

DOCUMENT No. 532
OCTOBER 1967

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING — MAY 3, 1968

The annual Spring Meeting of The Maritime Law Association of the United States was held at the Meeting Room of the New York County Lawyers Association Building, 14 Vesey Street, New York, N.Y., at 10 A.M. on Friday, May 3, 1968, Benjamin W. Yancey, President, presiding.

PRESENT:

BENJAMIN W. YANCEY, President
JAMES J. HIGGINS, First Vice President
JOHN C. MOORE, Second Vice President
J. EDWIN CAREY, Secretary
JOHN L. QUINLAN, Treasurer
FRANCIS J. O'BRIEN, Membership Secretary

and the following 204 other members:

Richard G. Ashworth
Edward S. Bagley
Raymond A. Ballard
Cdr. George Marshall
Bates, USN
Edgar F. Barnett
William F. Belmont
Michael C. Bernstein
Philip A. Berns
Edward C. Biele
W. L. Blackwell, Jr.
Robert S. Blanc, Jr.
Capt. Charles A. Blocher,
Jr., USN
Ed Bluestein, Jr.
Stuart B. Bradley
C. A. Brown

Charles Dodgson Brown
Richard H. Brown, Jr.
Joseph M. Brush
Leslie J. Buglass
William C. Bullard
Raymond J. Burke
August C. Burns
William D. Carle
Capt. Bert R. Carraway, USN
Capt. James M. Carroll, USN
Frank E. Caton
Owen W. Cecil
Harry B. Chassen
Alvern Dale Christian
Robert W. Clements
Thomas A. Clure
Leavenworth Colby

John P. Conroy
 Cornelius P. Coughlan
 Alan S. Dale
 Theodore R. Dankmeyer
 MacDonald Deming
 Brunswick G. Deutsch
 W. Mahlon Dickerson
 Thomas A. Dillon
 James O. Dixon, Jr.
 Sweeney J. Doehring
 Sweeney J. Doehring, Jr.
 James J. Donovan
 William R. Dorsey
 Joseph E. Doti
 Daniel J. Dougherty
 George E. Duncan
 Francis V. Elias
 Alfred M. Farrell, Jr.
 James W. Fay
 Robert A. Feltner
 Gilbert S. Fleischer
 William J. Fleming
 Jervis Spencer Finney
 Cody Fowler
 Carter B. S. Furr
 W. Gerald Gaudet
 Edwin L. Gehrhardt
 John F. Gerity
 John Germany
 Robert J. Giuffra
 Milton I. Goldstein
 Virgil Sampson Gore, Jr.
 Julian S. Gravely, Jr.
 Louis E. Greco
 Warren H. Greene, Jr.
 El Carol V. Greenwood
 John J. Gruber
 Louis J. Gusmano
 Richard A. Hagen
 William L. Hamm
 David G. Hanlon
 James A. Hanlon
 Fenton F. Harrison
 J. Reginald Hayden, Jr.

Raymond P. Hayden
 Nicholas J. Healy
 Nicholas J. Healy, Jr.
 Wilbur H. Hecht
 Charles E. Henshall
 Walter P. Hickey
 Lee C. Hinslea
 Brooks P. Hoyt
 Warren A. Jackman
 Leonard C. Jaques
 Robert A. Jenkins
 R. Arthur Jett
 Marshall P. Keating
 Robert G. Kelly
 Donald M. Kennedy
 James M. Kenny
 David C. G. Kerr
 Donald L. King
 John P. Kipp
 Peter M. Klein
 Donald A. Krach
 L. Glen Kratochvil
 Alexander F. Lankford
 Walter E. Lawlor
 Thomas H. Leach
 Theodore A. LeGros
 Vincent L. Leibell
 H. Lee Leonard
 Wilder Lucas
 Capt. C. E. Lundin, USN
 Allan B. Lutz
 James W. Lynch
 Thomas C. MacDonald, Jr.
 Philip E. McCarthy
 Joseph B. McDonald
 Joseph T. McGowan
 John C. McHose
 John William McMurray
 George V. McShane
 Malcom R. Maclean
 Henry W. Magenheimer
 James B. Magnor
 Capt. Clinton J. Maguire, USCG
 Paul Malley

Walter E. Maloney
 David C. Maloof
 Frank J. Marston
 Lloyd C. Melancon
 Hugh S. Meredith
 William B. Miller
 George O. Mitchell
 Clarence L. Mollison
 John C. Monroe
 B. Allston Moore, Sr.
 James F. Moseley
 Robert P. Nash
 Gardner A. Nason
 O. Taft Nelson
 Elliott B. Nixon
 Richard T. O'Connell
 Brendan P. O'Sullivan
 Richard W. Palmer
 Gordon W. Paulsen
 Axel E. Paulson
 Rene S. Paysse
 Sherman V. Petrie
 John Poitevent
 John G. Poles
 F. Herbert Prem
 Robert B. Preston
 Charles E. Quandt
 Edward A. Quinlan
 A. Clay Rankin
 Lucian Y. Ray
 Harry Smith Redmon, Jr.
 Ben L. Reynolds
 John H. Reilly, Jr.
 Philip O. Roach
 Henry W. Robinson
 John S. Rogers
 Henry R. Rolph
 James E. Ross
 Herbert J. Russell
 James L. Schupp, Jr.
 D. K. Schlorf
 Manuel A. Sequeira, Jr.

Ralph M. Sharpe, Jr.
 John R. Sheneman
 Seymour Simon
 John W. Sims
 William B. Sleigh, Jr.
 William A. Smith
 Saul Sperling
 John M. Speyer
 Harney B. Stover, Jr.
 George W. Stretch
 Roy L. Sykes
 Francis L. Tetreault
 Peter E. Thauer
 John O. Thomas
 George F. Tinker
 Melvin J. Tublin
 Elkan Turk, Jr.
 Leo J. Vander Lans
 Braden Vandeventer
 E. D. Vickery
 Dewey C. Villareal
 William R. Vincent
 George R. Wagner
 Guilford D. Ware
 Gerard P. Watson
 Russell T. Weil
 William Weymar, Jr.
 Michael F. Whalen
 Burton H. White
 Donald C. White
 William F. White
 Harvey Wieneke
 Gray Williams
 H. Barton Williams
 Reed M. Williams
 John W. Winston
 Frank L. Wiswall, Jr.
 Sidney J. Wolfson
 Stanley R. Wright
 Peter J. Zambito
 John W. R. Zisgen

The Chairman: Gentlemen, the meeting will please come to order. The first order of business will be the report of the Secretary.

REPORT OF THE SECRETARY

Mr. Carey: Gentlemen, before I proceed with the Secretary's report as such, I would like to make our usual announcements in respect of noting your presence here at the meeting.

There are various yellow pads which have been provided, on which it would be very helpful if you write your names. We prefer you to print your names, which will assist us in the preparation of the formal minutes at a later date. It is also desirable to state the city from which you come.

Secondly, with respect to the Committee Chairmen or their appointees, and particularly with respect to reports which are given from the floor, it would also be very helpful if you would state your names before proceeding with your report.

In addition, anyone who is recognized from the floor ought to announce his name prior to making any statement.

In a recent mailing you have received document number 520 which consists of the minutes of the fall meeting which was held on November 3, 1967.

The Executive Committee since its meeting of November 2, 1967 has held three meetings, the first of which took place on January 26, 1968; the next was on February 16, 1968; and, yesterday, the Executive Committee met, that date being May 2, 1968.

I am going to try to make my report particularly brief, for the work of the Executive Committee in its past three meetings has had to do with principally other than administrative matters.

The Executive Committee had for consideration the work of the Association in conjunction with the United States Government regarding various international conventions which were being negotiated. These conventions have to do with the proposed amendments to certain provisions of the Hague Rules and the work of the designees of the Maritime Law Association with the CMI and IMCO. We considered activities of both these groups, principally the matters having to do with Torrey Canyon and oil pollution.

Specifically, on January 26th, following the reports which were given by the Treasurer and the Membership Secretary, a general discussion was had in the Executive Committee regarding the forthcoming meeting in February in Brussels, which meeting was called by the Belgian Government, and was a reconvening of the Brussels Diplomatic Conference which had been held in May, 1967.

At the May conference, the work of the Diplomatic Conference was not concluded. The matter of limitation insofar as amendment to the appropriate provisions of the Hague Rules are concerned, was not agreed upon. You will hear more concerning that matter and the results of the February 1968 Conference from Mr. Moore, the Chairman of the Bill of Lading Committee.

Additionally, I would like to call your attention to Documents, 522 and 523, which have been circulated.

Document 522 is the report of the Committee on the Comité Maritime International. It deals with the five conventions which were under consideration in Brussels in May 1967 and February 1968. I regret to say that the text of the Protocol in respect of the Hague Rules Amendments, as a result of a printer's error, was not included in Document No. 522.

It had been my intention to have that as an Appendix E to Document 522 and, for some reason, the printer did not include it in the document. It was too late to provide you with the text of that Protocol. However, I am informed by Mr. Moore that he is in a position to provide you with the text as an appendix to the report of the Bill of Lading Committee, and I will see to it following this meeting that in a sub-document the text of that convention is made available to the membership.

Now, you also received Document No. 523, which consists of a report of Carl C. Davis, who was the United States Representative and Chairman of the Delegation to the Brussels Diplomatic Conference which was held between May 16 and May 27, 1967.

The Executive Committee met on February 16th, and again in addition to the administrative matters which were considered at that time, particularly the reports of the Secretary, the Treasurer and the Membership Secretary, we had for consideration the forthcoming meeting of the Working Group of the Comité Maritime International which had been appointed to deal with the matter of Torrey Canyon and associated oil pollution problems. They seemed to have arisen and were triggered, if you will, by the

Torrey Canyon incident. Mr. Healy is our representative on that Working Group, and he will have a report for you on this subject.

He will also, I assume, discuss the position of the Executive Committee with respect to the questionnaire which was circulated to the membership at the suggestion of the Comité Maritime International. Mr. Healy was provided with a position of our association, and authorized by the Executive Committee to speak on that subject at the Lisbon meeting which was held, I believe, in February 1968.

Additionally, consideration was given at the February Executive Committee meeting to the Senate Bill S.2760, particularly section E, thereof, which is also identified as HR 14,000 in the House of Representatives. Mr. Gerity is here to give you a report regarding the present posture of that Bill.

Yesterday, a meeting of the Executive Committee was held again and we dealt primarily with administrative matters. You will receive a report from Mr. Quinlan, the Treasurer, and Mr. O'Brien, the Membership Secretary. We had a report from Mr. Healy regarding the present position of the work of the CMI Working Group, and he will make certain remarks which will be included in his report today on that subject.

During the course of the Executive Committee meeting yesterday, it did come to our attention that some of our members are somewhat delinquent in dues. The By-Laws of our Association provide quite specifically with respect to these matters, and the members who do find themselves in arrears will be notified very shortly on that subject. The Executive Committee has concluded that a fairly strong position will be taken in this area.

Consideration was given to future out-of-town meetings, and either the President or others will consider that subject later this morning.

As is our practice, we note with sorrow the passing of several of our members, colleagues and friends:

Mr. Morgan J. Burke, Jr., Mr. Charles S. Haight. Mr. Haight was a former President of this Association; Eugene F. Gilligan; Anthony J. Randolph; Joseph F. Meehan; Herbert C. Splane; Harold A. Mouzon and Sparkman D. Foster, all of whom were loyal members of our Association.

Associate Members who have passed away are the Hon. William C. Coleman and the Hon. G. C. Sweeney.

Mr. President, I think that completes the report of the Secretary.

The Chairman: Do I hear a motion to approve the report of the Secretary?

From the floor: So moved.

From the floor: Seconded.

The Chairman: Any discussion? Is there any correction? If not, the report stands approved.

The Chairman: Now, this association received just this week the following letter from the Swedish Association:

“Dear Sirs,

The Swedish Association of International Maritime Law has learnt that one of the outstanding members of your Association and a former President of yours, Charles Haight, has unexpectedly passed away. We should like to express to you and to the American Association of Maritime Law our deep sympathy.

