of lading by the shipowners who purportedly by this method reserved to themselves the power to choose the law and forum of litigation. This practice allegedly inflicted hardship on receivers of cargo who often cannot afford to sue the shipowners in alien jurisdiction, and indeed could not do so when their national foreign exchange regulations would not permit them.

(iv) The various aspects of bills of lading that require to be examined are general nature of the contract of affreightment; contract by bill of lading; clausing the bills of lading; effect of endorsement of bills of lading; relation of bill of lading and charter-party; incorporation of the charter-party provisions in the bills of lading; conflicts between bill of lading and charter party; effect of arbitration clause; and effect of demise clause in the bill of lading.

86. Activities in this field of some of the international bodies are as follows :

(*i*) UNCTAD

In its resolution 14(11) of March 25, 1968 directed the Trade and Development Board to form a working group on International Shipping Legislation and included the question of revising legislation amending the 1924 Convention, in its terms of reference.

(*ii*) *IMCO*

The Legal Committee of the IMCO is going to deal with this matter in the near future.

(*iii*) *Latin American Free Trade Association* (*LAFTA*)

The Group of Experts on Facilitation of Shipping Documentation, which held its first meeting in May 1968, recommended (i) the acceptance or ratification by the LAFTA

countries of the 1968 Protocol to amend the 1924 Brussels Convention for the Unification of Certain Rules of Law relating to Bills of Lading and (ii) the LAFTA Secretariat, with the advice of ECLA (European Council of Legal Assistance), ALAMAR and other interested bodies, should study the adoption of a standard bill of lading, taking into account the draft, proposed by ALAMAR and the 'conlinebill' issued by the Baltic and International Maritime Conference.

(*iv*) *O.A.S.*

The third Inter-American Port and Harbour Conference which was held at Vina del Mar, Chile, from 15 to 24 November, 1968, considered the question of general utilization of standard shipping documents which have been submitted to member States for approval.

(*v*) *Baltic and International Maritime Conference* (*BIMC*)

Almost since its foundation BIMC and its Documentary Council have been active in preparing shipping documents, such as charter-parties and bills of lading, some of which are known and used internationally.

(*vi*) *Committee of European National Shipowners' Associations* (*CENSA*) *and National Shippers' Council of Europe*

Recommendations of the joint Plenary Meeting of the representatives of Conferences and European Shippers' Councils have made recommendations on clausing of bills of lading and have declared undesirable the automatic "clausing" of bills of lading covering goods packed in fibreboard containers and cartons.

(*vii*) *International Chamber of Commerce*

The International Chamber of Commerce has given its active cooperation to a study, by the U. N. Economic Commission for Europe, of the simplification and standardization

of external trade documents, including the maritime bill of lading; the latter is being studied in close cooperation with the I.C.S. (International Chamber of Shipping).

(*viii*) *International Chamber of Shipping*

Under the guidance of its Shipping Documentation Committee, the I. C. S. has continued its work on the standardization and simplification of documentation. The I. C. S. is preparing a standard manifest aligned with the standard bill of lading to meet the content and layout requirements of the Cargo Declaration recently recommended by the IMCO to member governments. It has kept in close touch with discussion within the IMCO on the establishment of forms suitable for universal use.

(*ix*) *International Maritime Committee* (*Comité Maritime International*)

The question of letters of guarantee delivered in exchange for a bill of lading issued without indemnity is under study by the IMCO.

PART XIX

Charter-party

85. There are three types of charter-parties: first, charters by demise; secondly, time charters (not by way of demise) and thirdly, voyage charters. In the case of a charter by demise, the ship itself is leased to the charterer. The charterer becomes for the term of the charter the owner of the ship, and the master and crew to all intents and purposes become his servants for the duration of the charter. Through the master and crew the charterer obtains possession of the vessel. In the case of a time charter, on the other hand, the ownership and possession of the ship remains with the shipowner, who merely agrees with the charterer to render services by his master and crew to carry goods placed on board his ship during a certain

