

Attachment 2

The Future of the CMI

Beijing Conference – 19 October 2012 at the Kempinski Hotel, Beijing

This session was opened by the President, Karl Gombrii, in which he identified the following topics which delegates might like to direct their remarks to, but he was not seeking thereby to place any restrictions on the ambit of discussion. He confirmed that the CMI Executive wanted to hear from the delegates and would not, as far as possible, engage in debate, except to answer specific questions. Topics identified were:

- Governance
- Work Projects
- Membership
- Website and technology
- Young members
- Future conferences
- Relationship with consultative members
- Publications

The first person to speak from the audience was Jose Apolo, the delegate from the Ecuador MLA who was disappointed that the role of titular members has been undermined by not requiring them to pay a subscription.

The President of the French MLA, Philippe Boisson, then made the following comments:

"1. The positioning of the CMI: the CMI for doing what?

The CMI was in the past the main promoter of the international maritime law conventions. Since the creation of the IMO Legal Committee in 1967, this role has been progressively reduced: today the main legal instruments are elaborated under the auspices of intergovernmental organisations, mainly IMO and UNCITRAL. Within the IMO, CMI is a NGO, giving it the possibility due to its consultative status to participate actively to the Legal Committee meeting.

The first question is: has the CMI been satisfied with this situation, the situation of a subcontractor of IMO? Or can it have another raison d'etre?

(a) The normative function of CMI

French MLA is sceptical about the convention drafting role of CMI. Today, it is the role of intergovernmental organisations to facilitate the adoption of conventions by the States. However there are other ways to reach uniformity at the international level such as Memoranda of Understanding (MoUs) to be adopted by States, model agreements on a regional basis etc.

If CMI wants to be helpful in that area, it is in the formulation of "soft law rules". Provisions of international conventions are rarely sufficient. They need to be supplemented by additional more flexible rules which will facilitate their implementation by the professionals.

Our Association has recognised unanimously the usefulness ("*la raison d'être du CMI*"), in the formulation of model laws, guidelines, recommendations, and principles of conduct for the various actors of the maritime community. The main question for CMI is to identify and to detect the needs of the industry in legal matters without encroaching upon territories/competences of other NGOs.

In its drafting role, it is of the utmost importance for CMI to have a good communication and coordination with the other NGOs representing the shipping industries (ICS, BIMCO, INTERTANKO, INTERCARGO, IUMI, International Group of P&I, OCIMF, ISU, IAPH) and also with the offshore industry for offshore legal instruments.

b) Monitoring function

another important function is to monitor and disseminate information concerning the implementation and interpretation by national courts of international conventions. The work started by CMI and ICS in this field is an excellent initiative and should be developed in close cooperation with national MLAs. France is a candidate to be involved in this process and to liaise with French Shipowner Association and French Administration.

The work done by Francesco Berlingieri up to now is considerable, but CMI should go further: CMI should appoint a person in charge of collecting and publishing information about the implementation and interpretation of international maritime conventions on a national level. The database of decisions by national Courts on the interpretation of maritime conventions established on the CMI website is a good initiative but all the maritime conventions are not listed and the database needs to be regularly updated.

c) Keeping the spirit of the origin

For the French MLA, it is of great importance that CMI keeps its soul and the spirit of its origins. CMI has always been a "club" of gentlemen, gathering legal experts of good will, keen to promote harmonisation of maritime law worldwide. CMI is neither a lobby group for a part of the industry nor a political forum.

2. Organisation of the CMI

The French MLA is convinced that the Secretariat of CMI should be reinforced to cope with its missions and new duties and to be concentrated under the responsibilities of one person in charge of administrative and financial matters as well as the regulatory and legislative monitoring.

From this point of view, we are not sure that the substantial reduction in subscriptions will give to the CMI the resources it needs to fulfil these ambitions."

Gregory Timagenis, of the Greek MLA, then congratulated the Executive Council on a job well done. He noted that the role of the CMI, as it had existed from its inception, has passed to the IMO and other United Nations bodies, but the role of harmonisation and unification of maritime law still exists. The CMI can, and does, prepare the first draft of what could be an international convention, as it did for the Rotterdam Rules, and then present it to one of those bodies. He then described the role of the CMI once a convention has been agreed as being able to seek to have such conventions applied in a unified way. He gave an example of the work on limitation of liability and procedural rules which the CMI, under his chairmanship had produced. He then questioned whether the CMI should not consider introduction of a new class of members, that is individuals who would pay a smaller fee but not have any vote.

