

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 1 - JANUARY/APRIL 2003

This Issue Contains:

News from the CMI

- The CMI Bordeaux Colloquium – June 10-13, 2003
- Minutes of the meeting of the Executive Council held in Antwerp on 6th-7th December 2002
- International Maritime Law – A Busy Schedule, by Patrick Griggs

News from Intergovernmental and International Organizations

News from the Instituto Iberoamericano de Derecho Maritimo

- “International Conference on Maritime Perils and Salvage at Sea”

NEWS FROM THE CMI

THE CMI BORDEAUX COLLOQUIUM – JUNE 10-13, 2003

The CMI Bordeaux Colloquium, which has been organised by the French Maritime Law Association, will take place between June 10 and 13, 2003. If you have not already registered for this event you should contact the Colloquium Secretariat at email:

d.pouvreau@bordeaux-expo.com.

The Colloquium will take place in Hangar 14, on the banks of the river Garonne, close to the centre of Bordeaux. There will be a Guest Programme run in parallel with the Colloquium for non-participants.

Wednesday, June 11, 09:00-18:00

Trade and Transport Law in the Electronic Age

Her Honour Judge Johanne Gauthier (Canada) has put together what promises to be an

interesting full day seminar on this fascinating topic. Increasing use of electronic means of communication in the context of the sale/purchase and transportation of goods is raising legal and practical problems all of which will be addressed during the course of the seminar.

Her Honour Judge Gauthier has put together a group of distinguished speakers who will address us in the morning session. During the afternoon session the opportunity will be taken of going through the CMI/UNCITRAL draft Transport Law Instrument and analysing the ways in which this document seeks to take account of trade by electronic means.

Wednesday, June 11, 2003

General Average

The CMI is the custodian of the York-Antwerp

Rules which were last revised in 1994 in Sydney. Since that time pressure has grown from the insurance market to revise the rules and reduce the range of port of refuge expenses which may be recovered in General Average.

All National Associations should have received a copy of the March 2003 report of the CMI International Working Group on this subject. If you have not received a copy and wish to attend the meeting of the International Sub-Committee which will take place in Bordeaux you will find the text of the report on the CMI website at www.comitemaritime.com.

The meeting of the International Sub-Committee will last all day and will run in parallel with the Trade and Transport Law session in a separate conference space.

Thursday, June 12, 09:00-13:00

Transport Law

In December 2001 the CMI delivered to UNCITRAL a draft Instrument on Transport Law which covered many aspects of the carriage of goods not previously covered by International Convention. The draft Instrument covers transportation of goods on a door-to-door rather than a port-to-port basis and also contains a liability section designed to replace the Hague-Visby and Hamburg Rules. This new liability regime seeks to strike an appropriate balance between the rights and liabilities of ship and cargo.

The UNCITRAL International Working Group, supported by representatives from the CMI, has just completed a first reading of the draft Instrument and the Secretariat is now producing a second draft. The Bordeaux Colloquium will offer an opportunity for the Chairman of the International Sub-Committee, Stuart Beare, and his colleagues to outline some of the controversial issues arising out of the first reading of the Instrument. Particular emphasis will be placed upon the problems of drafting an Instrument which covers transportation door-to-door.

Friday, June 13, 09:00-10:00

Places of Refuge

The Chairman of the CMI International Working Group on this subject (Stuart Hetherington) will

introduce this topic which is in the current work programme of the IMO Maritime Safety Committee and of the IMO Legal Committee following the *Castor*, *Erika* and *Prestige* incidents. The problem of finding places of refuge for vessels in distress is seen to require urgent solution.

Following the circulation of two questionnaires by the CMI this Colloquium session will look at the responses received and will consider possible solutions to the problem.

Friday, June 13, 10:00-10:30 and 11:00-11:30

Marine Insurance

Professor Malcolm Clarke and the three other members of the CMI International Working Group on Marine Insurance will review progress with this project and will outline how this topic will reach finality at the 38th International Conference of the CMI to be held in Vancouver in June 2004.

Friday, June 13, 11:30-12:30

Developments in International Maritime Law

The President of the CMI, Patrick Griggs, the Chairman of the IMO Legal Committee, Alfred Popp, QC, and Vice-President of the CMI, Frank Wiswall, will review current developments in International Maritime Law.

