

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 3 - SEPTEMBER / DECEMBER 2002

This Issue Contains:

News from the CMI

- Minutes of the meeting of the Executive Council held in London on 9th May 2002
- Minutes of the Assembly held in London on 10th May 2002
- Places of refuge – Supplemental Questionnaire
- CMI Publications

News from the National Associations

- News from the Malta Maritime Law Association

News from Intergovernmental and International Organizations

News from UNCITRAL

- Draft Instrument on the Carriage of Goods

News from IMO

- 85th Session of the IMO Legal Committee, by Patrick Griggs

Ratification and denunciation of International Conventions

NEWS FROM THE CMI

MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL HELD IN LONDON ON 9TH MAY 2002

Attending:

<i>President:</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Frank L. WISWALL, Jr.
<i>Councillors:</i>	Jean-Serge ROHART Stuart HETHERINGTON Gregory TIMAGENIS Johanne GAUTHIER
<i>Secretary General:</i>	Alexander VON ZIEGLER
<i>Treasurer:</i>	Benoît GOEMANS
<i>Acting Administrator:</i>	Wim FRANSEN
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Past President:</i>	Allan PHILIP
<i>Publication Officer:</i>	Francesco BERLINGIERI

The President opened the Meeting by welcoming the attendants. He mentioned that Thomas Remé is unable to travel, that owing to the recent death of his brother Luis Cova Arria was unable to attend and that John Hare's wife has severe health problems and that he wishes to be released from CMI duties for this year.

1. Minutes and Matters arising

(a) Approval of the Minutes of the Executive Council Meetings held in London on December 7th/8th 2001.

The Minutes of the Executive Council Meetings held in London on December 7th/8th 2001 were adopted.

(b) Matters arising. – Action list “Things to do” prepared following December 7th/8th 2001 meetings in London.

Patrick Griggs went through the Action list “things to do” and referred to the Agenda items where the open issues are discussed. In this context, Patrick Griggs welcomed Wim Fransen who is nominated to become Administrator of CMI.

2. Finances

(a) *Accounts for 2001*

W. Davis Angus joined the meeting in his function as Chairman of the Audit Committee. He reported on the involvement of the Audit Committee in the re-structuring of the financial affairs of CMI. The progress from the time the project started after the N.Y. CMI Assembly is visible but needs further improvement. The firm Moore Stephens was employed to study and assist.

The Income and Expenditure accounts show a total membership income of € 270,666 (minus an increase of the provision for unpaid subscriptions). The profit from the Singapore Conference amounts to € 70,522. The total expenses were € 10,000 less than last year. The surplus is € 87,856. Changes must be made to reflect the costs of the Yearbook Singapore II.

It was resolved that in the financial statement a note should be added to say that a “liquidity fund” of € 50,000 should be formed out of the income of the Singapore Conference.

It was decided to ask Moore Stephens to give an engagement letter for 2002 and to elect Moore Stephens as auditors. An external accountant should be asked to close the books (on a 6 months basis). The Council agreed to the recommendation of the Chairman of the Audit Committee to offer the auditors a bonus of € 2,500 taking into consideration their enormous work in supervising the CMI accounts.

(b) Unpaid Contributions

Patrick Griggs stated that reminders were sent which included the threat of enforcing the constitutional measures to expel certain national MLAs, which have not followed the payment requests by CMI.

It was decided to put on the next Agenda of the EC the decision on implementing such measures for a number of such MLAs.

2. Next two meetings of Executive Council

The next meeting of the Executive Council will be held on 6th December 2002, starting at 2.p.m. and ending on 7th December 2002 around lunch time at the CMI offices in Antwerp.

In 2003, the Executive Council meeting will take place in Bordeaux on 10th June 2003.

4. Assembly 2003

The Assembly Meeting will take place on 13th June 2003 in Bordeaux.

5. Nominating Committee

Reference was made to the report dated January 10th 2002 from the Chairman of the Nominating Committee.

Nigel Frawley, Chairman of the Nominating Committee, will recommend on behalf of the Nominating Committee:

- Jose Maria Alcantara (for Jean-Serge Rohart)
- Henry Li (for Prof. Feng)

6. Blue print for future CMI Conferences

The draft Blue Print for future Conferences was welcomed and some items amended after discussion. Name to change to “guide lines”.

7. CMI and expenses

Conference fees must be paid by members of the Executive Council, unless they perform a specific function (like other individuals) during the Conference, such as Chairman, Rapporteur or Speaker in a Colloquium. The President and the Secretary General do not pay conference fees. Patrick Griggs will revise the paper on CMI Expenses.

Turning to the “Report of CMI Publications and Funding Committee” prepared by Stuart Hetherington, the Council discussed how to cooperate with a professional publisher for the wider spread of CMI Publications. Further, it was discussed whether the CMI should open avenues for sponsorship in all or parts of CMI publication. The Council concluded that it may be advisable to review the necessity for a second EC meeting based on the issues pending in that year.

8. Terms of Office

This issue was referred to the December EC meeting; full documentation to be attached for next meeting.

9. CMI Charitable Trust

The President reported on the activities of the CMI Charitable Trust. Some funds will be used for CMI representatives at UNCITRAL. He stressed how important the Trust is for the functions of CMI.

10. Publications

The President referred to a letter from IMO thanking CMI for the Publications sent to IMO.

(a) Yearbooks, Newsletter, Website

The Council discussed the necessity of having all current parts printed in the Yearbook. There was a majority view that the format should be maintained. Francesco Berlingieri will prepare a format which will be used for collecting the updated information from the National MLA's. Johanne Gauthier and Stuart Hetherington agreed to take over the responsibility for this project.

