

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

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QUARTERLY

COMITE MARITIME INTERNATIONAL

BULLETIN TRIMESTRIEL

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## **NEWS FROM THE CMI**

### **MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD IN TOLEDO, 17 SEPTEMBER 2000**

#### Attending

<i>President:</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Hisashi TANIKAWA Frank L. WISWALL, Jr.
<i>Councillors:</i>	David ANGUS Luis COVA ARRIA Karl-Johan GOMBRII John HARE Stuart HETHERINGTON Thomas REME Jean-Serge ROHART Gregory TIMAGENIS
<i>Secretary General:</i>	Alexander VON ZIEGLER
<i>Treasurer:</i>	Paul GOEMANS (excused)
<i>Assistant Administrator:</i>	Leo DELWAIDE (excused) Pascale STERCKX
<i>Past President:</i>	Allan PHILIP
<i>Publication Officer:</i>	Francesco BERLINGIERI

Patrick Griggs, President of CMI, opened the Executive Council session and welcomed all its members in particular Gregory Timagenis and Stuart Hetherington, the two new Councillors. Patrick Griggs received the approval from the meeting to proceed pursuant to the agenda submitted to the Executive Council prior to the meeting.

## 1. Minutes and Matters arising

*a) Approval of the Minutes of the Executive Council meeting held in London on May 11th, 2000*  
The Minutes of the Executive Council meeting held in London were approved by the Council.

*b) To note minutes of the Assembly meeting held in London on May 12th, 2000*  
The Council took note of the Minutes of the Assembly meeting in London on May 12<sup>th</sup> 2000 and asked the Secretary General to add the name of Allan Philip who did attend.

*c) Matters arising*  
Patrick Griggs referred to the attached list which he prepared after the previous meeting and gave a short report on the status of the matters listed (the minutes to those items are found under the relevant section below).

## 2. Finances

*a) Audit Committee:*  
David Angus started with a short description of the efforts of the Executive Council and the Treasurer to obtain clear financial information and to restructure the financial statements from the traditional way they were prepared in the past (see also point 3 a of the Minutes of the EC Meeting in London in May 2000).

It was noted with great satisfaction that Benoit Goemans had agreed to assist his father in this phase of transition and in particular to represent and replace him in this meeting and also in Singapore. In view of the above, it was suggested that in a transition period Benoit would take responsibility over the finances and be acting treasurer. The Council appointed Benoit Goemans as acting Treasurer of CMI as of 1st January 2001 (the date agreed between Benoit and his father). Several Councillors asked for the floor to specially thank Paul Goemans for his work and efforts in looking after the finances of CMI but also for all his support in finding new and modernised methods for the financial arrangements of CMI. The President emphasised that Paul had a particular difficult task after he had taken over a quite unusual bookkeeping and accounting

system, and this in a period where CMI was in urgent need of major restructuring efforts in its financial affairs.

David Angus then reported that the Audit Committee had met with Benoit Goemans and Nicholas King from Moore Stephens (London) in London on August 30<sup>th</sup> where it was discussed how the financial statements could be reshaped (Reference is made to the Minutes of that Meeting). Based on this report and on the discussion held under this item the Executive Council decided to appoint Moore Stephens (London) as auditor for 1999 and approved the revised financial statements 31<sup>st</sup> December 1999 (subject to some corrections and clarifications discussed).

David Angus then touched on several issues which follow from the work undertaken by the Audit Committee and the Treasurer:

- a) It was decided to check the list of unpaid contributions against the special arrangements negotiated with some defaulting National Associations by the President under authority from the Assembly.
- b) Special measures will have to be prepared and discussed which assist the National MLAs to collect the dues for their titular members. The rule will have to remain that it is the MLA that has the responsibility of the collection of such dues, but one has to offer the MLA a possibility to apply for expulsion of members who do not pay their dues. The Audit Committee (assisted by the Constitution Committee) will have to think of a possible mechanism.
- c) Further changes to the Constitution will have to be prepared and discussed at the Singapore Conference, a list of which has been proposed by the auditors.
- d) It was decided that the auditors should be mentioned in the CMI Publications. The financial statements shall be reproduced in the CMI Publications (Yearbook or Newsletter).
- e) The Council authorised David Angus and Benoit Goemans to sign the letter from Moore Stephens laying out the audit procedure.

The President thanked the Audit Committee for having grasped this difficult issue and asked David Angus to remain the Chairman of the Audit Committee after the Singapore Conference even though his term of office as an Executive Councillor will have ended.

