in advising your administration on maritime legislation but it also has an important international role in responding to questionnaires which the CMI puts out in an endeavour to identify the law and practice in a particular geographical area. Please support it and thereby support the CMI and contribute to the production of workable, practical, uniform maritime law.

ISSUES OF TRANSPORT LAW - REPORT FROM THE CHAIRMAN OF THE INTERNATIONAL WORKING GROUP

The International Working Group held its second meeting in London on 22nd October 1998. Prior to this meeting each member of the Working Group had prepared a preliminary study of one of the topics referred to in Section III of the Report of the Steering Committee dated 29th April 1998.

Interfaces between Carriage of Goods and Sales of Goods

Mr. Beare's paper reviewed:

- I. The provisions of the Vienna Sales Convention which apply to contracts of sale involving the international carriage of goods by sea;
- II. Incoterms applying to contracts for the sale of goods on shipment terms;
- III. The Uniform Customs and Practice for Documentary Credits, 1993 Revision, (UCP 500); and
- IV. Provisions in some standard forms of contract for the sale of goods which exclude the application of the Vienna Sales Convention and which do not incorporate Incoterms.

The paper went on to consider how these provisions were reflected in the contract of carriage and the transport documents. The paper reviewed in outline the formation of contracts of carriage and the extent to which the form and contents of the transport document met the requirements of the contract of sale. The paper considered the effect of misstatements in the transport document and letters of indemnity in respect of such misstatements. Finally the paper dealt with delivery of goods by the carrier and the problems arising from non-availability of the bill of lading.

Relationships within the contract of carriage

Professor Van der Ziel analysed the rights and obligations of the carrier and his contractual counterpart and the extent to which those rights and obligations are transferred through successive bill of lading holders to the ultimate consignee. Mr van der Ziel then posed a number of questions arising out of this analysis which will be developed in his full paper.

Transport documents

Professor Zunarelli's paper examined the function of the transport document as a receipt of the goods by the carrier and as a negotiable document of title. First the paper reviewed the description of the goods to be inserted in the transport document and the effect of qualifications as to the condition and weight or quantity of the goods. Second the paper discussed the meaning of "negotiability" and reviewed different types of transport document, such as "straight" bills of lading, "freight pre-paid" bills of lading, "received for shipment" bills of lading, "switch" bills of lading, combined transport documents and sea waybills. Finally the paper considered arbitration and forum selection clauses in transport documents.

Bankability

Professor Gorton's paper studied the roles of the bank as a provider of trade finance, as a guarantor and in the process of collection of payment for the goods. After reviewing the different types of transport document and the concepts of "negotiability", "transferability", and "document of title", the paper examined the collection process and the rights and liabilities of the parties involved in it, with particular reference to the Uniform Rules for Collection (URC 522). The paper then examined the system of documentary credits (UCP 500) and the bank's respective rights and liabilities. Finally the paper studied the creation of security rights by way of pledge or otherwise, both when a bill of lading is issued and when it is not. The paper briefly reviewed the position in England, the United States, Germany and France, including the effect of the passing of property and the rights of sellers' creditors in these jurisdictions.

Ancillary contracts

Mr. Koronka had written an outline paper which gave an overview of the contractual chain both in the liner/containerised trades and the bulk trades and the ancillary contracts which came into existence in that chain, including contracts for packing/consolidation, forwarding and storage and contracts with Port

Authorities, terminal operators and cargo handling facilities. The paper also considered marine insurance practice in these areas.

Scope of application of international regimes relevant to International Transport Law

Professor Sturley's paper summarised the application and coverage of the carriage of goods by sea regimes (the Hague Rules, the Hague Visby Rules and the Hamburg Rules), the Warsaw Convention, the CMR and the Inter-American Convention on contracts for the International Carriage of Goods by Road, COTIF and CIM, CMN and the Multimodal Convention 1980.

These papers were reviewed at the meeting of the Working Group on 22nd October 1998. The writers of the outline papers will expand them into full study papers before the next meeting. The issues which arise from these study papers will be analysed and reviewed at the next meeting of the Working Group, which has been fixed for 1st March 1999. It is hoped that it will then be possible to formulate a questionnaire to national associations and that such a questionnaire will be sent out in the Spring of 1999.

