

Acts of Piracy and Maritime Violence

On 19 May 2005 the President of the CMI addressed to the Presidents of the National Associations the letter reproduced below with its attachments. The responses to the Questionnaire will be posted on the website..

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To the Presidents of the NMLA's

Dear President,

Acts of Piracy and Maritime Violence

At the latest meeting in London on 12th April 2005, the Joint International Working Group on Uniformity of Law Concerning Acts of Piracy and Maritime Violence, has considered to amend and re-formulate the Model National Law.

I attach herewith a letter from the Chairman of the JIWG, Dr. Frank L. Wiswall, Jr., together with a questionnaire, a Model National Law and the Resolution adopted at the CMI Conference in Vancouver, Canada on 4th June 2004.

You are kindly requested to give this questionnaire expedited consideration and to deliver your response by email to the CMI Secretariat (admini@cmi-imec.org) in Antwerp not later than Friday 30th September 2005.

Yours sincerely,

JEAN-SERGE ROHART
PRESIDENT

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TO THE PRESIDENTS OF THE MEMBER ASSOCIATIONS

QUESTIONNAIRE ON IMPLEMENTATION OF THE MODEL NATIONAL LAW ON ACTS OF PIRACY AND MARITIME VIOLENCE MAY, 2005

The Joint International Working Group on Uniformity of Law Concerning Acts of Piracy and Maritime Violence was established in 1998 and produced a Model National Law (attached) which was adopted by the Assembly of the CMI in Singapore in February, 2001. Following upon the attacks of 9/11 maritime security has become a matter of urgent concern to the international community, and amendments to the 1988 ("SUA") Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its 1988 Protocol concerning Fixed Platforms on the

Continental Shelf will be considered in October 2005 by a diplomatic conference under the auspices of the International Maritime Organization. The proposed amendments to the SUA Convention will greatly extend the scope of the regime.

At the same time, the IMO Legal Committee in co-operation with the CMI has been considering the problem of jurisdiction and effective prosecution of perpetrators of criminal offences committed on board foreign-flag ships (*i.e.*, ships not entitled to fly the flag of a State or States confronted by the necessity to deal with such offences). For background, the working paper presented to the CMI's 38th International Conference in Vancouver in June 2004 is attached. Of some relevance to this problem is also the increasing frequency of hostage-taking in connection with acts of piracy and maritime violence.

These developments raise the question whether the Model National Law should be amended or re-formulated to attract wider implementation and to resolve issues of jurisdiction and prosecution of a broader range of criminal offences committed on board foreign-flag ships, some of which offences may have implications for maritime security.

At a meeting in London on 12 April 2005, the Joint International Working Group, with participating representatives present from the CMI, the Baltic and International Maritime Council (BIMCO), the International Chamber of Shipping (ICS), the International Criminal Police Organization (INTERPOL), the International Group of P&I Clubs (IGP&I), the ICC International Maritime Bureau (IMB), the International Transport Workers Federation (ITF), and the International Union of Marine Insurance (IUMI), gave preliminary consideration to amendment and re-formulation of the Model National Law. To assist in further examination of the issues, the Group has requested that the National Member Associations of the CMI be circulated with the following questionnaire.

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**QUESTIONNAIRE CONCERNING THE MODEL NATIONAL LAW
ON ACTS OF PIRACY AND MARITIME VIOLENCE**

1. Has the government of your country given consideration to the Model National Law?
2. If so, has your country enacted or otherwise implemented all or any part of the Model National Law? If so, please supply the text of the relevant legislation or regulation in English or French.
3. If the answer to either (1) or (2) above is negative, what do you believe are the reasons for your government's lack of interest in or failure to implement the Model National Law?
4. If negative, and the reason is that your country already had national legislation in place applicable to acts of piracy and/or maritime violence, how many cases have arisen and been dealt with in recent years under such legislation?

5. Has your country ratified or acceded to (a) the United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”), and/or (b) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (“SUA”)? If the answer to either (a) or (b) is affirmative, has your country implemented the convention(s) by enactment of national legislation?

6. Do you believe that the Model National Law would be more acceptable to your government if re-formulated as draft legislation rather than as, at present, a statement of principles for embodiment in national legislation?

7. Reviewing the Model National Law, what changes in or additions to it would you recommend?

Member Associations are requested to give the questionnaire expedited consideration and to deliver their responses, if possible by E-Mail or E-mail attachment, to the Headquarters of the CMI in Antwerp not later than Friday 30th September 2005.

Your co-operation in this relatively new and vitally important area of the Comité’s work is greatly appreciated.

