

COMITÉ MARITIME INTERNATIONAL
Minutes of the CMI Assembly held at the Marriott Plaza Hotel
in Buenos Aires on October 27, 2010

Participating:

President:	Karl-Johan Gombrii
Immediate Past-President	Jean-Serge Rohart
Vice-Presidents	Stuart Hetherington Johanne Gauthier
Councillors:	Giorgio Berlingieri Christopher Davis José Tomas Guzman Mans Jacobsson Henry Li Louis Mbanefo Andrew Taylor
Secretary-General	Nigel Frawley
Administrator:	Wim Fransen
Treasurer:	Benoît Goemans

Member Associations

The delegates present at the Assembly are set out at Annex “A” to these Minutes. The President opened the meeting and welcomed all of the delegates present. A quorum was declared and the meeting held to be properly constituted.

1. Adoption of Agenda

- a) The tabled agenda was adopted.
- b) On behalf of the Credentials Committee, Johanne Gauthier reported that she and Benoît Goemans had reviewed the list of delegates present and reminded them that there was only one vote per delegation.

2. Memorials

The President paid tribute to old friends who had died since the last Assembly. He called for a moment of silence for Takeo Hori, Japanese MLA, Dr. Norbert Trotz, German MLA and former Secretary-General, and the Honourable Mr. Justice M.B. Belgore, past president of the Nigerian MLA.

3. Approval of Minutes

The Secretary-General moved, seconded by Stuart Hetherington, for approval of the minutes of the Assembly held in Rotterdam on September 23, 2009. The only business arising was that the

President reported that the new website was virtually complete and many thanks were due to Stuart Hetherington for organizing its construction, and to Francesco Berlingieri establishing and maintaining the old website for many years.

4. Members

a) Titulary Members

The Secretary-General advised the Assembly that the MLA of the USA had nominated Robert Parrish; that the MLA of China had nominated Henry Li; that the MLA of Italy had nominated Marcello Maresca, and that the MLA of Ireland had nominated Helen Noble. He then called upon Pat Bonner, Song Dihuang, Giorgio Berlingieri and Edmond Sweetman to speak to these nominations. All four nominees were then duly declared to be elected as Titulary Members with thanks and congratulations for their significant contributions to the work of the CMI.

b) Consultative Members

The Secretary-General advised that the Dutch Inland Waters Organization, IVR, had invited the CMI to be a consultative member of their organization. This was unanimously approved.

c) New MLAs

The President reported that an organization in Indonesia had applied to become a Member Association of the CMI and that the application was kept in abeyance pending a broadening of its membership so as clearly to comply with the CMI Constitution. The President also reported that he was in contact with persons and organisations in Poland, India, Malaysia and Honduras with a view to receiving in due course applications for membership from them.

d) Temporary Members

The President reported that the temporary membership of Mr Lejniaks had been terminated after Mr Lejniaks had advised that there were no real prospects of creating a viable Maritime Law Association in Latvia. There are also temporary members from Honduras, Kenya and The Democratic Republic of Congo. Discussions are still ongoing with Mr Okumu Ogola in Kenya and Mr Mvamvu in The Democratic Republic of Congo for purposes of creating maritime law associations there. Regarding Honduras, an application from a new Maritime Law Association there is expected shortly, see 4c) above.

e) Portugal

Giorgio Berlingieri reported that he had exchanged correspondence with several lawyers in Portugal who wish to revive the Portuguese MLA. He is optimistic that they will result in a reconstituted Portuguese MLA in due course.

f) Member Consultation Process

Christopher Davis reported that the process is progressing with meetings with several MLAs having been held. More will be arranged in the forthcoming year. He said that his committee had received several replies to the second Questionnaire but that more will be required before a proper summary can be distributed.

5. Finances

a) Treasurer's Report

The Treasurer said that prior to the Assembly, his report on the finances had been distributed to all NMLAs and this was composed of his report (Accounts for the Year ending December 31, 2009), and the Tentative Budget for 2010 and 2011.

b) The Treasurer then reported on the highlights of the Accounts for the Year ending December 31, 2009, including a PowerPoint presentation on the charts in his report.

