

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

No. 2 - May/August

COMITE MARITIME INTERNATIONAL

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## NEWS FROM THE CMI

### SUMMARY OF THE MEETING OF THE EXECUTIVE COUNCIL HELD AT SINGAPORE ON 11 FEBRUARY 2001

Attending

<i>President:</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Hisashi TANIKAWA Frank L. WISWALL, Jr.
<i>Councillors:</i>	Luis COVA ARRIA Karl-Johan GOMBRII David ANGUS (excused) Jean-Serge ROHART Thomas REME John HARE Stuart HETHERINGTON Gregory TIMAGENIS
<i>Secretary General:</i>	Alexander VON ZIEGLER
<i>Treasurer:</i>	Paul GOEMANS (excused) Benoit GOEMANS
<i>Administrator:</i>	Pascale STERCKX (attending Conference)
<i>Past President:</i>	Allan PHILIP
<i>Publication Officer:</i>	Francesco BERLINGIERI

The President opened the Meeting by welcoming the Councillors and advised on the health problems of David Angus and that due to that he was not able to travel to Singapore.

## **Financial Report from the Acting Treasurer Benoit Goemans including presentation of accounts and budgets**

Particular reference was made regarding the budget and the fixing of the subscriptions. Reference was also made to the decision of the Assembly 2000 (see Minutes of the Assembly 2000, point 5 (b)) to re-adjust the increase of 3% in the light of the currency situation EURO/USD. Despite the fact the EURO did not perform well it was decided not to use this option and leave the subscriptions for the year 2001 on the level agreed at the Assembly 2000. Regarding the fixing of the contribution 2002 it was mentioned that an increase should not be requested before the CMI not fully studied alternative funding, alternative income and has made at the same time a general exploration relating control and reduction of expenditure. The Publications Committee shall investigate the possible options of alternative income / funding in the confines of the CMI Constitution. One of the aspects to be studied by this Committee is to investigate into the possibility of involving professional fund-raisers. Relating to costs and expenses the President stressed that the CMI has to revisit the way the administration is run (and the costs incurred) and the way travel expenses are incurred. Relating to travel expenses it was envisaged to work in 2001 on the basis that a smaller section of the Executive Council will meet to prepare a consultation paper which will require replies and will possibly be discussed in a conference call. A decision will be taken on the EC Meeting of Saturday, 17 February 2001. Such a departure from the traditional way Council meetings are held, of course, poses a number of additional problems, which need to be investigated.

Relating to the administration in Antwerp alternative ways to organise the CMI office were discussed. It was decided that the CMI administration should remain, of course, in Antwerp, but that the operation should be revisited and that ways should be explored in which substantial savings could be made. This should be done at the same time as the revisiting of the administrative process in conjunction of the new Administrator. Further, the Newsletter could be published only 3 times a year and instead of reproducing full text minutes contain only summaries of the conclusions of the Council meetings of CMI.

The perfect set up (under cost and efficiency purposes) would be to have the job as Treasurer and Administrator combined and the office moved to the Administrator. This issue shall to be further discussed by the Council on a Lunch Meeting on Friday, 16 February.

## **Legal and tax status of CMI**

The draft Constitution was submitted to and discussed with the Belgian authorities. Relating to taxes there will not be big changes. No VAT will be levied on the subscriptions. Relating to the Constitution it was suggested to amend the draft to allow meetings of the Council also in form of video / telephone conferences or through electronic means.

## **Assembly 2002**

The Assembly will be held on 10 May 2002 in London

## **Nominating Committee**

Reference was made to the report of the Nominating Committee pursuant to which the vacancies in the Executive Council after the end of the term of H. Tanikawa (Vice- President), David Angus and Leo Delwaide needed to be filled, the Committee recommended to appoint Johanne Gauthier (Canada) and Prof. Feng LiQi (China) Councillors and Wim Fransen Administrator of CMI. Karl- Johan Gombrii is proposed as Vice-President.