Speakers in this session will review the current status of conventions and other international agreements in the maritime field with particular reference to the 2002 Protocol to the 1974 Athens Convention, the 2001 Bunker Convention, the 1996 HNS Convention, the Draft Wreck Removal Convention and the Supplementary Fund Convention. These are all Instruments which it is hoped will come into force in the foreseeable future and will substantially affect the shipping trades.

Social Programme

On the afternoon of Thursday, June 12, there will be an excursion for all delegates and guests to a Bordeaux vineyard to be followed by a guided tour of Saint Emilion. Wine tasting will be a feature of this excursion.

The Closing Dinner on the evening of Friday, June 13, will be held at Chateau Giscours.

**MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL
HELD IN ANTWERP ON 6TH-7TH DECEMBER 2002**

Attending:

<i>President:</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Frank L. WISWALL, Jr.
<i>Councillors:</i>	Luis COVA ARRIA Thomas REME John HARE Stuart HETHERINGTON Gregory TIMAGENIS Johanne GAUTHIER Jose Maria ALCANTARA Henry LI
<i>Secretary General:</i>	Alexander VON ZIEGLER
<i>Treasurer:</i>	Benoît GOEMANS
<i>Acting Administrator:</i>	Wim FRANSEN
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Past President:</i>	Allan PHILIP
<i>Publication Officer:</i>	Francesco BERLINGIERI

Patrick Griggs opened the Meeting by welcoming the attendants.

1.(a) Apologies for absence

No absences are noted.

(b) Approval of the Minutes of the Executive Council Meeting held in London on May 9, 2002

The Minutes of the Executive meeting held in London on May 9, 2002 were adopted.

(c) Matters arising.

Action list "Things to do" prepared following May 9, 2002 meeting in London.

Turning to the action list, Patrick Griggs went through the list "Things to do". Most of the items will be part of the Agenda and will be dealt there. The following items of the list were discussed:

(6.) The Visa Card can now be used for payments to CMI. It was re-stated that this does not change the basic principle that the dues for Titulary Members have to be collected by the national MLA. Where Titulary Members are not responding to payment request, the national MLA have to report this to CMI to take the respective measures provided for in the Constitution.

(19.) Patrick Griggs contacted ILO on abandonment of seafarers (super-priority scheme).

(22.) Allan Philip contacted Prof. Lebedev in order to discuss with him a possibility of having candidates from the Russian MLA for the Executive Council. An answer is expected and Allan Philip will monitor this issue.

(25.) A draft of a questionnaire regarding data from National MLAs is available and needs now to be brought into the right format for the Website.

2. Professor John Hare – resumption of CMI duties

Patrick Griggs welcomed back John Hare.

3. Finances

(a) Financial statement for 2001 and Financial Report for 2002

The final accounts 2001 were distributed at the London Assembly on 10 May 2002.

The preliminary figures for 2002 show that we are within budget. The lower projected surplus for 2002 is explained by the inclusion of share of the profits for the Singapore Conference in the books for 2001.

Looking at costs, the issue of bank charges should be reviewed by Benoît Goemans. An additional item for bank charges should possibly be included in the CMI invoices.

It was suggested the CMI should examine possibilities of co-operating with seminar organisers and receive some additional revenue. However, many concerns were raised relating to such an activity, in particular the control of quality etc of such seminars. It was decided to investigate this possibility further and prepare this in more detail (also in the context of the overall exercise to generate alternative funding for the benefit of CMI). The engagement of CMI in such seminar-cooperation could, however, also entail taxation

consequences. J.M. Alcantara will prepare a working paper on this issue.

Patrick Griggs and Benoît Goemans referred to the liquidity fund. It was discussed whether to put 50'000.- EURO on a fixed account (3,2 % interest rates). It was decided to leave it as it is and investigate alternative placement (bonds).

Benoît Goemans was thanked for presenting the financial statement so clearly.

Benoît Goemans reported on the employment of a local bookkeeper/accountant. The accounts will be prepared in Antwerp and a local auditor will (for a small fee) pre-audit the accounts. The final accounts should then be audited by Moore Stevens. Depending on this "test run", we will examine the audit situation and decide on future audit-agreements.