He explained that the reserves were too high and had accumulated as a result of a number of factors, not the least of which were healthy surpluses from the Vancouver and Athens Conferences and Colloquia, as well as settling with a number of delinquent NMLAs that had fallen behind with payment of successive annual subscriptions. There were no comments from the floor, and the 2009 Accounts were thereupon approved.

Mans Jacobsson then tabled the Audit Committee report, explaining that the Chair of that Committee, Liz Burrell of the US MLA, was unable to be present. He explained that one of the main issues in the report is what to do about the CMI's very high reserves and how to arrive at a reasonable level for the CMI as a non-profit NGO. He said that the Audit Committee was still investigating the matter. The report was very well received by the Assembly.

c) Budget

The Treasurer tabled a revised budget for 2010, which was approved and a tentative budget for 2011 with alternatives for the subscriptions from member associations for that year. The President explained that subscriptions for 2011 on the 2010 level, would not have the effect of reducing the high reserve. The Executive Council had considered various alternative levels, i.e. reductions as compared to the 2010 level and concluded to recommend that there should be a zero subscription for all NMLAs in 2011. That would result in a significant reduction of the reserves, by about 17%, whereas lesser reductions of subscriptions would of course have a less significant effect. The recommended solution was to be regarded as a "one off" measure to achieve a significant reduction of the CMI reserve without member associations becoming used to low subscriptions over time, which might lead to problems when the level of subscriptions would have to be "normalised" again. Also, the recommended solution would give the Executive Council time to consider other means of reducing the reserve, like applying funds to various projects or programs consistent with the objective of the organisation. The President emphasised that there were pros and cons in relation to all options that had been considered but that the one recommended was submitted to the Assembly. The heads of several delegations spoke to the matter, and a broad majority were in favour of the recommended solution, although two spoke against. Many delegates emphasised the general need for a concerted effort to reduce the reserves, including increased expenditures in furtherance of the CMI's mission. One delegate suggested that the Executive Council might wish to consider setting up a committee to investigate and give recommendations for how to deal with this issue, e.g. by increased spending on publications and creating projects where the expenses were such that the CMI had previously not been able to take them on.

d) Unpaid Subscriptions

Chris Davis reported that his fellow committee member, José Tomas Guzman, in keeping with a previous mandate by the Assembly had done an excellent job of settling arrears in subscriptions with several South American countries. More particularly, it was reported that the ExCo had ratified settlements with Chile and Colombia and had endorsed settlements on the same basis with the MLAs of Peru and Uruguay.

e) The Secretary-General moved, seconded by the Treasurer, for approval of the nomination of de Mol, Meuldermans and Partners, BVBA as auditors for 2011 accounts. The motion was unanimously approved.

f) CMI Charitable Trust

Patrick Griggs summarised Tom Birch Reynardson's report to the Executive Council and pointed out, in particular, the increase in assets from GBP 5,000 to GBP 7,000.

He said that the US MLA has asked for more transparency in dealings between the CMI and the Charitable Trust. Mr. Griggs said that he had prepared a note on the subject which would be posted on the internet. He further pointed out that the Charitable Trust does an excellent job in supporting IMLI in Malta and cited examples of Louis Mbanefo, Frank Wiswall, Francis Reynolds, Marko Pavliha and Mans Jacobsson who had all lectured at IMLI Malta during the past year and that the projected expenses for 2011 for that purpose were GBP 5,000. He also said that about GBP 7,000 would be spent on CMI publications and website management in 2010 and also in 2011.

Mr. Griggs further explained that the income of the Trust was approximately GBP 17,000 and that under the applicable law in the UK, the Trust must spend it all. With about GBP 5,000 to IMLI lecturing and about GBP 7,000 to CMI publications and website together with investment management fees and accountancy fees in excess of GBP 3,000 there was not much room for additional spending. At this point, Stuart Hetherington referred to the new website and reminded the Assembly that the Executive Council was now looking into a project of maritime law professors giving online lectures, which would no doubt have a monetary aspect to it.