**MINUTES OF THE ASSEMBLY  
16<sup>TH</sup> FEBRUARY 2001**

Attending

<i>President:</i>	Patrick GRIGGS
<i>Past President:</i>	Allan PHILIP
<i>Vice-Presidents:</i>	Hisashi TANIKAWA Frank L. WISWALL, Jr.
<i>Secretary General:</i>	Alexander VON ZIEGLER
<i>Administrator:</i>	Leo DELWAIDE (excused)
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Treasurer:</i>	Paul GOEMANS
<i>Publication Officer:</i>	Francesco BERLINGIERI
<i>Members:</i>	W. David ANGUS (excused) Luis COVA ARRIA Karl-Johan GOMBRII John HARE Stuart HETHERINGTON Thomas REME Jean-Serge ROHART Gregory TIMAGENIS

**MEMBER ASSOCIATIONS:**

The following Delegates have registered for this Assembly:

ARGENTINA:

Alberto C. Cappagli  
José Domingo Ray

AUSTRALIA & NEW ZEALAND:

Stuart Hetherington  
Ron Salter  
James Harb  
Sarah Derrington

BELGIUM:

Paul Goemans  
Pascale Sterckx  
Christian Dieryck  
Benoît Goemans  
Herman Lange

BRAZIL:

Rucemah Leonardo G. Pereira  
Walter de Sa Leitao

CANADA:

James E. Gould  
Johanne Gauthier  
Sean Harrington  
Barry Oland  
Nigel Frawley  
Edgar Gold

CHINA:

Zhu Zengjie  
CROATIA:  
Drago Pavic

DENMARK:

Allan Philip  
Bent Nielsen

FRANCE:

Jean-Serge Rohart  
Patrice Rembauville-Nicolle

GERMANY:

Thomas Remé  
Gerfried Brunn  
Hans-Heinrich Noell

GREECE:

Gregory Timagenis

HONG KONG

William Waung Sikying

ISRAEL:

Ilan Orly  
Gideon Gordon

ITALY:

Francesco Berlingieri

JAPAN:

Hisashi Tanikawa  
Seiichi Ochiai

KOREA:

Lee-Sik Chai  
Kiljun Park  
Juchan Sonn

MALAYSIA:

Nagarajah Muttiah

NETHERLANDS:

Vincent de Brauw  
Jan Ter Meer

NIGERIA:

Emmanuel Ezenachukwu

NORWAY:

Karl-Johan Gombrii

PHILIPPINES:

Ruben T. del Rosario

POLAND:

Wojciech Adamczak

SINGAPORE:

Chandran Arul  
Grace Feng-Wong

SLOVENIA:

Marko Pavliha

SOUTH AFRICA:

John Hare  
Andrew Robinson  
Michael Posemann

SWEDEN:

Lars Gorton

SWITZERLAND:

Alexander von Ziegler  
Thomas Burckhardt  
Vesna Polic

UNITED KINGDOM:

Patrick Griggs  
Richard A. Shaw  
Stuart Beare  
Geoffrey N. Hudson

U.S.A.:

Raymond P Hayden  
Frank L. Wiswall, Jr.  
Howard M. McCormack

VENEZUELA:

Luis Cova Arria

The Assembly met on 16 February 2001 at The Pan Pacific Hotel in Singapore. The President opened the Assembly Meeting.

### 1. Adoption of Agenda

The Assembly agreed to proceed as stated by the Agenda.

### 2. Memorials

The President reported to the Assembly that  
Vojslav Porcic (Croatia)  
Pedrag Stankovic (Croatia)  
James J. Higgins (USA)

William Garth Symmers (USA)

have passed away since the last Assembly. He asked the Assembly to rise in the honour of the deceased.

### 3. Approval of the Minutes of the Assembly held in London 12 May 2000

The Assembly approved the Minutes of the Assembly held in London on 12 May 2000.

### 4. Members

#### a) Titulary and Honorary Titulary Members

After the President had reminded the Assembly of the CMI "Guidelines for Proposing the Appointment of Titulary and Provisional Members", which were approved by the CMI Assembly on 8 May 1999 (CMI Yearbook 2000, p. 29), the Assembly elected the following Titulary Members:

- nominated by the Maritime Law Association of Belgium:
  - Christian Dieryck
  - Jan Theunis
- nominated by the US Maritime Law Association:
  - Lawrence J. Bowles
  - Michael F. Sturley
  - Vincent M. De Orchis

The appointments were unanimously agreed by acclamation.

