



## COMITÉ MARITIME INTERNATIONAL

EXCO eMEETING NOV 2015

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**Minutes of deliberations of the CMI Executive Council  
held by email conference during the week commencing  
23 November 2015, chaired by the President  
from his office in Sydney**

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### Participating

President:	Stuart HETHERINGTON
Past-President:	Karl-Johan GOMBRII
Vice-President:	Giorgio BERLINGIERI
Vice-President:	Christopher DAVIS
Secretary-General:	John HARE
Administrator:	Lawrence TEH
Treasurer/Head Office Director:	Peter VERSTUYFT
Councillors:	Ann FENECH
	Tomotaka FUJITA
	Jorge RADOVICH
	Dihuang SONG
	Dieter SCHWAMPE
	Alexander von ZIEGLER
	Luc GRELLET
	Taco VAN DER VALK

Paragraph numbers of these minutes correspond to the Agenda which was sent to all EXCO members, with supporting annexures, during the week prior to 23 November 2015. The President, in preparation for this eMeeting, explained the procedures to be adopted. In essence, EXCO members were enjoined to peruse the documentation and submit first round comments to him and to the Secretary-General by close of business Tuesday 24th November 2015. The responses were then collated and circulated to EXCO members the following day, for further second round comments the day after. Upon close of these second round comments, the President submitted a Final Round Document, with conclusions. It is upon these documents, and particularly the latter, that these minutes are prepared.

### 1. *OPENING REMARKS BY THE PRESIDENT*

The President welcomed EXCO members to this virtual eMeeting, repeating the sorrow he had previously expressed to Luc Grellet and all our friends in Paris over the recent terrible terrorist events of the previous week. He also thanked all those who had submitted reports for the benefit of the meeting and noted that John Hare would, by coincidence, be in Sydney during the course of the meeting while travelling on a private visit to New Zealand.

A particular welcome was given to Peter Verstuyft who has formally taken over the role of Treasurer and Head Office Director since the meeting in Istanbul in June. The President particularly thanked Ann Verlinde, Peter Verstuyft and John Hare for their detailed reports which were tabled at the meeting and to the Secretary General for his reports of 1st July and 28th October 2015 reporting on his activities, including his meeting in New York to discuss the New York Conference.



*Conclusion:*

President's Opening Remarks noted with thanks, and sympathies were conveyed to the French people through Luc Grellet on the terrible terrorist atrocities of recent days in Paris.

2. *MINUTES OF EXECUTIVE COUNCIL MEETINGS IN ISTANBUL ON SUNDAY 7 JUNE 2015 AND TUESDAY 9 JUNE 2015 AT THE SHERATON ATAKOY HOTEL, ISTANBUL*

*Resolved:*

That the draft Minutes of Executive Council Meeting held in Istanbul on 7 and 9 June 2015 at the Sheraton Atakoy Hotel be approved, corrected as follows:

- (i) By correcting the names of the Liability for Wrongful Arrest (IWG) and Gustavo Omana Perez.
- (ii) Paragraph 9(j) by replacing the words "to it - identifying" with "about".

3. *FINANCIAL AND ADMINISTRATION REPORTS*

*Conclusion*

1. All reports were noted with thanks, especially the detailed reports received from John Hare which enable Executive Councillors to keep abreast of current developments.
  2. Peter Verstuyft was welcomed by all to his new role as Treasurer and Head Office Director.
  3. The move of the CMI head office secretariat to the Belgium Shipowners' Office had been accomplished successfully and John Hare's assistance was greatly appreciated.
  4. The CMI's financial position continues to be in line with expectations, justifying the decision in Istanbul not to raise subscriptions.
  5. Priority is to be given to identifying a new website manager and to develop the archive of CMI publications.
4. *ISTANBUL CONFERENCE FINANCIAL RESULTS: REPORT OF JOHN HARE DATED 16 NOVEMBER 2015*

The report of John Hare was noted with thanks. The financial result of the Istanbul Colloquium was very satisfactory, especially considering that the "surplus" of €12,000 is now, as accurately as it can be, expressed after taking into account CMI's own expenses in organising such an event.

