



# COMITE MARITIME INTERNATIONAL

## Minutes of the Executive Council Meeting

Held by email during the week commencing 27 May 2013

and chaired by the President from his office in Sydney

### Participating

#### President;

Stuart Hetherington

#### Vice-Presidents:

Johanne Gauthier

Giorgio Berlingieri

#### Councillors:

Christopher Davis

Mans Jacobsson

Dihuang Song

Louis Mbanefo

Jorge Radovich

Andrew Taylor

Sergei Lebedev

Tomotaka Fujita

#### Secretary-General:

Nigel Frawley

#### Administrator:

Wim Fransen

#### Treasurer:

Benoit Goemans

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[www.comitemaritime.org](http://www.comitemaritime.org)

### **Past President:**

Karl Gombrii

### **Opening Remarks by the President**

1. In his opening remarks the President referred to the recently held Management Committee Meeting held in New York at the time of the MLAUS Spring meeting and attended by himself, Johanne Gauthier, Giorgio Berlingieri and Nigel Frawley

### **Executive Council Meeting Minutes**

2. The minutes of the two Executive Council meetings held in Beijing on 14 and 19 October 2012 which had been circulated were approved with one amendment being required, the inclusion of Tomotaka Fujita's name in the list of participants for the 19 October meeting.

### **Management Committee**

3. The minutes of the Management Committee meeting in New York were noted.

### **Accounts**

4. The draft profit and loss statement, which showed income of Euro 143,713 and expenditures of Euro 273,308, leading to a loss of Euro 129,596, (as against a budgeted loss of Euro 118,593 - related to greater anticipated costs, publications and speakers expenses for the Beijing Conference) was noted.

CMI investments as at 8 April 2013 stood at 611,393.25, (down from Euro 621,292.11 at 31 December 2012), the total return in 2012 was Euro 22,093.30. the funds are currently invested and returning the following:

Euro 63,911.46 - BNP Paribas Fortis 1.75%

Euro 278,665 - Bank J Van Breda & Co - a range of .50% - 3%

Euro 100,000 - Generali 2.10%

Euro 100,000 BNP (Fortis Bank) 4.0%

Euro 25,000 - Delhaize 4.25%

Euro 53,715.04 - Rabobank

It was noted that the audited accounts would be examined in detail by the Audit Committee and its recommendations be circulated as soon as possible to the Executive Council for approval (or otherwise) of the Accounts, Budgets, Charitable Trust report and outstanding Subscriptions report so that the final approved documents are ready in time to be submitted to the Executive Council meeting and Assembly in Dublin.

## **Beijing Conference Report**

5. The report of the Secretary-General on the financial aspects of the Beijing Conference and Shanghai Add-on, October 14-22 2012 was circulated and approved with the thanks of the Executive Council. The contribution of the founding members of the China MLA was noted also with thanks for their support of a very successful conference. The report noted that there had been 352 delegates and 60 accompanying persons. At Shanghai there were 104 delegates and 34 accompanying persons. Thanks to the contributions by Cosco, Sinotrans, China Shipping Group, CCPIT and PICC, the Conference broke even.

## **Unpaid Contributions**

6. An updated report on unpaid contributions is to be prepared by the Treasurer as soon as possible so that it can be circulated to the Executive Council for comment and then submitted to the Executive Council and Assembly Meeting in Dublin.

## **Executive Council Elections**

7. The Hon Johanne Gauthier advised of her decision to stand down as Vice-President in Dublin. Her decision was regretted by the Executive Council and her contribution over many years to the Executive Council was recognised.

It was also noted that Wim Fransen will be stepping down as Administrator in Dublin and his contribution to the Executive Council over many years to the Executive Council was recognised, and noted with thanks.

The Executive Council agreed to nominate Lawrence Teh as Administrator and to support the renewal of the terms of office (3 years) for the Secretary-General and Treasurer at Dublin. The Executive Council also agreed to recommend to the Assembly in Dublin the election of Jean-Serge Rohart as President Honoris Causa and of Rosalie Balkin as member Honoris Causa upon her retirement as Director of Legal Affairs and External Relations Division of the IMO.