He then turned his focus on Young CMI which he noted had developed from a social organisation to a scientific one and queried whether a seat on the Executive Council should not be made available for a young member.

Jose Goni of the Spanish MLA then suggested that CMI needed to pay more attention to the IIDM which meets every year and is producing a new generation of young lawyers.

Bob Parrish, the President of the United States Maritime Law Association, then spoke and once again thanked the CMI Executive Council for its work. He addressed the topic of finances from a US perspective. His association, he said, has 3,000 members and a 90 member board. It has a primary function as a member of the CMI. It holds four meetings a year, the next being on 8 November. Positions are taken on issues which come before the CMI by the US MLA after discussion with its membership. He was complimentary about the recent processes whereby the

CMI has substantially reduced subscriptions but queried whether the United States, should be paying as much as it does, in the state of its economy compared with that which existed over 50 years ago. He also echoed the comments made by Gregory Timagenis and then made some philosophical comments for the consideration of the CMI. He invited the Executive Council to consider, whenever it plans to "open an office or spend a dime", to ask itself "to what end?". He noted that the public sector has become the dominant sector and private organisations have limited influence. A detailed examination of the role of the CMI is needed immediately and he suggested that a small group should consider this issue, such a group being outside the current leadership of the CMI.

Wang Pengnan of the Chinese Maritime Law Association suggested that CMI should collect the national laws on transportation from all countries and for a booklet to be prepared in that regard.

Karel Stes of the Belgian Maritime Law Association then reflected on the cornerstones of the CMI, as perceived by the spiritual fathers of CMI. He commented that the future depends on the contribution of members, both financially and individually. He identified those cornerstones as:

Firstly, independence which he regarded as vital, from both government and non-government bodies

Secondly, the regional differences, being different cultures, different laws, which the organisation and management needs to reflect

Thirdly, acknowledgement that the mission of uniformity has not been accomplished, and

Fourthly, consultation with all parties, including shipowners, ship builders, financiers, P&I Clubs, insurers, and adjusters. This does not compete with the independence of the CMI.

Francesco Siccardi, of Italy, confirmed that the role of the CMI needed to be reconsidered. Despite the hard work which had been done in some sessions of the conference, including Salvage and York Antwerp Rules, no result had been achieved and in some cases there had been insufficient time to consult. He noted that individual members of maritime law associations needed to come to conferences after considerable preparation and some MLAs needed to consider this problem.

An Rui of the Chinese Maritime Law Association suggested that drafting International Conventions is still one of the main tasks of the CMI and CMI needs to liaise effectively with IMO and other inter-governmental bodies.

Judge Chen Yanzhong of the Chinese Maritime Law Association then identified the need to consider CMI's role as its role was restricted due to the inherent nature of non-governmental

bodies. He referred to the Judicial Sales topic which, if finalised, may not result in a convention. He referred to the meeting of judges which had taken place and the proposal by Justice Rares of the Australian Federal Court that it was desirable and feasible for common interpretation and that the application of the Vienna Convention on the Law of Treaties could lead to better results. He highlighted the need for a database of all relevant case law and the application and interpretation of conventions to be available.

Liz Burrell of the US MLA then referred to the CMI's Constitution and in particular Article 1 in which it identifies the objections of the CMI being "To contribute by all appropriate means and activities to the unification of maritime law in all its aspects. To this end it shall promote the establishment of National Associations of Maritime Law and shall co-operate with other international organisations. She stressed the words "promote" and "co-operate". The Constitution, she continued, therefore anticipates other ways to achieve uniformity and urged that significant attention be paid to fulfil the objectives of the CMI, outside the habitual mindset.