5. *COLLECTION OF FINANCIAL CONTRIBUTIONS: REPORT OF CHRIS DAVIS*

*Conclusion*

With Anne's assistance in following up MLAs they are paying their subscriptions in a more timely fashion. However, there are still some problems. MLAs in South and Central America and Portugal for example. The most serious defaulter is Russia. The meeting decided that the Russian MLA should be advised that unless payment of arrears is received, or a satisfactory proposal for payment of arrears is made early in 2016 the Executive Council will have to consider recommending to the Assembly in New York that the expulsion process will have to be commenced. Chris Davis's report was noted with thanks.



## 6. *MEMBERSHIP*

### *Conclusion*

Correspondence has been entered into with a number of putative MLAs and their development is to be encouraged, although the correspondence concerning a Baltic regional MLA needs to be considered in the light of the fact that there is already a provisional member in Latvia and Russia has its own MLA. The creation of new MLAs in Africa, the Emirates and Cyprus are particularly to be encouraged. An application for provisional membership in Cuba might be forthcoming.

## 7. *EXECUTIVE COUNCIL ELECTIONS AT ASSEMBLY MEETING IN NEW YORK.*

### *Conclusion*

Song Dihuang's retirement from EXCO in New York was noted with sadness. The eligibility for re-election of Chris Davis, Lawrence Teh, Alexander Von Ziegler and Dieter Schwampe was also noted.

## 8. *CONFERENCE IN NEW YORK: REPORT OF SECRETARY-GENERAL DATED 28 OCTOBER 2015; PRESIDENT'S LETTER TO MLAS DATED 5 NOVEMBER 2015*

### *Conclusion*

The President's letter to Presidents of MLAs dated 5 November 2015 attaching a preliminary notice concerning the joint CMI Conference with the MLAUS's 2016 Spring Meeting as well as John Kimball's letter concerning sponsorship were noted.

The Report of the Secretary-General dated 28 October 2015 and the developing work programme of the New York Conference were noted with interest and thanks were recorded to John Hare and the President for all their hard work. The liaison between the Chairs of IWGs and MLAUS Committee chairs, particularly since the Bermuda resort meeting of the MLAUS, has assisted. Sponsorship will be the key to making what is recognised as being an expensive location for this event a sound financial conference as well as being a highly successful event. Sponsorship from outside the US should be encouraged.

## 9. *INTERNATIONAL WORKING GROUPS*

### (a) *Judicial Sales*

The President's letter to Henry Li reporting on his discussions concerning this topic with Fred Kenney, Dorota Lost-Siemenska and Jan de Boer at the IMO in October were noted, as was the correspondence between the President and President elect of the South Korean MLA. The President's letter to Henry Li identified what needs to be done by the IWG in advance of the next IMO Legal Committee Meeting taking place from 7 to 9 June 2016, namely the submission of a report by 1 April 2016 which needs to have at least two State sponsors. China has already agreed to sponsor this work and it is hoped that South Korea will also support it. Other countries have also been approached and their response is awaited. The paper also needs to demonstrate the "compelling need" for this draft instrument to be made into an International Convention. The IWG is working on this paper.

### (b) *Review of the Rules on General Average*

The President's letter to MLAs dated 30 October 2015, which attached the report of the meeting of the ISC held in Istanbul between 6 and 7 June 2015, (extended) draft for CMI Guidelines on General Average, and a copy of the judgment of the English Commercial Court in the matter of The Longchamp and the fact that an ISC meeting is to take place in London on 7 and 8 December 2015 were noted with thanks to Bent



Nielsen, Taco van der Valk and Richard Cornah for all their work. The meeting noted the importance in ensuring that MLAs support whatever compromise is reached by the industry and especially the key stakeholders. It was also noted that it is important that MLAs have all the relevant documents available well before the New York conference so that they are aware of the text and the outstanding issues to be discussed in New York in time to give them their full consideration.

