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CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

No. 4 - 2000 COMITE MARITIME INTERNATIONAL
QUARTERLY BULLETIN TRIMESTRIEL

This Issue Contains:

NEWS FROM THE CMI

SINGAPORE CONFERENCE

Information on the Conference

Venue

As already advised, the venue of the Conference will be the Pan Pacific Hotel, 7 Raffles Boulevard, Marina Square, Singapore 039595.

Registration

Participants may register for the Conference at the Pan Pacific Hotel on Sunday, 11 February 2001 from 14000 to 1800 or Monday, 12 February 2001 from 0800 to 0900 in the Ballroom Foyer. Participants may register and collect conference materials at any of the dates and times specified above.

Opening Ceremony

The Opening Ceremony will take place Monday, 12 February 2001 at 1000 hours in the Pacific Ballroom, Level 1 of the Pan Pacific Hotel (lounge suit).

Welcome Reception

The Welcome Reception will take place Monday, 12 February 2001 at 0930 hours in the Raffles Courtyard of the Raffles Hotel (shirt and tie).

Gala Dinner

The Gala Dinner will take place Friday, 16 February 2001 at 1830 hours in Ballroom 2, Level 2 of the Singapore International Convention & Exhibition Centre (lounge suit).

General Average

The Chairman of the CMI International Sub-Committee Dr. Thomas Remé prepared a list of the issues Delegates are invited to consider at the Conference and wrote to the Presidents of the National Maritime Law Associations the following letter:

Dear Sirs,

General Average – Preparation for the Singapore Conference

The Singapore Conference of the CMI will give us the opportunity of discussing at some length the initiative taken by IUMI for changes in General Average. You will find the report by IUMI in the conference papers, i.e. in the CMI Yearbook Singapore I. The main thrust of the IUMI Proposals is to reduce the scope of general average to sacrifices made or incurred in time of peril and to delete from the definition any reference to the common adventure. In this context Delegates will be invited to consider:

1. Whether there are grounds to reduce expenses currently allowed in GA under rules X, XI, XII and XIV including

a) cost of entering port of refuge;
b) cost of leaving port of refuge;
c) cost of removal to repair port and entering/leaving;
d) cost of handling/discharging cargo or fuel/stores at port of refuge and subsequent storage/reloading;
e) wages and maintenance of crew, fuel, stores consumed and port charges incurred in consequence of a) to c) above and the extra period of detention in the port of refuge;
f) damage to or loss of cargo, fuel and stores in consequence of d) above;
g) temporary repairs for common safety or to enable adventure to be completed.

2. Whether substituted expenses under rule F should continue to be allowed in GA.

3. Whether rule D should be amended to provide that there shall be no recovery whatsoever in GA if the General Average Event is directly caused by any breach of the ISM Code or the STCW Convention or the Rules of the Classification Society with which the vessel is classed.

4. Whether salvage claims, which have been settled separately, should continue to be re-adjusted in GA. These topics are meant to encourage those national MLA's to get prepared for the Singapore Conference that have not responded to our questionnaire. It may serve as a certain guideline for all national MLA's that have responded to the questionnaire in their preparation for the Singapore Conference. The international working group for general average consisting of M. Pierre Latron, Mr. Hans Levy, Mr. Richard Shaw (as rapporteur) and myself will be grateful to accept additional suggestions if any. Since M. Pierre Latron will be prevented from attending the Singapore Conference, he will be replaced by Me. Gilles Gautier.

Yours faithfully
Dr. Thomas Remé

APPOINTMENT OF MOORE STEPHENS AS CMI AUDITORS

At its Toledo Meeting on 17 September 2000 the Execution Council resolved to appoint Moore Stephens as Official Auditors to the CMI. Ratification of this appointment will be sought at the Assembly meeting in Singapore.

FRANCESCO BERLINGIERI HONORARY PROFESSOR OF INTERNATIONAL MARITIME LAW

In the course of a ceremony at the Presidential Palace at the presence of the President of Malta, the IMO International Maritime Law Institute has conferred on the President ad Honorem of the CMI, Francesco Berlingieri the title of Honorary Professor of International Maritime Law.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

82ND SESSION OF THE IMO LEGAL COMMITTEE

The 82nd Session of the IMO Legal Committee, under the Chairmanship of Alfred Popp Q.C., took place at the IMO Headquarters in London between 16th & 20th October 2000.