period specified in the agreement. A voyage charter is a contract to carry specified goods on a defined voyage or voyages. There is no international convention concerning charter-parties. A charterer may himself ship goods on the vessel he has chartered or he may enter into sub-contracts of carriage with various shippers. In the latter case, as each shipper ships his goods, a bill of lading is issued to him evidencing a contract between the shipper on the one hand and the shipowner (in some cases the charterer) on the other. Such a contract, in the absence of an express stipulation, is independent of the contract contained in the charter-party. On the other hand, when the charterer himself is the shipper and a bill of lading is issued to him by the shipowner, such a document is only a receipt for the goods. As between him and the shipowner the contract of affreightment is contained in the charter-party and, in the absence of an express provision to the contrary, the bill of lading does not alter the contract. However, if the bill of lading is endorsed by the charterer to a third person for valuable consideration, the latter becomes entitled to delivery of the goods represented by this document under the terms and conditions set out in it and irrespective of the provisions of the charter-party except insofar as these provisions are incorporated. The 1924 International Convention for the Unification of Certain Rules relating to Bills of Lading does not make provisions in regard to charter-parties, so that the shipowner still enjoys unlimited freedom to insert in his contract any number of protective clauses in the charter-party. Very often charter-parties contain stipulations which, when incorporated into bills of lading, place the receivers of cargo at a great disadvantage. The question whether the incorporation of any such stipulation derogates from the protection given to the receivers of cargo under the Convention often leads to fine distinctions being drawn by courts. The Convention is silent on the question of the incorporation of charter-

party provisions in bills of lading. In this connexion, it may be of interest to note that the Netherlands which acceded to the Convention in 1955, applies the Hague Rules to charter-parties and bills of lading where the Netherlands Code is applicable. The only Convention which makes certain provisions in regard to charter-parties is the International Convention on Navigation Law, Montevideo, March 19, 1940[168] (adopted at the Second South American Congress on Private International Law), which, in Articles 25 to 27, provides in regard to the law governing contracts of charter-party and the forum for settlement of disputes relating to these contracts.

86. At the Second Session of UNCTAD, Mr. Khalil of the U. A. R. referred to the absence of any Convention dealing with charter-parties, which, according to him, was a matter of great importance to many developing countries that had to charter ships to export their goods. He also referred to absence of limitation on the shipowner's freedom of action in respect of clauses in charter-parties which are more advantageous to shipowners than to shippers, and conflicts between charter-parties and bills of lading.[169] However, Mr. Schuthe of Canada did not think the absence of a Convention on charter-parties was a tragedy, since, according to him, the charter-party was a type of freight contract in which the contracting parties could insert whatever clauses they deemed necessary. He suggested that if some clauses were more advantageous to shipowners than to shippers, they could be discussed by the consultative machinery on shipping.[170] Mr. Dalst of Norway expressed a similar viewpoint.[171] The advisability of having a Convention governing charter-parties has to be viewed in the light of the

168. *British Shipping Laws Series*, Vol. 8. at p. 1099.
169. In his statement of February 1968, before the Fourth Committee : UNCTAD Doc. TD/II/C. 4/SR. 14.
170. UNCTAD Doc. TD/II/C. 4/SR. 18.
171. UNCTAD Doc. TD/II/C. 4/SR. 16.

fact that there are different types of charter-parties and there are different forms of charter-parties for different groups of commodities, as also different forms of charter-parties negotiated by different groups of shipowners and shippers. This may prove to be a serious impediment to laying down a uniform pattern of legislation or to having a convention in this area. However, the possibilities of having six or seven model forms of charter-parties that may cover all the situations deserves to be explored. Principles may also be formulated with a view to limiting the shipowners' freedom of action in respect of such clauses in charter-parties as are prejudicial to the interests of shippers or receivers of cargo, or are more advantageous to the shipowners than to shippers. It is also necessary to deal with the problem of conflict between charter-party and bill of lading and to examine the advisability of applying the Hague Rules to charter-parties, as is done in the Netherlands in cases where the Netherlands Code is applicable.

