

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

COMITE MARITIME INTERNATIONAL

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**ALLAN PHILIP**  
1927 – 2004

*In order to commemorate the Past President of the CMI, Prof. Allan Philip, we publish hereafter the address delivered at his funeral and the tributes paid to him by the two CMI Presidents, who preceded and followed him: Francesco Berlingieri and Patrick Griggs.*

**ADDRESS DELIVERED AT THE FUNERAL OF ALLAN PHILIP WHICH TOOK PLACE AT MARIEBJERG GREAT HALL ON 16 SEPTEMBER 2004** (EDITED VERSION)

#### A TRIBUTE TO ALLAN PHILIP

Praise the Lord, O my soul,  
And forget not all his benefits

I have chosen these lines from David's Psalm 103 as a title for our last leave of Allan Philip, not at least because they contain a joy of living and a

gratitude for life. Looking back on Allan Philip's long, fruitful and active life and what it has meant to our country, to his friends and to you, his dear ones, we have, in the middle of our sadness, most of all reason to say thank you.

That every new day is a possibility to be received with openness and used with responsibility was also Alan Philip's attitude to life. His life was full of activity and responsible efforts to the last. In spite of illness he continued to work; he made everything ready as far as he could, prepared and

organized the procedure so that others could take over after him, and even on the morning he died he was arranging things; in short he remained his own self till the last.

Professor Philip was one of the legal luminaries of our country, both in practice and research. He started his career by being awarded the university's gold medal and improved his education in a number of countries; he had a comprehensive legal authorship behind him and was a highly esteemed researcher and university lecturer. At the same time he was very active in many fields of practical legal work. In Denmark as well as internationally he was very active as a negotiator and trouble-shooter and had a special talent for solving conflicts and making parties talk to each other. For one thing, he was always well prepared and broad-minded and for another he had the ability to make contacts; he was a kind person and a gentleman whom you could trust. His knowledge and expertise was profound and always up-to-date, and he was highly respected both in Denmark and internationally.

But Allan Philip was also very active at important posts in Denmark's cultural life: as a chairman of Gyldenal's publishing house, as a legal adviser to The Danish Academy, as a chairman through more than 30 years of the Louisiana Museum of Modern Art and as a member of the Karen Blixen foundation Rugstedlundfonden. And all this not for show, but as a diligent and important worker with great skills in building up a team-work and as a personally very understanding person, a man of high reading who took an active interest in literature and art.

A special gift ran through all Allan Philip's work with other people, which meant everything also in his family life and made him a cherished partner of life and an excellent father: his ability to allow his fellow human beings freedom of action, to support them and bring out the best in them. He showed deep respect and tolerance for other people, whether colleagues, family members or partners in Denmark or internationally; there was room for everyone and therefore you felt comfortable in his company.

And the heart of it all, the centre of force where he found strength and energy, was the family life, the equal and mutually invigorating feeling of solidarity through almost 50 years of marriage between two extrovert, active and each in their field busy personalities, and their four daughters, sons-in-law and grandchildren. Allan Philip was a heart and soul family man, and with his great gift for being one hundred per cent present wherever he was, he was completely engrossed in life both in the Hellerup home, in the young families and in

the country house at Hvalsø, where he devoted himself to the practical work with hedges and potatoes, painting and whitewashing, and where he wholeheartedly enjoyed both parties and everyday life. You have much to thank him for today and much to draw strength from on your way in life.

We believe that God is always involved in our lives, whether we feel it at the moment or not, and that He will be good to us also after death. Our Lord is still the God of wonders and life. Praise the Lord, O my soul, and forget not all his benefits. In this perspective we give Allan Philip into the hands of God in peace and with thanks.

#### **A TRIBUTE BY FRANCESCO BERLINGIERI, ALLAN PHILIP'S PREDECESSOR AS PRESIDENT OF CMI:**

Allan Philip, to whom I was tied by an old friendship, has been an outstanding jurist and a great lawyer. Born in Copenhagen in 1927, he graduated in 1951 at the University of Copenhagen School of Law and subsequently obtained the Diploma of comparative legal studies in the University of Cambridge and the title of Dr. Juris in the University of Copenhagen. He studied in Clermont-Ferrand and Dijon as well as in the University of Chicago and Barclay in the United States.

Professor and then Dean of the Law School of the University of Copenhagen, he has been lecturer at the Hague Academy of International Law and member of the Danish Labour Court. He has represented Denmark at many diplomatic conferences on maritime and private international law and has been Chairman of the First Commission of the Hague Conference on private international law from 1974 to 1976. He has been expert from Denmark in the Committees of the European Union and the Council of Europe, advisor to the Danish Government in the "North Continental Shelf" case and of the Norwegian Government in the "Jan Mayen" case at the International Court of Justice.