In the meantime, of course, if any reader would care to make any observations on the work of the Working Group, as outlined in this report, the Chairman would be pleased to have them.

STUART BEARE

CMI INTERNATIONAL SUBCOMMITTEE ON OFFSHORE UNITS

A meeting of the CMI International Subcommittee on Offshore Units was held at Houston, Texas, on 14-15 October 1998. A full report on the meeting will be published in the CMI Yearbook, 1998.

CMI HANDBOOK OF MARITIME CONVENTIONS

The centenary edition of the CMI Handbook of Maritime Conventions, edited by Dr. Frank Wiswall and published by Matthew Bender, is now available. This new edition, which follows the first edition of 1987, is for the time being only in the English language and consists of five parts. Part I includes all the Brussels Conventions, Part II includes the IMO Conventions, Part III the UN-UNCITRAL Conventions, Part IV the UN-UNCTAD Conventions and, finally, Part V the CMI Rules (York-Antwerp Rules 1994, Draft Rules for the Assessment of Damages in Collision Cases, Principles of Conduct for Classification Societies, Uniform Rules for Seawaybills and CMI Rules for Electronic Bills of Lading).

The Handbook, the cost of which is US\$ 65, can be ordered from Matthew Bender, 1275 Broadway, Albany, New York 12204, USA, tel. 1-518-487-3028, fax 1-518-462-3788 (United States: tel. 1-800-533-1637, fax 1-800-828-8341), E-mail address: <http://www.bender.com>.

Matthew Bender has also produced a CD-ROM containing a CMI Documentation Library with the text of the Handbook of Maritime Conventions and the 1995, 1996 and 1997 CMI Yearbooks which is available at the price of US\$ 200.

NEWS FROM THE NATIONAL ASSOCIATIONS

SEMINAR AT MARGARITA ISLAND, VENEZUELA FROM 6 TO 9 OCTOBER 1999

The Maritime Law Association of Venezuela has organized a Seminar at Margarita Island from 6 to 9 October 1999.

The issues of maritime law which will be discussed at the Seminar include the following, on which papers will be presented by the speakers indicated below:

Los Problemas del Derecho del Transporte (Issues of Transport Law):

- Dr. Alexander Von Ziegler, Secretary General of the CMI
- Prof. Michael Sturley, USA
- Mr. Stuart Beare, England

Intercambio Electronico de datos (Electronic data interchange):

- Mr. Jernej Sekolec, UNCITRAL
- Mr. George F. Chandler II, USA
- Mr. Luis Cova Arria, Venezuela

La Unificación del Derecho de transporte de mercancías por agua (Uniformity of the Law of Carriage of Goods by Sea):

- Prof. José Domingo Ray, Argentina
- Dr. Frank Wiswall, Vice-President of CMI
- Mr. Omar Franco, Venezuela

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

IMO LEGAL COMMITTEE - SEVENTY-EIGHTH SESSION

The Legal Committee held its seventy-eight session at IMO headquarters from 19th to 23rd October 1998 under the chairmanship of Mr. Alfred Popp QC.

The three substantial items on the agenda were:

1. Provision of financial security including an IMO Code recommending standards of security for shipowners responsibilities in respect of maritime claims.
2. Draft Convention on Wreck Removal.
3. Compensation for pollution from ships bunkers.

Provision of Financial Security

The Committee was invited to consider draft articles to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (1974) to require that the owners of ships carrying passengers should carry verifiable insurance or other financial security against claims from passengers. In connection with this subject the Committee considered the following topics:

(i) Form of insurance.

The Committee had before it a paper submitted by the CMI outlining an alternative insurance scheme whereby the owners of a passenger carrying vessel could discharge their obligation to provide insurance cover by purchasing a personal accident insurance open cover under which each passenger carried would be individually insured. The CMI had conducted investigations in the international insurance market and had ascertained that such cover was available. The CMI, in its paper, emphasised the fact that PAI Insurance had several advantages over liability insurance: notably the insurer would have no defences to claims and each claim would be dealt with direct as between the passenger and the personal accident insurer.

The alternative to personal accident insurance (compulsory liability insurance through P&I insurers or other liability insurers) had already been much discussed at earlier meetings of the Legal Committee. In a paper prepared by the Correspondence Group, which was before the Legal Committee, it was proposed that a shipowner should be given the option of providing legal liability cover or personal accident insurance.

