Pirjo Pöyhönen
Chairman

Report of the Liability Committee IUMI Conference Seville 2003

1. Composition of the Liability Committee

The Liability Committee has eleven members, namely:

Mr. Paul Buyl (Belgium)
Mr. Andrew Garger (USA)
Mr Kurt Günthart (Switzerland)
Mr. Sohei Hashisaka (Japan)
Mr. Gilles Heligon (France)
Mr. Arno Kneefel (the Netherlands)
Mr. Nimbe Oviosu (Nigeria)
Mrs.Pirjo Pöyhönen (Nordic Pool)
Mr. Massimo Spadoni (Italy)
Mr. Colin Sprott (Lloyd's, UK)
Mr. Haakon Stang Lund (Norway)

Mr Sten Göthberg (Nordic Pool), Secretary of the Committee.

Since September 2002 the following changes in membership took place:

Mr. Franz-Rudolf Golling (Germany) stepped down from the Committee. Mr. Manfredi Zanardi left the Committee and was succeeded by Mr. Massimo Spadoni (both from
Italy). Mr Haakon Stang Lund (Norway), Mr Colin Sprott and his alternate Mr David Croom-Johnson (both from Lloyd's, UK) joined the Committee.

The departing members, both representatives of important markets, have brought great expertise to the work of the Committee. They have played active roles not only in the Committee but also in presentations of the Liability Committee. We want to thank them for their excellent work and great contributions.

The Committee welcomes its newcomers and anticipates their contributions to its discussions.

2. Committee meetings

The Liability Committee has met since September 2002 in Paris on 17 March 2003 and discussed, inter alia, the following issues:

3. The Conventions on the Carriage of Goods by Waterways

3.1. UNCITRAL/CMI Draft Instrument for a New Convention on the Carriage of Goods by Sea

Upon the request of UNCITRAL, the Comité Maritime International (CMI) set up a Working Group on Issues of Transport Law to investigate the need for uniform rules in the international carriage of goods by sea, especially in areas where no rules existed. The main objective was to provide modern solutions to the issues that were not adequately or at all dealt with the existing conventions and to achieve uniformity of laws.

An International CMI Sub-Committee (ISC) was established and assigned the task of evaluating the information collected and preparing a study that would form the basis for future UNCITRAL efforts. The result of the discussions within the ISC was a draft of an outline instrument for a new convention on the carriage of goods by sea and including inland carriage preceding and subsequent to maritime carriage.

In February 2001, the CMI Conference in Singapore discussed the draft of the outline instrument prepared by the CMI ISC. In a resolution adopted by the CMI Assembly the Sub-Committee was requested to undertake further work on the basis of the draft outline instrument and the conclusions of the Conference.

The final meeting of the Sub-Committee was held in November 2001. The CMI draft outline instrument was finalized and submitted to UNCITRAL in December 2001.

UNCITRAL established a working group to consider the project. IUMI was also invited to participate in the discussions of the UNCITRAL Transport Law Working Group. Mrs. Pöyhönen, the Chairman of the Liability Committee and Mr. Garger, the Vice-Chairman of the Liability Committee, have been representing IUMI at the sessions of the Working Group III on Transport Law.

Based on the observations made at the first session in April 2002 it was felt that IUMI should carefully study the effects of the Draft Instrument on marine insurance. Therefore, in the process of preparing a position paper on the Draft Instrument, the Liability Committee sent out a questionnaire to the IUMI Member Associations in October 2002. The Executive Committee formally authorised the Liability Committee to represent IUMI in this matter in January 2003. A small group of Liability Committee Members held an extra meeting in Milan last February and analysed the responses. The IUMI Position Paper was delivered to UNCTAD on 5 March 2003.

In summary, IUMI submitted the following:

- the draft instrument should be extended to “door to door” in shipments that involve an overseas leg
- the ideal solution would be to have a uniform set of rules applicable throughout the carriage, rather than a network system, even if limited in scope, because the network system creates uncertainty

- favours permitting direct claims against sub-contractors and would support a rule imposing joint and several liability on the contracting carrier and the actual carrier as well as against any intermediate carrier or forwarder sub-contracting the transport to another carrier.
- present risk allocation should be modified. Error in navigation or management defense should be eliminated and fire exemption deleted. The seaworthiness obligation should be extended to the whole sea voyage
- a carrier should not be given the possibility to contract out of the regime by allowing the carrier to change its role from principal to agent during the course of a voyage.
- a seven-day notice period would be reasonable for all shipments, whether door-to-door or port-to-port
- time for suit should be two years
- in the forum provision for litigation and arbitration of disputes adoption of the language contained in the Hamburg Rules is preferred, which means that claimants may select a forum from a list of options, including the place where the shipment originates or the place of delivery. The contracting carrier and the shipper should not be allowed to agree on a forum and impose that selection on a consignee that has not agreed.

