

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 1 - JANUARY/ MARCH 2010

News from the CMI:

- Minutes of the Executive Council meeting held by e-mail conference during the week commencing March 15, 2010, chaired by the President in his office in Singapore
- Letter of the President of the CMI to the Presidents of the National Maritime Law Associations enclosing a second questionnaire on NMLAs

News from Intergovernmental and International Organizations

News from IMO

- IMO Diplomatic Conference adopts HNS Protocol on 30 April 2010, by Richard Shaw

NEWS FROM THE CMI

MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD BY E-MAIL CONFERENCE DURING THE WEEK COMMENCING MARCH 15 2010, CHAIRED BY THE PRESIDENT IN HIS OFFICE IN SINGAPORE

Attending:

<i>President:</i>	Karl-Johan GOMBRII
<i>Past President:</i>	Jean-Serge ROHART
<i>Vice-Presidents:</i>	Stuart HETHERINGTON Johanne GAUTHIER
<i>Councillors:</i>	Giorgio BERLINGIERI Christopher DAVIS José Tomás GUZMAN Måns JACOBSSON Sergei LEBEDEV Henry LI Louis MBANEFO Andrew TAYLOR
<i>Publications Officer:</i>	Francesco BERLINGIERI
<i>Secretary-General:</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Treasurer:</i>	Benoit GOEMANS

1. *Opening remarks of the President*

The President opened the meeting by explaining the procedure to be followed.

He then reported on his schedule since the meeting of the Executive Council on September 22 2009, including giving a lecture at the World Maritime University in Malmö, Sweden and participation at the 7th International Conference on Maritime Law in Shanghai in November 2009 where he had talks with Senior Officers of the Chinese Maritime Law Association in relation to the next CMI Conference in Beijing in October 2012. He also gave a presentation in Singapore on the Rotterdam Rules at an event organised by the Singapore Shipping Association.

The President then spoke to the 88th birthday celebrations of Francesco Berlingieri in Genoa on February 19 2010 and the presentation of Essays in his honour at a splendid evening gathering of maritime lawyers and other dignitaries, including ex CMI Presidents Patrick Griggs and Jean-Serge Rohart. Mr. Gombrii was regrettably unable to attend.

At this juncture, the Executive Council wished to note Happy Birthday greetings to Francesco Berlingieri and to compliment Giorgio Berlingieri for his organization of the Genoa event in his father's honour.

2. *Approval of the minutes of the Executive Council meeting at Rotterdam*

The Minutes were approved subject to amendments which are noted in annex A to these Minutes.

3. *Finances*

a) Treasurer's Report

There was considerable discussion on the March 2010 Treasurer's Tentative Report on Accounts for the 2009 year which were tabled. It was concluded that:

- i) The audited accounts for 2009 and a draft budget for 2010 should be ready for distribution to the Executive Council and Audit Committee by late Spring/ early Summer (Note: Subsequently agreed by May 21st);
- ii) The Audit Committee should be invited to review them as soon as possible pursuant to the plans and recommendations set forth in their report dated September 17, 2009.
- iii) The Executive Council should consider and approve the accounts and budget at a special virtual meeting to be held in the late Spring/early Summer, 2010. (Notes: 1. Subsequently agreed to be held June 21, 2010; and 2. Liz Burrell, Chair of the Audit Committee, has been asked to hold her meeting by telephone conference between May 21 and June 21, and also continue its consideration of the level of reserve that should be maintained in accordance with sound financial management). In advance of the Audit Committee meeting, the Treasurer has been asked to prepare a note and graph showing how the reserves will be eroded over time if the reduced subscriptions and "early bird" discounts are maintained;
- iv) The 2009 accounts and proposed budget

should be circulated to NMLAs in advance of the Assembly at Buenos Aires on October 27, 2010, and consideration be given to including a note showing how the reserves will be gradually eroded over time if the reduced subscriptions and "early bird" discounts approved at the Rotterdam Assembly are maintained for the foreseeable future; and

- v) At the Spring/early Summer virtual meeting (June 21, 2010) and the meeting in Buenos Aires on 24 October, consideration should be given to establishing a policy on how the reserves will be used and/or to hold subscriptions down until the reserves reach a pre-determined level. A report in this respect will be given at the Assembly at Buenos Aires on 27 October.

b) Audit Committee Recommendations

- i) The Audit Committee will be asked to meet before the Executive Council virtual meeting (i.e. subsequently agreed to be between May 21st and June 21st, 2010).
- ii) It was agreed that no decision should be taken by the Executive Council on the appropriate level of reserves pending receipt of the Audit Committee's report and recommendations on the subject.
- iii) Mans Jacobsson will prepare the first draft of a policy statement for CMI contributions to the Charitable Trust, hopefully with assistance from Patrick Griggs as a sitting member of the Board of Trustees of the Charitable Trust.
- iv) It was agreed that the role of the Audit Committee is to oversee the CMI's financial practices, to ensure the accuracy of the CMI's accounting and financial reporting, to assist the Treasurer in making sure the financial statements and accounts present a clear picture of the CMI's finances, to report to the Executive Council on observations about all aspects of the CMI's financial management practices, and to report and make recommendations to the Executive Council and Assembly, as appropriate, on the reliability and soundness of the CMI's finances, and on the fairness of their presentation in their accounting.

c) Unpaid subscriptions

The reports of Chris Davis and Jose' Tomas Guzman were considered, with thanks for all their excellent work. In brief, as of March 12, 2010, the sum of 33,602.77 Euros was outstanding for 23 member associations, a slight increase over last year's 31, 010.23 Euros and 18 member associations.