What has created a very strict link between him and me has been his participation to the works for the unification of maritime law conducted by the Comité Maritime International. After having become a member of the Executive Council of the CMI in 1990, he was elected President when I, after 15 years, decided that it was the time for me to leave the presidency. He has, for eight years, served as President in the most efficient and intelligent manner.

The very many years during which we have

worked together have created between him and me a relationship of reciprocal esteem and a true deep friendship that have enabled me to highly appreciate his scientific value, his promptness in considering and expressing his views on all the questions of maritime law, his great experience. The Comité Maritime International has lost one of its most illustrious members and I have lost a dear Friend.

**A TRIBUTE BY PATRICK GRIGGS, WHO SUCCEEDED ALLAN PHILIP AS PRESIDENT OF CMI:**

The Constitution of the CMI provides that the Immediate Past President remains a member of the Executive Council. This is a daunting prospect for a new President and a situation which needs tact and understanding from the Past President. No one who knew Allan will be surprised to know that he was a model of how these things should be done. His knowledge of the CMI and his exceptional brilliance as a lawyer made him an essential part of the Executive Council. Despite the fact that he was a natural

leader he resisted the temptation to intervene unless asked to express his view. He was always willingly available at the end of a telephone line if I needed to call on his knowledge and experience. In the early years I did this frequently.

Allan had a very sharp financial brain. As a member of the Audit Committee, which was initially appointed to oversee a modernisation of our finances in the post Henri Voet era, he identified errors in preparation of the Accounts which were missed by accountants and also by other members of that Committee.

In the dark days when the future of the CMI was in some doubt he always retained his faith in the importance of the work done by the CMI and encouraged us to think positively as well. Without his steadying influence things might have turned out differently. I came to respect and rely on his judgement in so many issues which had to be resolved both within and without the Executive Council.

But above all he was a gentleman and a true friend. We miss his presence in our meetings and we miss him at our social gatherings.

## **NEWS FROM THE CMI**

### **MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL HELD IN HAMBURG AT THE OFFICES OF THE INTERNATIONAL TRIBUNAL OF THE LAW OF THE SEA ON NOVEMBER 6, 2004 AT 9:00 A.M.**

Attending:

<i>President:</i>	Jean-Serge ROHART
<i>Past President:</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Frank L. WISWALL, Jr.
<i>Councillors:</i>	Jose Maria ALCANTARA Johanne GAUTHIER Stuart HETHERINGTON Henry H. LI Thomas M. REME Gregory TIMAGENIS
<i>Acting Secretary-General</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Publication Officer:</i>	Francesco BERLINGIERI

1. (a) *Apologies*

The President recorded apologies from John Hare and José Guzman, and welcomed back Francesco Berlingieri who was unable to attend the CMI Conference in Vancouver. He then referred to

John Hare's wife, Caerli, who is ill, and instructed the Acting Secretary-General to send a letter in which we send our prayers and thoughts. The President then paid tribute to Allan Philip who died recently. He advised that CMI's gesture of

Patrick Griggs attending the funeral was very much appreciated by Mrs. Birthe Philip. He thereupon called upon Francesco Berlingieri and Patrick Griggs to pay further tribute to the great achievements of Allan Philip within the CMI, particularly as President. The text of the Pastor's tribute to Allan at his funeral was very moving and will be put in the Newsletter. The President then called for a moment of silence in tribute to Allan Philip.

*(b) Approval of Minutes of the Executive Council Meeting held in London on 18 November 2003.*

The Minutes of the Executive Council meeting held in Vancouver on June 4, 2004 were approved as tabled with a reservation under paragraph 6 which the Acting Secretary-General would bring up when reporting on the Nominating Committee.

*(c) Matters arising from those minutes*

The President noted that matters arising from those Minutes were all on the Agenda and would be discussed at the meeting.

## 2. Finances

*(a) Report from the Treasurer*

The Treasurer reported that the two Antwerp accounts (current and deposit), and the Genoa account, showed on September 30, 2004 a total balance of 382,988.57 Euros. The liquidity plan shows that such a balance permits the CMI to bear normal expenses without earning fresh cash until January 2007 i.e. 28 months. Previous financial statements show that in December 2001 the liquidity plan had sufficient cash for eight months in October 2002 and in April 2003, and in April 2004 for 21 months. Thus, the cash position has improved and, in the Treasurer's opinion, appears to be safe.

The Treasurer anticipates that his draft accounts will be prepared soon after December 31, 2004 for the auditors. They should be finalized by February 2005 in time for circulation to the National Associations for the Assembly in Paris in April 2005. He also noted that 275,732 Euros are owing by defaulting MLA's, some of which will likely have to be written off.

*(b) Unpaid Contributions*

There was considerable discussion about the National Associations that had not paid their annual contributions. It was decided that those six countries that have not responded to letters

requesting payment would receive formal letters from the President by the end of the year threatening expulsion.

There was then a discussion about defaulting titulary members. It was decided that they should be given more time to pay their annual fees.

