



COMITE MARITIME INTERNATIONAL

**Minutes of the Executive Council Meeting
held on 29 September 2013 at 9.30am
at the Shelbourne Hotel, George Moore Suite, Dublin**

Participating: **President;**

Stuart Hetherington

Vice-Presidents:

Johanne Gauthier

Giorgio Berlingieri

Councillors:

Christopher Davis

Mans Jacobsson

Dihuang Song

Louis Mbanefo

Jorge Radovich

Andrew Taylor

Tomotaka Fujita

Secretary-General:

Nigel Frawley

Administrator:

Wim Fransen

Treasurer:

Benoit Goemans

Past President:

Karl Gombrii

1. Apologies: Sergej Lebedev

The President noted that Sergej Lebedev was retiring from the Executive Council and thanked him for his contribution over the last six years. The President also noted that Johanne Gauthier and Wim Fransen were attending their last Executive Council Meetings and thanked them both for their substantial contribution to the CMI. The Executive Council noted their appreciation with a round of applause.

2. Approval of Minutes of Executive Council meeting held by email during week commencing 27 May 2013.

These Minutes were approved.

Matters arising from Minutes

There were no matters arising, other than matters to be dealt with in this Agenda.

3. (a) Financial report for submission to the Assembly

The Treasurer's financial report was tabled and was approved for submission to the Assembly Meeting. It identified net revenues of EUR 116,248, expenditures of EUR 278,401 and reserves of EUR 613,518.

(b) Budget for 2014

The proposed budget provided for a modest shortfall and an early bird discount of 2.5%. There was considerable discussion as to whether the budget should seek to break even or even make a profit but it was ultimately concluded that a modest shortfall would be acceptable. This was also discussed, in the light of the views expressed that the early bird discount should be greater than 2.5%. It was agreed that the early bird discount to be proposed to the Assembly should be 5% based on the 2009 Rotterdam schedule of subscriptions.

(c) Audit Committee Report

There was considerable discussion concerning this report and in particular the comments made by the external auditor to the Chairman of the Audit Committee concerning the accounting for the Beijing Meeting and the absence of some of the documentation of expenses not being available to the external auditor. The concerns were related to process. They could have been obtained and produced had they been requested. It was noted that it has not been suggested that any expenses had not been incurred. The Treasurer and Secretary-General both commented at length on these matters. The Treasurer, in particular, advised that he had spoken to the external auditor and the auditor had not made any criticism in relation to the expenses of the Beijing Conference nor had he sought any further invoices in support of the expenses for the Beijing Conference. The Secretary-General referred to the fact that he had travelled from Shanghai back to Beijing at the conclusion of the Conference and been through all the accounts with the Conference organisers and was satisfied that everything was accounted for. It was also noted that the Conference had run at a loss, but the loss had been made good by the big five shipping companies in China, for which the CMI was extremely grateful. There was agreement that to preclude any such criticisms in the future Conference organisers would be asked to produce a set of accounts with supporting documentation within a short period of time of the end of each Conference, Symposium or Colloquium, for submission to the Treasurer.

(d) **Charitable Trust**

The report of the Charitable Trust was tabled and it was noted that the responsibility for payment of all printing and publishing costs, including secretarial had been restored to the CMI. It was also noted that the CMI has not had to seek support for the expenses of speakers at CMI Conferences, Symposiums and Colloquiums from the Charitable Trust for a number of years. It was also noted that the CMI had agreed to support the winner of the IMLI prize by waiving registration costs at the Symposium in Dublin. The report was noted, but further information was sought concerning the income and expenditure of the Charitable Trust. (This was subsequently provided together with the papers for the Assembly and the figures are noted in the Minutes of the Assembly meeting). The Treasurer is to enquire about capitalization of the Trust's excess income.

4. **Collection of Financial Contributions**

Christopher Davis reported that there seems no prospect of Costa Rica and Guatemala making good the arrears of their subscriptions and proposed that the Executive Council refer these members to the Assembly for the commencement of expulsion proceedings. It was agreed to propose to the Assembly that steps for expulsion should be taken in respect of those two NMLAs. In so far as Venezuela, Dominican Republic and Spain are concerned it was reported that arrangements are being made for payments to be made and both the Treasurer and Christopher Davis are confident that those Associations will take steps to remedy their default. There are also continuing discussions taking place with Russia. It was also noted that no response had been received from the Moroccan or Tunisian MLAs to the President's letter advising them of their defaults and the motion for expulsion would be presented at the Assembly.