In opening the Session the Secretary General of IMO, Bill O'Neil, referred to the stranding of the *Erika* in December 1999 which had resulted in serious environmental damage to parts of the French coast line. He referred to the fact that the Marine Environment Protection Committee was considering the accelerated phasing out of single hulled tankers but emphasised the importance of the work which the Legal Committee would be doing in considering increases to the compensation limits in the 1992 CLC and Fund Protocols. Any increase agreed, he indicated, would be implemented under the simplified tacit acceptance procedure. The Secretary General pointed out that the "*Erika*" sinking in 1999 and *Nakhodka* incident in 1997 had highlighted the fact that the funds available under the 1992 CLC and Fund Protocols were no longer adequate to compensate victims.

The Secretary General also commended the Committee for agreeing that the Diplomatic Conference to approve the draft Convention on Bunker Pollution could take over the slot normally occupied by the Spring meeting of the Legal Committee. The date fixed for the Diplomatic Conference is March 19th to 23rd and the Conference will be held at the IMO Headquarters in London.

Provision of Financial Security – Protocol to the Athens Convention

The Committee continued with is consideration of a draft Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974. The object of the Protocol is to increase the compensation limits, review the basis of liability and provide for all operators of passenger ships to secure adequate insurance cover for their liability to passengers. Victims would be given the right to pursue their claims direct against the providers of liability insurance or other security.

Basis if Liability

This remains a controversial issue. Under the Athens Convention of 1974 the Claimant is required to prove that the carrier was at fault though that fault is presumed where a death or injury arises out of a maritime incident. Most delegations have supported a change to the basis of liability and by the time that the further discussions on this issue were concluded the Committee had decided to accept a compromise which would involve a compensation system based on strict liability for death and injury to passengers in connection with shipping incidents (up to a certain limit) but with the maintenance of a fault based system above that limit and in the case of non-shipping incidents. Controversy continues to surround the question of how the burden of proof should be allocated in shipping incidents above the limit and in non-shipping incidents.

Limits of Liability

The discussion on this issue highlighted the difference of approach amongst the various delegations. The most extreme view was that in respect of claims for loss of life or personal injury there should be unlimited liability. This would, in effect, result in the deletion of article 7 of the Athens Convention. On the other hand a substantial number of delegations preferred a limitation provision which provided for per capita limitation without any overall limit per incident. Amongst this second group it remained for discussion whether State Parties should, in the alternative, be allowed to regulate by specific provisions of national law the limits of liability for loss of life and personal injury claims (if any) provided that the limit of liability under national law was no lower than that prescribed by the Convention. This option would give those State Parties looking for a higher limit the option to impose these but within the framework of the revised Convention.

It follows that in relation to limitation of liability there remain divergent views and much still to discuss.

Compulsory Insurance

It is now well established that one of the principal purposes of the Draft Protocol is to oblige the operators of passenger carrying ships to carry

compulsory liability insurance giving the Claimant a direct right of action against the liability insurer or provider of security. Within the general scheme of things there remains some discussion as to the extent to which the shipowners potential liability should be covered by the compulsory insurance. Should the insurance requirement be based on per carriage per capita or be calculated by reference to the number of passengers which the vessel was certificated to carry or by reference to the number of passengers the vessel is actually carrying at the time of the incident in question.

The representative of the International Group of P&I Clubs alerted delegates to the fact that if insurance was to be by reference to the number of passengers which the vessel was actually carrying at the time of the incident and the vessel was found to be overloaded the liability insurer might well have a defence under the contract of insurance.

Electronic Records

It is recognised that certificates of insurance printed on paper may eventually be replaced by certificates issued in electronic format. It was agreed by delegates that provisions should be made in the Protocol for this eventuality.

Limits of Liability for Loss or Damage to Luggage

No final decision was made as to whether the requirement of compulsory insurance should extend to lost or damaged luggage. In any event it was agreed that the limitation figures relating to claims for lost or damaged luggage should be left in blank for agreement at an eventual Diplomatic Conference.

Competent Jurisdiction

Consideration was given as to whether the Protocol should provide for an additional court of competent jurisdiction to embrace countries to which the carrier provided regular or scheduled services. A representative of the International Group of P&I Clubs suggested that adding further potential jurisdictions would simply complicate the settlement of the claims to the disadvantage of claimants. No final decision was made in relation to this issue.