Mr. Haight was an outstanding lawyer, an honour to his profession and to your Association. With devotion, energy and success he worked for the unification of maritime law and for the larger issues, greater international understanding.

We in Sweden knew him well and always held him in high esteem as a professional man and we liked him for his open and upright personality.

Our Association will not forget our dear friend Charles Haight.

Yours sincerely,”

Signed by Kaj Pineus, President, and by Claës Palme, Honorable Secretary of the Swedish Association.

I should like to entertain a motion to include this letter in the minutes of this meeting.

From the floor: So moved.

The Chairman: Is there a second?

From the floor: Seconded.

The Chairman: Is there any discussion? I assume that there is no objection.

So ordered.

I shall undertake to forward the original of this letter to Mrs. Haight.

Now, you will also have received Document No. 524, which is the Report of the Executive Committee on certain proposed amendments to our Articles of Association and By-laws. Mr. Lord, who was chairman of a committee to consider those proposed amendments will report in due course.

The next order of business is the report of the Treasurer, Mr. Quinlan.

REPORT OF THE TREASURER

Mr. Quinlan: My report was submitted to the Executive Committee at its meeting yesterday. I will give you the conclusions in it. The total amount on hand as of April 15, 1968 is \$45,587.42. Of this sum, \$21,204.59 was being carried in the general account, and in two savings accounts there were \$12,015.40 in one, and \$12,167.43 in the other.

The Chairman: Are there any questions about the Treasurer's Report?

Do I hear a motion to approve it?

From the floor: So moved.

The Chairman: Seconded?

From the floor: Seconded.

The Chairman: Any discussion? Any objection? Hearing none, so ordered.

The next report is the report of the Membership Secretary, Mr. O'Brien.

REPORT OF THE MEMBERSHIP SECRETARY

Mr. O'Brien: Mr. President, prior to yesterday's meeting, there were on the rolls of the Association 2,069 members. Yesterday 69 members were admitted at the meeting of the Executive Committee, so that we now stand at 2,138 members. The following are the names of the 69 members elected:

**REPORT OF THE MEETING
OF THE
COMMITTEE ON ADMISSIONS**

APPLICANT	PROPOSER	SECONDER
Frank C. Allen, Jr. (1968) Jones, Walker, Waechter, Poitevent Carrere & Denegre 225 Baronne Street New Orleans, Louisiana 70112	Gerard T. Gelpi	John B. Gooch, Jr.
Frank C. Bender (1968) Kelly, Deasey & Scanlan 926 Four Penn Center Plaza Philadelphia, Pennsylvania 19103	Robert G. Kelly	William R. Deasey
Lt. Jerry G. Berka, Jr. (1968) U.S. Navy, District Legal Office Commandant, Third Naval District 90 Church Street New York, New York 10007	Capt. C. E. Lundin, USN	Comm. B. R. Carraway, USN
Pledger M. Bishop, Jr. (1968) Moore, Mouzon & McGee Four Gillon Street Charleston, South Carolina 29402	B. Allston Moore, Jr.	Charles H. Gibbs
John A. Bolles (1968) Terriberly, Rault, Carroll, Yancey & Farrell 2141 International Trade Mart New Orleans, Louisiana 70130	Alfred M. Farrell, Jr.	William E. Wright
Folger Brink (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	Montague H. Hackett, Jr.	Baldvin Einarson
Alton R. Brown, Jr. (1968) Forman & Brown Van Antwerp Building Mobile, Alabama 36602	John H. Tappan	W. Boyd Reeves
Kaul J. M. Buhler, II (1968) Terriberly, Rault, Carroll, Yancey & Farrell 2141 International Trade Mart New Orleans, Louisiana 70130	Alfred M. Farrell, Jr.	William E. Wright
Jonathan G. Bunge (1968) Spray, Price, Hough & Cushman 134 South LaSalle Street Chicago, Illinois 60603	Joseph Keig, Jr.	John Moe
James R. Campbell (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	Henry J. O'Brien	Joseph F. Ryan, Jr.
Frank E. Caton (1968) Baker, Botts, Shepherd & Coates 1600 Esperson Building Houston, Texas 77002	William C. Bullard	B. D. McKinney

APPLICANT	PROPOSER	SECONDER
Alvern Dale Christian (1968) Admiralty & Shipping Section Department of Justice 42 Broadway, Room 600 New York, New York 10004	Louis E. Greco	Gilbert S. Fleischer
Lee H. Cliff (1968) Hall, Henry, Oliver & McReavy 100 Bush Street San Francisco, California 94104	Robert H. Thede	George L. Waddell
Louis G. Close, Jr. (1968) Due, Whitefore, Taylor & Preston Sun Life Building Charles Center Baltimore, Maryland 21201	Donald A. Krach	Manfred W. Leckszas
David L. Corbin (1968) Healy & Baillie 29 Broadway New York, New York 10006	Richard T. O'Connell	Raymond A. Connell
Ernest J. Corrado (1968) American Merchant Marine Institute 3700 S Street, N.W. Washington, D. C. 20007	Cornelius P. Coughlan	Ralph E. Casey
John R. Crumpler, Jr. (1968) Ober, Williams & Grimes 1640 Maryland National Bank Bldg. Baltimore, Maryland 21202	Randall C. Coleman	John H. Skeen, Jr.
Donald J. Danilek (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	William A. Sheehan	Arnold Tulp
Sweeney J. Doehring, Jr. (1968) Murfee & Hoover 1609 Bank of the Southwest Bldg. Houston, Texas 77002	E. V. Greenwood	Ed Bluestein, Jr.
Edward H. Duggan, Jr. (1968) Hill, Betts, Yamaoka, Freehill & Longcope 26 Broadway New York, New York 10009	Donald B. Allen	Francis L. Gannon
Charles E. Duross (1968) Zock, Petrie, Sheneman & Reid 19 Rector Street New York, New York 10006	Francis J. O'Brien	James D. Hanlon
Stuart Selley Dye (1968) Kirlin, Campbell & Keating 900 - 17th Street, N.W. Washington, D. C. 20006	Ronald A. Capone	Russel T. Weil
Gary Philip Eidelstein (1968) 350 Lincoln Road Miami Beach, Florida	Renato C. Giallorenzi	G. Morton Good

APPLICANT	PROPOSER	SECONDER
William F. Fallon (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	William J. O'Brien	Thomas Covne
David W. Foerster (1968) Jones, Foerster and Hodge 937 Florida Bank Building Jacksonville, Florida 32202	Richard H. Sommer	Gerard Harrington, Jr.
Frank J. Gilbride, II (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	William A. Sheehan	Richard E. Repetto
Albert C. Goudvis (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	Richard H. Sommer	Ralph C. Kreimer
Stephen W. Graffam (1968) White, Jones & Gregg 1010 Grant Building Pittsburgh, Pennsylvania 15219	Ira R. Hill	Norman J. Cowie
Gerald E. Grayson (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	Marshall P. Keating	Thomas Coyne
Joseph W. Griffin (1968) Hinshaw, Culbertson, Moelmann & Hoban 1 North LaSalle Street Chicago, Illinois 60602	Stuart B. Bradley	Joseph V. McGovern
Emery W. Harper (1968) Lord, Day & Lord 25 Broadway New York, New York 10004	Harry L. Blackiston	Franklin G. Hunt
David L. Hayutin (1968) Lillick, McHose, Wheat, Adams & Charles 600 South Spring Street Los Angeles, California 90014	John C. McHose	Gordon K. Wright
A. Owen Hennegan (1968) 406 Jefferson Building Towson, Maryland 21204	Martin J. McHugh	Randall C. Coleman
Commander Jack W. Howay (1968) Judge Advocate General Corps U.S. Navy—Navy Department Washington, D. C. 20370	Capt. C. A. Blocher	Comm. G. M. Bates
Thomas J. Ingersoll (1968) Kelly, Deasey & Scanlan 926 Four Penn Center Plaza Philadelphia, Pennsylvania 19103	Robert G. Kelly	William R. Deasey

APPLICANT	PROPOSER	SECONDER
Raymond S. Jackson, Jr. (1968) Thacher, Proffitt, Prizer, Crawley & Wood 40 Wall Street New York, New York 10005	Robert S. Stitt	Dwight B. Demeritt, Jr.
Dean K. Johnson (1968) Hagglund and Johnson 715 First National Bank Building Minneapolis, Minnesota 55402	Nathan A. Cobb	Edward T. Fride
Justin J. Karl (1968) Union Carbide Corporation 270 Park Avenue New York, New York 10017	Robert B. Acomb, Jr.	George Denegre
Robert G. Kelly, Jr. (1968) Kelly, Deasey & Scanlan 926 Four Penn Center Plaza Philadelphia, Pennsylvania 19103	Robert G. Kelly, Sr.	William R. Deasey
H. Lee Leonard (1968) Voorhies, Labbe, Fontenot, Leonard & McGlasson 718 South Buchanan Street Lafayette, Louisiana 70501	H. Barton Williams	W. Gerald Gaudet
Robert F. Lewis (1968) Overton, Lyman & Prince 550 South Flower Street Los Angeles, California 90017	Fred S. Lack, Jr.	Dan Brennan
Frank W. C. Loo (1968) 90 North King Street Honolulu, Hawaii 96817	Douglas A. Jacobson	Melvin J. Tublin
Paul V. Lucke (1968) Kaumheimer, Reinhart, Boerner, Van Duren & Norris 1800 Marine Plaza Milwaukee, Wisconsin 53202	John M. Reinhart	Harney B. Stover, Jr.
John V. McAuliffe (1968) Bigham, Englar, Jones & Houston 99 John Street New York, New York 10038	John L. Connors	John L. Quinlan
Marion E. McDaniel, Jr. (1968) Eastham, Watson, Dale & Forney 947 Mellie Esperson Building Houston, Texas 77002	John P. Forney, Jr.	Gus A. Schill, Jr.
Patrick V. Martin (1968) Poles, Tublin, Patestides & Stratakis 37 Wall Street New York, New York 10005	Melvin J. Tublin	John G. Poles
G. Edward Merritt (1968) Terriberly, Rault, Carroll, Yancey & Farrell 2141 International Trade Mart New Orleans, Louisiana 70130	Alfred M. Farrell, Jr.	William E. Wright

APPLICANT	PROPOSER	SECONDER
Robert C. Mirone (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	Robert P. Hart	Louis J. Gusmano
George O. Mitchell (1968) Dixon, DeJarnette, Bradford, Williams, McKay & Kimbrell 101 East Flagler Street Dade Federal Building Miami, Florida 33131	James A. Dixon, Jr.	Frank Marston
Nicholas E. Monsour (1968) Bigham, Englar, Jones & Houston 99 John Street New York, New York 10038	Charles G. Herbermann	Robert J. Williams
William McG. Morrison, Jr. (1968) Pritchard, Myers & Morrison 104 Church Street Charleston, South Carolina 29401	B. Allston Moore, Jr.	David C. G. Kerr
Hubert Oxford III (1968) Benckenstein & Benckenstein 605 San Jacinto Building Beaumont, Texas 77701	F. L. Benckenstein	Leslie M. Ball
Marshall M. Pearlman (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	James B. Magnor	Daniel J. Dougherty
Henry A. Pominville (1968) Lambert, Leser & Pominville 309 Davidson Building Bay City, Michigan 48706	Thomas F. McGovern	Robert A. Jenkins
Robert Leon Poster (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	Patrick J. Gilmartin	William J. O'Brien
Don A. Proudfoot, Jr. (1968) Graham & James 100 Long Beach Boulevard Long Beach, California 90802	Leo J. Vander Lans	Reed M. Williams
A. Clay Rankin (1968) Hand, Arendall, Bedsale, Greaves & Johnston 3000 First National Bank Building Mobile, Alabama 36602	Alex F. Lankford, III	George F. Wood
Jack C. Rinard (1968) Macfarlane, Ferguson, Allison & Kelly 512 Florida Avenue Tampa, Florida 33602	David C. G. Kerr	Dewey R. Villareal, Jr.
A. Arthur Rosenblum (1968) 42 Broad Street Charleston, South Carolina 29402	B. Allston Moore, Jr.	Charles H. Gibbs

APPLICANT	PROPOSER	SECONDER
Leonard B. Sachs (1968) 207 Plaza One Norfolk, Virginia 23518	Alan Raywid	William E. Gwatkin, III
Janis G. Schulmeisters (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	Richard Brown, Jr.	Alexander E. Rugani
Donald Barthold Shafto (1968) Kirlin, Campbell & Keating 120 Broadway New York, New York 10005	Patrick J. Gilmartin	William J. O'Brien
Daniel W. Shea, Jr. (1968) Sun Shipbuilding & Drydock Co. Foot of Morton Avenue Chester, Pennsylvania 19013	Howard H. Lewis	Charles E. Mather, III
Alvin L. Stern (1968) Poles, Tublin, Patestides & Stratakis 37 Wall Street New York, New York 10005	Melvin J. Tublin	John G. Poles
A. Jackson Timms (1968) Seawell, McCoy, Winston & Dalton 935 Wainwright Building Norfolk, Virginia 23510	Harry E. McCoy	William B. Eley
Karl M. Tippet (1968) Hinshaw, Culbertson, Moelmann & Hoban 1 North LaSalle Street Chicago, Illinois 60602	Stuart B. Bradley	Joseph V. McGovern
Charles M. Tomaselli (1968) Browne, Hyde & Dickerson 61 Broadway New York, New York 10006	W. Mahlon Dickerson	John H. Reilly, Jr.
Thomas A. Vyse (1968) Graham & James 100 Long Beach Boulevard Long Beach, California 90802	Leo J. Vander Lans	Reed M. Williams
James G. Wheeler (1968) Wheeler, Marshall & Manchester 903 Citizens Bank & Trust Company Building Paducah, Kentucky 42001	John H. Hanninen	Wilder Lucas

The Chairman: You have heard the report of the Membership Secretary. Are there any questions which members would like to direct to him? If not, do I hear a motion to approve the report?

