

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

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NEWS FROM THE CMI

REPORT OF THE SECRETARY GENERAL ON THE 42ND CMI INTERNATIONAL CONFERENCE

The 42nd International Conference of the CMI With joint sessions of the Maritime Law Association of the United States, 3-6 May 2016

This year saw the long-overdue return of the Comité Maritime International to New York for its 42nd International Conference.¹ It was a truly ambitious project, particularly because it was the fifth consecutive year in which the CMI had convened an

international event. New York in May 2016 thus followed hot on the heels of Beijing, Dublin, Hamburg and Istanbul. This unusual sequence was necessitated by the long and at times torturous road to finalisation of both the Draft International

¹ The last International Conference in New York was in 1965 when the main theme was Maritime Liens & Mortgages. The 1965 Yearbook of the CMI with a record of that conference is at www.cmi2016newyork.org/yearbooks. The 2016 Conference site is at www.cmi2016newyork.org. All documentation of the Conference, the seminar sessions and the CMI Assembly are available on that event site and will in due course be migrated to the CMI home site at www.comitemaritime.org under <Documentation>.

Convention in respect of Recognition of Foreign Judicial Sales of Ships in Hamburg, and essential amendments to the York Antwerp Rules which was the main thrust of the New York Conference.

The formula for the conference was somewhat unusual in that it was decided to combine the annual Spring Committee Meetings of the MLAUS with the CMI's 42nd International Conference and its own International Working Group and Committee meetings. This presented the CMI Secretariat and the MLAUS Organising Committee with a number of challenges: the first was to try to combine the subject matters dealt with by the respective CMI IWGs and MLAUS Committees into joint working sessions. The MLAUS and the CMI each have about twenty committees. There is considerable though not complete subject matter synergy between them, and the idea was to expose MLAUS and CMI attendees each to the workings of the other.

The second challenge was to devise a suitable costing formula for the conference: the MLAUS Spring Meetings are traditionally no-charge events – apart from the annual gala dinner. We were advised to maintain this tradition to ensure the largest possible participation by MLAUS members, many of whom had little or no previous exposure to the work and ethos of the CMI. By using as leverage the considerable cost of the gala dinner and other catering, we were able to secure conference meeting venues at the New York Hilton at no cost. Full CMI delegates then paid a normal all-in registration fee, whilst MLAUS walk-in attendees could still come to working sessions for no cost – essentially riding on the back of the catering bill which was largely generated by MLAUS attendance. Social add-ons attended by MLAUS members were however costed individually. The tight budget was much eased by very generous sponsorship garnered by the MLAUS from the industry.² Everyone seemed happy with this compromise and we ended up with 977 CMI delegates and MLAUS attendees. This was the biggest event in the CMI's history – nearly double the attendance of the next largest, the Antwerp CMI Centenary Conference in 1997.

The success of the conference was to no small measure due to the support we received from the IMO. It is probably fair to say that before this Conference, exposure of the average MLAUS maritime lawyer to both the CMI and the IMO was minimal. One of the really useful features of the New York Conference was the extensive and much valued participation of the IMO. As many will know, the CMI is privileged to work very closely with the IMO.

It is proud to be regarded as an international think-tank for the IMO. The IMO, through its Director of Legal Affairs Adm Fred Kenney and his team, gave its full support to the conference. Adm Kenney and Dorota Lost-Simenska of the IMO Legal Office participated throughout. But perhaps the greatest coup was to have had the IMO Secretary-General Kitack Lim deliver the opening address – another first for the CMI.³ Mr Lim was then thanked by CMI stalwart Hon Vice President Frank Wiswall, who with his wife Libby were guests of honour of the CMI for the proceedings.

The working sessions began in earnest on Wednesday 4th May with a keynote address by Adm Steven Poulin, outgoing JAG and Chief Counsel for the US Coast Guard before he handed over to Capt Nick Sloane for a fascinating account of the salvage and wreck removal operation of the *Costa Concordia* – the biggest and costliest such operation in maritime history. Both Adm Poulin and Capt Sloane's addresses were recorded, and are available on the event website. It is not possible in this short report to give a proper account of the enormous scope covered in the various working sessions. Suffice to say that the 'big ticket' events were largely centred around new topics embraced by the CMI during the past year or two: *Legal Issues of Unmanned and Autonomous Ships* showed the way forward into uncharted maritime law seas – none least the puzzle of how to accommodate the unmanned ship within the strictures of SOLAS and the Collision Prevention Regulations. Author Peter Singer and Bloomberg journalist Mike Riley set the somewhat scary scene in *Cybersecurity in Shipping* followed by insights into port and onboard cybersecurity. The IMO contributed to debates on *Pandemic Response at Sea* and on the tragedy that unfolds daily in *Refugee Migration at Sea*. There were interesting sessions on *Liability for Wrongful Arrest; Vessel Nomenclature; Liabilities from Offshore Activities; Judicial Sales; Maritime Arbitration; Cross-Border Insolvencies; Maritime Security; Jurisdiction and Arbitration Clauses in Carriage Contracts; Marine Insurance*; and the ongoing CMI project to identify fundamental common principles of the *Lex Maritima*. Meanwhile, the CMI *Polar Shipping* IWG held a full day's seminar on current issues facing polar shipping operations and Arctic development.

We repeated the Hamburg (Berlin) and Istanbul updates of maritime law reforms in selected jurisdictions, including the annual report of EU shipping law developments by Dr Vincent Power, the CMI Rapporteur on EU Shipping Law. This is likely

² The CMI is particularly grateful to John Kimball and his team for their success in raising generous sponsorship from New York and other lawfirms and from the industry. Many sponsors also gave worthwhile and much appreciated gifts to be included in delegates' conference bags.

³ Sec-Gen Lim's address is reproduced on the event website at www.cmi2016newyork.org under <Documentation>.

to be a regular item at future CMI events.⁴

Of course the main purpose of the New York Conference was to finalise much needed amendments to the York Antwerp Rules on General Average. Throughout the week, the CMI's General Average IWG held International Subcommittee meetings which, by dint of hard and dedicated work stretching back a good few years, finally resulted in broad stakeholder agreement on the amendments to the Vancouver 2004 version of the York Antwerp Rules. These amendments were put to a Plenary Meeting of the CMI just before the CMI Assembly on Friday 6th May, and then taken forward to the Assembly, where they were duly adopted unanimously by all 41 National MLAs represented, as *The York Antwerp Rules, 2016*. Also adopted, albeit after some debate as to what they should be called, were entirely new General Average Guidelines, designed to inform but not in any way change the Rules themselves. It would be remiss not to offer congratulations to all involved in this arduous process, especially IWG Chair Bent Nielsen, and his co-Rapporteurs, Taco van der Valk and Richard Cornah and all the dedicated members of this IWG.⁵

The annual Assembly of the CMI is where its current work is showcased and its officers are elected. Thus at the New York Assembly the President submitted his annual report, and all IWG and Committee chairs were invited to submit brief reports on their work during the preceding year. The minutes of the Assembly are published in this Newsletter and on the CMI site. Other Assembly documentation, including the reports of the Chairs, are available in the Documentation section of the New York event site. The only new member welcomed onto the CMI Council this year was John O'Connor, of Canada.

A notable feature of this year's Assembly was that it was open for attendance by MLAUS members. Similarly, the MLAUS AGM that took place during the Friday morning was also open to CMI. No-one could fail to notice that we operate in very similar fashion. The outgoing MLAUS President, Bob Clyne, offered generous thanks to both CMI and MLAUS organisers of the Conference. These sentiments were reciprocated by CMI President Stuart Hetherington at the CMI Assembly when he called upon Vincent Foley, Chair of the Organising Committee, to accept the grateful thanks of the CMI. Appreciation was also recorded for the enormous efforts of Kathy Morton of Professional Conference Organisers GMI.⁶ Running parallel with the Assembly was a series of

presentations by Young CMI and MLAUS members. This included a talk by the 2015 CMI/IMLI prizewinner, Haris Kazantzis, on the Aegean Sea Continental Shelf dispute. Fortunately all of the Young CMI sessions were recorded and are available on the event site.

Mention must also be made of the truly enjoyable social programme for Delegates and for the large number of Accompanying Persons whose presence at CMI events contributes so much.

Treats of the week included a Broadway Revue at the opening, visits to the Rockefeller Centre and Top of the Rock, a memorable evening at the annual Nicholas J Healy Lecture at NYU and a Gala Dinner to end all gala dinners at which 1342 people sat down to an excellent meal culminating in the passing of the CMI colours by Bob Clyne and his committee to Giorgio Berlingieri on behalf of the Italian MLA - which is to host the next CMI Assembly at Genoa in September 2017. The evening and indeed the week was wrapped up by a lively concert by the *Seven Seas Band* made up entirely of maritime lawyers - including two CMI Councillors. Legendary stuff!

Was CMI 2016 New York successful? Due largely to the interesting content of the programme, the calibre of speakers and participants, and the extensive participation of nearly 1000 who registered as delegates or attendees, we emerged at the end of a most enjoyable week having established really useful ties between our respective venerable and great institutions. The existing close ties between the CMI and the IMO were also reinforced. The (much appreciated) positive input which we have had since the conference is perhaps best summed up by the comment of Susan M. Dorgan who chaired a session on Jurisdiction and Arbitration Clauses in Carriage Contracts. She wrote:

This joint meeting of the CMI-MLA will long be remembered as one of the greatest and grandest meetings of maritime attorneys and friends. I am sure the future of maritime law will have changed for the better because of this meeting.

Could we have wished for more? To the 977 who attended and participated in this *great and grand* meeting of the world maritime law fraternity, the CMI owes you much gratitude. To those who could not be with us, please visit the CMI2016NewYork.org event site.

JOHN HARE
Secretary General

⁴ Again, Dr Power's report and documentation for most sessions is available on the event site.

⁵ The York Antwerp Rules, 2016 were endorsed in record time by BIMCO's Documentation Committee on 23 May for incorporation into all new and revised BIMCO charterparties. The text of the new Rules and the Guidelines are available in full on the event website under <Documentation> <Session 1 – General Average>.

⁶ I should like to add my own thanks to Vincent Foley and to Kathy Morton who have both been such a pleasure to work with over the past year and more.

REPORT ON THE 42ND CMI INTERNATIONAL CONFERENCE ⁷

The CMI returned to New York in May for the first time since 1965 for its 42nd International Conference. The Conference was held jointly with the US Maritime Law Association (USMLA) with all delegates welcomed at the various Conference sessions, the USMLA committee meetings and invited to the annual Assemblies of both organisations. Delegates from fifty one countries attended the Conference.

The Conference was opened by His Excellency Kitack Lim who is the current Secretary-General of the International Maritime Organisation (IMO). He reflected on the long association between the IMO and the CMI which dates back to the *Torrey Canyon* incident in 1967. At the time of that incident the CMI had already started work on an international convention to cover liability and compensation for oil spills from tankers and made the results of its work available to the then newly formed IMO Legal Committee. From this cooperation came the Convention on Civil Liability for Oil Pollution Damage which was adopted in 1969. Since that time, the Secretary-General, recalled, there had been close cooperation between the two organisations on numerous international maritime law conventions including

The Convention on Carriage of Passengers and their Luggage by Sea (1974 and 2002), the Convention on Limitation of Liability for Maritime Claims (1976 and 1996), the Salvage Convention (1989), the Bunkers Convention (2001) and the Wreck Removal Convention (2007). He welcomed this cooperation and spoke with enthusiasm about the programme which had been put together for the New York Conference which showed that CMI was still in the business of tackling topical maritime issues.

The Secretary-General stated that during his period of office at IMO he would give priority to achieving wider implementation of the many existing conventions which currently lack support. He emphasised that implementation was the sole responsibility of the governments of member states but recognised that in some states there was a lack of expertise within administrations in the implementation process. He will be concentrating his efforts on providing technical support from IMO and on creating a training programme.

In closing the Secretary-General said:

"...in conclusion, let me stress that the CMI's contribution to IMO's work is greatly valued and

much appreciated. You have helped us frame the rules and regulations that shape the shipping industry – an industry that is essential to sustainable development in the future."

The removal of the wreck of the Costa Concordia.

On the first day of the Conference Captain Nick Sloane, who was the Salvage Master for the "parbuckling" of the Costa Concordia, gave a detailed, illustrated account of this extraordinarily complex salvage operation. New, untried methods had to be devised to right the ship and at all stages the actions of the salvage company were subject to interference from the Italian authorities who were primarily concerned with the pollution risk and all plans had to be approved not only by the owners but also by the two P. & I. Clubs involved who were paying for the wreck removal operation.

The ultimate success of the operation can be put down to the persistence of Captain Sloane and his technical team.

General Average – the York-Antwerp Rules 2016.

The York-Antwerp Rules (YAR) 2004 have never been accepted by the shipping industry and were never incorporated in any of the standard documents for the carriage of goods by sea.

Over the past 4 years a CMI International Working Group and an International Sub-Committee, under the chairmanship of Bent Nielsen (Denmark), have been seeking to reconcile the interests of all sides of the shipping industry. The new YAR come as the result of compromises worked out with the cooperation of ship, cargo and insurance interests and particular credit goes to ICS, IUMI and BIMCO who have been involved throughout.

The most controversial aspect of the negotiations concerned the question of how salvage should be treated in General Average. On the one hand it was argued that since ship and cargo have separate liabilities to pay salvage charges there was no need to re-apportion salvage charges in General Average. On the other hand it was forcefully argued that in many cases a General Average adjustment resulted in a substantial (and appropriate) re-distribution between ship and cargo interests.

Under YAR 2016 salvage charges will only be subject to redistribution in General Average in five sets of circumstances which are set out in Rule IV (b).

⁷ Documents for the Conference will be found on the CMI website www.comitemaritime.org – go to the New York Conference tab.

A new formula has been incorporated in the YAR for calculating the rate of interest to be allowed on General Average expenditure and there are new requirements regarding the holding of cash deposits by adjusters.

New time limits have been introduced. Claims for contributions in General Average are time barred one year after the date of the adjustment but not later than 6 years after the termination of the voyage.

A number of detailed amendments have been made to facilitate adjustment. For example Rule B, on tug and tow, is clarified and expanded to cover port of refuge situations. There has also been some re-ordering of the Rules to make the sequence more logical. (The text of YAR 2016 is widely available but can also be found on the CMI website).

A few days after the Conference, BIMCO's Documentary Committee confirmed its approval of YAR 2016 and has immediately commenced using the Rules in its standard shipping documents.

The Conference also approved the CMI Guidelines relating to General Average. These are an entirely new concept. During the review process it was decided that it might be useful if the CMI, as the neutral custodian of the YAR, developed a set of Guidelines which would consist of readable explanations aimed at the layman. The Guidelines include some explanations of the background to the new Rules as they apply to salvage and General Average deposits. There is also a section on the role of the Average Adjuster and the General Average Surveyor. The Guidelines will be subject to regular review by a standing committee. Any changes which the Committee may suggest will be subject to ratification by the CMI annual Assembly⁸.

Ship Finance Security Practices.

The UNIDROIT Cape Town Convention on International Interests in Mobile Equipment 2003 is designed to standardise transactions involving movable property. The Convention creates standards for registration of contracts of sale, security interests (liens) leases and conditional sales contracts. It also deals with legal remedies for default in financing agreements including repossession.

The Convention itself deals with these security aspects but extending protection to particular types of asset is achieved by means of protocols to the Convention. To date the Convention has been ratified by 57 states and came into force on April 1st 2004 and

has been extended, by a Protocol of 2001, to cover aircraft (and their engines). This Protocol entered into force in March 2006. Two further Protocols extend the Convention to Railway Rolling Stock (2007) and Space Assets (2012).

It is now understood that UNIDROIT is looking to extend the Convention to cover other classes of assets. When the Cape Town Convention was in the process of development UNIDROIT hoped that the shipping industry might welcome extension of the scope of the Convention to cover ships. At that time the CMI and its member Associations were consulted and UNIDROIT was informed that the existing system of liens in the world of ship finance had proved adequate to protect the rights of mortgagees by well developed national laws and by the Mortgages and Liens Conventions (1936 and 1993) and also by the Arrest Conventions of 1952 and 1999. At the time UNIDROIT accepted this position but it is now looking again to extend the scope of the Convention to cover ship finance.

The CMI has set up an International Working Group, chaired by Ann Fenech (Malta) to consider the general question of ship finance security but also to consider what response the CMI might make to this latest initiative from UNIDROIT.

At the New York Conference the opportunity was taken to organise a joint session involving both CMI and USMLA delegates to explore this area of the law in greater detail. One of the presentations during this session came from Clay Maitland, who is involved in running the Marshall Islands Ship Registry. He was able to explain to delegates how the rights of mortgagees and mortgagors were protected in this important "open" registry.