87. (a) Charter-parties are governed in part by national statutory and customary law, and by the custom of those engaged in the shipping trade Thus the standard contract forms, especially those prepared by associations of shipowners and importers engaged in the carriage of particular raw materials assume great importance. (b) As far as charter-parties are concerned, the Hague Rules do not apply unless they are incorporated into the contract, and the shipowner still enjoys unlimited legal freedom to insert in his contract any number of protective clauses. And even under the Hague Rules the shipowner apparently enjoys privileges which considerably secure his position *vis-a-vis* the cargo owner. This aspect deserves to the looked into. It is most desirable that standard contracts are not drafted in such a way that one party to the contract is placed at a disadvantage, and that a balance is maintained between the conflicting interests. (c) It is also necessary to scrutinize the main types of charter-parties used in various trades, clause by clause, and to recommend the drafting of new legislation for minimum obligations and

liabilities to be imposed on shipowners concerning their principal duties to cargo interests from which they will not be permitted under the law to derogate. It is also necessary to formulate generally acceptable definitions of important technical terms used in chartering, for example as in computing "lay time" words such as "working days", "weather working days", etc. and other phrases and clauses whose meanings are constantly being reconstrued by Courts, thus causing confusion.

88. Some of the aspects which deserve to be examined are : contract by charter-party, printed forms of standard contracts and effects of alterations; responsibilities and liabilities of the shipowner and the charterer; exceptions relieving the shipowner and the charterer; relation of bill of lading and charter-party; incorporation of the charter-party provisions in the bills of lading; and conflicts between charter-party and bill of lading.

89. Some of the activities of international bodies in this area are as follows :

(i) Under the auspices of the Council for Mutual Economic Assistance (CMEA), the Consultative Conference of Representatives of Charterers' and Shipowners' Organisations continued its work on the standardization of shipping and chartering documents. In this work an active part was played by the Conference's executive organ, the Bureau for the Co-ordination of Ship-Chartering.

(ii) *O.A.S.*—The third Inter-American Port and Harbour Conference, which was held at Vina del Mar, Chile, from 15 to 24 November, 1968, considered the question of the general utilization of standard shipping documents which have been submitted to member States for approval.

(iii) *Baltic and International Maritime Conference* (*BIMC*) —Almost since its foundation, BIMC and its Documentary Council have been active in preparing standard shipping documents, such as charter-parties and bills of lading, some of which are known and used internationally.

(iv) *International Maritime Committee* (*Comité Maritime International*)—The question of the international interpretation of chartering terms is under study by the Committee.

PART XX

Marine Insurance

90. A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in the manner and to the extent agreed, against losses incidental to marine adventure. The contract of marine insurance is embodied in a written document called the policy. The monetary consideration in return for which the insurer undertakes to indemnify the assured is called the premium. The insurer is commonly called the underwriter. The object or property insured is called the subject-matter of insurance, and the interest which the assured has in such an object or property is known as insurable interest. The ship or goods, freight, profits or any other interests arising out of a marine adventure may be subject of marine insurance. The losses insured against are the perils of the sea, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, detainments of princes and peoples, jettisons' barratry, and any other perils which may be mentioned in the policy. These perils are called the perils insured against or losses covered by the policy. When the insurer's liability begins under the contract, the policy is said to attach; or the risk is said to attach.

91. The Institute of International Law drafted at its Brussels Conference of 1885 a Code on a "uniform law on

maritime assurances".[172] At its Glasgow Conference of 1901, the International Law Association discussed the benefits which would accrue to the various interests concerned if a standard form of policy, containing uniform rules on maritime risks, could be adopted on the example of the York-Antwerp Rules on general average. The Association at the said conference, adopted draft rules, known as "Glasgow Marine Insurance Rules of 1901".[173] Some of the questions of marine insurance on which international agreement is desirable seem to be the following : "(a) definition of total loss of ship, freight and cargo insured under a marine policy and the right of abandonment connected therewith; (b) the precise effect of the principle of subrogation as between the insurer and the assured in respect of the loss of property covered by the insurance policy; (c) the effect of faults of the assured and his agents or servants resulting from the unseaworthiness of the insured ship or the inherent vice of the insured goods; and (d) the definition of double insurance and its influence on other sub insurances contracted either simultaneously or subsequently in one or more countries."[174] Rule 12 of the Warsaw-Oxford Rules, 1932,[175] provides in regard to duties of the seller as to insurance. Further, the Treaty on International Commercial Navigation Law, Montevideo, March 19, 1940,[176] adopted by the Second South American Conference on Private International Law, provides, in Articles 28-30, laws governing contracts of insurance and the forum for settlement of disputes concerning them.