*(c) CMI Conference at Vancouver*

Patrick Griggs then advised that the Canadian Maritime Law Association had reported that there was a surplus of approximately \$140,000.00 U.S. which would be shared on a 50/50 basis with the CMI, as agreed. Of the \$70,000.00 U.S. coming to the CMI (less a small hold back for unforeseen contingencies) it was decided that the rounded equivalent of \$25,000.00 U.S. in Sterling should go to the Charitable Trust. The balance would then be sent in Euros to the CMI General Account in Antwerp, care of the Treasurer. These funds were anticipated in the next few weeks.

*(d) The Agenda item concerning Executive Council Members flying business class vs. economy class would be deferred to the next Executive Council meeting in Paris to permit John Hare and José Guzman to express their views.*

## 3. New Constitution – Legal status of the CMI

Frank Wiswall moved that the French version, as published in the Belgian Monitor, be translated into English (by Johanne Gauthier and Benoit Goemans) and a copy given to him so that he could propose amendments at the Paris Assembly. CARRIED.

Mr. Wiswall needs the date the Constitution actually entered into force pursuant to Belgium law so that it could be put into the Year Book. Benoit Goemans will review the matter and advise Mr. Wiswall accordingly.

Wim Fransen then brought up the discussion of CMI stationery and it was decided that the letterhead should read "Comité Maritime International, AISBL". The full name for "AISBL" translates to "International Non-Profit Association". Along the bottom of the stationery will be printed the Antwerp address and those using the stationery would then put their own address at the top right-hand corner.

## 4. Next meeting of the Executive Council

The next Executive Council Meeting will be held in Paris on Friday, April 15, 2005 at the offices of the French Shipping Council. The Maritime Law Association of France has kindly offered



hospitality for those attending the Executive Council Meeting and the Assembly the following day. Details will be worked out in the near future.

*5. Executive Council Meeting and Assembly at Cape Town February 13-15, 2006*

The dates of each event will be deferred to the Executive Council Meeting at Paris when, hopefully, John Hare will be able to report on this and other arrangements.

*6. Members*

(a) Nigel Frawley reported that the Nominating Committee should comprise Bent Nielsen as Chairman, the President, Patrick Griggs as Immediate Past President, (Francesco Berlingieri had earlier resigned from the committee), Professor Zhu Zengjie and one other to be elected by the Executive Council. He drew the attention of those present to paragraph 6 of the Minutes of the last meeting held on June 4, 2004 in which it was said that there were two vacancies and that John Kimball and Alexander Von Ziegler would both likely be elected by the Executive Council. This was clearly an error as there is only one vacancy according to the Constitution. The President reported that he had spoken to John Kimball who said that, although honoured, he was not interested in the position at the present time. The Committee was thereupon constituted as referred to above with the addition of Alexander Von Ziegler only.

Although John Hare had submitted his resignation owing to his wife's illness, the President advised that he preferred not to accept his resignation and would continue to try to persuade him to stay on the Executive Council with limited duties as the situation permitted.

The Acting Secretary-General was asked to request Bent Nielsen to write Karl-Johan Gombrii, Johanne Gauthier and Benoit Goemans to ask whether they were interested in a second term and, if so, to justify why they should be re-elected.

*(b) Creation of Starter Kit for new Members*

Johanne Gauthier proposed that the kit to be sent to new members, or prospective new members, should consist of information on the CMI, a Model Constitution for the new Association, a listing of current publications, a schedule of fees, suggestions on how to enjoy a good liaison with their respective governments, and how to

organize their budgets. Ms. Gauthier's motion for approval of such a starter kit was CARRIED. She said she would present further information in Paris at the next Executive Council Meeting. It was considered that the starter kit should be published on the CMI website. It was also felt that the starter kit should be sent to Norman Martinez of Honduras who had shown interest in creating an MLA and joining the CMI. It was agreed that the Executive Council must monitor carefully which countries and which persons were to be approached. There was some discussion at that point on provisional membership as found in Article 3 (c) of the Constitution. This possibility will be referred to in the starter kit.

*(c) Monitoring of National Associations*

The proposed guidelines for the monitoring of national associations, as tabled by John Hare at the June 4, 2004 meeting, will be considered for possible adoption at the Paris meetings.

*7. Conference programmes:*

(a) Patrick Griggs referred the Executive Council to his recently amended guidelines for future Conferences as a result of the Vancouver experience, which were accepted. Gregory Timagenis is content with them with respect to the initial planning for the CMI Conference in Athens in 2008, except that they have plans for the opening ceremony to be held on the Sunday evening. Mr. Griggs referred to paragraph 5 and said that, in his view, Conference organizers must propose those officers and speakers who would be eligible for free registration, free hotel accommodation, etc. at least one year beforehand. He also stated that, on reflection, the guidelines should provide for tax issues being raised by the Conference organizers at an early date. The guidelines will be amended and discussed again at Paris.