(b) Unpaid Contributions

Reference was made to the list of unpaid subscriptions. The countries with one year outstanding subscriptions will get a reminder; those with 2 years get a special reminder and those with 3 years get a warning letter that the Executive Council will ask the Assembly to enforce the constitutional consequences. The warning letter should also go to Titulary Members noting that this would also mean that they would simultaneously be expelled as Titulary Members.

(c) Legal Status of CMI

Benoît Goemans referred to the history of the transformation of the CMI to a new legal status under Belgian law. Due to several reasons within the authorization proceedings, the formal filing of the Constitution was followed by a request for several changes.

The Executive Council decided unanimously to amend the draft Constitution presented to the Singapore Assembly to cope with the fact that some national associations are not "incorporated associations". It was also agreed to include in the Constitution provisions whereby members may be excluded.

4.(a) Next Meeting of Executive Council (Bordeaux Colloquium)

The next Executive Council Meeting will be held on Tuesday, 10th June 2002 at 09.30 h, and a short meeting later on Friday afternoon, 13th June 2003, following the Assembly.

(b) To consider need for Executive Council Meeting in late 2003

The President explained his suggestion to hold an Executive Council Meeting in late 2003 in a

restricted format, where only selected officers would meet, a selection, which would particularly reflect the preparation of the Vancouver Conference. This proposal will finally be decided at the next Executive Council Meeting.

5.(a) Assembly 2003: Bordeaux – Friday, June 13, 2003

(b) Assembly 2004: Vancouver – Friday, June 4, 2004

6. Nominating Committee

(a) New Secretary General

A number of suggestions were made but only three candidates were really available for the job:

- Marko Pavliha, Slovenia
- Wim Fransen, Belgium
- Deucalion Rediadis, Greece

(b) Vacancies for Executive Councillor

- Luis Cova Arria (2nd term)
- John Hare (1st term), open for re-election

For Executive Council, one seat open, two names have been put forward:

- Alberto C. Cappagli, Argentina
- Jose T. Guzman, Chile

(c) New President in 2004

Jean-Serge Rohart has accepted to be a candidate for the post of the President of CMI from June 2004.

In relation to items 6 (a) and (b) a final report from the Nominating Committee is awaited.

7. Conference Programmes

(a) Bordeaux Colloquium 11th - 13th June 2003

Jean-Serge Rohart produced a copy of the draft brochure, which will be circulated mid-December. Relating to the formalities for obtaining points in the US for continuous education, Frank Wiswall will liaise between the US MLA and the Conference Organiser.

(b) 38th International Conference - Vancouver May/June 2004

The Conference will take place between 31st May and 4th June 2004.

(c) 39th International Conference

Reference was made to the correspondence relating to the 39th Conference to take place in Greece, if the invitation of the Greek MLA is still open.

John Hare raised the possibility of holding an intermediary Colloquium in Cape Town.

8. *Periods of Office*

John Hare advised the Executive Council on the background of the work on this subject. Reference was made to the several reports prepared on the terms of office for the Executive Council and for Presidents. After thorough discussion on the numerous suggestions, it was considered that the present system of two 4 years terms was appropriate (since CMI and its products need some “memory”), but that the mechanics of renewal for a second term ought to be revisited (not as an automatic nomination). A further suggestion is to change the way the Nominating Committee is constituted and to open it up to new members. The idea was further discussed to think of having a deputy Secretary General.

John Hare prepared a draft resolution, which reflected the discussion:

Resolved

After a full discussion by members present, it was resolved by consensus, with dissent as indicated, that:

- 1 The nature of the CMI’s legislative reform work is long-term and that its Executive Councillors require a reasonable time in office to enable them to make a meaningful contribution to such reform.
- 2 Four year terms of office for Councillors are reasonable in the circumstances (with minority dissent in support of three year terms).
- 3 Executive Councillors should not be automatically re-nominated by the Nominating Committee for election to a second term of office. However, where it is established to the satisfaction of the Nominating Committee that an Executive Councillor has made a meaningful contribution to the work of the CMI during his/her first four year term, and that he/she has an on-going commitment to continue such efforts, the Nominating Committee may propose a second term for such council member.
- 4 The present terms of office of the President and Vice-Presidents are appropriate to ensure continuity of governance within the CMI (with dissent favouring shorter terms).
- 5 And finally that in appointing members to the Nominating Committee, consideration should continue to be given to the composition of that Committee to ensure effective membership from outside CMI structures yet provide the committee with members who are familiar with the needs of the CMI. Such appointments are possible within the present constitutional framework of the CMI.