The report of the Charitable Trust and the reporting to the Assembly by Mr. Griggs were noted with approval.

6. Elections

Jean-Serge Rohart gave the report of the chairman of the Nominating Committee, Bent Nielsen. He reported that Wim Fransen had successfully concluded one term as Administrator and that Henry Li had successfully concluded two terms as Executive Councillor. He said that 24 MLAs had replied and unanimously proposed that Mr. Fransen carry on as Administrator, and that Song Dihuang be elected to the Executive Council in place of Henry Li. At this point, Mr. Rohart asked for the Assembly's approval to these two appointments and it was unanimously given. The President thanked Mr. Li for his excellent services to the CMI and added that Mr. Li will continue to act as liaison between the Secretary-General and the Organizing Committee of

the Chinese MLA with respect to planning and organization of the Beijing Conference in October 2012.

7. Publications

There was no report.

8. Work in Progress

a) General Average Interest Rate Committee

In the absence of Bent Nielsen, Patrick Griggs gave the Committee's report which, in essence, was to recommend that the rate of interest to be applied for 2011 under Rule XXI of the York-Antwerp Rules 2004 should be 4.25% per annum. The Committee also recommended that 4.25% per annum should be applied to expenditures, sacrifices and allowances in General Average during the period from January 1, 2011 to December 31, 2011. These recommendations were unanimously approved.

b) Piracy

Patrick Griggs reported that he had nothing to add to the paper he had just delivered at the Colloquium but that the CMI will continue to monitor international developments. He said that the IMO was very involved with the practical issues of piracy but that, apart from Frank Wiswall's model law of a few years ago, piracy had not yet become the subject of further work on legal issues.

c) Fair Treatment of Seafarers

Giorgio Berlingieri reported that the IWG on this subject is chaired by Kim Jefferies who was recently given a mandate by the Executive Council which has been tabled as an Assembly document. In compliance with such mandate, the IWG made a submission to the IMO Legal Committee which is also one of the Assembly documents. The submission was supported by other influential associations such as the International Group of P&I Clubs, the International Chamber of Shipping, the International Shipping Federation, BIMCO, INTERTANKO and ITF. The submission addresses the need that the IMO Guidelines adopted in 2006 be complied with and that Article 230 of the United Nations Convention on the Law of the Sea also be complied with by Member States. That Article provides that a custodial penalty is allowed only if a foreign seafarer is involved with a wilful and serious act of pollution. The CMI IWG had however noted that this binding treaty obligation is often violated which is what the CMI wished to focus attention on in its submission.

d) Marine Insurance

Dieter Schwampe, Chairman of the International Working Group, said that his group was focussing on three issues, namely mandatory insurance, transfer of rights in insurance contracts and direct action against insurers. He said that a Questionnaire on mandatory insurance had been distributed to all NMLAs in August 2010 and that only five replies had been received so far. Once he receives more replies, he will be able to summarize them and report to the Executive Council for guidance.

e) LLMC and Australian Proposal to Increase Limits

Patrick Griggs spoke to this matter and said that as 38 states had ratified the 1976 convention, the Government of Australia will need more than 19 states to open up the convention to achieve their proposal. At the present date, he said that they do not have sufficient support but that the matter would be considered at the IMO Legal Committee meeting in November 15-19, 2010. He said that as this is a matter for governments, the CMI must be neutral but that it had decided to assist the deliberations by preparing a note on the history of limitation of liability and the structure of LLMC Article 6-1976 and the 1996 Protocol with regard to limitation of liability for loss of life and personal injury claims and a separate limit for property claims. He said that the note was included in the Assembly documentation and had been submitted, with the Executive Council's approval, to the IMO Legal Committee for its meeting in London, November 15-19, 2010. The Assembly approvingly noted the report and the submission by the CMI.