From the floor: So moved.

The Chairman: Seconded?

From the Floor: Seconded.

The Chairman: Any discussion? Any objection? Hearing none, so ordered.

Before we proceed to the reports of the Committee Chairmen, I want to report that at the meeting of the Executive Committee we were officially informed that if this organization was interested San Francisco would like to extend us an invitation to meet there in the fall of 1970. The regular date for the fall meeting as fixed by the By-laws, but which is subject to change by the President and the Executive Committee, is the first Friday of November. The hotel situation in San Francisco on that first Friday of November, 1970, is such that San Francisco would not be able to have us on that date, but they would be able to take us on the last Friday of October; in other words, one week ahead of the regular time. Accordingly, the Executive Committee yesterday voted unanimously and enthusiastically to inform San Francisco that we would be delighted to accept an invitation, if made, for the last Friday of October, 1970.

I was also instructed to ask here at this meeting today for a show of hands to see what reception a San Francisco meeting on that date would receive from the general membership.

So, now I am going to ask. I assure you, you are making no binding contract at this moment. I ask you to give me a show of hands: all of those in favor of meeting in San Francisco on the last Friday of October, 1970, please hold up your hands.

[show of hands]

Here, too, I see that we have unanimity.

Since, in about 30 minutes I am going down the drain, I want to say now to our San Francisco friends that I personally and on behalf of the Association, I appreciate their invitation very much.

Thank you.

Now, we will proceed to the reports of Committee Chairmen.

The first report for which I will call will be the report of Mr. Healy, who is our representative, and to that extent, a committee of one, our representative on the international sub-committee of the Comité Maritime dealing with the Torrey Canyon problem.

Mr. Healy.

Mr. Healy: Mr. President, Gentlemen, I am actually a Subcommittee of one of Arthur Boal's Committee on the Comité. You will recall that in the November meeting of the Association, we discussed a questionnaire which the CMI was about to circulate among the National Associations.

This questionnaire was in fact circulated and printed—copies were distributed to all of our members.

A substantial number replied, and in the main there was considerable unanimity of opinion with respect to the answers.

There was to be a meeting of the Working Group at Lisbon on February 29th and March 1 in order to act upon the answers of the various National Associations.

And, for this reason, it was necessary for the Executive Committee to consider what answers should be given on behalf of our Association, since there was to be no general meeting of the Association before the Lisbon Working Group meeting.

And, in doing this, the Executive Committee did give careful consideration to the replies which had been received from the membership. I think the answers which they gave are consistent with those replies and reflect the ideas of the members who were interested in the subject and who did answer the questionnaire.

I won't repeat all the answers now, but in the main the Association, through its Executive Committee, voiced opposition to the principle of strict liability or absolute liability for oil pollution.

They were also opposed to the idea of giving up any right of limitation of liability in oil pollution cases, and they were also opposed largely for practical reasons, to the idea of compulsory insurance.

It developed at the Lisbon meeting that our answers were in line with those of the overwhelming majority of the other Maritime Law Associations on the essential points.

At the Lisbon meeting it was thought that some positive recommendations should be made by the Working Group to the full Subcommittee of the CMI dealing with the problem of oil pollution. And, after considerable thought and discussion, the Working Group recommended as follows:

- (1) That the carrier should be liable for injury or damage occurring outside of the ship through the escape, burning or explosion of oil, or alternatively dangerous or noxious commodities carried in the ship, and for the cost of protective measures taken by

public authorities and others in order to prevent or minimize the injury or damage so caused, unless he proves absence of fault on his part.

(2) Such liability should be limited under the 1957 Convention, but that Convention should be amended so that either (a), the limitation figure in respect of property claims is increased, or (b), the limitation figure is increased in respect of claims arising only under (1) above, that is for oil pollution or the escape of dangerous or noxious commodities or burning or explosion of oil, or alternatively, dangerous or noxious commodities.

The full Subcommittee was scheduled to meet in Brussels yesterday and today, and presumably that meeting has just been completed. Because it was expected that it would be completed before our meeting would really get underway, the Executive Committee yesterday again considered this problem and specifically the recommendations of the Working Group.

And, again, after considerable discussion the Executive Committee unanimously resolved as follows:

First, that the Association maintains its opposition to strict liability and abolition of limitation of liability, as expressed in its answers to the questionnaire circulated following the fall meeting of the Torrey Canyon Working Group.

Second, that the Association approves in principle the recommendations contained in the report to the International Subcommittee made following the Working Group's Lisbon meeting as summarized in the two propositions set forth on pages 3 and 4 of the Report, with the understanding that the term "absence of fault" as used in Proposition number 1, is intended to mean "absence of material contributing fault."

These resolutions were telexed to Lord Devlin, Chairman of the Subcommittee, and presumably reached him in time for consideration by the Subcommittee as a whole.

I might say that the Working Group's Report has been approved by the London and Scandinavian P & I Associations insuring two-thirds of the world's tonnage.

I think while he did not say so in so many words, Mr. Casey, the President of the AMMI, implicitly at least, approved them in his testimony in Washington last week.

The American Petroleum Institute not only approved the substance of these recommendations, but advocated even more drastic legislation again at the hearings in Washington last week.

Mr. Gerity will tell you about those.

It seems to me that the Working Group's proposals represent the most acceptable compromise between the advocates of strict liability and the opponents of strict liability that could be adopted.

In the main, they reverse the burden of proof, which I don't think in this country would be of any tremendous consequence, because in the usual case, at least the discovery rules would in effect accomplish the same result.

The recommendations would remove any doubt concerning the right of government and others to recover the reasonable cost of protective measures, that is the cost of taking reasonable steps to avert or minimize pollution damage once an oil spillage has taken place.

And, they would recognize the necessity of some increase in the Brussel's conference limits.

You will recall that this Association is on record as approving legislation embodying the Brussel's convention limits, and there has been a good deal of inflation since we did that so that possibly some increase may be warranted.

That's all I have to report.

Thank you, Gentlemen.

The Chairman: Thank you.

Are there any questions which any member would like to direct to Mr. Healy on this Torrey Canyon problem as now being considered by the International Working Group and Subcommittee of the Comité?

Mr. White: Mr. Healy, I didn't quite understand your reading of the proposal. Does it include the word "reasonable" before steps taken to prevent damage?

Mr. Healy: Yes, the cost of protective measures reasonably taken by public authorities and others.

Mr. White: Does it include also steps taken to mitigate damages as well as—

Mr. Healy: Yes, the exact language, the cost of protective measures reasonably taken by public authorities and others in order to prevent or minimize the injury or damage so caused unless he proves absence of fault on his part.

Mr. White: One further question, was consideration given to the possibility of creating a third category covering pollution damage only?

Mr. Healy: Yes.

Mr. White: I ask you these questions because they have come up in informal meetings which I attended.

Mr. Healy: Yes, the recommendations in this respect is made in the alternative, it is the recommendation that the liability be limited under the 1957 Convention, by which I know the delegates meant that in accordance with the rules of the 1957 Convention, absence of actual fault and privity and so on; but that Convention should be amended so that either (a), the limitation figure in respect of property claims is increased, or (b), the limitation figure is increased only in respect of claims arising under (1) above.

Now, "(1) above" is the paragraph dealing solely with oil pollution, or, alternatively, by pollution by dangerous or noxious materials or burning or explosion of oil, or alternatively, dangerous or noxious commodities.

The Chairman: Any other questions? If not, I will entertain a motion to receive and approve the report.

From the Floor: So moved.

The Chairman: Seconded?

From the Floor: Seconded.

The Chairman: Is there any discussion of the motion? Hearing no request for discussion, is there any objection to the motion? Hearing no objection, so ordered. Now, in January, we learned that the Senate had already passed a bill on this subject. Upon learning that, your President immediately appointed a small special committee to watchdog the proposed legislation. The chairman of the special committee was Mr. Gerity, and the two members were Mr. Paulsen, who is the Chairman of our Coast Guard Committee, and Mr. White, who is the Chairman of our Limitation of Liability Committee. I now ask Mr. Gerity, as Chairman of the special committee on the oil pollution legislation, whether he will report on it at this time.

Mr. Gerity.

**REPORT OF THE SPECIAL COMMITTEE ON
BILLS S. 2760 AND H.R. 14,000**

Mr. Gerity: Mr. President, Gentlemen, the hearings before the House of Representatives on the legislation which is the subject of the report I am about to make on behalf of the special committee, only commenced on the 23rd of April, and are still continuing. Consequently, our report was prepared only within the last 48 hours. We did not have an opportunity to print it, and distribute it to the members of the Association.

It is reasonably short and, if I may, I will read it in full.

This is a report of the Special Committee of the Maritime Law Association of the United States on bills S.2760 and H. R. 14,000 to amend the Federal Water Pollution Control Act (70 Stat. 498), as amended (33 USC 466 et seq.) now before the Committee on Public Works, United States House of Representatives.

The report reads as follows:

“On February 15, 1968 the President of the American Merchant Marine Institute, Inc., invited the attention of our President, to Section 19(e) of Bill, S. 2760 which passed the Senate on December 12, 1967 after action by the Senate Committee on Public Works, in executive session. The bill apparently imposes absolute liability upon, among others, the owner of a vessel to remove oil released or discharged therefrom upon the navigable waters of the United States or adjoining shorelines without apparent benefit of limitation of liability in respect of indemnity claims by our federal government for removal of such oil. The companion Bill now before the committee on Public Works of the House of Representatives is H. R. 14000. Both bills are substantially identical.

Section 19(e) of both bills reads as follows:

“(e) The owner or operator of a vessel or shore installation from which oil is discharged into or upon the navigable waters of the United States or adjoining shorelines shall remove such discharged oil immediately from such waters and shorelines in accordance with regulations prescribed by the Secretary under this section. If such owner or operator fails to so act, the Secretary may remove the oil or arrange for its removal from such waters and shorelines, and such owner or operator and, as appropriate, the vessel and the shore installation shall be liable, notwithstanding any other provision of

law, to the United States, in addition to the penalties prescribed in this section, for the full amount of the actual costs incurred by the Secretary under this subsection: Provided, That there shall be no such liability where such discharge was due to an act of God. Clearance of a vessel liable for such costs from a port of the United States may be withheld until such costs are paid or until a bond or other surety satisfactory to the Secretary is posted. Such costs shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States for any district within which such vessel may be found'.