Further, the President, based on a nomination by the Executive Council, proposed to honour:

- Mr. Thomas Mensah
- Mr. Gerold Herrmann
- Mr. William O'Neil

by reason of their contribution to the unification of International Maritime Law with an appointment as Honorary Titulary Members of CMI (Article 3 (b) CMI Constitution). This was approved.

#### b) Honorary Vice-Presidents

Upon nomination by the Executive Council Professor Hisashi Tanikawa (Japan) was appointed Honorary Vice President of CMI in recognition of his outstanding contribution to the work of CMI during his long period of service as member of the Executive Council of CMI.

#### c) Associations of Maritime Law

The Assembly unanimously appointed by acclamation the Maritime Law Association of Guatemala as new Member Association of CMI. Further, the President informed the Assembly that negotiations are currently being held with the

Maritime Law Associations of Madagascar and of India.

*d) Appointment of New Administrator*

The President read out the letter of resignation of Leo Delwaide as Administrator of CMI which was received shortly before the Singapore Conference. The Executive Council had to move quite quickly and agreed to propose to the Assembly a practical intermediate solution which consists of:

CMI to keep its Administration in Antwerp;  
Relocation of the Secretariat into the same building where the Treasurer has his offices;  
Wim Fransen to oversee this transfer of the Secretariat;

Appointment of a new Administrator deferred to the Assembly of 2002.

This proposal was accepted by the Assembly.

## 5. Finances

*a) Accounts*

*Appointment of new Treasurer*

Benoît Goemans was elected Treasurer of CMI. Mr. Goemans has already taken over on an interim basis from his father, Mr. Paul Goemans, some responsibilities of the financial affairs of CMI during the year. The President thanked Paul Goemans for his support for CMI in his time as Treasurer.

*Reports from David Angus (Chairman of Audit Committee) and the Treasurer*

The President advised that unfortunately David Angus was not able to travel to Singapore and that, therefore, Allan Philip would report on the item of finances during the Assembly. Since David Angus' term in the Executive Council is ending with the Singapore Conference the continuation of the Chairmanship of the Audit Committee had to be decided. The President stated that the Executive Council had decided to ask David Angus to continue to be Chairman of the Audit Committee.

Allan Philip, in the absence of David Angus, explained the accounts and referred to the auditor's report. The year 2000 ends with a surplus of Euro 3,694. The total unpaid contributions amount to Euro 181,591.

Based on those explanations the financial statements and accounts of CMI were approved.

*b) Budget*

Based on the budget it was agreed to maintain the decision taken in the Assembly of May 2000 namely to increase the contributions/subscriptions by 3%. It was further decided there should be no increase for the year 2002.

*c) Unpaid subscriptions:*

The President reminded the Assembly that based on prior decisions of the Assembly Egypt, Sri Lanka and India were expelled as Member Associations of CMI.

He further advised that negotiations with several Maritime Law Associations had resulted in payment of outstanding subscriptions for some past years. The Maritime Law Associations which have now settled their accounts by negotiation with the President are: Israel, Venezuela, Brazil, Peru, Costa Rica. Relating to Morocco, a settlement had been reached but the payment was not yet received.

Negotiations continue with the Maritime Law Associations of Senegal, Nigeria, Mexico and South Korea. Further, there are also some negotiations with Columbia.

*d) Auditors: Appointment of Moore Stephens*

The Assembly appointed Moore Stephens as Auditors of CMI. At the same time, the President expressed his appreciation of the assistance of Mr. Nick King of Moore Stephens in reorganising the account's structure of CMI.

*e) Revision of CMI Constitution/New Legal Status for CMI*

Frank Wiswall explained to the Assembly that in order to bring CMI into full conformity with Belgium law it was necessary to bring the Comité Maritime International in line with the legal and tax status required. He referred to the report of the Constitutional Committee which was sent out on 14 December 2000. He particularly emphasised that the domicile of CMI pursuant to this Constitution is Antwerp and that only the address within Antwerp can be changed by the Executive Council. He continued to explain the Constitution provision by provision and replied to several questions which arose in relation to those provision. Patrice Rambauville-Nicolle on behalf of the French Maritime Law Association made particular reference to the motion submitted by his Association and explained that there are quite a number of points which require some adaptation for final draft at a later stage in particular when transferring the English draft into French language. It was agreed that the motion should be attached to the Minutes (see attachment).