A number of observer delegations continued to oppose compulsory liability insurance which would require that passenger claimants should be given the right of pursuing their claims direct against the liability insurer which is quite contrary to the normally understood concepts of liability insurance.

The Committee agreed to continue to consider the two alternative methods of providing cover.

(ii) Basis of liability

Initially there had been a concerted move towards taking this opportunity to amend the Athens Convention to provide for strict liability leaving the shipowner with few if any defences. It was suggested that this would bring the carriage of passengers by sea into line with the carriage of passengers by air. Some delegations were in favour of a two tier liability / limitation regime. There were several variations on this theme namely:

- (a) a first tier based on strict liability up to the limits provided by the 1990 Athens Protocol with a second tier, doubling the limits of the first tier, based upon fault liability but with a reversed burden of proof (i.e. the shipowner being required to disprove negligence).
- (b) a first tier based on strict liability up to the limits provided by the 1990 Athens Protocol and the second tier based on fault liability with a reversed burden of proof and unlimited liability.
- (c) a first tier based on strict liability, excluding the defence of contributory negligence by the passenger, coupled with a second tier where fault liability, would be either unlimited or established in accordance with national law.

The Committee concluded that in the absence of agreement with respect to a particular option the basis of liability in the Athens Convention should remain unchanged so as not to over complicate the proposed changes.

(iii) Limits of Liability

There was general agreement that the current limits of liability provided in the Athens Convention need to be increased. One delegation suggested a limit of 500,000 SDR per passenger for death and personal injury but several other delegations objected that this figure was too high. Discussions on this topic will continue.

(iv) Definition of "Carrier"

Considerable debate took place regarding the obligations of the performing carrier and the contracting carrier under the Athens Convention. This definition is important in determining who shall be responsible for providing compulsory insurance or security. Different considerations would apply depending on whether liability insurance or personal accident insurance was selected. All delegates agreed that the instrument must make it plain who is obliged to provide insurance cover or security.

In a meeting which took place after the conference closed on Monday night a proposal was produced which would require the carrier who actually performs the carriage to maintain insurance or other financial security. It was further proposed that this insurance should cover the liability of both the performing and contracting carrier for personal injuries. The proposed amended article retains the right of the shipowner to take out

personal accident insurance as an alternative to liability insurance with the proviso that the personal accident insurance should be in all respects as favourable to the passenger as a liability insurance policy acceptable under the Convention.

(v) Escape Clause

The so called "Escape Clause" would enable states to make a reservation at any time in respect of obligations of an instrument to the extent such obligations would be in conflict with those of a newer IMO instrument. It was agreed that this was an exceedingly complex issue and that it would need to be discussed further in future.

At the close of discussions on this topic the Correspondence Group was instructed to produce a draft instrument to cover all the agreed proposals for consideration by the Legal Committee at its next meeting in April 1999. Representatives of the CMI have offered their services to the drafting group and will remain actively involved in this project.

IMO Code

It will be recalled that when the subject of financial security was first raised at the Legal Committee the proposal was for a broadly based convention requiring all shipowners to carry third party liability insurance in respect of all types of maritime accident. It was subsequently agreed to deal with passenger claims separately from a wider liability insurance scheme. Because of drafting and other problems the idea of a broadly based compulsory liability insurance scheme has been down graded to a suggested IMO Code which would set out minimum recommended standards to determine shipowners obligations to carry insurance against maritime claims.

This proposal was generally welcomed by shipowners representatives and representatives of the insurance industry but a number of delegations objected that a voluntary code would not solve the problem of the sub-standard owner of the sub-standard ship who would continue not to carry proper insurance with a reputable insurer.

It was recognised that whilst a Code might have some beneficial effect it would not do away with the need for a compulsory provision of financial security in specific instruments such as the proposed amendment to the Athens Convention, the proposed Wreck Removal Convention and a Convention to cover Liability for Bunker Pollution. All these instruments would require a compulsory insurance or financial security article.