However, there is every reason to expect that this year's numbers will be reduced as settlements are presently being pursued with vigour, particularly in South America. As a statement of policy, no settlements are ever to be negotiated on a nil payment basis.

4. *Member Issues*

a) Existing members

Giorgio Berlingieri reported on his efforts to bring

Portugal back into the fold as an active MLA. He was encouraged to continue his efforts.

b) Temporary Members

After full discussion it was concluded that there are positive signals from the Democratic Republic of Congo, Honduras and Kenya and it was decided that Wim Fransen and Johanne Gauthier continue their efforts with the Democratic Republic of Congo, that Chris Davis continue his dialogue with Honduras, and Louis Mbanefo should continue his talks with Kenya. With respect to Latvia, and after contacts with Mr Maris Lejnicks, who had concluded that there was no basis for a Latvian MLA at this stage, it was decided to let his Temporary membership lapse.

c) Potential new members

Poland

The President reported progress with his contact in that country including documents for the registration of a new Polish MLA to be submitted in Szczecin on May 21 2010.

India

The President has been in touch with two Indian lawyers who are trying to create an Indian MLA. There is a possibility that this will be established by July 2010 so that an application could be made for membership in the CMI at the Assembly in Buenos Aires in October 2010.

Malaysia

Owing to difficulties with the relevant Malaysian Government Department on establishing an MLA in that country, a contact will be made with the Malaysian attaché in London to see if they can assist.

Estonia

It was agreed that the present Estonian International Maritime Law Association does not currently satisfy the requirements for membership in the CMI and that they should be encouraged to broaden their membership in order to make it representative of the Estonian maritime law community in general.

Indonesia

It was noted with gratitude that there is a possibility that the Indonesian MLA will make an application to join the CMI at the Assembly in Buenos Aires in October 2010.

Ghana

Louis Mbanefo was encouraged to continue his efforts in relation to Ghana.

Cameroon

Louis Mbanefo was encouraged to continue his efforts in relation to Cameroon.

Conclusion

Discussion about formation of MLAs in Benin, Ukraine, Algeria, UAE and Egypt was adjourned to the Executive Council meeting in Buenos Aires on 24 October pending overtures to those countries in the meantime.

5. CMI Charitable Trust

The report of the Trust was tabled. It was noted that the Trust's financial position has been improving somewhat in recent months.

6. Conferences

a) Colloquium in Buenos Aires October 24-27, 2010

The Secretary General reported on all of the arrangements that he had made with the Argentine Organizing Committee and that matters are on track for a successful Colloquium. The Executive Council approved his report, the draft program, budget and list of suggested responsibility for speakers' expenses. It was noted with appreciation that Minister Holger Martinsen, a member of Argentina's Diplomatic Service, Plenipotentiary Minister and Vice Director of the Legal Department of the Foreign Affairs Ministry will speak on the legal regime in the Antarctic.

Mans Jacobsson will make a report on the outcome of the Diplomatic Conference on the HNS Convention in London commencing April 26, 2010.

b) 2011 Executive Council meeting and Assembly

It was decided that these meetings will be held either in Oslo or Stockholm in late September or early October 2011. The President will make contact with the local MLAs to discuss this and also to suggest that a meeting/seminar be organised in connection with the Assembly for the benefit of those visiting.

c) Conference in Beijing October 2012

The Secretary General advised that he had made contact with the Secretary General of the Chinese MLA and he was waiting for a reply. (Note: Since then, he has received a reply in which he was notified that he should liaise with An Rui, The Deputy Secretary General of the Chinese MLA).

Henry Li will act as liaison between the CMI and the organising committee of the Chinese MLA.

7. Steering Committee on reforms

As a follow up of one of the proposals made by the Steering Committee on Reforms, Stuart Hetherington reported on his efforts to conclude a contract with a website construction company in Australia and his recommendations were approved. It was also agreed to formally disband the Steering Committee that was established in 2007 and to confirm the creation of a new group known as the Monitoring Group, consisting of the President and the two Vice-Presidents (with input from Chris Davis, as may be required) for purposes of monitoring the broad consultation process with NMLA's that was agreed at the Rotterdam Executive Council meeting.

The Executive Council raised the subject of the second questionnaire to all NMLA's and the Secretary General said that this will be submitted shortly to the Executive Council for approval, but may be included in the consultation process referred to above, which may entail a certain delay.

8. Constitution – Amendments

Benoît Goemans referred to the decision at the Rotterdam ExCo and Assembly meetings to change the terms of Officers and Executive Councillors from four years to three years. He said that he has advised the competent authority in Belgium for publication in the *Moniteur Belge* about the proposed changes to

articles 9, 10, 11, 12 and 14, and the second last sentence of Article 13 of the Constitution to reflect such a reduction in terms.

The new address of the CMI Secretariat has also been notified to the competent authority in Belgium.

9. *Publications and CD-Rom*

It was decided to accept Wim Fransen's proposal to place an order for 600 copies of the CD-Rom containing the CMI Archives for distribution on a no cost basis to each NMLA, Titulary Members, Consultative Members, Universities and Court Libraries.

