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INTERNATIONAL WORKING GROUP –CAPE TOWN CONVENTION

Report for the CMI Assembly – 9th June 2015

Colleagues.

Towards the end of last summer, the President Stuart Hetherington approached me with a new project. This related to whether or not the Cape Town Convention should be extended to shipping. The history of this matter is interesting. In a nut shell when the Cape Town Convention was first debated in 1996, there was a reference to its application to the shipping sector in square brackets. This was dropped in the early days given the reaction of the CMI, IMO as well as Unctad. The feeling then was that it was not a good idea to have the convention extend to shipping because of the fact that the shipping sector always had its own international legal regime and, it so happened, that an international convention governing security interests in ships The Maritime Liens and Mortgages Convention 1993 had just been adopted.

During 2013 there was renewed enthusiasm in Unidroit evidenced by an attempt to put this matter back on the agenda. However during 2014, this enthusiasm waned somewhat and it was given a “low priority” at the meeting in May of last year. However, the Secretary General of Unidroit confirmed to our President in August of last year that ***“informal consultations required to gather information on the actual financing practices of the maritime industry are being undertaken by Unidroit and are to be considered on going.”***

In view of the above, our President asked me to chair and to get about organising a group of practitioners with a view to setting up an International Working Group to study this matter. In fact the brief of the group would go beyond the strict information gathering on the actual financing practices of the maritime industry as required by Unidroit, but would seek to assess what the views of the various national MLA's are with regard to the extension of Cape Town to Shipping.

I started by meeting in Paris with Anderw Tetley, partner at Reed Smith in Paris who is both an aviation lawyer and a shipping lawyer and who has written about the very subject. He immediately agreed to join the group. This was followed by a meeting in London with David Osborne partner at Watson Farley and Williams whose practice focuses on asset and project finance with a particular emphasis on the shipping and offshore industries. David has agreed to be the rapporteur of the group. From then on I worked together with the President on the choice of the other members of the group. I am very pleased to report that the other members of the group are:

Mr. Armstrong Chen - a Partner at King & Wood Mallesons in Beijing and an experienced arbitrator in commercial contract, ship finance and international trade;

Prof. Souichirou Kozuka - Professor of Law at Gakushuin University in Tokyo who was involved in the drafting of the Space Protocol of the Cape Town convention and participated in the discussion at UNIDROIT as the Japanese delegate;

Camilla Mendes Vianna Cardoso - a marine litigation lawyer from Brazil with a cross section of shipping disputes including assisting banks and owners and ship yards;

Allen Black – Partner of Winston and Strawn in the United States - an experienced marine litigation lawyer who has an impressive portfolio in representing financiers of vessels belonging to defaulting owners.

Stefan Rindfleisch - Partner at Ehlermann Rindfleisch Gadow in Hamburg who specializes in the field of structured maritime financing.

I would like to thank all these distinguished persons for having agreed to contribute to this group.

At the time of writing this report, the Group is at an "informal" stage of its existence. "Informal" in as much as it needs to be approved by the Executive Committee of CMI in Istanbul in June. Once the Exco confirm the IWG and its members, it will then be an official International Working Group of CMI.

In the meantime we have already gone beyond the composition of the group and have already exchanged a preliminary working document aimed at providing the basis of an eventual questionnaire which will be sent out to the national maritime law associations.

We will be making full use of this meeting in Istanbul to get together for the first time and to discuss this first working document and to exchange ideas. I am very grateful to all the participants of this group who unhesitatingly accepted to come to Istanbul for this first meeting. The only person who was unable to attend was Andrew Tetley due to work commitments.

The plan is for us to work on a final version of the questionnaire and to pass it on to the President for his approval as per normal practice.

Ann Fenech
24th May 2015