(b) CMI archives

Referred to the next meeting.

(c) Other CMI publication projects

Patrick Griggs and Francesco Berlingieri reported on the progress made in relation to the flyer on CMI publications.

11. Colloquium in France June 2003/38th International Conference in Vancouver, June 2004

(a) Bordeaux Colloquium

The President reported on offers from Germany and France. It was decided to accept the offer to hold the Colloquium at Bordeaux. Two sites have been pre-contacted in the old Bordeaux Centre and on the pier. Two hotels have also been identified. The provisional programme is as follows:

Tuesday (10th June 2003): EC meeting – evening reception

Wednesday (11th June 2003): Symposium on Trade & Transport Law in the Electronic Age/ITL: Johanne Gauthier (with help from ITL and EDI Working Group)

Thursday (12th June 2003): Report on CMI Projects – Outing (in the afternoon)

Friday (13th June 2003): General up-date on IMO projects (in particular also on maritime security) / Patrick Griggs / Frank Wiswall), General Assembly

A flyer should probably be launched in December.

(b) Vancouver Conference

Johanne Gauthier reported that the preparations by the Canadian MLA are underway. As the budget stands, the Conference Organisation (CO) need a participation of at least 350 paying guests. It is important that it is not a pure repetition of the CMI Singapore Conference. Early June 2004 is the anticipated period for the Conference.

The CO wants to install a Website and asked that a link be established on the CMI Website.

The Council decided to register its wish to hold the 39th Conference of CMI in Athens, if the Greek MLA's offer still is open at that time.

12. Work in progress

(a) Issues of Transport Law

CMI was involved with UNCITRAL in the preparation of a "door-to-door" Agenda and of a so-called "door-to-door" paper. Simultaneously, the Working Group will have to prepare a paper on selected issues which arose during the meeting. The International Subcommittee will meet after the September meeting to overview reports of UNCITRAL and discuss the UNCITRAL door-to-door paper.

(b) Classification Societies

Frank Wiswall advised that the EU has issued a directive regulating the liability of the Classification Societies which, if implemented, could put a severe liability system on the Classification Societies. On this development, the CMI initiative could regain a momentum. CMI notes the possibility that it may be approached to do further work on this subject.

(c) Places of Refuge

IMO invited CMI to prepare a Synopsis on the legal consequences resulting from refusal of access to a place of refuge for a vessel in distress.

(d) E-commerce

It was decided that whenever issues arose in the ITL project which had an e-commerce implication, Johanne Gauthier should receive an input from the ITL-team.

13. Management Reports.

(a) Young Lawyers

John Hare resigned from this Committee (it is envisaged the J.M. Alcantara should take his place in this Committee)

(b) Regional membership

Experiences in the performing of the task to monitor the membership by the Council were exchanged and discussed.

14. Various

No further item was raised.

**MINUTES OF THE ASSEMBLY
HELD IN LONDON ON 10TH MAY 2002**

Attending:

<i>President:</i>	Patrick GRIGGS
<i>Past President:</i>	Allan PHILLIP
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Frank L. WISWALL, Jr.
<i>Secretary General:</i>	Alexander VON ZIEGLER
<i>Acting Administrator:</i>	Wim FRANSEN
<i>Treasurer:</i>	Benoît GOEMANS
<i>Publication Officer:</i>	Francesco BERLINGIERI
<i>Members:</i>	Jean-Serge ROHART Stuart HETHERINGTON Gregory TIMAGENIS Johanne GAUTHIER
<i>Assistant Administrator:</i>	Pascale STERCKX

Member associations:

The following Delegates have registered for this Assembly*:

<p>AUSTRALIA & NEW ZEALAND: Stuart Hetherington Ron Salter</p> <p>BELGIUM: Pascale Sterckx Wim Fransen Benoît Goemans</p> <p>CANADA: Johanne Gauthier David Angus Nigel Frawley</p> <p>CHINA: Zhu Zengjie Kang Ming Li Henry Hai</p> <p>CROATIA: Marija Pospisil-Miler Ms Amra Pende Ms Zdravko Kacic Zoran Tasic Igor Vio</p> <p>DENMARK: Allan Philip</p> <p>FRANCE: Jean-Serge Rohart Philippe Boisson P. Simon</p> <p>GERMANY: Hans-Heinrich Noll</p> <p>GREECE: Gregory Timagenis</p>	<p>HONG KONG: William Waung Sikying</p> <p>IRELAND: Paul Gill</p> <p>ITALY: Francesco Berlingieri</p> <p>JAPAN: Noboru Kobayashi</p> <p>KOREA: Wan Yong Chung Juchan Sonn</p> <p>NETHERLANDS: Gertjan van der Ziel</p> <p>NIGERIA: Louis Mbanefo</p> <p>NORWAY: Karl-Johan Gombrii Stephen Kundtson</p> <p>RUSSIA: Vladimir Mednikov</p> <p>SLOVENIA: Marko Pavliha</p> <p>SPAIN: José M. Alcantara</p> <p>SWEDEN: Lars Boman</p> <p>SWITZERLAND: Alexander von Ziegler</p> <p>UNITED KINGDOM: Patrick Griggs Donald Chard</p> <p>U.S.A.: Raymond P. Hayden Frank L. Wiswall, Jr. Thomas S. Rue William R. Dorsey, III Howard McCormack</p>
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* The Minutes only reflect those delegates which have registered their names during the Assembly.

The Assembly met on 10 May 2002 at the Watermen's Hall in London. The President opened the Assembly Meeting.

1. Agenda

The Assembly agreed to proceed as stated by the Agenda.