Marjorie Krumholz (a Washington Lawyer) and chair of the USMLA Marine Financing Committee, looked at this UNIDROIT initiative in the context of the existing international conventions.

Giorgio Berlingieri (President of the Italian Maritime Law Association and Vice-President of the CMI) provided delegates with a careful analysis of the reasons why, in his view, the Mortgages and Liens Conventions of 1936 and 1993) had not been more widely ratified.

Several other speakers spoke of the problems encountered in their countries where the rights of both parties to a ship financing contract had been the subject of litigation.

The work of this IWG will continue.⁹

⁸ I am grateful to Bent Nielsen (Chairman of the IWG and the ISC) for supplying me with a note of the outcome of the New York meeting. This report is based on his note.

⁹ I am grateful to Ann Fenech, Managing Partner of Fenech & Fenech, member of the CMI Exco and chair of the CMI IWG on Ship Finance Security for her note which forms the basis of this report.

Judicial sale of ships and their recognition.

The CMI Conference in New York took place one month before the 103rd session of the IMO Legal Committee at which the CMI draft convention on this subject was due to be presented. Delegates to the Conference were urged to lobby their national delegations to the Legal Committee meeting for support from the floor for this project.

The outcome of the 103rd session of the Legal Committee was reported in the last issue of JIML.¹⁰

Cross-border Insolvency.

The CMI's International Working Group (IWG) and the USMLA's Committee on Maritime Bankruptcy and Insolvency held a joint meeting. Justice Stephen Rares (Australia), retired Bankruptcy Judge Robert Gerber (New York) and Professor Martin Davies of the Tulane Maritime Law Center were amongst the panellists.

The meeting considered recent cross-border trends and developments affecting shipping insolvencies, including the interplay of maritime and general bankruptcy law and the potential need for a protocol to the UNCITRAL Model Law¹¹ carving out in rem actions.

Some of the specific topics included whether a debtor's centre of main interest (COMI) should be evaluated at the date of the filing of the main or ancillary insolvency proceedings, whether U.S. bankruptcy courts should refrain from exercising jurisdiction over insolvencies filed by foreign debtors with little or no connection to the U.S., the extent to which a shipping debtor must establish an operational presence in a "letter-box" jurisdiction in order for the debtor's COMI to be fixed there, whether a U.S. bankruptcy court has jurisdiction to enforce its "automatic stay" order when creditors subsequently take steps to enforce in rem claims in a foreign jurisdiction, should admiralty and bankruptcy courts resolve the issue of competing priority of claims in cross-border insolvency cases by observing principles of reciprocal comity, whether a ship sale by a U.S. bankruptcy court (as distinct from an admiralty or maritime court) would be recognised by a foreign court, and the likelihood of the United States adopting a carve-out for in rem claims (similar to EC Regulation 1346/2000, soon to be replaced by EU Regulation 2015/848 which will apply from June 26th 2017).

This was a well-attended meeting with many interventions from the floor.¹²

Polar shipping and Arctic Development.

The opening up of Arctic and Antarctic regions to exploration and exploitation has forced governments and NGOs to look at thirty private and some public maritime law conventions to ascertain their applicability in these regions and to determine whether they need to be amended to take account of the unique conditions.

Within the Conference a Symposium was organised jointly between the CMI and the USMLA to consider (1) the recently adopted Polar Code – its gaps and challenges, (2) civil liability for pollution from oil spills, (3) the emerging regime for fisheries, (4) issues of ship safety and routeing and (5) "lessons from the Antarctic".

A Working Paper and Recommendations of the CMI International Working Group were placed before the Symposium.

Amongst recommendations in the IWG report are the need for a definition of "Polarworthiness" for purposes of the Hague Rules, Hague-Visby Rules and Rotterdam Rules. It was recommended that the CMI should take a close look at the Nairobi Convention on Wreck Removal 2007 with particular reference to limits of liability for damage caused.

It is a matter of great concern that the HNS Convention 2012 is not yet in force bearing in mind the great potential for chemical pollution from polar shipping. It was noted that the Ballast Water Convention 2004 is also not yet in force leaving the polar regions vulnerable to damage from ballast water discharge.

The IWG report proposes that the IMO should be invited to consider whether the North Atlantic Winter Seasonal Zone 1 load lines should be extended to Arctic waters or whether there should be an Arctic load line annex.

Liability for pollution and the current limitation of liability regime is considered in a report of the CMI IWG entitled "Report on the Legal Framework for Civil Liability for Vessel Source Oil Spills in Polar Regions" and the recommendation of the IWG is that this report should be submitted to IMO for further consideration even though there was a strong measure of disagreement within the IWG on the need for a special liability regime for polar regions.

Consideration has also been given to the need for amendments to the Collision Regulations.

All these and other topics were considered at the Symposium.¹³

¹⁰ JIML Vol. 22 Issue 3 p.140

¹¹ The UNCITRAL Model Law on Cross-Border Insolvency (1997).

¹² Thanks to Christopher O. Davis of Baker, Donelson, Bearman, Cadwell & Berkowitz (New Orleans), Vice President CMI and chair of the Cross-border Insolvency IWG on whose note this report is based.

¹³ Thanks to Aldo Chirop (Canada), chair of the CMI IWG on Polar Shipping on whose note of the proceedings in New York this report is based.

Unmanned craft.

In May 2015 the CMI Executive Committee set up an International Working Group to look at the challenges presented by ships operating without crews.

At the New York Conference Oskar Levander, Vice President of Innovation, Engineering Technology and Marine at Rolls Royce gave a detailed technical presentation of “unmanned ships” which he predicts will be sailing the high seas by the end of this decade. Professor Henrik Ringbom (Finland) looked at provisions of UNCLOS with particular reference to the powers of flag, port and coastal states within their waters and on the high seas. He stressed that this topic was within the remit of IMO.

Professor Eric von Hooydonk (Belgium) compared this development with the containerisation revolution and talked of the vision of unmanned ships calling at unmanned ports to load and discharge. Whilst the current legal regime was relatively well prepared to meet these new challenges he expressed the view that new business models would emerge requiring new legal regimes.

Robert Veal from Southampton University looked at the Collision Regulations in the context of unmanned ships and suggested that changes would be required. Interestingly (and logically) he pointed out that STCW would no longer have any relevance on unmanned ships.

Andrew Garger, member of the Board of Commissioners of Pilots of the State of New York, drew attention to the importance of keeping liability insurers and Classification Societies “on-side” – they would have many things to think about.

The work of this IWG will continue.¹⁴

The Rotterdam Rules.

At the present time 25 states have signed and three have ratified the Rotterdam Rules. Whether the Rules ever enter into force is largely dependent on whether the U.S. ratifies and this continues to be in doubt.

At the New York Conference a two hour session was devoted to a review of the current status of this instrument and to an examination of the classic problem of jurisdiction and arbitration clauses in transport documentation and whether and to what extent they are enforceable in various jurisdictions. Speakers also addressed the question of whether states are likely to opt-in to the chapters in the Rules which cover jurisdiction and arbitration.

It was reported that a Working Group at UNCITRAL has just commenced a study on “electronic transferable records” with a view to

producing a model law on the subject. The IWG will keep this project under review.

It was also reported that UNCITRAL is working on an “Accession Kit” to help states with domestic implementation. This kit will include a document prepared by the IWG entitled “Q. & A. on the R.Rs.” The future of the Rotterdam Rules, to which the CMI devoted so much time and energy remains in the balance.

When is a ship not a “ship”?

This IWG has been created to look at the uncertainty caused by the different definitions of “ship” or “vessel” in both domestic and international law.

The Chairman of the IWG, Francis X. Nolan III (USA), referred delegates to two decisions of the U.S. Supreme Court – *Stewart -v- Dutra* (2005) and *Lozman -v- City of Riviera Beach* (2013) in which the Court considered the general Federal definition of “vessel” simpliciter and the stricter, more admiralty orientated, test of what constitutes a “vessel in Navigation”.

In the field of ship finance problems have arisen where a loan, secured by a mortgage, attached to a vessel which was then laid-up for an extended period and ceased in most respects to be a vessel.

One of the speakers at the session was Dorota Lost-Sieminska, Head of the Legal Affairs Office at IMO. She delivered a paper which examined the various definitions of “ship” or “vessel” which appear in instruments drafted over the years by the IMO. This revealed that there was no uniform definition in IMO treaties and that in certain instruments there might be more than one definition. To illustrate her point she referred specifically to the various definitions of “ship” which appear in SOLAS, the Wreck Removal convention and the Bunkers Convention.

The situation in Latin America was analysed by Aurelio Fernandez-Concheso (Venezuela). Many different definitions of “ship” are to be found in legislation in different jurisdictions in the region often dependent on the purpose of the particular piece of legislation.

Dr. Bulent Sozer (Turkey), Lawrence Teh (Singapore) and Edmund Sweetman (Ireland/Spain) all gave examples of where problems arise in their particular jurisdictions due to the uncertainty about the definition of “ship” or “vessel”. A “vessel” which may be arrested in one jurisdiction may not be capable of arrest in another.

The Chairman explained the format of the Questionnaire which had been sent out to affiliated maritime law associations and urged delegates to

¹⁴ Thanks to Andrew Higgs for his note on this session which forms the basis of this report.

encourage their associations to respond to the Questionnaire. Once the responses are received the IWG will prepare a report with recommendations for future work on this issue which continues to create problems in many jurisdictions.

Pandemic Response at Sea.

Following the Ebola outbreak in Sierra Leone and its spread to other African states there has been much discussion about the role played by ship movements in spreading viruses of that nature. Paul Gill (Ireland) presented a paper on the ways in which viruses evolve and can be spread and the vectors they use. Natalie Shaw (International Chamber of Shipping) looked at the practical effects of pandemic response on seafarers and explained the current legal regime. In terms of practical measures she referred to an exercise, which took place on December 16th 2014 in the Port of Norfolk, Virginia. This exercise involved the Port Authority, the Norfolk Fire-Rescue Service and the Coast Guard and revolved around the arrival of a ship carrying two suspected Ebola victims who needed to be “extracted” from the ship in conditions of high security and removed to hospital. She also referred to a chart which had been produced jointly by IMO and ILO and distributed within the shipping community. This simple chart tells ship masters and medical officers what to do in the event of a crew member or passenger showing symptoms of Ebola. It seems that a similar chart will be produced for the Zika virus which has now replaced Ebola as the most feared potential pandemic. The IWG on this new subject has sent out an initial Questionnaire to CMI affiliated maritime law associations and a further report will be prepared once responses have been received.

Piracy.

Andrew Taylor (UK) reported that, based on data published by the International Maritime Bureau (IMB), incidents of piracy and armed robbery at sea increased in 2015/16 though the number of hijackings and crew captures dropped. Measures taken to deal with the Somali pirates appear to have succeeded as there were no Somali-based attacks reported in 2015. However, the increase in the number of incidents in South East Asia and off the coast of West Africa (Nigeria in particular) have more than made up for this. Much of the activity in South East Asia is described as “low-level theft” but the incidents are still logged as piracy/armed robbery. Activities in Vietnam are described in similar terms. This is not a problem which is about to go away. The total number of “kidnaps for ransom” in 2016 (32) has already exceeded the number recorded in 2015.

It is notable that the operational range of the pirates off the coast of West Africa has greatly increased. The *MV Leon Dias* was attacked more than 100 miles off the coast of Nigeria and the *MV Maximus* was hijacked off the coast of Abijan which is 600 miles off the Niger Delta. A Nigerian Naval force, with logistical support from the navies of the U.S., Ghana and Tonga, eventually stormed the *Maximus*, captured six pirates and freed the 18 crew members. The focus of international efforts is on assisting states to develop a legal framework to handle the prosecution of pirates. The United Nations Office on Drugs and Crime (UNODC) is in the forefront of this effort. By way of example UNODC has provided training for Nigerian Federal High Court Judges and Prosecutors on the international legal framework for piracy and maritime crime. Similar programmes are operating in other West African countries. The UNODC Counter-Piracy Programme (CPP) which was launched in May 2009 assists the criminal justice systems in East Africa (Kenya, Seychelles, Somalia, Mauritius and Tanzania) in the prosecution of pirates. The UN Contact Group on Piracy off the Coast of Somalia, set up after the spate of hijackings in the Indian Ocean, is considering whether to extend its mandate to cover West Africa and Southeast Asia. Andrew Taylor concluded his report by saying “...the battle goes on”.

Lex Maritima.

This ongoing CMI project involves the compilation of the law on selected principles of maritime law. The object of this ambitious project is to prepare a basic set of rules of maritime law that may be regarded as being internationally accepted and common to most, if not all, legal systems and traditions. The International Working Group, under the chairmanship of Professor Eric Van Hooydonk, has agreed a list of maritime legal “themes” or “principles” which are to be explored with a view to extracting a set of rules.

Offshore Activities.

The IMO Legal Committee continues to be opposed to including in its work programme the drafting of a convention or other instrument to tackle issues of liability and compensation arising from the escape of oil or other polluting substances from offshore exploration or exploitation causing transboundary damage. It has, however, encouraged intersessional work on a Guidance document designed to assist states which wish to resolve this problem by entering bi-lateral or regional agreements. A CMI International Working Group has been following these

developments and has contributed to this intersessional work. It is anticipated that the Guidance document will be presented to the next meeting of the Legal Committee in Spring 2017.

Cybercrime.

Two sessions of the Conference were devoted to examining how cybercrime is having an impact on the shipping industry. Michael Riley, a Journalist with Bloomberg News, gave a graphic description of the hacking of the I.T. systems of a container terminal in Antwerp by two “geeks” allegedly acting under duress from criminals.

Paul W. Singer, Strategist and Senior Fellow at the New American Foundation and author of “*Cybersecurity and Cyberwar: What Everyone (in Shipping) Needs to Know*” explained just how vulnerable the shipping industry is to cyberattacks. He argued the need for the development of defences to the hacking.

Wrongful Arrest.

The CMI has for some years been considering the lack of international uniformity in matters of wrongful arrest. Of particular concern is the need, under some systems of law, to prove that the arrest was malicious before a claim for wrongful arrest can succeed. This work continues.

Legal issues arising out of Refugee Migration.

The Conference session on this subject examined the maritime and international legal and humanitarian issues arising from the waves of refugees coming across the Aegean and Mediterranean Seas. The legal rights and liabilities arising from search and rescue operations were discussed and also the private law aspects where commercial vessels deviate from the voyages in the course of a rescue operation.

There was a brief description of the functions of EUNAVFOR MED operation codenamed “Sophia”.

PATRICK GRIGGS

**MINUTES OF A MEETING OF THE CMI EXECUTIVE COUNCIL
HELD ON TUESDAY, 3 MAY 2016 FROM 09H00 TO 17H30
AT THE HILTON HOTEL, NEW YORK ***

Participating:

<i>President:</i>	STUART HETHERINGTON
<i>Past President:</i>	KARL-JOHAN GOMBRII
<i>Vice-Presidents:</i>	GIORGIO BERLINGIERI CHRISTOPHER O. DAVIS
<i>Secretary-General:</i>	JOHN HARE
<i>Administrator:</i>	LAWRENCE TEH
<i>Treasurer/Head Office Director:</i>	PETER VERSTUYFT
<i>Councillors:</i>	ANN FENECH TOMOTAKA FUJITA LUC GRELLET JORGE RADOVICH DIETER SCHWAMPE DIHUANG SONG ALEXANDER VON ZIEGLER
<i>Absent:</i>	TACO VAN DER VALK [Apology noted]

ITEM NUMBERS CORRESPOND TO THOSE ON THE AGENDA DULY CIRCULATED
TO EXCO MEMBERS BY THE PRESIDENT.

1. *Apologies*

Apologies were accepted from Taco van der Valk who was attending the GA IWG session.

2. *Approval of the Minutes of Virtual Meeting November 2015*

There being no comment nor objections, the November 2015 minutes were approved and signed by the President and the Secretary-General.

3. *Matters arising from Minutes of Virtual Meeting*
None not covered by the agenda for this meeting.