*b) Unpaid Contributions:*

Patrick Griggs went through the list of unpaid contributions and reported on the different deals made or still under negotiation under the authority of the Assembly. It was noted that a group of 5 countries will have to be notified that they risk the consequences set out in the Constitution.

c) *Legal and tax status of CMI:*

Benoit Goemans reported on the possibilities and the optimal way for CMI to obtain legal and tax status under the laws and regulations of Belgium. He referred to the documentation prepared and submitted to the Council for consideration. The best way forward is the creation of a “association internationale” under Belgian Law. After a description of the consequences relating to the Constitution and the formalities with the civil service in Belgium it was decided to refer the matter to a Constitution Committee, which shall have as members F. Wiswall, Alan Philip, Benoit Goemans and *ex officio* the President and the Secretary General. This Committee shall prepare the necessary decisions and in particular also review the necessity, the aims and the consequences (in particular TVA and taxes) of such an incorporation; this matter will then be referred to the Assembly in Singapore. The repercussion such an incorporation might have on the legal status of the national associations will have to be taken into consideration in order to avoid the necessity of changes and restructuring the MLAs world-wide.

### 3. Next two meetings of the Executive Council

11 <sup>th</sup> February 2001 in Singapore	15:00 - 18:00
17 <sup>th</sup> February 2001 in Singapore	09:00 - 11:00
22 <sup>nd</sup> September 2001 in London	10:00 - 16:00.

### 4. Assembly 2001

16<sup>th</sup> February 2001, afternoon, in conjunction with CMI XXXVII Conference, Singapore.

### 5. Nominating Committee

Patrick Griggs referred to the need to re-elect the Secretary General and the Administrator for second terms pursuant the Constitution. At the same time it was noted that the Nominating Committee has received a number of proposals for the replacement of David Angus, H. Tanikawa and K.J. Gombrii. The report of the Nominating Committee is expected soon.

The President suggested that the Executive Council should propose the following personalities for membership as “titulary members *honoris causa*” under Article 3 d of the Constitution:

- Gerold Herman
- William O’Neil
- Thomas Mensah

The proposal was unanimously supported and it was decided to submit the proposal to the next Assembly in Singapore.

### 6. CMI Charitable Trust

The President reported that the Trustees will meet after the Council meeting.

### 7. Publications

a) *Yearbooks and Newsletters*

F. Berlingieri reported that Singapore I (CMI Yearbook 2000) will have to be distributed to MLAs latest mid November 2000. It will contain all preparatory material for the Singapore Conference. This will include in particular the following:

- Transport Issues:  
Reports ISC, Outline Instrument, Report of the Chairman
- Marine Insurance:  
Full text of Report of the Rapporteur
- General Average:  
IUMI paper; synopsis of replies of questionnaire
- Impl. of Conventions:  
Report, Synopsis Replies; Structure for Discussion
- Piracy:  
Model Law, possibly papers of Piracy Presentation

The Yearbook 2000 will not contain a part III (status of ratification).

It was further decided to have the names of the members of the Audit, the Nominating, the Constitution Committee and other management functionaries with full address details published in the CMI Yearbooks.

b) *CMI archives*

The cataloguing and storage of the CMI archives has made some progress. The Assistant Administrator has already recovered and reorganised about half of the content of the garage of Henry Voet.

F. Wiswall reported that the new edition of the CD ROM is ready this month and contains CMI-Newsletters up to 1999 and CMI-Yearbook up to 1998. It will be available in time for the Singapore Conference. The CD ROM will only be available in conjunction with the new edition of the Handbook of Maritime Conventions.

c) *Other CMI publication projects*

The Travaux Préparatoires of the LLMC ’76 prepared by F. Berlingieri are ready for publication. We wait to receive the foreword by W. O’Neil.

The President thanked in admiration F. Wiswall and F. Berlingieri for their enormous task of looking after and organising the CMI Publications.

*d) Links to CMI Website*

J. Hare suggested to provide for a selection of links from the CMI Website to specialised Websites, including the sites of IMO, UNCITRAL, ICC, BIMCO and of similar organisations. It could also include links to “private” Websites, as long as the content would be mainly non-commercial and of utility to CMI members.

It was decided that the CMI Rules on Seawaybills and on Electronic Bills of Lading should be made available on the CMI Website.