The Maritime Law Association of South Africa then suggested that, without actually requesting a change in the Constitution at this stage, the Executive Council should revisit the decision that the Executive Council's term are on a four year term basis. Rather, he suggested that there should be a possibility of two terms of three years each. Again, this was meant as a point for reflection and



not as an application for changes to be made to the draft Constitution.

The Assembly then unanimously agreed on the Constitution. In a second vote relating to the resolution on the "Procedure for the Suspension and Expulsion of Members", again, the Assembly agreed unanimously.

## 6. Assembly 2002. Date and venue

The next Assembly will be held on Friday, 10 May 2002, in London.

## 7. Elections; Nominating Committee Report presented by Nigel Frawley (Committee Chairman)

Nigel Frawley (Canada) took the floor as Chairman of the Nominating Committee and made reference to the fact that Hisashi Tanikawa (Japan) is stepping down as Vice-President and that the term of David Angus (Canada) as well as Karl-Johan Gombrii (Norway) have expired after two terms as Executive Councillors of CMI. Upon nomination and suggestion of the Nominating Committee the Assembly then agreed on the following elections:

President:

Patrick Griggs (UK) for a second term

Vice-Presidents:

Frank L. Wiswall, Jr. (USA) for a second term

Karl-Johan Gombrii (Norway) for a first term

Executive Councillors:

Thomas Remé (Germany) for a second term

Johanne Gauthier (Canada) for a first term

Feng LiQi (China) for a first term

Further, the Secretary General, Alexander von Ziegler, upon expiry of his first four year term as Secretary General, was elected for an additional term. The President then thanked the resigning members of the Executive Council for their strong support during their term on the Executive Council.

## 8. Publications

Frank Wiswall advised that there is a plan to have a Millennium Edition of the hand book on Maritime Conventions prepared by CMI. The publication is intended to be available in September 2001. There will be a new CD Rom accompanying this book.

## 9. Conference Report

The President referred to the work and decisions of the Plenary session of the Conference. All Reports

and Resolutions presented and approved at the Plenary were adopted with the exception of the report relating to the UNESCO Underwater Cultural Heritage which will be treated as a new matter.

The Maritime Law Association of the United States reiterated its opposition to the General Average Resolution made already during the plenary.

## 10. Other Work in progress

(a) *International Interest in Mobile Equipment:*

Relating to the UNIDROIT Project on International Interest in Mobile Equipment, Dr. Thomas Remé referred to the fact that it is likely that "Containers" might come up as subjects for this UNIDROIT Instrument and that CMI might become involved if this is decided.

(b) *Arrest Convention:*

Francesco Berlingieri then reported that the Travaux Préparatoires on the Arrest Conventions will be available shortly.

(c) *Offshore Mobile Craft:*

The President advised that relating to Offshore Mobile Craft reference was made to the report which suggested to keep the subjects alive but on a low priority level. This means that the International Sub-Committee relating to that subject will be terminated but that the Working Group will continue in existence.

## 11. Various

(a) *38th Conference:*

The President advised that the next Conference (38<sup>th</sup> Conference of CMI) will be held in the year 2004 or 2005 depending on the development of the working programme. As venues for such a Conference the Cities of Hong Kong, Vancouver, New Orleans, Seville, Athens and possibly Cape Town were named. The Executive Council will take up the matter and report back after further evaluation to the Assembly in relation to the choices for such a CMI Conference.

(b) *A possible Colloquium:*

The President referred to the very successful Toledo Colloquium which was organised by the Spanish Maritime Law Association and CMI. It is envisaged to host or co-host a Colloquium again in September/October 2002. The Executive Council will come back to the Assembly with suggestion for the place and date to hold such a Colloquium.

The President declared the meeting of the Assembly closed.

COMITE MARITIME INTERNATIONAL  
**PROPOSED CONSTITUTION 2001**

Association Française du Droit Maritime - AFDM

*Motion*

The French Maritime Law Association, after studying the French version of the draft proposed Constitution and after comparison with the English text, makes no remark as to its substance but reserves its rights as to propose some modifications of its wording. The AFDM shall request these amendments to be included in the agenda of the next Assembly of the CMI.