(c) *Cross-Border Insolvency: Report of Chris Davis*

The report of Chris Davis was noted with thanks. It identified three principal legal settings for cross-border marine insolvencies: EC Regulation 1346/2000 of the EU; the UNCITRAL Model Law on Cross-Border Insolvency; and the uncertainty which arises where either neither of those regimes applies or where one regime applies but other jurisdictions are not subject to either regime. The IWG is looking at alternative solutions: a protocol to the UNCITRAL Model Law, specifically addressing in rem actions, or developing a set of best practices based on the comparative analysis of the replies to the questionnaire received to date and, perhaps, encouraging countries that have a substantial maritime sector and have yet to adopt a cross-border insolvency legal regime to do so in an effort to promote harmonisation of the law of this area. Reference was also made to the new EC Regulation No. 2015/848. Chris Davis' report also noted liaison with the US MLA Committee on Bankruptcy and Insolvency and the preparation of a joint presentation or panel discussion in New York.

*Resolution:*

It was agreed that Olaf Hartenstein (Germany) be admitted to the IWG.

(d) *Polar Shipping*

The report of Aldo Chircop was noted with thanks. It has identified the IWG's subgroups as:

- Conventions;
- Load lines;
- Civil liability;
- Polarworthiness; and
- Collision avoidance regulations

and noted that liaison with the MLA US's subcommittees, including International Organisations, Conventions and Standards; Offshore Industry; Regulation of Vessel Operations, Safety, Security and Navigation, and Fisheries had resulted in a full day programme for the New York conference being developed.

(e) *Marine Insurance*

The report of Joe Grasso was noted with thanks. It reported that the IWG had continued to work on draft guidelines for governments relating to mandatory insurance coverage under certain international maritime Conventions and it is hoped to finalise that in the near future and to have that process completed in time for the New York Conference. It also reported that there had been liaison with the MLA US Committee on Marine Insurance in preparation for the New York Conference where the draft guidelines and also a panel discussion on developments in marine insurance law are likely to be debated.





(f) *Offshore Activities*

*Resolution:*

It was agreed that Aurelio Fernandez-Concheso (Venezuela) be added to the IWG.

(g) *Rotterdam Rules*

The report of Tomotaka Fujita was noted with thanks. This reported that there is to be a two hour session on Carriage of Goods by Sea at the New York Conference, based on the suggestion made by the Polish MLA that CMI could carry out a comparative analysis of how different countries deal with jurisdiction and arbitration clauses in sea carriage documents. There has been liaison with the Chair of the MLAUS Carriage of Goods Committee and Michael Sturley, since the Bermuda Resort meeting. The report also referred to the Second Expert Group Meeting in August 2015 convened by UNCITRAL in order to draft an "Accession Kit of the Rotterdam Rules". The meeting noted that Michael Sturley remains optimistic of US ratification of the Rotterdam Rules but that the State Department is still dealing with some US ports over ratification.

(h) *Fair Treatment of Seafarers*

The Opening Remarks of the President suggested that consideration be given to merging the two new topics of Pandemic Response and Migration at Sea (which the IMO has referred to CMI) with this IWG. Reference is made to (p)(iii) and (iv) below.

(i) *Acts of Piracy and Maritime Violence*

The report of Andrew Taylor was noted with thanks. This report identified an overall reduction in the number of serious piracy attacks this year but there is an emerging new geography of piracy, particularly Southeast Asia and West Africa. A troubling figure he identified was that 266 crew members have been taken hostage, 13 injured, 10 kidnapped and one killed in the first nine months of 2015.

(j) *Ship Finance, Security Practices*

Ann Fenech's report and its attached article by John Bradley in "Marine Money" were noted with thanks and interest. Her report noted that a draft Questionnaire is being prepared and that contact has been made with the MLAUS Committee. An agenda for a joint meeting has been prepared.