## **8. Work in Progress**

*a) Issues of Transport Law*

Alexander von Ziegler noted the remarkable progress made in this project since the last Executive Council Meeting. In particular he informed the Council of the intervention made during the UNCITRAL Assembly on the 3 July and the outcome of the UNCITRAL/CMI Colloquium on 6<sup>th</sup> July. In a 3<sup>rd</sup> International Subcommittee Meeting of 7<sup>th</sup> and 8<sup>th</sup> July the project was discussed and it was decided to have the drafting committee draft a first outline of an instrument as a basis for discussion for the next International Subcommittee meeting and the session at the Singapore Conference.

He then advised on the efforts of some other international organisations to undertake some work in the same area. Those efforts are a matter of great concern since they are creating conflicts and uncertainties among the delegates of the governments as to the best way forward in that project.

After a thorough discussion of the different issues involved the Council decided that the Singapore Conference should not directly deal with drafting matters but should remain focused on the general principles in particular in areas where the International Subcommittee had so far not been able to find a sufficient consensus. It was further decided that the International Subcommittee should also consider how the instrument might accommodate other forms of carriage, associated with the carriage by sea. Further, it was decided that the project should be submitted also to the EDI Working Group which should be asked to report in Singapore on possible amendments which relate to the electronic trade.

*b) IMO - 82nd Session of the Legal Committee*

This item was generally left to later reports in the next Council Meeting. H. Tanikawa reported that

the next IMO Legal Committee meeting will discuss the increase of the CLC and the Fund-Conventions. At the same time a discussion is scheduled on a draft protocol to the Athens Convention. Further, in March 2001, there will be a diplomatic conference at IMO relating to a Bunker Pollution Convention.

*c) UNESCO: draft Convention on Underwater Cultural Heritage*

Patrick Griggs reported on the background of this issue. Frank Wiswall added that within the USMLA John Kimball had written a document on the potential of that project to affect the laws applicable to salvage. It was decided that an ISC was to be created, prepared, by the International Working Group, headed by Eric Japikse and extended by the addition of Roger Field (RSA), A. Kolodkin (Russia) and John Kimball (USA). Alexander von Ziegler was asked to be the Deputy Chairman.

The task of the ISC is to investigate in what ways the “Brice Protocol” could indeed solve the problems which the UNESCO project was attempting to solve without taking into consideration the existing salvage practice. The Chairman is asked to prepare a report for Singapore (to be published in CMI Yearbook 2000 Singapore I), taking into consideration the results of the 3d session of the Group of Experts. The CMI Secretariat will circulate the Brice Protocol within the Executive Council.

*d) Euro Section*

Mr. Griggs mentioned that he had been asked by M. Jacobson (IOPC Fund) to intervene with the Directorate General for Environment (European Commission) relating to the EU regulations prepared as a response to the “Erika” disaster and had done so (letter in papers).

*e) Issues of Marine Insurance*

J. Hare and T. Remé generally referred to the upcoming discussion during the Toledo Seminar. It was decided to publish the full report of Trine Lise Wilhelmson in Singapore I as a basis for further discussion in Singapore.

*f) US COGSA*

The bill of the revised US COGSA has not yet been introduced in Congress. It is quite unlikely that this issue will be dealt within the upcoming election period.

*g) FONASBA*

Jean-Serge Rohart referred to the new booklet prepared by Fonasba.

*h) CMI - Management plan*

The President referred to the paper presented to the last meeting of the Executive Council Meeting.

He stressed that the task of a President in CMI has taken such proportion that it becomes quite impossible to transfer his duties to his successor in few years time if the management task were not better distributed amongst the members of this meeting. Following the structure the following was agreed:

1. *Accounts Budget and Financial Contributions*  
AUDIT COMMITTEE: David Angus (Chairman); Allan Philip, Benoit Goemans, President and Secretary General (ex officio).  
Benoit Goemans will be responsible to “chase” unpaid contributions and will have the support of the Councillors responsible to supervise the CMI membership in their part of the World (see below 5.).
2. *Publications*  
F. Berlingieri, F. Wiswall, J. Hare, S. Hetherington
3. *Conferences / Seminars*  
President and Secretary General and three members of the Executive Council: P. Griggs, A. von Ziegler, F. Wiswall, J. Hare, S. Hetherington
4. *Work Programme*  
ISSUES OF TRANSPORT LAW:  
S. Beare (Chairman), K.J. Gombrii (Dep. Ch.), M. Sturley (Rapporteur)  
MARINE INSURANCE:  
J. Hare (Chairman), J.S. Rohart (Dep. Ch.) (until Singapore, thereafter possibly new allocation); Trine Lise Wilhelmson (Rapporteur)  
GENERAL AVERAGE:  
T. Remé (Chairman), R. Shaw (Rapporteur)  
IMPLEMENTATION OF CONVENTIONS:  
F. Berlingieri (Chairman), R. Shaw (Rapporteur)  
PIRACY:  
F. Wiswall (Chairman), J. Menefee (Rapporteur)  
UNESCO:  
E. Japikse (Chairman), Alexander von Ziegler (Dep. Ch.), J. Kimball (Rapporteur)  
MOBILE EQUIPMENT:  
supervised by P. Griggs and T. Remé  
EDI:  
J. Gauthier (Chairperson), Alexander von Ziegler (Dep. Ch.)
5. *National Associations*  
N/S AMERICA / CARIBBEAN  
F. Wiswall / L. Cova Arria  
AUSTRALIA & FAR EAST  
H. Tanikawa / S. Hetherington