*(b) Cape Town Colloquium - February 2006*

It was decided that if John Hare cannot attend the Paris meetings, his nominee for the planning of the Colloquium should attend and report on the arrangements. Nigel Frawley said that he would write Mr. Hare about this. It is essential that by the time of the Paris meetings the Executive Council know more of the arrangements.

*(c) 39<sup>th</sup> Conference- 2008 in Athens*

After considerable discussion it was decided that the Conference organizers should explore holding the Conference in the month of November in

order to get the advertised reductions in price cost for hotels, other events and airfares.

*(d) Possible next Colloquium/Conference*

The President suggested several places where the colloquium in 2010 and the 40<sup>th</sup> Conference in 2012 could be held. There was general discussion about this and other locations, but no decision was made.

*(e) Database with E-mail Addresses for future Conferences*

It was decided to defer this to the Paris meetings when John Hare could report.

*8. CMI Charitable Trust*

Patrick Griggs reported that after 2006 any surplus could still be put back into the Trust but that it was obligatory for a report to be made to the taxation authorities about the planned allocation of the surplus.

Patrick Griggs reported that no interest had been earned on the trust monies for a period of eight months. He will consult the Secretary of the Trust about this.

*9. Publications*

*(a)* Francesco Berlingieri said that all was well with deadlines and printing of Year Books, Newsletters and the website.

*(b)* It was agreed to defer John Hare's report on third party websites containing unwanted links with the CMI website until the Paris meetings.

*(c) CMI Archives*

Frank Wiswall reported that he had put all of CMI published records into a single CD-ROM. Concern was expressed that CD's deteriorate over time so it was agreed that Wim Fransen would prepare another two copies, one for him and the other for Benoit Goemans. They will fix labels on the CD-ROM's stating that they were re-writeable so that new ones can be created in approximately four years time. Caution was also expressed that they should be stored on their end and not flat, and that an archivist should be consulted for advice on preservation of the contents of the CD-ROM over the years.

*(d) (i)* It was agreed that the Handbook on Maritime Conventions should be published as separate documents for the English and French versions.

*(ii)* Francesco Berlingieri reported that the

distribution and sale of Travaux Préparatoires was proceeding satisfactorily.

*(iii)* There was some discussion, led by Francesco Berlingieri, about the publication of the Handbook in several languages. It was agreed that it would be done in English, French and Spanish in separate copies.

The York/Antwerp Rules 2004, as agreed at Vancouver, were then discussed. It was agreed that 500 printed cards containing these Rules in English and French would be arranged by Francesco Berlingieri for IUMI and other interested organizations.

*10 Work in progress*

*(a)* The President said that he preferred that the topics under this heading be discussed in an informal fashion after lunch.

*11. International Organizations*

*(a)* The President stated that he had decided to ask Patrick Griggs and Richard Shaw to represent the CMI at meetings of the IMO and IOPC and report to him in time for review and discussion at Executive Council meetings.

*(b)* The President said that Frank Wiswall would be lecturing at IMLI in Malta in November 2004 and that Patrick Griggs would be lecturing there in February 2005. He called for volunteers for future lectures.

*(c) Monitoring of EU Shipping Measures (Penal Sanctions against Seafarers)*

The President asked Wim Fransen to continue monitoring this subject and report on what he learned to the President and the Chairman of the International sub-committee on Fair Treatment of Seafarers following Marine Accidents.

*12. Various*

*(a)* The President then reviewed management functions and the attached list shows what was agreed.

*(b) Planning Committee*

The President said that he would be the only one on this committee for the time being but would set up the committee at least a year before the Athens Conference in 2008.

The meeting adjourned at 1:00 p.m. to be reconvened following luncheon at a nearby restaurant.

### 13. *Work in Progress and Other Matters*

#### (a) *Cape Town Colloquium*

The discussions started on a philosophical level about whether the CMI considers itself free to carry on work on a subject, particularly Places of Refuge, if the IMO puts that work in abeyance. The consensus seemed to be that the CMI should act independently and take the lead where necessary and appropriate. If there are gaps in existing Conventions with respect to ships seeking places of refuge, then the CMI should feel free to try to fill those gaps with appropriate measures. The discussion then moved on to the topics for the Colloquium at Cape Town. In the end, there seemed to be a broad consensus in favour of the following topics for Cape Town under the heading “Major Marine Casualties and their Consequences on Shipowners and Seafarers”:

- (i) Practical aspects of limitation of liability;
- (ii) Fair treatment of seafarers following marine casualties; and
- (iii) Places of refuge.

Francesco Berlingieri said that he would do an initial draft of a Questionnaire on limitation of liability in all relevant conventions.

The discussion then turned to transport law and it was considered that this could also be on the Agenda at Cape Town as a topic for educational purposes in which there would be included some speakers from African nations. Nigel Frawley said that he would write the Cape Town organizers about this particular topic and ask whether there are any regional agreements on transport law issues.