Indeed, the AFDM considers that the French versions of the Constitution, the text of 1992 and the 2001 draft, need to be improved concerning, for instance, their presentations, the order of various provisions and also the wording (which will imply to correct also the English text).

However, the AFDM, which highly appreciates the eminent part taken by the Belgium Maritime Law Association as to the creation and the international influence of the CMI, understands that the objects of the proposed revision is to make the Constitution of the CMI in compliance with the Law of Belgium in order to facilitate its registration as a juridical personality and to confirm its juridical domicile in Belgium. Consequently, the AFDM will vote in favour of the proposed Constitution as drafted in the French version because it seems that there are some missing in the English text.

Furthermore, the AFDM considering that there is no French versions of the Rules of Procedures and of the Guidelines for proposing the appointment of Titulary and Provisional Members, offers to prepare the French versions of these documents early enough to enable their publication in the next Yearbook "Singapore II" and with a view to further submit them to the approval of the next Assembly.

Finally, the AFDM will also propose for approval at the next Assembly that the adoption of the new Constitution made in compliance with the Law of Belgium leads to insert in the new text a few words able to assure the compatibility of the French and English versions of the Constitution with the French and English versions of the Rules of Procedures as to the use of the French language. The AFDM understands indeed that such a solution will facilitate the registration of

the Constitution which must be done under one of the official Belgium languages, which includes French. To this effect, it will be sufficient to add, at the end of the article 1, the following words :  
*"The two official languages of the CMI are English and French"* [*"les deux langues officielles du CMI sont l'anglais et le français"*].

Singapore, 16th February 2001  
for the President of AFDM

Patrice REMBAUVILLE-NICOLLE  
*Secrétaire Général Adjoint*  
*Titulary Member of the CMI*

**SUMMARY OF THE MEETING OF THE EXECUTIVE COUNCIL  
HELD AT SINGAPORE ON 17 FEBRUARY 2001**

Attending

<i>President:</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Frank L. WISWALL; Jr. Karl-Johan GOMBRII
<i>Councillors:</i>	Luis COVA ARRIA David ANGUS (excused) Jean-Serge ROHART (excused) Thomas REME John HARE Stuart HETHERINGTON Gregory TIMAGENIS LiQi FENG Johanne GAUTHIER
<i>Secretary General:</i>	Alexander VON ZIEGLER
<i>Treasurer:</i>	Benoit GOEMANS (excused)
<i>Administrator:</i>	Pascale STERCKX (attending Conference)
<i>Past President:</i>	Allan PHILIP
<i>Publication Officer:</i>	Francesco BERLINGIERI (excused)

**Next meeting of the Executive Council**

22 September 2001 in London followed by Dinner. (Date changed later to the 7/8 December 2001 in London)

**Appointment of a new Administrator**

On an ad hoc meeting on Friday, 16 February, the Executive Council decided to propose to the Assembly to keep the Administration in Antwerp, but to relocate the Secretariat in the same building where the treasurer has his offices. Wim Fransen will oversee this transfer.

The Executive Committee decided to propose to the Assembly that B. Goemans shall be Acting Administrator until a final decision has been made on the way the administration of CMI is run in Antwerp. This proposal was discussed and approved by the Assembly on 16 February 2001.

**Publications**

It was suggested that B. Goemans looks into the possibility to charge subscriptions and payments for publications via Credit Card.

The Executive Council's Minutes shall only be published in form of a summary of the Meeting due to the decision to have only 3 Newsletter per year.

It was suggested that the CMI should publish the results of the Conference (Journal of Maritime

Law & Commerce / Lloyd's Maritime & Commercial Law Rep.).

J. Hare is currently preparing a way to have notices circulated per e-mail advising the recipients that the CMI - Website had been amended. Further, the plan is that the Website can be directly fed by CMI officers. The intention is to directly feed the Website with CMI documents relating to the different projects.

Further, an independent e-mail service was discussed which would allow to inform the shipping community on developments falling in the scope of CMI. J. Hare, J. Gauthier and F. Wiswall (consulting with F. Berlingieri) will prepare a report on that proposal.