4. *Finance and Administration*

(a) *Treasurer's Report*

Presented by the Treasurer who pointed out that there is a change in accounting from 2015 to try to give a more accurate view of the actual expenses arising from EXCO attendance at conferences and colloquia. He, Anne Verlinde and the Secretary-General had been working with the auditors to devise a more transparent and accurate reporting format, especially in relation to CMI events. Thus the Secretary-General explained that in the new format EXCO expenses relating to meetings remain in the operating and travel budget, but additional expenses arising from EXCO members attending events would be included in the event budget. It is hoped that this

format will enable the CMI to get a better indication of the cost of events. Accordingly, the Istanbul Colloquium reported only a small surplus of Euro 607 on the revised reporting format, but this took into account far more of the CMI's expenses than previously would have been included. The Secretary-General confirmed that the new reporting of event costs should not affect the base aim of a Euro 20000 'surplus' split 50:50 with the host NMLA in future events. That surplus should continue to be built into an event budget as a line item. Chris Davis observed that in relation to New York, the decision taken in Istanbul that EXCO members would meet 50% of event registration had been implemented. The Secretary-General confirmed that as with Istanbul, the CMI would absorb its share of registration fees of EXCO members, removing the necessity of EXCO claiming this portion back, and resulting therefore in only one transaction in which CMI pays the event budget for EXCO registrations.

The Treasurer reported a surplus on budget of Euro 23580, largely achieved because of the absorption of a significant portion of expenses into the Istanbul Colloquium budget.

(b) *Accounts*

Balance Sheet, Income and Expenditure Account; Cash Flow Statement

The Treasurer went on to present the remaining accounts for the 2015 year, showing cash on hand of

* Provisional, for approval by the next EXCO meeting

Euro 605 094 – an amount which he reported both the Audit Committee and the CMI auditor considered satisfactory.

(c) (i) Audit Committee Report

The report of Måns Jacobsson as chair of the Audit Committee was tabled and noted for tabling at the Assembly. Mr Jacobsson reported excellent cooperation from the Treasurer whose tabled accounts were recommended for adoption by the Assembly without reservation.

(ii) Auditors report

Similarly, the report of the Auditors was tabled for submission to the Assembly.

(d) Budgets for 2015 and 2016

The Treasurer tabled the updated 2015 budget reflecting a surplus of Euro 25 483, and projected budgets for 2016 and 2017 both of which reflect a deficit. The Treasurer projects a Euro 23 550 deficit for 2016 and Euro 6100 deficit for 2017. Chris Davis suggested that maybe an increased Earlybird discount would encourage swifter settlement and proposed that Earlybird discount of 2,5% be put to the Assembly.

RESOLVED that: EXCO approve the Budget for 2017, including an Earlybird discount of 2,5% and that the 2017 Budget be recommended to the Assembly.

(e) Report of Chris Davis on collection of outstanding subscriptions and correspondence relating to Uruguay, Colombia, Russia, Dominican Republic and Portugal.

Russia

More than half of the present dues are from Russia. The Russian MLA owes just under Euro 30000 arrears incurred over 3 years. The Russian subscription levy is Euro 10000 per annum. A letter from Russia was tabled explaining an extreme financial crisis of their NMLA. The Russian MLA proposed a payment of Euro 2000 for 2016, and asked that their membership be frozen while they try to collect the balance of arrears. Russia pointed out that there are 264 members in their MLA, with no corporate membership.

Concerns were expressed that there is no precedent for keeping membership but freezing subscription, nor constitutional power to suspend membership or freeze subscriptions other than by beginning the expulsion process. Art 21 states that for the first two years of arrears, NMLAs may lose their membership benefits and voting rights (but retain membership) and that three years of non-payment entitles the CMI to start expulsion proceedings.

Discussion centred on concerns not to expel Russia if some accommodation can be reached. The President will write to the President of the Russian MLA advising that the expulsion process will be carried out unless some appropriate proposal is received from the Russian MLA to pay its arrears.

RESOLVED that: The CMI initiate steps, absent a satisfactory compromise with the Russian NMLA, leading to its expulsion at the Genoa Assembly in 2017.

RESOLVED FURTHER that there be no formal suspension of Russia's subscription.

Dominican Republic has not met its agreed payment. *RESOLVED that: The CMI commence expulsion proceedings of Dominican Republic.*

South Korea

The South Korean MLA owes Euro 7300. The MLA has previously asked for a reduction of its membership fee. The Administrator expressed the view that it would be inappropriate to consider expulsion. Capt In Hyoen Kim is in New York and discussions will be held with him as to the future situation of the Korean MLA in the CMI.

DPR Korea

The DPR of Korea MLA owes Euro 2000 over 3 years. It has asked for a reduction of arrears owing because of the effect of international sanctions.

RESOLVED THAT: No reduction of arrears be agreed, and that expulsion proceedings of DPR Korea be commenced.

Portugal

The Portuguese MLA has offered to make a payment before the end of the year.

RESOLVED to allow them to do so.

Colombia

Colombian arrears extend over more than 4 years during which there have been many negotiations. The Columbian President had made a payment out of his own pocket and had then resigned.

RESOLVED to commence expulsion proceedings of Colombia and that the payment made by the President of the Columbian NMLA should be refunded to him (this latter confirmed in EXCO New York meeting #2)

Uruguay

Chris Davis reported that thanks to Jorge Radovich there is now a settlement proposal which is regarded to be reasonable. Uruguay paid Euro 1000 in April 2016 and proposes to pay a further Euro 1500 before the end of July 2016.

RESOLVED to accept the payment proposal.

Philippines

Errors in contact details have now been corrected. The President is to follow up payment of outstanding amounts with the Philippine MLA.

(f) Approval of nomination of De Mol, Meuldermans and Partners BVBA as auditor of 2016 accounts

As recommended by the CMI Audit Committee, the Treasurer proposed that EXCO recommend the reappointment of the CMI auditors by the Assembly. *RESOLVED: That De Mol, Meuldermans and Partners BVBA be reappointed by the Assembly as the CMI's auditors.*

(g) Guidelines on CMI Investment Policy

Approved for submission to the Assembly for adoption.

RESOLVED: That the CMI Investment Policy document as tabled be tabled for approval by the Assembly and be thereafter implemented.

(b) Succession for Secretary-General and role of Administrative Assistant.

The Treasurer and the Secretary-General reported that Anne Verlinde is unable reasonably to manage the demands of her job in the time presently allocated to her – which currently amounts to a three-day week. She would be prepared to extend her hours to a four day week.

RESOLVED: That EXCO Accept the Treasurer's recommendations re Anne Verlinde in effect that she go onto a four day week.

The Secretary-General indicated that he would be stepping down in Genoa in September 2017. He pointed out that it would be unwise for him to step down in the same year as the President (2018). Thus he should do so either in 2017 or 2019. Having chosen to resign in 2017, he felt that it is important that there be a period of proper handover to his successor. The CMI Constitution requires proposals for the election of Secretary-General to be made by EXCO to the Nominating Committee, and thence to the Assembly. He reported that he and the President had held informal discussions with Rosalie Balkin, past Director of Legal Affairs of the IMO, with a view to her taking over as CMI Secretary-General in 2017. She has indicated her willingness to do so, and the Secretary-General and Rosalie would prefer that the Assembly be advised in New York of this development so that they both can plan ahead for a smooth handover.

RESOLVED FURTHER: That EXCO approves that Rosalie Balkin be proposed to the 2017 Assembly to succeed John Hare, to take office from the end of that Assembly.

RESOLVED FURTHER: That the President, Administrator and Secretary-General examine their respective roles in relation to the Constitution with a view to better defining those roles either by Constitutional amendment or by EXCO guidelines.

(i) Archive

The Secretary-General informed EXCO that Anne Verlinde and he had delved into boxes in our basement storage and found most of the items are indeed catalogued. Material is manageable and accessible. The next step is to inspect the offsite storage after which we will have to decide whether material should be kept or dumped. The Secretary-General's suggestion is that if material is not costing the CMI, then the decision should be to keep it. Luc Grellet asked how external parties would know about the material that the CMI kept. The Secretary-General replied that we deal with a number of research requests annually and that Anne, being a librarian, is particularly well-suited to that research. We have CD Roms listing the documentation we hold which, though not at this stage easily accessible to outsiders, are a help to Anne Verlinde in locating documents. The President said that we should aim for as much relevant documentation as possible to be accessible through the CMI website.

The Secretary-General will again tackle the archives

during his next visit to Antwerp.

5. Members and appointments

(a) Membership

Application by Iran Maritime Law Association and correspondence: Iran's application for membership was tabled and discussed. Further detail of the status of the Iranian Association is required before the matter can be taken further.

(b) Provisional membership

(i) Termination of provisional membership for Kleis Klauberg (Latvia)

(ii) Correspondence with Norman Martinez (Honduras)

In both instances there had been no progress in the formation of an NMLA and both Messrs Klauberg and Martinez accept that provisional membership may be terminated.

RESOLVED: That the provisional membership of Latvia and Honduras be terminated.

(c) Titulary Membership

(i) Prof Sarah Derrington (Australia and New Zealand)

(ii) Luis Felipe Galante (Brazil)

(iii) Regula Hinderling (Switzerland)

(iv) Andreas Bach (Switzerland)

(v) Luis Siano (as a late entry)

RESOLVED: That all of the above be recommended to the Assembly for election as Titulary Members of the CMI.

(d) Consultative Members

(i) International Salvage Union (ISU)

(ii) International Transport Workers Federation

RESOLVED: That both be recommended to the Assembly for election as Consultative Members of the CMI.

(e) Nominating Committee

The President reported that Johanne Gauthier would like to step down as Chair of the Committee. Also that Francesco Berlingieri suggests that he resign from the Committee. He proposed that Andrew Taylor be invited to chair the Nominating Committee.

RESOLVED: That EXCO invite Andrew Taylor to Chair the CMI Nominating Committee.

6. Meetings

(a) New York 2016

The Secretary-General reported briefly on registrations for New York being 421 full delegates with a further 556 MLA US 'walkins' who had registered to attend all or some sessions. This was way in excess of expectations, though it should be remembered that the walkins do not pay a fee, only *a la carte* social costs. He reported excellent cooperation with the MLAUS Organising Committee over the past year.

(b) Assembly/Seminar 2017

Vice-President Berlingieri tabled his report and presented the case for the 2017 Assembly to be held in Italy in pursuance of the suggestion that the CMI

honour Life President *Honoris* Francesco Berlingieri. There was a general acceptance of Genoa or Santa Margherita as the venue for the 2017 Assembly. As to the timing, The Treasurer raised the legal requirement of Belgian law that accounts need to be finalised in June. There is precedent for being late – Oslo was in October. The Treasurer will look into this and report further to EXCO. Dates agreed were Thursday 7 September and Friday 8th September (allowing delegates to enjoy the weekend in and around Genoa).

RESOLVED: That EXCO meet on Thursday 7 September 2017 and that EXCO propose to the New York Assembly that the 2017 Assembly be held in Italy (Genoa or environs) on 7 or 8 September 2017.

The Secretary-General expressed the opinion that as a policy, all NMLAs should be invited to submit offers for hosting future events and that no decision should be taken to award an event until that process has been done.

RESOLVED that: The CMI would call for offers from NMLAs for annual Assemblies and appropriate accompanying events for consideration by EXCO and thence confirmation by the Assembly. To allow for proper planning, at least one year's lead should precede Assemblies with smaller Colloquia or Symposia, and at least two year's lead for Conferences.

(c) Colloquium/Seminar/Symposium and Assembly 2018

EXCO would call for offers.

(d) Colloquium/ Seminar/Symposium and Assembly 2019

EXCO would call for offers – Ann Fenech indicated that Malta would probably consider submitting an offer for 2019.

(e) Conference 2020

Correspondence from Brazil dated 18 October 2012 and 25 February 2016 was tabled and noted.

A delegation from the Brazilian NMLA made a presentation to propose Rio de Janeiro for the 43rd International Conference, 2020.

RESOLVED: That the CMI shall invite NMLAs to make offers for hosting intermediate Assemblies and events for 2018 and 2019 and the 43rd International Conference for 2020 and that these offers be considered by EXCO for recommendation to future Assemblies. The process for 2018 should commence immediately by an invitation to be issued by the President.

7. International Working Groups

Reports from IWGs were tabled and considered read. All are to be made available to the Assembly, and the President noted that most had already been circulated to NMLAs. An executive summary of each will be included with the minutes of the Assembly. These EXCO minutes will thus only record relevant EXCO discussion around those Reports.

(a) Foreign Judicial Sales of Ships

The Report of Henry Li; Submission to the IMO Legal Committee (LEG 103/13; List of Delegates to

IMO Legal Committee 2015) were tabled and duly noted. The President reported on the preparations for LegCom 103 on 9 June aimed at persuading the Legal Committee to agree to put the draft Convention on its workbook for 2016/7. He reported that China and South Korea had agreed to sponsor the Draft at LegCom, and that the main hurdle to be faced was the issue of whether LegCom would accept that there is a compelling need for the Convention as drafted, and whether the IMO was the appropriate forum. The President noted that considerable work had been done by the IWG in preparation for this meeting and thanked them for their efforts.

(b) Review of the Rules on General Average

Correspondence to MLA Presidents attaching Papers for the Conference dated 29 March 2016 were tabled and duly noted.

The President recorded that considerable consensus had been achieved on the proposed New York amendments under discussion in parallel discussions being held by the IWG in New York preparatory to the forthcoming Plenary and Assembly.

(c) Cross Border Insolvencies

The Report of Chris Davis and Papers of Martin Davies and Julie Soars were tabled and duly noted; Vice-President Davis reported that a session to be held in New York would discuss the need to draft a Protocol to the Model Law and other possibilities. The line-up included two judges and Prof Martin Davies.

(d) Polar Shipping

The Report of Aldo Chircop and Papers for the Conference were tabled and duly noted.

The Secretary-General reported that the Polar Shipping IWG had requested a full day session in New York and commended the IWG for its considerable energies and progress.

(e) Marine Insurance

The Report of Marine Insurance IWG Chair Joe Grasso was deferred to the second EXCO meeting.

(f) Offshore Activities

The Report of Patrick Griggs was tabled and duly noted. The President reported that Patrick Griggs' wished to step down as Chair and that Mr Griggs had proposed Jorge Radovich as his successor.

The President recorded EXCO's appreciation for the considerable efforts of Patrick Griggs in Chairing this IWG.

RESOLVED that: Jorge Radovich be appointed as Chair and Andrew Taylor as Rapporteur of the IWG on Offshore Activities.

(g) Rotterdam Rules

The Report of Tomotaka Fujita was tabled and duly noted.

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

The Questionnaire on Pandemic Response was tabled and duly noted.

The President reported that Paul Gill had agreed to

Chair the Pandemic Response subgroup and noted his suitability for the task in the light of his academic experience with this unusual topic.

RESOLVED that: Paul Gill be appointed Chair of the Pandemic Response Subgroup of the IWG on Fair Treatment of Seafarers.

(i) Acts of Piracy and Maritime Violence

The Report of Andrew Taylor was tabled and duly noted.

(j) Ship Financing Security Practices

The Report of Ann Fenech and Questionnaire were tabled and duly noted. Ann Fenech reported progress of the group and moved for the appointment of Andrew Berlingieri to the IWG.

RESOLVED that: Andrew Berlingieri be appointed to the IWG on Ship Financing Security Practices.

(k) Liability for Wrongful Arrest

The Report of Giorgio Berlingieri and Summary of Responses to Questionnaire were tabled and duly noted. Vice-President Berlingieri reported on good progress of the IWG. Karl Gombrii suggested maybe the group should look further at the conflict of laws in relation to wrongful arrest, a suggestion supported by Alex von Ziegler and Chris Davis.

(l) Restatement of the Lex Maritima

Report from Eric Van Hooydonk duly noted.

A proposal was tabled from Prof van Hooydonk that Kerim Atamer be appointed to the IWG.

RESOLVED that: Kerim Atamer be appointed to the IWG on Restatement of the Lex Maritima.

(m) Maritime Law for Unmanned Ships

The Report of Tom Birch-Reynardson was tabled and duly noted.

A proposal from IWG Chair Tom Birch Reynardson was made requesting that the following be appointed to this IWG. The Secretary-General noted that the IWG as it stands was mandated to identify further members for appointment, and that the IWG had already been very active and had planned a double session for New York.

(i) Professor Nick Gaskell

(ii) Brian Eisenhower

(iii) Eric van Hooydonk

(iv) Andrew Garger

(v) Andrew Higgs

(vi) Robert Veal

(vii) Helen Noble

(viii) Frank Smeele

(ix) Jeffrey Moller

(x) Oskar Levander

(xi) Alan Weigel of Blank Rome as a late entry.

RESOLVED that: All the above be appointed to the IWG on Maritime Law for Unmanned Ships.

(n) Vessel Nomenclature

The President's letter to MLA Presidents dated 8 March 2016 attaching Questionnaire and the report of IWG Chair Frank Nolan were tabled and duly noted.