#### (b) *CMI Conference at Athens*

The discussion concentrated, again, on CMI inspired work - this time on guidelines for drafting, interpretation and implementation of Conventions. Gregory Timagenis will prepare a list of ideas for further discussion at the Paris meeting when a committee might be established for this purpose. Mr. Timagenis thought that such a topic would be very helpful and useful as well as being a CMI inspired work. He also pointed out that a unified enforcement of Conventions was in the spirit of uniformity.

Stuart Hetherington said that he and his committee would consider whether and how the existing Conventions bearing upon places of refuge can be improved. See page 6 of his Report to the IMO of 2004 – “Legal Deficiencies in the Present System”.

#### (c) *Wreck Removal*

It appears that IMO want a clean text on wreck removal by April 2005 with a planned Diplomatic Conference for 2006. The CMI has undertaken to submit a further paper intersessionally. Patrick Griggs and his committee will do this. The President said that he and Bent Nielsen should have a copy to review before it is filed.

#### (d) *Criminal Acts Onboard Foreign Flag Ships*

Frank Wiswall reported that Richard Shaw said that this topic appeared to be in limbo at the IMO. It was considered that the CMI should put in a paper at IMO even though IMO is not keen on the CMI doing a Model Law on the subject. Frank Wiswall will also look at CMI’s Model Law on Piracy in London soon. He has already discussed with IMB and Interpol the possibility of combining these two areas as there are many common issues. Patrick Griggs said that he would help Frank Wiswall with a Questionnaire on this subject.

#### (e) *Issues of Marine Insurance*

Thomas Remé said that this committee should be kept alive and John Hare kept on as Chairman. There was agreement that Thomas Remé and the two French lawyers should remain on the committee.

#### (f) *Bareboat Charter Registration*

José Maria Alcantara said that “channelling” is a major issue now at the IMO. That is to say that there should be only one target. He said that it would not be wise to do anything further beyond what IMO have asked.

#### (g) *General Average*

The French version will be done soon and the English/French versions will then be published in 500 cards and sent to IUMI. It was considered that hull underwriters views should be sought and Thomas Remé undertook to check with the London hull underwriters.

Patrick Griggs said that he would look into the fixing of an interest rate pursuant to Rule 21 of the York/Antwerp Rules, 2004 as the Assembly would have to pass whatever interest rate was deemed reasonable.

*(b) Classification Societies*

Although originally thought that this subject did not deserve further work at this time, Bureau Veritas seem to be keen on the CMI doing work on levels of limitation. Frank Wiswall said that he would do some discrete lobbying at the ICS and other organizations to gauge the level of interest in renewing work in this area.

*(i) Young CMI Prize*

José Maria Alcantara said that before January he would prepare a letter announcing a prize for an essay contest to be a trip to the Cape Town Colloquium. He said that he would also draft rules for the contest. It was considered that practising lawyers, and not professors, should be the readers of essays. The topic will be 'Fair Treatment of Seafarers following a Maritime Casualty'. The decision was made that there should be publication by March 2005 of the topic, rules and a letter to all national MLA's; that papers/projects be received by September 2005 and that a decision be made on the winner by November 2005.

*(j) Administrative Matters*

In order to streamline the paperwork for use at

Executive Council meetings, the President will arrange that further production of a clip or bundle of documents be stopped. Everything from now on should be done by e-mail. Frank Wiswall said that he would bring his computer to the Paris meetings and would need an electrical plug for this.

*(k) Future Agendas*

The discussion then turned to the Agenda of today's meeting and it was felt that at the Paris Executive Council meeting, the Agenda should be reversed so that substantial issues are dealt with first and the administrative issues dealt with later. The President concluded the discussion by saying that the Agenda for the Paris Executive Council meeting would put John Hare's subjects that had been deferred in first and this would then be followed by substantial issues and the President, Secretary-General and Administrator would then deal with administration matters in the afternoon.

*Termination*

There being no further business, the meeting adjourned at 4:30 p.m. with the President thanking Thomas Remé for all the excellent arrangements he had made for the Executive Council's visit to Hamburg.

## **NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS**

### **NEWS FROM IMO**

#### **MEETING OF THE LEGAL COMMITTEE HELD ON 25-29 OCTOBER 2004**

On the Agenda of the meeting of the IMO Legal Committee, which took place during the week 25-29 October 2004, there were listed, inter alia, the following topics:

- Places of Refuge
- Provision of Financial Security
- Draft Wreck Removal Convention

A report of the discussions on each of the above topics follows. The report on Places of Refuge has been prepared by Richard Shaw; the reports on Provision of Financial Security and on the Draft Wreck Removal Convention have been prepared by Patrick Griggs.