92. Dr. T.K. Thommen in his Report to UNCTAD II had stated that "Marine insurance is essentially international in character as the subject-matter insured is generally involved

172. *Annuaire*, Vol. 8, pp, 125-126.

173. 20th Report (1901), at p. 213.

174. Colombos in his book on *International Law of the Sea*, at p. 318.

175. *British Shipping Laws Series*, Vol. 8, at p. 1096.

176. *Ibid.*, at p. 1099.

in international trade. There is no international convention on marine insurance. Although it is highly desirable to reconcile the existing divergencies in the marine insurance laws of various countries, there has been little success in this field. It may be of interest to consider whether international legislation is possible on several aspects of marine insurance. Some of the questions on which an attempt might be made to formulate international rules are : a definition of the terms "total loss" and "the right of abandonment"; measure of indemnity; rights of the insurer after payment of the indemnity; the effect of the faults of the assured and his agents or servants and double insurance." At that Session Mr. Khalil of the U.A.R. pointed out that, under the 1924 and 1957 Conventions relating to limitation of shipowners' liability, shippers had to insure to the full value of their goods, and there was often double insurance by the shippers and shipowners—to the benefit of Insurance Companies and to the detriment of the developing countries.[177] Mr. Umar of Indonesia referred to absence of principles governing marine insurance.[178] The law governing marine insurance is national statutory or customary law, which in turn is partly derived and greatly influenced by the standard policies, contracts and standard clauses of the insurance trade, particularly that of London and New York, and the general customs of underwriters. A number of texts also exist prepared by international trade associations providing definitions for standard terms used in marine insurance contracts.[179]

93. What has been stated in the present Note in regard to standard form contracts equally applies to marine insurance policy forms. These policy forms, which are prepared by the insurers, contain many complicated and archaic clauses which are not apparently uniformly interpreted in many countries

177. UNCTAD Doc. TD/II/C. 4/SR. 14.

178. UNCTAD Doc. TD/II/C. 4/SR. 14.

179. International Union of Marine Insurance, Tables of Practical Equivalents, No. 3.

and have been "subject of repeated demands for reconstruction and simplification. Mere unification of the legal rules on an international plane might not be effective in maintaining a balance between the conflicting interests of the insurer and the assured unless the terms of the policy are also internationally unified along equitable lines". It may be necessary "to examine the clauses used in policy forms in different countries and consider the desirability of recommending their simplification and unification so that they may be easier understood and may carry the same meaning everywhere in appropriate cases".[180] The matters that need examination are : nature of marine insurance; what is insured; insurable interest; principle of indemnity; principle of utmost good faith; formation of the contract; the policy; types of policy; rules of construction of the policy; evidence of usage; consignment of the policy; warrants-nature of warranties; effect of non-compliance with warranties; express and implied warranties; the voyage-change of voyage; deviation from voyage; abandonment of voyage, delay in voyage; perils insured against losses for which insurer is not liable; proximate cause of loss; insurer's liability in respect of a general average loss or contribution; insurable value; particular average; particular charges; salvage charges; suing and labouring clause; memorandum in the policy; measure of indemnity; total loss; actual total loss and constructive total loss; total loss of ship, freight and cargo; rights of the assured; notice of abandonment; the principle of subrogation; the effect of the faults of the assured and his agents or servants; double insurance; circumstances in which premimum is returnable; reinsurance; and standard clauses in policy forms.

94. The International Chamber of Commerce has given priority, *inter-alia*, to insurance and documentation, in close co-operation with UNIDROIT and the Comité Maritime International.