The Working Group completed the first reading of the Draft Instrument at the meeting in April 2003. The Secretariat of UNCITRAL was requested to prepare a revised version of the Draft Instrument for the next session, which will be held from 6 – 17 October 2003 in Vienna.

3.2. Convention on the Carriage of Goods by Inland Waterways (CMNI)

The CMNI was adopted at the Diplomatic Conference in Budapest on 3 October 2000. The Convention combines features of the Hamburg and Hague-Visby Rules. The carrier may avoid liability by proving that exercising due diligence could not have averted a loss. Liability is limited to 666.67 SDR/ 2 SDR (unit of account/ per kilogram), whichever is higher. The liability limit for a container is 1,500 SDR (empty) and 25,000 SDR (the goods in the container). The Convention was signed on 22 June 2001 by 11 States, mainly Rhine and Danube states. Convention will enter into force when five States have ratified it. At present, only Hungary has ratified the Convention.

4. Multimodal transport

4.1. UN Economic Commission for Europe – UNECE

The Inland Transport Committee of the Economic Commission for Europe (ECE) established a Working Party on Combined Transport to analyse the possibilities for reconciliation and harmonization of civil liability regimes governing combined transport operations. The result of the discussions in an Informal Group of Experts was that a new international convention is necessary, which should be based on the CMR. Therefore, the Inland Transport Committee of the ECE has set up an expert group to prepare a first draft of a new civil liability regime.

In February 2003 the mandate of the Ad Hoc Expert Group was prolonged for the year 2003. Taking into account the complexity of the issue, the Inland Land Transport Committee requested the Working Party and its ad hoc Expert Group to pursue the task of reconciling and harmonising civil liability rules governing multimodal transport, in close operation with other inter-governmental organisations in this field.

The commercial parties interested in sea transport (International Chamber of Shipping, the International Group of P&I Clubs, FIATA, ICC, IUMI, CMI) are opposed to the work undertaken by ECE with regard to the work of UNCITRAL/ CMI.
A new convention might lead to an even greater proliferation of international law, as the mandate of the ECE is only regional.

4.2. EU Commission

The EU Commission finalised a study on "The Economic Impact of Carrier Liability on Intermodal Freight Transport" in January 2001. The Commission's aim is a single market, to foster competitiveness in European industry and to optimise European transport. The study included several recommendations. One of them was that the EC should invest time and effort in greater harmonisation of conditions of carrier liability to secure the potential reduction in friction costs, which should help intermodal transport. However, after consultations with CEA (Comité Européen Des Assurances) the Commission decided not to continue the work on this issue for the time being.

4.3. UNCTAD – Report on Multimodal Transport

UNCTAD distributed a Questionnaire on Multimodal Transport in 2002. It received 109 replies, 60 from governments and 49 from industry representatives and others. On 13 January 2003 UNCTAD published a report entitled " Multimodal Transport, the Feasibility of an International Legal Instrument". The report presents the results of a study based on the views expressed in replies to the questionnaire.

A large majority of respondents, both among governments and non-governmental and industry representatives, considered the present legal framework unsatisfactory, not cost-effective and felt an international instrument to govern liability arising from multimodal transport to be desirable.

As regards the most suitable approach, which might be adopted, views were, to a certain extent, divided. However, around two thirds of respondents from both governments and non-governmental organizations appeared to prefer a new international instrument to govern multimodal transport or a revision of the 1980 MT Convention. A number of respondents expressed their support for a new legally binding instrument based on the UNCTAD/ICC Rules.

A minority of respondents, representatives mainly of parts of the maritime transport

industry, appeared to favour the extension of an international sea-carriage regime to all contracts for multimodal transport involving a sea-leg and stated their support for the proposed Draft Instrument on Transport Law. Overall, the responses indicated that there appears to be only limited support for the approach adopted in the Draft Instrument on Transport Law.