#### **Places of Refuge**

This topic was listed on the agenda of the Meeting of the IMO Legal Committee which took place

during the week 25<sup>th</sup> to 29<sup>th</sup> October 2004. The two principal topics for discussion were the Protocol revising the SUA Convention (to protect against ship-borne terrorism) and the Draft Wreck Removal Convention. For obvious reasons the SUA Protocol was given a high degree of priority, and as a result the topic of Places of refuge did not come up until the very end of the meeting, and with very tight time constraints, which did not permit a full debate.

Two documents were tabled:

- LEG 89/7 - Stuart Hetherington's Report to IMO on the research done by CMI and the debate at the Vancouver Conference.
- LEG 89/7/1 - A paper put in by the International Group of P and I Clubs, to which was annexed a standard wording for a



letter of guarantee in favour of a port or proper authority granting access to a place of refuge.

Richard Shaw introduced the first paper, emphasising the legal deficiencies identified by CMI in the present system (paras 8 to 13) and the proposed solutions (paras 22 to 24). He also emphasised that the most urgent need in the short term was to ensure widespread ratification of the HNS, Bunkers and, eventually, the Wreck Removal Conventions. The representative of the International Group introduced their paper, arguing that further debate of this subject was premature until the framework conventions on Oil Pollution, HNS, Bunkers and Wreck removal had all entered into force, and the system of compensation had been seen working in practice.

The Chairman suggested that this subject should be held over until the next meeting of the Legal Committee in April 2005, but it became apparent that some delegations wished to speak on it, so he allowed the discussion to continue. A group of European states, led by Sweden, argued against further work on this topic, on the grounds that the existing conventions give coastal states good protection, and that the gaps in cover resulting from the limited compensation under the CLC/Fund regime and LLMC were agreed internationally and did not require a further instrument to fill them. This was supported by Denmark, Norway, and Germany, and to a lesser extent by the UK and Italy. Other states, notably India, Greece, and Korea were in favour of a new instrument, but considered that the CMI proposals merited further debate at the next meeting and mature consideration in the meantime. Among the NGOs there was also disagreement, with ICS and OCIMF supporting the Swedish position, and IAPH strongly urging the need for a new instrument to ensure balance between the interests of the ship and the coastal state.

In summarising the discussion the Chairman (Alfred Popp QC of Canada) recorded the division of views concerning the need for a new instrument, but also the consensus that the subject merited further study, and stated that a further debate will take place during the April meeting of the Legal Committee. He also emphasised that the Committee should confine this debate to matters of compensation.

#### *Editor's note*

No further paper is expected from CMI between October 2004 and April 2005, and the debate at the next meeting promises to be an interesting one. Underlying the positions adopted by many European states, particularly the Scandinavian countries, was, it subsequently emerged, a political agenda. They were concerned that the EU, and in particular the European Maritime Safety Agency (EMSA), should not hijack this issue and force through some form of European Directive on the basis of the perceived deficiencies in the existing regime identified in the CMI paper.

RICHARD SHAW

### **Provision of Financial Security**

This topic was listed on the Agenda of the meeting of the IMO Legal Committee which took place during the week 25 – 29 October 2004.

Two documents were tabled:

- LEG 89/6 – submitted by the CMI on the subject of bareboat chartered vessels
- LEG 89/6/1 – submitted by the IMO Secretariat on the subject of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers.

Patrick Griggs introduced the CMI document which was prepared in response to a request from the Legal Committee to study the issuing of certificates of insurance or other financial security under the 2002 Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea where the ship in question had been bareboat chartered. Delegates were reminded that the CMI had been authorised to extend its study to consider the situation under other liability and compensation conventions where responsibility for insurance was placed upon the registered owner.

Delegates' attention was drawn to the summary of the responses received to questionnaires issued by IMO to member governments and by CMI to its affiliated National Maritime Law Associations. The responses to the questionnaire revealed that there was a general acceptance that where a ship had been bareboat chartered full possession and control of the ship lies with a person other than

her registered owner, who would employ the master and crew. On this basis third-party liability arising from the operation of the ship would fall upon someone other than the registered owner. It should follow that the bareboat charterer would be the logical person to take out insurance.

The paper submitted by CMI only deals with the situation where a convention obliges the registered owner to take out insurance. In its paper, the CMI suggested that the Legal Committee might wish to consider proposing a “Common Understanding” to be backed by a resolution of the IMO Assembly which would extend the definition of “registered owner” to embrace a registered bareboat charterer. The CMI paper further suggested that an alternative way of proceeding would be to amend the definition of “registered owner”, in the conventions in which compulsory insurance is a requirement, so as to embrace bareboat charterers.

The CMI paper did not address the problem which arises under the Athens Protocol where the obligation to insure is placed upon “the carrier” rather than the “registered owner”.

In the limited time available for discussion, a number of delegates suggested that including bareboat charterers in the definition of registered owner might create unforeseen problems under other articles within a convention. The CMI was urged to consider this and also to address the problem which arises under the Athens Convention where the obligation to insure is placed upon the carrier.