9. *CMI Charitable Trust*

Allan Philip referred to the latest accounts of the CMI Charitable Trust. Special mention was made to the funds available for the purposes of the Trust and the projects for which the Trust has contributed.

10. *Publications*

(a) *Yearbooks, Newsletters and Website*

It was discussed whether by publishing some parts of the Yearbook only through Internet some mailing/printing costs could be reduced.

Frank Wiswall also reported on first contacts on the possibility of publishing the Yearbook through professional publishers (e.g. Nexis Lexis). Apparently, there could be an interest of some publishing houses to co-operate. He will now continue to look into this avenue and investigate what the printing structure would be.

It was then discussed whether Part I and III of the Yearbook could be left out from the Yearbook. If Part I and III are deleted, mailing costs could be reduced to a third. It was agreed that some parts of the Yearbook could be left out in some years as it has been done in a way for “Singapore I”. Looking at all possibilities and arguments, it was decided to leave things as they are for the present. Another issue is how the updating of the information for Part I could be organised noting that it is very difficult to obtain the information at all and/or in the correct format.

Benoît Goemans and Wim Fransen will see with Pascale Sterckx how to ensure that the information on the Website is updated on a timely basis.

Turning to other information published on the Website, Francesco Berlingieri advised that he faces substantial problems in collecting jurisprudence on interpretation of international conventions from different jurisdictions. Frank Wiswall will also investigate with Tulane University, New Orleans/USA.

It was decided that the CMI Charitable Trust should be asked to take over the Editor’s Secretariat costs relating to the publication of CMI in Genova.

(b) *CMI archives/CD-Rom*

A CMI CD-Rom could be a good investment, a one time exercise to collect all CMI Materials. Patrick Griggs/Francesco Berlingieri/John Hare will investigate this project. John Hare will prepare a report on how the content of the CD-Rom could be structured (CD Navigation).

(c) *Handbook on Maritime Conventions*

Frank Wiswall raised the possibility of preparing a new edition for 2004. Further, R. Shaw (through

Frank Wiswall) had suggested to have the Handbook sold in the IMO bookstore. Also, the order form for the Handbook should be put on the CMI Website.

Relating to the French version/edition of the Handbook, Nexis Lexis has approached the French MLA and they have agreed on a co-operation of production and for publication of the French edition.

(d) Links to CMI Website

We need to establish Links for the next CMI Seminars/Conferences.

11. Consultative Members

The application of Association Internationale de Dispatcheurs Européens will be put before the next CMI Assembly. Patrick Griggs had contacted ICC/IMB/ and ITF and will pursue this.

12. National Associations

The Council took note of the application of Bulgaria. It was decided to put this application before the next CMI Assembly.

Patrick Griggs reported on the progress in the formation of the MLA in India.

13. Work in progress

(a) Transport Law

Alexander von Ziegler reported on the Initiative of UNCITRAL to create an Expert Group, which receives the task to prepare the basis for a secretarial paper on the door-to-door issue. This Expert Group met in the summer and structured the issue for further preparation by individuals. The main work leading to such a door-to-door paper was prepared by Francesco Berlingieri, Gertjan van der Ziel, David Martin-Clark and Michael Sturley. There are several drafts including some governmental proposals to be submitted to UNCITRAL for final completion in the UNCITRAL format.

The door-to-door issue will be discussed at the UNCITRAL Working Group Meeting in New York. There was a report on the progress made in the first two Working Group sessions of UNCITRAL.