The ordinary members of the NMLA's will have to pay 14 Euros per CD, exclusive of mailing costs.

10. *Work in progress*

a) *Rotterdam Rules*

The ExCo commended the work of the IWG on the Rotterdam Rules in generally promoting and defending the convention as a necessary means for unification of the law relating to the carriage of goods. The possibility of further work by the CMI in relation to the Rotterdam Rules was discussed. Consideration will be given as to whether and how the CMI might wish to carry out such further work, particularly in relation to those areas which are not covered by the Rotterdam Rules or only summarily covered therein. The President will consider the matter further and make a proposal to the Executive Council in the near future.

b) *Piracy*

Patrick Griggs's report on Piracy was tabled and it was decided that he and his working group should continue to monitor work of the "Working Group 2" established by the IMO Contact Group on Piracy off the Coast of Somalia.

c) *Marine Insurance*

The Executive Council considered the IWG work program that has been proposed by its chairman, Dr. Dieter Schwampe, a) Mandatory Insurance, b) Transfer of Title and c) Political risks. The work program was approved on the understanding that the comments which had been made by Councillors in writing would be conveyed to the IWG. Further, the IWG should complete 3 separate draft Questionnaires covering these topics and forward them to the Secretariat for distribution to the Executive Council for approval prior to distribution to NMLAs. It was also approved that Dr. Dieter Schwampe co-ordinate their work on mandatory insurance with AIDA's working party on the subject, and with IUMI if they undertake a study on that subject as well.

d) *Salvage Convention 1989*

Stuart Hetherington tabled a discussion paper of his IWG which was noted with approval.

e) *Fair Treatment of Seafarers*

It was agreed that the IWG should participate in the Roundtable discussions as proposed by the Chairwoman, Kim Jefferies. Also, that any proposed

submission by the Roundtable to IMO be referred to the Executive Council for approval before bringing it into final form in case the IWG/CMI would be asked to subscribe to it. There was also discussion about preparation of a draft mandate/terms of reference for the IWG and Giorgio Berlingieri was asked to take on this task.

f) *Judicial Sales of Ships*

Henry Li tabled his report which was approved in principle, subject to consideration being given by the IWG to suggestions made by Giorgio Berlingieri for additional questions in the Questionnaire arising from the 1993 Convention on Maritime Liens and Mortgages.

g) *Procedural Rules and Limitation Conventions*

The scheduled meeting of the ISC in London on March 25 and 26 2010 was noted with approval. Mans Jacobsson will attend the meeting.

h) *Ship Recycling*

The Convention having been adopted, it was agreed to disband the IWG. The Executive Council shall continue to monitor the events at IMO meetings on this subject.

i) *CMI's submission to IMO of observations on the HNS Protocol*

The Executive Council formally nominated Mans Jacobsson, Richard Shaw and Patrick Griggs as observers at the Diplomatic Conference on a Draft Protocol on the HNS Convention commencing April 26, 2010, in London. It was noted that, following submission to the Executive Council for comments, their submission had been forwarded to IMO. Mans Jacobsson will make a report on the outcome of the Diplomatic Conference.

11. *Future work*

a) *IWG to consider the proposed amendments to LLMC 1996 Limits of Liability*

It was noted that the Australian delegation to the IMO Legal Committee meeting during the week of October 5 2009 had proposed increasing limits of liability in the LLMC 1996 as the result of a spill of bunker oil by the "Pacific Adventurer" of the coast of Queensland Australia. The claims substantially exceeded the 1996 Protocol property damage limits. The Executive Council formally appointed a working group consisting of Mans Jacobsson, as chairman, together with Richard Shaw and Patrick Griggs, with Francesco Berlingieri and Giorgio Berlingieri as an informal reference group, to draft a submission on the subject to the IMO Legal Committee. It was agreed that it was not the place of the CMI to enter into the public policy realm of recommending certain figures. However, a submission outlining the background leading up to the current Limits of Liability and the ratio between the different limits for personal injury claims and property damage claims was thought to be helpful. The Executive Council considered and commented upon a draft submission and asked that these thoughts be taken into account when the working group brings its submission into final form. The final form document would then be passed to the

Executive Council again for final approval before submission to IMO.

b) *Preparation of a Manual on the Practical Handling of Bills of Lading and Letters of Indemnity, etc.*
Following discussion it was agreed to defer work on this topic for the time being.

c) *Cross Border Insolvencies*

It was noted with approval that Chris Davis, as Chairman, has proposed to form an International Working Group consisting of Sarah Derrington of Australia, William Sharpe of Canada, Stephen Girvin of Singapore, Hilton Staniland of the UK. Mr. Davis said they will prepare an initial questionnaire of the subject for circulation and will consult with UNCITRAL on their Model Law on Cross-Border Insolvency and promotion of guidelines. The first formal meeting of the IWG will be held in Buenos Aires during the Colloquium in October 2010. The Executive Council also suggested that the IWG consult with the IWG on Judicial Sales of Ships as certain topics are interrelated.