Final Clauses

A number of issues remain outstanding within the Final Clauses notably the form of the model certificate of insurance, certain treaty issues arising between States, issues of sovereign immunity and a provision to accommodate states where more than one system of law applies.

Possible Diplomatic Conference

After considerable discussion it was agreed that the Committee would recommend to the Council of the IMO that allowance should be made for a two week Conference to adopt the Protocol during the 2002 / 2003 biennium. The Committee indicated that it would be prepared to forgo one of its regular week-long meetings in order to make two weeks available to finalise the Protocol.

Draft Convention on Wreck removal

This subject, which had been extensively worked upon **intersessionally**, was further studied. Discussion was based upon a scaled down version of the text which omits provisions on liability and compensation and on reporting requirements as were contained in the original draft. The purpose of this scaling down was to ensure rapid progress so as to enable a recommendation to be made for a diplomatic Conference in the 2002/2003 biennium.

Discussions within the Committee revealed several reservations about the revised text. Some delegations expressed concern that many of the most controversial matters would be left to be regulated by national legislation.

There remain a number of controversial issues arising even within the scaled down instrument. There is still a need for a definition of “wreck”, “preventative measures” and “hazard”. The financial liability for locating, marking and removing wrecks remains controversial as does the question of contributions from cargo. It was agreed that the question of insurance for wreck removal expenses could be dealt with under existing IMO instruments on the subject; notably the IMO Guidelines on insurance requirements. Following lengthy discussion the Committee decided that it could not make a recommendation to the Council for the convening of a Diplomatic Conference though it did agree to devote more time at future meetings to producing a draft treaty for possible consideration at a Diplomatic Conference during 2004/2005 biennium.

Finally on this subject the Committee requested the International Group of P&I Clubs to get together with their colleagues in the insurance industry as well as other sectors of the shipping industry to see whether the project might be further advanced.

Increase in the Compensation Limits under the 1992 Civil Liability and Fund Protocols.

As a result of the likely compensation shortfalls in the *Erika* and *Nakhodka* incidents and in face of the threat of the European Union to introduce a regional compensation and liability scheme the Committee was invited to consider whether the limits in the above two Protocols should be increased pursuant to the tacit acceptance procedure contained in the Protocols.

The sponsors of document LEG 82/10/5 proposed increases between 50.36% and 79.09% depending on the interpretation of the relevant provisions of the two Protocols concerning the effective dates. These increases would be calculated on a full 6% per annum as stipulated by the two Protocols.

The Director of the IOPC Funds introduced a document which recounted the history of claims which it had handled. The Director drew attention to the fact that whilst, with a few exceptions, sufficient funds had in the event been available to meet claims this was not readily apparent at the outset of a number of cases with the result that initial payments had to be scaled down.

Lengthy discussions took place regarding the appropriate percentage increase to be applied. In the event the Committee agreed to amend the limits in the two Protocols by applying a factor of 50.37% in respect of both instruments. The Committee expressed its belief that these increases would maintain a proper relationship between the limits in the Fund Convention and those laid down in the Civil Liability Convention.

In the event two resolutions were adopted which have the effect of increasing the limits under 1992 Protocols as follows:

a) Protocol of 1992 – The International Convention on Civil Liability for Oil Pollution Damage 1969.

   Article 6 (1) of the 1992 CLC Protocol to be amended as follows:

   the reference to "three million units of account" shall read "£4,510,000 units of account";

   the reference to "420 units of account" shall read "631 units of account";

   the reference to "59.7 million units of account" shall read "89,770,000 units of account".

b) Amendment of the limits of compensation in the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971

   Article 6 (3) of the 1992 Fund Protocol to be amended as follows:

   the reference in paragraph 4 (a) to "135 million units of account" shall read "203,000,000 units of account";

   the reference in paragraph 4 (b) to "135 million units of account" shall read "203,000,000 units of account"; and

   the reference in paragraph 4 (c) to "200 million units of account" shall read "300,740,000 units of account".

In adopting these resolutions it is recognised that the new limits cannot take effect until November 2003.

As a footnote to this discussion the French delegation noted that even the new limits could prove to be insufficient in certain cases which may leave the way open for the European Commission to introduce a regional compensation and liability regime.