It was decided to hold a further ISC Meeting in order to discuss the door-to-door issue and other important developments in the UNCITRAL project. The following resolution was made in order to extend the terms of reference of the ISC:

Transport Law; CMI/UNCITRAL Draft Instrument

At the meeting of the CMI Executive Council on December 6/7, 2002, it was resolved that the

International Working Group on Issues of Transport Law should continue to monitor the work of the UNCITRAL Working Group III – Transport Law on the Draft Instrument. In furtherance of this decision it was resolved that meetings of the International Sub-Committee of the CMI on Issues of Transport Law would be convened as and when necessary.

Structure CMI representation:

- Stuart Beare
- Alexander von Ziegler

(b) UNESCO: draft Convention on Underwater Cultural Heritage

The CMI position paper will be published in the News Letter or in the Year Book.

(c) International Interests in Mobile Equipment

There is a possibility that the maritime industry might be interested in a protocol for Container trade.

(d) Arrest Convention 1999

There is not much interest by Governments in this Convention.

(e) Marine Insurance

Malcom Clarke looked after this project during John Hare's leave of office in 2002. Authors are preparing draft papers for Bordeaux where those issues will be discussed.

(f) Piracy

The Maritime Safety Committees and a diplomatic conference will discuss issues relating to security. It could be that depending on the outcome of the diplomatic conference the Piracy Group could reconvene to see whether some additional paragraphs need to be made.

(g) Implementation and Interpretation of International Conventions

Francesco Berlingieri referred to the Salvage Convention Project. It was decided that CMI should offer its services to IMO in inquiring whether they have enacted implementing legislation. Francesco Berlingieri was asked to prepare a draft for submitting to IMO.

(b) General Average

The International Working Group met last week and is preparing a paper to be put before an ISC to be formed at the Meeting in Bordeaux. B. Nielsen will chair this ISC.

It was suggested to investigate also the interplay

between General Average and the issue of the “port of refuge”.

(i) Places of Refuge

Reference was made to the Questionnaires sent out to national associations and replies from national MLAs are requested.

Suggestions were made to also include a paragraph dealing with the possibility to provide refuge sites and special dry docks. Gregory Timagenis will prepare such a paragraph.

(j) Athens Protocol 2002

Patrick Griggs reported on the Diplomatic Conference finalising the Athens Protocol.

(k) Criminal Offences committed on Foreign Flag Ships

A new project was registered at IMO (on request of Japan). A joint IMO/CMI Questionnaire was sent out to national associations of CMI and Governments.

Frank Wiswall and John Hare will supervise this project.

14. Management Reports

(a) Young CMI Initiative

Jose Maria Alcantara, John Hare and Johanne Gauthier went through the report on the response to the Questionnaire. The recommendations and

conclusions set out in his report were discussed and approved.

The group is asked to continue and prepare a paper for the CMI Assembly at Bordeaux. A letter will be prepared to national MLAs to ask for information on local rules on continued legal education programmes.

(b) Regional membership

Luis Cova Arria	South America
Henry Li	Far East and Caribbean
Stuart Hetherington	Oceania
Gregory Timagenis	Europe
Frank Wiswall	North America
John Hare	Africa / Middle East / Indian Sub-Continent

15. Various

(a) Planning Committee

The Planning Committee should be reconvened to be ready for the Vancouver Conference.

(b) List of CMI Management Functions

The list was discussed and revised/amended.

(c) VAT liability arising from CMI Colloquium

José Maria Alcantara advised on the VAT issues arising after the Toledo Conference and its effect on the sharing of profit. He will take up this matter with Patrick Griggs and find a solution to this issue.

An appropriate note in the Guidelines for future Seminars/Conferences should be made.

INTERNATIONAL MARITIME LAW – A BUSY SCHEDULE *

In my role as President of the CMI I have been in the privileged position of being able to observe at close quarters the activities of many of the international agencies which devote their energies to harmonisation of international maritime law. I am also, personally, very conscious of the efforts being made by my colleagues within the CMI to the same end.

This seemed a convenient opportunity to look at recent developments in international maritime law by way of conventions and otherwise.

Transport Law

I start with this topic because it is, perhaps, the most important single project currently in the international work programme.

