



8Feb.
With Stuart &
Chris' corrections
As published.

COMITÉ MARITIME INTERNATIONAL

EXCO eMEETING NOV 2016

**Minutes of deliberations of the CMI Executive Council
held by email conference during the week commencing
21 November 2016, chaired by the President
from his office in Sydney
[Provisional Minutes for adoption at the next EXCO meeting]**

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
John O'CONNOR
Jorge RADOVICH
Dieter SCHWAMPE
Taco VAN DER VALK
Alexander von ZIEGLER
Luc GRELLET

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 22 November. 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. Paragraph numbers of these minutes correspond to the Agenda which was sent to all EXCO members, with supporting annexures, during the week prior to 21 November.

Apologies were received from Lawrence Teh and Luc Grellet who were prevented from participating.

1. Opening remarks by the President

The President welcomed EXCO members to this virtual eMeeting, thanking those who had submitted the reports that were annexed to the Agenda.
A particular welcome was given to John O'Connor for this, his first eMeeting since joining the Executive Council.

The President noted with regret that Vice President Giorgio Berlingieri had confirmed his wish that he step down from his significant roles as Publications Editor and on the IWGs for Liability for Wrongful Arrest, Fair Treatment of Seafarers, and the Database of Judicial Decisions. The President recorded that the CMI owes to Giorgio Berlingieri a huge debt of gratitude for performing his CMI roles so assiduously – especially that of Publications Editor.

In relation to publications, the President confirmed that he had raised the possibility with Taco van der Valk of his succeeding Giorgio Berlingieri, and he had agreed to put his name forward.

The President also made reference to the unfortunate incident shortly after the New York Conference in which the CMI was the victim of electronic fraud resulting in an irrecoverable loss of US\$17 230. Further mention of this fraud and the remedial measures put in place in its wake will follow under the relevant agenda item below.

The President commented in relation to the Management Committee meeting scheduled for March 2017 that he would ask the Management Committee to consider whether there are any ways in which the CMI might be able to reduce its expenditure; the split of functions of the Secretary-General and of the Administrator (this in contemplation of Rosalie Balkin taking over as Secretary-General at Genoa in September 2017); and debate possible changes to the CMI Constitution to put before the Assembly in Genoa.

Conclusion: President's opening remarks noted with thanks.

2. Minutes of Executive Council Meetings in New York on Tuesday 3 May 2016 at the Hilton Hotel, New York and Friday, 6 May 2016 at the Hilton Hotel, New York

Resolved:

To adopt the Minutes of both meetings subject to the amendments proposed by Peter Verstuyft, Ann Fenech and Chris Davis as follows:

- **Christopher Davis - Corrections to 3 May 2016 Minutes:**
Page 3: replace “Columbian” with “Colombian” twice in penultimate paragraph, and add “former” before “President” in bold “Resolved” wording; page 5, paragraph 5E(v): correct name to read “Luis Leven Siano;” and page 8, paragraph 7(j): correct “Andrew” to read “Andrea” in two places; and following corrections to 6 May 2016 Minutes: page 1, paragraph 2: add Chris Davis to EXCO members congratulated on re-election; and page 2, paragraph 10(b): replace “Columbian” with “Colombia.”
- **Ann Fenech - Correct Minutes of the meeting of the 3rd May, item (j) to read “Andrea” not “Andrew”.**
- **Peter Verstuyft: Minutes of a meeting of the CMI Executive Council Tuesday, 3 May 2016 – Correct para 4(d) Budgets to read 2016 and 2017; and amend further to read “The Treasurer tabled the updated 2016 budget reflecting a deficit of € 23.550. The Treasurer projects a deficit for 2017.”**

3. Financial and administration reports:

Conclusions:

The reports of the Treasurer and materials tabled were noted with thanks. In particular, the Treasurer's report explaining the unfortunate circumstances in which the CMI had been defrauded in June of USD17,230, whereby that sum had been remitted at the request of a fraudster posing as the President to a bank account in the United States. By the time that the fraud was appreciated funds had been removed

from the US bank account. The efforts of John Hare and Chris Davis to energise the US bank were greatly appreciated.

The letter sent by the President to each of the banks holding funds of the CMI notifying them that CMI required them only to transfer funds at the request of the Treasurer, in person and only after verification of his identity until further notice, i.e. no electronic transfer for the time being, was also noted.

The meeting acceded to the suggestion by the Treasurer that the final paragraph in the Protocol prepared by the President and the Secretary-General immediately after the fraud was exposed, which effectively precluded electronic transmission of funds not be pursued, as CMI's principal banker, J Van Breda requested that the CMI revert to issuing payment instructions through the bank's secured "Van Breda Online" link. In so recommending the Treasurer noted that there was no link between the fraudulent transaction and the Bank's electronic banking system.

The meeting also noted that the Payment Requisition Protocol had stipulated that all requests for transmission of funds by CMI should be in writing and accompanied by supporting documentation and should be approved by both the President and the Secretary-General. For amounts in excess of Euro 1,000 the verbal confirmation should be obtained from the President and Secretary-General. The meeting agreed to minor variations to the Protocol in accordance with the suggestions of John Hare.