d) *Arctic/Antarctic Issues*

The Secretary General tabled a commentary he had prepared on the Legal Regimes in the Arctic and Antarctic. It was agreed that an IWG on the subject be formed with a mandate to review the applicability of existing private maritime law conventions to activities in the Polar regions. The IWG might later suggest to the Executive Council that its scope of work should be extended to include other types of conventions like UNCLOS. It was agreed that members of the IWG would be appointed by the President and the Secretary General in consultation and as reported to the Executive Council. It was also agreed that this topic should be on the substantial program at the Buenos Aires Colloquium.

e) *Admiralty Rules*

It was agreed that CMI should defer any work on this subject until the work on Judicial Sales of Ships has been completed and the interaction between the procedural regimes on Arrest, Liens and Mortgages and Judicial Sales of Ships can be reviewed more easily.

f) *Ratification of the 1993 Liens and Mortgages Convention, and the 1999 Arrest Convention*

Giorgio Berlingieri's report on this subject was noted and it was decided to ask him to pursue the matter within a new IWG, the other members of the group to be appointed by the President and the Secretary General in consultation and as reported to the Executive Council.

12. *Young Members*

Andrew Taylor's report was noted and it was agreed to give Jorge Radovich considerable latitude, in consultation with Andrew Taylor, Frank Smeele and Nigel Frawley, to finalize the Young CMI program in Buenos Aires.

A proposal to reinstitute the Young Members' Essay prize for the Conference in Beijing was raised and will be put on the agenda for the next meeting of the Executive Council in Buenos Aires in October 2010.

13. *International Organizations*

a) *IMO Legal Committee and IOPC Funds and IMO Assembly*

The report tabled by Mans Jacobsson was noted.

b) *IMLI and WMU*

Lectures by the President at the World Maritime University and by Mans Jacobsson at IMLI were noted with appreciation. It was also noted that Mr. Jacobsson will lecture at the WMU in the summer of 2010 and that he had recently been appointed as a member of the WMU Board of Governors. It was also noted with appreciation that Louis Mbanefo had lectured at IMLI in April 2009 and again in February 2010. He has agreed to make it an annual event.

c) *ICC*

It was noted that the ICC is considering a revision of Incoterms and that Prof. Philip Delebecque of the Sorbonne in Paris had volunteered to provide input on behalf of the CMI regarding the concept of "Documentary Shipper".

d) *IIDM*

It was noted with appreciation that José Tomas Guzman had attended the Congress of the IIDM held in Uruguay in November 2009 on behalf of the CMI, as well as the Chilean Maritime Law Association, and that he had promoted the CMI and the October Colloquium in Buenos Aires.

e) *International Foundation on Law of the Sea*

Mans Jacobsson's report was noted with appreciation.

f) *UNCITRAL*

Sergej Lebedev suggested that the CMI have an observer at the next session of UNCITRAL in New York in June 2010 if transport topics are going to be discussed.

14. *Next meeting of the Executive Council*

It was decided that the next physical meeting of the Executive Council will be at 9:30 AM Sunday, October 24, 2010 at the Marriott Plaza Hotel, Buenos Aires.

15. *Assembly 2010*

The next meeting of the Assembly will be at 2:30 PM on Wednesday, October 27, 2010 at the Marriott Plaza Hotel, Buenos Aires

16. *Other Business*

a) *CMI Nomination for Titulary Membership*

It was unanimously decided to propose at the next Assembly that Henry Li be elected as a Titulary Member.

b) *Possible Partnership with "Portius"*

Following discussion it was agreed that the CMI shall become a "partner organization" in relation to Portius International and the EU Port Law Centre.

17. *Closing remarks of the President*

Termination and concluding remarks by the President were then given with thanks to those who contributed to the meeting. He said that, in his view, the possibility

of having a Third Round of comments in a virtual meeting was useful, as it had been used in this instance with regard to agenda item 11 a) when a draft text had been submitted after the First Round. He also said that he will convene another meeting by email conference, tentatively in the week commencing 21 June 2010, to deal with the financial statements.

Finally, the President thanked Nigel Frawley in Toronto, Pascale Sterckx in Antwerp and Faustina Tan in Singapore for their support and assistance prior to and during this virtual meeting.

KARL-JOHAN GOMBRII
President

NIGEL FRAWLEY
Secretary General

Annex A

The following amendments to the Minutes of the Executive Council meeting held in Rotterdam September 22, 2009 have been made:

10. Work in progress

i. Protocol to the HNS Convention

Mr. Jacobsson reported that there will be a Diplomatic Conference to consider the Protocol in London during the week of 26 April 2010. He said that the CMI

should make any suggestions they have on improving the Protocol or give its support to the existing Protocol to IMO. The President said he would look after this with input from Mr. Jacobsson.

13. International Organisations

b. IMLI, WMU and IUMI

Patrick Griggs, Frank Wiswall and Måns Jacobsson continue to liaise and give lectures at IMLI Malta, and Måns Jacobsson continues to lecture at IMLI. The President liaises with WMU and BIMCO. IUMI had a meeting during the week of 14 September 2009. The Secretary General said that he would approach Dieter Schwampe to see if he would be prepared to share IUMI's report of proceedings with the Executive Council.

e. International Foundation on Law of the Sea – Hamburg

The President said that he had received advice that there is a summer academy in Hamburg on shipping law and law of the sea which is sponsored by this Foundation. Mr. Jacobsson said that he had since the Academy's establishment in 2007 lectured on oil pollution liability and compensation and the HNS Convention, and suggested that we maintain a close link with them. The President asked Mr. Jacobsson if he would kindly develop such a link.