5. **Chairman of the Nominating Committee**

The President reported that Bent Nielsen had asked to be replaced as Chairman of the Nominating Committee. The President advised that pursuant to Article 15(a) of the Constitution the Chairman of the Nominating Committee is elected by the Executive Council. [Johanne Gauthier left the meeting]. The President proposed that the Executive Council appoint Johanne Gauthier as Chairperson of the Nominating Committee. This was unanimously approved by the Executive Council.

6. **Executive Council elections at Assembly Meeting: Report of the Nominating Committee**

The Secretary-General advised that he had notified the President a few weeks ago that he would like to retire from his position as Secretary-General as he had reached an age where he said it was time for a younger person to take over. The President reported that with the assistance of Karl Gombrii an approach had been made to John Hare to ascertain whether he would be prepared to take on the role of Secretary-General. John Hare had advised that he would accept the position if appointed to that role. The President advised that he would be inviting the Executive Council to consider making John Hare, pursuant to Article 18(g) of the Constitution, the interim Secretary-General, after the Assembly meeting, until the position was formalised at the next Assembly meeting in Hamburg.

7. **Dublin Symposium**

The Secretary-General advised that there were about 250 registrants for the Dublin Symposium, which was a good figure and all the arrangements appear to have been made satisfactorily. He commended the Irish MLA for the efficiency with which they had organised the meeting.

Future Meetings

(a) 2014 Conference in Germany

At the invitation of the President Dieter Schwampe, John Hare and Lawrence Teh joined the meeting for a PowerPoint presentation by Dieter Schwampe identifying a proposed location for the Conference, the Elysee Hotel, the proposed locations for the seminars, the availability of accommodation and also proposed locations for social functions and visits. The presentation was warmly received by the Executive Council and Dieter Schwampe was thanked for the efficiency with which the Conference is already being organised. Some work/lecture should be arranged for the Berlin add-on.

(b) 2015 Colloquium in Istanbul.

The President reported that the Turkish MLA had offered to host a Colloquium in 2015 and would be making a proposal to that effect at the Assembly meeting. The Executive Council supported this proposal.

(c) The 2016 Conference in New York

The President tabled a report of correspondence entered into and discussions that had been taking place with the organising committee of the MLA US. The fees to be charged by the proposed conference organisers were extremely high and the MLA US organising committee had not expressed much confidence in many members of its association, who would be attending the Spring Meeting, registering for the CMI Conference. In these circumstances a meeting had been organised to take place on the morning of 1 October in Dublin with those members of the MLA US organising committee that were present, including Bob Parrish, the President of the MLA US and Bob Clyne, one of the Vice-Presidents of the MLA US and Vince Foley as well as former President Pat Bonner. These distinguished gentlemen had all expressed much enthusiasm for hosting the Conference in New York. A further report will be given to the Executive Council at its meeting immediately following the Assembly.

8.

CMI Membership

(a) Expulsion

(i) & (ii) Morocco and Tunisia - the President reported that no response had been received to his correspondence to the Moroccan or Tunisian MLAs and accordingly the expulsion process would proceed in the Assembly on 1 October.

(b) Potential new members

The President tabled a report identifying potential new members of the CMI which included Poland and India (see below), but also Egypt, Malaysia, United Arab Emirates, Africa, including Cameroon, Senegal and East African countries, Taiwan, Thailand, Latvia, Honduras and Romania. Louis Mbanefo reported on the East African situation, to the effect that there has not been recent contact from those with whom he has communicated in relation to this project in the past. He also reported that there had been recent contact with Senegal and that this potential association is a work in progress.

Poland

The President tabled an application from the recently re-formed Polish Maritime Law Association to be admitted to membership with the CMI. The President reported that over the last couple of years Karl Gombrii and he had had ongoing discussions with Pawel Mickiewicz in relation to the formation of a new MLA. It did seem from the materials that had been provided that this was a genuinely new association and if the Executive Council was agreeable, Poland should be admitted as a new member of the CMI. The Executive Council so agreed and the application would be dealt with at the Assembly Meeting. Pawel Mickiewicz is present in Dublin for the Symposium.