(k) *Ship Nomenclature*

*Resolution:*

It was agreed that Massimiliano Musi (Italy) be added to the IWG.

(l) *Restatement of the General Principles of Lex Maritima*

The Opening Remarks of the President advised that Eric Van Hooydonk, the originator and Chair of this project, had not been able to develop this work since Istanbul. Some concerns were raised as to the lack of a defined goal and a plan following the working methods of the CMI. The President gratefully accepted Alexander Von Ziegler's offer to assist in the formulation of the work plan.

(m) *Liability for Wrongful Arrest*

The report of Giorgio Berlingieri was noted with thanks. That report advised that an extension of time had been given to MLAs to respond to the questionnaire by the end



of the year and that liaison had taken place with the chair of the MLAUS Practice and Procedure Committee for a joint session in New York. Giorgio Berlingieri also foreshadowed the further expansion of the ISC once more responses to the questionnaire had been received, including seeking a member from the Spanish MLA to join the IWG (as that country is a State party to the 1999 Arrest Convention), although one member of ExCo considered that Spain's ratification may be contrary to European law. Song Dihuang also suggested that a Chinese lawyer be invited to join the IWG.

(n) *Unmanned Ships*

The report of Tom Birch-Reynardson was noted with thanks. It reported that there had been two meetings of the IWG and consideration was being given to making a report at the New York Conference which would contain a legal overview of the way in which unmanned ships will need to have a legal regime within which to operate in respect of National Law, Territorial Law and International Law, a technical overview of the present situation in relation to technological developments, a legal session on how SOLAS Chapter V and COLREGS will be applicable, and consideration of the Liability Conventions. Tom Birch-Reynardson also foreshadowed the need to enlarge the IWG with representatives from the Far East and the United States.

*Resolution:*

It was agreed that Henrik Ringbom (Finland) be added to the IWG.

(o) *Cyber crime*

It was noted from the Opening Remarks by the President that this topic has excited considerable attention in the MLAUS to the extent that a new MLAUS Committee has been formed under the chairmanship of Joe Walsh and that one of the other Committees which is very concerned about cybercrime is the Terminal Operations Committee, chaired by Nash Billisoly. Song Dihuang suggested that it may be appropriate to involve a Chinese lawyer at an appropriate time.

*Resolution:*

It was agreed that Elias Bestani (Argentina) be added to the IWG.

(p) *Ad hoc Committees*

(i) *Arbitration*

Luc Grellet's report was noted with thanks. This reported that in response to the questionnaire a number of MLAs considered that CMI should not play a role in maritime arbitration while some considered that it should play a role, including to provide information on arbitration through its website and offer its knowhow in maritime disputes to arbitration centres. The report also noted that consideration is being given with the MLAUS to a joint session to study enforcement procedures of arbitration awards under the new Convention. The meeting encouraged the setting up of a panel discussion on recognition and enforcement in the context of the New York Convention. Lawrence Teh expressed interest in becoming involved with this Committee, and was duly appointed to it

(ii) *Liability of Classification Societies*

Karl Gombrii noted that this Ad hoc Committee has in fact been reconstituted as an IWG in Istanbul and reported that its focus will be on the desirability and possible format and content of rules or recommendations regarding



Limitation of Liability. He foreshadowed extending the size of the IWG in order to include representatives from ICS and IACS. Luc Grellet expressed interest in joining this IWG in view of his experience of acting for classification societies.

(iii) *Pandemic Response*

The questionnaire and comments made in his Opening Remarks by the President on this topic, Fair Treatment of Seafarers and Refugee Migration at Sea were noted and discussed.

*Resolution:*

There was general agreement that, for both this topic and Migration at Sea, it would be sensible to ask Olivia Murray if she would take responsibility for these topics under the general umbrella of Fair Treatment of Seafarers, as being public law issues which had been instigated by the IMO and was of considerable interest to the ICS.