Monitoring Implementation of the HNS Convention

Delegations remain concerned at the delays in ratification of accession to the HNS Convention. The HNS Correspondence Group continues to act as a forum for the exchange of views and will help States interested in ratifying or acceding to the Convention.

A further meeting of the Correspondence Group will take place on Friday 16th March 2001 at the IMO Headquarters to determine the progress made on the implementation of the Convention.

Technical Co-operation Programme for Maritime Legislation

Under this general heading reference was made, inter alia, to the excellent work of IMLI (Malta) in providing training for lawyers in Government employ in the ratification and implementation of international conventions. In this context gratitude was expressed by delegates and by the Chairman of the Legal Committee for the financial support given to IMLI by the CMI Charitable Trust.

Long Term Work Programme

The Committee looked at is long term work programme which contains three items as follows:

a) Consideration of the legal status of novel types of craft, such as air cushion vehicles, operating in the marine environment;

b) A possible Convention on the regime of vessels in foreign ports;

c) Possible revision of maritime law conventions in the light of proven need.

There will be no meeting of the Legal Committee in the Spring of 2001. The meeting is displaced by the Diplomatic Conference on a Draft Convention for Compensation for Pollution from Ships Bunkers. As mentioned earlier in this report this Diplomatic Conference will take place at the IMO Headquarters in London and will run between March 19th and 23rd.

PATRICK GRIGGS

NEWS FROM IOPCF

AUTUMN MEETINGS – 23-27 OCTOBER 2000

The Autumn meetings of the Governing bodies of the 1971 and 1992 IOPC Funds took place at the IMO Building in London on 23-27 October 2000. There were three dominant matters which preoccupied the meetings:

1. The winding up of the 1971 Fund.

Membership of this Fund has now declined to 40 States, of whom 12 have now denounced the 1971 Convention, so that by October 2001 there will only be 28 member states left. More significantly, the remaining states will include in their number only 12 states which import significant quantities of oil, so that the cost of a casualty involving a 1971 Fund member state will bear very heavily on each of them. In September 2000 a Diplomatic Conference was held in London at which a protocol to the 1971 Fund Convention was adopted. This protocol will, if it comes into force, bring the 1971 Fund to an end 12 months after the membership falls below 25, or when the total quantity of contributing oil falls below 100 million tonnes, whichever is the earlier. This Diplomatic Conference adopted a tacit amendment procedure for this protocol, meaning that it will enter into force on 27th June 2001, unless more than one-third of those states who remain members of the 1971 Fund register objection to it.

The predominant features of the remaining states in the 1971 Fund are that i. they import no or very little oil, and ii. they do not turn up to meetings. If this typical inertia continues, the protocol will enter into force, and the states who have taken no action will find themselves members of a Fund which no longer exists.

Purists of Public International Law may assert that the tacit amendment procedure is not applicable to such an important measure, but there can be no doubt that it should produce a pragmatic solution to an otherwise insoluble dilemma. It is to be hoped that it will encourage all the remaining 1971 member states to transfer their membership to the 1992 Fund without delay.

2. Increased Funds for payment of oil pollution claims.

The IMO Legal Committee at its meeting on 18th October 2000 adopted resolutions , again under the tacit amendment procedure, which will have the effect of increasing the limits under the 1992 IOPC Fund Convention to 89,770,000 SDR and 203,000,000 SDR respectively for the shipowner's and IOPC Fund's respective limits of liability. Assuming that there are no objections to these increases, they will take effect in 2003.

In the meantime, a Formal Working Group has developed a list of aspects of the 1969 and 1971 and 1992 Conventions which, in the view of the Working Group, merit review, and the Chairman of the Working Group reported to the meetings on these matters. This led to an animated debate with a substantial body of delegates speaking in favour of revision, although several cautioned against attempting too radical changes in a system which has been shown to work effectively. The CMI has pledged its support and assistance to the Working Group and to the Director of the Funds Secretariat in following up this work.