Resolved:

That the payment protocol be amended as follows:

- (i) **By the deletion of the final paragraph which suspends electronic transfers; and**
- (ii) **By the amendment of the first paragraph to read:**

"The Treasurer has sole authority to make payments or effect transfers from CMI bank accounts.

1. All payments for office supplies, recurring payments such as monthly or quarterly office and archive space rents, and amounts beneath €200 may be paid by the Treasurer without further formality although he/she is required to sight all supporting documentation in relation to such payments before such payments are made."

- (iii) **By the amendment of para 4 to read:**

"4. Executive Councillors shall submit claims for reimbursement using the CMI Expense Reimbursement Claim Form. When processing such claims, the Administrative Assistant and the Treasurer should verify the signatures held on file for all CMI executive officers."

The meeting also noted the report of the Treasurer and his recommendations for reinvestment of the sum of Euro 100,000 which had matured in June 2016, as well as the President's comments concerning the guidelines on CMI investment policy and the advice that he had sought from Smith & Williamson (who manage the funds held by the CMI Charitable Trust) and the further comments made by ex-CMI Executive Councillors Andrew Taylor and Mans Jacobson, the authors of the CMI Investment Protocol.

Executive Councillors had mixed views as to which of the four options considered by the Treasurer should be accepted. In light of the Guidelines on CMI investment policy the appropriate course is to adopt the Treasurer's first option, that is to invest the funds in the CMI savings account at an interest rate of 0.05% or a Business Investment Plan but having an upfront cost of 3%.

Resolved:

To authorise the Treasurer to reinvest that sum in accordance with his first recommendation.

Vice President Davis had some support for his suggestion that the CMI Investment Guidelines be revisited. This will be an agenda item in Genoa.

Executive Councillors received the sad news that Anne Verlinde had resigned to take up a job at the University of Antwerp Library and thanked her for her contribution to the CMI in the three years she has been employed and wished her well in her new employment. Steps to find her replacement are under way. Chris Davis queried whether the services of Anne could still be utilised in conjunction with the University of Antwerp Library.

Resolved: not to acquire a crime policy which had been sought to put in place following the fraud because the wording proposed by the insurers would not have responded to the fraud that took place in June. In addition, the Euro 50,000 excess which was proposed would again have meant no coverage and the premium of Euro 12,500 was thought to be too large. Alexander Von Ziegler queried whether a special procedure for payments over Euro 10,000 should be considered.

Executive Councillors also noted the correspondence received from Jean-Francois Peters concerning the necessity to update the records of the CMI on the Belgian Official Journal and thanked him for his endeavours.

The current cash position of the CMI as being Euro 589,297.33 was also noted.

4. New York Conference Financial Results: Report of John Hare dated 7 October 2016

Conclusion:

John Hare's report and its attached closing accounts for the New York Conference were tabled and noted by the Executive Council as were the President's congratulations to John Hare and Vince Foley and the MLAUS organising committee, especially John Kimball and the sponsorship committee of the MLAUS which were all echoed and commented upon by Executive Councillors who are deeply appreciative of all the hard work put into the organisation of this Conference.

It was noted that there had been 977 registrants with a total revenue of USD846,121 and sponsorship of USD213,000 giving a total revenue of USD1,059,121 with total expenditure at USD1,051,843.

5. Collection of financial contributions: Report of Chris Davis

Conclusion:

The report of Chris Davis was tabled and noted with thanks to him for his continuing efforts to collect outstanding contributions, noting also that 75% of subscriptions for 2016 had been collected and reminders recently sent to those who are yet to pay for this year.

The Executive Council is mindful of concerns expressed by a couple of Associations at their drop in membership and thus the effect on their ability to pay their current subscriptions. It was noted that the Management Committee will be meeting in Antwerp in March with a view to considering what further expenditure cuts can be made with a view to seeking to reduce or, at least not increase, some subscriptions. The President's authorisation from the Assembly to negotiate deals regarding outstanding subscriptions was noted by Karl Gombrii who also suggested, as did others, a need to be flexible whilst honouring Article 21 of the Constitution and not creating adverse precedents.

6. Membership:

Conclusion:

(a) The President's letters to the MLAs of the Democratic People's Republic of Korea, Philippines, Russia, Colombia, Dominican Republic and Portugal, notifying them that at the next Assembly meeting in Genoa in September 2017 the Executive Council will be recommending their expulsion to the Assembly unless they pay their arrears or enter into an arrangement for the payment of their arrears with the CMI for their reduction before then, were tabled and noted with approval. (Considerable regret was expressed in relation to Russia, a long standing member of CMI).