R. Balkin suggested during the Conference to have a mutual IMO - CMI Link. J. Hare will follow up this project.

**General Average**

It was suggested that the involved commercial circles (Adjusters / P&I Clubs / Underwriters Shippers and Ship owners) could discuss and negotiate the fate of general average in a forum following the pattern of the Joint International Working Group on the Liability of Classification Societies and within the Resolution of the Singapore Conference. However this meeting should be conducted as a industry meeting upon invitation of CMI.



Since T. Remé expressed the wish to move to the project on Marine Insurance a new Chairman needs to be found. For the Industry Meeting F. Wiswall will chair the Industry Meeting and for the actual CMI Working Group it will be B. Nielsen. R. Shaw should be rapporteur on both groups. F. Wiswall will develop the concept of this industry meeting further.

### **Planning Committee Report**

The suggestion to create a CMI Young Lawyers Group found particular interest. It is crucial to find young candidates for recruitment for CMI projects. It was realised that for the target age group of 30 - 40 it will be crucial to look at the situation in the different MLAs and that the success will very much depend on the acceptance of the project by the national MLAs and the larger firms in the market. J. Hare will chair this project and come back at the next Executive Council meeting.

### **CMI XXXVIII Conference**

The Executive Councillors were asked to make up their mind for the September (changed to December!) EC Meeting. It was noted that Greece has extended an invitation for holding a Conference either in Athens or Crete. It was decided that there should be a Colloquium between the Conferences. There were suggestions relating an educational Seminar on Electronic Commerce (including representatives of the maritime industry). This could take place in

September 2002 in Vancouver on 18<sup>th</sup> - 20<sup>th</sup> September 2002 with EC Meeting on 21<sup>st</sup> September 2002). Another idea for a Colloquium topic was raised by F. Berlingieri during the Conference to concentrate on methods of unification in the field of maritime law. A further idea is to discuss the proposal during the discussion on Implementation of Conventions to establish standard clauses.

### **CMI Management Functions**

The list of Management Functions was revised. The second Group will be called "Publication and Funding". In this group B. Goemans was added. In group "Conference, Seminars, etc." Johanne Gauthier (Vancouver) was added. Relating to "General Average" F. Wiswall is the Chairman of the Joint Working Group and B. Nilsen is the Chairman of the International Working Group. As for "Implementation of Conventions" G. Timagenis and Prof. Feng were added to the Working Group. P. Griggs will be the Deputy Chairman of the project on "Underwater Cultural Heritage" Erik Japikse being the Chairman. The Working Group on "Electronic Commerce" should be added by listing J. Gauthier and L. Cova Arria.

Relating to National Associations Prof. Feng will join the team for Asia. B. Goemans was added to the Group "Executive Council and Assembly Meetings" and to the Group "Constitution". Prof. Feng agreed to join the Group "Planning Committee".

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

### **NEWS FROM UNIDROIT**

#### **CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT & AIRCRAFT PROTOCOL DIPLOMATIC CONFERENCE.**

A Diplomatic Conference will take place in Cape Town between the 29<sup>th</sup> of October and 16<sup>th</sup> November to finalise the above Convention and a Protocol specifically designed to apply the Convention to Aircraft Equipment. The Diplomatic Conference is being jointly convened by UNIDROIT and ICAO – the latter being the sponsors of the Aircraft Equipment Protocol.

It will be recalled from earlier reports that a decision was made by UNIDROIT to radically reshape its project on Interests in Mobile Equipment to create a core Convention containing no definition of mobile equipment and then invite organisations involved with particular types of

mobile equipment to sponsor a Protocol tailored to the specific requirements of their industry. In the event the Convention, by Article 2 (3), restricts the categories of equipment which the Convention may be extended to the following

- (a) airframes, aircraft engines and helicopters;
- (b) railway rolling stock; and
- (c) space property."

The CMI originally took an interest in the drafting of this Convention because ships were included in the categories of Mobile Equipment to which the Conventions might apply. The CMI and many other organisations in the shipping sphere strongly objected to this inclusion on the basis that

there were already in place adequate systems for protecting the financial interest of those who lend money on the security of a ship.<sup>1</sup> When ships were removed from the draft Convention the CMI continued to monitor progress in the expectation that the Convention would, nonetheless, extend to cover items of mobile equipment, such as containers, which were shipping related. This is no longer the case and assuming that the Convention is agreed in its present form it will be of no further interest to those in shipping and the shipping related trades.