(iv) *Refugee Migration at Sea*

The comments made on this topic in the Secretary General's Report of 28 October were noted with thanks. There was general agreement that this Committee should be brought within the Fair Treatment of Seafarers umbrella, if Olivia Murray is willing for that to happen, subject to John Hare's reservation that it not be subsumed completely and retain its separate identity. The best solution would appear to be to have a separate subcommittee of the Fair Treatment of Seafarers IWG dealing with each of *Pandemic Response and Migration at Sea* which John Hare will drive.

10. *STANDING COMMITTEES*

(a) *Jurisprudence on Maritime Conventions:*

In the absence of any report from Stephen Girvin, there have been no developments in relation to this Committee. Giorgio Berlingieri noted that the Italian MLA has an IWG which collects jurisprudence on certain conventions and queried whether the template used by *Il Diritto Marittimo* might be suitable for the Standing Committee. Taco van der Valk suggested that he and Giorgio Berlingieri discuss the way forward for this Committee with Stephen Girvin which suggestion was readily accepted by the President.

(b) *Implementing and Promoting the Ratification of Maritime Conventions*

The report of Deucalion Rediadis was noted with thanks. This reported on the 15 replies to the questionnaire and identified two distinct groups of Conventions: those with wide acceptance and those with few accessions. In relation to the former jurisdictions would need to be targeted where CMI and ICS may not be represented. This may require visits to "educate" governments by way of presentations in seminars or conferences and may have to be organised via the IMO. Teams would have to be set up of perhaps two or three individuals. As to the latter, these conventions would need to be promoted in jurisdictions where CMI / ICS is present but also in jurisdictions where there is no representative.

The report also noted that there seems to be a varying degree of influence of an MLA or ICS member in the different countries from whom responses have been received to questionnaires.



In relation to the 11 Conventions, the report identified the main reasons for non-ratification as follows:-

Rotterdam Rules: Ratification will depend on accession by each State's major trading partners.

HNS: Burdensome procedures and accession will depend on neighbouring States.

Wreck Removal Convention: There is no common reason apparent.

Recycling Convention: Ratification by States with recycling capacity is relevant, hence no urgency for other States to ratify it themselves.

Seafarers Identity Documents Convention (SID): Burdensome procedures; data protection issues and no added value are the principal reasons.

Arrest Convention 1999: There is a preference for the 1952 Convention and EU member States defer to EU Regulations on jurisdiction in civil and commercial matters.

The other five conventions are widely accepted in the 15 jurisdictions from which substantive replies have been received.

As the report noted, both the promotion of ratification and monitoring the implementation of conventions are at the core of CMI's raison d'être and, as such, should be permanently on the CMI Agenda. Those two activities are of course distinct and the Committee's work, it is suggested, should be divided accordingly, necessitating a second Rapporteur and some more members. Peter Laurijssen had been added to the IWG in Istanbul. It is also suggested that a further member from a common law background, and possibly from academia, be appointed to this Committee.

The meeting agreed that this is a most important aspect of the work of CMI and the present committee should be encouraged to continue its work and recommend new members.

(c) *Young CMI*

The report of Taco van der Valk was noted with thanks.

There was considerable discussion (to be continued in New York) as to whether the Chair of the group should continue to be a member of the Executive Council. It was concluded that the Chair should be either: "A member of Executive Council and its leaders should be members of the Committee or its Chair should be appointed by the Executive Council and the duly appointed Chair should report to a designated member of the Executive Council". Taco van der Valk is to discuss these alternatives and prepare a further report for the ExCo meeting in New York.

*Resolution:*

There was unanimous approval for the suggestion that the age limit for this group be limited to 40.

(d) *Constitution Committee*

John Hare's comments that the work is underway on a report to ExCo on changes to the Constitution were noted.





(e) *General Average Interest Rates*

It was noted that the Committee had advised that there was no recommendation to increase the interest rate for 2016 from that which had been decided in Istanbul. It was therefore resolved not to make any change to the interest rate.