- (b) **Resolved: The application for membership by the International Malaysian Society of Maritime Law (IMSML) was approved and will be submitted to the Assembly in Genoa in September 2017.**
- (c) **Resolved: The applications for Consultative Membership status by AMD and FONASBA were approved and will be submitted to the Assembly in Genoa in September 2017. It was also agreed to seek equivalent status for the CMI with FONASBA, at no cost.**
- (d) The current list of membership of IWGs and Standing Committees was tabled and approved, subject to notified corrections.
- (e) The nomination received from the Venezuelan MLA of Professor Aurelio Fernandez-Concheso to the CMI Executive Council was tabled and noted. It will need to be resubmitted to the Nominating Committee at the appropriate time in 2017. Whilst his selection had the support of a large number of South American countries, Karl Gombrii reminded EXCO that as a member of EXCO a person is not a representative of any particular association or geographical region or interest. He/she represents himself or herself.
- (f) The report of Chris Davis concerning developments regarding Cuba's potential application to join CMI was tabled and approved, including the recommendation that the maritime law section of the Cuban National Union of Jurists be encouraged to seek membership with the CMI, provided they can meet the CMI subscription.
- (g) The lack of progress in either Ghana or Sri Lanka to form Maritime Law Associations was noted with regret. John Hare is to make further enquiries in Ghana from provisional member Kwabena Asare and the President is to write further to Dan Gunasekera, in relation to Sri Lanka, both of whom have been created Provisional members.

7. Executive Council elections at Assembly Meeting in Genoa:

Conclusion:

The Executive Council noted that John Hare and Jorge Radovich retire from the Executive Council in Genoa next year and that Ann Fenech has the option for a second term commencing next year.

8. Future Meetings:

Conclusion:

It was noted that the President had recently written to Presidents of MLAs seeking expressions of interest to host CMI events during the next four years and that an offer to host the 2020 Conference had been made by Japan, as had Brazil prior to the New York Conference. In addition, Mexico had offered to host an event at Cancun in 2019 or 2020 and the United Kingdom and Malta had also expressed interest in hosting a CMI event after Genoa in 2017. In addition, the Belgian MLA had reminded the Executive Council that in 2022 the CMI will celebrate its 125th Anniversary and that Belgium (or Antwerp) might be an appropriate venue for that year.

In relation to 2020 there was considerable support for a Conference in Japan. Reservations were expressed that following the meeting in Genoa in 2017 it may not be appropriate to host both of the 2018 and 2019 meetings in Europe. Further consideration will be given to the proposals which have been made and any other proposals which are forthcoming.

The Executive Council noted the report of Giorgio Berlingieri of arrangements made for the 2017 Assembly and Seminar on 8 September 2017 and expressed their thanks and appreciation for all the work that had been done already. Those arrangements included bookings at the Hotel Bristol for accommodation, the Doge's Palace where the seminar will take place and the old Stock Exchange

Building which will host the Assembly, as well as the Villa Lo Zerbino to host the closing dinner. It was also noted that post meeting tours will be proposed and a possible theme for the seminar could be “Enforcement of Maritime Claims and the Works of the CMI”.

John Hare noted that a website www.CMI2017Genoa.org has been reserved and there will be a save the date site up at that address by the end of 2016.

9. International Working Groups:

(a) Judicial Sales:

Conclusion:

The report of Taco van der Valk of his discussions with both Ms Marta Pertegas, the first Secretary of the Hague Conference, and earlier with the past Secretary-General, was noted. Their discussions were encouraging leading to the possibility of integrating the CMI instrument on Judicial Sales with the current Judgments Project of the Hague Conference. The suggestion had been made during those discussions that the CMI should develop contacts with the representatives from Australia, Canada, China, EU and US on the Conference.

As a result of these discussions the IWG have been requested to identify how the 2016 preliminary draft Convention might look if the CMI's Judicial Sales instrument was added to its provisions.

The draft prepared by the IWG was considered by the Executive Council and the IWG was congratulated on the work that it had done in creating a further Chapter (iii) to the Preliminary Draft prepared by the Hague Conference.

Resolved: that the text prepared by the IWG, together with any further amendments it thought appropriate, be sent together with a letter of explanation to the Hague Conference as soon as possible and Taco van der Valk be authorised to discuss it with the Hague Conference and report back to the President and Secretary-General.

(b) Review of the Rules on General Average:

Conclusion:

The Executive Council considered the email of Richard Cornah dated 10 November reporting on the omission of two lines of text in the final text of the York Antwerp Rules 2016, in Rule XVII(b). It was also noted that those words were not the subject of review or discussion in any of the discussions leading up to or at the 2016 Conference and had been approved in both the 1994 and 2004 YAR Rules. It was also noted that ICS, BIMCO and IUMI representatives understood the position.

The Executive Council approved the correction of the text subject to its ratification at the Assembly Meeting in Genoa and it was also agreed that an error notice in the form drafted by John Hare should be inserted in the CMI website by way of explanation:

"The words previously appearing at the end of this sentence: "or fall upon the ship by virtue of an award for special compensation under Article 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance" were erroneously omitted from the 2016 New York text of the Rules. They were in previous versions of the Rules and were not contested in the New York discussions. The 2017 CMI Assembly will be asked to approve this correction to the published text of the 2016 Rules".

It was also determined by the Executive Council that there was no need to retain the Review of the Rules of General Average IWG, but see below under item 11(g) on the Standing Committee of the General Average Guidelines. It was also suggested by Dieter Schwampe that there should be a prominent link to where the YAR 2016 are to be found on the CMI website, on its opening page.

(c) Cross-Border Insolvency

Conclusion and Resolved:

In the absence of a report from the Chair on this topic, the only discussion was the appointment of Professor Martin Davies as Rapporteur which was approved.

(d) Polar Shipping

Conclusion:

The Executive Council noted the extensive report of Aldo Chircop and congratulated him and his IWG on their work.