The application, if accepted by the Assembly, will be based on the lowest level of annual subscription for the first two years and will be reviewed by the Executive Council at the end of that time.

India

The President tabled a comprehensive document received from the new Maritime Law Association that had been formed in India and which is based in Mumbai. The formation of this Association has taken many years to come to fruition. Tom Birch Reynardson has taken on a significant role in assisting in that process. As will be seen from the application, the membership is spread throughout India, although centred in Mumbai, which is regarded generally as the most significant maritime legal community in the country. As has been reported to the Executive Council over the last couple of years another Maritime Law Association has been formed based in Cochin, which does not have a broadly based membership. The Executive Council agreed that the application by the Mumbai based association for membership of the CMI should be supported and placed before the Assembly. VJ Mathew who is on the board of the new association is present in Dublin for the Symposium.

The application, if accepted by the Assembly, will be based on the lowest level of annual subscription for the first two years and will be reviewed by the Executive Council at the end of that time.

The Executive Council also expressed concern that the name of the Indian MLA is virtually identical to the CMI and as a condition of membership it should be asked to change its name.

(c) Provisional membership

The President tabled a request from Dan Malika Gunasekera of Sri Lanka to be granted Provisional membership status to enable him to form an MLA in Sri Lanka. After due consideration the Executive Council agreed to propose Dan Malika Gunasekera for Provisional membership at the Assembly meeting. Dan Gunasekera is present in Dublin for the Symposium.

(d) Titulary membership

It was noted that some applications had been made quite recently and the President was asked to notify Presidents of MLAs to submit their nominations well before Assembly meetings. All applications which had been submitted were approved by the Executive Council for submission to the Assembly.

International Working Groups

- (a) Recognition of Foreign Judicial Sales of Ships - it was noted that the International Sub-Committee meeting had been taking place the previous day and concurrently with the Executive Council meeting in Dublin and a report will be given to the Assembly meeting of developments.
- (b) Review of the Rules on General Average. It was noted that an International Sub-Committee meeting had been taking place on the previous day and concurrently with the Executive Council meeting in Dublin. The President reported that Bent Neilsen had advised him on Saturday night that he was pleased with the way matters had progressed during that day and there seemed to be willingness to compromise on the contentious issues.
- (c) Cross-border insolvency. Christopher Davis reported that there will be discussions on this topic during the course of the Symposium and a report provided to the Assembly.
- (d) Arctic/Antarctic Legal Regimes - the Secretary-General reported on developments in relation to this topic and in particular that David Baker of the International Group of P&I Clubs will join this working group. It is likely that this could be a topic to be discussed in Germany next year with representatives from Scandinavia and an Italian naval architect, possibly, on the panel. It was also noted that Lars Rosenberg Overby of Denmark who has a special interest in the offshore industry in the Arctic had joined the IWG.
- (e) Marine insurance - it was noted that this topic was also going to be discussed during the course of the Symposium and a report which had been prepared for the Assembly meeting was noted. It was advised that there was to be a new member of the IWG, Prof. Adv Pierangelo Celle of Italy to replace Jose Thomas Guzman who had indicated that he wished to step down from this working group.
- (f) Offshore Activities - Pollution Liability and related issues - Jorge Radovich noted that this topic would be discussed at the Symposium and a report had been prepared for the Assembly by Patrick Griggs who had kindly agreed to chair this working group due to the serious illness of Richard Shaw. The President asked the Minutes to record the good wishes of the Executive Council and everyone connected with the CMI for Richard Shaw and his family at this difficult time. Further new members of this working group are Rosalie Balkin, Professor Rosaeg, Robert Dorey, Lorenzo Schiano Di Pepe of Italy and Clifton Hall of the US. Jorge Radovich confirmed that the IWG is trying to get the industry involved but this is proving difficult.
- (g) Rotterdam Rules - Tomotaka Fujita reported that there had been a further recent signing of the Rotterdam Rules but still only two ratifications. He referred to the UNCITRAL meeting in Vienna on proposed model laws concerning electronic transferrable records in December 2013 and that the work in that regard needed to be monitored to ensure there were no inconsistencies with the Rotterdam Rules. He and Alexander von Ziegler would liaise as to who should attend on behalf of CMI/IWG. The President reported that recent communications from Michael Coffee at the US State Department had indicated that they were close to finalising the transmittal package and that thereafter it would be forwarded by the Secretary of State to the President for his approval and for forwarding to the Senate.