LETTER OF THE PRESIDENT OF THE CMI TO THE PRESIDENTS OF THE NATIONAL MARITIME LAW ASSOCIATIONS ENCLOSING A SECOND QUESTIONNAIRE ON NMLAS

Dear President,

As you will recall, the CMI appointed a Reforms Steering Committee in early 2007 that was responsible for producing a list of recommended changes which included, among other things, reductions in the annual subscriptions of member associations, the elimination of Titulary Member fees, and reduced terms of office (from four to three years) for those on the Executive Council. These reforms and changes (which were formulated after seeking input from member associations and reviewing the responses received to a questionnaire dated 27 March 2007) were submitted to the Assembly for approval at Rotterdam on 23 September 2009, and have now been implemented. The March 2007 questionnaire was designed to assist the CMI in gaining a better understanding of its member associations, improve the dialogue between the CMI and member associations, and ensure that the CMI's work programme was relevant and reflected the wishes and interests of its membership. The CMI is in the process of implementing a broad

consultation process in order to continue this dialogue and solicit input on work projects of interest to its member associations. In furtherance of this effort, the CMI has prepared the attached second questionnaire which seeks information and suggestions from member associations on a number of subjects.

Needless to say, your input and responses to the attached questionnaire are very important and will further improve the ongoing dialogue between the CMI and its member associations. Likewise, receiving timely responses to the questionnaire from as many associations as possible will ensure that the CMI's future work programme is relevant and of interest to member associations.

Accordingly, we would appreciate your replying to this questionnaire by 1 September 2010, so that a preliminary report summarizing the responses received can be submitted to the Assembly at Buenos Aires on 27 October 2010.

Sincerely,

KARL-JOHAN GOMBRII
President, CMI

SECOND QUESTIONNAIRE ON NATIONAL MARITIME LAW ASSOCIATIONS ("NMLAS") MEMBER CONSULTATION

This second questionnaire regarding the relationship between CMI and its constituent National Maritime Law Associations has been developed to further assist the CMI in having a better understanding of all member associations. The following questions arise from the replies to the first questionnaire, which was submitted in 2007, and the reforms that were approved at the Rotterdam Assembly on 23 September 2009. As before, we hope that this will also lead to an improvement in the dialogue between us and that the CMI work product will better reflect the wishes of its membership. It is also designed to identify potential problems that our NMLAs may have with their organization and work product, and how the CMI could provide assistance if it is wanted.

We would appreciate it if you would reply to this questionnaire by 1 September 2010. The results will be considered at the next following Executive Council meeting. A report to all NMLAs will subsequently be issued on the results of the questionnaire. Naturally, any information provided on a confidential basis will not be disclosed.

If you are one of the few NMLAs that did not reply to the first questionnaire, please try to find the time to do it now and reply as well, to this second questionnaire. If you need a copy of the first questionnaire, do not hesitate to contact the CMI Secretariat for this (admini@cmi-imc.org).

1. Name of your association?
2. Having regard to the changes in subscriptions approved at the Assembly Meeting in Rotterdam (see e.g. CMI Newsletter No 03/2009), do you think:
 - (a) Your MLA's grouping is reasonable?
 - (b) If not, in which grouping do you think your MLA should be situated?
 - (c) If you have suggested a different grouping for your MLA please advise the number of members that you have, whether they are individual and/or corporate, what subscription you charge your members and what your annual revenue is. Do you obtain revenue from holding seminars in addition to annual subscriptions? (Any such information will of course be treated confidentially).
 - (d) Do you have any suggestions to make concerning the levels of subscriptions which CMI charges to NMLAs?
3.
 - (a) Do you have a website?
 - (b) What are its coordinates?
 - (c) Does it have links to universities, national legislation or case law, or courts having a maritime focus?
 - (d) If not, would you be prepared to provide such information for inclusion on an upgraded CMI website?
 - (e) On the other hand, would you agree to a link to your website being established on the CMI website?
4.
 - (a) To your knowledge, do your members consult the CMI website?
 - (b) For what purpose do they consult the website? Is it to view:
 - (i) Publications (such as the Yearbook and the Newsletter);
 - (ii) To obtain contact information;
 - (iii) To review working progress materials;
 - (iv) To identify links to other organizations and/or;
 - (v) For other purposes?
 - (c) Is it your understanding that members find the information on the website helpful?
 - (d) The CMI website is being revised. How could the information on the website be made more helpful? What further information do you think needs to be included?
5. What suggestions can you make that would assist the CMI to be more relevant to Young Members and encourage them to be more involved in CMI work?
6.
 - (a) To your knowledge, do your members read CMI publications such as the Yearbook and the Newsletter?
 - (b) Which other CMI publications do they read?
 - (c) If you think that they do not read the Yearbook or the Newsletter, could you explain the reasons for that?
 - (d) Do the Yearbook and the Newsletter contain relevant information to your members' practices or work? If not, what is missing?
 - (e) How could the information contained in such publications be made more accessible to your members?
7.
 - (a) Do your members attend CMI Conferences, Colloquia and Symposia?
 - (b) What makes a good location for such meetings:
 - (i) Price;
 - (ii) Geographical location;
 - (iii) Proximity to clients;
 - (iv) Climate;
 - (v) Ability to take other family members (e.g. in connection with school holidays)?
 - (c) Should CMI attempt to have meetings that coincide with other maritime events?
 - (i) If so, which events?
 - (d) How long do you think Conferences should last? Are you happy with the traditional format of five days (with one day of rest in the middle of the week) for Conferences (arranged every 3-5 years), and three days for Colloquia and Symposia (arranged between Conferences)? Do you believe the format should be changed with respect to duration or otherwise?
 - (e) What would assist your members to send Young Members to Conferences, Colloquia and Symposia?
 - (f) What type of events, meetings, etc. would attract your members' participation?
 - (g) Is there anything more that CMI should be

doing to assist your members earn Continuing Legal Education (CLE) points that some countries' Bar Associations and Law Societies require their members to achieve annually?