Nonetheless it may be of some interest to look, briefly, at the draft Convention and its Aircraft Equipment Protocol.

The first industry to show an interest in this project was the aircraft industry with the result that the core Convention and the first Protocol, specifically tailored to Aircraft Equipment, will come into existence at the same Diplomatic Conference.

In the preamble to the Convention reference is made to the fact that mobile equipment of high value is a feature of many industries and that the financing or leasing is asset based. The preamble also notes the need to ensure that interests, which companies and individuals may acquire in such equipment by manufacture financing or leasing, are protected universally. The purpose of the Convention is stated to be the establishment of a legal framework for international interests in equipment covered by the Convention and for that purpose to create an international registration system.

An “international interest” capable of being protected by the Convention is essentially, an interest in an identifiable object granted by a chargor under a security or financing agreement, vested in a person who is a conditional seller under a title reservation agreement or is a lessor under a leasing agreement.

As mentioned above the categories of objects in which it is possible to acquire an international interest are listed as airframes, aircraft engines, helicopters, railway rolling stock and space property.

Article 3 of the Convention provides that at the time when the agreement giving rise to the interest is concluded the debtor must be situated in a Contracting State. On the other hand the debtor does not have to be situated in a Contracting State.

As regards applicable law the Convention

specifically avoids choice of law provisions and states that the applicable law shall be determined by the normal rules of private international law applicable in the forum State i.e. the State in which the case comes before the courts.

There are certain formal requirements as to the constitution of a so called “international interest” which is capable of being registered under the Convention and thereby protected. An international interest can only arise under an agreement which conforms to the formalities prescribed in the Convention though it is understood that a registrable non-consensual right or interest may be registered in the International Registry set up under the Convention and will then rank for priority as if it were an international interest.

Articles 7 to 14 deal with the so called “default remedies” i.e. they detail steps available to the chargee where there has been any default under the loan or other agreement. These remedies include taking possession of the object charged, its sale or the appropriation of income or profits arising from the use of the object.

This Convention would not work unless it were possible to register the interests of the chargee in some central register. Thus Articles 15 & 16 deal with the creation of an International Register in which it will be possible to register all types of interest whether consensual or non-consensual in objects covered by the Convention. Interestingly Article 15 allows for different international registries to be established for different categories of object. In other words it is probable that aircraft equipment will have its own international register and any other industry which sponsors a Protocol will, in its turn, have to set up its own international register.

Articles 17–25 cover what are described as the “Modalities of Registration”. Thus the Convention indicates who may register an interest, when registration takes effect, what its duration shall be and what are the requirements for registration. Distinctions are made as to the registration of non-consensual rights as against rights arising under agreements.

Important provisions of the Convention are contained in Articles 28 & 29 which explain the legal effects of the registration of an international interest as against third parties. Specifically a registered interest has priority over any other interest subsequently registered and or an un-registered interest.

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<sup>1</sup> F. BERLINGIERI, *The Preliminary Draft Unidroit Convention on International Interests in Mobile Equipment. Should ships be included?* CMI News Letter No. 2-1998, p. 9.

One of the objections which CMI took to the original concept of the Convention to protect interests in Mobile Equipment was the conflict between rights granted by registration of non-consensual interests and the rights of action which claimants are traditionally able to exercise against ships under Admiralty Court procedures.

This problem is, to some extent, addressed by Articles 38 & 39 of the Convention which enables a contracting state to deposit a list of the categories of non-consensual rights or interests which should be capable of being registered under the Convention as if that non-consensual right was an international interest as defined in the Convention. In other words contracting states can, by declaration and deposit, preserve existing rights and remedies under their existing national law.

This is a very brief description of the effect of this draft Convention. The terms of the Aircraft Equipment Protocol do not need to be examined – it merely contains provisions designed to adapt the Convention to the needs of the aircraft equipment industry.

As mentioned earlier those in the shipping industries no longer have any interest in this Convention as it is incapable of being extended to any shipping related equipment. The enthusiastic manner in which ICAO, on behalf of the aircraft industry, has embraced this Convention suggests that the protection which it offers is badly needed. It will be interesting to see how it works in practice.

PATRICK GRIGGS