"At a meeting of the Executive Committee on February 16, 1968, our President appointed the following members to constitute a Special Committee to report on the foregoing legislation; John F. Gerity, Chairman, member of the Executive Committee; Burton H. White, Member and Chairman, Committee on Limitation of Ship-owners' Liability; and Gordon W. Paulsen, Member and Chairman, Committee on Matters Concerning Coast Guard Regulations.

"The Special Committee actively considered the above legislation on February 26 and 28, 1968. A joint meeting was held on March 19, 1968 by your Special Committee with committee members of the AMMI Ad Hoc Legal Committee on the 'Torrey Canyon' Casualty, and the Special Committee on Limitation of Liability.

"H. R. 14000 was referred to the House Committee on Public Works which held hearings with respect thereto in Washington, D. C., on April 23, 24 and 25, 1968. This Committee could not appear before the House Committee to express the views of this Association without the unanimous consent and authorization of the Executive Committee or alternatively by a majority vote of this Association at this its annual meeting. Accordingly, the House has consented to permit the Association to file a statement on the legislation following this report and action if authorized at this meeting.

"It is apparent that the above Bills deal with principles of law and liability which are of importance to the entire maritime industry, in that under Section 19(e) thereof the following adverse consequences would result:

"1. Owners of vessels would be responsible for removal of oil discharged therefrom even though the liability therefor based on negligence should have been imposed on another.

"2. Should owner fail to immediately remove the oil, the Secretary of Interior may cause such removal and such owner would be liable not only for the costs in connection therewith but without any right to limitation of liability whatever in respect to the government's claim. The owner also would be subject to the penalties prescribed in the bill. The bill is in effect quasi-penal. The casting of such liability upon what could be an innocent owner without proof of negligence or limitation as to amount is contrary to settled principles and our law. Before one may be held liable under such a statute it should be required that his legal liability for the occurrence and damages must be established and be enforced on proof of negligence.

"3. It is also a realistic probability that the vessel owner could not obtain insurance to cover the extent of possible liability indicated.

"In 1962 and 1963 the Membership authorized the Association to present the majority view that the Congress pass legislation by enacting into law the limits of liability and terms thereof known as the 'International Convention on the Limitation of Shipowners' Liability', written at the Diplomatic Conference on Maritime Law, Brussels, September 30-October 10, 1957. This legislation was before the Congress in bills S. 3251 and H. R. 10327 in 1966. The effect of such law would bring the system of liability limitation in the United States into harmony with that of other maritime nations. In 1966 your Chairman testified before the Congress in an endeavor to have the provisions of the 'International Convention on the Limitation of Shipowners' Liability', written at the Diplomatic Conference on Maritime Law, Brussels, September 30-October 10, 1957, adopted by the United States. Despite such efforts the Association's recommendations have not been enacted into law but limitation of liability remains as provided in 46 USC 183 et seq.

"After due consideration your Special Committee recommends that it be authorized to file a statement with the Congress on S. 2760 and H. R. 14000 reflecting the following principles:

"1. That the concept of liability irrespective of fault as provided in Section 19(e) should not be enacted into law.

"2. That the imposition of absolute liability without limitation for the benefit of the United States is contrary to all prior measures of responsibility heretofore imposed in similar cases and is unwarranted. Limited liability on settled principles should be as it is in other aspects of our jurisprudence.

"3. That this Committee again be authorized to request that the principles of the 'International Convention on the Limitation of Shipowners' Liability', written at the Diplomatic Conference on Maritime Law, Brussels, September 30-October 10, 1957 pertaining to limitation of liability, be adopted by the United States, as urged by this Association in 1962, 1963 and 1966.

"4. That any financial responsibility to be imposed on owners of vessels under the proposed legislation be limited to such responsibility evidenced by certificates of insurance recognized in other matters of maritime commerce.

"In conclusion your Special Committee recommends that this cause should be granted the Association's full support and the Special Committee be granted authority to take all such related action as may be necessary to effect the aforesaid principles".

Respectfully submitted,

John F. Gerity
Burton H. White
Gordon W. Paulsen."

Thank you, sir.

The Chairman: Thank you, Mr. Gerity.

Are there any questions which the members would like to direct to Mr. Gerity on this Report?

From the floor: Mr. Chairman, I would ask Mr. Gerity if the Committee has considered whether this Bill imposes an obligation on the government to clean up spilled oil so that the government may possibly be liable whether or not they give indemnity to the shipowner.

Mr. Gerity: The Bill gives authority to the Federal Government to clean up, and the owner's ability to go forward himself to clean up must be enacted and put into force immediately.

The Chairman: Any other questions?

From the floor: Could you read your recommendation number 4 again?

Mr. Gerity: Yes, sir, I will.

“That any financial responsibility to be imposed on owners of vessels under the proposed legislation be limited to such responsibility evidenced by certificates of insurance recognized in other matters of maritime commerce.”

Perhaps I could add to that, sir, if I may, that in the Safety Bills of last year, I think of 1966, proof of financial responsibility was required by the owners of 36 passenger vessels, and, if under the administrative rules, if the Secretary of Interior goes back into that tact to gain financial responsibility in the depositing of large sums of money in this country, it will be an impossible situation, not only for hundreds, but possibly thousands of owners of vessels.

Does that answer your question, sir?

From the floor: Yes, it does.

Thank you.

From the floor: Mr. Gerity, I wonder if that fourth recommendation could be interpreted as requiring insurance.

I have in mind the oil companies, some of the oil companies which are self-insurers, and may not be able to provide certificates of insurance showing entry in a P & I Club or insurance on the open market or in some other way.

Mr. Gerity: The answer to your question came to the Committee's attention, and recommendations were that certificates of insurance should not be required, but, if this question of financial responsibility is again raised, as it was in the Safety Bills of 1966, then we seek authority from the Association to put forward as its views that in a certificate of insurance, if any such evidence is required, should be accepted as sufficient. That does not require insurance as such.

Does that answer your question, sir?

From the floor: In other words, if I understand you correctly, Mr. Gerity, your proposal would permit a certificate showing financial responsibility in some other way, for example, by establishment of insurance reserves as is done by some of the oil companies?

Mr. Gerity: Yes, sir.

With respect to recommendation number 4, we are trying to foresee what happened in 1966 so that the impact upon the industry, particularly upon the financial resources of the industry, will not be stretched beyond reasonable limits.

Does that answer your question?

From the floor: Yes.

From the floor: I have a question.

Mr. Gerity, does the amount of insurance to be provided by certificates in the event of your number 4 proposal, is that left to the discretion of the Department of Interior?

Mr. Gerity: No, sir.

I think the amount of insurance would also be subject to the enactment of our limitation of liability laws, be they as presently written, or be they as set forth in the 1957 Brussels Convention; just the same as if you gave a letter of undertaking in a collision case.

The Chairman: Any other questions?

Hearing no further questions, I will now entertain a motion to approve the report.

From the floor: So moved.

The Chairman: Seconded?

From the floor: Seconded.

The Chairman: Is there any discussion now on the motion? Hearing none, I now ask whether there is any objection to the motion as put? The motion is to approve the report, which recommends certain positions.

From the floor: So that we shall have the record straight, do you have a motion to approve the report?

The Chairman: Yes, Mr. Paulsen so moved, and there was a second.

Is there any discussion on the motion to approve the report as read?

From the floor: I might suggest, too, Mr. Gerity, that, when the Committee does have an opportunity to appear before the Congressional Committee again, they be advised of the position which this Association is taking in regard to Mr. Healy's report, that is the position that we just took in favor of the proposed International Convention, which would impose liability, but shift the burden of proof on to the ship as being the lesser of two evils.

If we could pass that on to the Government, and state that this is also—this also appears to be the position of the CMI, then I think it might have more weight.

Mr. Gerity: This has also been taken under consideration in our discussions in the Executive Committee with Mr. Healy, and I think, again speaking—again for the small special committee, it is the overall thought that under our domestic law there is no need, or certainly no pressing need, to urge a change in the burden of proof.

As Mr. Healy has told us, and the body of his report shows, we personally think that under our discovery rules and under the principles of *res ipsa loquitur*, the burden of proof would be in that direction anyway, ultimately. But, under foreign law, the matter is entirely different, and I understand that our colleagues abroad feel that they must have an express provision with respect to the burden of proof.

Does that answer your question, sir?

From the floor: I think it does. But I believe what you are saying is that under the American law, *res ipsa loquitur*, this is read into the law, and that is what is being done by Mr. Healy's Committee.

If we are not giving away anything, it might pacify some of the legislators to let them see that we would be agreeable to a shifting of the burden of proof in these oil cases.

Mr. Gerity: I will take that matter up and I would take it also, since Mr. Healy's report was approved, that we also may express, if the subject is pressed, that the sense of the authority of this Association to this Committee on its statement would reflect that the burden of proof, if necessary, should be cast upon the vessel or vessel owner responsible for the release of the oil.

From the floor: That was my suggestion to these legislators, many of whom are not lawyers. They may feel this is a real concession on our part and something which will pacify them.

Mr. Gerity: I think also, I don't want to speak for our President, I think that these reports were scheduled to follow one, two, three, because in a real sense the authority of this Association with respect to one, as far as it is related to the other two, would reflect the views of this Association which we want to place before the Congress.

The Chairman: Thank you, Mr. Gerity.

If I may be permitted an observation, these subjects are so closely interrelated, in fact overlapping to the point of virtual identity, that all three committees, that on the Comité, as represented here by Mr. Healy, the special committee on this legislation, as represented

by Mr. Gerity, and the Committee on Shipowners' Limitation of Liability, as represented by Mr. White, all have been acting in very close collaboration.

Unless there is any further discussion on the motion, which is to approve Mr. Gerity's report, I will now call for the "Ayes" and "Nays" on this particular one.

All in favor of approving the report will please indicate by saying "Aye".

(Chorus of "Ayes".)

The Chairman: All those opposed?

From the Floor: No.

The Chairman: One "no."

Do you wish to be recorded by name?

From the Floor: No, sir.

The Chairman: The "ayes" have it.

Now, in continuing the development of these interrelated subjects, I will now call on Mr. Burton White, who is Chairman of our standing Committee on the Limitation of Shipowners' Liability.

REPORT OF THE COMMITTEE ON SHIPOWNERS' LIABILITY

Mr. White: A brief report on the subject of limitation of liability has been prepared within the last 24 hours and could scarcely be printed for distribution this morning.

With that initial observation, I should take the liberty of reading this report, which, after all, is general in nature and less than two pages in length:

When the President in November 1966 approved Public Law 89-777, dealing with the safety on passenger ships, he indicated that he felt that the question of limitation of liability should have been dealt with. Accordingly, a bill was prepared by the Administration which would have abolished limitation for personal injury and loss of life. To date this bill has not been introduced, but there have been various indications that it may be introduced in the not too distant future.

On the other hand, there is a strong feeling that the 1957 Brussels Convention, expressing the international point of view on limitation of liability, should be ratified and adopted by the United States. If the so-called Administration Bill is introduced, there is

little doubt that a counter effort will be made to secure the adoption of the principles of the 1957 Convention.

Although there is no immediate question before the Maritime Law Association, there is no assurance that one will not arise before another Association meeting. The Association has previously endorsed the principles of the Brussels Convention and pressed for their adoption. In the minds of your Committee members there is no reason why this position should be changed now.

There can be little doubt that our limitation statute is due for liberalization, in that the recoveries under it are presently inadequate and the fund itself is calculated on an improper basis. On the other hand, despite some assertions to the contrary, limitation is still necessary. It is necessary for the development of shipping; it is necessary to prevent incalculable risks; it is necessary to obtain insurance protection on a proper basis.

This Committee feels that the United States should not continue to take a unilateral position, contrary to that of almost all maritime nations. Limitation on an internationally agreed basis is as beneficial to the United States as it is to the world.

The 1957 Brussels Convention accomplishes this objective. It would provide an appropriate increase in liabilities and in potential recoveries. It corrects unnecessary and destructive conflicts in municipal laws and avoids jurisdiction shopping. It is the considered view of your Committee that—if, as and when the limitation question is again raised in Congress—the Maritime Law Association should re-assert its previous position in favor of the principles of the Brussels Convention and that your Committee should be authorized and directed to take such steps as may be necessary and appropriate in support thereof.