## **Consultative Membership**

8. The Executive Council approved for recommendation to the Assembly at Dublin IMLI's application for Consultative Member status of the CMI, and similarly in respect of a foreshadowed application by IACS.

## **Management of the CMI**

9. The President's report on his visit to Belgium was noted. It included: meetings with the Presidents of the Belgium, French, Swiss and Italian MLAs in Antwerp and visit to the historic building at Ernest Van Dijckkaai 8 which is owned by the Royal Belgian Shipowners Association and houses a museum where the work of Eugene Van Mieghen is displayed. It was also noted that since Pascale Sterckx's employment had ended shortly prior to the Beijing Conference her temporary replacement, Hilde Van de Wiele had been absent from work for long periods as a result of surgery and it has been decided to terminate her contract. This had put a strain on the secretarial assistance available to the officers of the Association. The Executive Council approved acceptance of the invitation of the Royal Belgian Shipowners Association (KBRU) to move the registered office of the

CMI, on Wim Fransen's retirement, and the library (such as Yearbooks, Newsletters, Travaux Préparatoires and other publications) of the CMI to Ernest Van Dijckkaai 8, B-2000 Antwerpen, Belgium at an annual fee of €500 with the opportunity to hold meetings in the historic second floor boardroom at a cost of €150. An engraved plaque with the full name of the CMI is to be affixed in a prominent place at or near the front door at street level.

It was also agreed to change the Treasurer's title to "Treasurer (and Head Office Director)" and to engage a personal assistant and a book keeper on a part time basis on terms to be approved by the President.

The storage of all other CMI archived material to be moved to a suitable location in Antwerp.

### **Dublin Symposium**

10. The Secretary-General's report on the Dublin Symposium and ISC meetings being held between 28 September and 1 October was circulated, noted and approved. The report had detailed that ISC meetings on Judicial Sales and Review of the Rules on General Average will take place at the Shelbourne Hotel, Dublin on 28 and 29 September 2013, the First Executive Council meeting will take place on Sunday, 29 September 2013 at 9.30am. The Symposium website is [www.cmi2013dublin.com](http://www.cmi2013dublin.com). A reception for MLA Presidents will be held at 1700 on September 29, immediately prior to the Welcome Reception. Johanne Gauthier is investigating the possibility of a Judge's seminar being conducted as the Beijing one was so successful. There will also be presentations by Young Lawyers. The Assembly meeting will take place at 1430 on 1 October 2013, followed by a short Executive Council meeting. The Irish MLA (which is celebrating its 50th anniversary) Organising Committee, led by the President Helen Noble has devised (together with the Secretary-General) an interesting work and social programme which can be viewed on the website.

### **Meeting in 2014**

11. The President reported that having sounded out former Presidents and Frank Wiswall the better view of the Constitution is that it will be necessary to hold a conference to complete the proposed Instrument on Judicial Sales. With that in mind it was agreed to invite the German MLA to host a conference in May or June 2014 in conjunction with the Assembly and a short seminar to be organised by the German MLA in either Hamburg or Berlin. In the event that it should be decided in Dublin that work on Judicial Sales cannot be completed at a Conference in 2014 the German MLA be asked to host a lengthier seminar instead.

### **Meeting in 2015**

12. The Executive Council approved for recommendation to the Assembly that a Colloquium be held in Istanbul in May or June 2015 to prepare work for the CMI Conference in May 2016.

### **Conference 2016**

13. It was reported that the Management Committee had met with Chris Davis, Vince Foley and Charles Schmidt, who are part of the 12 person committee of the MLAUS. They advised that they had approached a number of event organisers with whom they had met and produced a short list of three organisations and were continuing discussions with them. They had also identified two potential conference venues: the

Waldorf Astoria and the Marriott Marquis. (The last CMI Conference held in the USA took place in 1965, the business sessions were held at the Association of the Bar of the City of New York, and the Gala dinner was held at the Waldorf Astoria).