2. Memorials

The president reported to the Assembly that

Alfredo Mohorade, Argentina

Feng Liqi, China

Kurt von Laun, Germany

Walter Müller, Switzerland

passed away since the last Assembly. He asked the Assembly to rise in the honour of the deceased.

3. Approval of the Minutes of the Assembly held in Singapore

The Assembly approved the Minutes of the Assembly held in Singapore on 16 February 2001.

4. Members

(a) Titulary and Honorary Titulary members

The following proposed members were elected:

Peter J. CULLEN, Canada

A. William MOREIRA, Q.C., Canada

Dr. Petar KRAGIC, Croatia

Dr. Ernesto VERNAZA, Ecuador

Prof. Nicholas J. GASKELL, United Kingdom

Michael J. RYAN, United States

Rafael ILLESCAS ORTIZ, Spain

(b) Consultative members

This item was referred to next year.

(c) Associations of Maritime Law

Recently, CMI was approached from Ghana; Patrick Griggs hopes to have the application soon.

5. Administrator

Wim Fransen was appointed Administrator of CMI.

6. Finances

(a) Accounts

David Angus, Chairman of the Audit Committee, reported on the progress made in the financial affairs of CMI. The accounts as per 31 December 2001 were reviewed, but not formally audited by the Auditors. He walked the Assembly through the financial statements and referred to the exceptional profits from the Toledo (2000) and

Singapore (2001) CMI events, which allow CMI to put aside a reserve – or liquidity fund – for CMI financial emergency situations. The accounts are prepared on an “accrued” basis. The accounts will be approved by Moore Stephens, Auditors in 2002.

(b) Budget

Benoît Goemans presented the budget. The budget for 2002/2003 was approved.

(c) Subscriptions

The level of contribution for 2003 was confirmed.

(d) Unpaid subscriptions

Patrick Griggs referred to the fact that, based on the current status of unpaid subscriptions, the EC will try to collect as much as possible and prepare a decision for the next Assembly to enforce the measures provided by the Constitution.

(e) Auditors

Moore Stephens were re-appointed for another year.

(f) Revision of CMI Constitution

Benoît Goemans reported on the process of having the CMI and its new Constitution registered in Belgium. It appeared that the Rules on exclusion of members had to be included in the Constitution. Further, some amendments had to be made regarding the nature of the membership.

7. Assembly 2003/2004

The French MLA will hold a CMI Colloquium in Bordeaux from 10 to 13 June 2003. The next Assembly will, therefore, be held on 13 June 2003 in Bordeaux. The Assembly 2004 will take place in conjunction with the Vancouver Conference in June 2004.

8. Elections

Patrick Griggs asked Nigel Frawley, Chairman of the Nominating Committee, to deliver the report of the Nominating Committee.

Jean-Serge Rohart steps down and Prof. Feng, sadly, died last year.

The Committee received a number of comments and suggestions and based on those data, the Committee nominated:

José M. Alcantara, Spain

Henry Li, China

Wim Fransen, Belgium (Administrator) (see also Agenda item 5 above)

The Assembly elected all proposed candidates.

The President welcomed the two new members of the Executive Council and thanked Jean-Serge Rohart for all the support given to CMI.

9. Publications

(a) *CMI archives*

Frank Wiswall reported that storage of the CMI archives is made in two places in Antwerp. The Administration is in process to complete an inventory of the archive of CMI. During the next EC meeting in Antwerp, the progress of this project will be supervised by the EC. Then Frank Wiswall referred to the Handbook on Maritime Conventions, newly edited and published in its second edition.

(b) *CMI on the Internet*

Francesco Berlingieri invited National Associations to submit to him judgements relating to the Jurisprudence on Maritime Conventions and invited for comments on content of information on Website. Links with websites of National MLA's will be established.

10. Work in Progress

(a) *Issues of Transport Law*

This project is certainly the biggest project CMI has undertaken in the last years. After several ISC meetings, a final CMI text was submitted to UNCITRAL. There is a synopsis of the work and text of the draft instrument on the CMI Website. UNCITRAL has converted this into its own format. The official UN text can be downloaded from UNCITRAL's Webpage.

UNCTAD and UNECE have (initially) reacted negatively, in particular regarding the proposition to cover the door-to-door period: UNECE because of their own (inland) Convention; UNCTAD offers wide-ranging Multimodal Convention and is interested in the multimodal issue.

The CMI draft has been taken as the basis for discussion at the first 2-weeks review on April 2002 in New York by the UNCITRAL Working Group. Objections from some delegations were made to door-to-door and to some aspects of the liability regime. The opposition did not succeed, and at the end of the NY meeting, there was broad support for continuing the work on the assumption that the instrument is to cover the contractual relationship from door-to-door. The project goes forward, using the CMI (door-to-door) draft as the basis of the work.

Particular attention should be given to the scepticism shared in some sectors of the freight forwarder's industry. It is important that one can show to the industry that this is not an academic exercise, but a practical solution to actual needs. It is also noteworthy that with a door-to-door regime, some "maritime flavour" will be lost.

At the end of the April UNCITRAL session, it became apparent that the CMI needs to feed UNCITRAL with more substance in certain areas. Especially on aspects where more general education is needed. The ITL Working Group will be asked to provide such clarification.

The CMI work is carried forward by the CMI Working Group. After the September UNCITRAL meeting, an ISC review session should be convened, and –as the case may be – a further report of the ISC for UNCITRAL prepared.

The Secretary General and the President thanked all National Associations for their assistance and also the ISC Working Group and in particular its Chairman, Stuart Beare, for their substantial work for this project.