EUROPE

J.S. Rohart / Gregory Timagenis

AFRICA MIDDLE EAST AND INDIAN SUBCONTINENT

J. Hare / J.S. Rohart

6. *Liaison with International Bodies*  
President / Secretary General  
P. Griggs / A. von Ziegler
7. *Executive Council Meetings/  
Assembly Meetings*  
President / Secretary General, Administrator:  
P. Griggs / A. von Ziegler / P. Sterckx
8. *Nomination*  
NOMINATING COMMITTEE:  
N. Frawley (Chairman) / J. Ramberg /  
A. Philip / F. Berlingieri / P. Griggs
9. *Constitution*  
CONSTITUTION COMMITTEE:  
F. Wiswall (Chairman) / A. Philip / President  
and Secretary General (both ex officio)
10. *Planning Committee:*  
P. Griggs (President) /  
A. von Ziegler (Secretary General)
11. *Charitable Trust*  
Trustees:  
P. Griggs / F. Berlingieri / A. Philip / A. von  
Ziegler / Tom Birch Reynardson / C. Goldie

It was decided that all responsible individuals in their correspondence shall always copy in the President, Secretary General and the Administration.

It was further decided that the name of the members of the Audit Committee, of the Nominating Committee, of the persons responsible for the project mentioned under “work programme” and the members of the Executive Council accepting particular responsibility over selected regions as reported in point 5 above, shall be published on the CMI Website.

## 9. Various

### a) Singapore 2001

The President went through the organisational matters of the Singapore Conference (see paper distributed). He pointed out that there was a misunderstanding on the side of the host MLA insofar as the costs for Singapore I (or II) was concerned. He will clarify this matter with the Singapore MLA.

It was noted that the MLAs will have to be reminded before the Conference of the Rule of Procedure under which in each Committee of the

Conference only one spokesman should speak per MLA. The President will write to the MLAs and remind them that the program is also available on Website (www.cmi2001.com)

He further clarified who will have to bear what type of costs for the Conference. In general the chairmen of the committees as well as the rapporteur will be paid the hotel accommodation out of the Conference proceeds and the registration fee will be waived. For all other Executive Council members the registration fee will be waived and the hotel costs will be borne by CMI.

Further, the registration fee are waived for W. O'Neil (IMO), A. Popp (IMO), M. Jaccobsen (IOPC Fund), J. Sekolec (UNCITRAL), and in case that the new Secretary of UNCITRAL is a person other than Mr. Sekolec, then also for the Secretary of UNCITRAL. Apart from these arrangements the CMI Charitable Trust will also cover the registration fee for D. Attard (IMLI) and the travel costs for Trine Lise Wilhelmson.

David Attard will be given an opportunity during the Plenary to give a short presentation on IMLI.

#### *b) CMI Planning Committee*

P. Griggs has received a number of suggestions so far but is still waiting to receive the final report. He will prepare a summary for the CMI Plenary Meeting in Singapore.

#### *c) Possible change of logo and letter head*

F. Wiswall produced several different options and variants for a new logo prepared by his wife L. Wiswall. It was decided to go for the version with solid stars and to have the logo printed in blue. The letterhead should show the new logo and the name

“Comité Maritime International” in modern script letters, only in French language. It was decided that F. Wiswall will develop this further and decide together with P. Griggs, F. Berlingieri and A. Philip on the final logo / letter head. Further, F. Wiswall was authorised to produce a limited number of special CMI “burgees”. The President thanked L. Wiswall for her proposals of possible changes in the logo and letter head of CMI.

#### *d) CMI XXXVIII Conference*

No decisions on possible locations were taken. The next Conference would probably take place in 2004.

#### *e) IMLI Support*

See decisions taken relating to IMLI presentation in Singapore.