It was decided: to approve the arrangements made thus far for the 2016 Conference; that the CMI Conference Guidelines be applicable and adjusted as may be necessary following negotiations between the President and Secretary-General with the MLAUS organising Committee; to investigate the possibility of the Charitable Trust sharing in speakers' travel expenses in return for a share of the CMI profit arising from the Conference; and all financial arrangements with the MLAUS be set out and detailed throughout the process. Potential topics for the Conference were identified as York Antwerp Rules, Arbitration (New York Convention) and Marine Insurance.

### **Guidelines for Symposia**

14. The Guidelines for CMI Symposia prepared by the Secretary-General had been circulated and were approved subject to two minor changes. The Guidelines are to be posted on the CMI website.

### **Financial Support for Young Lawyers**

15. It was agreed that prizes for the top PhD student at the Ravenna Summer School, (a joint enterprise between Alma Mater Studiorum, Universita di Bologna, Rotterdam Institute for Shipping and Transport Law, Erasmus University, Rotterdam, Scandinavian Institute of Maritime Law, University of Oslo, Institute of International Shipping and Trade Law, Swansea University, Wales and University of Sassari), and the winner of the IMLI student prize would include the waiver of the registration fee at the Dublin Symposium and a contribution by the CMI towards their hotel accommodation. Each of the winners will participate in the Young Lawyers session at the Symposium.

### **MLA and Other Events**

16. The following MLA and other events were noted: the 5th Asian Maritime Law Conference; the Israel Maritime Law Association meeting; the Counter Terror and Transport Security Conference in Moscow; the IMO workshop in the HNS Convention (attended by Deucalion Rediadis on behalf of CMI); the inaugural meeting of the Indian MLA formed in Mumbai (attended by Tom Birch Reynardson).

### **Membership Applications and Expulsions**

17. An application for membership of the CMI had been received from Romania. It was decided to write a letter of encouragement to the Romanian applicants seeking further information concerning its Constitution and suggesting that it broaden its membership if possible to meet CMI requirements for membership and they should communicate further with the President, preferably well before the Dublin Symposium, so that further consideration be given to their application.

It was noted that the President had written to Morocco advising that the expulsion process had been commenced, pursuant to the decision taken at the Executive Council meeting in Beijing and decided that the President is to write to Tunisia pointing out that expulsion proceedings are under way for non payment of subscription arrears and to report to the Assembly on their reaction. It was noted that an application for membership had been made by Dr Malika Gunasekera of Sri Lanka.

There being no MLA in that country consideration should be given to recommending that the Assembly approve provisional membership for him, after further investigation and confirmation that he meets the requirements of the Constitution in that regard.

As to the formation of an MLA in Mumbai and another in Cochin, and the latter's application for membership of CMI it was agreed that either (or both if they join together), must have a broad membership around India in order to qualify for membership.

## International Working Groups

18. Approval was given in relation to the work of the following International Working Groups:

**Marine Insurance:** Dieter Schwampe's report to the Executive Council had been circulated; it notes that 17 responses have been received to the Questionnaire which dealt with six issues (in relation to mandatory insurance provisions in international conventions): Licensing; certification; statutory law; jurisdiction/proceedings; particulars of direct action; state liability.

The report is extremely comprehensive and includes a spreadsheet identifying the 17 responses received to the 55 questions. That material will be placed on the website with the report. The IWG had identified seven areas of concern:

1. Financial security of the insurer - it is regarded as fundamental that the insurer be solvent and the IWG considers that this issue could be highlighted in some way so as to ensure that all states appreciate that they rely on the licensing State (of the particular insurer) as to its financial stability.
2. There is a concern that some jurisdictions are not paying attention to whether insurance conditions are in line with what conventions require.
3. In some jurisdictions authorities do not take any action when they receive notice of termination from an insurer. The IWG believes that further work can be done in this area through NMLAs making contact with their Port State Control regulators.
4. Jurisdiction of courts for direct action. There is clearly considerable diversity amongst jurisdictions. Apart from drawing attention to these differences it is not recommended that the IWG take this issue further.
5. Binding effects of judgments against the insured ship owner for the insurer, including default. The same comments are made as for paragraph 4.
6. Cross actions of the insurer against the insured. The same comments are made as for paragraph 4.
7. Time limits for direct actions. The IWG recommends that it do further work on this issue. Whilst the conventions can work despite diverse time limits from State to State, problems could arise where a major incident occurs involving more than one State.

