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| **Maritime Arbitration & Mediation** |
| **Source:** MLA **Doc. No.:** 765 **Date:** May 3, 2002 **Committee:** [ARBITRATION AND ADR](http://www.mlaus.org/committee-profile.ihtml?id=10)   **FORMAL REPORT OF THE COMMITTEE ON**  **MARITIME ARBITRATION AND MEDIATION**    Since November, 2001 the Committee has met twice to discuss issues relating to Maritime Arbitration and Mediation and has been working on a variety of projects.     * CMI Draft Instrument on Transport Law     The Final Draft Outline Instrument was distributed by email to all members of the Committee and Jay Paré advised the Committee of his concern that the Draft Instrument blurs the distinction between common and private carriage currently found in U.S. law.    Chet Hooper, Vincent DeOrchis and George Chandler attended the Committee's meeting on May 1, 2002, and there was a discussion of the issues and it was agreed that in future drafts the point about private carriages should be squarely addressed.    Mr. Paré pointed out that the scope of Article 3 of the Draft Instrument is very broad, covering "all contracts of carriage," except those which are specifically excluded by the Article's terms, a subject which is apparently still under discussion. Moreover, Article 17 of the Draft Instrument prohibits parties from agreeing to remove their contracts from the Instrument's coverage. Mr. Paré pointed out that the regime contemplated by the Draft Instrument is the reverse of what we have under COGSA, which applies only to bills of lading and not to all contracts of carriage.     * + BIMCO Clause     BIMCO has developed a Standard Dispute Resolution Clause by incorporating a comprehensive mediation clause into the standard law and arbitration clause. Keith Heard made a presentation concerning BIMCO's new standard dispute resolution clause. Under the clause a party is allowed to demand mediation within the context of an on-going arbitration, and the BIMCO standard wording provides a mechanism for proceeding with such mediation, including empowering the arbitrators to assist in appointing a mediator. The panel is further explicitly empowered to take a party's refusal to participate in a mediation into account in allocating costs. Mr. Heard discussed various pros and cons of the BIMCO clause wording, following which a general discussion was had on the subject.     * + - UNCITRAL     Mr. Kennedy was appointed by the United States Department of State as a Private Sector Advisor on the United States Delegation to the UNCITRAL Working Group on Arbitration, 36th Session, being held in New York on March 4-6, 2002 and attended the Working Group on Arbitration sessions at the U.N. during which time there were deliberations and decisions relating to the requirement of written form for arbitration agreement, including the "in writing" requirement under Article II (2) the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration. The Secretariat prepared background documentation for the New York meetings which may be found on the UNCITRAL website:‹www.uncitral.org.› by clicking on "English," "Preparatory Documents," then "Working Group on Arbitration."     * + - * MLA/SMA Liaison Committee     The Liaison Committee has been working with the Society of Maritime Arbitrators in developing a seminar program for arbitrator for the Fall of 2002.    Respectfully submitted,    Donald J. Kennedy, Chair |