(f) *Planning Committee*

The comments made in his Opening Remarks by the President were noted to the effect that the Committee was taking second place to the organisation of the Hamburg, Istanbul and New York meetings but will need to be revived after the New York Conference, as were John Hare's comments that he will ensure a full report is prepared for New York.

11. *IMO LEGAL COMMITTEE*

The President's memorandum dated 17 June 2015 reporting on his recent visit to the IMO Legal Committee which dealt with the topics of: Judicial Sales, Migration - Refugee issues, Marine Insurance, Offshore Activities, Ratification and Implementation of Conventions and Technical Co-operation Activities was noted. Alexander Von Ziegler queried whether the CMI Charitable Trust should be involved in the latter. The President has asked the Malta MLA to consider how IMLI can be used to further CMI's contacts with African countries.

12. *PUBLICATIONS*

The report of Giorgio Berlingieri was noted with thanks. This report noted the contents for the first News Letter to be published next year and Yearbook 2015.

It was suggested during the meeting (and readily agreed to by Anne Verlinde) that she could post general messages on CMI's LinkedIn Group. Song Dihuang referred to social apps such as "WhatsApp" and "Wechat".

13. *CMI REGIONAL OFFICE IN SINGAPORE: REPORT OF LAWRENCE TEH*

The report, and further comments of Lawrence Teh, were noted with thanks. He is to be commended on all his efforts to galvanise MLAs and encourage the formation of MLAs in the countries in the region that he has visited, including Thailand, India, South Korea, China and Indonesia, with a forthcoming visit to Dubai. It was agreed that Lawrence Teh should seek an extension for the existence of the representative office in Singapore.

14. *EU REPRESENTATION*

There being no further report from Vincent Power since Istanbul, there have been no further developments to report. The Power EU Report has been made available on the CMI website. The Secretary-General will approach Dr Power for an update well in time for New York.

15. *CMI - THE FUTURE*

The comments made by the President in his Opening Remarks were noted with some support for a suggestion of holding an MLA Presidents' meeting during the New York Conference. The President is to discuss this further with the President of the MLAUS but if such a meeting does not take place, ExCo will have to further consider this matter at its meeting in New York.

16. *REPORTS TO NMLAs BY EXECUTIVE COUNCILLORS*



The Opening Remarks of the President encouraging regular contact by ExCo with MLAs was noted, as were the Guidelines for monitoring MLAs and John Hare's pro forma letter were noted.

17. *CORRESPONDENCE*

(a) *Email from Jorge Radovich*

The correspondence from Jorge Radovich dated 4 September 2015 concerning the non-ratification of the Bunkers Convention and comments from the representative of Brazil at the IMO concerning Transboundary Pollution were noted. Giorgio Berlingieri commented on Italy's ratification of the Bunker Convention and Jorge Radovich on Argentine's position in relation to the Nairobi Wreck Removal Convention and the Salvage Convention 1989.

(b) *The report of Rosalie Balkin on the IOPC Funds Meeting*

The report of Rosalie Balkin on the IOPC Funds Governing Bodies meeting held between 19 and 23 October 2015 was noted with thanks.

18. *FUTURE CMI MEETINGS*

*Resolution:*

The Executive Council will recommend holding the 2017 Assembly in Genoa, subject to the Italian MLA confirming that suitable arrangements can be made.

19. *CMI BUSINESS CARDS*

*Resolution:*

With one reservation it was agreed that the Executive Councillors be authorised to have business cards prepared identifying their role as an Officer or Executive Councillor of the CMI. It is suggested that they liaise with the Secretary-General as to the format of such cards before arranging for them to be printed. John Hare proposed that cards be printed at the expense of the CMI for the President, Secretary-General, Treasurer and Anne Verlinde, but that other EXCO members should bear the costs of CMI cards should they wish to order same.

20. *GENERAL BUSINESS*

There being no general business the meeting concluded.



STUART HETHERINGTON  
PRESIDENT



JOHN HARE  
SECRETARY-GENERAL