8. Bearing in mind the CMI's objective, which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects, and that CMI has at all times to adapt to changing circumstances, what subjects do you recommend to be on our future work agenda and what changes, if any, in our working methods are desirable?
9. Having regard to the replies to the first questionnaire, there is clearly the need for more internet activity. Would you be prepared to provide the email addresses of all your members to the CMI so that a database of all individuals falling under the CMI umbrella can be established in an upgraded CMI website, and used for notices and other mailings?
10. Would you be prepared to submit a regular newsletter to CMI for inclusion in an upgraded CMI website, of your activity and of legislation, case law or developments of a maritime nature in your jurisdiction?
11. Would you be agreeable to receiving CMI Newsletters exclusively by email rather than hard copies? Would you prefer both? How many hard

copies would you like? Kindly ask these questions of your titular members as well.

12. At present, you receive two free hard copies of the CMI Yearbook. Would you like more? If so, would you be prepared to pay approximately 25 Euros each, depending on the number of pages?
13. Your attention is drawn to the list of International Working Groups and International Sub-Committees in the Yearbook, see Yearbook 2009, Athens II, pp 45-46. Does your MLA have similar working parties? If so, please list them. Would you be interested in designating one of your members to act as liaison with the similar CMI International Working Group or International Sub-Committee?
14. Do you have a contact person responsible for liaising with your relevant government departments and, if so, would you be interested in coordinating this dialogue with the CMI?

Of course, we would like you to answer all the foregoing questions, but if you consider that any of them infringe upon your privacy please simply state "No comment" beside that question or put "Confidential" next to your answer to ensure that it will not be disclosed. Your cooperation and willingness to assist us in this survey of the CMI's membership is very much appreciated.

NIGEL H. FRAWLEY
Secretary General, CMI

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

IMO DIPLOMATIC CONFERENCE ADOPTS HNS PROTOCOL ON 30 APRIL 2010

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea was adopted by a diplomatic conference in 1996 but has not yet entered into force. The Convention, modelled on the comparable instruments dealing with oil pollution, is long and complicated, but that has not proved the stumbling block.

As described in our previous reports on this subject¹, a "Focus Group" set up by the International Oil Pollution Compensation Funds (IOPC Funds) identified the principal reasons for the failure of the 1996 HNS Convention to attract the necessary number of ratifications by states for entry into force, and the work of this Focus Group led to the preparation of a draft Protocol to amend the original 1996 Convention text. The draft protocol was refined at the last two meetings of the IMO Legal Committee, and the text, substantially unamended, was adopted by the Plenary Session of the Diplomatic Conference on 30th April 2010.

Consensus was achieved on all outstanding points, thanks in no small measure to the patient chairmanship in the Committee of the Whole of Alfred Popp QC of Canada.

The important changes to the 1996 HNS Convention

The four principal areas of concern identified by the focus group were: contributions by the receivers of packaged HNS goods, contributions to the LNG account, non-submission of contributing cargo reports and the definition of "hazardous and noxious substances".

Packaged HNS goods

Article 1(5) of the HNS Convention contains a broad definition of HNS cargoes including solids, liquids and gases. The final paragraph covers solid HNS cargoes which are subject to the International Maritime Solid Bulk Cargoes Code, as amended, to the extent that such substances are also subject to the IMDG Code²

¹ See the short article *Hazardous and Noxious Substances – Is the End in Sight?* [2009] LMCLQ 289.

² International Maritime Dangerous Goods Code published by the IMO.

when carried in packaged form. In practice this means containerised cargo.

The structure of the HNS Convention, based as it is on the CLC and Fund Conventions applying to oil pollution damage, establishes a two-tier compensation framework, with the shipowners (and their P and I Clubs) paying claims up to the limit of the first tier, and a fund contributed to by cargo interests paying claims in excess of that limit³ in proportion to the quantities of HNS material received in each member state after carriage by sea. This requires all member states to report all relevant cargoes received in their territory above certain thresholds. The administrative burden of reporting HNS cargoes transported in containers in relatively small quantities (but which may cumulatively exceed the relevant threshold) is very considerable indeed. Studies by the major importers of such cargoes have indicated that the burden of collecting this information far exceeds the benefits conferred.

The focus group draft therefore proposed that packaged HNS cargoes should not be reported, and should not be included in the calculations of contributing cargo on the basis of which contributions to the HNS Fund will be levied. Victims of an HNS casualty, even where it is caused by packaged HNS goods, would still be compensated. This is a revolutionary, but practical, proposal. To meet the concern that the receivers of bulk HNS cargoes may be obliged to make greater contributions to the HNS Fund to make up for the lack of contribution from packaged goods, it was agreed by the shipowners' representatives and the International Group of P and I Clubs that the limits of liability for ships carrying packaged HNS cargoes, and thus the shipowners' contribution to the first tier, would be increased.