(o) Liability of Classification Societies

Report of Karl Gombrii duly noted. Mr Gombrii reported that owing to reservations expressed by shipowners' representatives, and notwithstanding considerable support from Societies and other roleplayers that the CMI should revive its initiative to seek uniformity on the liability of classification societies and the limitation of that liability, it had been decided not to proceed with a session on the topic in New York. Further discussions will be held during the week to seek a way forward. He proposed that Luc Grellet join the IWG.

RESOLVED that: Luc Grellet be appointed to the IWG on the Liability of Classification Societies.

(p) Cybercrime in Shipping

In the absence of Taco van der Valk, the Secretary-General reported the considerable interest shown both from the MLAUS and NMLA membership in this new topic, which was accordingly to be given a half-day session in New York, with leading speakers including author Peter Singer and journalist Michael Riley.

8. Standing Committees

(a) CMI Charitable Trust

Report of Tom Birch Reynardson

This report will be presented at the Assembly meeting.

(b) CMI Young Lawyers:

In Taco van der Valk's absence there was discussion on whether EXCO should appoint a CMI person to run with this group, reporting to Taco van der Valk and thence to EXCO. The President reported discussions with Mr van der Valk and undertook to follow the suggestion up with him.

There was discussion on the involvement of Young CMI in working groups. Alexander von Ziegler suggested that each IWG should have at least one Young CMI member, and the Secretary-General reported that this had been successfully done with the new IWGs – Unmanned Ships at which Robert Veal, a young academic from Southampton was to be a main speaker at the New York Session, and with the Cybercrime IWG.

It was agreed that this should be a guiding policy in the setting up of IWGs.

(c) Constitution Committee

The report of Chair Jean-Francois Peters was tabled and duly noted.

The Secretary-General reported that although there had been no formal meeting of the IWG, he had a lengthy meeting with IWG chair Jean-Francois Peters in Antwerp in February at which he was able to brief Mr Peters fully. Work would continue and if any amendments were considered necessary, these would be proposed for EXCO's consideration in good time to be able to give the necessary notices to NMLAs of proposed amendments for the Genoa Assembly.

(d) General Average interest rates

In the absence of Taco van der Valk and the continuing

work on the Review of the York Antwerp Rules, this item was deferred until the Assembly meeting later in the week.

(e) Planning Committee

The Report of the Secretary-General was tabled and duly noted.

(f) Jurisprudence Database on Maritime Conventions

The President reported that correspondence had been exchanged with Prof Girvin in which he had explained that work was being done to set up the database and prepare a template for submission of material by IWGs and NMLAs. Prof Girvin sought a four year commitment of Euro 5000 p.a. from the CMI and that the Administrator be the CMI contact person with the University.

RESOLVED that: In accordance with Professor Girvin's request in the Administrator's tabled email proposal, the CMI would budget Euro 5000 per year for 4 years from 1 April 2016 to enable the project to continue, and that the Administrator would be the primary contact person for this project.

(g) Implementing and Promoting Ratification of Maritime Conventions

The Report of Deucalion Rediadis was tabled and duly noted. The President reported on correspondence with Mr Rediadis and his proposals for the future structuring of this IWG.

It was noted that Louis Mbanefo had resigned from the IWG. The President noted, with appreciation, the work of Louis Mbanefo as Chair of this IWG. The President then proposed that Deucalion Rediadis take over as Chair, and that there be additions to the IWG which would be determined during the week, and put forward at Friday's EXCO meeting.

RESOLVED that: Deucalion Rediadis take over as Chair of the IWG.

(h) Publications

(i) CMI Yearbook and News Letter

Preparation of Index 1996 to 2016;

The President commended Vice-President Berlingieri on his enormous task of preparing the Yearbook in time to hand it out at New York and for Mr Berlingieri's offer that he compile a new index of Yearbooks post 1999 when the last index was published.

(ii) Handbook

Correspondence from Frank Wiswall reporting on developments with this project was tabled and duly noted.

9. Ad hoc Committees

(a) Arbitration

Luc Grellet reported that there was a clear majority among NMLAs of the view that the CMI should not become involved in arbitration matters. Mario Riccomagno had expressed concerns about Luc's report and there will be a meeting tomorrow with him and Vincent De Orchis. Luc will report further to EXCO.

(b) Future of CMI

Correspondence between Liz Burrell and the Presidents of MLAs was tabled and duly noted. The President reported that Ms Burrell would be meeting with NMLA Presidents at the breakfast to be hosted by MLAUS President Bob Clyne later this week, and encouraged MLA Presidents to participate.

10. IMO Maritime Prize Nomination

Frank Wiswall. Correspondence to and from the IMO: It was noted that the CMI had proposed Frank Wiswall for the IMO Prize for 2016.

11. [Item withdrawn]

12. EU representative

The Secretary-General reported that Vincent Power's report had now been received, and circulated copies to EXCO. It is a most comprehensive document and will be presented to the Assembly, and would again be put on the CMI site. It has already been uploaded on the New York event site which will remain operative until at least the Genoa Assembly.

13. Singapore regional office

The Report of the Administrator was tabled and duly noted.

The Administrator reported that on 3 March 2016, CMI was informed formally that the registration of its Representative Office ("RO") with International Enterprise Singapore Board ("IE Singapore") would expire on 25 April 2016 (after three years). A renewal application was submitted by CMI's Singapore solicitors on 15th April 2016. In it the point was made that notwithstanding the general policy that representative offices were able to operate in Singapore for a maximum of three years following which it is required to establish a permanent registered business presence in Singapore, CMI wished to renew its RO status. It was explained that CMI was a non-governmental, non-profit international organisation established with the object of contributing to the unification of maritime law in all aspects. It was said that as CMI had no intention to carry on business in Singapore, it would be unduly onerous for CMI to establish a business presence in the form of a subsidiary or registered branch office in Singapore, and that such a registered business presence would not be the most appropriate forum for CMI to continue its activities in Singapore. It was emphasised that CMI and its RO engaged regularly with the Maritime Port Authority of Singapore ("MPA") and that the MPA supported the extension of CMI's RO status.

On 3rd May 2016, CMI was informed by its Singapore solicitors that its status as an RO was renewed for one year.

14. Report of the Nominating Committee

The report of the Nominating Committee was tabled and duly noted for presentation to the Assembly. The President noted that Ms Naiqun Xing, the candidate

for EXCO proposed by China, had appeared to be an excellent candidate but that the fact that she was little known to MLAs was probably a distinct disadvantage to her. The Secretary-General reported that the Constitution Committee has the nomination and election process on its worksheet and will report to EXCO in good time for any proposed amendment in Genoa 2017.

15. *Correspondence*

The following correspondence was noted:

- (a) IOPC Fund Notification of Meetings 25-27 April 2016 (Andrew Taylor to attend).
- (b) International Malaysian Society of Maritime Law (IMSML) A potential application for CMI membership by a newly formed second MLA in Malaysia is to be made.
- (c) Cameroon MLA – A potential membership application is to be made by this MLA. The Cameroonian representative is in New York and Luc Grellet will make contact. The possibility of a regional association was noted though it was suggested that the French/English divide in West Africa may be a problem for regional cooperation.
- (d) Congo MLA – A potential membership application is to be made by this MLA. This was noted, with similar comment being made about regional cooperation. Luc Grellet to follow up a membership application that is likely to be made. In both cases more information is required.
- (e) Professor Olivencia - Stuart Beare had referred a request that the CMI consider supporting the award of a Prize to Prof Olivencia. Further information has been sought from the Spanish MLA. No comment required from the Executive

Council at this stage.

- (f) Piraeus Bar Association Meeting 13-15 October 2016.
- (g) Lloyds List Partnership Proposal - It was decided that this was not appropriate for the CMI.
- (h) Letter to MLA Presidents re International Tribunal for Law of the Sea.
- (i) Email correspondence with Paraguay regarding a potential membership application.
- (j) Adriatic Maritime Law Conference announcement.

16. *Future Executive Council meetings*

- (a) Second New York Executive Council Meeting: 6 May 2016 at 1715 hours in the Clinton Room, Hilton Hotel, New York, USA.
- (b) Virtual Meeting week commencing 21 November, 2016.
- (c) Maybe a further virtual meeting in April 2017.
- (d) Genoa 7/8 September 2017

17. *Any other business*

Chris Davis reported contact with Cuba. Nothing needs to be done by EXCO yet but he will report further at the next meeting of EXCO.

The President recorded that this would be the last EXCO meeting attended by Song Dihuang, and his praise and appreciation for Dihuang's long contribution to the CMI and EXCO was roundly endorsed by EXCO

There being no other business the meeting closed at 17h30.

STUART HETHERINGTON
President

JOHN HARE
Secretary General

**MINUTES OF THE CMI ASSEMBLY HELD ON FRIDAY, 6 MAY 2016
AT 15H00 AT THE HILTON HOTEL, NEW YORK***

– *Welcome*

President Stuart Hetherington welcomed all delegates present.

Participating:

<i>Past President:</i>	KARL-JOHAN GOMBRII
<i>Vice-Presidents:</i>	GIORGIO BERLINGIERI CHRISTOPHER O. DAVIS
<i>Secretary-General:</i>	JOHN HARE
<i>Administrator:</i>	LAWRENCE TEH
<i>Treasurer/Head Office Director:</i>	PETER VERSTUYFT
<i>Councillors:</i>	ANN FENECH TOMOTAKA FUJITA LUC GRELLET JORGE RADOVICH DIETER SCHWAMPE DIHUANG SONG ALEXANDER VON ZIEGLER
<i>Absent:</i>	TACO VAN DER VALK

Member Associations

Member associations were duly represented by delegates listed in
the Attendance Register attached to these minutes (Annex A)

PARAGRAPH NUMBERS BELOW CORRESPOND WITH THOSE OF THE PUBLISHED AGENDA.

1. Report of the Credentials Committee

Vice-President Chris Davis reported that the Assembly had been properly convened with notice of the Agenda as tabled, that a quorum of member associations was present, and that, in terms of the Constitution, all member associations represented were entitled to vote.

2. Memorials

The President advised the Assembly of the passing of the following distinguished members of the CMI family, and asked all to stand in a moment of silent tribute:

- (a) Professor Vinko Hlaca (Croatia)
- (b) Professor Tsuneo Ohtori (Japan)
- (c) Sergei Lebedev (Russia)
- (d) Peter Willis (Australia)
- (e) Anna Berlingieri (Italy).

3. Approval of the Minutes of the Assembly held in Istanbul on 9 June 2015

The Secretary-General tabled the minutes of the meeting of the Assembly held in Istanbul on 9 June, which were duly adopted without change, and signed by the President and Secretary-General.

4. Matters arising from Minutes of the Assembly held in Istanbul on 9 June 2015

There were no matters arising from the Istanbul Assembly minutes that were not to be covered by the Agenda of this New York Assembly.

5. Report of the President

The President tabled and delivered his attached Report which was duly adopted. In particular, the President made mention of the success of the Istanbul

* Provisional, for approval by the next Assembly.

Colloquium and of the fact that even with a change in reporting of the accounts which sought to allocate costs of CMI events more accurately, the Colloquium had been a break-even event for the CMI which was most satisfactory. He gave thanks to the organising committee of the Turkish MLA. He made appreciative mention of Peter Verstuyft's succession as CMI Treasurer, and noted particular thanks to Bent Nielsen and the IWG on General Average for all the effort and time they have put into the revision of the York Antwerp Rules. Thanks were also due to Henry Hai Li and his Judicial Sales IWG for the dedication they had shown in attempts to progress the draft Instrument adopted in Istanbul through international processes. The President thanked Anne Verlinde, the CMI Administrative Assistant at the headquarters in Antwerp for her dedicated service. Her efforts in taking charge of the CMI website has resulted in more efficiency and considerable cost saving.

The President informed the Assembly of the unfortunate motor accident suffered by Lord Phillips, who was to have made a keynote speech at the opening of the New York Conference, and recorded good wishes to Lord and Lady Phillips for a speedy recovery. The President's Report for 2016 is available on the Conference Website www.cmi2016newyork.org.

6. Finances

(a) Treasurer's Report

The Treasurer presented the annual accounts by means of a slide presentation which illustrated both the income and expenditure of the CMI and the state of its financial holdings. He was able to report a surplus of Euro 23580 for the year, in accordance with the financial statements tabled. This compared most favourably with the budgeted deficit of Euro 4210, occasioned to a large extent by good recoveries of outstanding levies from NMLAs and by the satisfactory Istanbul Colloquium outcome.

(b) Accounts

The Treasurer then presented the CMI Balance sheet for the year under review which reflected a reserve of Euro 605 093,85.

(c) Auditor's Report

The Treasurer tabled the Auditor's Report for the year ended 31 December 2015 which endorsed the financial statements presented to the Assembly by the Treasurer without reservation.

(d) Audit Committee Report

The Chair of the Audit Committee, Måns Jacobsson, explained that the Audit Committee examines the audit conducted by the CMI's appointed auditors and conducts between its members an in-depth discussion of the auditor's report. Owing to geographic separation, these discussions are done by telephone. Mr Jacobsson tabled and presented the Audit

Committee's report which approved the 2015 accounts without reservation and which recommended that De Mol Meuldermans & Partners be retained as the CMI's auditors for the ensuing year.

(e) Budget for 2016

The Treasurer tabled the 2016/7 budget covering the New York Conference and beyond, which was duly adopted. Of note, with budget implications, was the recommendation of EXCO to increase the subscription *earlybird* discount from the existing 1% to 2,5%. EXCO held the view that 1% was not sufficient incentive to encourage early settlement. The Assembly was asked for this increase to be approved as part of the 2016/7 budget.

(f) Report of collection of outstanding subscriptions

Vice-President Chris Davis presented a report on the collection of outstanding subscriptions. He recorded thanks to Anne Verlinde for her efforts in chasing up subscriptions. There were no resolutions for expulsion of any defaulting NMLAs, though there would be continuing follow-up with those NMLAs who had fallen into arrears. It was noted that the Assembly in Istanbul confirmed an authority for Messrs Davis and the President to negotiate settlements with any NMLAs in arrears, and this procedure will continue.

The President commended Chris Davis, Jorge Radovich and Anne Verlinde for their continuing efforts.

(g) Approval of the Nomination of De Mol, Meuldermans and Partners BVBA as auditors for the 2016 accounts

The above financial issues subparas (a) to (g) were put to the vote, with Belgium proposing and Australia/New Zealand seconding, and all the subparagraphs above were approved and adopted, including the increase of the *earlybird* discount to 2,5% and the re-appointment of the CMI's auditors.

(h) Charitable Trust

Tom Birch Reynardson presented the report of the activities and financials of the CMI Charitable Trust, for the information of the Assembly.

7. Membership

(a) Provisional membership

Termination of provisional memberships of:

- (i) Norman Martinez (Honduras)
- (ii) Theis Klauberg (Latvia)

The President reported that there had been no significant progress in the formation of NMLAs for either Honduras or Latvia, and he proposed that these provisional memberships be terminated. Neither Latvia nor Honduras have been successful in encouraging the formation of MLAs and both Mr Klauberg and Mr Martinez recognised that their respective provisional memberships should be terminated.

The proposal was duly adopted.

(b) Titulary memberships

The President reported the receipt of applications by MLAs for Titulary Membership which had been considered and approved by the Executive Council. The following distinguished persons were elected by acclamation as Titulary Members. Each was presented in turn by a representative of their respective NMLAs.

- Dr Sarah Derrington (Australia and New Zealand)
- Luis Felipe Galante (Brazil)
- Luiz Roberto Loven Siano (Brazil)
- Regula Hinderling (Suisse)
- Andreas Bach (Suisse)

(c) Consultative membership

The President (with the support of the Executive Council) proposed the election of the following as Consultative Members of the CMI. Both organisations were elected by acclamation and welcomed to the CMI by the President.

- The International Salvage Union (ISU)
- The International Transport Workers' Federation (ITF)

8. *Future meetings*

(a) Assembly meeting in 2017

The President reported that EXCO had decided to ask the Assembly to name Genoa as the venue for the 2017 Assembly – primarily to honour Hon Life President of the CMI, Prof Francesco Berlingieri. This would be a one day meeting that will include the Assembly, and a half day seminar. This heralds a return to the CMI formula of a conference every 4 years, a Colloquium or Symposium in between, and Assemblies in intervening years. The President invited Vice-President Berlingieri to present a proposal for hosting the Assembly from the Italian MLA. This was enthusiastically received and it was resolved that the 2017 Assembly would be held in Genoa on 7-8 September 2017.

(b) Meetings in 2018/19/20

After the Genoa Assembly in 2017, there would accordingly be a Colloquium or Symposium convened for 2018 or 2019, an Assembly (and half day seminar) for 2018 or 2019 and the 43rd International Conference of the CMI would be held in 2020.