The IWG would like to involve industry associations (such as the International Group of P&I Clubs, property insurers, ICS, Intertanko and IUMI) in their further deliberations.

The IWG has sought the Executive Council's views on these suggestions and as to whether responses to the questionnaire should continue to be sought from NMLAs.

This work should be continued and the IOPC Fund should also be asked if it is interested in participating.

**Offshore Activities:** the appointment of Patrick Griggs as Acting Chairman during Richard Shaw's illness was approved. Efforts are to continue to include industry spokesmen in the discussions and Bradley Jackson, the chair of the MLAUS offshore industries committee is to be approached for suggestions.

**Rotterdam Rules:** Stuart Hetherington reported that together with ex President of the MLAUS, Chester Hooper, he visited the State Department in Washington on 22 April 2013. They met Keith Loken (Assistant Legal Adviser for Private International Law) and Mike Coffee (Attorney-Adviser Office for Private International Law). They were informed that "The transmittal package has been developed and we are continuing to have discussions with various stakeholders to try and address concerns. On completion of the package there will be an inter agency review, all of whom are well briefed on the Rotterdam Rules. It is hoped that that will be achieved in the relatively near future and the State Department will then be in a position to go to their principals". The inter agency review is thought likely to involve Department of Justice, Federal Maritime Commission and MARAD.

It is understood that once that is completed the State Department will forward the package to the President, who then sends it to the Senate for the ratification process to be completed.

Since the meeting in Washington, Chet Hooper has been advised that Mr Loken is to retire. It is not thought that that will cause any further delay. His boss is Sue Biniarz, and she has taken over his role on an interim basis, and she is very supportive of Rotterdam Rules. Stuart Hetherington advised Mr Loken and Mr Coffee that the CMI is very keen to see the US ratify the Convention as it is believed that many significant ship owning and trading nations are likely to follow its lead.

The State Department is trying to eliminate the possibility of any debate (or opposition) once the Convention gets to the Senate.

After the meeting, Chet Hooper and Stuart Hetherington had lunch with Peter Gatti of the National Industrial Transportation League and Donald O'Hare, a consultant to the World Shipping Council who will be the principal lobbyists once the package reaches the Senate.

The CMI should continue to be involved in the ongoing work of UNCITRAL, particularly with respect to E-Commerce. Vincent de Orchis, who attended recent meetings of UNCITRAL Working Group IV in New York, should be invited to join the IWG to ensure that there is no inconsistency with the E-Commerce provisions in the Rotterdam Rules. CMI should be represented at the next session in Vienna.

**Judicial Sales and York Antwerp Rules:** Plans for the ISC meetings in Dublin on 28 and 29 September were approved. It was noted that a Questionnaire on the York Antwerp Rules had been sent to MLAs on 15 March 2013 and a further version of the Beijing Draft Instrument on Judicial Sales had been sent to MLAs on 25 March 2013.

**Cross-Border Insolvency:** it was noted that responses to the Questionnaire were still awaited and planning is underway for the session on this topic in Dublin.

**Fair Treatment of Seafarers:** it was noted that allegations of unfair treatment in a collision last year in Indonesian waters had been drawn to the attention of the IWG, which will continue to promote the IMO Guidelines on this subject and to continue monitoring for instances of unfair treatment.

The Executive Council took note of the President's report that on his visit to Antwerp in April he had attended a meeting with the Treasurer and Administrator with the Ambassador-Director of the Cabinet of Foreign Affairs, Foreign Trade and European Affairs in Brussels where it had been indicated that the Belgium Government would be interested in hosting a diplomatic conference for a topic such as Judicial Sales in the absence of some other suitable international forum.

## **Standing Committees**

### **Promoting Ratification of Maritime Conventions**

19. The work of the Standing Committee on Promoting Ratification of Maritime Conventions, in co-operation with ICS and the Legal Committee of the IMO was noted and approved, with thanks to Louis Mbanefo and Deucalion Rediadis who had held a number of meetings with ICS and IMO resulting in the letter sent to NMLAs by the President on 25 March 2013 and the publication of a brochure by ICS. This is seen as providing a good opportunity for NMLAs to get closer to governments.