f) Limitation of Liability

Gregory Timagenis of the Greek MLA gave his report as Chairman of the ISC on this subject. He said that their mandate had been transformed so that the ISC should not now exclusively deal with procedural rules. The new mandate is 1) to prepare a list of substantive issues of Limitation of Liability for study; and 2) to finalize a commentary on the Guidelines of procedural rules. He said that a meeting of the ISC had taken place in London in February 2010 which clarified the new mandate. He will hold a further ISC meeting in the coming months and said that the identification of issues is in itself helpful both to practitioners and those in the process of implementing the convention into the national legislation of a ratifying state. He said that the ISC would consult regularly with the Executive Council regarding future work.

g) Salvage

Mr. Hetherington referred to the excellent papers which had been given during the Colloquium on the subject of environmental provisions of the Salvage Convention. He noted that there is a clear difference of view between the ship owners and the P&I clubs on the one hand, which do not see any need for reform, and salvors and the property insurance market on the other hand which recognise such a need. He said that the IWG would be meeting in London in May 2011 to discuss the various options available to the CMI and the industry. He then advised that the difficulty is how to respond to the opposing views and that he and his IWG were considering a new questionnaire on the subject taking into account the individual views of the speakers on the Colloquium panel on this subject.

h) Recognition of Foreign Judicial Sales of Ships

The President referred to the excellent papers given on this subject at the Colloquium. He said that chairman, Henry Li, had advised him that the IWG had a meeting immediately after the Colloquium and had agreed that

- 1) legal issues with respect to the recognition of the judicial sale of ships do arise;
- 2) as far as the proceedings are concerned, there is a fair amount of uniformity on the main points in many countries;
- 3) the specific question of the duty to delete the registration after a judicial sale needs particular attention;
- 4) approximately half of the national MLAs which had responded the questionnaire saw the need for an international legal instrument;

- 5) the other half felt no immediate need for such an instrument, partly because the matter has already been dealt with in the 1993 Convention on Maritime Liens and Mortgages;
- 6) while issues arise with respect to judicial sales, in various countries there is less controversy regarding the need for recognition of foreign judicial sales and to lay down, by way of an international instrument, the standard or basic requirements for judicial sales of ships and for the recognition of foreign judicial sales of ships;
- 7) the IWG should therefore continue its work aiming to produce a preliminary draft international instrument which should be completed, following approvals of the Executive Council as the matter proceeds, and finalized at the CMI Conference in Beijing in October 2012.

The President asked the Assembly to approve continued work by the IWG along the proposed lines and to ask the ExCo to formulate a mandate for the IWG. There was unanimous approval.

i) Implementation and Interpretation of International Conventions

Giorgio Berlingieri spoke to Francesco Berlingieri's report on this subject which formed part of the Assembly documentation. There was no discussion.

j) Ratification of the Conventions on Arrest (1999) and Maritime Liens and Mortgages (1993)

Giorgio Berlingieri reported that the Executive Council decided to include an investigation on the reasons why these two conventions had achieved such little success. In fact, the 1993 MLM Convention, although in force since 2004, has been ratified by only 12 States, while the 1999 Arrest Convention is not yet in force. The IWG, chaired by Professor John Hare of Cape Town with members Professor Ignacio Arroyo Martinez of Madrid and Giorgio Berlingieri of Genoa, is presently considering the best way to proceed with this investigation, either by way of a Questionnaire or by direct approach to NMLAs. Mr. Berlingieri said that a report would be sent to the Executive Council within the next few months.

k) Arctic/Antarctic Issues

The Secretary-General said that the President and he would be establishing an ad hoc working group in the near future to investigate the legal issues involving the Polar Regions which might be the subject of a study by the CMI. He said that he was pleased with the enthusiasm shown for the subject at the Colloquium and that several delegates had volunteered to be part of the process.