Of particular note from the Chairman's report are the following matters:

- The review of private maritime law conventions carried out by a subgroup and chaired by Nigel Frawley has been revised since the New York Conference and will be published on the CMI website. The work of the subgroup and its contributors, such as David Baker are congratulated on their work.
- Note that the work is proceeding on Polar Load Lines with a view to concluding this work in time for an IWG meeting in Genoa in 2017.
- Note that the work on the Pollution Liability Regimes in polar regions will consider the IOPC Fund's draft document on Guidelines for Environmental Damage Assessment in its working paper.
- Note that the work of a further subgroup studying the context, purpose and significance of the COLREGS in the polar environment and their interaction with polar shipping regulation is continuing.

The Executive Council also noted the questions posed by the Chair of this IWG to the President in relation to the existence of any rules, procedures or practices of IWGs concerning length of tenure on an IWG, decision making and whether there were any requirements for unanimity, or consensus; the status of working drafts, the use of corporate logos on IWG work.

John Hare's standard wording of letters to new IWG members and its possible adaption to address such concerns was discussed. This topic and whether Prof Chircop's issues can be dealt with in such a letter will be revisited at the next Executive Council meeting.

Resolved: to appoint Kim Crosbie (USA) and Stephanie Johnston (UK) to the IWG and to remove Dr Pfirter, unless she advises Aldo Chircop or Jorge Radovich of her wish to remain on the IWG.

(e) Marine Insurance

Conclusion:

The report of Joe Grasso was tabled and noted. In particular it was noted that the IWG had completed its draft of Guidelines for governments relating to mandatory insurance coverage under certain international maritime conventions and that feedback had been received from the IMO which is under consideration.

The topics for further possible discussion by the IWG were the subject of pertinent commentary by a number of members of the Executive Council. John Hare, a previous Chair of the Marine Insurance IWG, suggested that the IWG should determine its work programme and supported

consideration of the Marine Insurance Act reforms in the UK. He also suggested forming a Standing Committee. The former chair of this IWG and current IWG member, Dieter Schwampe's comments, were as follows:

"When still under the lead of John Hare the IWG had done extensive work on English marine insurance law (which also, as I understand, had a significant influence on the International Hull Clauses). My recollection is that at that time there was no optimism that a wider harmonization of marine insurance would be possible, but John should comment. As regards common law jurisdiction I believe that the new Act will have its influence anyway. As to civil law jurisdictions, the Act brings English law much closer law to the insurance law in civil law jurisdiction. For example, basically all new features of the new Act can be found, though in slightly different ways, also in German insurance law. If CMI really intends taking harmonization of insurance law up, then we will need to make sure we take other developments into account, like the PEICL project in Europe (Principles of Insurance Law). I am personally sceptical whether this is something we should start with

Being a member of the IWG, my personal views on the subjects addressed in the IWG report are as follows:

- Amendment of existing conventions with rules on mandatory insurance: Given the reluctant reply by IMO to our suggested Guidelines, I seriously doubt that IMO/the member states would see a compelling need for amending any of the conventions.
- Choice of law/jurisdiction for mandatory insurances: This seems a worthwhile subject, but could at best lead to a model law. In Europe both areas are covered by EU Regulations.
- Conflicts of interest for insurance brokers: This issue is high on the agenda in Germany, where the Federal Court has ruled that for conflict of interest reasons insurance brokers are barred from handling liability claims on behalf of insurers, a widespread practice in Germany.
- "General Average" in case of complex maritime insolvencies: The Hanjin insolvency has triggered ideas, whether a new approach is needed to solve problems of all kinds of parties involved in such insolvency along the principles, of general average, like treating those with cargo on board of ships or under control of the insolvent carrier as a community and distribute costs incurred in order to re-route such cargo to destination on them. This is far reaching, but I believe it is sensible to look at it."

Resolved:

That the existing IWG be re-formed as the Standing Committee on Marine Insurance and that its Chair, Joe Grasso, be requested to approach the existing members of the Marine Insurance IWG to enquire if they wished to continue serving on the Marine Insurance Standing Committee, and to make recommendations to EXCO as to the future composition of the re-formed Marine Insurance Standing Committee.

EXCO noted its approval of the topics proposed for further consideration by the IWG, passing on the reservations held by some members of the Executive Council in relation to their relevance and encourage a study of the reforms to the English Marine Insurance Act and whether or not the IWG can promote uniformity in the satellite jurisdictions which have similar legislative provisions to the Marine Insurance Act 1906.

(f) Offshore Activities

Conclusion:

The report of Jorge Radovich was noted as were the views expressed at the IMO Legal

Committee 103rd Session to the effect that there was no compelling need for an international Convention on Transboundary Pollution from Offshore Craft. The IWG continues to work on a Guidance document (which it is noted is not to be an IMO document) and EXCO congratulates the IWG on its persistence.