ALFRED M. FARRELL, JR.

JOHN GERITY

LEAVENWORTH COLBY

ROBERT A. FELTNER

WILDER LUCAS

BURTON H. WHITE

Chairman

Thank you, Gentlemen.

The Chairman: Thank you, Mr. White.

Are there any questions to be directed to Mr. White in connection with his report?

Hearing no questions, I will entertain a motion to approve the report as rendered.

From the Floor: So move.

From the Floor: Second.

The Chairman: It has been moved and properly seconded, that the report be approved as presented.

Is there any discussion of this motion?

From the floor (Mr. Maloney): Mr. President, I think it is unfortunate that this matter should come up in this fashion. I am sure you will recall—many in the room will recall that when this issue was last before this body, it was before us with voluminous reports, both majority and minority. There was a very close vote after long debate. There are many in the room who weren't here at that time, many people who never had the benefit of those reports.

I think it would be unfortunate if a vote today without any advance warning should be taken as an overwhelming support of the position that Mr. White's committee advocates.

There are many reasons why that position isn't sound.

I don't care to go into them at the moment, but I may say that the State Department has taken the position that they will never support the '57 Convention because of its jurisdictional defects.

I would much prefer if Mr. White under these circumstances would ask merely that his report be received, and that we not be asked to approve the recommendation at this time.

The Chairman: Is there any further discussion?

From the floor: May I be heard?

The Chairman: Mr. Gerity.

Mr. Gerity: I am a member of the Committee and Mr. Maloney has spoken with respect to advising the membership of the position on limitation of shipowners' liability.

I have stated in my report in 1966 when I testified before the Senate, I had the unanimous approval of the Executive Committee on every word of that testimony, and Mr. Maloney was a member of that Executive Committee.

Thank you, sir.

The Chairman: Is there any further discussion?

Hearing no further discussion, I will now put the "Ayes" and "Nays."

All those in favor of the motion that Mr. White's report be approved, signify by saying "Aye."

(A chorus of "Ayes.")

The Chairman: All opposed, "Nay."

(A chorus of "Nays.")

The Chairman: The "ayes" have it, and the report stands approved.

Now, pass to Mr. Boal's report as Chairman of the Committee on the Comité Maritime International.

THE REPORT ON THE COMMITTEE ON THE COMITE MARITIME INTERNATIONAL

Mr. Boal: Mr. President, first I think I can speak in a little lighter vein.

I attended a meeting of the Bureau Permanent on May 1, 1968 in Antwerp.

At this meeting a plenary session of the Comité was fixed for Tokyo, Japan, March 31st to April 5, 1969.

The next meeting after Japan is scheduled for Hamburg in '71, but the date has not yet been determined.

The Japan Airlines has offered the Europeans to furnish a jet plane for 130 passengers and pick them up at four places in Europe, transport them to Tokyo and permit them to return to Europe at any time on any scheduled Japan Airlines flight with no time limit. This at a 43% discount from established fares.

What can be done for us? I don't know. But, I don't think we would have 130 going.

The European Nuclear Energy Agency has scheduled a symposium to be held in Monaco October 7th to October 11th of 1968. This matter first came up in January with the idea that the meeting would be held in February. There was a great deal of confusion about it, and your President asked me to handle it for the Association. This I did, and found that much of the information we had received up to that time was erroneous.

This is a symposium to get all the possible views on the problems involved in the transportation of nuclear materials including nuclear waste. Nothing will be decided at this symposium. As a result of the views expressed, the Agency may propose a convention which will deal with the subject of transportation of nuclear materials, either separately or as a part of a broader convention.

At the request of the Bureau Permanent I agreed to present a paper on our existing law and to attend the meeting as a representative of the Bureau Permanent.

At my request, Peider Konz was designated as a deputy to attend with me.

As many of you know, Peider Konz is very familiar with the European scene, particularly in the field of nuclear liability. At the present time he is in charge of the office of Donovan and Leisure in Paris and is Vice President of the International Legal Center in New York. The International Legal Center is an organization put together by the Carnegie Foundation and the Ford Foundation whose purpose is the improvement of legal education in the developing countries.

SUBJECTS ON THE AGENDA FOR THE PLENARY SESSION OF THE C.M.I. AT TOKYO IN 1969

The following subjects have been placed on the agenda for the plenary session of the C.M.I. in Tokyo in 1969.

1. Containers.
2. The TORREY CANYON.
3. A revision of the convention on Passenger Liability.

The convention on Passenger Liability adopted in Brussels in 1962 has not been ratified by any country. The whole convention will probably not be reviewed. Review will probably be confined to the limitation amounts in the convention. These are obviously too small under present conditions.

THE CONVENTIONS ADOPTED AT BRUSSELS IN 1967

Now I would like to go back to the really serious part of my report and I would like to talk with you about four of the conventions which were adopted at Brussels in May of 1967. The fourth one, rather the fifth one, dealing with Bills of Lading will be discussed with you by John Moore.

The first is a rather minor one. It is an amendment of the Salvage Convention of 1910 to make that convention apply to warships and other publicly owned ships.

Those ships are now covered in our own statutes, i.e., the Suits in Admiralty Act and the Public Vessels Act. This amendment, if adopted, would make very little change in our law. Under our present law foreigners could not sue under either the Suits in Ad-

miralty Act or the Public Vessels Act unless their governments gave reciprocal rights to our citizens.

There was only one vote cast against this convention in Brussels and that was by the United States and this was due to the position of the Navy. I am sure that the reasons advanced by the Navy for their position seemed reasonable to them.

In fairness and in honesty if we want a proper legal system we should approve this convention.

I would like to review all of the conventions and ask at the end for separate votes on each one.

The next convention is really a companion to that on Passenger Liability. It deals only with liability for passenger's luggage.

That was handled at Brussels by Mr. Mendelsohn of the State Department. I do not know whether Mr. Mendelsohn is here today or not. The principal points involved in this convention were the limits of liability for passengers' luggage. This is more important to Europeans than to us. It is particularly important for the ferry services on which vehicles are transported of which there are many in Europe. The vehicles are considered by them as luggage.

The limit of liability for loss of a vehicle is increased from 660 to 30,000 Francs. The loss of other articles to 16,000 Francs. It also provides that the carrier and passenger may agree upon a deductible of 15,000 francs for damage to the vehicle and 100 francs for damage to their luggage. Translated into dollars the limit of liability for loss of cabin luggage is increased to \$660, for the loss of a vehicle to \$1980 and other articles \$1000.

Mr. Mendelsohn was very much pleased with the convention. It was the only one signed by the United States representative.

SHIPS UNDER CONSTRUCTION

The next convention is one relating to the registration of rights in vessels under construction.

As our law stands today this is not a subject within the admiralty and maritime jurisdiction. This is entirely a matter of State law.

However, I believe that Congress can extend the maritime jurisdiction to cover rights in or to ships under construction and I think it would be advisable that it do so. So that it will be possible for those who lend money for the construction of ships, to advance money during construction, and be protected for those advances when the ship is waterborne and is a real ship subject to a mortgage.

THE SHIP MORTGAGE CONVENTION

The fourth convention making rules on maritime liens and mortgages is a very important one.

The real controversy at the meeting of the C.M.I. in New York and the diplomatic conference in Brussels centered on Article 4 which determines priorities, including the determination of those liens which come ahead of the mortgage.

Each country is left free to impose any liens it sees fit but only those so specified in the convention may come ahead of the mortgage. All others must come after the mortgage.

Article 4 as adopted at Brussels gives the following liens priority over the mortgage:

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

ii) port, canal and other waterway dues and pilotage dues;

iii) claims against the owner in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

iv) claims against the owner, based on tort and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the vessel;

v) claims for salvage, wreck removal and contribution in general average.

Sub-paragraph (iv) was the subject of lengthy discussion. The words "not capable of being based on contract" were inserted for the express purpose of eliminating any lien for cargo damage on the list of those that come ahead of the mortgage. All other liens for property damage resulting from tort do come ahead of the mortgage.

The American delegation proposed striking out the words "not capable of being based on contract" but in that they did not succeed.

The only other change from our law in Article 4 is that under our law liens existing at the time of the recording of the mortgage come ahead of the mortgage. This has been eliminated. This will not be of any importance in the case of new construction. How important it is in other areas is doubtful.

Another lien under our law which has been eliminated is that for the wages of a stevedore directly employed by the owner. This is of no importance under modern conditions.

The American representatives fought very hard to put the cargo lien ahead of the mortgage. We had the support of Norway, Germany, Canada and Argentina but that was about all.

It comes down to this—if we want an international convention on ship mortgages we will have to accept the rule that the cargo lien comes after the mortgage.

ARTICLE 11

Article 11 is in the form which was requested by our lending institutions.

This was discussed at great length with representatives of our lending institutions prior to the meeting in Brussels. They explained to us their own peculiar problems and we worked out with them a clause that would meet their problems.

The lending institutions are lending large sums for the construction of new ships, particularly oil tankers and other bulk carriers. These ships are under a special form of charter party which contains no cesser clause and no off-hire clause. The obligation of the charterer is to pay such sums as are sufficient to pay the interest and principal of the loan as these sums become due. They want to be sure that this charter party is not frustrated by the sale of the ship at foreclosure. They also want an opportunity to go in at the foreclosure sale to buy the ship and continue the charter party.

Article 11 as finally adopted is as follows:

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

a) at the time of the sale, the vessel is in the jurisdiction of such Contracting State, and

b) the sale has been effected in accordance with the law of said State and the provisions of this Convention.

No charter party or contract for the use of the vessel shall be deemed a lien or encumbrance for the purpose of this Article.

Considering this convention as a whole, it is a good one. If we want a convention dealing with ship mortgages, we must accept this one. There is no question that an international convention on ship mortgages is highly desirable. Your Committee recommends the approval of this convention.

Mr. President, we request a separate vote on these conventions and I will ask first for a vote of approval on the Salvage Convention as recommended by the Committee.

The Chairman: Is there a second?

From the Floor: Seconded.

The Chairman: Is there any discussion on this Salvage Convention?

From the Floor: My name is Charles Blocher. I address myself, of course, to this Salvage Convention. As Mr. Boal has accurately put it, it is unimportant except as it may affect interests other than commercial interests.

Number one, I would like to observe that, while, as Mr. Boal did correctly put it, the main impact of this Protocol is to include warships, this was done by the International Committee on their own, without consultation with this government or any other that I am aware of, and, indeed, I am informed that it was done without even consultation with the Maritime Law Association of the United States.

Its impact in some areas of the government is rather severe, and I would like to point out one or two areas.

We have with various governments, agreements or separate agreements, multilateral, which provide that when one warship of a nation renders salvage assistance to the warship of a member of that agreement, there will be no salvage claims asserted.

Number two, the United States Navy expends a considerable amount of money in maintaining in reserve an exploration of salvage, and it gets and asks from the commercial community, when it does render salvage assistance on a non-commercial basis, or on a non-competitive basis, to pay back to the Navy only that amount which is chargeable for the time it is engaged in the salvage of the ship.

Under the proposed Protocol or under the Protocol there would be no payment to the Navy to reimburse it if the operation were unsuccessful.

Number two, there is a provision in the Convention or Protocol, that would require a commanding officer of a Navy ship, which he has shot and hopes to sink, to render salvage assistance, and this even though there may be dire and urgent need to continue warfare within the immediate area.

I thought, or it occurred to me, if you had the benefit of these remarks, it might help and assist you in arriving at a vote.

And, Mr. Chairman, the one thing I would like to ask, if I am the sole voter at this time, may I have more than one vote?

The Chairman: May I interject here one completely irrelevant comment. During the last two years, this organization, through its various committees, has been deeply engaged, day to day, with hard work on all of these important questions. Now, I know that we are having a long meeting, but I do ask that all of you bear with us, because these various things are vitally important, and may even be more important than getting lunch at noon.

From the Floor: My name is Ashworth.

The report of our delegation stated that the United States took the position against this Protocol on the ground that warships and public ships should not be included in the scope of maritime conventions. That's a general point. That's not mentioned in our committee report at all.