- (h) Fair Treatment of Seafarers - Giorgio Berlingieri reported that Olivia Murray would be reporting on this topic at the Symposium and had prepared a report for the Assembly meeting. She sought approval to work together with Seafarers' Rights International (SRI), in order to send a questionnaire to governments and MLAs with an overall objective of promoting generally the subject of fair treatment of seafarers in the event of a maritime accident. The Executive Council agreed to this suggestion.
- (i) Acts of Piracy and Maritime Violence - Andrew Taylor reported that whilst there seems to be a lessening of reported incidents in Somalia there is an increase in Western Africa.

10.

Standing Committees:

- (a) Promoting Ratification of Maritime Conventions - Louis Mbanefo reported that this topic will be discussed during the Symposium and that some responses to the President's letter have been received from MLAs but more are needed. He referred to the questionnaire that Francesco Berlingieri had prepared some time ago on this topic and that the next phase of the work of this Working Group will endeavour to take that aspect of the project further; as he said: after ratification it is necessary to have Conventions implemented uniformly by States. NMLAs should be asked to respond to the President's letter and urged to liaise with their governments. Once more responses are received a consolidated report will need to be prepared.
- (b) Jurisprudence on Maritime Conventions - the President tabled the service agreement that had been entered into with Audile Plegat and referred to the fact that she was going to be attending the Symposium in Dublin. He urged all Executive Councillors to introduce themselves to her and seek to provide a point of contact for her with their particular Association. NMLAs are to be urged to assist her in the work. The Treasurer will monitor the work. She should be encouraged to set up a network which can continue the work at the conclusion of her six months.
- (c) Young CMI - the President tabled an email with a report of Taco van der Valk, which was noted and he congratulated Taco van der Valk on all the work he has been doing to promote the interests of young CMI and in particular the LinkedIn group which he has set up and which has 440 members. It was noted that the CMI had supported the attendance of the winner of the Ravenna Summer School at the Dublin Symposium by waiving registration costs and contributing €750 towards the winner's hotel costs and travel. (The same contribution as was made for the IMLI prize - see under Charitable Trust 3(d) above).
- (d) Constitution Committee - Benoit Goemans reported that consideration is being given to restructuring or changing the format of the Constitution and work is being done in that regard. It is hoped that the report will be available prior to the first Executive Council meeting in 2014.
- (e) York Antwerp Rules 2004 (rate of interest) - the report which is to be presented to the Assembly was tabled.

11.

Future work of CMI

The Secretary-General tabled a report on the following topics:

(a) **Review of UNCLOS deficiencies**

The Secretary-General suggested that it may be useful for the Arctic/Antarctic IWG to have a look at Article 234 and pointed out that it would not be usual for the CMI to review a public law convention. Rosalie Balkin will be asked to advise who would be the appropriate UN agency to consult over this convention.

(b) **Review of LLMC deficiencies**

After discussion the President was requested to circulate Helen Noble's report in relation to the outstanding issues identified by the IWG and ISC chaired by Gregory Timagenis for further consideration by the Executive Council.

(c) **Uniformity of Admiralty Rules of Procedure**

This was a suggestion made by the President many years ago in light of the variety of rules of procedure in various national laws dealing with arrest, judicial sales and limitation of liability. There may be scope for work to be done in this area, particularly in relation to model rules which might be capable of adoption by those countries that do not have a refined set of rules in place at the present time. This might conveniently follow on from the Judicial Sales topic.

(d) **Competition laws applicable to maritime law**

There was no support for work to be done on this topic, as the EU has already investigated P&I Clubs and Liner Conferences.