Draft Convention on Wreck Removal

CMI was represented during the discussion of this topic by Bent Nielsen, Chairman of the CMI International WRC Sub-Committee. On the eve of the Legal Committee meeting the members of the CMI International Sub-Committee met the Chairman of the IMO Legal Committee Correspondence Group. It had proved possible during that meeting to identify a number of problems with the draft instrument and to contribute suggestions as to how they might be solved.

It will be recalled that, as drafted, this instrument would give states the right to order the removal of a wreck outside territorial waters where it represented a threat either to navigation or to the environment. The instrument was so drafted that any state which did not have an adequate domestic wreck removal law might apply the terms of the Convention to territorial waters as well as waters outside.

In the course of discussions a number of issues were addressed.

(i) Definition of hazard

The instrument gives a state the power to intervene where a "hazard" has arisen. There was lengthy debate regarding the definition of hazard since it was clear that the threat of minor damage due to the presence of a wreck should not trigger the operation of the Convention. The representative of the CMI was in particular concerned that this new Convention should not create a liability regime in respect of coal and other solid bulk cargoes which had been deliberately excluded from the HNS Convention.

Delegates were divided on the crucial question whether "hazard" should be limited to navigational dangers or extended to cover pollution.

(ii) Geographical scope of application.

This topic was the subject of hot debate. It was recognised that the states could not be granted unlimited powers outside their territorial waters and that some geographical limit would need to be set. This could either be the area of the Continental Shelf or the EEZ or equivalent sea area. There was a general feeling that limiting the extraterritorial powers to the EEZ would be a satisfactory solution.

(iii) State liability

This draft article dealt with the liability of a state where damage was caused as a result of a state ordered wreck removal.

The representative of the CMI suggested that issues of this sort should be left to the domestic law of the state involved. This suggestion was welcomed by most delegates and the draft article will now be deleted.

(iv) Contribution from cargo

The issue at stake here was whether, following an order for the removal of wreck, cargo should be required to contribute to the cost of the wreck removal. The representative of the CMI repeated previous statements to the effect that such matters should be left to the law of salvage on the basis that the cargo interest cannot be held responsible in any way for the sinking of the ship and that the law of salvage would, where the cargo was worth anything after being raised, ensure that the person raising the vessel received remuneration for the work undertaken.

(v) *Ships and wrecks*

The debate continued on the definition of a wreck and specifically whether it should include a ship drifting out of control though not stranded. The Correspondence Group was requested to consider this matter further.

(vi) *Time bar*

It was generally accepted that the time limit for claims for compensation for the cost of wreck removal should be three years.

(vii) *Other issues*

A number of further issues, of less significance, were discussed. Of particular interest was the question whether the owner of the wreck should be given the right to select a salvor to carry out the work and whether there should be any restriction on that right.

Elaborate rules contained in the draft Convention relating to the right of a state to auction a wreck were removed on the suggestion of the CMI on the basis that such matters were better regulated by domestic law.

Inevitably the question of financial security came up once more. As drafted the instrument would require shipowners to carry liability insurance against wreck removal claims.

The draft Wreck Removal Convention will come up for further discussions at the meeting of Legal Committee in April 1999.

Compensation for pollution from ships' bunkers

The Legal Committee continued with its consideration of a proposal to make the owners of all ships strictly liable for damages caused by the escape of bunkers. It will be recalled that bunkers are specifically excluded from the CLC and from the HNSC. But it will also be recalled that the P&I clubs resolutely refuse to recognise bunker spills as a problem. Liability is only rarely an issue and the P&I clubs traditionally indemnify their members against claims for bunker pollution.

On the other hand whilst this subject has been under discussion at the Legal Committee a number of governments have produced evidence that pollution from bunkers is a frequent occurrence and that compensation is by no means always forthcoming.

At the seventy-eighth session of the Legal Committee delegates were able to examine a draft free standing Convention for bunker spills (it having previously been decided that dealing with bunker spills by means of a protocol to either CLC or HNSC would not be appropriate). The draft instrument is based on a strict liability regime with limits of liability tied to those specified in the 1996 LLMC Protocol.

There were two principal issues which absorbed the time of the Legal Committee.