The committee says that it is difficult to understand the opposition.

Since that point hasn't been raised by our committee, and since our committee says that the Association has taken no position, because the convention primarily concerns the government of the United States, it seems we should not unnecessarily embarrass our government in its diplomatic negotiations, particularly since the committee says there's little prospect of ratification.

Mr. Boal: I don't think it would embarrass the government one bit.

From the Floor: My name is McGuire.

I would like to be heard, that I support the position advanced by Charles Blocker.

From the Floor: Commander Bates, United States Navy.

I, too, join respectfully in the position taken by Captain Charles Blocher, administrative counsel of the Navy, as my immediate superior in command.

The Chairman: Is there any further discussion?

From the Floor: Mr. President, Stars and Stripes Forever. It seems to me that there is one genuine consideration involved in our participation as an Association in determinations by this international body.

If it isn't going to hit us between wind and water, if there are things to be said for it, I should think that the consideration that maritime law, if it is going to be good law, has got to be international, and would dictate a—dictate some give and take response on the part of the delegation of the United States. If I am not misinformed, that kind of attitude has been missed by some of our European comrades.

The Chairman: Speaking to the motion, which is to approve, to record this Association as approving the proposed amendments to the Salvage Convention, is there any further discussion?

If not, all those in favor of the motion to approve the amendment to the Salvage Convention, please signify by saying "aye."

(A chorus of "ayes.")

The Chairman: All those opposed?

(A chorus of "nays.")

The Chairman: Let's have a show of hands on the "ayes."

(A show of hands.)

The Chairman: Let's have a show of hands on the "nays."

(A show of hands.)

The Chairman: I'm afraid we are going to have to count them. I ask Mr. Higgins and Mr. Carey to serve as tellers to count the vote.

All the "nay" hands down.

All the "aye" hands up.

These are "ayes," that is, in favor of the motion to approve the Salvage Convention.

All the "aye" hands down.

All the "nay" hands up, please.

(A count was taken and reported by the tellers.)

The Chairman: The motion carries 65 "ayes" to 50 "nays."

Proceed, Mr. Boal.

Mr. Boal: Mr. President, I move the approval of the committee's recommendation that the Association approve the Luggage Convention.

The Chairman: Is there a second?

From the floor: Seconded.

The Chairman: Is there any discussion on this particularly innocuous convention.

Hearing no discussion, I will put the vote.

All those in favor of the motion now, please signify by saying "aye."

(A chorus of "ayes".)

The Chairman: All those opposed, say "nay".

(Nay.)

The Chairman: One vote "nay", and the motion is carried.

Proceed, please, Mr. Boal.

Mr. Boal: I next move the approval of the Committee's recommendation that the Association approve the Convention Relating to the Registration of Rights in Ships under Construction.

The Chairman: Is there a second?

From the floor: Seconded.

The Chairman: Is there any discussion of the motion to approve this Convention.

All those in favor of the motion to approve this Convention, please signify by saying "aye".

(A chorus of "ayes".)

The Chairman: All those opposed. There are no "nays", and the motion is carried.

Finally, the Mortgage Convention.

Mr. Boal: I move that the recommendation of the Committee for approval of the Ship Mortgage Convention be approved.

The Chairman: Is there a second?

From the floor: Seconded.

The Chairman: Is there any discussion of this Convention?

From the floor (Mr. Maloney): Mr. Chairman, I am happy that I am not rising in the position of a dissenter again, because having known Arthur for many years, and having the greatest respect for his ability and integrity, I can say I don't know anyone who could have worked any harder than Arthur worked to achieve the American objectives, not only in the Comité, but at Brussels.

I am rising only to say that I think action by this body at this time is premature, and I want to call attention very briefly to a short excerpt from the report of the delegation, the American Delegation, signed by Carl Davis, under date of October 10, 1967, and submitted to the Secretary of State.

He states here that the principal objectives of the United States were to obtain recognition of a preferred lien for cargo, as well as to conform the list of preferred liens substantially to the list of the ship mortgage act of 1920.

The second principal objective was to obtain a two-year period after which maritime liens were extinguished rather than the one-year period specified in the Draft Convention.

The third principal objective was to eliminate the forced sale notice procedure, or, alternatively, to obtain something less than 30 days prior notice.

There was a fourth principal objective that was achieved, but these three were not.

At the conclusion of his report, Mr. Davis sets forth the recommendations of the Delegation.

Under paragraph (e), he stated the Conference adopted a convention on maritime liens and mortgages. The Delegation recommended that implementing the domestic legislation with amendments to existing legislation as appropriate, be sought and that the United States should ratify the convention with such reservations as may be appropriate.

I suggest, Mr. President, that it is premature for this body to approve the convention as Mr. Boal puts it, as it is, as it stands, without seeing what reservations, what domestic legislation our government, or administration proposes to submit.

I would hope that when that legislation or reservation is submitted, that this group can vote unanimously for that position.

I hate to see this body divided. I hate particularly to see this body divided before the fact.

So, Mr. Chairman, I move that this matter be tabled until such time as our administration submits to Congress either domestic legislation, or, a ratification letter or both.

From the floor: I second the motion.

The Chairman: A motion to table has been made and seconded. And, my ruling is that the motion to table is not debatable. The motion before the House is a motion to table the report on this particular Convention.

All those in favor of the motion to table, please signify by saying, "aye".

(A chorus of "ayes".)

The Chairman: All opposed?

(A chorus of "nays".)

I am afraid the "ayes" have it, unless the "nays" call for a count. Hearing no request for a count, I rule that the "ayes" have it, and the motion is tabled.

Thank you very, very much, Mr. Boal.

Mr. Boal: Copies of the Davis report are over there. Whether it was mailed out or not, I brought some extra copies that I got from Carl Davis himself.

The Chairman: The next order of business is the report from the Bill of Lading Committee, Mr. John C. Moore.

REPORT OF THE BILL OF LADING COMMITTEE

Mr. Moore: Mr. President, the report of the Bill of Lading Committee is on the table outside, and there's also a pile of documents entitled Exhibit A. At the last moment there wasn't time to attach Exhibit A to the committee report, but it is an exhibit to the report and forms a part of it.

Exhibit A is a mimeographed copy of the document which was intended to be Exhibit E to the report of the Committee on the CMI.

Now, the report of the Bill of Lading Committee is unanimous, and I would like to say that it was unanimous only because of the loyalty and hard work of a great many members of the Committee who held disparate views, but we managed to produce a recommendation in which those views were set forth.

There are two issues which will appear clearly from the report, but we will not have a recommendation which produces any divisive feeling within the Association today.

I think I should also say that the Committee's Report is long enough to satisfy the desires of even the most discriminating of our members.

The report covers three subjects.

The first subject is the Visby Amendments to the Hague Rules.

"Action on the Visby Amendments was completed by the Brussels Diplomatic Conference on February 23, 1968. A copy of the resulting Protocol is attached hereto, marked 'Exhibit A'.

"Most of the Visby Amendments are not controversial, simply filling needs which had received general support. They have been explained fully in previous reports of your Committee and require no further comment at the present time. However, there are three items which do require comment, as follows:

A. SCOPE OF APPLICABILITY.

Article 5 of the Protocol amends Article 10 of the Convention to broaden the scope of applicability to cover any bill of lading issued in a Contracting State (even if the goods are loaded in a Non-Contracting State) and also so as to give the force of law to any bill of lading clause which stipulates for applicability of the Hague-Visby Rules in circumstances in which they would not otherwise apply (outward from Non-Contracting States and inward to Contracting and Non-Contracting States). This Article also specifically permits any Contracting State to broaden the scope of applicability to include inward shipments.

This Article does not broaden the scope of the Convention to reach as wide as present U. S. law and is, therefore, somewhat disappointing. However, it was the best that could be obtained and leaves it open to the United States to maintain the full scope of U. S. law so your Committee recommends approval.

B. LIMITATION AMOUNT PER UNIT.

Article 2(a) of the Protocol amends Article 4(5) of the Hague Rules so as to fix the limitation amount at Fr. P. 10,000 (U.S. \$662) per package or unit or Fr. P. 30 (U.S. \$1.98) per kilogram (equivalent to U.S. \$.90 per pound), whichever is the higher.

Limitation on this basis was approved in advance of the final phase of the Brussels Conference on behalf of United States interests representing shippers and consignees.

Organizations reflecting the views of United States shipowners and cargo underwriters supported a proposal to fix the new limitation at Fr. P. 12,500 (U.S. \$827.50) per package or unit or Fr. P. 20 per kilogram (U.S. \$.60 per pound), whichever is the higher, and the shipowner group accompanied this with a proposal that, if any weight limit higher than Fr. P. 20 per kilogram were agreed upon, it should be limited to a fixed amount or 'ceiling' per package or unit.

The ceiling concept was advanced by certain countries at Brussels, one proposal being Fr. P. 200,000 (U.S. \$13,240) per package or unit, but the proposal was rejected.

It is your Committee's impression at the present time that United States Cargo underwriters would not oppose the limitation of \$662 per package or unit or \$.90 per pound but that this limitation would

be opposed by United States shipowner groups unless accompanied by a ceiling.

Since the indicated desire of shipowner groups for a ceiling arises from economic rather than legal considerations, it is the view of your Committee that it would be inappropriate for the Association to take a stand on this point, leaving it to the interested groups to advance their own views at Congressional hearings if they are then advised to do so. With reservation of the right of any interested group to seek adoption of a ceiling, your Committee recommends that the Association approve the new limitation system.

C. THE CONTAINER AS ONE UNIT OR THE CONTAINER AND
ITS CONTENTS AS SEVERAL UNITS.

There has been much discussion as to whether or not a container or other means of consolidating packages or units, such as a pallet or flat, should be considered a single unit for limitation purposes under the Hague Rules as they presently exist. It has been held in the United States that six packages consolidated on a pallet were a single unit and there is a *dictum* that a container, freighted at a flat rate per container, was a single unit.

Preparatory to the second phase of the Conference, there was also discussion as to whether or not a container should be treated as a package or unit in the Protocol. In terms of the new Protocol limits of \$662 per package or \$.90 per pound, if the container were treated as the package, the \$.90 per pound would always be the limit, the breaking point being 735.5 pounds at which the limitation on the weight basis would be \$662 and containers always being used for more cargo than that.

This problem was resolved at Brussels by a compromise, Art. 2 of the Protocol, amending Hague Rules Art. 4(5) by a new Art. 4(5)(c) which reads:

'c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the Bill of Lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.'

Thus, a bill of lading receipting for

'One container said to contain carboys of acid'

would constitute a single limitation unit while a bill of lading receipting for

'One container said to contain 100 carboys of acid'

would constitute 101 limitation units, the container itself being a separate limitation unit, which is important only if it is not owned by the carrier.

Under an enumerated bill of lading for a container in which break-bulk cargo was consolidated, a mixture of limitation systems might result. Suppose, for example, that the bill of lading receipted for:

One container said to contain:

'5 printing presses and 50 cartons of typewriters,'

assuming also that the container itself belonged to the shipper and weighed 3 tons, the printing presses weighed 1 ton apiece and the cartons of typewriters weighed 40 pounds apiece, the limitations would then be:

Container 6720# x \$.90	=	\$ 6,048
Presses: 5 x 2240# = 11,200# x \$.90	=	10,080
Typewriters: 50 x \$662	=	33,100
Total:		\$49,228

Of course, it should be remembered that these are only *limits* and the carrier's liability will not in any case exceed the consignee's loss. In the example cited, the presses might be subject to the limitation but the container itself and the typewriters probably would not be.

Sir Kenneth Diplock of the United Kingdom delegation, who was chairman of the Drafting Committee which produced this compromise, stated on the record of the Diplomatic Conference that the parties would be free to stipulate for alternative freight rates depending on whether or not the consolidated packages or units are enumerated in the bill of lading. Your Committee has had the benefit of seeing the report submitted to the Secretary of State by the United States Delegation under date of April 26, 1968, which controverts Sir Kenneth Diplock's statement, and contends that the shipper would have the choice of enumerating the packages or units in the container without having to pay a higher rate of freight.