(e) **Choice of law rules as applicable to maritime issues**

This subject was raised by Tomotaka Fujita when he pointed out that conventions often refer to national law without specifying how to identify the applicable law. Therefore it is important to know which laws govern such issues. He considers that it is worth considering to investigate the choice of law on maritime issues around the world, and, if necessary CMI can explore a harmonization or unification of choice of law rules. It was pointed out that this is essentially a matter of conflicts of laws and Professor Tetley has produced a substantial work on this topic. Tomotaka Fujita is to prepare a paper identifying the outcomes he would like to achieve.

(f) **Modern ways of doing business**

The Secretary-General pointed out that there are several areas that could be reviewed. One of them could be the clauses in the Rotterdam Rules dealing with electronic way bills. Tomotaka Fujita's report on the Rotterdam Rules has advised that the UNCITRAL Working Group IV has commenced a study on e-commerce and they are investigating the desirability of a model law on the subject. The IWG is to monitor their progress. The suggestion was made that perhaps Johanne Gauthier could provide some insight into the e-commerce issues that could be pursued by the CMI.

(g) **Collision regulations**

The Secretary-General will ask ICS for details of any work already done on this topic. In Hyeon Kim of South Korea is to be asked to prepare a paper setting out his concerns and possible outcomes from such work in relation to fishing vessels. The Secretary-General queried whether

consideration might be given to issues concerning navigating in ice covered waters in convoys, which, as he pointed out, increases the risk of collision in the polar regions. It was suggested that this topic should be brought within the Arctic/Antarctic IWG.

(h) **Charterers' debts**

This is a subject, as the Secretary-General has advised, that Kiran Khosla, the legal adviser to the ICS, has invited the CMI to consider as there is an increasing number of claims being made against shipowners for charterers' debts through the exercise of liens and arrests. There is a lack of uniformity worldwide in dealing with such claims and it is suggested that this could be remedied by a wider range of ratifications of the 1998 Maritime Liens & Mortgages Convention and the 1998 Arrest Convention. It seems that "floating jurisdiction clauses" are being used to overcome certain unpopular choice of law rules. The Secretary-General suggested that it might be a useful work project for the Executive Council to consider. It was decided to ask Kiran Khosla to prepare a paper identifying her concerns and the possible outcomes she has in mind. Andrew Taylor suggested that charterers' liens for unpaid freight be added to the work project if it proceeds.

(i) **Crimes at sea**

The Secretary-General pointed out that the IMO Legal Committee has recently put this subject on their work agenda. The IMO has recently published rules relating to the investigation of crimes at sea, presentation of evidence and other forensic techniques for ships at sea. The President reported that Kate Lewins who is present at the Symposium (a Professor of maritime law in Western Australia), has written extensively on this subject. It was suggested that Olivia Murray's IWG might be interested in pursuing this topic. The President will raise this with Olivia Murray and Kate Lewins.

(j) **Role for CMI as a source for explanation concerning conventions**

Dihuang Song will liaise with Louis Mbanefo whether CMI could develop explanatory documentation in respect of maritime conventions which could be of assistance to developing countries with their maritime laws or implementing conventions into their domestic law. He would also investigate the work done by the IBA concerning rules of evidence in maritime law.

(k) **Arrest of Passenger Ships**

Dihuang Song raised this as a topic which could be investigated. It was suggested that he prepare a paper on the issues that have arisen and how they might be resolved, bearing in mind questions of wrongful arrest and counter security, which may not be uniform throughout the world. (There may be an overlap with Admiralty Rules Procedure (see item 12(c) above).

(l) **Limitation Convention: Classification Societies**

This is a topic that it might be expected that the new Consultative Member IACS might ask the CMI to investigate. A decision should be deferred until that occurs.

12. **Regional Office**

The President tabled correspondence received from Nicholas Sansom confirming the registration of the regional office in Singapore and advised that if Lawrence Teh is appointed Administrator the two roles are likely to merge and he will be responsible for seeking to develop the formation of maritime law associations in the region. Lawrence Teh, Benoit Goemans and the President will liaise on the secretarial needs of the CMI and engagement of secretarial assistance in Belgium and/or Singapore.

13. **Publications and website (including LinkedIn)**

Giorgio Berlingieri confirmed that the Yearbook and News Letter were available in Dublin and urged NMLAs to take extra copies back to their countries in order to save CMI considerable postage costs.