180. UNCTAD Doc. TD/B/C. 4/ISL. 2.

PART XXI

General Average

95. The York-Antwerp Rules provide an interesting instance of international unification of maritime rules by means of voluntary agreements, and not by State legislation or multilateral treaties. The York-Antwerp Rules, 1950,[181] were adopted by a Conference convened by the International Maritime Committee to replace the York-Antwerp Rules of 1924. The 1924 Rules, as well as the earlier Rules known as the York-Antwerp Rules, 1890, were prepared by conferences convened by the International Law Association. The York-Antwerp Rules have established a body of principles as regards the adjustment and contribution to be made by the several interests concerned in a general average. The interests involved are the ship, the freight and the cargo. *Rule A* of the York-Antwerp Rules, 1950, states : "There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involving in a common maritime adventure." *Rule B* provides that "general average sacrifices and expenses shall be borne by the different constituting interests."

The third International General Average Congress at York, in 1864, drafted eleven rules (The York Rules) and a proposed bill to be adopted by the legislative branches of the various governments. Amendments and additions to these Rules were made by the Antwerp Rules, 1877, drafted by a Committee of the Congress of the Association for the Reform and Codification of the Law of Nations, at Antwerp. The York-Antwerp Rules finally took shape at the Conference of the Association, at Liverpool, in 1890 with certain modifications and additions to the previous rules. There was virtually a

181. *British Shipping Laws Series*, Vol. 8, at p. 1105.

universal acceptance by the mercantile interests of inclusion by reference of the York-Antwerp Rules in bills of lading and charter-parties. However, the Rules of 1890 were largely provisions for the handling of specific and individual questions; they did not constitute a general code. The movement for such a Code led to adoption of a new set of rules under the title of York-Antwerp Rules, 1924, at Stockholm, by the 33rd Conference of the International Law Association. These contained both a statement of general principles in the "lettered" rules and specific provisions for the decision of individual points of practice in the "numbered" rules. In the late 1940's there was a movement to revise, simplify and reform the 1924 Rules. The Comitè Maritime International at its meeting at Amsterdam in September 1949, considered a revision of the Rules. In September 1950 the revised rules were formally approved by the Copenhagen Conference of the International Law Association. The Rules are not law in a public sense; they represent a system recommended to private interests for inclusion by them in their private contracts, bills of lading charter-parties and similar maritime documents. Under the Rules only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average. This excluded loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market.

96. The Treaty on International Commercial Navigation Law, signed at Montevideo on March 19, 1940[182] in articles 15 to 19, provides in regard to the law governing average and the forum for settlement of disputes concerning the average.

97. At the Second Session of the UNCTAD, Mr. Khalil of the U.A.R. expressed the view that the 1950 Rules favoured the shipowners rather than the shippers. As stated above, there is no convention on the subject. Nevertheless, the 1950 York-

182. *British Shipping Laws Series*, Vol. 8, at p. 1099.

Antwerp Rules, though not incorporated as such into statutory law, have had a profound impact on the practice of the shipping industry and are widely accepted as part of general international commercial usage. As such, a review of the subject for the purpose of having a convention on the subject has to be made in the light of international practice relating to general average. It is necessary to explore "the possibility of simplifying general average procedure and the York-Antwerp Rules which are difficult to understand and even more difficult to apply. Average adjustment is a notoriously complicated and time-consuming process and its ultimate incidences fall upon the underwriters representing the different interests. These underwriters often belong to different departments or subsidiaries of the same Insurance Company or group. The task of "adjustment" is so difficult that a considerable "mystique" has grown up around the subject, and a specialized body of highly trained professional "average adjusters" are employed to do full justice to it. All this is expensive and is eventually reflected on freight. Whether it would be an advantage to abolish general average altogether and let the loss lie where it falls so that the particular underwriter of the interest concerned bears the burden, is another question which deserves thorough investigation. If sufficient evidence is adduced to work this as a practicable proposition, contracts of carriage will have to be materially revised, for example, in regard to the treatment of common charges met initially by shipowners as bailees. Consideration would also have to be given to the inter-relationship with salvage." The conclusion may possibly be "that in view of the extreme complexity of the issues involved, and in consonance with recent practice in the insurance market, it might be advisable to study first prospects of simplifying general average procedures, and later go on to study the reduction or abolition of contribution in selected instances where the equitable principle of beneficiaries proportionately absolving costs incurred in their common interest may be found to have least value". It may then be necessary to "tackle the