A further paper will need to be prepared.

PATRICK GRIGGS

### **Draft Wreck Removal Convention**

This topic was listed on the Agenda of the meeting of the IMO Legal Committee which took place during the week 25 to 29 October 2004. The object of the discussions was to further refine the text of the draft Wreck Removal Convention in anticipation of a Diplomatic Conference in 2006. The following documents were tabled:

- LEG 89/5 submitted by the Netherlands;
- LEG 89/5/1 a note submitted by the Secretariat;
- LEG 89/5/1/Rev.1 a note submitted by the Secretariat.
- LEG 89/5/2 a note submitted by CMI;

- LEG 89/5/5 a note submitted by Canada;
- LEG 89/5/4 a note submitted by Canada;
- LEG 89/5/3 a note submitted by Brazil, France, UK and USA.

This topic has been in the Legal Committee programme since 1996 and progress towards a finished instrument has been slow. There is now, however, a determination to produce a final text at the next meeting of the Legal Committee in April 2005 which will then go forward to a Diplomatic Conference in 2006. It follows that the outstanding issues need to be resolved at the next meeting.

Inter-sessionally, the CMI circulated a document raising issues of substance and drafting. Many of these proposals have since been adopted by the Netherlands delegation which is leading this topic, incorporated in the text and approved by the Legal Committee.

CMI submitted, at the request of the Legal Committee, document LEG 89/5/2 which considered whether the draft WRC was compatible with the Salvage Convention 1989 and other maritime conventions including UNCLOS and the Intervention Convention.

The paper submitted by CMI was broadly welcomed and delegates were asked to consider two substantive issues. Firstly, should a salvor who is working on the wreck be consulted by State Parties affected by the wreck as they are required to do under, for example, the Intervention Convention? Secondly, should the draft WRC contain a provision for the compensation of those affected by State Party orders as, for example, in the Intervention Convention?

These issues were presented but not resolved. Discussions will resume in April next year. Once the issues of principle have been determined any further drafting necessary should not present a problem.

This draft convention is important in the context of encouraging states to offer refuge to ships in distress. As and when this convention is in force, State Parties which are considering whether to permit a vessel to enter their waters should find added comfort in the knowledge that removal of any subsequent wreck can be ordered and that insurance is available to cover the costs.

Inter-sessionally, further consideration will be given to the amended draft WRC for improvement and submissions will be passed through the WRC correspondence group of IMO.

PATRICK GRIGGS

## NEWS FROM THE INTERNATIONAL OIL POLLUTION COMPENSATION (IOPC) FUNDS

REPORT ON THE MEETINGS OF 18<sup>TH</sup> SEPTEMBER TO 2<sup>ND</sup> OCTOBER 2004

The CMI has been represented, as usual, as an observer at the meetings of the International Oil Pollution Compensation (IOPC) Funds which took place in October 2004. A number of important matters were discussed. The “PRESTIGE” casualty continues to cast a long shadow over the proceedings. Pollution damage from this has affected not only the coasts of Spain, but also those of Portugal, France and even the UK. Total claims could reach as much as 1,100 million euros (about £780 million) and there is no realistic possibility that the total claims could fall within the limit payable by the IOPC Fund at the time of the casualty of 135 million SDR (£114m or E171.5m). In November 2003 this ceiling was raised to 202 million SDR (£170m), but this increase was not retrospective and will not therefore apply to the “PRESTIGE” claimants. The Executive Committee of the IOPC Fund therefore decided in May 2003 that the Fund’s payments should be limited to 15% of the loss actually suffered by the respective claimants.

In June 2003 the Government of Spain has adopted legislation in the form of a Royal Decree (Real Decreto-Ley) under which it made available funds to settle all proved Spanish claims in full, and to take rights of subrogation from the claimants. It was significant that this law expressly provides that the assessment of claims would be made following the criteria used by the Fund to settle claims under the CLC and Fund Conventions.

At the October 2003 meeting the Spanish delegation to the IOPC Funds made a very unusual request. It asked that the Government of Spain be paid on account of the Fund’s potential liabilities to Spanish claimants a sum representing 15% of not only the claims actually assessed, but also of the claims which could reasonably be foreseen based on an objective appraisal by the Director of the Fund. Some delegations were reluctant to authorise such an unusual development, which is not provided for expressly in the Fund Conventions of 1971 and 1992. However it was pointed out that such a scheme was permitted by the framework of the Fund’s working methods, and after some intense discussions the Director was authorised to make

such a payment against a bank guarantee for repayment in case this proved necessary.

At the February 2004 meeting it was announced that the Director had indeed made two payments to the Spanish Government of E16 million and E41.5 million respectively. The total figure of E57.5 million represents 15% of the general assessment made by the Director that the total Spanish claims arising from this incident will not be less than E383.7 million. A bank guarantee to secure refund of any overpayment has been provided to the Fund.