The President reported that Brazil had made a presentation to EXCO in New York to host the 2020 conference. Brazil had been notified that their proposal will be further considered once the CMI has invited offers to host 2020 from all NMLAs in order to give any interested NMLA the opportunity of making an offer. This invitation will be done within the next 4 – 5 months, so that EXCO may consider offers at its November virtual meeting, and thereafter be in a position to approach the Assembly to confirm its preferred choice in Genoa 2017.

9. *Work in Progress - International Working Groups*

Note: Reports for some of the following are on the New York Conference site at www.cmi2016NewYork.org under <Documentation | Assembly>.

Much of the New York documentation is also available both in hard copy and online on the CMI site at www.comitemaritime.org in the CMI Yearbook 2015 *Documents for the New York Conference*. Short synopses of the reports are provided below.

The President invited reports from the Chairs of CMI International Working Groups and Standing Committees. Reports were duly tabled and presented thus:

(a) Acts of Piracy and Maritime Violence

Andrew Taylor reported on the state of piracy and maritime violence. The IMB's 2016 report records an increase in crew kidnappings but a decrease in ship hijacking, with SE Asia being the worst trouble spot. The increase in crew kidnaps was confirmed by the report of the Oceans Beyond Piracy 2016 report, especially in the Niger delta area. Andrew Taylor then referred to the UN Office on Drugs and Crime and its Counter-Piracy Programme, launched in May 2009 and reported upon a meeting of the Contact Group on Piracy off the Coast of Somalia in January 2016. He concluded that piracy and armed robbery at sea remains rife and on the increase in some regions.

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

In the absence of the Chair of this IWG, Olivia Murray, the President reported that Paul Gill (Ireland) had volunteered his services on the Pandemic Response subcommittee of the Fair Treatment IWG. His offer was gratefully accepted in time for him to participate in the informative sessions on the issue earlier in the week, and it would be a continuing initiative of the Fair Treatment IWG. The Secretary-General reported on the activities of the subcommittee on Refugee Migration at Sea, which was essentially a watching brief mandated to give the IMO any possible assistance it might seek. The NY session on the subject included insightful presentations by Adm Fred Kenney, Prof Allen of Washington State University at Seattle, and Dr Valeria Eboli of the EU SOFIA operation. Copies of these and other presentations are available in the <Documentation> section of the New York Conference site at www.cmi2016newyork.org

(c) Recognition of Foreign Judicial Sale of Ships

Chair Prof Henry Li Hai reported on progress on the long road towards acceptance of the Draft Convention adopted by the Assembly in Hamburg. The first step is to attempt to persuade the Legal Committee of the IMO at the forthcoming LegCom 103 in early June to put the draft onto its work programme. At LegCom 102 the CMI team were advised that the draft would need two promoting countries, and also that the issue of a compelling need would have to be addressed. Prof Li Hai noted that the key to furtherance of the CMI draft is lobbying support at the EU and with other national governments. To that end the IWG would make the necessary preparations to address LegCom 103. The President expressed his thanks to Prof Li Hai for the continuing efforts of his IWG, and to China and South Korea for agreeing to promote this topic, with the CMI, at the IMO.

Attachment 15, available on the New York event site, contains the record of LegCom 102 and the detailed submissions of the IWG filed in support of the case to be argued at LegCom 103.

(d) Marine Insurance

The Chair of the Marine Insurance IWG, Joseph Grasso, presented the IWG report. He noted that the IWG had prepared draft guidelines relating to mandatory insurance under certain conventions, which have been submitted to the IMO and to the International Group of P&I Clubs for comment. The IWG has also been cooperating with the CMI General Average IWG in preparing draft guidelines for General Average, which will be tabled at this Assembly for adoption. The Chair gave some indications of future work to be undertaken by the IWG.

(e) Cross-border Insolvency

IWG Chair Chris Davis reported on work of the group since replies were received to the Questionnaire on Cross-Border Insolvency sent to NMLAs in May 2012. Sixteen replies have been received to date, and they continue to trickle in. Vice-President Davis indicated that the subject remains topical and has been covered in a number of international conferences, including the CMI's own events in Hamburg and Istanbul. As to future work, the Chair includes assessing the need and support for a protocol to the UNCITRAL Model Law addressing *in rem* actions, and looking at the implications of a new EU Regulation. Mr Davis reported on a most useful joint session with the MLAUS Committee on Bankruptcy and Insolvency was held during the New York conference sessions. He indicated that he would be stepping down as Chair and Prof Sarah Derrington would take over.

(f) Polar Shipping

The CMI Polar Shipping IWG has been extraordinarily active in the year since Istanbul. The IWG Chair, Prof Aldo Chircop, reported in full on the Group's activities – culminating in an all-day working programme devised for the New York Conference. Prof Chircop assured the Assembly that the sessions had been a great success. Of particular note in the Chair's report was the recommendation of the IWG that the CMI prepare a draft definition of "Polar-worthiness" for the Hague, Hague-Visby, and Rotterdam Rules. Also, that the IWG study the Nairobi Wreck Removal Convention's limitation of liability provisions in a polar context. Prof Chircop expressed concern that the HNS Convention has not yet come into force – which he avers could have disastrous consequences in polar regions. The IWG will in due course make recommendations to EXCO and to a subsequent Assembly. Also under review by the IWG are the issues of Loadlines in Polar regions, the Collision Avoidance Regulations in polar regions and Pollution Liabilities in polar regions. In the latter respect, the IWG recommended a draft resolution for consideration by the Assembly as follows:

Draft Resolution: POLAR SHIPPING: Loadlines That upon the recommendation of the CMI International Working Group on Polar Shipping

the CMI should invite the International Maritime Organisation to consider whether, in light of the absence of Arctic-specific international load lines applicable to waters subject to the Polar Code, it is timely and appropriate to consider the need for formal extension of the North Atlantic Winter Seasonal Zone I load lines as defined in Annex II of the International Convention on Load Lines, 1968, as amended, to Arctic waters as defined in the Polar Code, or, if appropriate, to consider the development of a new annex on Arctic load lines for inclusion in the Convention.

[Secretary-General's Note: This resolution was not tabled for approval by the Assembly. The approach it envisages is however within the remit of the Executive Council which will be asked to consider and progress the proposal with the IMO.]

(g) Review of the Rules on General Average

This being the main topic of the New York Conference, the President invited Mr Bent Nielsen, Chair of the CMI IWG on General Average to report upon the year's work and the deliberations and outcome of the New York sessions, and of the Plenary held just before the Assembly. Mr Nielsen was happy to confirm that there had been agreement between all stakeholders participating in the review process, as expressed during the Plenary when the amendments to the 2004 Vancouver version of the York Antwerp Rules were presented for comment and approval.

Mr Nielsen and Rapporteur Taco van der Valk then tabled the following resolutions which were put to the vote:

Resolution NY#1

GENERAL AVERAGE YORK ANTWERP RULES, 2016

The Assembly of the Comité Maritime International, duly represented by the delegates representing the National Maritime Law Associations of the states recorded as being in attendance: Takes due note of the work done by the International Working Group and the International Subcommittee on General Average in accordance with the mandate given at Beijing in 2012 to carry out a general review of the York-Antwerp Rules and to draft a new set of Rules to meet the requirements of ship and cargo owners and their respective insurers; RESOLVES THAT the new set of Rules as tabled be approved and referred to hereafter as the York Antwerp Rules 2016.

Resolution NY#2

CMI GUIDELINES ON GENERAL AVERAGE The Assembly of the Comité Maritime International, duly represented by the delegates representing the National Maritime Law Associations of the states recorded as being in attendance: Takes due note of the work done by the International Working Group and the International Sub Committee on General Average in accordance with the mandate given at Beijing in 2012 to carry out a general review of the York-Antwerp Rules and to draft a new set of Rules to meet the requirements

of ship and cargo owners and their respective insurers; Also takes note that during their work the International Working Group and International Sub-Committee recommended that CMI should publish non-binding Guidelines to assist commercial interests with general average matters; RESOLVES THAT the Guidelines as drafted in New York by the International Sub-Committee are published on the CMI website;

FURTHER RESOLVES THAT in order to monitor the working and effectiveness of the CMI Guidelines, a Standing Committee shall be constituted to consist of:

- *A chairman nominated by the Assembly of CMI;*
- *A representative nominated by the International Chamber of Shipping;*
- *A representative nominated by the International Union of Marine Insurance;*
- *and Five additional members nominated by the Assembly of CMI;*

FURTHER RESOLVES THAT the Standing Committee may recommend changes to the Guidelines as circumstances dictate, which shall be submitted to the Assembly of CMI for approval prior to publication.

In the debate following, all parties expressed support for Resolution #1, but France, supported by Nigeria, had concerns about referring to the guidelines as such, suggesting that this could cause conflict with the Rules themselves. Following this debate, the President called for a vote, and 42 votes were recorded in favour of Resolution NY#1, with 40 votes, France and Nigeria abstaining, recorded in favour of Resolution NY#2. There were no votes against either resolution.

The President congratulated Bent Nielsen, co-chairs Taco van der Valk and Richard Cornah and their full IWG on a job well done. [Secretary-General's note: The full ambit and implications of the amendments are set out in Mr Nielsen's report, which is available on the Conference website. All the supporting documents submitted for the New York sessions are available under <Documents> on the event website at www.cmi2016newyork.org/session-1 where the revised 2016 York Antwerp Rules are also posted. There is a useful comparison in tabular format comparing the 1994, 2004 and the 2016 Rules. Also available are the Guidelines as approved by the Assembly.]

(b) Rotterdam Rules

Chair Tomotaka Fujita filed his report on the Rotterdam Rules. He began by updating the status of the Rules: 25 signatories and 3 ratifications. He reported upon the UNCITRAL "Accession Kit" initiative in which he and Executive Councillor Alex von Ziegler had taken part – designed to provide answers and practical help to countries considering adopting the Rules. Prof Fujita reported briefly upon the combined session at the New York Conference at which aspects of Carriage of Goods by Sea were discussed and comparisons were drawn between law and jurisdiction clauses from various jurisdictions.

There was also an update of progress in the implementation of the Rotterdam Rules. In that regard, a US State Department official confirmed that the United States is still supportive of the Rotterdam Rules and is working towards ratification.

(i) Offshore Activities - Pollution Liability and related issues

Chair Patrick Griggs CBE submitted the report of his group dealing particularly with the contact between William Sharpe of the IWG and the IMO Intersessional Correspondence Group in relation to improving the "Zero Draft of Guidance Notes designed to assist states in negotiating bilateral or regional agreements relating to pollution from offshore activities. He reported a continuing reluctance of the IMO to prepare a convention dealing with liability for offshore industry accidents and the limitation of that liability. The matter, reported Mr Griggs, would again be put before the IMO at LegCom 103 in June. He also noted that he will be standing down as Chairman and Jorge Radovich will take over. The President thanked Patrick Griggs for stepping into the breach on this IWG after Richard Shaw's death.

(j) Ship Finance Security Practices

Ann Fenech, the Chair of this IWG submitted her report which was primarily concerned with the Questionnaire sent to NMLAs on national practices relating to ship finance security practices, and the replies to that questionnaire. She reported on the contact between her group and the MLAUS's Marine Finance Security Committee and that the two committees had had a successful session at the New York Conference. [Secretary-General's Note: The Questionnaire and other useful documentation is available on the New York event website at <Documentation | Session 6>.]

(k) Study relating to Liability for Wrongful Arrest

Vice-President Berlingieri outlined the considerable progress that this IWG has made since Istanbul. In particular, he reported that a detailed questionnaire had been sent out, to which 32 NMLAs have responded. The report and responses may be found at p 295 *et seq* of the CMI Yearbook 2015 – New York I and on the CMI website under <Work in Progress | Study Relating to Liability for Wrongful Arrest> as are comments relating to wrongful arrest in relation to the 1952 Brussels Convention and the 1999 Geneva Convention. Mr Berlingieri reported on a useful and informative session held as part of the New York event, documentation for which is to be found on the event site. Mr Berlingieri ended his report by raising the possibility for consideration in the future, that the CMI draft a Protocol or Model Law or other instrument providing uniformity in relation to the liability for wrongful arrest. The matter will remain on the CMI workbook for further study by the IWG. The President commended the IWG for its hard and effective work done. In particular, NMLAs are referred to the most useful comparative schedule prepared by Dr Mandaraka-Sheppard as an analysis of the questionnaire replies.

(l) *Restatement of Lex Maritima*

Prof Eric van Hooydonk, chair of this IWG, submitted his report, which can be found on the event website and at page 431 *et seq* of the CMI 2015 Yearbook. Prof van Hooydonk reported that a large IWG has now been formed, and he submitted the proposed methodology of the group for the future: he stressed that this is a study of *the shared, underlying and fundamental concepts of maritime law* and is not intended to be a compendium of maritime laws, nor a convention or treaty. The research will however hopefully inform NMLAs of the commonality of certain fundamentals of maritime law. Prof van Hooydonk listed a number of themes that the IWG is considering for study, listed in his report. The President thanked Prof van Hooydonk for his efforts in driving this interesting project.

(m) *Ship Nomenclature*

This IWG is chaired by Francis Nolan, Vice-President of the MLAUS. Mr Nolan reported that in March 2016 the IWG had sent out a Questionnaire dealing with issues relating to the broad international diversity in the names by which ships or vessels are called in law. There have been useful studies in relation to aspects of nomenclature in the IOPC Funds *Guidance for Member States* and the IMO. A few replies had already been received, but Mr Nolan appealed to NMLAs which have not yet responded to do so.

(n) *Classification Societies*

Past-President Karl-Johan Gombrii reported upon exploratory discussions held with stakeholders in relation to whether or not the CMI should again take up the issues of the liability of classification societies and the limitation of that liability. There appeared to be significant support amongst classification societies to revisit the issues in an attempt to harmonise the approach of national jurisdictions, and it was initially believed that a decision to that effect could be sought from the New York Assembly. It then transpired that there appeared to be some reservations held by the shipowners' representatives about the necessity of such an initiative and the IWG accordingly recommended that it continue discussions with all interested parties, including the ICS, to determine whether or not the initiative should proceed. It's provisional view however is that this is a both useful and necessary exercise. That said, it would be imperative that such a review carry the full support of all stakeholders.

(o) *Cybercrime*

The Secretary-General reported that after Istanbul the Cybercrime in Shipping IWG had worked closely with a similar Committee set up in the MLAUS, in consequence of which this had become a significant topic of the New York Conference. He reported that the Conference was fortunate to have input during the well-attended Cybercrime sessions from Peter Singer, leading author on the subject, and Michael Riley, one of the two Bloomberg journalists who had done a fascinating analysis of the Port of Antwerp hacking incident and the trial that followed. The IWG will continue to monitor cybercrime issues.

(p) *Unmanned Ships*

Under the chairmanship of Tom Birch Reynardson, this IWG also attracted much attention at the New York Conference. He reported that this new area of technology had considerable legal ramifications as ably outlined by the speakers in the New York sessions. He referred the Assembly to the slides and papers provided on the New York event site. The IWG will continue its brief to monitor technological developments and consider their impact on the regulatory regime.

10. *Work in Progress - Standing Committees*

(a) *CMI Young Members*

Taco van der Valk reported on the considerable participation (especially as speakers) of younger members of both the CMI and the MLAUS in the New York sessions. The Secretary-General reported that the CMI and MLAUS sessions that were taking place at the same time as the Assembly were being recorded, and that the recordings would in due course be put on the event and CMI sites to ensure that everyone had an opportunity to watch the presentations. It was reiterated that wherever possible, each CMI working group should include Young CMI members.

(b) *Constitution Committee*

The Secretary-General presented the report of the Chair of the Constitution Committee, Jean-Francois Peters, which reported slow but continued progress with the editorial 'clean-up' of both the English and French texts of the constitution. The Secretary-General reported that the committee had spent time (in informal session without full complement) examining the nomination and election procedures of the CMI. This work will continue.

(c) *General Average Interest Rates*

Bent Nielsen reported on discussions of this IWG culminating in the proposal of a Resolution in the following terms:

Resolution NY#3

GENERAL AVERAGE INTEREST RATES

The Assembly of the Comité Maritime International, duly represented by the delegates of the National Maritime Law Associations of the States recorded as being in attendance:

RESOLVES THAT the rate of interest on General Average awards made in pursuance of the York Antwerp Rules (2004) should remain at 2.5 % for the period 1 January 2017 – 31st December 2017; and RESOLVES FURTHER that the Executive Committee have authority to change the above rate, if the ongoing monitoring of the situation by the CMI Standing Committee on General Average Interest Rates up to 1 January 2017 would show this to be appropriate.