economic effects of particular contentious situations which really always cause difficulty in general average and where State practices vary, as for example in "port of refuge or call situations".[183] Some of the specific aspects which deserve a thorough study are principles of general average; general average sacrifice of cargo, of ship or tackle or freight; general average extraordinary expenditure and expenses in port; contribution to sacrifices and expenditure; contributions to and from freight; master's duty to collect general average; who can sue and be sued for general average; rules of general average adjustment; and application of York-Antwerp Rules.

PART XXII

Containers and unitized cargoes

98. The existing legislation on the subject of containers is the Customs Convention on Containers of 1966. The Comitê Maritime International, in March-April 1969, at its Tokyo Conference, adopted a draft convention on "Combined Transport", which also deals with the subject of containers. The legal and economic issues connected with the carriage of containerized cargo need to be examined. At present the Comitê Maritime International is studying the question of liability of the operator of a container in international carriage done partly by sea.

99. The Legal Committee of the IMCO took note of the Secretariat's suggestion that the question of legal problems arising from maritime transport of containers, may be considered ripe for study. The organization (IMCO) is becoming increasingly involved in the safety, technical facilitation and other aspects of containerization. Studies in this field are broadly subdivided as follows :

(a) *Containers* : dimensions, rating, strength, construction, testing, certification, marking, etc.;

183. UNCTAD Doc. TD/B/C. 4/ISL/2.

(b) *Ships carrying containers* : stability, fire protection, construction of specially built ships including strength of cargo doors, hatch covers, guide rails of container cells, etc.;

(c) *Carriage of containers* : carriage of dangerous goods, stowage, security on board and inside containers, safe handling, forward visibility of ships carrying containers on deck;

(d) *Administrative matters* : problems of an administrative nature arising from the consideration of the above items, such as the mutual acceptance of safety certificates by inspecting authorities, arrangements for periodical inspection of containers, arrangements for inspection and inter-change of existing containers and the testing and certification of containers; and

(e) *Facilitation aspects*: Certain other matters such as requirements for documentation in connection with the handling and forwarding of containers and the contents and form of documentation.

100. Some of the activities of international bodies in the field of containers and unitized cargoes are as follows :

(i) The United Nations Inter-regional Seminar on Containerization and other Unitized Methods for International Movement of Freight (London, May 1967), where a paper was presented on the situation regarding containerization in Latin-America.

(ii) The first Inter-American Port and Harbour Seminar (Unitized Cargoes) was held by the O.A.S. at Bogota in March 1968. On the basis of the discussions and the supporting documents, the participants arrived at a number of conclusions concerning the measures required in the various countries to facilitate the movement of unitized cargo. These conclusions

showed the value of standardizing internal transport and cargo-handling equipment, and unifying government regulations, procedures and techniques and customs regulations in member States. Conclusion III called on governments to give active support to the preparation of a Convention on Unitized Cargoes for submission to the Third Inter-American Port and Harbour Conference. The said Conference, which was held at Vina del mar, Chile, in November 1968 gave careful consideration to the draft Convention on the subject.

(iii) The Council for Mutual Economic Assistance (CMEA) has been working on the completion of a Unitized Cargo Classification for recording and coordinating the transport of goods among the member countries of CMEA.

(iv) The Economic Commission for Europe is currently considering the revision of the Customs Convention on Containers of 1956. The Inland Transport Committee and its Working Party on Customs Questions affecting Transport has adopted a number of resolutions on customs aspects of container transport, which may have repercussions on customs formalities at ports. The results of the work of the *ad hoc* meeting to prepare a uniform container manifest (November 18 to 22, 1968) may affect documentary requirements for container movement by sea and through ports.

(v) National Shippers' Councils of Europe and Committee of European National Shipowners' Associations, in the Joint Plenary Meetings, held in London (1964), Brussels (1965), Amsterdam (1966), Marseilles (1967) and Hamburg (1968), adopted recommendation concerning fibreboard containers and cartons, which declares undesirable the automatic "clausing" of bills of lading covering goods packed in fibreboard

containers and cartons. This recommendation arises from the recognition of technical developments in the packing industry.