(b) *Issues of Marine Insurance*

Prof. M. Clarke will take over the responsibility on this subject. The Working Group will now produce a report for the Bordeaux Colloquium or for the Vancouver Conference.

(c) *General Average*

Patrick Griggs reported on the work regarding this subject. The Working Group will prepare a report and based on this, most probably a ISC will be convened.

(d) *Piracy*

Frank Wiswall referred to the Model Law and the final report of the joint IWG on the Uniformity of Law Concerning Acts of Piracy and Maritime Violence. The content of the Model Law is currently considered for implementation into national law by some Governments. Further, the IMO considers implementing the content based on the Model Law in form of a protocol to the 1988 Rome (SUA) Convention.

(e) *Places of Refuge*

Stuart Hetherington reported on the questionnaire sent out and the results collected so far.

(f) *UNESCO: Convention on Underwater Cultural Heritage*

The final text was approved at UNESCO last year. The new instrument may run counter to the Salvage Convention and in parts to UNCLOS. John Kimball will produce a draft position paper.

(g) *International Interests in Mobile Equipment*

The Convention provides that it operates through protocols which regulate specific types of equipment. There may be an interest amongst container owners/operators to sponsor their own protocol to this UNIDROIT Convention.

(b) *Arrest Convention*

Neither UNCTAD nor IMO are taking any current action to promote the new Convention.

(i) *Maritime Security*

IMO, in the aftermath of the events of September 11, are investigating to produce rules providing for greater transparency on ownership and control of ships.

The President, on behalf of CMI, has assisted the Secretariat of IMO Legal Committee to collect relevant information.

11. Various

(a) *CMI Planning Committee Report*

The President referred to the report of the CMI Planning Committee. Looking at the current projects of CMI (in particular ITL, General Average and Marine Insurance) there is however no urgency to take on new items into the Working Programme of CMI.

(b) *IMLI Support by CMI*

Patrick Griggs reported on the CMI (and the CMI Charitable Trust) support for IMLI and stressed the importance and value of this Institute.

(c) *New MLAS*

Lawyers of Ghana are hoping to establish a new MLA. CMI looks forward to the application from Ghana.

(d) *CMI 38th International Conference*

The 38th International Conference of CMI will take place in June 2004 in Vancouver.

(e) *CMI-Colloquium in Bordeaux June 10th to 13th 2003*

The issues covered at this Colloquium will be focussed in a first part on "trade and transport law in an electronic age". This section will offer presentations and illustrations on the use of technologies and on the legal aspects involved. Also, it will provide information (and possibly some discussion) of the "hot issues" on aspects of work in progress/ITL/General Average.

(f) *Events*

China MLA 11th to 14th October 2002 in Shanghai

USMLA 28th October – 1st November 2003 in the Bermudas

The President declared the meeting of the Assembly closed.

PLACES OF REFUGE

SUPPLEMENTARY QUESTIONNAIRE ADDRESSED TO NATIONAL MARITIME LAW ASSOCIATIONS

Introduction

At its eighty-fifth session in October 2002, the IMO Legal Committee received a report from the CMI concerning response to a questionnaire regarding the extent to which its member States, under their domestic law, dealt with the problem of vessels in distress and seeking refuge. A copy of a summary of the report (document LEG 85/10/3) is attached. In considering the report, the Legal Committee identified a number of additional issues which it wishes to explore at its next session in April 2003. These issues concern liabilities that might arise when a ship in distress is permitted or denied entry by a coastal State to a place of refuge, and compensation for damage that might occur as a result of such a decision. Responses to the following questions would assist the Legal Committee in its further consideration of the issues and the identification of gaps that may need to be filled by international instruments.

In responding to the following questions, due regard should be paid to current national law as

well as existing international conventions which are likely to be implemented in the future (such as the 1996 HNS Convention and the 2001 Bunkers Convention).

Question 1: Where entry to a place of refuge has been *permitted or granted* by your country to a foreign-flag ship in distress, and the place of refuge is located in the territorial sea of your country, and pollution or other damage occurs as a direct result of that entry, would your country (i.e., government or authority) accept or assume any degree of liability for such damage:

- A. if the damage took place within the jurisdiction of your country?
- B. if the damage occurs within the jurisdiction of a neighbouring country?

Question 2: Where entry to a place of refuge has been *denied or refused* by your country to a foreign-flag ship in distress, and pollution or other damage occurs as a direct result of that denial or refusal, would your country (i.e., government or

authority) accept or assume any degree of liability for such damage:

- A. if the damage took place within the jurisdiction of your country?
- B. if the damage occurs within the jurisdiction of a neighbouring country?

Question 3: In the circumstances described in questions 1 and 2,

- A. would any liability attach to the shipowner?
- B. if so, what defences would the shipowner have available?
- C. if liability did attach to the shipowner, would that liability be covered by an adequate and secure compensation regime? If so, please describe the relevant regime.

Question 4: In the circumstances described in questions 1 and 2,

- A. would any liability attach to a person other than the shipowner providing assistance to the ship in distress?
- B. who would be liable for the costs of assisting the ship in distress and of responding to any threat of pollution or actual pollution incident?

Please attach any pertinent laws, regulations, decrees, court decisions or other legal instruments which relate to the above questions.

Thank you for responding to this questionnaire.

CMI PUBLICATIONS

NEWS LETTER

The CMI News Letter is published three times each year.

YEARBOOK

The CMI Yearbook is published in the first months of each year and consists of three parts:

- PART I contains the Constitution, lists the Members of the Council, the Member Associations and the CMI Titulary Members
- PART II contains the text of the studies and reports prepared by the CMI in the current year
- PART III updates the status of ratifications of Maritime Conventions.