14. **Liaison with IMO/ICS/ICC/IOPC Funds**

The President reported that there has been substantial contact with the IMO and the ICS in relation to the promotion of maritime conventions as well as other matters, such as the celebration of the 100th meeting of the IMO Legal Committee. In relation to the ICC reference will be made to the topic of arbitration later in this meeting. In so far as the IOPC Funds are concerned, it was reported that no replacement has as yet been identified for Colin de la Rue as our contact with the IOPC Funds, although Polly Davies (Ince & Co) had attended the last meeting and produced a report for the CMI Newsletter. The view was expressed that it may be necessary for a more senior person to be appointed for that role and Andrew Taylor undertook to give consideration as to who should fill that position.

15. **Future of CMI**

The President reported that Liz Burrell had not provided any report as to whether her ad hoc committee had met and whether any progress had been made in relation to this work. Johanne Gauthier volunteered to join this committee and will liaise with Liz Burrell.

16. **IMO Prize**

The President reported that ongoing investigations are still being made in relation to this.

17. **D&O Insurance**

The Treasurer tabled a copy of the policy wording recently obtained by the Treasurer from AIG dated 26 September 2013 which provides an aggregate limit of liability of €1M at a cost of total annual premium of €1,584.13. The President and Andrew Taylor will arrange for it to be reviewed.

18. **Arbitration: CMI and ICC**

The President tabled his report on this topic which annexed a request from the ICC to renew the mandate of CMI persons named as potential arbitrators to the

joint venture between the ICC and the CMI which had commenced in 1978 and been the subject of a working party that had prepared a report in 1999, which had queried whether this venture should continue.

Patrick Griggs, Jean-Serge Rohart and Ron Salter (a former member of the Executive Council and one of the nominated potential arbitrators) have all agreed that this is a pointless exercise and the CMI should abandon it.

The decision was made that the CMI should notify the ICC that it no longer wished to continue this arrangement and it should be disbanded. The President was authorised to notify Luc Grellet that he should convey this decision to the ICC but that he might also wish to form an ad hoc committee to investigate whether there is any role for the CMI to play in relation to arbitration, particularly bearing in mind the CMI's raison d'etre of seeking to bring uniformity to maritime law. Possible members of the ad hoc committee, who were identified, included: Vincent de Orchis and Leo Kailos of the US MLA and Mario Riccomagno of Italy.

19. **UNIDROIT: Cape Town Convention**

The President tabled correspondence which he had entered into with the President of UNIDROIT and the response he had received from the Secretary-General Jose A. Estrella-Faria. The President also referred to the fact that he had communicated with Luc Grellet in relation to the colleague of his at Reed Smith, who is counsel in the Paris office, Andrew Tetley, who has written on this subject. (During the course of the Symposium in Dublin, Kerim Atamer of the Turkish MLA had mentioned that he and Frank Nolan both have an interest in this topic). A decision as to whether to appoint an International Working group will be deferred until a further communication is received from UNIDROIT.

20. **Request for Sponsorship for translation of Travaux Préparatoires of Carriage of Goods by Inland Waterways Commission**

A request that had been received from Frank Smeele to assist in the finance of this project was discussed but rejected. The President is to notify Frank Smeele.

21. **Future Assembly and Executive Council Meetings**

It was noted that the next Assembly meeting in 2014 will be on 17 June 2014 in Hamburg and the Executive Council meeting will be held on Sunday, 15 June 2014.

22. **Other Business**

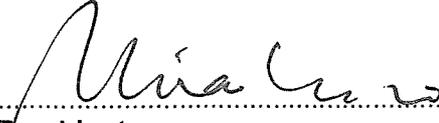
(a) **Relations with the European Union**

The President queried whether the appointment of a member of the Executive Council (or some other person) to be the principal liaison person with the European Union should be revived. Wim Fransen pointed out that it had not been a success in the past and some had felt that it was unnecessary, but it may be worthy of fresh consideration. The President recalled that Jean-Serge Rohart was not generally in favour of it in the past and undertook to ascertain whether that was correct and to seek his views.

(b) The Executive Council members should review the list of members of the IWGs and ISCs in the latest Year Book and advise Giorgio Berlingieri

and the President of any additions or deletions.

The meeting was concluded at 4.30pm.


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President


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Secretary-General