(i) *Definition of shipowner*

Selecting the correct definition for shipowner is rightly regarded as extremely important since it will identify the person who is to be held liable for bunker spills and will identify the person who should carry insurance cover against such claims. The four options considered were all intended to identify the person who has effective control of the vessel and to make him responsible for ensuring that the obligations under any convention were met. In the event four options were reduced to two leaving a choice between:

"Shipowner" means the owner, charterer, manager and operator of the ship and "responsible party" means the owner of the ship or any other organisation or person who or which has assumed responsibility for compliance with the insurance requirements of this Convention"

or

"Shipowner" means the owner of the ship, or any other organisation or person who or which has assumed responsibility for the operation of the ship".

Further efforts will be made by the Correspondence Group to produce a satisfactory definition before the next meeting.

(ii) *Limitation of liability*

It was readily agreed that the options were to apply the provisions of the 1976 LLMC as amended by the 1996 LLMC Protocol or insert the limits of the 1996 LLMC Protocol in the new bunker pollution instrument. However one delegation backed the CMI proposal that all reference to limitation of liability should be removed from the draft Convention on the basis that claims giving rise to liability under the Convention would be dealt with in accordance with whatever limitation regime applied to the incident in question.

The second option referred to above received no support because it was felt that this could have the effect of simply creating yet another limitation fund exclusively available for bunker pollution claims which was not the intention.

In seeking a solution it was suggested that the limitation provisions of the draft Convention might be redrafted so as to preserve the right of the shipowner to limit liability under any applicable limitation regime: this would embrace all types of limitation regime which might be encountered.

Work programme and meeting dates for 1999

It was noted that there is much work still to be done on the three main items discussed at the seventy-eighth session and this work will therefore be retained within the Work Programme for 1999. In addition to these three items the future work programme includes:

1. Draft Convention on Civil Jurisdictions, Choice of Law, Recognition and Enforcement of Judgments in matters of Collisions at sea.

2. Draft Convention on Offshore Craft.

As regards Civil Jurisdiction this work is based upon a draft instrument produced by the CMI at its Rio conference in 1977. It has since been reviewed on more than one occasion by the CMI. It is not a subject which generates much enthusiasm either within the CMI or amongst delegates to IMO Legal Committee meeting.

As regards Offshore Craft, Richard Shaw, Chairman of the CMI International Sub-Committee presented to the Committee a lengthy document summarising the work of this Committee over the past two years. Delegates were invited to consider this document, consult their governments and be ready to discuss the topic at the seventy-ninth session in April 1999.

Future Meetings

The seventy-ninth session of the IMO Legal Committee will take place between 19th and 23rd April 1999 and the eightieth session between the 11th and 15th October 1999.

Generally speaking the discussions at the seventy-eighth session closely mirrored those of the seventy-seventh session and whilst progress was made on a number of fronts there still remains considerable doubt as to whether IMO and its member governments will feel that there is the necessary "compelling need" to warrant the creation of new international instruments. The issue of "compelling need" was not confronted in relation to any of the three main projects in the course of the seventy-eighth session but will have to be addressed at some stage.

NEWS FROM IOPC FUND

MEETINGS OF IOPC FUNDS - OCTOBER 1998

Richard Shaw attended as CMI Observer the Assembly and Executive Committee meetings of the International Oil Pollution Compensation Funds held in London during the week commencing 26th October 1998.

There was a unique atmosphere at these meetings since this was the first occasion that the Assembly and Executive Committees had met since the major oil importing countries denounced their membership of the 1971 Fund (in most case with effect from 15th May 1998) and became full members of the 1992 Fund. Readers will be familiar with the effect of the 1992 Protocols to the 1969 Civil liability Convention (CLC) and the 1971 Fund Convention, by which the compensation levels were increased substantially, and the scope of the oil pollution compensation regime was expanded, both geographically to spills in the Exclusive Economic Zone (EEZ), and legally to pollution not only by persistent oil carried as cargo, but also from residues of such cargo and by bunkers from tankers carrying such cargo or residues.

The departure of 26 major contributors from the 1971 Fund has not of course brought about the demise of that fund - it still has over 50 member states - but it has left the 1971 Fund in a curious situation. At the meeting of the Assembly of the 1971 Fund at 1430 on Tuesday 27th October the required quorum (half the member states) was not present. The Chairman held a half hour adjournment for any late-comers to arrive, and then announced that, there being only 18 members present, the Assembly was not quorate.

