being an action or two aimed at clarifying precisely what its ambit is and also to clarify exactly how far along the reinsurance "chain" the principle should be extended.

Last November the DTI put out its so-called "explanatory and consultative note" concerning the implementation of the Products Liability Directive requesting comments by 19th February 1986. There has been quite a lot written about the various options which are open to H.M. Government with regard to its implementing legislation and it will be interesting to see exactly what the draft Bill contains, especially on the contentious issues of including or excluding a State of the Art defence and having limits of liability. But no matter what our Act ultimately contains it is still a great pity that so many options have been left open to individual Member States, thereby seriously undermining the whole principle of harmonisation of laws within the European Community. The one positive aspect of the sad tale is that the Directive obliges the Commission to submit regular reports to the Council on the working of the Directive, especially with regard to the State of the Art defence and the issue of financial limits, so, who knows, full harmonisation might actually be achieved in a couple of decades.

Gordon Cornish

1985 PRESIDENT'S LUNCHEON

Sir Denis Marshall, President of BILA, had invited Michael Ogden, Q.C., Chairman of the Criminal Injuries Compensation Scheme, to give the post-luncheon address. Over 100 members and guests attended the event in the now traditional venue of the Elizabeth Suite in Barrington House, London EC2.

Mr. Ogden recalled that the Board had originally been

established in 1964 as a result of the success of a similar scheme in New Zealand.

Compensation was nowadays awarded in respect of injuries caused by direct criminal violence, where they arise from assisting in effecting an arrest and from involvement in crime prevention.

The procedure to be followed, Mr. Ogden explained, is relatively simple: if a claim form is satisfactorily completed, has been attested by the police and is supported by adequate medical evidence, then payment is automatic. Certainly great efforts have been made to avoid any type of inquisitional procedure as is traditionally adopted by employers and their insurers in dealing with claims.

Mr. Ogden pointed out one difficulty, namely that, whereas in a court action the judge or jury come to a decision on the basis of evidence from both sides, the Board has to try to "smell out the truth". This is especially difficult where the identify of the assailant is unknown or where false allegations may have been made.

In any event, the burden of proof lies squarely on the shoulders of the applicant. For instance, he must somehow statisfy the Board how it came about that he was stabbed. The application of the White Book rules of evidence is inappropriate and, as evidence-in-chief would be a waste of time, the Board is forced to act along the lines of cross-examination only.

On the other hand, Mr. Ogden emphasised, normal court procedures are very useful in determining expenses and costs where special evidence may be required.

Mr. Ogden said that the procedures employed by the Board led to results being achieved quickly. He gave the example of an award of £175,000 (including medical and other expenses) being made after a hearing lasting a mere sixty minutes. Another

example was £100,000 awarded in total whereas a court action to cover loss of earnings, pain, suffering and loss of amenities might have taken weeks.

It is interesting that in cases dealt with by the Board it is not necessary for the criminal concerned to have been convicted or, even, identified. However, police confirmation of prompt reporting of the incident is essential.

One difficulty frequently encountered arises in cases of injuries sustained as a result of a fight or of drunkenness as opposed to criminal assult or battery. It is easy for someone who has slipped on the pavement and cracked his head open to go to a hospital and claim that he has been mugged. In cases such as these outside evidence is essential: a casual passer-by can state quite simply that he saw the person concerned fall and pointed him in the direction of the hospital.

(One fascinating aspect of Mr. Ogden's address was that it was given immediately following the publication of the judgement of Mr. Justice Woolf in the case of Meah v. McCreamer. This was the case where Mr. Meah, who had suffered brain damage in a car accident due to the defendant's negligence and had then committed serious sexual offences, had been awarded damages and where his two victims had sued him but had been awarded considerably less than Mr. Meah had received. The outcry in the "popular" press had been alarmingly vociferous).

In rounding off his most stimulating talk Mr. Ogden re-emphasised the speed of settlements made by his Board when compared with those eventually made in the typical road traffic accident or industrial accident situation.

But Board cases, he said, can always be reviewed and he referred specifically to serious head injury and epilepsy claims. Circumstances can also change with the result that it turns out that some applicants are receiving too little on a very low income; this then merits a review of the award.

A. McCrindell

AIDA VII - BUDAPEST

INSURANCE AND CHANGING NOTIONS OF LIABILITY 1964 - 1984

In May 1986 Mr. Cyula Eorsi (Hungary) will present a general report on this theme to the Seventh World Congress of the International Association of Insurance Law (AIDA). It is one of the two themes chosen by the Council of AIDA for the Congress. The general reporter's task will be to synthesise some twenty or thirty national reports. They are the pieces of a jigsaw from which, it is to be hoped, a clear picture will emerge when they are fitted together.

I had the honour to chair the working group which produced the UK national report. No one from Scotland, alas, volunteered to take part, so the report had to be based on English Law. How far, if at all, has English Law relating to liability changed in 21 years?

If one were to attempt to set out the law as it was in 1964 in about half a dozen sentences, one could say:

1. Claims for damages have to be based on tort, principally negligence, breach of statutory duty, or breach of contract.