

COMITE MARITIME INTERNATIONAL

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

Participating:

President:	Karl-Johan Gombrii
Past-President:	Jean-Serge Rohart
Vice-President:	Stuart Hetherington Johanne Gauthier
Councillors:	Giorgio Berlingieri Christopher Davis José Tomas Guzman Mans Jacobsson Sergej Lebedev Henry Li Louis Mbanefo Andrew Taylor
Publication Officer:	Francesco Berlingieri
Secretary General:	Nigel Frawley
Administrator:	Wim Fransen
Treasurer:	Benoît 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 Lejnieks, 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-ROMS

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