Fortunately the possibility of this happening had been foreseen at the last meeting of the Assembly, and a special resolution had been passed authorising the Executive Committee of the 71 Fund to conduct the business before the Assembly. A quorum of states required for the Executive Committee being smaller, and the requisite number being present, that meeting was able to proceed with the business on the Agenda.

As more and more states transfer to the 1992 Fund, the transaction of the business of the 1971 Fund will become more and more difficult. There are, of course, several major cases involving the 1971 Fund dating from the time when the major oil importing countries were members and in which claims are still being handled and contributions levied from those countries.

As membership of the 1971 Fund dwindles, however, the number of member states importing substantial quantities of oil will likewise diminish, and the burden of funding compensation if a major casualty occurs in a 1971 Fund country will necessarily fall very heavily on some states. Other states who do not import sufficient oil to cross the threshold of 150,000 tons per contributor may believe that they have little incentive to transfer to the 1992 Fund. This would be a mistake, since they lose the benefit of the higher levels of compensation and, more significantly, the security of the oil companies who contribute to the Fund in the major oil importing states. The 1971 Fund Convention provides that the Fund will be wound up when the number of member states falls below three, and that is clearly a long way off, but it remains to be seen whether the 1971 Fund will be capable of functioning in a practical sense for as long as that.

The major casualties of the past few years have all been handled efficiently by the IOPC Funds, and substantial settlement payments have been made. This has taken place, it must be said, in part due to the close cooperation between the IOPC Fund and the P and I Clubs, who cover their shipowner members for the first tranche of pollution liabilities. However the limit of liability of the 1971 Fund in particular has meant that in certain cases such as the "Braer" and "Nakhodka", it has only been possible to pay a limited percentage of even those claims which have been admitted to be valid, until the total amount of the valid claims becomes known. Even more difficult have been the "Aegean Sea" and "Nissos Amorgos" cases, in Spain and Venezuela respectively, where the extravagant amounts and duplication of claims put forward has rendered it impossible to make prompt settlement of those claims which are accepted as justified.

Until the duplication has been eliminated and the extravagant claims cut down to reasonable size (fishermen the world over are prone to wishful thinking when talking about size of the fish they have not actually caught), a distribution of the limited, albeit large, fund available cannot proceed, and only limited payments on account can be made. This is the inevitable result of a system in which strict liability is granted by international

convention in return for a ceiling on the amount of that liability. Generally the system works well, but regular review of the sufficiency of the limited funds available must take place, with appropriate increases in the Limitation Figures, if the system is to function effectively. There is no doubt that the provisions of the 1992 Protocols are a major step forward, and this above all is the principal incentive for all states who are still members of the 1969 CLC and 1971 Fund Conventions to denounce them and accede to the 1992 Conventions. It is to be hoped that members of national Maritime Law Associations which are part of the CMI family will take up these matters with their Governments.

The IOPC Fund Secretariat is happy to supply relevant information, and can be contacted at IOPC Funds, 4 Albert Embankment, London SE1 7SR, Fax 0171 735 0326. Alternatively Richard Shaw, the CMI delegate to the IOPC Funds, will be happy to assist. He can be contacted at University of Southampton Institute of Maritime Law, Highfield, Southampton, SO17 1BJ; fax +441703 593789; Email iml@soton.ac.uk.

Another interesting discussion at the IOPC Funds took place concerning the application of the pollution liability regimes under the 1969, 71 and 92 Conventions to the new types of craft being generated by the offshore oil industry, particularly the Floating Production Storage and Offloading vessel (FPSO). The application to other offshore craft of maritime law concepts created to apply to ships has been under study by the CMI since 1977, and an International Subcommittee under the chairmanship of Richard Shaw (UK) has been working on this. Some organisations, notably the Houston - based International Association of Drilling Contractors (IADC) has argued that there is no need for such work, and this position has found support in the Maritime Law Associations of Norway and the USA. Others, notably Canada and Australia, have argued strongly for a more broadly based International Convention on offshore craft.

A detailed paper was tabled by the CMI Subcommittee at the Centenary Conference in Antwerp, and is reproduced in the 1997 Year Book. The CMI has now submitted a revised version of this paper to the Legal Committee of the IMO, whose delegates have been requested to seek the instructions of their governments in preparation for a debate in the Legal Committee in April or October 1999. This subject will however be debated also during the week after the April 1999 Legal Committee, when the Formal Working Group set up by the IOPC Fund will also hold hearings. Again, it is to be hoped that the extensive expertise of the member Maritime Law Associations of the CMI will be used to ensure that the governments concerned give a full briefing to their delegates attending these meetings.