Taco Van Der Valk of the Netherlands Maritime Law Association did not support the suggestion of Greece that the CMI give consideration to introducing a category of membership for individuals. In response to Ecuador's concerns about titular membership he emphasised that such membership recognises individuals. He urged that better use be made of electronic communications and referred to both Facebook and LinkedIn and suggested that groups be set up. He said that documents could be put on the internet and views sought on them. He agreed with the Chinese Judge and referred to the database which had been commenced by Francesco Berlingieri and recognised that there were problems with people failing to send in judgments and transactions, probably because it was too time consuming. He thought there was more that could be done perhaps by setting up an editorial board to investigate. He thought the interpretation of conventions may be a better source of work for CMI than trying to formulate rules.

Dieter Schwampe of the German MLA stressed that the CMI has no future without people. the CMI, he said, needed to take care of young CMI, essentially through National Maritime Law Associations, some of which are extremely successful. He then referred to the five Western European countries that had joined together and put on regional young maritime lawyers meetings on a rotational basis. He referred to the French, Belgian, UK and Netherlands regional meetings for young lawyers which had been meeting for the last six years extremely successfully. The next meeting is to take place in Rotterdam this year. It can be done in other regions and helps to bring young lawyers together.

The President, Karl Gombrii, then intervened and raised the issue concerning interaction between National Maritime Law Associations and State Governments. Vice President Johanne Gauthier then commented on the Canadian, US and French MLAs which included delegates from government in working committees of their national associations. She referred to the fact that the Canadian MLA had for many years had an annual meeting with government bodies. The

guidelines for new MLAs stressed the need for such interaction with government bodies. MLAs, she said, should ask themselves "what can we do better?".

In relation to the collection of jurisprudence, Benoit Goemans identified the concept which he had put before the CMI Executive, and which it was considering, to improve the database. It was pointed out that Francesco Berlingieri had for a long time complained that he was not receiving decisions from NLMAs. Although NLMAs were accustomed to reply to questionnaires they were not accustomed to sending, unprompted, decisions in their jurisdiction. It was pointed out that Francesco Berlingieri also sought a summary of such decisions and translations, from national maritime law associations.

Chris Giaschi of the Canadian Law Association said that he had set up a website with such material from his own firm as well as the Canadian MLA. He said it was very difficult to ask one person to set up such a database. It would take hundreds of hours of time. He suggested it would be better to subcontract to the National Maritime Law Associations the task of submitting material direct to the website and one person having the supervisory role within the CMI who could then vet material before it went live on to the website. He suggested that National Maritime Law Associations be given the opportunity to upload information by provision of a form which could provide a link to a decision which was searchable.

Karl Gombrii then invited delegates to look at the Canadian MLA website.

Stuart Hetherington then commented that work was underway to seek to have international conventions more widely ratified in a joint exercise with the IMO Legal Committee and the International Chamber of Shipping, which would hopefully generate greater communication and co-operation between NMLAs and their relevant government officials.

Johanne Gauthier then commented in relation to young lawyers that there was no need for separate membership for young lawyers but it was important that they be welcomed into the CMI and provided with education and the opportunity to develop their skills.

Liz Burrell of the United States MLA then referred to regional meetings and the benefit that they provide in increasing friendships and contacts and helping to understand structures and the role of government. Lowering the barriers to participation with regional meetings and developing the website should be encouraged. The US and Canadian MLAs have regular joint meetings.

A delegate from the French Maritime Law Association said that it did not make any separation between young and old members of its association but promoted young lawyers within the Association. They were encouraged to push the older members out and show that they were able to manage the Association and become titular members. He stressed that the CMI had two official languages, English and French. The rules of procedure are in English and there are

significant differences between the civil and common law systems. The French language should not be overlooked.

Karl Gombrii concluded the meeting by inviting delegates to send in further submissions to the CMI.

Stuart Hetherington
President

30 November 2012

Excerpts from CMI Constitution

Part II The Assembly

Article 4

The Assembly shall consist of all Members of the Comité Maritime International and the members of the Executive Council.

Each Member Association and each Consultative Member may be represented in the Assembly by not more than three delegates.