This was the most significant matter decided by the Diplomatic Conference. Numerous suggestions were put forward for the level of increase, the major flag states arguing, predictably, for no increase at all or for a maximum of 5%, while major cargo importing states argued for an increase of up to 50%. The Chairman conducted discreet discussions in the margins of the conference during the overnight adjournment between the sessions on Monday and Tuesday, and after lunch on Tuesday 27th April he announced that his sense of the meeting was that consensus could be achieved at a level of 15%. One or two of the delegates which had argued for a higher level expressed disappointment, but all delegates present supported the Chairman's recommendation. The IMO spirit of consensus had again showed how effective it is.

LNG Cargoes

The present state of the gas industry today was not foreseeable in 1996. The quantities of gas shipped by sea have increased dramatically in recent years, and the development of gas fields notably in Nigeria,

Indonesia and Qatar has led to the building of a large number of new ships to carry both Liquefied Petroleum Gas ("LPG") and Liquefied Natural Gas ("LNG")⁴.

When the HNS Convention was adopted in 1996, the transport of LNG was almost entirely in the hands of governmental organisations and the major energy companies, due to the enormous capital costs involved. When the HNS Convention was under consideration at the 1996 diplomatic conference, the delegates were informed by the representatives of the gas industry that it would be simpler for the contributions to the HNS fund to be made by the "title holder" of the cargo immediately prior to discharge, and an appropriate wording was adopted in article 19 (1)(b) of the 1996 text.

However further study has revealed that this arrangement would give rise to considerable difficulty, particularly when the title holder in question is resident in a state which is not a party to the convention.

The Focus Group encountered very considerable difficulty in finding a solution to this problem despite the good intentions of all concerned. The differences between the positions adopted by various states were of a political, economic and policy nature, and not just a matter of drafting. At the June 2008 meeting of the IOPC Funds it was agreed that the Malaysian delegation would coordinate an informal correspondence group during the summer to attempt to resolve the problem. This led to the wording set out in Article 11 of the Protocol, which amends Article 19 of the 1996 HNS Convention. This provides that the duty to report receipts of LNG, and to make contributions to the HNS Fund, should lie with the physical receiver, but that the Convention (as amended by the Protocol) should allow the parties to an LNG contract the flexibility to determine by agreement the person liable to make contributions to the LNG fund, provided that the receiver has informed its government that such an agreement exists.

If a title-holder liable under such an agreement fails to make payment of any contribution due from them, the receiver of the cargo in question will be liable to pay the outstanding contribution.⁵

This amendment raised significant difficulties, but the compromise wording developed by the delegation of Malaysia and its correspondence group was worked out with the close cooperation of the gas exporting and importing industries as well as the governments concerned, and this led to its unanimous acceptance by the diplomatic conference.

Non-submission of Contributing Cargo Reports

The functioning of the HNS Fund, like the IOPC Fund, requires the reporting by member states of the quantities of the relevant cargo received in their ports and terminals during the preceding year, in order to

³ Up to a maximum of 250 million SDR.

⁴ LPG is principally propane and butane, and LNG principally methane.

⁵ The draft of this Article prepared by the correspondence group uses the words "remaining contribution", and this led to a debate in the Drafting Committee. The English-speaking delegates suggested that "outstanding" or "unpaid" was more appropriate, but such was the delicacy of the negotiations in the correspondence group over this article that the Drafting Committee decided not to interfere.

apportion the burden of the financial contributions to the fund. The IOPC Funds have a proud record of collection of such contributions, which has enabled it to make prompt payments to the victims of oil pollution incidents.

However it has encountered persistent problems with a small number of member states in collecting the statistical data of the tonnages of relevant cargoes received in those states.

Concern has been expressed at meetings of the IOPC Funds' governing bodies at the failure of the IOPC Fund system to solve this problem⁶, and when the Supplementary Fund Protocol was adopted in 2003 a provision was included⁷ which obliges that Fund to withhold payment of compensation for pollution damage in a state party which has not complied with its reporting obligations.

The 1996 HNS Convention contains no such provision, but it was the view of many governments that a provision to this effect should be included in the Protocol. An eloquent demonstration of the need for such a provision is the fact, confirmed by the Director of Legal Affairs of the IMO⁸, that of the 13 states which have deposited instruments of ratification of the 1996 HNS Convention, only 2 have submitted data on the relevant quantities of contributing cargo as required by Article 43. Article 46 of the HNS Convention provides that the Convention will enter into force 18 months after consents to be bound have been expressed by at least 12 states, including four states each with at least 2 million units of gross tonnage, and instruments of ratification have been deposited (with the IMO) accompanied by particulars of the quantities of contributing cargo to show that the total has reached the required 40 million tonnes of contributing cargo other than oil, LNG and LPG. Without the relevant information it is simply impossible for the ratifying states, or for the IMO, to establish whether or not the required tonnage level of contributing cargo has been reached.