D. CONCLUSION.

Your Committee recommends (1) that the Association take no position with regard to the question whether or not there should be a ceiling limiting the amount of liability for any package or unit to which the Fr. P. 30 per kilogram (\$.90 per lb.) limitation would be applicable and (2) before or in connection with any ratification or legislative enactment of the principle of Article 2 of the Protocol, inserting a new Article 4, Paragraph 5(c) it should be made certain whether or not alternative freight rates may be charged, depending on whether or not the consolidated packages or units are enumerated in the bill of lading. With those exceptions, your Committee recommends that the Association approve the Visby Amendments and further that the Association urge the United States Government to give the amendments the force of law by enactment of domestic legislation and by ratification of the Visby Protocol.

II

CONTAINERS

Your Committee has just received a report of the CMI Working Group on Containers, recommending a Draft Convention on International Combined Transport. The Convention would provide a set of rules for liability of any 'Combined Transport Operator' ('CTO') who issued a special form of Combined Transport Bill of Lading to cover carriage of goods between two countries, of which at least one is a Contracting State, by at least two modes of transport of which at least one is by seagoing vessel. Applicability of the Convention could be avoided simply by omitting reference to the Convention from the Combined Transport Bill of Lading.

The system of liability under the Draft Convention is that, with the exception of force majeure and certain listed causes beyond his control the CTO shall be liable for any damage suffered by the goods unless the CTO can show that the damage happened during carriage on a sea-going vessel, in which case the Hague-Visby Rules, shall apply.

Your Committee has the draft Convention under study and will make informal recommendations for the guidance of the CMI's International Sub-Committee which will meet on June 10, 1968 at Brussels. These comments will not in any way purport to express the views of the Association. Thereafter, it is expected that a revised Draft Convention will be circulated for study by the National Associ-

ations preparatory to the Plenary Sessions of the CMI to be held at Tokyo March 30/April 5, 1969. Your Committee expects to make full recommendations to the Association in that regard to assist the Association in formulating a position at its 1968 Fall Meeting.

III

LETTERS OF INDEMNITY

As a matter of completeness, your Committee has mentioned this subject in each of its semiannual reports. However, nothing has happened since 1959 and, although the President of the CMI's International Sub-Committee on this subject insists that the matter is not dead, it seems unlikely that anything further will happen. Accordingly, it is your Committee's intention to omit mention of this subject in the future unless and until there is a development to report.

May 1, 1968

Respectfully submitted,

* J. EDWIN CAREY
* ALBERT F. CHRYSTAL
* ABRAHAM A. DIAMOND
JAMES J. DONOVAN
DAVID I. GILCHRIST
* HARRY L. HAEHL, JR.
WILLIAM L. HAMM
WALTER P. HICKEY
JOHN P. KIPP
* HERBERT M. LORD
* CYRIL F. POWERS
* C. EUGENE SPITZ, JR.
* HENRY J. READ
* LEON SARPY
EDWARD C. SCHMELTZER
DEWEY R. VILLAREAL, JR.
JOHN W. R. ZISGEN
JOHN C. MOORE, *Chairman.*

* Prevented from attending and therefore not concurring in this report.
(NOTE—Exhibit "A" has been distributed to the membership as Document No. 529.)

Mr. Moore: I would like, if I may, to make one further comment.

At the foot of the report is a list of all the members of the committee with asterisks next to those who were prevented from attending the committee meeting for one reason or another.

I should say that several of those who did not find it possible to come to the committee meeting, made their contributions to the work of the committee by letter or telephone in advance, and, in view of certain changes which we made at the committee meeting, for which we didn't have time to get their approval, I didn't feel it was right, and the Committee didn't feel it was right, to burden them with the responsibility for the result.

However, it should be said that they did contribute very substantially to the work of the Committee.

The Chairman: Thank you, very, very much.

Do I hear a motion to approve the recommendations of the Committee as stated?

From the floor: So moved.

The Chairman: Are there any questions which should be directed to Mr. Moore as Chairman of the Committee?

Is there any discussion?

From the floor: I'd like to ask Mr. Moore for his opinion concerning whether we may properly approve these recommendations here in the light of the action that was taken on Mr. Maloney's motion on the mortgages and liens convention.

After all, not a one of these international conventions may be ratified until implementing domestic legislation has been worked up, and has been adopted.

Now, strictly speaking, in view of our vote on Mr. Maloney's motion on the other, we should reconsider all of our votes on the previous convention, and I would like to ask Mr. Moore how he finds it possible to recommend action here on his recommendation, after the action that was taken on Mr. Maloney's motion?

Mr. Moore: I think I may answer that. We know in this instance, at least as far as progressed, that the State Department is going to recommend the ratification of this Protocol. So, this is in a position somewhat different from that which Mr. Maloney was talking about, and I don't see any reason not to proceed to a vote on this particular one. I agree with the present statement, and it is the opinion of the State Department that it is not necessary to have domestic legislation in advance of ratification.

Mr. Colby: I would like to remind Mr. Moore that if that is the view of the day of the legal department at the Department of State for the time being—we were obliged to pursue the contrary course at the time when we adopted the Carriage of Goods by Sea Act in 1936—and it is rather news to me that that will not be required at this time, and, as regards the other suggestion that has been made, I think it is a valid one, but it is rather pro forma in the sense that we have what Mr. Davis put in his report, a fact that I think he intended to be a more general approval, and was given to some of the other conventions, that is to say they would really try to get up some domestic legislation, where on these others, they haven't said they would try to get up some domestic legislation.

And, I think the membership should understand that certainly our friends abroad will find it totally incomprehensible to have us vote one way on one and the other way on the other.

From the floor: I would like to answer Mr. Colby's comments.

It took 12 years, from 1924 when the Hague Rules were formulated, until they were enacted into domestic legislation here in the United States, that was in 1936 by the Carriage of Goods by Sea Act, and since we are dealing with a revolutionary handling procedure, I don't think we can wait another 12 years until domestic legislation is discussed and debated and modified and remodified.

I think the expeditious way of curing a vacuum which we have with respect to containers and pallets is to ratify the convention as has been proposed.

The Chairman: Do I hear any further discussion?

All those in favor of approving the report of the committee, signify by saying "aye".

(A chorus of "ayes".)

The Chairman: All opposed?

(A chorus of "nay".)

The Chairman: The "ayes" have it, and the motion is carried.

We will now proceed to the Committee on Supreme Court Civil Procedure and Admiralty Laws.

Mr. Healy: I have no formal report, but I would like to call upon my fellow committee member, Mr. Edward Hayes, who would like to discuss a proposal we are now considering.

Mr. Hayes: Mr. President, I shan't even take the time to tell you the part of this report that I have omitted for purposes of this statement.

It will be on file.

I will try to summarize it in a way to convey its central idea.

The hope of the Committee is that the Association may afford, through its Committee, a sort of a clearing house for the actual day-by-day experience of members with the rules of procedure; and to the end that a situation that is currently interesting the committee might be stated briefly at an Association meeting from time to time, in the hope that members will find opportunities to furnish the committee with instances as those arise in our courtroom experience.

For example, under the 1966 revision of the Federal Rules, it may be possible, for the first time, to assert a counterclaim in an admiralty matter that did not arise out of the same transaction, or what we used to call a cross-libel.

Now, suppose some common case, for instance, an action by a stevedore to collect his agreed charges for discharging a vessel. The unpaid debt has to be admitted, or it is readily established on the first round of interrogatories. But, the owner now asserts a counterclaim against the stevedore for alleged careless discharge of half a dozen other vessels of this owner—matters that will take years to litigate, and all unrelated to the subject matter for which the suit was brought.

Under the Rules, the counterclaims may be separately established by admissions on the record or by summary judgment, or by separate trial.

In such a case—the practical question is whether the party whose claim is established and liquidated must wait for his money until unrelated claims against him are litigated and disposed of to the bitter conclusion.

Rule 12, allowing unrelated cross claims, refers to the possibility of separate trials of claim and cross claim.

Rule 43b does not require the separate trials in any situation, but only gives the judge discretion to order them. By the same token, he has discretion not to order them.

In the Rules, there is afforded no means of reviewing that interlocutory order for abuse of discretion. Experienced trial counsel have encountered, from time to time, judicial resistance to the suggestion that two trials be had instead of one. Suppose that a separate trial is not ordered. Then, the party with the quickly provable—

The Chairman: Excuse me, Mr. Hayes, nobody has risen to a point of order, but I will make the point myself. Do you have any

specific recommendation for action that you want this meeting to take? If not, I am afraid you are out of order.

Mr. Hayes: I do, indeed. I have only two seconds more.

The Chairman: I am going to hold you to two minutes, and not two seconds.

Mr. Hayes: I will come closer to the two seconds really. There are no less than five separate discretionary unappealable determinations in which the parties, with established or quickly establishable claims, must wait in order to litigate unrelated matters.

We are not making a recommendation as to specific language for a change in the Rules, but we are urging the Association, if the members will do so, to furnish us with their views, and to furnish us more particularly with more information as to how these Rules, as to counterclaims in unrelated matters, actually work out.

Mr. President, thank you. I think I have presented a very complicated matter in a very brief time.

The Chairman: Does Mr. Bissell of the Committee on Arbitration have a report?

Mr. Bissell: No report.

The Chairman: Now, Mr. Hecht, who is not only the Chairman of our standing Committee on Marine Insurance, General Average and Salvage, but is also our representative—one of them—on the special committee industry on General Average, will have a short report. He has promised me that it will be short.

REPORT OF THE COMMITTEE ON MARINE INSURANCE, GENERAL AVERAGE AND SALVAGE

Mr. Hecht: Mr. President, since this is for information only, and no action on the part of the Association is being sought, I would just take about one minute to say what it is all about.

This will be printed, I assume, in the minutes of our meeting.

It deals with the question of the possibility of modernizing and simplifying a General Average. It stems from a committee of the International Marine Underwriters Institute formed to consider this problem.

Mr. John Kipp of Appleton & Cox, Marine Division of Continental Insurance Company, is the American representative on that International Committee and largely through Mr. Kipp's activities, an informal Industry Committee has been formed in the United States also to consider the possibility of simplification of the General Average, possibly through amendments to the York-Antwerp Rules.

There are four associations represented on this industry committee: the Average Adjusters Association of the United States, the American Merchant Marine Institute, the American Institute of Marine Underwriters, and our Maritime Law Association.

Each organization has two members on this Committee.

Incidentally, all eight of them are members of our Association, and John Zisgen and I have been appointed by President Yancey to represent the Maritime Law Association.

There are other details that are in the report. We hope to be able to report something maybe for consideration at our other meeting.

The Chairman: Thank you so much.

Mr. Hecht's report follows:

"COMMITTEE ON MARINE INSURANCE, GENERAL
AVERAGE AND SALVAGE

April 19, 1968.

TO THE MARITIME LAW ASSOCIATION OF THE UNITED STATES:

This report is submitted for information only and no action on the part of the Association is sought at this time.

Approximately one year and a half ago, The International Union of Marine Insurance, an association of Marine Underwriters, appointed a Committee to review General Average, the purpose of which was to consider its modernization, simplification or abolition. That Committee is composed of a representative from each of the following national delegations to the I.U.M.I.; The Netherlands, England, Norway, France, The United States.

That Committee, after a preliminary meeting, issued its first report, stating that it was the sense of the Committee that for practical and juridical considerations it appeared to be impossible and undesirable to abolish General Average. As the principles of General Average form an integral part of the law of each maritime nation it would not be possible to abolish General Average without first altering International Maritime Law on the subject. It was the view of the I.U.M.I. Committee, however, that the possibility of simplification should be explored.

John P. Kipp of Appleton & Cox, Marine Division of the Continental Insurance Company, is the United States representative serving on the International Union Committee. It is apparent that to accomplish any result with respect to the modernization and simplifi-

cation of General Average requires the interest and understanding of all concerned in the problem. Mr. Kipp has been instrumental in the formation of an informal Industry Committee in the United States to review this matter. Such a Committee has been recently set up under the chairmanship of Leslie J. Buglass of Johnson & Higgins, composed of two representatives of each of the following organizations:

The Average Adjusters Association of the United States
American Merchant Marine Institute
American Institute of Marine Underwriters
The Maritime Law Association of the United States.