Article 7 - Functions

The functions of the Assembly are:

- a) To elect the Officers of the Comité Maritime International;
- b) To elect Members of and to suspend or expel Members from the Comité Maritime International;
- c) To fix the amounts of subscriptions payable by Members to the Comité Maritime International;
- d) To elect auditors;
- e) To consider and, if thought fit, approve the accounts and the budget;
- f) To consider reports of the Executive Council and to take decisions on the future activity of the Comité Maritime International;
- g) To approve the convening and decide the agenda of, and ultimately approve resolutions adopted by, International Conferences;
- h) To adopt rules governing the expulsion of Members;
- i) To adopt rules of procedure not inconsistent with the provisions of this Constitution; and
- l) To amend this Constitution.

Part III Officers

Article 14

There shall be eight Executive Councillors of the Comité Maritime International, who shall have the functions described in Article 18.

The Executive Councillors shall be elected upon individual merit, also giving due regard to balanced representation of the legal systems and geographical areas of the world characterised by the Member Associations.

Each Executive Councillor shall be elected for a term of three years, and shall be eligible for re-election for one additional term.

Article 15 Nominating Committee

A Nominating Committee shall be established for the purpose of nominating individuals for election to any office of the Comité Maritime International.

The Nominating Committee shall consist of:

- a) A chairman, who shall have a casting vote where the votes are otherwise equally divided, and who shall be elected by the Executive Council,
- b) The President and past Presidents,
- c) One member elected by the Vice-Presidents, and
- d) One member elected by the Executive Councillors.

Notwithstanding the foregoing paragraph, no person who is a candidate for office may serve as a member of the Nominating Committee during consideration of nominations to the office for which he is a candidate.

On behalf of the Nominating Committee, the chairman shall first determine whether any officers eligible for re-election are available to serve for an additional term. He shall then solicit the views of the Member Associations concerning candidates for nomination. The Nominating Committee shall then make nominations, taking such views into account.

Following the decisions of the Nominating Committee, the chairman shall forward its nominations to the Administrator in ample time for distribution not less than ninety days before the annual meeting of the Assembly at which nominees are to be elected.

Member Associations may make nominations for election to any office independently of the Nominating Committee, provided such nominations are forwarded to the Administrator in writing not less than three working days before the annual meeting of the Assembly at which nominees are to be elected.

The Executive Council may make nominations for election to the offices of Secretary-General, Treasurer and/or Administrator. Such nominations shall be forwarded to the chairman of the Nominating Committee at least one-hundred twenty days before the annual meeting of the Assembly at which nominees are to be elected.

Part IV Executive Council

Article 18 Functions

The functions of the Executive Council are:

- a) To receive and review reports concerning contact with:
 - (i) The Member Associations,
 - (ii) The CMI Charitable Trust, and
 - (iii) International organizations;
- b) To review documents and/or studies intended for:
 - (i) The Assembly,
 - (ii) The Member Associations, relating to the work of the Comité Maritime International or otherwise advising them of developments, and
 - (iii) International organizations, informing them of the views of the Comité Maritime International on relevant subjects;
- c) To initiate new work within the object of the Comité Maritime International, to establish Standing Committees, International Sub-Committees and Working Groups to

undertake such work, to appoint Chairmen, Deputy Chairmen and Rapporteurs for such bodies, and to supervise their work;

d) To initiate and to appoint persons to carry out by other methods any particular work appropriate to further the object of the Comité Maritime International;

e) To encourage and facilitate the recruitment of new members of the Comité Maritime International;

f) To oversee the finances of the Comité Maritime International and to appoint an Audit Committee;

g) To make interim appointments, if necessary, to the offices of Secretary-General, Treasurer and Administrator;

h) To nominate, for election by the Assembly, independent auditors of the annual financial statements prepared by the Treasurer and/or the accounts of the Comité Maritime International, and to make interim appointments of such auditors if necessary;

i) To review and approve proposals for publications of the Comité Maritime International;

j) To set the dates and places of its own meetings and, subject to Article 5, of the meetings of the Assembly, and of Seminars and Colloquia convened by the Comité Maritime International;

k) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars and Colloquia convened by the Comité Maritime International;

l) To carry into effect the decisions of the Assembly;

m) To report to the Assembly on the work done and on the initiatives adopted.

The Executive Council may establish its own Committees and Working Groups, and delegate to them such portions of its work as it deems suitable. Reports of such Committees and Working Groups shall be submitted to the Executive Council and to no other body.