(vi) The International Chamber of Commerce is actively at work on the problems raised by container ships. The Chamber's International Bureau of Chambers of Commerce is very carefully following the work on customs problems which is being done within the United Nations Economic Commission for Europe (ECE) and the Customs Cooperation Council. A guarantee system intended to facilitate container movement across boundaries is being discussed with the latter.

(vii) The International Chamber of Shipping (ICS) has formed an ICS Container Committee to deal with the development of the concept of through transport of goods, particularly by container; to coordinate the views of shipowners on container developments; and to study such questions as customs procedures affecting containers, the standardization, inspection and certification of containers, and health regulations. The documentation relating to containers are studied by a special sub-committee of the Shipping Documentation Committee.

PART XXIII

Carriage of Passengers

101. The existing legislation on this subject is as follows :

(i) International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea, Brussels, April 29, 1961,[184] adopted through

184. *Britis Shipping Laws*, Vol. 8, at p. 1067.

the efforts of the Comite' Maritimè International. It was based on a draft prepared at the Madrid meeting of the Comitè Maritime International in 1955 and adopted by the Diplomatic Conference on Maritime Law, held at Brussels on October 10, 1957. "The Convention contains many provisions which may throw light on certain aspects of problems arising in the carriage of goods by sea. Article 2 states that the Convention shall apply to any international carriage if either the ship belongs to a contracting State or if the place of departure or destination is in a contracting State. Article 3 provides that the shipowner shall exercise due diligence, and shall ensure that his servants and agents, acting in the course of their employment exercise due diligence to make and keep the ship seaworthy and properly manned, equipped and supplied at the beginning of the carriage and at all times during the carriage. The carrier is responsible for the death or bodily harm of a passenger if it is caused by the neglect of his servants. Article 4 provides that in the absence of evidence to the contrary, the fault or neglect is presumed when death or bodily harm results from shipwreck, collision, stranding, explosion or fire. The liability of the carrier is limited to 2,50,000 gold francs for the death or personal injury of a passenger (each franc consisting of 65.5 milligrams of gold of millesimal fineness 900) (Article 6)".[185]

(ii) International Convention for the Unification of Certain Rules Relating to the Carriage of Passengers' Luggage by Sea, May 27, 1967, adopted through the efforts of the Comitè Maritime International.

185. Dr. T. K. Thommen, in his report on "International Legislation on Shipping", UNCTAD Doc. TD/32/Rev. 1.

102. The subject of coordination of luggage convention and passenger convention was considered by the General Assembly of the Comitè Maritime International held in Tokyo from March 30 to April 5, 1969.

PART XXIV

Pollution

103. The existing legislation on the subject is the International Convention for the Prevention of Pollution of Sea by Oil, 1954,[186] adopted by the International Conference on Prevention of Pollution of Sea by Oil, convened in London in 1954 on the initiative of the U. K. Government. The Convention provides in regard to oil pollution of sea caused by vessels which discharge into sea large quantities of oil while washing their tanks and disposing of oily ballast water, leading to serious damage to coasts and beaches, the destruction of sea birds, and damage to fish. The Convention was amended in 1962, by a conference covened by the IMCO. The conference envisaged the provision of facilities for the reception of oil residues and oily water mixtures at ports and a resolution of the conference provided that progress in the provision of such facilities should be kept under review by the IMCO.

104. (i) Following the *Torrey Canyon* accident, which brought to light a number of problems calling for international action concerning accidental pollution, the IMCO is giving urgent consideration to the development of measures which would minimize the risk of such accidents, and the measures to be undertaken following such an accident. Consideration is also being given to the various associated legal problems, such as those concerning the right of a coastal State to intervene in cases of grave and imminent hazard to its coastline and the problem of liability involved with respect to compensation and damage. The Legal Committee of the IMCO concentrated on two principal facets of the problem of accidental pollution on a

186. *British Shipping Laws*, Vol. 8, at p. 1157.