### **Jurisprudence Database**

It was noted that the President and Treasurer were in prolonged negotiations with a French legal practitioner with a view to retaining her as a consultant to the CMI for six months at a cost of about Euro 44,000 to the CMI to prepare an extensive database of cases on Conventions for placing on the CMI database. The work of Reed Smith's office in Paris in drafting a contract was acknowledged with thanks. The President was authorised to continue to negotiate an agreement with the practitioner as a research resource.

### **Young CMI**

The appointment of Taco Van der Valk as the new chairman of Young CMI was approved. He was congratulated for his work in setting up a LINKEDIN group. It was hoped that under his leadership there will be greater interaction with young lawyer groups in NMLAs in different parts of the world.

## **Regional Office**

20. The extensive review by the President regarding the opening of a regional office in Singapore from early beginnings to the present time, as set forth in the minutes of the Management Committee meeting in New York, was noted and agreed with appreciation for his efforts. The President repeated that the head office of the CMI will remain in Antwerp, notwithstanding the formation of a regional office in Singapore, and perhaps in South America and Africa in future years. A budget for



an office in Singapore, including revenues from the CMI and perhaps the Singapore Maritime and Port Authority, including projected secretarial and travel expenses, with a business plan, will be prepared in the near future and, hopefully, before the Assembly in Dublin. The activities of the President are ratified.

The historic role of European NMLAs in the CMI, the need to extend CMI's influence in the Far East where the full weight of shipping power has moved and regard paid to the ambitions of other regions (especially Latin America and Africa) should be kept firmly in mind as new administrative arrangements are considered, negotiated and made.

## **Publications**

21. It was noted that progress is being made on the Handbook on Maritime Conventions. The index has now been settled and it rests with Frank Wiswall to forward the texts to IMLI for publication.

In the absence of secretarial services in Antwerp, CMI has been heavily dependent on Admission (who set up the new CMI website) for updating the website. Francesco Berlingieri (and Giorgio) continue to be responsible for publication of the Yearbook and Newsletters, for which CMI remains ever grateful. It was decided to approve a wording to be inserted in the Yearbook concerning Ratification of Treaties advising readers to refer to official depositories to verify all the information. Approval was given for all publishing costs incurred by Francesco Berlingieri's office for publications, including secretarial costs to be paid fully by CMI for 2012 and 2013 years. Discussions will be held with the Charitable Trust with respect to future years, if possible, by the time of the Assembly in Dublin with respect to publication costs and speakers expenses at meetings, which the Charitable Trust has historically paid.

## **Constitutional Reform**

22. It was approved that a review be made of the CMI Constitution for errors and required reforms by the Constitution Committee and perhaps an ad hoc committee for the consideration of future Assemblies. In particular it is noted that the terms of the President, Vice-President, Secretary-General, Treasurer and Administrator are incorrectly said to be for four years in Articles 9 to 13 of the Constitution as reproduced in the Year Book and should, consistent with Article 14 in relation to Executive Councillors be for three years, as agreed at the Assembly Meeting in Rotterdam.

## **Future of CMI**

23. It was noted that following on from the "Future of CMI" discussions in Beijing the President had invited Liz Burrell to chair and form an ad hoc committee (outside the Executive Council) as suggested by Bob Parrish in Beijing to consider the role of CMI. The following had agreed to serve on the Committee: Diego Chami, Ioannis Markianos-Danivios; Karel Stes; Ying Ying Zou and Stephen Knudtzon.

It was suggested that notwithstanding the numerous contacts which have taken place with the ICS, IMO and other UN bodies further work can be undertaken towards a closer relationship with such bodies. It was also stressed that the European Union has the power to ratify conventions and this should not be overlooked.

It was also noted that the CMI has in the past assisted China to bring its maritime legislation into harmony with maritime conventions and

consideration should be given as to how CMI can continue to provide assistance to those countries which do not have very well developed maritime law.