RICHARD SHAW

NEWS FROM THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ENTRY INTO FORCE OF THE RELATIONSHIP AGREEMENT BETWEEN THE UNITED NATIONS AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA.

The General Assembly of the United Nations, on the last day of the Fifty-Second Session, gave its final approval to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea.

The Agreement provides for cooperation on several matters, including exchange of information between the United Nations and the Tribunal, reciprocity of representation in each others meetings, use by the Tribunal of the United Nations laissez-passer (travel documents), and a range of other mutually supportive activities.

The International Tribunal for the Law of the Sea is now part of the system for the peaceful settlement of disputes laid down in the United Nations Charter. It finds its very origin in efforts sponsored by the United Nations to establish a universal regime for the seas and oceans. The links of the Tribunal to the United Nations Secretariat are rooted in the role of the Secretary-General in servicing the Conference that established the Convention. The Secretary-General's role continued in servicing the Preparatory Commission for the International Seabed Authority and the International Tribunal for the Law of the Sea, which was created to pave the way and prepare for the institutions established by the Convention. The close ties were maintained and assistance and support was lent by the United Nations Secretariat, through its Division for Ocean Affairs and the Law of the Sea, during the initial organizational phases of the Tribunal.

LEVEL OF COSTS LIKELY TO BE INVOLVED IN BRINGING CASES BEFORE THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA*

The policy adopted by the International Tribunal for the Law of the Sea is to make its services available to States and other appropriate entities without "undue delay or expense". States Parties to the 1982 Convention on the Law of the Sea and the International Seabed Authority are not charged any fees by the Tribunal for bringing or defending cases before the Tribunal. With respect to other States and non-State entities parties in cases before the Tribunal, the Statute provides that they "contribute towards the expenses of the Tribunal". The amount payable in each case shall be fixed by the Tribunal.

The Tribunal has not so far had occasion to apply this provision. However, the expectation is that the amount of "contribution" in any case will reflect the additional costs incurred by the Tribunal in dealing with the case. A major element of these costs will be the travel costs of the Judges involved in the case, together with the special

and daily subsistence allowances (DSA) payable to them by the Tribunal in accordance with the approved scale of remuneration of the Judges. These allowances are paid for each day the Judges will be engaged in the case. Subject to certain conditions the Judges are also entitled to allowances for preparatory work and to subsistence allowance for preparatory work undertaken by them away from their normal place of residence. The rates of these allowances are established in the budget of the Tribunal as approved by the Meeting of States Parties to the Convention. The current rates are approximately US\$220.00 per day for special allowance and US\$260.00 per day for DSA. The total amount of special, preparatory and daily subsistence allowances payable in a case will, of course, depend on the number of Judges serving on the particular case and the number of days they are required to work on the case, either at the seat of the Tribunal or at other locations away from their normal places of residence.

In addition the parties may be asked to reimburse the Tribunal for extra administrative and related expenses incurred by the Tribunal in connection with the case. These expenses cover such items as interpretation of proceedings, production of the verbatim records of the hearings, translation of documentation, temporary personnel or services required for dealing with the case, as well as other expenditure, such as overtime payments to staff, costs of extra documentation etc that are directly attributable to the case.

The costs to the parties will not include any "fees" for the Judges or the staff of the Registry. The "annual allowances" for the Judges and the salaries and related allowances for the Registrar and the staff of the Registry are paid from the regular budget of the Tribunal.

* Statement contributed by the President of the Tribunal

NEWS FROM FONASBA

TIME CHARTER INTERPRETATION CODE

The second meeting of the working group convened under the auspices of FONASBA was held on the 6th October 1998 in Paris.

The following persons attended that meeting:

- John P. Besman, Chairman
- Christopher Hill, The Charterers P & I Club
- Captain Massimo Bernardini, Intertanko
- Jean Lerbret
- Jean-Serge Rohart, as an observer for the C.M.I.

The report of John P. Besman, Chairman of the meeting is reproduced below with his kind permission.