In 1996 the UNCITRAL Assembly decided that

its Secretariat should start a consultation process which would lead to a new international convention covering all aspects of maritime transport law. At that initial stage issues of liability for loss or damage to cargo were to be excluded. One of the international organisations to be consulted by UNCITRAL was the CMI and over the next 4 years, through an International Working Group chaired by Stuart Beare (UK), the CMI produced a draft transport law instrument which covered issues such as electronic communication, scope of application (door-to-door rather than port-to-port), the period of the ship owners' responsibility, the obligations of the carrier, the liability of the carrier, the obligations of the shipper, transport documents and electronic records, freight, delivery to the consignee, rights of

* This article has been prepared for publication in the *Shipping & Transport Lawyer International*.

control of the goods, transfer of rights, rights of suit, time for suit, general average, relationship with other conventions and limits of contractual freedom. It will be noted that even though issues of liability did not feature in the original brief to the UNCITRAL Secretariat, there are sections in the draft instrument which deal with liability and would aim to replace the liability regime currently to be found in the Hague, Hague-Visby and Hamburg Rules. The CMI felt throughout that a transport law convention which did not take a fresh look at issues of liability would be of no great interest.

The CMI submitted its final draft document to the UNCITRAL Secretariat in December 2001. UNCITRAL created an International Working Group which has now met on 4 occasions and has just completed a full review of the articles in the draft instrument. The Secretariat has now been charged with the task of producing a second draft which should be available during the course of this Summer (2003).

Perhaps the most controversial aspect of this instrument is the attempt to cover transport of goods on a door-to-door basis. There are a number of difficulties posed by this proposed change of scope but most of the delegates to the UNCITRAL International Working Group meetings agreed that an instrument which does not recognise the realities of the container trade would be unlikely to attract substantial support. We now await the publication of the Secretariat's complete re-draft of the instrument.

Hazardous and Noxious Substances

In 1996 the IMO hosted the Diplomatic Conference at which the text of a convention was finalised relating to liability and compensation for the escape of HNS from ships.

Unlike the oil pollution regime (CLC and Fund Conventions) the HNS Convention covers, in a single instrument, the liability of shipowners and also the obligation of receivers of HNS cargoes to contribute to an industry fund to "top up" the fund provided by ship owners. HNS is defined by reference to the International Maritime Dangerous Goods Code which is regularly updated to embrace new chemicals. The Convention comprises a minimum liability limit of 10 million SDR for ships not exceeding 2,000 gross tons with per ton increments up to a maximum of 100 million SDR. Where claims exceed 100 million the industry-based HNS fund contributes up to a total inclusive maximum of 250 million SDR.

As with the oil pollution regime, liability is channelled to the registered owner who is

required to carry adequate liability insurance. That insurance must enable claimants to make direct claims against the liability insurers.

There has been a slow take up of the HNS Convention and it has not yet reached its entry into force requirements. This is partly due to the technical complexities of the Convention. With a view to increasing the rate of take up, the IMO Legal Committee has brought HNS back into the work programme and has set up an HNS Correspondence Group (chaired by John Wren of the UK DfT). The work of this Correspondence Group is progressing well. It has produced an Overview containing basic information for those with little knowledge of the instrument, a software programme listing all HNS substances and information to help with the practical application of the Convention. These are not guidelines. In June 2003 there is to be a conference in Ottawa which will be attended by government delegates all with a view to speeding up the ratification process.

Ship's bunkers

In April 2001 the IMO hosted a Diplomatic Conference at which the text of a bunker pollution convention was finalised. This plugs a gap in the pollution legislation so that all substances which may escape from a ship are now covered by a liability and compensation regime. It should be noted that even though compulsory insurance and direct action are a feature of this Convention there is no special fund to cover claims. In this respect the convention differs from the CLC/Fund Conventions and the HNS Convention. It follows that claims arising out of a bunker spill will simply compete with other claims against the ship's general limitation fund under LLMC 1976 (with or without 1996 Protocol) or earlier limitation legislation.

1996 Protocol to the LLMC 1976

This Protocol has so far failed to reach its entry into force requirements and does not, therefore, apply internationally. Under the Protocol the minimum tonnage for limitation purposes is increased from 500 tons to 2,000 tons (although national law may specify lower minimum tonnages). The effect of this higher minimum tonnage is to increase the potential liability of shipowners by a minimum factor of 6 and a maximum factor of 12. For vessels over 2,000 tons the increase is by a factor of 2.3.