In the meantime claims totalling E86.9 million have been received by the Fund’s claims handling office in Bordeaux, including a claim for E67.5m from the French Government. Claims totalling E3.3m have been received from the Government of Portugal. Given the scale of the total claims received it appears unlikely that the Fund will be able to increase significantly the 15% level of payments which it is able to make.

During the October 2004 meeting an interesting discussion took place in closed session as to whether the Fund should commence a recourse action against the American Bureau of Shipping, with which the “*Prestige*” was classed. Observer delegations were not allowed in the room for this debate, but press reports suggest that a decision was made not to institute proceedings, in either the USA or in Spain, at this stage.

A final piece of good news was the report from Spain that a total of 13,600 tonnes of fuel oil cargo had been recovered from the two sections of the wreck. The technology involved is completely new, and offers the prospect that this may be used in the future on wrecks which would have been considered far too deep to be accessible.

The “*Erika*” case continues to progress. Since the French Government and Total Fina Elf, charterers of the “*Erika*”, have agreed to “stand last in the queue” of claims against the Fund, the remaining claimants have been able to receive 100% of their assessed claims. In addition, a payment of E10.1 Million has been made to the Government of France on account of its subrogated claims in respect of payments made to claimants in the tourism sector.

Meanwhile the Working Group on the Review of



the Working of the Fund Compensation System held an important meeting in February 2004, under the able chairmanship of Mr Alfred Popp Q.C. (Canada). Working papers had been put in by several delegations (these are available at [www.iopcfund.org](http://www.iopcfund.org)) on a variety of topics, but the two most important were the possibility of an increased contribution by shipowners and their insurers (the P and I Clubs) to the compensation regime, and measures to reduce the number of sub-standard ships.

The Supplementary Fund Protocol of 2003 shows every possibility of entry into force in early 2005, and this will increase the compensation available in participating states to SDR750 million (£650 million). This, like the existing Fund, will be paid for by contributions from the oil industry in member states in proportion to the tonnage of persistent oil imported by each company in those states. While however, the oil industry generally was content to see the Supplementary Fund established quickly, particularly in view of pressure from the European Commission, it made no secret of its view that the shipowning sector should be prepared to make a contribution substantially greater than at present. An initial move in this direction has come from the P and I Clubs in the form of a voluntary agreement called STOPIA, whereby the CLC liability of the carrying ship would cover all pollution claims up to a figure equivalent to the CLC Liability of a ship of 40,000 tons. However the delegates, led by the observer delegation of the Oil Companies International Marine Forum (OCIMF) made it clear that more was expected. To the surprise of some, the delegate of the International Group of P and I Clubs announced that he had received from the Boards of the member clubs authority to engage in negotiations to make ship owners take a fair share of the Supplementary Fund. This would be in substitution for the STOPIA scheme. No figures (or percentages) were mentioned and we shall look forward to further news from the Clubs with keen interest.

On the question of sub-standard ships the views were more divided. Again the OCIMF delegation led the fray, with a radical proposal that it should be easier for claimants against the owners of such ships to “break” the owner’s right to limitation of liability. Others, notably the leading flag states,

the P and I Clubs and the International Chamber of Shipping, cautioned against such an approach, arguing that a compensation regime was not the place in which to introduce regulatory measures, which were the responsibility of governments under schemes such as SOLAS and MARPOL. The debate did not lead to a firm conclusion, and will no doubt continue at the next meeting of the Working Group in May 2005.

It is however worth remembering that the number of unsafe ships has (see the latest Annual Report of ITOPIF) reduced very considerably over the last 10 years, notably with the establishment of the Port State Control system, now operating world-wide, and the implementation of the ISM Code. No-one can defend unsafe ships, but if the right to limit liability is to be removed from the owner of a polluting ship, it cannot be removed from his liability insurers. This principle is recognised in Article VII(8) of the CLC Conventions. Indeed loss by the owner of his right to limited liability may well prejudice his P and I cover. Ships causing major pollution damage are usually so badly damaged (if not sunk) that they have virtually no residual value. They are frequently owned by a one-ship company. If the victims of such an incident are able to obtain judgment for unlimited damages against an asset-less company, that will not improve their prospects of recovering fair compensation, and the IOPC Fund may well be left to pick up the bill.

During the Autumn 2004 meetings the delegations of certain flag states argued that there is no realistic prospect of a new convention on oil pollution compensation until the increase in the 1992 Fund limit (to 202m SDR) has settled down, and the Supplementary Fund has been established, and there was a real effort to close down immediately the work of the Working Group. However the majority view was that there are still matters which require to be addressed, particularly the possibility of increasing the overall share borne by the owner of the polluting tanker, and this will be the main thrust of the meeting beginning on 28<sup>th</sup> February 2005. That will indeed be a “make or break” meeting, and the CMI Observer Delegation will be there to play its part.

RICHARD SHAW