(g) Rotterdam Rules

Conclusion:

The report of Tomotaka Fujita was noted and that the Rules have been signed by 25 States but only ratified by three. It was also noted that the New York Conference session which considered a topic raised by the Polish MLA: a comparative analysis of how courts in different countries deal with jurisdiction and arbitration clauses in bills of lading and other sea carriage documents, was a great success. Noted also that UNCITRAL Working Group IV has adopted a "Draft Model Law on Electronic Transferrable Records" at its 54th Session (31st October to 5th November 2016), and that there is one provision which may cause inconsistency with the E-commerce provisions in the Rotterdam Rules, relating to multiple original transferrable records. Once the draft is published and available for comment, the IWG will, if it considers it necessary and appropriate, express the CMI's views on that aspect.

There was considerable discussion concerning the Polish MLA's suggestion that there be a study of jurisdictional clauses in bills of lading and other sea carriage documents by the IWG. The view was expressed that if this is taken up by the IWG it will need to be handled carefully as it is covered by the Rotterdam Rules, noting that there is no likelihood that the issue will be revisited in an International forum. A study of how the problem is presently dealt with and compares with Rotterdam Rules may be of utility.

Resolved:

- (i) **That the existing Rotterdam Rules IWG be re-formed as the CMI Standing Committee on the Carriage of Goods (including Rotterdam Rules), and that Tomotaka Fujita be requested to approach the existing members of the Rotterdam Rules IWG to enquire if they wish to continue serving on the Carriage of Goods Standing Committee, and to make recommendations to EXCO as to the future composition of the re-formed Carriage of Goods Standing Committee.**
- (ii) **IWG to submit a paper, if it considers it appropriate to UNICTRAL on the draft Model Law on Electronic Transferrable Records.**
- (iii) **That it be left to the Standing Committee to determine how the work proposed by the Polish MLA could be progressed and to involve members of the Polish MLA on the topic who it considers is appropriate.**

(h) Fair Treatment of Seafarers (including Pandemic Response and Migration at Sea)

Conclusion:

The report of Olivia Hamer (nee Murray) was noted and in particular that the IWG continues to liaise with and support as appropriate Seafarers' Rights International (SRI) and that the issue of Pandemic Response is being further investigated by way of a questionnaire and the IWG will prepare a paper reminding States of their responsibilities for the IMO Legal Committee in order to gain a wider appreciation for appropriate action to be taken when faced with these recurring pandemic problems.

Resolved: to appoint Edmund Sweetman (Ireland) to the IWG, noting that Paul Gill is already a member having been appointed Chair of a Pandemic Response subgroup.

(i) Acts of Piracy and Maritime Violence

Conclusion:

In the absence of any report from this IWG there was no Executive Council discussion.

(j) Ship Finance, Security Practices

Conclusion:

The report of Ann Fenech was noted, including the facts that both the Marshall Islands and Liberia are being encouraged to respond to the Questionnaire which has been sent to MLAs; that David Osborne had attended an annual conference in Oxford of the Cape Town Convention Academic project, where he noted that the "Cape Town Camp" realised that shipping is totally different and he raised the suggestion that consideration be given to a Protocol on containers. The Executive Council also noted the paper given by Dr Vincent Power in Oxford entitled "Assessing the Legal and Economic case for a shipping protocol to the Cape Town Convention" which was attached to the Chair's report; that the Malta Maritime Summit in October 2016, at which Ann Fenech participated on a panel where the Cape Town Convention was discussed, and others drew attention to the significant differences between aviation and shipping.

The Executive Council noted that the Chair of the IWG had invited them to encourage their own MLAs to respond to the Questionnaire, which is to have a further deadline extension to the end of March 2017.

(k) Ship Nomenclature

Conclusion:

EXCO noted the report of Frank Nolan and the receipt of five responses to the Questionnaire and for the possibility that the IWG will meet in Genoa, although this may not eventuate as Frank Nolan will be prevented by family commitments from attending the Genoa meeting. Executive Councillors were again urged to encourage their MLAs to respond to the Questionnaire.

(l) Restatement of the General Principles of Lex Maritima

Conclusion:

In the absence of any report from this IWG there was no Executive Council discussion.

(m) Study relating to Liability for Wrongful Arrest

Conclusion:

The Executive Council noted with sadness, but understanding, that Giorgio Berlingieri wished to stand down from his role of Chair. EXCO expressed its gratitude and thanks to Giorgio for all his work in starting this IWG and achieving 36 responses from MLAs to the Questionnaire. Consideration was given by the Executive Council to an appropriate replacement for Giorgio. The obvious replacement would be Aleka Sheppard who has done a tremendous job as Rapporteur. Enquiries suggested that Sir Bernard Eder would not have time to take the role.

Resolved: to invite Aleka Sheppard to take over as Chair and request the Secretary-General to discuss with her the potential Rapporteurs who were mentioned during the course of the meeting.

The Executive Council also noted the two cases referred to by Vice-President Berlingieri involving Wrongful Arrest in both Italy and Singapore and the suggestion that an International Sub-committee meeting might be a possible way forward for this IWG.

(n) Unmanned Ships

Conclusion:

The Executive Council noted the report of Tom Birch-Reynardson which commented on the meeting of the IWG which had taken place in conjunction with the Marine Autonomous Systems Regulatory Working Group Conference in Southampton, at which IWG members Henrik Ringbom, Eric Van Hooydonk and Andrew Higgs each spoke, and he had made a short presentation on the role of the CMI.