It is notable that the increases in relation to vessels in excess of 2,000 tons by no means restores the 1976 values to those of 1996. The reason for this is that the HNS Convention, which was finalised

at the same Diplomatic Conference, creates a new fund for HNS claims which would previously have been covered by the general limitation fund under LLMC'76. On that basis delegates accepted that a modest increase in the general limitation fund would be appropriate.

Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 2002

This is the name given to the consolidated text of the 1974 Athens Convention as amended by the 2002 Protocol.

This is, in many ways, a revolutionary document. It imposes strict liability up to 250,000 SDR on shipowners where the loss arises from a "shipping incident". The maximum liability for claims is set at 400,000 SDR per passenger.

Owners are required to carry insurance cover up to 250,000 SDR per passenger and such policy, in order to be valid must permit claimants to pursue claims direct against insurers.

Interestingly, Article 7(2) of the revised Convention enables national governments to unilaterally increase limits where the limits in the convention are thought to be too low.

Again, this convention has not yet reached the entry into force requirements and is not enforced internationally.

IOPC – Supplementary Fund

In May 2003 there is to be a Diplomatic Conference hosted by IMO to finalise the text of a new oil pollution compensation convention. This will provide a fund, supplementary to the funds available under the CLC and Fund Conventions. The main features of the draft Supplementary Fund Convention are that ratification is voluntary for state parties to the 1992 Fund Convention. At the Diplomatic Conference it will be necessary to fix the amount of the Supplementary Fund. In this context the European Commission has publicly stated that unless the Supplementary Fund increases the maximum recoverable figure to the region of 1 billion Euros the Commission will seek, by directive, to impose an obligation to provide a fund up to 1 billion Euros to be applied by European states to all vessels trading in or out of European ports.

CLC/Fund – Revision

The IOPC Fund has set up an Inter-sessional Working Group to consider wholesale revision of the CLC/Fund compensation scheme.

Numerous issues requiring attention have already been raised by delegates at meetings of the

Working Group and CMI, as the drafters of the original CLC, has set up its own International Working Group to contribute to this revision process. This exercise is likely to be a protracted one and a complete revision of the liability/compensation regime for oil pollution is unlikely to be achieved in the short term.

Wreck Removal

Since 1996 the IMO Legal Committee has been studying the possibility of introducing a convention to allow maritime states to issue orders regarding wrecks immediately outside their territorial waters which pose a threat to navigation or threaten to cause pollution within territorial waters.

Work within the Legal Committee on this project continues alongside other projects.

General Average

The York-Antwerp Rules of 1994 have in recent years been challenged by cargo insurers who feel that they are bearing a disproportionate share of general average expenditure. It is felt inappropriate that cargo interests should be contributing to the cost of repairing and maintaining sub-standard cargo vessels.

Stimulated by cargo insurers, the CMI, which is custodian of the York-Antwerp Rules, set up an International Working Group in 2001 to examine these proposed changes. A consultative report was prepared in March 2003 and this will be discussed by an International Sub-Committee which will meet in Bordeaux in June this year. It is the intention of the CMI to lay before its 38th Conference in Vancouver in June 2004 a revised text of the York-Antwerp Rules for consideration. Amongst the proposals made would be the restriction of port of refuge expenses, elimination from general average of costs of temporary repairs and a possible revision of the rule relating to substituted expenses.

Places of Refuge

Following the incidents involving the *Castor*, the *Erika* and the *Prestige*, the international community has become conscious of the fact that there is a general lack of facilities for ships in distress. This may mean that a minor incident develops into a major problem due to the inability of a ship to find shelter.

The MSC of IMO is working on practical guidelines to deal with these problems and the IMO Legal Committee has been asked to look at the legal aspects including liability and compensation.

CMI, with the agreement of the IMO Legal

Committee, has been conducting research into various issues surrounding places of refuge and expects to submit a final report on the liability and compensation aspects to the IMO Legal Committee at its autumn meeting in 2003. This topic will be discussed both at the CMI Bordeaux Colloquium and at the 38th International Conference at Vancouver in 2004.