President Yancey of our Association has appointed John W. Zisgen and me to represent The Maritime Law Association of the United States on this Industry Committee. All eight members of this Industry Committee are members of The Maritime Law Association. This Industry Committee has had several meetings and while the Committee is fully appreciative of the problems involved, it is the sense of the Committee that efforts should be made to explore the possibility of simplifying the practice of General Average, possibly through amendments of the York/Antwerp Rules. It is the hope of that Industry Committee to come forward with certain suggestions with a view toward simplification, and when such suggestions and recommendations have been formulated, it is planned to submit them for consideration to all interested in General Average, including The Maritime Law Association of the United States, possibly at the time of our November meeting.

The Industry Committee would welcome comments and suggestions from members of our Association and any such comments or suggestions may be forwarded to Mr. Zisgen or to me.

WILBUR H. HECHT
Chairman"

The Chairman: Does Mr. Dunahey have a report?

From the floor: I have been asked by Mr. Dunahey to announce that there will be no report.

The Chairman: Does Mr. Gordon Paulsen have a report for the Committee on the Regulations for Preventing Collisions and Matters Concerning the Coast Guard?

Mr. Paulsen: I do.

The Chairman: Will you summarize it as best you can.

**REPORT OF THE COMMITTEE ON THE REGULATIONS FOR
PREVENTING COLLISIONS AND MATTERS CONCERNING
THE COAST GUARD**

Mr. Paulsen: The point that needs to be discussed now, because it does involve time, concerns proposals which were published in the Federal Register on March 29 and 30th, with respect to changes in the procedure for suspension and revocation proceedings which the Coast Guard conducts. These, as you know, are conducted by civilian examiners.

A subcommittee of my Committee has considered these proposals. The subcommittee consists of Mr. Palmer of Philadelphia, Mr. Richard Brown of New York, and Judge Henry Rolph of San Francisco.

No hearings were held by the Coast Guard in connection with these procedures, and they are, I think, of very considerable importance.

I won't take the time to read the whole sections.

Basically, the hearing examiner, under the proposed revisions, will be precluded from ruling on any matter of law where, if such rulings in favor of the persons charged, the result would be dismissal of the charges or specifications. Such questions would have to be submitted to the Commandant of the Coast Guard for a separate ruling.

We find this a very awkward procedure, to say the very least in that it divides the decision-making procedure of the examiner in a most peculiar way.

We think it will result in a lot of very prejudicial delays to a licensed officer whose license is in jeopardy, and we think this is a very bad provision.

Another provision which has been suggested in the proposals printed in this issue of the Federal Register is one which changes the Commandant's powers of review.

The way it is set up now, the Commandant can review only cases in which the licensed officer has been found guilty.

It is proposed to change that so that other matters can be reviewed, even where the licensed officer is not found guilty: the Commandant's review would be limited to questions of fact, and he would not be able to reverse the examiner. He could, however, issue a decision which would have powers of precedent in other similar cases.

In other words, it would be an ex parte review by the Commandant. That is, the licensed officer (having had his license cleared) would, of course, not submit any briefs, but the Commandant would have briefs, presumably, by a "district attorney"—the prosecuting officer of the Coast Guard. We find this would establish some very, very awkward, and very possibly dangerous, precedents, which could be prejudicial to the rights of the licensed officers, and we feel that it is violative of the due process provisions of the Constitution. Our Committee recommends that we be authorized to advise the Coast Guard of these views in a letter.

The Commandant has asked for views, and we have obtained an extension of time to submit views so that we would have the authorization of this meeting.

We recommend that we be authorized so to advise the Coast Guard.

From the floor: So moved.

The Chairman: Is there any discussion?

Is there any objection?

If not, so ordered.

Thank you very much.

In the interests of saving time, instead of calling on the remaining committees individually, I am going to ask the general question, whether there is any committee chairman here burdened with a report to which birth must be given, except Mr. Lord's Committee on Amendments to the By-Laws.

Mr. Weil: I do have a report for the Committee on Jurisdiction and Venue in Suits Against the United States, but it is for information only. I ask permission to file it and have it printed in the minutes.

The Chairman: There are no recommendations?

Mr. Weil: No.

The Chairman: Let the report be received and made part of the minutes.

**REPORT OF THE COMMITTEE ON JURISDICTION AND
VENUE IN SUITS AGAINST THE UNITED STATES**

Since its last report, your Committee has reviewed the operation of the legislation enacted some eight years ago permitting transfer of suits between United States District Courts and the Court of Claims. No complaints have been received by your Committee, although we requested them in our last report, and our own review of the operation of the legislation indicates that no present action by your Committee with respect thereto is necessary.

With respect to possible future amendments to the present law governing jurisdiction and venue in suits against the United States, the Committee proposes to continue to review any suggested amendments. Your Committee also proposes to review the current statutory sections to determine whether modifications, if any, are required with respect to jurisdiction and venue in suits against the United States in light of the increased activities of many agencies of the United States in the field of oceanography.

Respectfully submitted,

Members of the Committee:

RUSSELL TAYLOR WEIL, Esq.
J. FRANKLIN FORT, Esq.
FRANCIS T. GREENE, Esq.
WARNER PYNE, Esq.
DONALD M. WAESCHE, Esq.
THEODORE R. DANKMEYER, Esq.
REIGH FREDERICK KLANN, Esq.
RUSSELL TAYLOR WEIL, *Chairman*

The Chairman: The next order of business is the report of the Executive Committee on the proposed amendments to the By-laws. A special committee comprised of Mr. Lord, as Chairman, Mr. Gerity and Mr. Noble, who prepared and submitted certain recommended changes in the By-Laws. The Executive Committee has unanimously approved them, and Mr. Lord, for the Executive Committee, will now put them before the Association for its action.

Mr. Lord: There are two ways of presenting the report. One, which, conservatively, would require an hour; and, the other way, which might possibly be accomplished in five minutes.

I am adopting the latter course.

The Executive Committee of our Association has for some time thought it necessary that there be some revision in the By-Laws, principally to enable the Association on certain vital issues to take a position, either by action of the Executive Committee or by the Association itself. It was thought that if a study and an effort were pursued diligently, recommendations for suitable revision could be made that were not divisive. We think that, this has been accomplished since the with the cooperation of the Sub-committee and the Executive Committee, they were able to produce recommended revisions of the By-Laws which now have the unanimous support of that small sub-committee and of the Executive Committee itself.

The recommendations appear in Document 524. There is a minor printing error. The change of the word "there" to "its" should be in Article 11, paragraph 7, line 1; not Article 1, paragraph 5, line 1.

The proposed revisions of substance involve revision of Article 6, paragraph 2, to permit the Executive Committee, by a two-thirds vote, to take a position for the Association; and, further, permit the Association to direct the Executive Committee to take a position by a majority vote of the Association rather than a two-thirds vote.

The method of dealing with minority reports has not been substantially changed. When both a majority report of a Committee and a minority report have been filed, the present usual procedures for notifying the membership of the Association of the existence of a minority report, and the mailing of copies of the majority or minority reports to the membership is still required, except (as is presently provided) the rule is dispensed with by a vote of the Executive Committee.

There has been considerable discussion as to a possible revision of the By-Laws to add to the Executive Committee certain officers or former officers of the Association. To this end the Executive

Committee recommends only that the immediate past president of the Association be added to the Executive Committee.

I believe, Mr. President, I can say that the balance of the proposed amendments in Document 524 are either textual or minor.

I, therefore, Mr. President, now move that the Articles of the Association and By-Laws of our Association be amended as recommended in Document No, 524, as corrected.

From the floor: Seconded.

The Chairman: Seconded that the Articles of the Association of the By-Laws be amended in accordance with Document 524, as corrected.

Is there any discussion of the proposal?

In this instance, I will call for a vote.

All those in favor of the motion, signify by saying "aye".

(A chorus of "ayes".)

The Chairman: All opposed, by "nay".

(Nay.)

The Chairman: There is only one "nay".

The "ayes" have it—and more than two-thirds of the members present have approved the proposed amendments to the By-Laws.

Now, Gentlemen, in about five minutes I am going to lay this gavel down, but in spite of the lateness of the hour, I am not going to be deprived of saying two or three sentences to you.

First of all, to say that I have been deeply honored and highly flattered by having been your President is a masterly understatement.

I hope that this presidency, which has not been without its numerous innovations, has not permanently damaged the organization. But, I also want to say that, present company excepted, an out-of-town President has been shown to be feasible; but that out-of-town presidency would not have been feasible without the staunch and stalwart support such as was given me by Higgins, by Moore, by Carey, by Quinlan and by O'Brien and Mr. Noble, and by each and every one of the Executive Committee.

In addition to the Executive Committee, I want to thank each and every Chairman of every Committee, and every member of every Committee, but I must particularly single out Gordon Paulsen and Dick Palmer, who very ably and very helpfully walked into—and saved—a situation in connection with IMCO, back there last June, when I was still abroad and not here to handle it.

Now, in closing, I want to thank everybody, everybody for everything.

Thank you.

From the floor: Mr. President, I want to stand up.

I'd like at this time to pay personal tribute to Ben Yancey and the work he has done as our first out-of-town President, and the man who handled the first meeting of the Association outside of New York.

He has made us realize more than we did before that we are not a New York organization; we are a national organization, and we must think as a national organization, and then, as an international one, too.

And, Ben Yancey has not only been an excellent President, he has been the first out-of-town President, and I think we owe him a real vote of thanks for a grand job, and the work that stamped him as a great President of this Association.

I suggest we rise and give him another vote of thanks.

The Chairman: In my political State, that's called double-dipping. Thank you.

I will now call on the Chairman of the Nominating Committee.

Mr. Healy: Mr. President, before giving the report of the Nominating Committee and to give you a little more exercise, I think we should have rising vote of thanks for all of the other officers and Executive Committee members of this Association, who have all done a magnificent job during these past two years.

(Applause.)

Mr. Healy: The principal problem of this Committee was not in finding the right men for the offices—to fill the offices of this Association, but rather in selecting nominees, from so many available men, all of whom are well qualified to serve.

But, after due deliberation and considerable correspondence, it is the unanimous recommendation of the Nominating Committee, which consists of 21 members of this Association scattered throughout the country, that the following be elected to the offices indicated.

For President, James J. Higgins of New York.

For First Vice President, Sweeney J. Doehring of Houston.

For Second Vice President, James J. Donovan of New York.

For Secretary, J. Edwin Carey of New York.

For Treasurer, John L. Quinlan of New York.

And for Membership Secretary, Francis J. O'Brien of New York.

The Committee further recommends the election of the following to the Executive Committee for the term expiring in May, 1971:

Edward C. Biele of Seattle.

Daniel Huttenbrauch of New York.

J. Ward O'Neill of New York.

The members thus recommended for election to the Executive Committee would replace the following, whose terms expire today:

Sweeney J. Doehring.

Alfred A. Lohne of New York and

Gray Williams of New York.

I respectfully move, Mr. President, that this Association elect to office the gentlemen whose names I have read for the offices indicated.

From the floor: Seconded.

Mr. Moore: May I move that the Secretary be instructed to cast the ballot of the Association in favor of the gentlemen just nominated as officers and members of the Executive Committee.

The Chairman: Is there a second?

From the floor: Seconded.

Any discussion?

All those in favor of Mr. Moore's motion, signify by saying "aye".

(A chorus of "ayes".)

The Chairman: All opposed?

There are no "nays".

Now, it becomes a nostalgic but a very real pleasure to turn the gavel over to Mr. Higgins.

(Applause.)

Mr. Higgins: Of course, I am fully aware of the honor you have bestowed on me and the great privilege and I thank you.

I have one announcement to make, and that is to tell you that yesterday at the Executive Committee meeting it was unanimously decided that in the fall we will hold another Dinner-Dance for members only. That will be on the first Friday of November, 1968.

In view of the lateness of the hour, I think it would be in order to entertain a motion to adjourn.

From the floor: I move we adjourn.

From the floor: Seconded.

Mr. Higgins: Is there any discussion?

Is there any objection? Hearing none, so ordered.

(Time noted: 12:45 p.m.)