### **Voy Rules**

24. The progress to date of the new laytime definitions was noted and comment made that they should play an important role in future laytime negotiations. During the meeting, it was learned that the BIMCO Documentary Committee had met and approved them with two minor editing errors. The revised version will be forwarded to the ExCo by the Immediate Past President once issued. Karl Gombrii's work in monitoring developments on the new definitions is greatly appreciated.

### **Liaison with IMO Legal Committee, ICS, ICC and Others**

25. The President had met with Rosalie Balkin at IMO, Kiran Khosla at ICS in April; Karl Gombrii will be attending BIMCO's 100th Meeting and the President had met Soren Larsen (of BIMCO) at the MLAUS Spring meeting. A report from Polly Davies who had attended the IOPC Fund meeting was circulated and will be placed on the website. Patrick Griggs' report on the IMO Legal Committee meeting is also on the website.

It was noted that there had been many connections and meetings taking place between Executive Councillors and members of MLAs on behalf of CMI with international organisations over the last few months. In particular the speeches made by Mans Jacobsson and Patrick Griggs at a seminar held on the occasion of the 100th Session of the IMO Legal Committee were noted with appreciation.

### **Planning Committee Report**

26. This identifies the following topics under consideration by the CMI:

1. Review of UNCLOS deficiencies
2. Review of LLMC deficiencies
3. Unification of Admiralty Rules of procedure law
4. Competition law as applicable to marine law
5. Choice of law rules as applicable to marine law
6. Modern ways of doing business, eg Rotterdam Rules and electronic waybills

In addition the Planning Committee discussed:

- A. Collision Regulations (1972) in light of interpretation problems.
- B. Whether there is a role for the CMI similar to ICC in relation to its banking committee as a source for explanation of UCP, in the context of conventions it has been involved in and in relation to rules of evidence such as are being studied by the IBA (where shipping issues are exempted).
- C. Review of choice of law rules (eg Rotterdam Rules make reference

to "applicable law" without indicating what law is intended to apply).

Those recommendations were noted and approved, as were two additional topics.

D. Charterer's debts. It was noted that this might involve the concept of "floating" jurisdiction clauses in contracts to overcome certain choice of law clauses in order to obtain a more favourable remedy. It was noted that issues in relation to charterers debts stem from a lack of uniformity regarding maritime liens which could be remedied by widespread ratification of the 1993 Maritime Liens and Mortgages Convention.

E. Crimes at Sea

#### **IMO Prize**

27. It was agreed that consultation with IMO should be pursued considering a nomination to be made by the CMI.

#### **D&O Insurance**

28. A quotation from Chartis Europe SA had been obtained.

It was decided that:

(i) the Treasurer approach the broker and ascertain the premium for Association cover from Chartis Europe SA.

(ii) the Treasurer obtain a comparable quote from an alternative insurer for both D&O and Association cover.

(iii) the Treasurer agree the most satisfactory quote obtained from either Chartis Europe SA or an alternative insurer before the Dublin Assembly.

#### **Lists of IWGs, Standing Committees and Consultative Members**

29. Lists were circulated and their composition approved. They will be published in the forthcoming Yearbook.

#### **IMO: 2002 Protocol to the Athens Convention**

30. The paper by Patrick Griggs on this subject (and now posted on the CMI website) was noted with appreciation.

#### **Arbitration**

31. It was suggested by a New York practitioner to the President that CMI, as an unaffiliated and independent body has a role to play in arbitration. It was decided that the President shall form an ad hoc committee to look into this and report back before the Executive Council meeting in Dublin where it will be discussed. Such a committee would be well advised to study the excellent comments made by members of the ExCo in the virtual meeting.

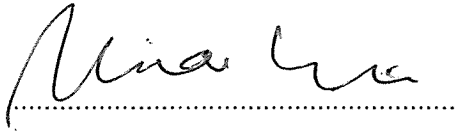
#### **Future Assembly and Executive Council Meetings**

32. Executive Council meeting (1) - 9.30 - 29 September 2013


Assembly meeting - 2.30pm - 1 October 2013

**Closing remarks by the President**

33. The President thanked all the Executive Council for participating and contributing to the meeting and the Management Committee for giving up their time in order to prepare the materials for this meeting.



**President**



**Secretary-General**