The excellent paper produced by Henrik Ringbom and Robert Veal identifying the areas where in the IWG's opinion, consideration will need to be given to reviewing or amending existing Conventions to accommodate Unmanned Ships was highly commended by the Executive Council, as was the work which is being done. The comments made included that this is an area where the CMI can really offer value to the debate as to how the Regulatory regimes that apply to shipping will have to be amended to keep track with the new technology.

It was noted that the ongoing work of the IWG is to identify any bodies or national governments which are carrying out legal or regulatory work in respect of unmanned ships to ascertain what they are doing and what conclusions they have reached.

Once the IWG has finalised the report which has thus far been prepared by Henrik Ringbom and Robert Veal it is proposed, with EXCO approval, to send it to MLAs for comment and request MLAs to advise what work is being done in their jurisdictions on this topic. (It is known that China and Korea are both engaged in work in this area). It is then proposed to submit the paper to the IMO.

Resolved: to agree to the paper being submitted to MLAs for comment but to suggest that it could be accompanied by a Questionnaire, which would include the questions concerning work being done within their own jurisdictions.

Resolved further to appoint Lena Wiedenbach (Germany) to the IWG as Rapporteur.

(o) Cybercrime in Shipping

Conclusion:

It was noted with regret that Taco van der Valk would like to be replaced as Chair of the group to enable him to take on other roles within the CMI (see Publications below). It was agreed to appoint John Hare as Chair of this IWG which he had himself inaugurated.

Resolved that:

- **John Hare be appointed Chair**
- **John Hare should ascertain whether Kate Belmont (USA) and Remy Carreira (Panama) are prepared to join the IWG.**
- **Assuming they are all willing, appoint them to the IWG.**

(p) Liability of Classification Societies

Conclusion:

EXCO noted the report of Karl Gombrii which advised that the ICS had said that it is not interested in further work on this topic although IACS is cautiously interested in the CMI assisting to find a way of limiting class liability for claims by third parties.

Resolved: that this IWG continue its consultations with industry stakeholders with a view to reinstating the CMI's previous work to promote an international regime to regulate the liability of classification societies, and its limitation.

10. Ad hoc Committees**Arbitration****Conclusion:**

In the absence of any report from this IWG there was no Executive Council discussion.

11. Standing Committees**(a) Jurisprudence on Maritime Conventions****Conclusion:**

The Executive Council noted the correspondence between Lawrence Teh and Stephen Girvin, of Singapore University, that it has been suggested that a draft form of agreement to be entered into with CMI for a period of five years commencing on 1st January 2017 be prepared and the judgments and summaries are to be submitted to Singapore University in English in accordance with the template which has been prepared. The President noted that the role of the Standing Committee is to monitor the website, to liaise with Stephen Girvin (principally through Lawrence Teh) and encourage and assist MLAs to appoint representatives of their Associations to provide materials to the website.

Resolved:

- (i) That the appointment of Lawrence Teh to the Standing Committee on the Database of Judicial Decisions on International Conventions is ratified;**
 - (ii) That the Standing Committee preserve the material which has been produced by and under the supervision of Francesco Berlingieri over many years until such time as it can be adapted and migrated to the Singapore University site.**
 - (iii) That a link to the new Singapore website should be placed on the CMI website with a suitable explanation of what the Singapore site contains (Lawrence Teh to brief the CMI Administrative Assistant on suitable wording).**
 - (iv) That steps be taken to identify contact persons in each NMLA to be responsible for feeding judicial decisions to the Database, and that the Standing Committee approach NMLAs explaining the importance of their sending decisions to us in the English language.**
 - (v) That the CMI contribute Euro 5,000 for each year for 5 years to this project.**
- (b) Implementing and Promoting the Ratification of Maritime Conventions**

Conclusion:

The report of Deucalion Rediadis was received too late to be considered by the Executive Council.

Resolved: to appoint Nick Gaskell to the Standing Committee.

It was noted by the President that he had suggested, soon after the New York Conference, that one consideration for the Standing Committee might be to divide its membership into two streams, one being a promotion team and the other an implementation team and that Nick Gaskell and Rosalie Balkin could contribute significantly to the latter, particularly concerning methods of acceding to or ratifying conventions.

The President also noted that in his report Deucalion Rediadis had commented on a meeting at the IMO in May and June which raised a number of issues that the Standing Committee needs to

consider. The President will write to Mr Rediadis suggesting he forward his report to his Committee and at the same time suggest roles for them and seek their comments on the issues raised. Consideration might be given to arranging a meeting of this Standing Committee, at least those members of it who attend in Genoa, if enough are present.

(c) Young CMI

Conclusion:

The extremely helpful memorandum of Taco van der Valk was noted. It identified the strengths of Young CMI and the regional meetings that it was the catalyst for, suggested that an age limit of 40 be placed on this group, and that it be organised by Young Lawyers with a CMI Executive Council liaison person or persons. It also suggested that an attempt be made to ensure that young CMI events which occur simultaneously with a CMI event do not take place at the same time as the Assembly. The memorandum also suggested that more young people be appointed to IWGs and Standing Committees, especially as Rapporteurs or Assistant Rapporteurs, perhaps with a responsibility to place all relevant documents on the CMI website and messages be placed on the CMI LinkedIn page.