The individual subscription price for the CMI Associations and their members for the News Letter and for the Yearbook is Euro 7.44. Special reduced prices are available for multiple subscriptions. Such prices may be obtained from CMI Secretariat at the following address:

Mechelsesteenweg 196,
2018 Antwerp, Belgium
Tel.: +32 3 227.3526 - Fax: +32 3 227.3528
e-mail: admini@cmi-imc.org

Those who are not members of a CMI National Association can subscribe to the CMI News Letter and to the CMI Yearbook through:

Taylor & Francis Ltd.
Rankine Road,
Basingstoke, Hants
RG24 8PR, United Kingdom
Tel.: +44 1256813002 - Fax: +44 1256479438
e-mail: enquiry@tandf.co.uk

HANDBOOK OF MARITIME CONVENTIONS

The texts of those Maritime Conventions most often referred to as well as of CMI documents establishing standards of practice are available in a soft-cover *Handbook* compiled by the CMI and published by LexisNexis/Matthew Bender. The Conventions are divided in 14 chapters as follows:

- Chapter 1. Transport of goods
- Chapter 2. Carriage of passengers and luggage
- Chapter 3. Collision and navigation
- Chapter 4. Salvage and general average
- Chapter 5. Limitation of liability
- Chapter 6. Pollution: liability and compensation
- Chapter 7. Maritime liens and claims
- Chapter 8. Registration of ships, mortgages, rights and claims
- Chapter 9. Arrest and immunity of ships
- Chapter 10. Unlawful acts: piracy, terrorism and maritime violence
- Chapter 11. Classification societies
- Chapter 12. Offshore mobile craft
- Chapter 13. Shipping conferences
- Chapter 14. Stowaways

The *CMI Handbook of Maritime Conventions* is available for purchase on-line: go to <http://bookstore.lexis.com> and on the catalog page type CMI in the 'Bookstore Product Search' box.

TRAVAUX PRÉPARATOIRES

The Travaux Préparatoires of the following Conventions have been published in the following three volumes:

1. International Convention for the Unification of Certain Rules of Law with Respect to Collision between Vessels, 1910 and International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952: Euro 160

2. International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 with its 1968 and 1979 Protocols (Hague-Visby Rules): Euro 160
3. Convention on Limitation of Liability for Maritime Claims, 1976 and its 1996 Protocol: Euro 110
4. International Convention on Salvage 1989 (in preparation)

Payment can be made for all CMI publications by VISA or Master Card.

NEWS FROM THE NATIONAL ASSOCIATIONS

NEWS FROM THE MALTA MARITIME LAW ASSOCIATION

1. *Establishment of the Maritime Law Advisory Council*

A new entity, the Maritime Law Advisory Council (MLAC), has been established in Malta by the Ministry of Transport, the Malta Maritime Authority and the Malta Maritime Law Association with the view to fostering the development of Maltese maritime policies and legislation.

A close relationship will be established between

the Malta Maritime Law Association and the Maritime Law Advisory Council. The two entities will be located at the following address:

144/1 Palazzo Marina, Marina Street, Pietà, Malta.
Tel.: (+356) 21 250319 – Fax : (+356) 21 250320 –
E-mail: mlac@vol.net.mt.

Dr. Nadia Scerri has been appointed as Administrator of both the MMLA and the MLAC. The new Executive Council of the MMLA appears in the CMI website.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM UNCITRAL

DRAFT INSTRUMENT ON THE CARRIAGE OF GOODS

The CMI Instrument on Transport Law (CMI Yearbook 2001, p. 532), submitted to UNCITRAL in December 2001 and renamed “Draft Instrument on the carriage of Goods [by sea]”, has been considered during the ninth session of the UNCITRAL Working Group III (Transport Law) held in New York from 15 to 26 April 2002* and then during its tenth session, held in Vienna from 16 to 20 September 2002.

The Reports of the Working Group on both sessions may be found on the UNCITRAL website, www.uncitral.org/english/workinggroups/wg_3/wg3-transport-index-e.htm. Other documents available on the website are the following:

- A/CN.9/WG.III/WP.23 – Preliminary draft

instrument on the carriage of goods [by sea] –
Proposal by Canada

- A/CN.9/WG.III/WP.25 – Transport Law: Preparation of a draft instrument on the carriage of goods [by sea] – Proposal by Italy
- A/CN.9/WG.III/WP.26 – Transport Law: Preparation of a draft instrument on the carriage of goods [by sea] – Proposal by Sweden
- A/CN.9/WG.III/WP.27 – The UNCITRAL Draft Instrument on the Carriage of Goods by Sea and the other transport Conventions - Comparative tables.

The next session of the UNCITRAL Working Group will be held in New York from 24 March to 4 April 2003.

* A summary of the work done in that session is published in CMI News Letter No. 1/2002, page 11.

NEWS FROM IMO

REPORT ON THE 85TH SESSION OF THE IMO LEGAL COMMITTEE

The Legal Committee held its 85th Session at IMO Headquarters from 22 to 24 October 2002 under the chairmanship of Alfred Popp QC (Canada). In his opening remarks the Secretary-General of IMO, Bill O'Neil, drew attention to the important role of the IMO in devising means of protecting shipping from becoming a target for international terrorism. In this context he referred to the Legal Committee's review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. It was hoped that the review of the SUA Treaties would ensure that those involved in acts of terrorism would be prosecuted and brought to trial wherever in the world they might try to find refuge. The Secretary-General encouraged the Committee to pursue its work on the draft Wreck Removal Convention and commended the efforts of the Committee in monitoring the implementation of the HNS Convention.

