



COMITÉ MARITIME INTERNATIONAL

PRESIDENT

To the Presidents of all Member Associations

cc: All registered delegates to the Beijing Conference

Oslo, 3 October 2012

Dear President,

You may recall that in May and June this year I sent out three circular letters inviting your comments and replies to:

- 1) A Draft Instrument on International Recognition of Foreign Judicial Sales of Ships (JSS);
- 2) A Questionnaire on Cross Border Insolvencies; and
- 3) A proposed revision of the York Antwerp Rules (YAR) 2004.

To follow up and inform of the feedback received, I am now pleased to enclose:

- (i) A document regarding JSS prepared by Andrew Robinson (Maritime Law Association of South Africa), setting out first the replies received in full and thereafter the text of the Draft Instrument with comments on the respective Articles; and
- (ii) A synopsis prepared by Richard Shaw (British Maritime Law Association) on the comments received to the YAR proposal, followed by the replies set out in full.

I am told that Mr Robinson is hoping to produce a concise summary of the replies in relation to JSS some time before the Conference, which will then be sent to all delegates and uploaded together with the materials enclosed hereto on the Conference website as well as on the CMI website.

As to Cross Border Insolvencies, comments are still being received and will also be uploaded on the Conference website and the CMI website in due course. I am also told that a comparative analysis of the responses to the Questionnaire will be provided in one of the sessions on JSS in Beijing by William Sharpe (Canadian Maritime Law Association) assisted by Sarah Derrington (Maritime Law Association of Australia and New Zealand) and Chris Davis (Maritime Law Association of the United States).

Since only a limited number spare copies of the documents in question will be available in Beijing, I urge those attending the various sessions to print out and bring their own copies as required.

Judging from the comments and replies received so far, the Beijing Conference is promising to be very interesting indeed, and I very much look forward to participating in the various sessions and listening to what you will have to say.

Best regards

A handwritten signature in black ink, appearing to read 'W. Wise', written in a cursive style.

PS. I am also pleased to extend on behalf of the Hong Kong Maritime Law Association an invitation to all CMI delegates who may be visiting Hong Kong the week after the Conference to attend a cocktail reception following their AGM on 25 October at the Hong Kong Club. If you are interested, please reply to the Secretary at steven.wise@hkf.com , who will be able to give you further details.

GENERAL AVERAGE
Synopsis of MLA Responses to CMI Working Group Report
prepared by Richard Shaw - Rapporteur

1. Argentina

The terms of the GA W/G report were approved, and a percentage of 75% was proposed as the threshold.

Rapporteur's note: This may need clarifying, since on the wording of the proposed amendments to Rule VI this would mean that the salvage payments would have to exceed 75% of total GA allowances in order to be excluded from GA.

2. Australia and New Zealand

The terms "salvage payments, interest and costs" need to be more precisely defined. Also the percentage comparison should be between the "prime cost" of the salvage versus the prime cost of the rest of the GA.

There will also be a potential problem in major cases in deciding at an early stage whether the threshold will be exceeded and thus whether it is necessary to incur the expense of collecting GA security or not.

Possible problems may arise if at the early stages of a casualty it seems that most of the potential GA will be salvage so no GA security is collected, but subsequent developments change the picture.

"I understand and applaud the concept but I think that the practical application of the proposed Rule VI will be a nightmare for all concerned. Salvage should be either in or out."

3. Belgium

A revision of the YAR 2004 should be made with the support of the industries concerned. We therefore propose that no revision is proposed or adopted until the representative industry organizations have actually confirmed their support.

4. China

Prefer to delete proposed Rule of Application

Keeping Salvage remuneration as a GA expense/sacrifice could give the parties more choice.

Opinions divided as to whether the percentage cut off would work. Difficulty would be encountered in assessing the amount of salvage remuneration at an early stage of the case.

Rule XI(c) (crews wages at port of refuge) – agreed.

Conclusion: CMI's suggestion would be taken reference in further discussions.

5. Great Britain

Concern expressed that without shipowners/BIMCO support the proposed amendments to YAR 2004 will not be adopted. Moreover there are technical reasons against the proposed revision of Rule VI due to the difficulty in defining the moment when the threshold must be exceeded in order to exclude salvage. (Rapporteurs note: This is a long paper and should be read in full.)

As a compromise, BMLA recommends adopting the non contentious 2004 amendments to Rules XIV(b) (temporary repairs) XX (commission) XXI (interest) and XIII (time bar) pending a further review of the YAR generally at the 2016 CMI Conference.

6. Finland

Approves the adoption of all the CMI Working Group recommendations.

7. France

At this stage, the Association Française du Droit Maritime shares the views expressed by the Association of Belgium and Netherlands as to communicate its comments and suggestions only at the occasion of the negotiations to take place in Beijing. Indeed, the difficulties revealed in 2004 still exist in 2012 and no efficient position can be expressed before having a clear knowledge of at least the professional organizations which are concerned by the proposed revision.

8. Germany

Given the ongoing discussions in the area of salvage, it may be too early to consider amendments to the YAR at this stage. The German MLA also favours that all stakeholders, in particular including shipowners and property underwriters, do have the possibility of expressing their views and participating in the discussions before new YAR are out up for voting by CMI. The current procedure, which includes a discussion of the percentage figure in the suggested new Art. VI (b) as well as a voting on this figure during the Beijing conference, in this context might be less than optimal. For these reasons the German MLA, whilst generally not being opposed to an amendment of the YAR, recommends to keep the subject on the agenda for discussion, but to postpone any voting to a later stage.

9. Japan

Is not convinced of necessity and appropriateness of the revision of Rules VI and XI(c) under the new title of the York-Antwerp Rules 2012 at this stage. It is difficult for various interests to reach consensus in the time available. Also the discussions of revision of the Salvage Convention may have a bearing on the relationship between ship and cargo.

Subject to this general position, see also detailed comments of the Japan MLA on the specific proposals of the Working Group.

10. Netherlands

It was felt that the [2004] changes came too soon: the previous YAR 1994 had not yet been widely used. Changing the YAR too often was thought not to be good for the solid reputation of the YAR. These points still stand in 2012, although against the backdrop of greater use of the YAR 1994 and greater use of absorption clauses. In the short time frame given our General Average Committee Members have been unable to get any confirmation from their national or international organizations that the compromise suggested in the draft YAR 2012 is acceptable. Preliminary views issued by ICS even suggest that the draft YAR 2012 would not be acceptable to that particular shipowners' organization.

The Dutch MLA therefore suggests not to come to any definite YAR 2012 proposal or adoption unless the most relevant industry groups have expressed their willingness to accept this (or some other) compromise. The Dutch MLA doubts whether a compromise may be reached as early as the CMI Beijing Conference

11. International Chamber of Shipping (ICS)

There is no enthusiasm for change at this time, and ICS members would not wish to see another set of Rules adopted in Beijing that does not have the support of shipowner interests. ICS members are not opposed to a review in the longer term and only after the outcome of other discussions that could have an impact on GA is known. (Rapporteurs note: This is a lengthy paper which deals with many aspects of the revision of the YAR.)

Richard Shaw – Rapporteur September 2012