The Resolution was adopted by a show of hands.

(d) *Planning Committee*

The Secretary-General reported that forward planning of the CMI had focussed on identifying topics for the New York sessions, and that there had unfortunately been no occasion on which the full planning committee

could meet. He reported on the establishment and progress of the new initiatives identified at Istanbul as meriting the CMI's attention, and confirmed, in the context of future planning, that EXCO had confirmed at its New York meeting that the CMI would now return to its format of an international conference every four years, an intermediate Colloquium, with intermediate years having only an Assembly and half day seminar.

(e) Implementation and Promotion of Maritime Conventions

Chair Deucalion Rediadis submitted his report, outlining the blueprint used for the Committee's deliberations during the preceding year, focussed entirely on promoting the ratification of conventions via the ICS and in consultation with the IMO. The initiative resulted in an approach being made to NMLAs inviting explanations of why their States has not yet ratified a selection of conventions named by the IWG. Eighteen replies have been received, indicating two categories of conventions: the first being conventions with wide acceptance in the jurisdictions where the CMI and ICS are represented, and the second in other jurisdictions without as profound a presence of the CMI and ICS. The latter report few accessions or ratifications. It is thus the intention of the IWG to continue its push to extend persuasion to those jurisdictions which have perhaps been out of the CMI/ICS loop. Useful comments were received in the replies to date indicting reasons for not ratifying or acceding to the listed conventions.

(f) Publications: Yearbook, Newsletter, LinkedIn, Website and CMI Handbook

CMI Publications officer Vice President Giorgio Berlingieri confirmed the availability of the CMI Yearbook 2015: New York I that contains much of the materials for the New York Conference. He reported continuing work on the CMI website under the able hand of the CMI's Anne Verlinde. Work is due to commence on an update of the 20 Year Index of the contents of the Yearbooks last produced in 1996. The President commended Mr Berlingieri on his sterling work in maintaining the CMI's publications.

(g) Database of Judicial Decisions on International Conventions

The President reported on continuing efforts to create and update a workable, searchable database of judicial decisions, an initiative now under the able hand of Prof Stephen Girvin of the National University of Singapore. The work is presently delayed pending the creation of an appropriate template and IT system to accommodate the database. Prof Girvin has engaged the services of a researcher and CMI Administrator Lawrence Teh is to continue to liaise with Prof Girvin in relation to this important CMI initiative.

11. Work in Progress - Ad hoc Committees

(a) Arbitration Committee

Chair Luc Grellet reported on the work of the Arbitration Committee in the light of responses to the

Questionnaire sent out to NMLAs during the year. Most of the 15 NMLA responses were against the creation of rules and an arbitration facility within the CMI. Eight were of the clear opinion that the CMI should not play a role in maritime arbitration. Some favoured the continuation of CMI work comparing arbitration rules and practices in various countries. M Grellet questioned the availability of funds for such research, but indicated that the Committee would continue its research and report further to EXCO and to the Assembly.

(b) The Future of CMI

Ms Liz Burrell, chair of this Committee and member of the Planning Committee of the New York Conference, submitted her report to the Assembly. This report will be made available to NMLAs on the CMI website in due course as it is of fundamental importance to the CMI. Ms Burrell was able to address and hear input from the NMLA Presidents attending the New York conference at a working breakfast, hosted by the MLAUS. She reported that this was a lively and useful exchange, the import of which will be carried further into her continuing work with this Committee. The following goals and strengths could be identified at this time:

- The CMI needs to achieve greater visibility, especially to increase awareness of the CMI's accomplishments;
- More communication is required between the EXCO and the NMLAs;
- The CMI is a valuable forum for learning and exchange among lawyers from different nations;
- The CMI is a wide and deep reservoir of expert legal knowledge and has the potential to become a primary source of scholarship and research materials on international maritime law, particularly as a database of international conventions, their status and judicial decisions interpreting them; and
- The CMI should consider developing more soft law rules.

The Committee would continue to develop specific recommendations based on these goals and strengths.

12. Report of the CMI's EU Rapporteur

Dr Vincent Power submitted his report as CMI EU Shipping Law Rapporteur. His report is available on the CMI site under <Publications | Documents of Interest>. The President recorded the CMI's appreciation for the detailed report prepared by Dr Power to which NMLAs are referred.

13. Singapore Regional office

The Administrator reported that the registration of the regional CMI office for Asia in Singapore had again been renewed for a further year from April 2016. He reported on contact with the National University of Singapore and Prof Stephen Girvin on the CMI database project referred to above.

14. *Elections - Report of the Nominating Committee*

The President invited the Chair of the Nominating Committee, Justice Johanne Gautier, to present the report of the Committee. The report confirmed that after due process in terms of Art 15 of the CMI Constitution (which requires the Chair to call for proposals from NMLAs regarding the re-election of existing officers and the election of new officers) and after due consideration of the candidates thus proposed by their respective NMLAs and the views of the 26 NMLAs who responded, the Nominations Committee nominated the following officers for election by the Assembly:

- (i) Christopher Davis for a second term as Vice-President
- (ii) Alex von Ziegler and Dieter Schwampe, both for second terms as Executive Councillors
- (iii) Lawrence Teh for a second term as Administrator. (This office was not initially on the Assembly Agenda nor was mention made of the re-election of the Administrator in the report of the Nominating Committee. The Chair of the Committee nominated Mr Teh from the floor, and the Assembly was asked to record condonation of the omission.)
- (iv) John G. O'Connor (Canada) as Executive Councillor.

Art 15 of the CMI Constitution allows NMLAs to nominate officers for election independently of the Nominating Committee process, such nominations to be received by the CMI no later than 15 days before an Assembly meeting. The Administrator confirmed that there had been no such other nominations for any of the above offices outside of the Nominating Committee process. The President therefore declared all five nominees duly elected to office.

The Assembly congratulated those elected by acclamation.

The President thanked Johanne Gauthier who had asked to step down from her role of chairing the Nominating Committee for the last few years and announced that the Executive Council had appointed Andrew Taylor to replace her.

The President then reported that Secretary-General John Hare had also indicated that he would be stepping down as Secretary-General in Genoa in September 2017. This would mean he would have held office for four years since taking appointment at short

notice in Dublin. Prof Hare wanted the Assembly to be aware of this issue of succession, and had pointed out that it would be unwise for him to step down in the same year as the President (2018). Thus he should do so either in 2017 or 2019. Having chosen to resign in 2017, he felt that it is important that there be a period of handover to his successor. Informal discussions have been held with Rosalie Balkin, past Director of Legal Affairs of the IMO, with a view to her taking over from John Hare. She has indicated her willingness to do so and has the support of EXCO from whom the Constitution requires proposals for the election of Secretary-General to be made to the Nominating Committee, and thence to the Assembly. The Assembly was asked to note that Ms Balkin will accordingly be proposed by EXCO to the Nominating Committee for appointment as Secretary-General of the CMI by the Genoa Assembly in September 2017 – to take office from the end of that Assembly.

15. *Any other business*

The President reported that Song Dihuang's term as an Executive Councillor had come to an end in New York. He would be much missed, and was warmly thanked for his considerable contributions to EXCO and the CMI during his terms.

The President concluded the Assembly by thanking the organising committee and the event organisers of what he stated had been a most successful 42nd International Conference in New York - especially Vincent Foley, John Kimball (who had been so successful in securing sponsorship), its other members, the outgoing President of the MLAUS, Bob Clyne and CMI Secretary-General John Hare.

The President also thanked all the Chairs of the IWGs and MLAUS Committees and all the presenters of papers for the time they had given in organising the sessions and making presentations.

The Secretary-General thanked the President for his kind comments, and expressed the appreciation of the organising committee for all the support given by the President during the many months of planning.

There being no other business the meeting closed at 17h35.

STUART HETHERINGTON
President

JOHN HARE
Secretary General

ANNEX A
List of attendees

COUNTRY	NAME	COUNTRY	NAME
ARGENTINA	Esteban Vivanco Jorge Radovich Hernan Lopez Saavedra	KOREA	In Hyeon Kim
AUSTRALIA & NEW ZEALAND	Neil Beadle Matthew Harvey Rosalie Balkin	MALTA	Ann Fenech Matthew Attard
BELGIUM	Eric van Hooydonk Frank Stevens Jef Gorrebeeck	MEXICO	Ignacio Melo Ignacio Melo III
BRAZIL	Rucemah Pereira Pedro Calmon Filho Luis Felipe Galante	NETHERLANDS	Taco van der Valk R.P. van Campen J. Kruit
CANADA	John O'Connor David Colford Marc Isaacs	NIGERIA	Chief Jimi Oduba San Michael Igbokwe Luke Chidi Ilogu
CHILE	Eugenio Cornejo Lacroix Rodrigo Ramírez Daneri	NORWAY	Andreas Meidell Frithjof Herlofsen
CHINA	Dihuang Song Bo Chen Henry Hai Li	PANAMA	Enrique de Alba Iria Barrancos
DENMARK	Henrik Thal Jantzen	PERU	Katerina Vuskovic Miriam Sara
ECUADOR	José Modesto Apolo Javier Cardoso Victor Carrion	POLAND	Maria Dragun-Gertner Pawel Mickiewicz
FINLAND	Henrik Ringbom Lauri Railas	ROMANIA	Adrian Cristea Ciprian Cristea Andrei Murineanu
FRANCE	Philippe Godin Philippe Boisson Olivier Raison	SINGAPORE	Kenny Fook Ken
GERMANY	Dieter Schwampe Tilo Wallrabenstein Christoph Zarth	SOUTH AFRICA	Patrick Holloway Michael Wragge Andrew Robinson
GREECE	Grigorios Timagenis Ioannis Markianos-Daniolos	SPAIN	Rodolfo A. González-Lebrero Eduardo Albors Tomás Fernández-Quirós
INDIA	V. J. Mathew	SWEDEN	Måns Jacobsson
INDONESIA	Andrew Sriro Juni Dani	SWITZERLAND	Alexander von Ziegler Guillaume Loonis-Quelen
IRELAND	Paul Gill Edmund Sweetman Vincent Power	TURKEY	Sevilay Kuru Didem Light
ITALY	Giorgio Berlingieri Alberto Pasino Andrea Berlingieri Jr.	UKRAINE	Evgeniy Sukochev
JAPAN	Kenjiro Egashira Hiroshi Kimura Tomotaka Fujita	UNITED KINGDOM	Andrew D. Taylor Patrick J.S. Griggs John Macdonald
		UNITED STATES	Harold K. Watson Francis X. Nolan Robert G. Clyne
		VENEZUELA	Julio Cesar Sánchez-Vegas Aurelio Fernández Concheso Luis Cova Arria

**MINUTES OF A MEETING OF THE CMI EXECUTIVE COUNCIL HELD ON FRIDAY,
6 MAY 2016 FROM 18H15 TO 18H45 AT THE HILTON HOTEL, NEW YORK ***

Participating:

<i>President:</i>	STUART HETHERINGTON
<i>Past President:</i>	KARL-JOHAN GOMBRII
<i>Vice-Presidents:</i>	GIORGIO BERLINGIERI CHRISTOPHER O. DAVIS
<i>Secretary-General:</i>	JOHN HARE
<i>Administrator:</i>	LAWRENCE TEH
<i>Treasurer/Head Office Director:</i>	PETER VERSTUYFT
<i>Councillors:</i>	ANN FENECH TOMOTAKA FUJITA LUC GRELLET JOHN O'CONNOR JORGE RADOVICH DIETER SCHWAMPE TACO VAN DER VALK ALEXANDER VON ZIEGLER ANNE VERLINDE
<i>By invitation:</i>	

1. *Apologies*

No apologies were recorded.

2. *Welcome*

The President welcomed all present, especially John O'Connor, as a newly elected member of EXCO, and congratulated Lawrence Teh, Dieter Schwampe and Alex von Ziegler on their re-election.

3. *Judicial Sales*

(a) *Europe*

Taco van der Valk will make enquiries through the Netherlands MLA as to what the European Group would need to promote the draft Convention, and will report to EXCO.

(b) *Attendance at IMO LegCom 103 on 9 June 2016*
Henry Hai Li and Jonathan Lux will be attending LegCom 103 to present the CMI's case for adoption of the Draft Convention on the Judicial Sales of Ships onto the IMO's workbook.

4. *Resolutions made at the Plenary*

The decisions and recommendations taken at the Plenary held earlier in the afternoon, carried forward to the Assembly were duly noted.

5. *Marine Insurance*

The report of Joe Grasso, Chair of the Marine Insurance IWG was tabled and noted.
RESOLVED: That the Executive Council accept the recommendations for the way forward outlined in the report of the Marine Insurance International Working

Group and that Andreas Bach of Switzerland be invited to join the Group.

6. *Cross Border Insolvency*

Vice-President Chris Davis confirmed that he wished to step down as Chair of this IWG, and proposed that Prof Sarah Derrington be appointed in his stead.
RESOLVED: That Sarah Derrington be invited to Chair the International Working Group on Cross-Border Insolvency, and that she be further invited to nominate a Rapporteur for the Group.

7. *Implementation and Promoting Ratification of Maritime Conventions*

Further to the report of Deucalion Rediadis submitted to the first New York EXCO meeting and to the Assembly,
RESOLVED: That and that the following persons be invited to join the IWG on Implementing and Promoting the Ratification of Maritime Conventions:

*Rosalie Balkin
Dimitri Christodoulou
Chidi Ilogu
Patrick Holloway
Maria Borg Barthet
Kiran Khosla*

8. *Future of CMI*

The President reported on the successful breakfast meeting of NMLA Presidents and the extensive input received at that meeting from all Presidents present. He reported that Ms Burrell had undertaken to follow up with a note recording the input at the breakfast meeting.

* Provisional, for approval by the next EXCO meeting.

9. *Virtual Meeting of EXCO 21 November 2016*

It was confirmed by the President that the next meeting of the Executive Council would be an eMeeting held during the week of 21 November 2016. He mentioned that as the next meeting in person would only be in September 2017 in Genoa, it might become necessary to hold a further eMeeting earlier in 2017.

10. *Correspondence*

(a) *Dominican Republic*

The President reported that the arrangement we considered we had reached with the Dominican Republic in relation to their arrears appears to have come to naught. It was decided to allow the Dominican Republic until the end of October 2016 to settle arrears, failing which expulsion procedures should commence.

RESOLVED: That The Dominican Republic be advised that unless the agreement for payment of arrears previously reached is honoured, the expulsion process will take place in Genoa.

(b) *Colombia*

The President reported that he had met with Jose Guzman who confirmed the unfortunate situation in which the Columbian MLA finds itself.

RESOLVED: That that the personal payment made by the former President of the Colombian MLA should be refunded to him and thereafter that expulsion procedures

should commence against the current Colombian MLA.

11. *Young CMI*

The President expressed the view that the CMI Committee of the CMI needs structural change to ensure greater involvement of younger CMI members. Taco van der Valk will be asked to report further on this at the next meeting of the Executive Council.

12. *Reallocation of NMLAs to EXCO members*

The Secretary-General undertook to consider the reallocation of the NMLAs previously under Dihuang Song's care, and to allocate appropriate NMLAs to John O'Connor.

13. *Composition of the Nominating Committee*

It was reported that Prof Francesco Berlingieri had indicated that he no longer wishes to take part in the nominations process. The Secretary-General undertook to include the composition of the Nominating Committee in the review currently being done by the Constitution Committee. John O'Connor indicated his willingness to participate in this process.

There being no further business, the meeting adjourned at 18h45.

STUART HETHERINGTON
President

JOHN HARE
Secretary General

**THE IMO INTERNATIONAL MARITIME PRIZE 2015 -
NOMINATION OF DR. FRANK LAWRENCE WISWALL JUNIOR**

Letter of the President of the CMI

8 July 2016

Presidents of NMLAs
Executive Councillors
Titulary Members
Consultative Members

Dear All

The IMO International Maritime Prize 2015

I am delighted to inform you that Vice-President Honoris Causa of the CMI, Frank Wiswall, has been named as the winner of the IMO's International Maritime Prize 2015.

This is a great honour for Frank Wiswall and the CMI and I am delighted that the CMI's nomination of

Frank for this award has been successful.

I am attaching for your information the Nomination and attachments. If you would like to communicate with Frank in order to pass on your congratulations his email address is: flw@silver-oar.com.

With kind regards,
(Signed)

STUART HETHERINGTON

Post script to the letter of the President of the CMI 8 July 2016

The CMI has been informed that the presentation of the IMO Prize to Frank Wiswall is to take place at IMO headquarters in London on 5 December at

5.45pm. Patrick Griggs will be saying a few words on behalf of the CMI on that occasion.