#### *f) List of members of International Working Groups and International Sub-Committees*

To be further developed taking in consideration the decisions made under points 2a (d), 7a and 8h (1.) and (4.).

#### *g) New MLAs. Netherlands Antilles, Guatemala, Madagascar*

The application of the Netherlands Antillies is ready for submission to the Assembly 2001 in Singapore. Reference to the MLAs of Guatemala and India were made, where we expect further steps from the applying Associations. Patrick Griggs and Luis Cova Arria will continue to supervise the developments.

The President, Patrick Griggs, declared the meeting closed.

## **UNCITRAL/CMI COLLOQUIUM**

### **OPENING STATEMENT FROM THE PRESIDENT OF THE CMI**

It is my task today to set the scene for this Colloquium from the CMI perspective.

At the UNCITRAL 29<sup>th</sup> Session, held between 28<sup>th</sup> May and 14<sup>th</sup> June 1996 the UNCITRAL Secretariat was authorised to act as a “focal point for gathering information, ideas and opinions” as to the need for greater uniformity in the law relating to the carriage of goods “in areas where no such rules” currently exist. Attention was drawn in particular to “the functioning of bills of lading and seaway bills, the relation of transport documents to the rights and obligations between the seller and the buyer of the goods and to the legal position of the entities that provide financing to a party to the contract of carriage”. The Secretariat was urged to gather information from a long list of organisations headed by CMI.

Why should UNCITRAL put the Comité Maritime International (better known as CMI) at the head of the list of those who should be consulted in relation to matters relating to the carriage of goods by sea? What is the CMI?

Some mystery surrounds the creation of the CMI but the archives of the Belgian Maritime Law Association contain a circular letter dated 2<sup>nd</sup> July 1896 from the CMI announcing its creation and proposing the constitution, in each maritime nation, of an Association of Maritime Law. This letter indicated that there were to be regular meetings of these newly formed Associations. The declared aim of the CMI was, with the assistance of National Associations, the unification of maritime law. The founders of the CMI in defining its policy stated that no maritime law should be promulgated

that did not have input from shipowners, merchants, underwriters, average adjusters, bankers and other persons interested in the maritime trade. It was, the founders insisted, then, and only then, the duty of the lawyers "to discern what, among diverse solutions, is the best". In other words the maritime trades were to have a primary say in determining the rules which would govern their activities.

For the first 70 years of its existence the CMI was effectively the only international organisation involved in projects aimed at unification of private international maritime law. During that productive period of its existence the CMI was instrumental in the creation of no less than 22 conventions including the Collision and Salvage Convention of 1910, a series of Limitation Conventions, the Hague and Hague-Visby Rules, Arrest of Ships, etc, etc. Since the creation of IMO, UNCTAD and UNCITRAL a further 25 Conventions or Protocols with private international law implications have been created. In many instances the CMI has been involved in the creation of those instruments either by producing an initial draft (viz the 1976 Limitation Convention, the Arrest Convention of 1999 and the 1989 Salvage Convention) or in a general consultative role.

When the CMI first received the invitation to co-operate with UNCITRAL on the Issues of Transport Law we saw no reason for departing from our time honoured work methods.

Firstly we created an International Working Group under the Chairmanship of Stuart Beare. Stuart was a natural choice for Chairman. Retired Senior Partner of a leading maritime law firm, Richards Butler, in the City of London and a specialist throughout his professional career in the law relating to the carriage of goods by sea. He had all the knowledge and experience which the job demanded. The CMI then appointed the following to serve on the International Working Group:- Lars Gorton (Sweden), Paul Koronka (U.K.), Gertjan van der Ziel (Netherlands), Stefano Zunarelli (Italy), Sean Harrington (Canada), Michael Sturley (USA) [Rapporteur]. Jernej Sekolec of the UNCITRAL Secretariat has attended most meetings of the IWG as observer. The varied backgrounds of these individuals (academics, practising lawyers and the retired in-house lawyer to a major ship operating company) has ensured that the project has been guided towards practical solutions to practical problems. For those of you who do not know the CMI and its work methods it is the tradition that the International Working Group, at the earliest possible opportunity, prepares a Questionnaire for circulation to all its affiliated National Maritime

Law Associations. The Questionnaire is designed to establish national law, in as many CMI member countries as possible, on the subject under review. The CMI currently has 52 associated National Maritime Law Associations, all based in countries with a maritime tradition.