l) Rotterdam Rules

In the absence of Tomotaka Fujita, the President gave his report. He said he was pleased with the quality of the papers given at the Colloquium and the spirited debate that followed. He said that all of the papers would be posted on the website for the benefit of NMLAs. He further said that the work of the IWG would continue in its mandate of promoting the Rules and to explore any possible additional work required to achieve uniformity under the Rules, i.e. to look for issues that require particular attention when applying the Rules (such as by providing a comprehensive guide or commentary, publishing a synopsis of UNCITRAL reports on an article by article basis, or the like).

m) HNS Convention Protocol

Mans Jacobsson spoke to this subject and gave reasons why the original convention had not found favour. He said that a Protocol had been drafted and adopted in April 2010 which was designed to address three principal areas of concern: contributions by the receivers of packaged HNS goods, contribution to the LNG account; and non-submission of contributing cargo reports. He said that the Protocol and the 1996 Convention shall be read and interpreted as one single instrument to be referred to as the 2010 HNS Convention. Mr. Jacobsson expressed the earnest hope that the efforts of many distinguished international law specialists to modify the original 1996 text, intended to meet the concerns of governments and industry alike, will result in early ratification by a sufficient number of states. Only then will the victims of a major HNS incident be sure of prompt and adequate compensation for the damage suffered by them.

9. CMI Conference in Beijing October 14-19, 2012

The Secretary-General reported that he and the President had met that very day with some of the Chinese delegates to the Colloquium to discuss planning and organization to date and that everything was on track for a very successful conference. He then gave the floor to the distinguished delegate from the MLA of China, Mr. Shen Man Tang, who issued a warm welcome to all NMLAs to attend at Beijing for the conference.

10. Next Assembly

The President said that the next Assembly would be in late September 2011 in Oslo. He said that no firm date had been settled as yet. He also said that a one half-day seminar was also likely on that occasion.

11. Other Business

a) CMI as Partner Institution with the International Foundation for the Law of the Sea
Mans Jacobsson said that the CMI had been asked to be a Partner Institution and that the Executive Council had accepted that position with enthusiasm and welcomed the idea that Young Members may wish to take advantage of the Summer Academy in Hamburg as a result. The acceptance of the CMI as a Partner Institution was approved unanimously by the Assembly.

b) Portius – International and EU Port Law Centre

The President explained that the CMI had been approached by the founder of Portius, Professor Eric Van Hooydonk, and been asked to become a sponsor (with no formal obligations). The President had responded favourably subject to the approval of the Assembly, which was unanimously given.

c) World Ocean Council

The Secretary-General sought the approval of the Assembly to join the mailing list of this Council which had been established to seek ways of combating the ever-increasing pollution of the world's oceans. Such approval was given.

d) Iran Sanctions

Dieter Schwampe tabled a report on the impact on the shipping industry of the EU sanctions on Iran and also another report that had been prepared by the MLA of the USA on the impact on shipping by the US sanctions on Iran. He said that all of these sanctions had created major problems for the shipping industry including the marine insurance industry.

The President noted that putting this topic on the agenda at the last minute was viewed with favour by the Executive Council, as a means of using the opportunity to discuss a current topic of interest to most maritime lawyers although the topic might not be of immediate relevance to the CMI as such. In fact it was considered that the CMI should be putting more such current topics on future agendas for the Assembly and not be restricted solely to the unification mandate of the CMI. This was approved by the Assembly.

In the absence of Wim Fransen, the Treasurer then spoke briefly on the subject of the “Albert Lilar” prize. He said that after several years of inactivity, Administrators of the Foundation met in September 2010 and decided to award a prize in the year 2011. The prize will be awarded to the author of an innovative book on maritime law published during the last five years. The prize is 5,000 Euros. Any books to be entered must be filed at the secretariat of the Albert Lilar Foundation by no later than May 15, 2011. The address is the same as the CMI Secretariat at Everdijstraat 43, 2000 Antwerp. The conditions to be met by the candidates will be published on line on the CMI website.

At this point, the President thanked the Organizing Committee of the Argentine MLA for the splendid arrangements for the Assembly and thereupon terminated the meeting.

Nigel H. Frawley, Secretary-General

Karl-Johan Gombrii, President