Resolved to:-

- (i) **Appoint Taco van der Valk to be the CMI Executive Council liaison to the Young CMI Standing Committee.**
- (ii) **Limit the age of members of the Young CMI Standing Committee to 40.**
- (iii) **Request the Secretary-General to approach Blythe Daly (USA) to ascertain whether she would be prepared to be the Chair of this Young CMI Committee, and approach others named in the first round responses such as Massimiliano Musi, Miso Mudrich, Ionnis Timagenis, Frano Zarate and Violeta Radovich to confirm that they would like to remain on this reconstituted Young CMI Committee. The Secretary-General should then approach those who are already presently on the Young CMI Standing Committee and advise them of the new Constitution of this body.**
- (iv) **Request the young CMI Standing Committee to set up an essay prize on an annual basis to be awarded to a Young CMI person.**
- (v) **Note for future CMI events that it would be ideally preferable to try and hold the Young CMI sessions at times that do not clash with the Assembly Meeting.**
- (vi) **Seek to appoint as many members of Young CMI to International Standing Committees or International Working Groups in the future, especially as Rapporteurs.**

(d) Constitution Committee

Resolved:

- (i) **That the Constitution Committee continue its brief to address language anomalies in the present Constitution, and inter alia to examine the composition and terms of the Nominations Committee, and the nomination and election process generally, and Article 21 expulsion procedures and that it prepare proposals for EXCO to consider by the end of April 2017. Changes endorsed by EXCO should then be circulated no later than 1 June 2017 by the President to NMLAs, with an explanatory memorandum from the Constitution Committee and Secretary-General. NMLAs should be given until 30 June 2017 to respond, allowing the Committee and EXCO to process the responses with a view to including proposed amendments in the agenda**

for the Genoa Assembly – which is required to be circulated no later than 27 July 2017 – being the required 6 weeks' notice of the Assembly.

(ii) To appoint John O'Connor to the Constitution Committee.

(e) General Average Interest Rates

Conclusion:

The report of Taco van der Valk and its recommendations were noted, in particular that no increase be made to the rate of interest approved at the Assembly Meeting in New York and the difficulty of setting interest rates under the Guidelines to the 2004 York Antwerp Rules. It was also noted that Bent Nielsen had suggested a mechanism for reform of the Guidelines. As the Guidelines are required to be amended by a Conference of the CMI it is not possible for EXCO to approve the suggested amendments.

The President has noted, in correspondence with Taco van der Valk, that the Guidelines are themselves somewhat contradictory in that they seem to provide an unfettered discretion to the Assembly "based upon any information or consideration which in the discretion of the Assembly are considered relevant, but may take the following materials into account..." when setting the interest rate. It then later provides that "due regard shall be had..." which is somewhat contradictory to the general discretion. Pending possible reform in 2020 it would seem that the Assembly, on the recommendation of the Standing Committee, should proceed as best it can; despite the difficulty of ascertaining the top up rate which first rate banks charge the first rate shipowner on top of LIBOR, as first rate shipowners do not seem to get much capital by old fashioned borrowing and there is little data available, and banks not surprisingly, would not wish to disclose such confidential information.

The President's suggestion is that the Standing Committee do its best in the next few years to obtain whatever information it can and if thought necessary propose an amendment to the Guidelines for the 2020 Conference.

(f) Planning Committee

In the absence of any report from this IWG there was no Executive Council discussion.

(g) General Average Guidelines

Conclusion:

The report of Taco van der Valk was noted confirming the membership of this Standing Committee and its intentions to consider some topics which were not considered at the New York Conference due to time constraints.

The suggestion was made by John Hare that in view of the closing down of the Review of the Rules on General Average IWG a new Standing Committee be created.

The Executive Council also agreed with the recommendation of the German MLA that Jörn Groninger (Germany) be appointed to the Standing Committee.

The President in his summing up made reference to the process to be followed in amending the General Average Guidelines, in CMI Conference and/or in an Assembly. Any suggestion that the present Guidelines require amendment should thus carry forward to Genoa.

Resolved : /overleaf

Resolved that:

- (1) **There be a new Standing Committee on General Average and that the General Average Guidelines Committee be reconstituted within that new Committee as the Standing Committee on General Average (including Guidelines to the York Antwerp Rules 2016).**
- (2) **Jörn Groninger be appointed to the new Committee.**

12. The CMI and the IMO**(a) The IMO Legal Committee**

The Executive Council noted with pleasure that shortly after the New York Conference, which he had attended, Frank Wiswall was announced as the winner of the IMO Prize, for which he had been nominated by the CMI. The Executive Council, through the President, has extended its congratulations to Frank Wiswall, and is grateful to Patrick Griggs for agreeing to say a few words when the Prize is awarded on 5 December at the IMO.

