

**ANSWERS OF THE SPANISH MARITIME LAW ASSOCIATION (AEDM) TO THE  
QUESTIONNAIRE OF THE CMI ON ARBITRATION (LETTER OF CMI'S  
PRESIDENT DATED 29<sup>th</sup> FEBRUARY 2015)**

**1/ Would you encourage the CMI to lay a role in Maritime Arbitration?**

The answer of the Spanish Maritime Law Association (AEDM) is affirmative. Whilst there are different maritime and international arbitration institutions, as the ICC itself with which the CMI developed CMI/ ICC Rules that have not worked in practice, the importance and tradition of arbitration as a method to solve disputes in the maritime business has to be underlined. Alternative Dispute Resolution systems (ADR), mediation and arbitration by truly neutral experts could play a role, not only as efficient methods for dispute resolution in an industry where specialisation and time are crucial values, but also in harmonisation of the interpretation of maritime law, in accordance with art. 1 of the Constitution of the CMI (*"the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects"*)

**2/ If the answer to point 1 is affirmative, to which extent would you consider the CMI should engage itself in this field?**

If the CMI engages in this field, it is the view of the AEDM that it must try to provide an option for arbitration of maritime disputes that may improve the already existing ones. This would require to cooperate with the existing first level international and national maritime mediation and arbitration entities, purporting to create an specialized, qualified and neutral arbitration system (either by providing rules, arbitrators lists, guidelines as well as any other information resources and services that may be needed for ad hoc arbitration, or by acting as through an arbitration institution), which is also cost differential to the existing institutions or options in different ways:

- i. Own Arbitration Court and/or arbitration and mediation rules: just if it is not possible to agree on cooperation schemes with international and national mediation and arbitration entities.
- ii. Publication of own and others (where authorised) Arbitration Awards to create an arbitration corpus similar to the Jurisprudence on the Interpretation of Maritime Conventions.
- iii. Providing to other arbitration institutions a reliable list of expert maritime arbitrators selected through transparent quality controls jointly with the national MLAs for arbitration proceedings in several different languages.

**3/ Would you support the three above areas of investigation or only some of them?**

To the first one, we encourage the CMI to project itself as an information centre in maritime arbitration, and, if requested, we will provide our support thereupon. For that, we may gather and present all data and knowledge, which can be distilled out from adjudication bodies in Spain.

Turning to the second area of investigation, we will be glad (if asked by) to explore and assess the potential of arbitration in Spanish maritime disputes. However, we definitely cannot put down such potential to our court system being “not technically satisfactory”. That would be too sensitive, if at all appropriate, if we take into account that our self-professed role is the promotion of maritime law in Spain.

Third and last, in connection with the arbitration rules, we must distinguish UNCITRAL Model Law on International Commercial Arbitration 1985 (2006) from UNCITRAL Arbitration Rules 1976 (2010). In our view, only the latter would be of help here for the CMI drafting its own set of rules. That said, we do not believe the benefits for setting up any such rules may outweigh the drawbacks, not least for the fact that the UNCITRAL Arbitration Rules are a benchmark of unquestionable value and acceptance within the arbitration community.

#### **4/ Formulate any other suggestions for examination by the Working Group?**

Our Association will encourage the Working Group to research the actual implementation and application of the 1958 New York Convention and any other regional conventions on recognition and enforcement of arbitration awards both on the merits, preliminary and precautionary measures, costs, etc. to implement a catalogue of the different practices, as any arbitration has three crucial milestones: the arbitration clause or agreement to arbitrate, the arbitration proceedings up to the award and the enforcement of the award.