Nomination of Candidate for the International Maritime Prize 2015

THE COMITE MARITIME INTERNATIONAL hereby nominates

Dr Frank Lawrence Wiswall Junior for his outstanding contribution to the purposes and functions of the International Maritime Organisation, his effective leadership and his personal contribution to the International Maritime Organisation through his role as Vice Chairman of the Legal Committee of the IMO from 1974 to 1979; as Chairman of the Legal Committee of the IMO from 1980 to 1984; and as lecturer at the IMO International Maritime Law Institute (IMLI) at Malta as well as being a member of its governing board from 1992 to the present; contributing to the establishment of the uniformity of maritime law during his long and distinguished career

as a practising maritime lawyer, academic, and as Vice-President of the Comité Maritime International (CMI).

for the International Maritime Prize 2015

The attached statement and Curriculum Vitae is submitted in support of the candidature.

For and on behalf of the Comité Maritime International

(Signed)

Dated: 12 January 2016

Name: Stuart Hetherington

Designation: President of the Comité Maritime International

Nomination for the International Maritime Prize 2015

Doctor Frank Lawrence Wiswall, Junior

Nomination Narrative

1. Dr Frank Lawrence Wiswall Junior (Frank Wiswall) is nominated on behalf of the Comité Maritime International (CMI) for the International Maritime Prize 2015 for his outstanding contribution to the purposes and functions of the International Maritime Organisation during his long and distinguished career which has included being Chair of the Legal Committee of the International Maritime Organisation, Vice President of the Comité Maritime Organisation (CMI). Attorney and Academic.

2. Frank Wiswall was born in Albany, New York and raised in Maine in the United States. He obtained a Bachelor of Arts degrees at Colby College, a Doctor of Law at Cornell University and a Doctor of Philosophy at Clare College, Cambridge University for his thesis on the development of Admiralty Jurisdiction and Practice since 1800, which was published by the Cambridge University Press in 1970. He was admitted to the Bar in the State of Maine in 1965 and the Supreme Court of the United States in 1968.

3. Frank Wiswall worked with one of the leading New York admiralty and maritime firms at the time, Burlingham Underwood, between 1967 and 1973 before taking on the role as Admiralty Counsel, Bureau of Maritime Affairs for the Republic of Liberia from 1973 to 1988. He also worked as Maritime Counsel at the International Bank in Washington DC and has been in private practice and consultation on admiralty and maritime international law from 1985 to the present.

International Maritime Organisation (IMO)

4. He held the posts of Vice Chairman (1974 to 1979) and Chairman (1980 to 1984) at the Legal Committee of the IMO. He was elected as Vice-Chairman of the Legal Committee of the IMO at LEG 21 in January/February 1974 and remained so until

LEG 42 in February 1980. He was acting Chairman at LEG 25, LEG 30, LEG 35, LEG 39, LEG 40 and LEG 42. Thereafter Dr. Wiswall was Chairman of the Legal Committee from LEG 43 in June 1980 until LEG 52 in September 1984.

LEG 21 February 1974 - LEG 42 February 1980: main achievements

- Preparations for the inaugural session of the Assembly of the 1971 Fund Convention
- Draft Articles of a Convention on Wreck Removal and Related Issues
- Draft articles of a Convention relating to the Carriage of Passengers and their Luggage on Board Ships
- Draft Articles for an International Convention on Limitation of Liability for Maritime Claims
- Consideration of recommendations to the Council on a convention on the regime of vessels in foreign ports
- Consideration of legal aspects of the draft International Convention on Maritime Search and Rescue

LEG 43 June 1980 - LEG 52 September 1984: main achievements

- Extension of the 1969 International Convention on Civil Liability for Oil Pollution Damage to oils not covered by that Convention
- Review of the limits laid down in the 1969 Civil Liability Convention and the 1971 Fund Convention
- Consideration of matters relating to the organization and work of the International Conference on Liability and Compensation for Damage in Connection with the Carriage of Certain Substances by Sea, 1984
- Draft Convention on Liability and Compensation in Connection with the Carriage of Noxious and Hazardous Substances by Sea

- Consideration of the question of salvage, in particular the revision of the 1910 Convention on Salvage and Assistance at Sea, and related issues
- Consideration of work in respect of maritime liens and mortgages and related subjects

Apart from his considerable work as Chairman and Vice Chairman of the Legal Committee, Frank Wiswall played a proactive role at several international conferences convened by IMO. In particular he was Chairman of the Drafting Committee of the International Legal Conference on the Carriage of Passengers and their Luggage on Board Ships, 1974. He was also Chairman of the Committee on Final Clauses of the International Conference on Limitation of Liability for Maritime Claims, 1976. He was the Chairman of the Committee of the whole of the International Conference on Liability and Compensation for Damage in Connexion with the Carriage of Certain Substances by Sea, 1984.

International Maritime Law Institute (IMLI)

5. Frank Wiswall has been a member of the Governing Board of IMLI since 1992, a Professor at IMLI since 1991 and on its Academic Committee since 2008.

6. Frank Wiswall's association with IMLI in Malta dates back to the 1980s, shortly after his tenure as Chairman of the IMO Legal Committee, when the then IMO Secretary-General asked him to review a draft syllabus which had been prepared for IMLI (at the time in the process of establishment in Malta). Frank Wiswall instantly became a strong believer in IMLI's purpose and began teaching at IMLI in 1990, visiting once or twice a year. For over 20 years Frank Wiswall had lectured on a diversity of topics including maritime legal history, maritime legislation drafting, law of maritime safety and the law of marine collisions.

7. Through his lectures he trained lawyers from around the world in the drafting of international conventions, in the international regulation of maritime law through international conventions including the Convention on the International Regulations for Preventing Collisions at Sea and the International Convention for the Safety of Life at Sea, as well as in the incorporation of international conventions into national legislation.

8. On 30 March 1999 IMLI conferred on Frank Wiswall the Degree of Honorary Professor of International Maritime Law in recognition of his life-long service to the harmonization, progressive development and codification of international maritime law.

9. Not only was Frank Wiswall a visiting fellow at IMLI, but he also acted as a supervisor in the Institute's Research Degree programme after being a

fervent promoter of the establishment of the Institute's M. Jur. Degree as part of the programme.

10. For many years Frank Wiswall has also actively contributed to the work of IMLI as a Member of the IMLI Governing Board and as a Member of the IMLI Academic Committee.

Comité Maritime International (CMI)

11. Frank Wiswall's contribution to the work of the CMI has also been extensive. He was made a Titulary member of the CMI in 1980 and an Executive Councillor from 1989 to 1997, Vice President from 1997 to 2005 and Chairman of the CMI Constitutional Committee from 1992. He was CMI's main representative to the United Nations from 1997 to 2011 and Chair of the Joint International Working Group on Piracy and Maritime Crime from 1998 to 2007.

12. The CMI Handbook of Maritime Conventions which he first produced in 1992 has been reproduced on many occasions since, and has been a necessary accompaniment to anyone having to consider or write about any of the significant IMO Conventions.

13. In his work for the CMI Frank Wiswall brought his considerable experience, esteem in which he has been held, and skills as Chair of International Working Groups of the CMI to two particular tasks that concerned the maritime community and which produced the following texts:

- Piracy and Maritime Crime - "A Model National law on Piracy and Acts of Maritime Violence 2001 and a Code of Practice for the Investigation of the Crime of Piracy and Armed Robbery against Ships".
- Classification Societies - "Principles of Conduct for Classification Societies and Governments and Classification Societies and Shipowners (1999)".

All the above texts were produced by working groups involving representatives from the industry bodies concerned about the topics and chaired by Frank Wiswall, and the texts are located in the CMI Handbook of Maritime Conventions.

14. Frank Wiswall was Chairman of the Committee in Intergovernmental Organisations of the Maritime Law Association of the United States (MLAUS) from 1983 to 1987; Chairman of its Committee in the CMI 1987-1995; and created a life member in 2006 of the MLAUS. 15. His scholarship has been prodigious. Apart from his thesis to which reference has been made earlier and his numerous writings, including papers, articles, and lectures on Admiralty and International Maritime Law he was the Editor in Chief of *Benedict on Admiralty* (Vols 6-6F); Editor in Chief *Benedict's Maritime Bulletin* since 2009 and a member of the Editorial Board of the *Journal of Maritime Law and Commerce*.

RÉSUMÉ

WISWALL, FRANK LAWRENCE, JR.

- Vitae:* Born Albany, New York USA; 21 September 1939. Raised in Maine.
- Degrees:* Bachelor of Arts (B.A.), Colby College, 1962;
Doctor of Law (J.D.), Cornell University, 1965;
Doctor of Philosophy, Faculty of Law (Ph.D. jur.), Cambridge University (Clare Coll.), 1967.
- Academic and Professional Honors:* Yorke Prizeman of the University of Cambridge, elected 1969;
Fellow of the Royal Historical Society (F.R.Hist.S.), elected 1972;
Professor of International Maritime Law *ad honorem*, IMO International Maritime Law Institute (IMLI), title conferred 1999;
Chairman, American Maritime Law Foundation, Inc., 2002- present;
Vice-President *honoris causa* of the Comité Maritime International (CMI), elected 2005.
- Professional Posts:* Burlingham Underwood, New York, Marine Collision Department, 1967-73;
Admiralty Counsel, Bureau of Maritime Affairs, Republic of Liberia, 1973-88;
International Bank, Washington, DC, Maritime Counsel 1975-85;
private practice and consultation in Admiralty and Maritime International Law, 1985- present.
- International Posts:* Legal Committee of the International Maritime Organization, London (IMO - a Specialized Agency of the United Nations), Vice-Chairman 1974-79, Chairman 1980-84; Membre Titulaire du Comité Maritime International (CMI), elected 1980; Executive Councillor of the CMI, 1989-97; Vice-President, 1997-2005; Chairman of the CMI Constitutional Committee, 1992- present; Main Representative of the CMI to the United Nations, 1997-2011; Member, Governing Board, IMO International Maritime Law Institute, 1992- present; Chairman of the Joint International Working Group on Piracy and Maritime Crime, 1998-2007.
- Nautical Qualifications:* USCG License as Master of Near Coastal Steam & Motor Vessels, 1960- present (10th Issue); Member, Navigation Safety Advisory Council, US Dep't of Homeland Security, 2009- present; District Captain for Sector Northern New England, US Coast Guard Auxiliary, 2010- present.
- Academic Posts:* Tutorial Supervisor in International Law, Clare College, University of Cambridge, 1966-67; Guest Lecturer in Admiralty, Cornell University School of Law, 1968-77; Lecturer in Law (Admiralty), University of Virginia School of Law, 1978-82; Adjunct Professor of Law (Admiralty), Cornell University School of Law, 1984; Niels F. Johnsen Distinguished Professor of Maritime Law, Tulane Univ. School of Law, 1985; Visiting Professor of Law, World Maritime University, Malmo, Sweden, 1986-2003; Professor, IMO IMLI, Malta, 1991- present; Academic Committee, 2008-present; Occasional Lecturer and Panelist, US Naval War College, Newport, RI, 2009-present.
- Bar Membership:* State of Maine (1965); Supreme Court of the United States (1968);
United States District Courts for Maine and E.D. Virginia; United States Courts of Appeals, 1st, 2nd, 3rd, 4th, 5th, 11th and DC Judicial Circuits.
Resigned in Good Standing: State of New York (1968-2007), District of Columbia (1975-2007), Commonwealth of Virginia, (1978-1992), US District Courts Southern NY and DC (1968-2007).
- Subjects Taught:* Admiralty and Maritime Law, Diplomatic and Conventional Process, International Maritime Law and Regulation, Law of Marine Collision, Law of International Organizations, Law of Treaties, Drafting of Maritime Legislation, Marine Casualty Investigation, Marine Environmental Law, Maritime Legal History, Maritime Security Law, Piracy and Maritime Criminal Law.
- Writings:* Books: *Admiralty Jurisdiction and Practice Since 1800*, Cambridge University Press, 1970; *A Brief History of the Comité Maritime International*, Antwerp, 1997; rd ed., 2010. Contributor of articles to The Oxford Encyclopedia of Maritime History, Oxford U.P., 4 Vols., 2007. Numerous published articles and papers on Admiralty and International Maritime Law. Editor-in-Chief, *Benedict on Admiralty*, Vols. 6-6F, *International Maritime Law, Documents and Commentary*, LexisNexis/Bender, 1992- present; *CMI Handbook of Maritime Conventions*, LexisNexis, 2001, 2004, 2008, 2011. Editor-in-Chief, *Benedict's Maritime Bulletin*, 2009- present. Member of the Editorial Board of the *Journal of Maritime Law and Commerce*.
- Member of:* Maritime Law Association of the United States (Chairman, Committee on Intergovernmental Organizations, 1983-87; Chairman, Committee on the CMI, 1987-95; Life Member, 2006 -); National Lawyers Association; National Cargo Bureau; Ecclesiastical Law Society; Selden Society (English Legal History); American Society for Legal History; National Association of Scholars.

**NOTE OF SPEECH MADE BY ROSALIE BALKIN ON BEHALF OF CMI
WHEN THE ANNOUNCEMENT OF THE WINNER OF THE PRIZE WAS MADE
AT THE IMO COUNCIL MEETING IN JUNE**

Secretary-General, Excellencies, Chairman, Members of the Council, Ladies and Gentlemen,

It is an honour for me to be here at this session of the IMO Council to accept the award of the International Maritime Prize to Dr Frank Wiswall.

I do so on behalf of the Organization that nominated him-CMI; and I convey to you the especial thanks of the CMI President, Mr Stuart Hetherington and that of the CMI Secretary-General, Professor John Hare, neither of whom was able to be here today.

The CMI, as you may be aware, was established in Antwerp in 1897. It's objective- very much in line with that of IMO-is to contribute to the advancement and unification of international maritime law.

CMI's collaboration with IMO dates back to 1967 and the fateful incident involving the Torrey Canyon. Following the British Government's request to IMCO to consider the liability issues raised by the incident, the IMCO Council established an ad hoc Legal Committee, which in its turn, approached CMI for assistance. Many of the ensuing negotiations took place within CMI's International Committee and the IMCO- CMI collaboration led directly to the adoption, in 1969, of the Civil Liability Convention. The Diplomatic Conference that adopted the Convention was, incidentally, chaired by the then CMI President, Baron Albert Lilar.

Since then the collaboration between CMI and IMO's Legal Committee has been steady and productive. This is true not only as regards the host of liability and compensation regimes adopted by IMO, but also in other areas of concern to the IMO membership, for example, Places of Refuge for Vessels in Distress and the Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident.

Dr Frank Wiswall, the individual you have honoured today by the award of the International Maritime Prize, has over many years played a key role in advancing the work not only of CMI but also that of IMO and IMLI.

As you all have full details of his curriculum vitae in the papers before you, I will refrain from quoting too fully from them. Suffice be it to point, firstly, to his

contribution to the Legal Committee, where he held the post of Vice-Chairman from 1974 to 1979 and that of Chairman from 1980 to 1984.

The Committee's work over this period included subjects as diverse as wreck removal, the Athens Convention on the Carriage of Passengers and their Luggage by Sea, the International Convention on Limitation of Liability for Maritime Claims and the Salvage Convention, and under Dr Wiswall's leadership, substantial progress was achieved.

Dr Wiswall also played a key role in the various diplomatic conferences convened by IMO following on the work of the Legal Committee, which included, for example, his chairmanship of the Drafting Committee at the Athens Diplomatic Conference.

His association with IMLI dates back to the 1980s, when he was requested by the then IMO Secretary-General to review the draft syllabus in preparation for IMLI's establishment. Dr Wiswall's support for IMLI thereafter was shown in the form of his becoming a Visiting Professor over a period of more than twenty years, as well as his membership of IMLI's Governing Board and Academic Committee.

Of Dr Wiswall's work for CMI, I shall mention only his production, in 1992, of the CMI Handbook of Maritime Conventions, which is an essential accompaniment to anyone wishing to consider or write about the significant IMO Conventions.

Dr Wiswall's academic output in the form of numerous texts, papers, articles and lectures has been prodigious and his scholarship has been recognised in maritime law circles. It is fitting, therefore, for Members of this prestigious Council also to recognise Dr Wiswall's achievements and I once again thank you for awarding him the International Maritime Prize.

I know that he will be thrilled and honoured once he hears of this award and I am sure that he will write personally to the Secretary-General to express his appreciation to the Council.

In conclusion, I wish to express my own thanks to the Council for agreeing to consider Agenda item 15(f) today so as to allow me to participate as the proud representative of CMI."