(b) The IMO Maritime Safety Committee meetings in November 2016

The Executive Council noted the report of Patrick Griggs dated 24 November 2016 on his attendance at the MSC meeting at the IMO which took place during the Executive Council meeting and at which the MSC had considered the problem of safety standards for personnel (where more than 12 were involved) when being transferred to work on offshore installations and the trip goes beyond the Territorial Seas. Patrick Griggs noted that discussion had centred around a new Chapter 6 to SOLAS although consideration is being given to an interim solution, which is to create a definition of "industrial personnel" by means of an MSC resolution so as to define such persons as not being passengers within the meaning of SOLAS regulations. Patrick Griggs noted that he had drawn the attention of the United Kingdom delegate to the existence of the Athens Convention and its definition of passenger and his recommendation to the CMI to the effect that there is little the CMI can do unless and until this problem is referred to the IMO Legal Committee. The Executive Council expressed its appreciation to Patrick Griggs for monitoring this meeting which has been conveyed by the President.

(c) The IMO Legal Committee 2013rd Session 8 – 10 June 2016

The Executive Council noted, with thanks, the report which had been received from Patrick Griggs on the June meeting of the IMO Legal Committee. John Hare drew attention to the last paragraph of Patrick Griggs' report which is reproduced below:

“This was a short meeting (effectively 2 days) and the only possible new projects of any substance (Transboundary Pollution and Judicial Sales) were both rejected. This leaves the Legal Committee with only one meeting per year and a very insubstantial future work programme. There must be some doubt about the long term future of the Committee.”

13. IOPC Fund Meeting

The Fund's own report of this meeting which was attached to the papers was noted by the Executive Council.

14. Publications

The retirement of Giorgio Berlingieri from his role as Publications Editor for the Yearbook and Newsletter was accepted with sadness and reluctance by the Executive Council. EXCO expressed its grateful thanks to him for having taken on this role on the retirement of his father in 2013 and in particular, that since then his firm had borne the secretarial costs and disbursements for these publications. The grateful thanks of EXCO and the CMI have been extended to Giorgio and his family on their devoted service to the CMI and in particular its publications over many years.

Resolved that Taco van der Valk's offer to take on this role will be accepted but he will require such assistance as the CMI secretariat is able to supply. It is hoped that Anne Verlinde's replacement will have the time and ability to assist in that regard.

Further issues which were discussed and supported concerning publications were:

- Work will be done to prepare an index for the Yearbooks, that is, initially, all the indexes of the Yearbooks currently on the website will be published together on the website.
- That further investigation into an online search facility be explored and developed if economically feasible.
- That for the foreseeable future CMI continue to publish hard copies of the Yearbook.
- Vice President Davis suggested exploring developing a relationship with Antwerp Library.

15. CMI Regional office in Singapore

The report of Lawrence Teh was noted and considerable thanks and commendations conveyed to him for his efforts in reaching out to MLAs and jurisdictions where there is no MLA in the region around Singapore, which in recent times have included the UAE (Dubai), Thailand (where there seems little prospect of an MLA being developed in the foreseeable future), and Malaysia (see earlier membership application agenda item) where Lawrence Teh had met both Arun Krishnalingam and Sitpah Selvaretnam. He had also participated in the 8th Asian Maritime Law Conference in Singapore at which the President had given the keynote address.

16. EU representation

In the absence of any report there was no Executive Council discussion, but the Executive Council noted that the report presented by Vincent Power at the New York Conference is being published on the CMI site.

17. CMI - The Future

In the absence of any report there was no Executive Council discussion.

18. Reports to NMLAs by Executive Councillors

The report by Giorgio Berlingieri and his visits and/or correspondence to MLAs of Croatia, Greece, Portugal, Slovenia and Spain and the yearly conference organised by the MLAs of Italy, Croatia and Slovenia on a rotating location basis was noted, as was the memorandum of understanding entered into between those MLAs. Vice President Berlingieri and the Italian MLA are to be congratulated for their work in assisting those other MLAs and participating in such regional activities.

Executive Councillors were urged by John Hare to liaise with their identified MLAs for whom they have responsibility as well as lending support to those who are known to them and participate in IWGs and Standing Committees and encourage them with their work.

19. Correspondence

Correspondence between the President and the Croatian MLA concerning its declining membership and difficulty meeting subscriptions was noted.

The President's correspondence to MLAs on the conclusion of the New York Conference was noted.

20. Future Executive Council Meetings

Future EXCO meetings were noted as follows:

1. Management Committee Meeting - March 7th and 8th, 2017 in Antwerp;
2. A possible virtual meeting in April/May 2017; and
3. An EXCO meeting on 7 September 2017 in Genoa.

21. General business

The Executive Council noted:

- The President's attendance at the 40th Anniversary of the New Zealand Branch of MLAANZ and the 8th Asian Maritime Law Conference in Singapore in September 2016.
- Vice President Chris Davis's attendance at the joint meeting of the MLAUS and Tulane Admiralty Law Institute between 26 and 28 October 2016 (which was also attended by John O'Connor and Dieter Schwampe).
- The article in ICS on "Ocean Governance" and the work being done at the United Nations with which ICS is involved on a new legally binding instrument on the Conservation of Marine Life in areas beyond national jurisdictions which is likely to have an impact on shipowners work.

Closing remarks by President.

The President thanked EXCO members for their participation and for all the work they do for the CMI, and recorded special thanks to his assistant, Melissa Matheson, for her hard work in preparing and processing papers for this meeting.



STUART HETHERINGTON
PRESIDENT



JOHN HARE
SECRETARY-GENERAL