At the same time as the International Working Group was set up we also created what we called the "Round Table". The Round Table was to meet periodically and would consist of representatives of international organisations with an involvement in the transportation of goods by ship and other means. The importance of the Round Table is that it gives those in the trade an opportunity to keep abreast of the work of the CMI in co-operation with UNCITRAL and also gives those organisations an opportunity to contribute their own ideas.

I am grateful for the assistance of these organisations and mention in particular FIATA, ICS, BIMCO, ICC and IGP&I, all represented here today.

The Questionnaire which we sent out was complex and the demands that it placed on the resources of National Maritime Law Associations were considerable. The response was excellent and the CMI has published on its Website the responses which were received to the questionnaire.

As previously stated the purpose of the Questionnaire was to enable the International Working Group, before it started work on the creation of an instrument designed to introduce uniformity, to have clear knowledge and understanding of national law on the issues under discussion. The CMI has always proceeded in the belief that you cannot produce a satisfactory unifying instrument unless you work from the firm base of knowledge of national laws and current trade practice. That firm base is essential. Uniformity implies a harmonising of existing laws (and practice), not the imposition of new laws from above which have been drafted in a void.

Armed with the responses to the Questionnaire the International Working Group set about the preparation of a synopsis of the replies received in relation to the issues covered by the Questionnaire. They also prepared a background paper which set the scene for the first meeting of the International Sub-Committee convened by the CMI Executive Council to study this subject. National Associations were invited to send delegates to the first meeting of the I.S.C. which took place in London on 27<sup>th</sup> and 28<sup>th</sup> January 2000. A further well attended meeting of the I.S.C. took place on 6<sup>th</sup> and 7<sup>th</sup> April and a further meeting of the I.S.C. will take place on Friday and Saturday July 7<sup>th</sup> and 8<sup>th</sup>. These I.S.C. meetings have been attended by

delegates from National Associations and also by representatives of the organisations which are members of the Round Table. The latter made their valuable contributions to our discussions.

The initial UNCITRAL project on which the CMI was invited to co-operate involved a study of those areas of the law of transportation of goods not presently covered by an international instrument. These essentially related to the various functions of the bill of lading. As the project has progressed it has become increasingly apparent that this is a unique opportunity also to seek to reintroduce some degree of uniformity in relation to the liability regime for loss or damage to cargo.

I am very conscious of the fact that we are faced with a major task. If we are to produce a comprehensive unifying instrument we will need hard work, determination and not a little good luck. We have already made astonishing progress and I can assure you that we will not be easily deterred. The prize is a valuable one and both UNCITRAL and the CMI are determined to attain it. In passing I must mention the enthusiastic support and encouragement we have received from Jernej Sekolec of the UNCITRAL Secretariat.

And what exactly is that prize? It is a unifying

instrument. This may be a Convention part mandatory and part non-mandatory (as in the Vienna Sales Convention). Alternatively it may take the form of a set of Rules, available for voluntary incorporation in contracts for the carriage of goods. Whichever form the instrument takes the intention is that it will provide a uniform solution to many of the problems currently encountered where part at least of the transportation of goods is by sea. This Convention or set of Rules will not receive the necessary support unless the drafting has taken place following close consultation with those who struggle on a daily basis with problems arising from the transportation of goods. I include in this consultation process the insurance industry, those who provide finance and those in other support services. In that context, today will be an opportunity for all of us to hear a broad spectrum of views of people involved in those trades. Those involved in the UNCITRAL/CMI project will do well to take note of what is said in the context of the project for, as the founders of the CMI stated, it is only through a process of consultation and of understanding the problems that a worthwhile unifying instrument can be created.

This promises to be an interesting day.

PATRICK GRIGGS

## **NEWS FROM NATIONAL MARITIME LAW ASSOCIATIONS**

### **NEWS FROM THE CHINA MARITIME LAW ASSOCIATION**

#### **THE IMPLEMENTATION OF THE NEW LAW OF MARITIME PROCEDURE**

In China, a new maritime procedure law (hereinafter referred as “the new law”) was adopted in late 1999 and entered into force as of the 1<sup>st</sup> of July 2000. The new law consists of 12 chapters and 127 articles. With the Civil Procedure Law of PRC as its basis it covers various sorts of special procedures which are applicable in maritime litigation for cases arising from both maritime tort and maritime contracts.

The maritime courts, which are located in nine coastal cities and one inland river city, have, since the year of 1984, handled more than 33000 maritime dry and wet cases, and arrested around 1500 domestic and foreign ships. The Maritime Code of PRC, which was promulgated in 1992, constitutes the main substantive statute on the basis of which the maritime courts make judgments and awards.