In the conclusions UNCTAD announced its plan to organise an informal international forum together with other interested UN organisations such as UNCITRAL and UN ECE. This forum would hold a frank discussion on the findings of UNCTAD and plan the best approach in relation to the possible regulation of multimodal transportation.

5. Liability and compensation for damage in connection with the transport of hazardous and noxious substances

5.1. By Sea: HNS Convention

European States believe that there will be a problem collecting contributions from receiving shippers and to identify cargo. An international working group is trying to find a possible solution. It is unlikely that there will be any progress on ratification until these problems are solved and a workable funding mechanism is in place.

5.2.By inland waterways

5.2.1.The Draft for a European Convention

A draft Convention has been finalised by the Working Group of IVR and the European Association for Inland Navigation and has been presented to the ECE, the Danube Commission and the Central Commission for the Navigation of the Rhine. The draft is based on the HNS Convention. Under the Convention, liability will commence when goods cross a vessel's rail. A hearing was organised for all interested parties of the inland waterways industry on 11 October 2002 at the Central Rhine Commission in Strasbourg. IUMI was represented by Dr Gerhard from the IUMI Inland Hull Committee. The main points raised in the discussions were the channelisation of shipowners' liability, the proposal regarding compulsory insurance and the possible system with direct action against the insurance industry. The International Group of P&I Clubs stated that the Clubs could offer the necessary insurance capacity and that they could accept the direct action principle up to SDT 10 M.

5.2.2 UN Economic Commission for Europe UNECE - CRTD

The Convention on Civil Liability for Damage Caused during the Transport of Hazardous Goods by Road, Rail and Inland Navigation (CRTD) was prepared by the International Institute for the Unification of Private Law (UNIDROIT) and adopted by the Inland Transport Committee of the Economic Commission for Europe at its fifty-first session, held in Geneva, in 1989. The CRTD was opened for signature in February 1990 but only two States have signed the Convention.

The UN ECE Inland Transport Committee has decided to investigate, consult and propose modification to the existing articles of the CRTD, which would provide a better basis for application of the Convention to the various modes of transport. The aim is that the reviewed text of the Convention would be submitted to the Inland Transport Committee at its 2004 session.

6. Liability Questionnaire

The Committee decided not to send out a liability questionnaire this year as the work done in collecting the views of the Member Associations for the IUMI Position Paper on the UNCITRAL Draft Instrument has already required a substantial contribution from the Member Associations.

7. National Regulations Concerning Carriers' Liability for All Kinds of Transportation

The “National Regulations” were updated and put on the IUMI website last year. At the end of July 2003, 28 Member Associations had replied to the request for the updated information and the information on their National Regulations on Carriers' Liability can be found at IUMI’s homepage. Mr. Kurt Günthart has been kindly taking care of the project on behalf of the Committee.

8. General Average – developments since the New York Conference 2003

The aim of the IUMI Reforms is to try to reduce the number of General Averages and the amounts recoverable in General Average by shipowners. The present system of General Average is seen as, generally speaking, inefficient, too costly and in need of restriction. However, changing it is an extremely slow and arduous process, which has been under way now since 1994.

At the CMI Conference in Singapore, in February 2001, the Council of CMI established an international Sub-Committee, which will deal with the proposed amendments of York-Antwerp Rules. In order to focus the efforts of the Sub–Committee on the proposals, which will have the broadest support a Joint International Working Group was also established.

The CMI Working Group finalised its report in March 2003, which was then distributed to all National Associations of CMI. The report was discussed at the meeting of the International Sub-Committee in Bordeaux on 11 June 2003. Mr. Gilles Heligon, Mr. Ben Browne and Mr. Nicholas Gooding represented IUMI at that meeting. The conclusions reached at the meeting were as follows:

- **Common benefit**; draft wording shall be made for 1) excluding from GA allowance for crew wages and maintenance,2) separate wording for also excluding fuel and stores, 3) to limit allowance for temporary repairs
- **Salvage**; no final decision made but no drafting will be required

- **Time limit**; it seemed that a compromise may be reached about an amended wording.
- **Interest**; draft clause with guidelines will be produced under which the CMI will fix the interest rate at suitable intervals
- **Commission**; draft clause shall be made under which the actual costs of administering GA would be allowed.

