

5. CURRENT TOPICS

A. ADMIRALTY JURISDICTION

The Chairman of the Australian Law Reform Commission, Mr Justice Kirby, has acknowledged receipt of the letter¹ from the Executive Secretary of the Association, Stuart Hetherington, which contained the views of the Australian Branches of the Association on jurisdiction in Admiralty. The matters raised in that letter are to receive further consideration by the Commission and its consultants. The Chairman thanked branches for their assistance.

B. COMITÉ MARITIME INTERNATIONAL

Recent editions of the *C.M.I. News Letter* contain a number of items which may be of interest to members of the Association.

The C.M.I. Colloquium on Bills of Lading

This was held in Venice from 30 May to 1 June 1983. Two particular problems appear to have been discussed during the Colloquium: the use of bills of lading in fraudulent transactions and the arrival of goods at their destination before the bills of lading.

The Colloquium heard from an impressive list of speakers, who subsequently chaired the four working groups of participants. The Colloquium adopted eight recommendations, which were approved by the C.M.I. Assembly. These recommendations are that

1. the practice of issuing bills of lading in sets of two or more originals should cease;
 2. the practice of carriage of a negotiable bill of lading on board and delivery of cargo against that bill of lading involves serious risks;
 3. the practice of issuing a bill of lading when a negotiable instrument is not required should be discouraged;
 4. uniform rules for incorporation in sea waybills should be prepared and their adoption encouraged;
 5. reaffirmation be given to the principle that clean bills of lading should never be issued against letters of indemnity and bills of lading should be dated incorrectly;
 6. an agreement should be reached with the International Chamber of Commerce as to clausal bills of lading beyond the provisions of Article 18 of the *Uniform Customs and Practice for Documentary Credits*;¹
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7. banks should be encouraged to warn their customers of the risk of fraud under documentary letters of credit and advise them on suitable precautions;
8. the name of the person under whose authority a bill of lading is issued should appear in the bill of lading.

The suggestion of co-operation in the sixth recommendation was received favourably by the Secretary General of the International Chamber of Commerce. It was observed that the Revision of the *Uniform Customs and Practice for Documentary Credits*, to come into effect on 1 October 1984, discourages the practice of issuing bills of lading when a negotiable instrument is not required to the extent that, in future, bills of lading may not be the most common document called for under documentary letters of credit. In particular, the Revision provides that banks will accept any transport document unless the documentary letter of credit specifically calls for a bill of lading.

It is also interesting to note that the C.M.I. Working Group on Uniform Rules for Sea Waybills held its first meeting in London on 1 December 1983. A preliminary report is expected to issue shortly.

C.L.C. Protocol

At its meeting on 2 June 1983 the C.M.I. Assembly received, considered and adopted three revised definitions proposed for inclusion in a Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1969.

The result intended by the revised definitions is the avoidance of arbitrary assessments of oil pollution damage while adding the broad possibility of asserting claims under the Convention for the cost of preventing damage to the environment as well as for economic loss resulting directly from contamination or preventive measures.

The revised proposed definitions are:

Article I

Paragraph 6

"Pollution damage" means

- (a) costs actually incurred by reasons of contamination outside the ship resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur;
- (b) economic loss actually sustained as a direct result of contamination as set out in (a) above;
- (c) actual costs of preventive measures and economic loss actually sustained as a direct result of such preventive measures.

Paragraph 7

"Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

Paragraph 8

"Incident" means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a /grave and imminent/ serious/² threat of causing such pollution damage.

General Average

The C.M.I. Working Group which reported on General Average concluded, from the comments it had invited, that there is little support for reform of the law or principles of General Average but that there is considerable support for the reform of insurance arrangements in order to overcome the disadvantages of the existing system. It was also considered that new insurance arrangements are more likely to provide solutions to current problems in respect of General Average than is the reform of the law or principles of General Average.

Ultimately, the Working Group appeared to view the matter as one which should be discussed between insurance interests rather than lawyers and that it was inappropriate for C.M.I. to consider it any further at this stage.

Maritime Liens and Mortgages

The C.M.I. Sub-committee considering this matter expressed surprise at the numbers of Maritime Law Associations from both developed and developing countries who approved, some with minor reservations, of the 1967 Brussels International Maritime Law Convention relating to Maritime Liens and Mortgages.

The Sub-committee considered that long-term financing was necessary for the development of the merchant marine and that the most appropriate security, in most circumstances, was the vessel itself. Thus, it was necessary to ensure the protection of mortgagees. The majority of the Sub-committee were of the view that the 1967 Convention fulfilled this requirement by

1. ensuring that a mortgage which is validly constituted according to the law of the country of registration is recognised in all contracting states, provided that certain basic conditions are complied with;
2. ensuring that, except in the event of a forced sale, the vessel is not de-registered without the consent of the mortgagee;
3. regulating the forced sale in such a manner as to enable the buyer to obtain a title to the vessel which is recognised as valid in all contracting states, thereby enhancing the possibility of sale of the market price;
4. ensuring that the proceeds of a forced sale are distributed

² The obliques in paragraph 8 have been retained by the C.M.I. because the Legal Committee of the International Maritime Organisation has indicated that it will return to this matter at its Fiftyfirst Session.

according to the provisions of the 1967 Convention and that the mortgagee is satisfied according to his priority;

5. according to the mortgagee a reasonably high priority by limiting the number of maritime liens having precedence over the mortgage.

Further reports of the Sub-committee will be awaited with interest.

The C.M.I. Lisbon Conference

The C.M.I. 1985 Conference is to be held from 19 to 25 May at (provisionally) the Ritz Hotel in Lisbon. The number of active participants is to be limited to 250 delegates. The main subjects of discussion will include maritime liens and mortgages and the arrest of sea-going ships.

The Hamburg Rules

Ratifications of the Hamburg Rules remain few, with a "wait and see" attitude prevailing — thus, the Hamburg Rules would appear to have an uncertain future. At an O.E.C.D. meeting in Paris on 26 October 1983, ratification of the Hague-Visby Rules was recommended. At its meeting in London on 2 December 1983, the Executive Council of the C.M.I. noted that a ratification of the Hague-Visby rules together with the 1979 S.D.R. Protocol would improve the position of shippers compared to their position under the 1924 Bills of Lading Convention. Accordingly, the Executive Council stressed the need for immediate ratification of the Hague-Visby Rules and the 1979 S.D.R. Protocol.