Territorial connection forms the basis on which maritime courts establish their jurisdiction over maritime cases and the actual link principle appears to be the most effective criterion for the

identification of the due jurisdiction in respect of maritime cases among the 10 maritime courts. To emphasize the principle of special jurisdiction, the new law provides that all maritime cases, whether involving only domestic elements or also foreign elements, shall be submitted to maritime courts in accordance with the principle of actual link. No other ordinary people’s courts shall, without a special assignment of the Supreme People’s Court of PRC, exercise such a special jurisdiction over maritime cases. Where there would be any conflict of jurisdiction between a maritime court and an ordinary people’s court for the same case, negotiation between these two courts would be essential and, if it fails, a designation of jurisdiction shall be made by their common superior people’s court. In addition to the provisions for territorial jurisdiction, the new law has furthermore adopted the new principle, which is different from that of the Civil Procedure Law, that where all the parties in a maritime dispute are aliens, stateless persons, foreign enterprises or organizations and have



agreed in writing to be subject to the jurisdiction of a maritime court of PRC, the maritime court of PRC shall have jurisdiction in the dispute notwithstanding that the place that has an actual link with the dispute is not within the territory of PRC.

In the chapter on protection of maritime claims, the new law has set out rules upon which a maritime claimant may arrest a ship or attach the cargo carried by a ship in order to ensure the realization of its maritime claim. Further, the ship arrested and/or the cargo attached may also be ordered sold by auction if no sufficient security is provided. In general, with the new law, the procedure for ship arrest has been harmonized with the Ship Arrest Convention 1999. It is predictable that China will become a State Party to that Convention. By the implementation of the new law, China will change its maritime judicial practice, to some extent, and a more perfect and reasonable maritime legal system will be established and improved. For instance, before the new law, pursuant to the rule laid down by the Supreme People's Court a ship could be arrested as security for a claim, irrespective of the claim being against her owner or not. For instance, a time-chartered ship could be arrested even though it is the time-charterer rather than the ship-owner that is liable for damage or loss caused by that ship. Also, the security, which would be provided by the person liable or the ship-owner of the arrested ship, could be as much as the amount of the claim, without any reference to the value of the arrested ship or other assets. The new law instead requires that the claim be against the owner of the ship or, if it is against the time charterer, that it is secured by maritime lien, and the security cannot exceed the value of the ship or other property arrested.

To cope with the actual requirement of maritime justice, the new law has provided procedures for the issuance of maritime injunctions enabling a maritime claimant to compel its opponent to do or refrain from doing certain things in order to prevent its legitimate interest being infringed. For instance, a shipper may apply to the maritime court for the issuance of a maritime injunction ordering the carrier to issue a bill of lading after the latter has loaded the cargo on board its ship but has failed to issue that document without any lawful excuse. In the event of urgency, the maritime injunction may be applied and adopted before a lawsuit is commenced. Preservation of maritime evidence forms a part of the preservation procedure in the new law. While the Civil Procedure Law of PRC only permits preservation of evidence in the course of litigation, the new law

has additionally provided rules for preservation of maritime evidence before litigation is initiated, considering that the evidence relevant to the maritime claim might be lost or hard to obtain unless pre-litigation preservation is resorted to. Furthermore, the maritime court that has, before a lawsuit is brought, adopted one of the above-mentioned three sorts of preservation and injunction procedures may exercise its jurisdiction over the maritime case on its merits, even though no actual link is established with the maritime court. Anyway, the new law has upheld the legal validity of an effective arbitration agreement, i.e. where an arbitration agreement is or has been validly reached, the parties may submit the dispute to arbitration and the maritime court may not maintain its jurisdiction to determine the merits of the case.

The new law has also provided three sets of procedures for trial of typical disputes arising out of ship collision, GA and subrogation in marine insurance, in order to ensure a fair and impartial judgment. As it happens in England with the Preliminary Act, the new law has provided that both the plaintiff and the defendant in a collision case shall in good faith fill in the Investigation Form for Maritime Accident (hereinafter referred as the Form) at the time of bringing an action and of submitting a defence. Parties are estopped from modifying the statements previously made in the Form.

For the sake of convenient service of proceedings in maritime litigation, the new law has provided, in addition to the ways of service provided for in the Civil Procedure Law of PRC, several easy ways of service, i.e. service to the agent ad litem duly instructed by the person to whom the proceedings must be served, or to the representative office or branch established in PRC by that person or to the business agents appointed by that person. A Chinese lawyer, who has been retained by a foreign litigant, shall be liable to accept service of proceedings irrespective of whether or not he has got such an authorization. Only proceedings in respect of the arrest of a ship must be served directly to the master of the particular ship.