It was decided that the work should continue with the aim of making final decisions at the CMI Conference in Vancouver in June 2004. The working Group will produce a draft working paper for the Conference, which will be considered at the meeting of the International Sub-Committee in London on 17 November 2003.

Mr. Matthew Marshall has kindly promised to update the IUMI statistics regarding the economic impacts of General Average on marine insurance. An updated version will be needed to support IUMI's proposals for the reform at the Vancouver Conference at the latest, where the final decisions will be made. Thus, the Member Associations of IUMI were requested to collect and send a hard copy of all General Average Adjustments since 1998 to Mr. Marshall.

The Liability Committee encourages the marine insurance markets to send representatives to the Vancouver Conference to support the IUMI proposals.

Mr Gilles Heligon, from the Liability Committee, was appointed by the Committee in 2002 as a special liaison officer to closely monitor the progress of the proposal from IUMI for the revision of the York-Antwerp Rules.

9. Marine Insurance Law – developments since the New York Conference 2002

CMI recognises the existence of a need for the harmonisation of marine insurance law. Consequently, the CMI International Working Group on the Laws of Marine Insurance has prepared a study. According to the study there is growing dissatisfaction with certain aspects of the law of marine insurance, notably: (a) Non-disclosure; (b) Good faith; (c) Alteration of risk and (d) Warranties. Problems arise in these areas in many civil and common law jurisdictions.
The CMI International Working Group will present a series of proposals designed to resolve the problems in these specific areas. The nature and form of the solution will be open for discussion and finalisation at the CMI Vancouver Conference in June 2004.

Mr. Massimo Spadoni, from the Liability Committee, was appointed by the Committee in March 2003 as a special liaison officer to closely monitor this project.

10. Protocol of 2002 to the Athens Convention

The Protocol of 2002 to the Athens Convention was adopted at a Diplomatic Conference in October 2002. More than 70 countries were represented at the Conference.

The Protocol will increase the liability of the shipowners for passenger claims to 400.000 SDR. It requires a compulsory insurance or other financial security to at least 250.000 SDR and claimants will have a direct action-possibility against the insurer for this amount. A general view of the industry (P&I-Clubs, ICS and IUMI) has been that the direct action limit was too high in the present conditions. The new Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 will enter into force 12 months after 10 States have ratified the Convention.

11. The US Terrorism Insurance Act

The Act was accepted on 20 November 2002, signed by the President on 26 November and immediately entered into force. The temporary Terrorism Insurance Program terminates on 31 December 2005.

It creates a program through which the Federal Government will share with the insurance industry the risk of loss from future terrorist attacks aimed at US interests. The minimum amount for a loss to be covered under the Act is $5 million, while the maximum of aggregate losses in any year is capped at $100 billion. During the first two years, participation is mandatory, meaning terrorism coverage must be offered in all commercial policies issued by primary property/casualty insurers, including excess lines.

Insurers covered by the bill are all admitted companies, those on the NAIC surplus lines list, and any US or foreign insurer approved by the Federal regulators of maritime, energy or aviation activity on all US risks. The program covers all losses from terrorism which occur within the United States, an area defined as including the states, the territories, the territorial sea and also the continental shelf. It does not generally apply to losses which occur outside the United States, except for US citizen-operated air carriers, US flag vessels, and foreign-flag vessels home-ported in the United States on which US income tax is paid. Cargo is covered while it is within the United States or if the loss occurs on an US flag vessel.

It voids all policy exclusions for “terrorism”, including those contained in marine policies. Such exclusions may be reinstated with written authorisation from the assured. As a condition of being able to receive a payment from the Treasury, the insurer must have disclosed to its assureds the premium charged for terrorism coverage not later than 90 days after enactment.

It has been somewhat unclear what exactly is the impact of the US Terrorism Insurance Act on insurers outside the US. The Member Associations are advised to make enquiries with the US Treasury Department to ensure what impact the Act will have on business in their national markets.

12. The US Maritime Security Act 2002

The Act was accepted in the US on11 November 2002. The purpose of the Act is to improve security in US ports and to define the role and mandate of the US Coast

Guard. New regulations and security provisions are implemented even on foreign vessels entering US ports and foreign ports as well.

Helsinki 15 August 2003

Pirjo Pöyhönen
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