Draft Convention on Wreck Removal (DWRC)

The delegation of the Netherlands has continued to lead the inter-sessional consultations on this draft Convention and introduced LEG 85/3. This document summarised the inter-sessional work and contained a consolidated text of the DWRC revised in light of discussions in the Legal Committee and comments of delegations involved inter-sessionally.

The delegation of the Netherlands also introduced document LEG 85/3/1 which examined the relationship between the DWRC and the 1969 Intervention Convention. The distinction to be drawn was that the Intervention Convention would apply where there was a grave and imminent threat of pollution to the coastline of the state whereas the DWRC would apply in all other cases including where the threat was to safety of navigation.

The Committee then turned to specific topics for debate.

(1) *Financial liability for locating, marking and removing wrecks.* Under the current DWRC owners would be excluded from liability where a vessel became a wreck as a result of an "act of terrorism". After some debate, the representative of the International Group of P&I Clubs drew delegates attention to the insurance implications of removing the "act of terrorism" exclusion.

Liability insurers generally speaking excluded claims arising from such acts and therefore could not guarantee payment of wreck removal expenses where the underlying cause of the sinking/stranding was an act of terrorism. The Working Group was instructed to look into this matter further and report at the next meeting of the Legal Committee.

(2) *Cargo contribution.* Debate was resumed on the question of whether cargo should be expected to contribute to the cost of wreck removal particularly when the cargo itself was the real cause of the wreck representing a threat. The Working Group was asked to consider further whether or not to include a provision on contribution by cargo bearing in mind the practical difficulties that might arise from imposing liability directly on cargo interests.

(3) *Article 12.* This Article is of major importance since it is designed to ensure that the DWRC does not over-lap and conflict with other liability regimes. Various drafting suggestions were made and the Working Group was again asked to consider this issue.

(4) *Evidence of Financial Security (Article 13).* The representative of the International Group of P&I Clubs suggested that Article 13 should be replaced with a provision to the effect that a valid Certificate of Entry in a Club member of the International Group should be sufficient proof of financial security. Delegates agreed that the Working Group should be invited to co-operate with the International Group of P&I Clubs to consider this proposal and also to consider whether it was appropriate to include in this provision a reference to the limits contained in the 1976 LLMC bearing in mind that most States had exercised the option granted by that Convention to exclude the right to limit liability in respect of wreck removal expenses.

(5) *Measures to facilitate the removal of wrecks (Article 10).* The Committee continued to debate the question of whether to replace the expression "state of the ships registry" with "the flag State" in paragraph 1 of Article 10 and elsewhere. Consideration was also given to the possibility of an addition to paragraph 2 which would require the flag State to supply the coastal State with information on the identity of the registered owner.

During discussions it was emphasised that flag States would be expected to play a greater supervisory role in ensuring that the owners of ships registered in their country complied with wreck removal orders.

Consideration was also given to the powers conferred on a coastal State to remove wrecks in the interest of reserving the environment and of removing threats to navigation. It was pointed out that UNCLOS sanctioned conferring this power on coastal States.

Again the matter was referred back to the Working Group for further assessment.

(6) *Objectives and General Principles (Article 2.4)*. This was a new proposal whereby a State Party would be deemed to have given advance consent to a coastal State to remove wrecks where this is not otherwise permitted under international law.

Doubts were expressed about this proposal principally on the grounds of public policy. It was decided to delete this provision.

SUA Convention and Protocol 1988

The delegation of the United States which has lead the inter-sessional Correspondence Group introduced LEG 85/4 which contained, in Annex 1, a draft Protocol to the SUA Convention and a consolidated text.

The Japanese delegation introduced document LEG 85/4/1 which suggested that LEG 85/4 substantially exceeded the scope of the current SUA Convention and Protocol and would introduce offences which had already been criminalised by other Conventions. The delegation of Japan urged on delegates the need to avoid overlap and duplication.

A number of delegations indicated that they had not yet had time to look at the proposals in detail but confirmed that they would participate in future discussions.

The Assistant Secretary-General and Director, Marine Safety Division drew the Committee's attention to Resolution A.924/22 which considers the review of measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships.

The Committee agreed to use document LEG 85/4, Annex 1 as the basic document for discussion.

New Offences (Article 5(1) of the draft Protocol; Article 3 of the SUA Convention). The US delegation noted that draft Article 5(1) introduced seven new offences into Article 3 of the SUA Convention. Four of these new offences concerned activities taking place on the ship or directed towards a ship that involve a terrorist purpose. One of the proposed new offences

concerned the presence of substances not usually used on a ship but useful in a weapon of mass destruction. Two of the new offences concerned use of the ship for transport of substances to be used for mass destruction. It was stressed that the aim was to be clear and comprehensive though it was recognised that some overlap might be unavoidable in order to close the gaps which would arise if some States did not become a party to other conventions on terrorism and if some States did not become party to the new Protocol.

The Correspondence Group was invited to reconsider the issue of overlap by comparing or contrasting the text of existing Conventions.

During the course of discussions the words of the Secretary-General in his opening statement were recalled to the effect that IMO needed to adopt measures to ensure that the shipping industry does not become a soft target for terrorist activities.

The representative of the CMI drew delegates attention to the fact that its study group on piracy had found that criminals take advantage of "gaps" to avoid or escape jurisdiction and it would be preferable to have overlaps rather than to leave gaps.

Attempts (Article 5(2) of the draft Protocol; Article 3, paragraph 2(b) of the SUA Convention). It was noted that the consequence of including an "attempted commission" of the offences could result in an offence of "attempting to attempt". It was thought that this would be an unfortunate extension of the scope of the Convention. The Correspondence Group was asked to look at this matter with some care.