3. The Erica Casualty.

This vessel, laden with 31,000 tonnes of heavy fuel oil, sank in heavy weather off the Brittany coast of France in December 1999. This casualty caused huge pollution of the coast of France from Brest to La Rochelle. The claims from the French fishery, mariculture and tourist industries are expected to

be very large, and will almost certainly exceed the 135m SDR limit of the 1992 Fund's liability. In July 2000 the French Government presented to a meeting of the Fund's Executive Committee a meticulously prepared study on the estimated claims of the tourist sector. A revised and refined report was presented to the October meeting, based on actual figures for the Summer 2000 season up to mid August, so far as it was possible to gather these in time to present the report. The Director reminded the Executive Committee of its duty to pay claims as generously and as quickly as possible, but also of the danger of encountering a situation, actually encountered in the case of the *Braer*, where over generous payments were made in the early stages.

Removal of the oil from the wreck, using a new technique, was completed in September 2000 and proved surprisingly successful, but further pollution by oil coming ashore cannot be definitely excluded. The Committee felt unable to increase the level of payment of admitted claims beyond the 50% approved in July. This will no doubt disappoint the French media, but was reasonable in view of the uncertainties still surrounding the potential claims against the Fund arising out of this casualty, particularly those from the tourist sector. It is to be hoped that further hard evidence as to the amount of these claims will be forthcoming before the next meeting of the IOPC Fund's Executive Committee scheduled for January 2001, since the political and media pressure to see claimants receiving money is substantial.

Three other large cases which have been moving rather slowly towards finalisation saw some substantial progress reported at the meetings. The *Nakhodka* in Japan and Korea, the *Aegean Sea* in Spain and the *Nissos Amorgos* in Venezuela all share the common feature of a large number of fisheries claims presented in more than one forum, with consequent duplication (and a certain amount of exaggeration) of figures. In each case the Governmental Authorities concerned have intervened to bring all claimants round the same table, and the signs of a possible overall settlement of each case are beginning to look promising. The principal lesson to be learned here is that the 1992 increase in the maximum limit of liability of the IOPC Fund has proved insufficient fully to meet the claims arising out of a major pollution casualty, and that there is a real need to introduce higher figures as quickly as possible. The Protocol adopted in October goes some way to meet this, but it was clear from the debates in the Working Group that there is a perceived need to increase the limits still further in the reasonably near future.

RICHARD SHAW

NEWS FROM UNCITRAL

DRAFT GUIDE TO ENACTMENT OF THE UNCITRAL UNIFORM RULES ON ELECTRONIC SIGNATURES

Pursuant to decisions taken by the Commission at its twenty-ninth and thirtieth sessions, the Working Group on Electronic Commerce devoted its thirty-first to thirty-sixth sessions to the preparation of the draft UNCITRAL Uniform Rules on Electronic Signatures. At its thirty-sixth session, the Working Group adopted the substance of draft articles 1 and 3 to 11 of the Uniform Rules and referred them to a drafting group to ensure consistency between the provisions of the Uniform Rules. The Secretariat was requested to prepare a draft guide to enactment of the provisions adopted. Subject to approval by the Commission, the Working Group recommended that draft articles 2 and 13 of the Uniform Rules, together with the guide to enactment, be reviewed by the Working Group at a future session.

The draft articles 1 and 3 to 11 of the Uniform Rules and the draft Guide are published as an annex to a Note by the UNCITRAL Secretariat of 18 August 2000 (Document A/CN.9/WG.IV/WP.86). In Chapter I of the draft Guide the purpose and origin of the Uniform Rules are explained and then general very interesting and clear remarks on electronic signatures are made, with particular emphasis on digital signatures relying on public-key cryptography. There follows a description of the main features of the Uniform Rules. In Chapter II an article-by-article comment is made of the draft Uniform Rules.

It is sought that a Guide of this type will be of great assistance to States in enacting and applying the Uniform Rules, when they will be finalized.

RATIFICATION AND DENUNCIATION OF INTERNATIONAL CONVENTIONS

INSTRUMENTS OF RATIFICATION OF AND ACCESSION TO THE FOLLOWING CONVENTIONS HAVE BEEN DEPOSITED WITH THE DEPOSITARY:

– **Convention on Limitation of Liability for Maritime Claims, 1976**
Trinidad and Tobago[*]

– **Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976**
Finland: 15 September 2000

INSTRUMENTS OF DENUNCIATION OF THE FOLLOWING CONVENTIONS HAVE BEEN DEPOSITED WITH THE DEPOSITARY:[**]

– **Convention on Limitation of Liability for Maritime Claims, 1976**
Finland: 15 September 2000

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[*] Date not known.

[**] The dates indicated are the dates when denunciation becomes effective.