At previous meetings of the IMO Legal Committee, certain states had expressed reluctance to accept such a provision, but at the diplomatic conference the provision of the protocol adding such a provision to the amended HNS Convention was adopted unopposed. A Resolution was also adopted which urges the IMO and member states to provide technical assistance to states requiring support when considering whether they should ratify the Protocol and the amended HNS Convention.

Definition of HNS

Mention has already been made of the definition of

HNS cargoes carried in packaged form in Article 3.1.5(a)(vii). This refers to the 1996 IMDG Code without the words "as amended". A proposal was put forward to the Committee of the Whole by a group of states led by the Bahamas to adopt an amended wording which would refer to the current version of the IMDG Code rather than to the one in force 14 years ago. The arguments against referring to an instrument which is 14 years old are self-evident, but these arguments were reinforced by an observation that no-one had been able to locate a copy of the IMDG Code in force in 1996⁹. The reasons for including a reference to the 1996 IMDG Code were essentially political¹⁰, but it was accepted by all delegations at the Diplomatic Conference that the categories of packaged cargo to which the HNS Convention will apply should not be extended. The Bahamas proposal was not adopted by the Conference.

Members of the IMO staff present during the Conference were able to assure delegates that they did indeed have a copy of the 1996 IMDG Code, and it was agreed that the IMO Secretariat and/or the Secretariat of the HNS Fund will ensure that there is a copy of this document accessible on their websites.

Some concern was expressed that it will not be possible to add new hazardous and noxious substances carried in packaged form to the list in the 1996 IMDG Code, substances such as direct reduced iron (c) whose dangerous qualities have become known since 1996¹¹. The definition in the HNS Convention, as amended by the Protocol, cannot be changed.

Tacit acceptance procedure

The 1996 text contains in Article 48 provisions for the amendment of the limits of liability of the ship owner and the HNS Fund by a simplified procedure which is also to be found in the 1992 Conventions and the 2003 Protocol on Compensation for Oil Pollution Damage. That procedure has already been invoked to increase the limits in the 1992 CLC and Fund Conventions. This is known as the "Tacit Acceptance Procedure"¹². However certain states have argued that, valuable as the tacit acceptance procedure is, the time limits and limitations on the amount and frequency at which those convention limits can be amended make the procedure too slow to ensure that the conventions are brought quickly up to date. The 2003 Supplementary Fund Protocol contains an amended wording compared with its predecessors, with shorter time intervals, and a smaller number of states who can initiate the amendment procedure.

A proposal was made at the HNS Protocol Diplomatic Conference that the number of states required to

⁶ See the papers submitted by the Audit Body to the October 2007 and March 2008 IOPCF meetings.

⁷ Article 15.

⁸ The depositary of ratifications of the HNS Convention.

⁹ The Institute of Maritime Law of the University of Southampton has a copy of the 1997 version.

¹⁰ The purpose of this paragraph was to ensure that certain bulk cargoes which can be hazardous in certain limited circumstances, notably coal, fishmeal and woodchips, should not be included in the definition of Hazardous and Noxious Substances to which the HNS Convention will apply. Although those cargoes are not without hazards, it was accepted by the 1996 Diplomatic Conference that the very large tonnages of those materials carried by sea would unjustifiably distort the fair sharing of the burden of contributions to the HNS Fund in the light of the low risk of damage associated with them.

¹¹ The Marshall Is. flag vessel "Ythan" sank in 2004 after an explosion while laden with this cargo.

¹² It is often referred to as the "tacit amendment procedure".

initiate the tacit acceptance procedure and the shorter intervals specified in the Supplementary Fund Protocol should also be adopted in the HNS Protocol. A significant number of states, including all the members of the EU together with Canada, Australia and New Zealand, argued in favour of this, but at the end of a lively debate the Chairman concluded that there was not a sufficient consensus to adopt this proposal.

Entry into force of the HNS Protocol and the 2010 HNS Convention

Article 18 of the HNS Protocol provides that the (1996) Convention and the 2010 Protocol shall, as between the parties to the Protocol, be read and interpreted as one single instrument. It goes on to state that Articles 1 to 44 of the Convention as amended by the Protocol and the Annexes thereto, together with the final clauses in articles 20 to 29 of the Protocol shall *mutatis mutandis* constitute and be called the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (the 2010 HNS Convention).

States ratifying the Protocol will therefore, after the requirements for its entry into force have been satisfied¹³, automatically become parties to the 2010

HNS Convention. Those requirements are aligned with Article 46 of the 1996 Convention text. Article 20, paragraph 8 of the Protocol provides that a state which has consented to be bound by the 1996 Convention shall be deemed to have withdrawn its consent on the date on which it signed or deposited an instrument of ratification, acceptance approval or accession to the Protocol. This should, it is hoped, avoid a situation which has been encountered with a small number of states who have become parties to the 1992 IOPC Fund Convention without having denounced the 1969 CLC and 1971 Fund Convention.

It is inevitable that many governments will pause for reflection before ratifying this long and complicated International Instrument. However it is devoutly to be hoped that the efforts by many distinguished international law specialists to modify the original 1996 text, intended to meet the concerns of governments and industry alike, will result in early ratification by a sufficient number of states (with the appropriate tonnage of ships and receipts of the set quantity of HNS cargo) for the 2010 HNS Convention to enter into force. Only then will the victims of a major HNS incident be sure of prompt and adequate compensation for the damage suffered by them.

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¹³ In accordance with Article 21.

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