Accomplice Liability (Article 5(3) of the draft Protocol; Article 3, paragraphs 2(b) bis and 2(b) ter in the SUA Convention). With regard to this Article it was noted that abetting an offence was already covered by paragraph 2(b) of Article 3 of the SUA Convention.

Duress or threats (Article 5(4) of the draft Protocol; new paragraph 2(d) of Article 3 of the SUA Convention). It was pointed out that under this Article threats can be made through any medium of communication, including mass media. This might affect how the offence was introduced through national legislation.

A warning was given that there was a potential for making "ordinary" crimes into terrorist crimes. The line between what is permitted and what is prohibited should be drawn carefully and in the right place. It was noted, for example, that the current proposals, taken together, might create an offence of being an accomplice to an accomplice.

Elimination of the political offence exception (Article 9 of the draft Protocol; new Article 11 bis of the SUA Convention). There was some support for the

removal of the political offence exception although some delegations cautioned against its removal bearing in mind the widening of the scope of other provisions of the Treaty. The fear was that it could lead to the inclusion within the scope of the Convention of conduct not related to terrorism.

Transfer of persons to assist in investigations/prosecutions (Article 10 of the draft Protocol; new Article 12 bis of the SUA Convention). The intention of this provisions is to strengthen co-operation and assistance among parties.

New boarding provisions (Article 7 of the draft Protocol; new Article 8 bis of the SUA Convention). Concerns were expressed that the proposed boarding procedures could be inconsistent with the principles of freedom of navigation and flag State jurisdiction. Doubts were also expressed as to whether such a revision was needed.

One delegation expressed concerns regarding the safety of crews who might be exposed to hijacking by individuals posing as members of the armed forces of its State. It was suggested that the MSC should be asked to examine the security implications of the new boarding provisions.

Exclusion of armed forces (Article 4 of the draft Protocol; new Article 2 bis of the SUA Convention). Doubts were expressed as to the feasibility of applying this exclusion in the SUA Convention it being noted that there is no such exclusion in the Terrorist Financing Convention.

Nationality of the ship (Article 6 of the draft Protocol; new Article 8 of the SUA Convention). Debate revolved around the use of the traditional language “flying the flag” to be found in other IMO Conventions as well as in UNCLOS.

A debate then developed on the problems of establishing nationality. It was suggested by some delegations that the issue of the nationality of a ship should be kept under general review as it creates a problem under several existing and developing conventions.

Exclusion of naval auxiliary (Article 3 of the draft Protocol; new Article 2 of the SUA Convention). It was agreed that the expression “naval auxiliary” should be used as in Article 236 of UNCLOS.

It was agreed that the United States delegation would continue to act as lead and circulate comments inter-sessionally.

Monitoring the Implementation of the HNS Convention

The delegation of the United Kingdom, as Co-ordinator of the Correspondence Group established by the Legal Committee at its 80th

Session summarised the issues, dealt with by the Group during the inter-sessional period, in document LEG 85/5.

The UK delegation drew delegates attention to the IMO HNS Correspondence’s Group website which is being set up by Prof Erik Rosaeg of the Scandinavian Institute of Maritime Law.

The address of this website is:

<http://folk.uio.no/erikro/www/hno.html>.

This website will continue to be up-dated.

The UK delegation reported that the website includes the implementing legislation for the HNS Convention of the Russian Federation, Ireland and the United Kingdom. The hope was expressed that other States would take advantage of the experience of these three countries.

It was reported that the IOPC Funds had developed an electronic database to be used to report contributing cargo under the Convention. On ratifying the Convention, a State will be required, under Article 43, to report annually on receipts of contributing cargo. The Director of the IOPC Funds himself advised the Committee on the development of the IT based system for identifying and reporting contributing cargo. The system had been tested and found to work.

Delegates generally welcomed the initiative of the UK and agreed that the entry into force of the Convention is now no longer a question of “if” but “when”.

As an encouragement to implementation, the Correspondence Group would continue to up-date the HNS incident list on the website which serves to emphasise the importance of this Convention.

Provision of Financial Security: Joint IMO/ILO ad hoc Expert Working Group on Liability and Compensation Regarding Claims for Death Personal Injury and Abandonment of Seafarers

Reference was made to the work of this joint IMO/ILO Working Group. The Chairman of the Group made an oral report. He confirmed that the Working Group would be submitting a written report to the Committee at its next session in April 2003.

Attention was drawn to the fact that the Legal Committee had, in October 2001, approved two draft Resolutions and related Guidelines on provisions of financial security to cover the plight of abandoned seafarers and on shipowners’ responsibilities in respect of claims for personal injury to or death of seafarers. He confirmed that these resolutions had subsequently been adopted by the IMO Assembly in November 2001. Both resolutions and guidelines took effect on 1st January 2002. The Working Group will continue to monitor the implementation of the resolutions

and related guidelines and will report the results of this exercise.

Review of the status of Conventions and other Treaty instruments adopted as a result of the work of the Legal Committee

It was reported that the Bunker Oil Pollution Damage Convention 2001 has been signed, subject to ratification by Australia, Canada, Denmark, Finland, Germany, Norway, Sweden, United Kingdom and Spain. It was also noted that the LLMC 1976 had been ratified by Australia.

Criminal Acts committed on foreign flag ships

The delegation of Japan introduced document LEG 85/10 which outlined the *Tajima* incident in which an off duty Japanese Second Officer was killed by two Filipino seafarers on board a Panamanian-flag vessel on the high seas. The master had placed the suspects in custody but had been forced to keep the suspects in custody on the ship for a month while she remained in port before custody could be transferred to a shoreside facility.