ROSALIE BALKIN

CMI 2017 GENOA



Arrangements are proceeding for the holding of the 2017 CMI Assembly in Genoa on 8 September 2017 at the Old Stock Exchange Building in the central Via XX Settembre, located across the street from the Hotel Bristol Palace which is the venue of the Executive Council and the CMI Working Groups and International Subcommittees meetings to take place on 7 September and where rooms have been reserved for delegates, with other hotels conveniently located nearby.

A half day Seminar will be organized in the morning of 8 September, followed by a lunch, at *The Doge's Palace*, at walking distance from the Stock Exchange Building and the Hotel Bristol Palace, with distinguished speakers addressing on Enforcement of Maritime Claims and the Works of the CMI.

In the afternoon of 8 September, parallel with the

Assembly, a Young CMI Seminar is to follow exploring the Ballast Water Management Convention which will enter into force that very day.

A social program is being arranged with a Reception on 7 September at the *Acquario* of Genoa, located in the old harbor area, the largest aquarium in Italy and among the largest in Europe, and a dinner on 8 September at Villa Lo Zerbino, a 17th century stately home in the center of Genoa, surrounded by beautiful gardens.

Genoa offers various exploring and tourist attractions and tours will be organized for accompanying persons and a post Assembly tour calendar will also be proposed.

The event site **cmi2017genoa.org** is being built, going live in early 2017.



COMITÉ MARITIME INTERNATIONAL

INTERNATIONAL WORKING GROUPS

[As constituted in New York, May 2016]

Note: In terms of Art. 9 of the CMI Constitution, the President is *ex officio* a member of all Committees and Working Groups

Acts of Piracy and Maritime Violence

Andrew TAYLOR, [UK] *Chair*
Rodolfo GONZALEZ-LEBRERO [Spain]
Patrick GRIGGS [UK]
John KIMBALL [USA]
Louis MBANEFO [Nigeria]
Lars ROSENBERG OVERBY [Denmark]
Frank L. WISWALL Jr [USA]

Arbitration

Luc GRELLET [France] *Chair*
Vincent DE ORCHIS [USA]
Leo G. KAILAS [USA]
John KIMBALL [USA]
Mario RICCOMAGNO [Italy]
Lawrence TEH [Singapore]

Liability for Wrongful Arrest

Giorgio BERLINGIERI [Italy] *Chair*
Aleka SHEPPARD [UK] *Rapporteur*
Sir Bernard EDER [UK]
Ann FENECH [Malta]
Karl-Johan GOMBRII [Norway]
Chris DAVIS [USA]

Liability of Classification Societies

Karl-Johan GOMBRII [Norway] *Chair*
Alex VON ZIEGLER [Suisse] *Rapporteur*
Luc GRELLET [France]
John HARE [South Africa]
Tomotaka FUJITA [Japan]

Cross Border Insolvencies

Sarah DERRINGTON [Australia] *Chair*
Christopher O. DAVIS [USA]
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NEWS FROM IMO

REPORT ON THE IMO LEGAL COMMITTEE, 103RD SESSION, 8-10 JUNE 2016,

by Patrick Griggs

The session was opened by Kitack Lim who is the new Secretary General of IMO.

He offered his condolences to the Belgian delegation on the death of Johan Van Steen, a long-time member of their delegation, who had been killed in the March 22nd bombing of Brussels Airport. A minute's silence was observed.

The theme of the Secretary-General's opening remarks was the importance of states ratifying international conventions. The adoption of a convention at a Diplomatic Conference should not be the end of the process. "...if anything, it should be just the end of the beginning." A convention is not worth anything until it is "effectively and universally implemented."

He commented on the fact that many states find the process of implementation difficult and explained the assistance which is available through the IMO technical cooperation programme. "...it is my firm intention to address this lack of domestic implementing legislation as a priority of my tenure as Secretary-General."

The HNS Convention 2010: implementation.

It is now twenty years since the HNS Convention was adopted and six years since the 2010 Protocol was finalised and yet entry into force remains an elusive target. It was hoped that the creation of the HNS Correspondence Group would help guide states through the complexities of implementation. The chairman of the Group, Francois Marier (Canada), introduced two reports¹⁵ which outlined work done by the Group including the publication of a brochure entitled "The HNS Convention: Why it is needed", a paper containing practical advice on dealing with HNS incidents ("HNS Incident Scenarios") and a draft Assembly Resolution on implementation and entry into force.

The Canadian delegation also introduced a report¹⁶ on the outcome of a Workshop which had taken place in Montreal in March 2016. During the Workshop sessions various practical problems were addressed including the method (and cost) of collecting data regarding contributing cargo and the availability of adequate insurance cover for claims. Delegates from the Canada, Denmark and Norway, who have adopted the Convention and are well advanced with the process of implementation, had been invited to talk at the Workshop about their experiences.

The mandate of the Group was extended and states

were encouraged to ratify and bring into force this important convention.

Provision of financial security in case of abandonment of seafarers, death or injury.

Shipowners' obligations in this regard are contained in the ILO Maritime Labour Convention 2006 (which came into force in August 2013) and in a 2014 Amendment (which will enter into force in January 2017).

As of March 2016 the ILO's Abandonment of Seafarers Database listed 192 abandoned merchant ships some dating back to 2006. Many abandoned seafarers are still working and living on ships without pay, food or water, medical care or the financial means to return home.

The committee decided to keep the issue under review and will watch with particular interest what effect the entry into force of the 2014 Amendment will have.

Fair treatment of seafarers in the event of a maritime accident.

The representative of ITF introduced a document¹⁷ which analysed the laws of member states which give effect to the "2006 Guidelines on the fair treatment of seafarers in the event of a maritime accident". This revealed a great number of different approaches being adopted to the issue of implementation. Some states had incorporated the Guidelines into their national legislation whilst others simply stated that their existing law offered sufficient protection. Yet others had chosen to be selective in implementing the Guidelines.

In its paper ITF advised that it is in the process of preparing guidance for states on implementation of the Guidelines. In order to promote adoption and proper implementation of the Guidelines ITF proposed the organisation of regional workshops to discuss and refine the guidance document which will, in its final form, be submitted to the next session of the Legal Committee. It is hoped that this will ensure consistency of approach by states when implementing the Guidelines.

The Committee recognised the importance to the shipping trade of ensuring that seafarers are treated properly following a maritime accident if recruitment of future generations of seafarers is not to be adversely affected. The various educational and research institutions affiliated to IMO should be encouraged to promote and teach the Guidelines.

¹⁵ LEG 103/3, LEG 103/3/1

¹⁶ LEG 103/3/3

¹⁷ LEG 103/5

Piracy.

The IMO response to the problem of piracy had been to set up The Contact Group on Piracy off the Coast of Somalia (CGPCS). Working Group 2 of the Contact Group was charged with looking at the legal aspects and held several meetings which concentrated on the building of court capacity to enable prosecutions to be dealt with in the region where the incidents of piracy occurred.

At a meeting of the Contact Group in January 2014 it had been agreed that Working Group 2 had successfully achieved all its aims and would only meet, in future, on an ad hoc basis.

The Secretariat advised that all aspects of piracy will in future be dealt with by the Maritime Safety Division of IMO.

The Committee noted a submission from the Indian delegation who drew attention to the lack of support for seamen whilst in captivity and suggested that India might wish to submit a paper on the subject at LEG 104.

Maritime legislation - implementation of conventions.

IMO is very well aware of the problems which member states have in drafting legislation implementing its instruments. The Secretariat reported that it is actively developing training programmes aimed at improving the understanding of the principles of IMO instruments and their legal implications and guiding legislative drafters on the techniques to be applied when developing national law.

With this aim in view the Secretariat is in urgent discussions with the International Maritime Law Institute in Malta (IMLI) on the creation of short courses in legislative drafting. Reference was made to the fact that IMLI now publishes the dissertations and legislation drafting exercises produced by students attending its long courses. These are a useful resource.

IMO International Maritime Law Institute (IMLI).

The Director of IMLI introduced his report¹⁸ on the activities of the Institute in the year 2015. He reported that the Institute had introduced a Master of Science in International Law and Logistics degree programme in cooperation with Kuhne Logistics University (Hamburg). This will start in October 2016. In conjunction with the World Maritime University (WMU) it will also offer a Master of Philosophy Programme in International Maritime Law and Ocean Policy. This will start in September 2017. As mentioned earlier in this report the Institute will offer

a Master of Humanities degree programme in International Maritime Legislation to train candidates in the development of domestic implementing legislation.

Status of Conventions.

In notes from the Secretariat¹⁹ will be found a review of the status of IMO conventions and other instruments in terms of ratification and implementation.

Of the most frequently encountered conventions it is worth noting that the Protocol of 1992 to the CLC 1969 now has 134 contracting states and the 1992 Protocol to amend the 1971 Fund Convention has attracted 114 contracting states. The 2002 Protocol to amend the 1974 Athens Convention on the Carriage of Passengers by Sea has 25 contracting states and the 1996 Protocol to amend the 1976 LLMC has 52 contracting states. The 2007 Wreck Removal Convention has 28 contracting states though it is not known how many of these states have opted to extend the application of the convention to wrecks lying within territorial waters²⁰. The 2001 Bunkers Convention has 82 contracting states.

Needless to say there were calls from several delegates and from the chair for states to ratify and implement the HNS Convention. Delegates were also reminded of the importance of remembering to denounce older conventions when ratifying the later ones. This is particularly important in the case of the 2002 Athens Protocol where the 1974 and 1976 Conventions and the 1990 Protocol must be denounced.

Transboundary pollution damage.

This topic was first introduced at the 97th Session of the Legal Committee in April 2011. At that and subsequent meetings the Committee has rejected the idea of an international convention (no “compelling need”) but has encouraged those promoting the topic (notably Indonesia and Denmark) to prepare Guidance for the creation of bilateral or regional agreements to deal with the problem. The Committee decided that armed with such a document and with encouragement from IMO, states could negotiate agreements with neighbouring countries which would deal with issues of regulation, liability and compensation for damage caused by pollution from offshore rigs.

In a joint submission by the delegations of Indonesia and Denmark²¹ the history of this matter was summarised and a draft Guidance note was introduced and attached as an Annex to the submission. The Committee was informed that the Guidance note was in two parts. One an introduction and examples of elements that might be included in bilateral and

¹⁸ LEG 103/9/1

¹⁹ LEG 103/10 and LEG WP.3

²⁰ At the end of the session the delegate from Spain made a statement concerning the UK's extension of the Wreck Removal Convention to Gibraltar, its territorial waters and its EEZ. The Spanish Government challenged the right of the UK so to extend its jurisdiction into Spanish waters. The response of the UK government was to insist on its right to take this step and to reject the Spanish complaint.

²¹ LEG 103/13/1

regional agreements. The second part consists of a non-exclusive list of elements which could be discussed and elaborated upon in the course of negotiations.

(At the CMI meeting in New York in May the International Working Group on Offshore Activities held a meeting at which the text of the draft Guidance was considered and amendments suggested. These drafting suggestions have been passed directly to the Indonesian and Danish delegations for their consideration but were not formally submitted to the Legal Committee.)

The Committee repeated its opposition to a binding convention or other instrument and emphasised that though it was encouraging the production of Guidance any document produced in future would not be an official IMO document.

The Committee again invited states to submit to the Secretariat examples of existing agreements covering transboundary pollution.

Delegating authority to issue certificates of insurance under CLC and Fund Conventions.

In a submission to the Committee²² the French delegation pointed out that whilst the Bunkers Convention, the Athens Convention and the Wreck Removal Convention all contained a specific provision allowing for delegating the issue of insurance certificates, the CLC and HNS Conventions did not. The French delegation submitted that this should be cured by means of an Assembly Resolution, a Conference Resolution or an amendment to the Conventions by Protocol.

Whilst some delegates felt that there was sufficient implied authority to delegate the issuing of insurance certificates it was decided that the best solution would be to pass a Resolution in the Assembly confirming the authority to delegate. (A draft Resolution is attached to the French submission.)

An issue which will come up in future is whether it will be possible to create a single certificate to cover liabilities under all the numerous liability conventions.

Judicial Sale of ships and their recognition.

At LEG 102 the CMI submitted a paper²³ outlining a proposal for an international convention to regulate the judicial sale of ships so as to ensure that the buyer obtains good title to the ship which cannot be challenged in other jurisdictions. The Committee

concluded that this subject might be suitable for inclusion in its future work programme but that it could not consider a project solely sponsored by an NGO. CMI was urged to find one or more states who were prepared to co-sponsor the proposal. The Committee also decided that as matters stood there did not appear to be a “compelling need” for such an instrument. Again, CMI was urged to do some further research and identify cases in which the problem of non-recognition of a judicial sale had occurred and had created problems for the buyer.

During the lunch break on the second day of the Meeting the co-sponsors, China, Republic of Korea and CMI put on a short seminar at which they explained the results of the further research. This meant that when the time came to present the revised and extended submission in the afternoon session a large number of delegates had a full understanding of what was involved.

However, after the submission²⁴ had been presented to the Committee it became clear that there was still firm opposition to this project.

In the first place several delegates questioned whether this essentially legal/commercial issue fell within the competence of the Legal Committee. Secondly, delegates again questioned whether it would be justified in spending time on a convention or other instrument to solve a problem which, based on the case histories summarised in the submission, did not appear to arise frequently. On the basis of this assessment and despite the presence of some support for the project the Committee decided not to include this subject in its future work programme. It suggested that the sponsors of the project might wish to approach other UN bodies (such as UNCITRAL or UNCTAD) to see whether they might be interested. The Committee also indicated that it might be prepared to consider the subject as a joint project with another UN body.

The future.

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.

PATRICK GRIGGS

²² LEG 103/13/2

²³ LEG 102/11/2

²⁴ LEG 103/11/3

NEWS FROM IOPC FUNDS

REPORT OF THE 25-27 APRIL 2016 MEETING OF THE IOPC FUNDS GOVERNING BODIES

Of the incidents involving the 1992 Fund the “*Prestige*” prompted the most discussion. The Supreme Court in Spain had found the Master guilty of a crime against the environment and liable for civil damages, without the benefit of the protection of Article III (4) of the 1992 CLC, as the damage had resulted from his recklessness. The shipowner was held to have subsidiary civil liability and unable to benefit from limitation of liability. Finally the insurer, London P&I Club, had direct civil liability up to the policy limit of US\$1,000,000,000.

The Director had noted that the decision was in breach of Article VI (11) of the 1992 CLC which provides that even if the Owner has lost the right to limit its liability, the insurer can constitute a fund under the Convention. The International Group of P&I Clubs and other industry observers voiced similar issues and expressed concerns about the imposition on the Master of criminal liability, without giving the Master the opportunity to present a defence.

In its intervention, the Kingdom of Spain explained that Spanish law provides as a general principle, for the direct and unlimited liability of the insurer. Accordingly, whereas Article VII paragraph 8 provide that the insurer may “*avail themselves of the limits of liability prescribed in Article V paragraph 1*”, it is for the insurer who wishes to limit its liability to invoke that defence. Because the Club had not appeared in the proceedings and had not exerted its right to avail itself of the limit of liability, no such limitation could be granted by the Court.

In the “*Hebei Spirit*” case it was reported that a possible settlement between the 1992 Fund and the Government of the Republic of Korea had not yet been finalised. The Executive Committee increased the level of payments to 60%.

In relation to compensation matters, among other things, amendments were approved to the claims manual in respect of claims for VAT by central governments. It has been decided that compensation for claims for VAT by central governments can be paid, if the national law of the relevant State allowed for the inclusion of VAT in the State’s claim for compensation. In all other cases the usual principles of the law of damages would be applied.

Mention should, however be made of the debate concerning the definition of “*ship*”. In this regard what has been described as a “*hybrid approach*” is to be adopted. Under this approach there is an illustrative list of vessels which clearly fall within the definition of “*ship*” and an illustrative list of those which clearly fall outside the definition. Where the situation is unclear, that matter will be considered on a case by case basis adopting consideration of the maritime transport chain as an interpretive tool. Examples of the maritime transport chain are also provided.

Finally, in view of the developments in the “*Nissos Amorgos*” case, the International Group had raised concerns as to whether its practice of making interim payments and, thereby allowing prompt payment of claims, could continue. The Governing Bodies decided in October 2015 that a Consultation Group should be formed to work with the Director and the International Group in order to progress the complex issues which arose. It was reported by the Director that the Consultation Group had met and that progress was being made. It was hoped that with continuing discussions the Consultation Group would be in a position to make recommendations to the Governing Bodies at the October 2016 session.

ANDREW TAYLOR