Yours sincerely,

DR. FRANK L. WISWALL, JR., VICE-PRESIDENT *HONORIS CAUSA*
CHAIRMAN OF THE JOINT INTERNATIONAL WORKING GROUP

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VANCOUVER CONFERENCE 2004

WORKING PAPER FOR THE COMMITTEE ON MARITIME SECURITY RE CRIMINAL OFFENCES COMMITTED ON FOREIGN FLAGGED SHIPS

The basic issue for consideration is whether there presently exist adequate provisions in customary and/or conventional international law to deal with situations arising out of criminal acts committed on board foreign-flagged ships – *i.e.*, ships flying a flag other than that of the coastal or port State which is presented with such a situation. Each of the following scenarios will be briefly considered by the Committee:

(A) A violent criminal act has been committed on board a container ship while in transit through the coastal State’s EEZ (*i.e.*, on the high seas)-

- The suspect is in confinement and neither the vessel nor the crew are in danger, but the Master requests the coastal State to assist by removing the suspect from the vessel; alternatively,

- The suspect is armed and remains at large on board and in the opinion of the Master poses a danger to the vessel and crew; the Master sends a distress call picked up by the coastal State.
- (B) Same as (A) above, but the vessel is an oil tanker.
- (C) Same as (A) above, but the vessel is a passenger ship.
- (D) Same as (A – C) above, but the vessel is in transit through the territorial sea of the coastal State.
- (E) Same as (A – C) above, but the vessel subsequently enters the territorial sea bound for a port of the coastal State.
- (F) Same as (A – C) above, but the vessel is in a port of the coastal State at the time the criminal act is committed.
- (G) Same as (F) above, but the criminal act is a theft not involving violence; there has been a long series of thefts on board, but only now has the suspect been identified.

This subject first arose in the IMO Legal Committee in 2002. In document LEG 85/10, the Delegation of Japan referred to an incident involving the *M/V TAJIMA*, a Panamanian-flag ship with a mixed Japanese/Philippine crew. It was alleged that the Japanese second officer was killed by two Philippine seafarers while the vessel was on the high seas. The Master placed the suspects in custody on board until the ship made a cargo call in Japan. Questions have arisen as to the appropriate conduct of the coastal/port State where there are alleged criminal offences on foreign flagged ships and, in particular, whether on the stated facts of the *TAJIMA* case there was an offence committed under Article 3(1)(b) of SUA 1988. The Legal Committee was also informed of a number of other cases of crime committed on the high seas, but no clear view emerged as to the law(s) to be applied. It was agreed that the issues should be examined, to address not only crimes against ship's officers but also against crew and passengers where safety of navigation might not be directly endangered, especially when suspects are not nationals of the State where the ship will next call.

For this reason the Legal Committee, in response to a suggestion by the CMI that it might assist in gathering relevant information regarding current practice, agreed that the Comité would develop a questionnaire, in consultation with the IMO Secretariat, and would circulate this to its constituent national Member Associations of maritime law in order to gather information about existing national laws which may be relevant to the issues under discussion; this was done in January, 2003, and a gratifying number of responses in varying detail have been received from both governments and CMI Member Associations of Maritime Law.

In August of 2003 the CMI submitted to the Legal Committee an interim report appending a condensed synopsis of the responses so far received from its individual Member Associations to the questions posed, and concluding that while the SUA Convention was not applicable to the facts of the *TAJIMA* case there are a substantial

number of States that would act under national and customary international law in a manner similar to what would be required under the SUA Convention if it were applicable. An update to the CMI's 2003 report will be available in Vancouver prior to the Committee meeting on this subject.

The purpose of the exchange of views at the Vancouver CMI Conference in the Committee on Maritime Security is to conclude with a recommendation as to four alternative courses of action:

1. On the basis that the present regime of international law is adequate, recommend no action and leave further developments to national law.
2. On the basis that international law offers no clear solution and that there is disuniformity in national law, recommend that:
 - CMI co-operate with the Legal Committee in drafting further amendments to the SUA Convention designed to deal with the problem of criminal acts committed on board foreign-flag ships; or
 - CMI co-operate with the Legal Committee in drafting a new international convention dealing with the problem of criminal acts committed on board foreign-flag ships; or
 - CMI draft a model national law dealing with the problem of criminal acts committed on board foreign-flag ships.

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The CMI respectfully submits to the Legal Committee the following Resolution unanimously adopted by both the International Conference in Plenary Session and the Assembly of the Comité on 4 June 2004:

RESOLUTION

CONCERNING

CRIMINAL OFFENCES ON BOARD FOREIGN FLAG SHIPS

BE IT RESOLVED BY THE 38TH INTERNATIONAL CONFERENCE OF THE COMITÉ MARITIME INTERNATIONAL, MEETING IN VANCOUVER, BC, CANADA, ON 4TH JUNE 2004, AS FOLLOWS:

The Conference's Committee on Criminal Offences committed on board Foreign-Flagged Ships, having considered the responses to the Questionnaire on this subject circulated jointly by the CMI and the International Maritime Organization to the members of both organizations together with submissions to and Reports of the IMO Legal Committee on this subject from its 86th through 88th Sessions, and having

examined the issues in detail at its 38th International Conference in Vancouver, BC, together with various means of dealing with the problem,

THE CONFERENCE recommends to the Assembly that the Comité establish a Joint International Working Group to draft a model national law concerning such offences and that, upon approval of the text of such model national law by the Assembly, it be promulgated to the national Member Associations of the CMI with the request that the model law be reviewed and adapted by them and presented to their respective Governments together with recommendations for its enactment.