1. *Withdrawal for late/non payment of hire*

A general discussion took place on Mr. Hill's comments.

It was reminded that we should avoid falling into the trap of drafting a new charterparty clause rather than drafting interpretations of certain heads, bearing in mind our 'Disclaimer' stating that the Code only came into play where a timecharter was silent, or in case of any conflict between the Code and a charter the terms of the latter would prevail.

There was general approval of Mr. Hill's proposed interpretation guide lines reading as follows:

"Except where otherwise specifically permitted in the provisions of this charter, the charterers shall have no right to make deductions from hire which shall remain payable punctually and regularly as stipulated herein. Nothing in the charter shall, however, prejudice the charterers' right to make any equitable set-off against a hire payment due provided a) that the calculation is reasonable and made bona fide and b) that it is in respect of a claim arising directly out of the deprivation from them of the use of the chartered vessel in whole or in part.

The owners shall have a right of permanent withdrawal of their vessel when payment of hire has not been received by their bankers by the due date due to oversight, negligence, errors or omissions on the part of the charterers or their bankers, but notice of withdrawal may not be made until, in respect of a failure to pay any hire by the due date, the owners have put the charterers on preliminary notice of their failure to pay and have, following that, allowed the charterers two clear banking days to remedy the default, or in respect of a payment made in due time but insufficient in amount, the owners shall be permitted a reasonable time to investigate the correctness of the deduction. If there is disagreement on the correctness, then the matter shall be immediately referred to arbitration. In that event, there shall be no right of withdrawal.

Withdrawal of the vessel in accordance with the procedure herein described shall be without prejudice to any other claim owners may have upon the charterers."

2. *Repudiation*

It was agreed that any interpretation depended on an 'ad hoc' situation and thus the rubric should be deleted.

3. Off-Hire

It was agreed that Mr. Hill would draft an explanatory clause to take into account an enlargement of the term 'preventing full working of the vessel'.

Capt. Bernardini was of the opinion that we should follow clause 21 of the Shelltime in allowing off-hire for any occasion covered by the charter's off-hire clause, but only in excess of three hours. This was agreed.

Subsequently, on October 12 Mr. Hill submitted his draft reading as follows:

"By way of interpretation of Clause 17 (of the NYPE 93) it is agreed that (a) the phrase "preventing the full working of the vessel" in line 225 shall be deemed to include interference by a legal, port or government authority resulting in the charterers being deprived of their free and immediate use of the vessel at any given time during the currency of this charter or in the vessel being prevented from leaving the jurisdiction contrary to the charterers' requirements. And (b) in line 229 the words...she is again in the same or equidistant position ... shall be deemed to mean ... she had reached a position no less favourable to the charterers in distance"

The suggestion of the Chairman was not to limit this to the NYPE93 charter and he therefore proposed the following text:

Off-Hire

"Any period of time qualifying as off-hire under terms of the off-hire clause of the charter shall be allowed to the charterers for any time lost in excess of three hours for each occurrence. In addition to matters referred to as off-hire in the charter shall include time lost to the charterers caused by interference by a legal, port or government authority resulting in the charterers being deprived of their unfettered and immediate use of the vessel at any given time during the currency of the charter, or in the vessel being prevented from leaving the jurisdiction contrary to the charterers' requirements."

4. Deviation

All periods of off-hire due to deviation shall run from the commencement of the loss of time, deviation or putting back and shall continue until the vessel is again in a fully efficient state to resume her service from a position not less favourable to the charterers than that at which the loss of time, deviation or putting back commenced.'

5. Vetting Clauses for Tankers

The Chairman will send to all concerned a copy of the "American Chemist" arbitration award by airmail. This item will be discussed in detail at the next meeting.

6. The Last Voyage ... legitimate or not?

To be rediscussed at the next meeting.

7. ISM CODE

Held over for next meeting.

The next meeting of the Working Group will take place in London on Tuesday January 26, 1999.

RATIFICATION OF INTERNATIONAL CONVENTIONS

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

- Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussels on 25 August 1924, Brussels 23rd February 1968
Republic of Croatia: 28 October 1998
- Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading as modified by the Amending Protocol of 23rd February 1968, Brussels 21st December 1979
Republic of Croatia: 28 October 1998