Implementation of Conventions

A theme which has run through both CMI and IMO debates in recent years is the poor level of ratification and implementation of international conventions.

CMI, with the agreement of IMO, is currently undertaking a review of the Salvage Convention 1989 to ascertain how this Convention has been implemented in IMO member states. It is hoped that this exercise will not only reveal why the Convention has not been universally embraced but will also establish how effective implementation and interpretation of the Convention has been.

Marine Insurance

The CMI has, over the past few years, been identifying and reviewing issues of marine insurance law which regularly cause problems internationally. The CMI International Working Group has identified non-disclosure, good faith, alternation of risk and warranties as being the most controversial areas. It is the intention of the International Working Group to produce a document for consideration at the 38th International Conference of the CMI in Vancouver in June 2004 which will review these 4

topics and seek to establish what are the most regularly applied solutions to these problems in national laws. In some instances it may be possible to produce a text which might be incorporated in insurance contracts or in national legislation for any country which is contemplating amending its law on this subject.

Criminal Acts committed on Foreign Flag Ships

In a recent case involving the ship *Tajima* the Japanese Second Officer was murdered and two of the Filipino crew were suspected of the murder. The vessel flew the flag of Panama but neither Japan or the Philippines nor Panama was prepared to exercise jurisdiction. This caused delays to the ship which was unable to persuade the authorities, at the first port of call following the incident, to accept the accused into custody. The CMI is working on this project jointly with IMO. The aim is to deal with this problem by international agreement possibly by extending to ships the Convention on Offences and certain other acts committed on board Aircraft. This topic will be on the Agenda of the CMI Colloquium in Bordeaux in June 2003 and the 38th International Conference in Vancouver in June 2004.

These are the main international and maritime law harmonising projects being undertaken at present. I have limited my review to projects which predominantly involve private international maritime law. There are, of course, numerous other public or regulatory law projects currently under review within IMO and other agencies.

PATRICK J. S. GRIGGS

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM THE INSTITUTO IBEROAMERICANO DE DERECHO MARITIMO

“INTERNATIONAL CONFERENCE ON MARITIME PERILS AND SALVAGE AT SEA”

The Instituto Iberoamericano de Derecho Maritimo will hold an “International Conference on Maritime Perils and Salvage at Sea” in Bariloche, Argentina, from September 29th to October 2nd, 2003.

The preliminary programme of the Conference is the following:

1. Safety at Sea, relevant risk factors
2. Collision
 - Different hypothesis
 - Liability under Common Law and Civil Law
 - Insurance
3. Assistance and Salvage
 - According to the Common Law and Civil Law

- Voluntaryness - Danger - Useful Result - Case Law
- LOF (*Lloyd's Open Form Salvage Agreement*)
- Towage and Salvage
- Admittance into the York-Antwerp Rules
- Apportionment of assistance and salvage wages (owner, captain and crew)
- Special compensation for pollution prevention
 - Salvage values - assessment of their value (ship, cargo and freight)
 - Salvor liability - Right to limit his liability

Workshop

1. Classification societies
2. Water pollution due to oil spills and other hazardous or noxious substances
3. Safety at Sea and human resources applied to industry
 - STCW Convention and ISM Code
 - Liability of the flag State
 - Port State Control (PSC)
4. New measures of prevention against terrorism and piracy

Presentation of papers deadline: 15th August.

Maximum length: 20 pages A4 double spacing-format.

Every speaker will have a ten-minute speech period.

The Conference will take place at "Llao Llao Hotel" (Bariloche - Argentina).

Tariffs and different hotels options and tourism programs to follow communication.

Inscriptions before May 1st, 2003

US\$ 400.00 for IIDM's members

US\$ 500.00 for non IIDM's members

US\$ 200.00 for accompanying participants

Inscriptions after May 1st, 2003

US\$ 500.00 for IIDM's members

US\$ 600.00 for non IIDM's members

US\$ 250.00 for accompanying participants

Inscriptions after July 1st, 2003

US\$ 600.00 for IIDM's members

US\$ 700.00 for non IIDM's members

US\$ 300.00 for accompanying participants