China is not a State Party to the Convention on Limitation of Liability for Maritime Claims 1976. The main provisions of the Convention, however, have been incorporated into the Maritime Code of PRC. For the actual implementation of such a system of limitation of liability for maritime claims, the new law has a special chapter setting out the rules for the constitution of the limitation fund in respect of maritime claims. After the occurrence of a marine casualty, the person liable who intends to limit his liability may, before an action against him

is brought, apply to the maritime court for the constitution of the limitation fund for maritime claims at the place of the accident or the place of the performance of the contract or the place where the ship is arrested. If such an application is filed after an action has been brought, it shall be submitted to the maritime court in which an action has been brought.

The maritime court must notify all the known interested persons within 7 days of the acceptance of an application, and make an announcement in the newspapers or other news media. Any objection by interested persons must be filed in writing with the maritime court within seven days after the receipt of the notice or within 30 days after the date of the announcement if no notice is received. The maritime court may reject the application or allow it. If allowed, a limitation fund must be constituted either by depositing cash or by producing security acceptable to the maritime court. Unless the jurisdiction or arbitration agreement between the parties provides otherwise, an action in respect of the maritime dispute must be brought before the maritime court where the fund has been constituted.

Where a limitation fund has been constituted for or on behalf of the person liable and as a consequence of this the arrested ship has been released or the maritime claimants could not attach other assets of the person liable, but finally the maritime court has ruled that the person liable was not entitled to limitation of liability due to his personal act or omission or whatsoever, then the wrongful constitution of a limitation fund would ensue therefrom and the person liable would consequently be required to indemnify the maritime claimants or other interested person against all the losses sustained thereby.

The new law also provides, in the same chapter, some rules for the constitution of the limitation fund for oil pollution liability by the ship-owner and its insurer or the person who has provided financial security for the ship-owner.

After the notice that the maritime court has allowed the constitution of the limitation fund, the maritime claimants and other creditors must

register within 30 days in that maritime court their claims arising out of the maritime accident causing the pollution. If they fail to do so, they shall be deemed to have waived their right in respect of claims arising out of that maritime accident.

Last but not the least, the new law has provided a procedure for the enforcement of maritime liens in order that, where title to a ship is transferred, the maritime lien holders should assert their rights promptly, failing which the maritime liens attached to the ship are extinguished. The order fixing the time for the enforcement of the maritime liens is issued upon the application by the transferee to the maritime court at the place of delivery of the ship or at the domicile of the transferee. The application must be filed in writing with the maritime court together with the contract of ship transfer, technical documents of the ship and other documents. The maritime court will examine the application and the relevant documents submitted and decide thereon within seven days. If the application is allowed, the maritime court will make an announcement in newspapers or other news media requesting maritime lien holders to assert their rights within 60 days. The maritime lien holders must complete registration with the maritime court within the same period, failing which they shall be deemed to have waived their lien. Where there is no assertion of maritime liens on the expiry of the period of enforcement, the maritime court shall on application of the transferee make a judgment declaring that the ship is free from maritime lien. Such judgment shall be published. China has its law governing maritime liens, i.e. Sect 3, Chapter 2 of the Maritime Code of PRC, and the procedure for enforcement of maritime liens in the new law will certainly make maritime liens to a ship more practical and effective.

In the process of drafting, several international conventions and the legislation of some other States have been perused for reference. The English version of the new law is being prepared and will be published soon.

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## NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

### NEWS FROM IMO

The IMO International Maritime Law Institute has conferred on Professor Francis M. B. Reynolds the title of Honorary Professor of International Maritime Law and on William Birch Reynardson, CBE, titular member ad honorem of the CMI, the title of Doctor of International Maritime Law *Honoris Causa*.

## RATIFICATION AND DENUNCIATION OF INTERNATIONAL CONVENTIONS

### INSTRUMENTS OF DENUNCIATION OF THE FOLLOWING CONVENTIONS HAVE BEEN DEPOSITED WITH THE DEPOSITARY: \*

- **Convention for the unification of certain rules of law relating to assistance and salvage at sea, signed at Brussels on 23 September 1910**  
*Croatia*: 16 March 2001  
*Iran, Islamic Republic of*: 11 July 2000
- **Protocol of 27 May 1967 amending the Convention for the unification of certain rules of law relating to assistance and salvage at sea**  
*Croatia*: 16 March 2001

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\* The dates indicated are the dates when denunciation becomes effective.