The Japanese delegation drew attention to the fact that under UNCLOS the flag State has exclusive jurisdiction on the high seas but where an incident takes place on board a ship which is geographically far from the territory of its flag State, it may be difficult for that flag State to take steps to exercise its jurisdiction. The Japanese delegation suggested that there was a need to establish a scheme by which the vessel could deliver suspects to the nearest coastal State as soon as possible for that State to deal with.

It subsequently transpired that a number of other States had encountered similar problems.

Some delegations suggested that it might be necessary to develop a new international Convention to deal with the problem. Guidelines might be developed to provide practical guidance to masters and coastal States on how to handle such situations. The observer delegation of the CMI offered to assist in gathering relevant information regarding current law and practice and it was agreed that the CMI would co-operate with the IMO Secretariat in gathering this information prior to the next Legal Committee meeting.

Places of Refuge

The Assistant Secretary-General and Director of Maritime Safety Division advised the Committee that the MSC had considered the operational aspects of this issue and had produced three draft Assembly Resolutions. One of these draft

Resolutions contained Guidelines on identification and access to places of refuge for ships in need of assistance. He indicated that the Legal Committee might be requested to consider the legal perspective with particular reference to liability and compensation for damage arising from entry of a ship in need of assistance into a place of refuge.

The observer delegation of the CMI introduced document LEG 85/10/3 which contained the results of a survey conducted by the CMI at the Legal Committee's request to ascertain the extent to which domestic law dealt with the problem of vessels in distress seeking refuge. These responses had emphasised the existing obligations to offer refuge contained in OPRC, Salvage and UNCLOS Conventions. CMI indicated that it was already engaged in studying the liabilities of the State that allows a ship into a place of refuge under its jurisdiction and what those liabilities might be were States to refuse entry.

The Legal Committee expressed its unanimous appreciation to the CMI for the useful submissions contained in document LEG 85/10/3 and also acknowledged the existence of the fuller version of the study lodged in the IMO library. The Committee agreed that it would examine the legal aspects of the draft Assembly Resolutions on the liability aspects of places of refuge should it be asked to do so by the MSC.

Delegates agreed that the IMO Secretariat and CMI should jointly prepare a Questionnaire on liability issues which would be circulated to member governments and national maritime law associations affiliated to the CMI.

Treatment of persons rescued at sea

Reference was made to the Assembly Resolution requesting the MSC, the Legal Committee and the Facilitation Committee to review current international conventions and other IMO instruments to identify any gaps, inconsistencies, ambiguities or vagueness in provisions for the treatment of persons rescued at sea.

It was agreed that no particular action need be taken at this stage but remained ready to assist.

2002 Protocol to the Athens Convention 1974

The 85th Session of the Legal Committee was held back-to-back with a Diplomatic Conference on the draft Athens Protocol. A text was finalised and unanimously adopted by the Diplomatic Conference on Friday, 1 November and the text is now deposited for signature at IMO. The provisions of the Protocol are the subject of a separate paper.

RATIFICATION AND DENUNCIATION OF INTERNATIONAL CONVENTIONS

INSTRUMENTS OF RATIFICATION OF AND ACCESSION TO THE FOLLOWING CONVENTIONS
HAVE BEEN DEPOSITED WITH THE DEPOSITARY: *

- **International Convention for the unification of certain rules of law relating to bills of lading and Protocol of signature, done at Brussels on 25 August 1924**
St. Vincent and the Grenadines: 22 July 2003

- **Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969**
Brunei Darussalam: 31 January 2002
Chile: 29 May 2002
Congo: 7 August 2002
Guinea: 2 October 2002
Madagascar: 21 May 2002
Mozambique: 26 April 2002
Nigeria: 24 May 2002
Samoa: 1 February 2002

- **Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution damage, 1971**
Brunei Darussalam: 31 January 2002
Congo: 7 August 2002
Gabon: 31 May 2002
Guinea: 2 October 2002
Madagascar: 21 May 2002
Mozambique: 26 April 2002
Nigeria: 24 May 2002
Samoa: 1 February 2002

- **Protocol [of 1976] to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974**
Estonia: 8 October 2002

- **Convention on Limitation of Liability for Maritime Claims, 1976**
Estonia: 23 October 2002
India: 20 August 2002

- **Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976**
Australia: 8 October 2002
Denmark: 12 April 2002

- **Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988**
Albania: 19 June 2002
Bolivia: 13 February 2002
Ghana: 1 November 2002
Grenada: 9 January 2002
Iceland: 28 May 2002

* The dates indicated are the dates of deposit of the instrument.

Kenya: 21 January 2002
Libya: 8 August 2002
Mali: 29 April 2002
Monaco: 25 January 2002
Morocco: 8 January 2002
Panama: 3 July 2002
St. Kitts and Nevis: 17 January 2002
Vietnam: 12 July 2002

– **Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988**

Albania: 19 June 2002
Bolivia: 13 February 2002
Ghana: 1 November 2002
Grenada: 9 January 2002
Iceland: 28 May 2002
Kenya: 21 January 2002
Libya: 8 August 2002
Mali: 29 April 2002
Monaco: 25 January 2002
Morocco: 8 January 2002
Panama: 3 July 2002
Vietnam: 12 July 2002

– **International Convention on Salvage, 1989**

Iceland: 21 March 2002
New Zealand: 16 October 2002
Syrian Arab Republic: 19 March 2002

– **International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990**

Ecuador: 29 January 2002
Guinea: 2 October 2002
Madagascar: 21 May 2002
Peru: 24 April 2002