

# **Report on the Future of the CMI**

presented to Stuart Hetherington, President of the CMI

on 23 October 2018

from a Task Force with the following members:

*Stephen Knudtson (chair),*

*Jesús Casas,*

*Edmund Sweetman*

and

*Harold Watson*

1	BACKGROUND AND MANDATE .....	4
1.1	The Antwerp conference (1997).....	4
1.2	The Beijing conference (2012).....	4
1.3	The original mandate and establishment of the Ad Hoc Committee on the Role of the CMI and its' report with update at the Hamburg conference in June 2014. ....	5
1.4	The report from the Ad Hoc Committee at the New York conference in March 2016 .....	7
1.5	The discussions at the New York conference (2016) .....	11
1.6	The Genoa conference (2017) .....	11
1.7	The work in the Task Force .....	12
1.8	Recommendations .....	12
2	SOME OBSERVATIONS IN RESPECT OF THE CMI .....	12
2.1	Our mandate.....	12
2.2	Members of the CMI (see articles 3 to 7 of the Constitution) .....	13
2.3	The active individuals in the CMI.....	13
2.4	The "outside world" the CMI is interacting with.....	14
3	IDEAS AND REFLECTIONS ON VARIOUS SUBJECTS .....	17
3.1	Format and duration of conferences and meetings organized by the CMI .....	17
3.1.1	Conferences, Colloquia and Symposia and the Guidelines for such .....	17
3.1.1.1	Format and duration of Annual Meetings - recommendations .....	17
3.1.1.2	Frequency of meetings – recommendations .....	18
3.1.1.3	Location of Annual Meetings and local contribution - recommendations .....	19
3.1.1.4	Objectives of the Annual Meetings – recommendations .....	19
3.1.1.5	Regional meetings – recommendations .....	19
3.1.1.6	Importance of social events and time for networking - recommendations .....	20
3.1.1.7	Learning from other organizations .....	20
3.1.1.8	Credits for education time .....	20
3.1.2	ExCo , Committee and Working Group Meetings .....	20
3.1.2.1	The Executive Council (Exco).....	20
3.1.2.2	International Working Groups, Standing Committees and Ad hoc Committees.....	21
3.1.2.3	The Future of the CMI Organization of these IWGs and Committees.....	22
3.2	Relations with international, governmental and other maritime agencies or legal groups or entities – and the role of the CMI in preparing legislation .....	22
3.2.1	Introduction.....	22
3.2.2	The IMO Legal Committee.....	22
3.2.3	The IOPC Funds.....	24
3.2.4	The role of the CMI in producing conventions .....	24
3.2.5	The role of the CMI in promoting soft law .....	25
3.2.6	Promoting ratification of maritime conventions .....	26
3.2.7	CML CMI Database of Judicial Decisions on International Conventions .....	26
3.2.8	The York Antwerp Rules .....	27
3.2.9	The use of questionnaires .....	27
3.2.10	Conclusions and recommendations .....	27

3.3	Publications and website .....	28
3.3.1	Digital publication .....	28
3.3.2	The CMI website.....	28
3.3.3	Information found on the website .....	29
3.3.4	Details and information about NMLAs and their members .....	30
3.3.5	Contact with the members of the NMLAs .....	30
3.3.6	Status of Conventions .....	31
3.3.7	Links to other organizations and information .....	31
3.3.8	Interactive use of the website .....	31
3.3.9	Communication on Linked-In in and other social media .....	32
3.3.10	Brochures.....	32
3.4	Governance.....	32
3.4.1	The role and operation of the Executive Council (ExCo) .....	32
3.4.2	The day to day management of the CMI .....	33
3.4.3	Role of NMLAs in governance .....	33
3.4.4	The composition and work in the IWGs.....	33
3.4.5	Work in the Committees .....	34
3.4.6	Titulary Members.....	34
3.4.7	IMLI.....	35
3.5	Finances .....	35
3.5.1	Introduction.....	35
3.5.2	Comments on the accounts for 2016 and 2017.....	35
3.5.3	Investment policy .....	36
3.5.4	Charitable Trust and Albert Lilar Foundation.....	36
3.5.5	Recommendations .....	37
3.6	Communication and transparency .....	37
3.7	Increase awareness of the CMI's capabilities .....	37
3.8	The Increased involvement of younger lawyers – Young CMI.....	39
3.8.1	The organization of Young CMI .....	39
3.8.2	Ideas on how to increase awareness and participation from young practitioners .....	39
3.8.3	Age limit.....	40
3.9	New and old functions of the CMI.....	40

## **Report on the Future of the CMI**

from a Task Force with the following members:

Stephen Knudtzon (chair), Jesús Casas, Edmund Sweetman and Harold Watson

### **1 BACKGROUND AND MANDATE**

#### **1.1 The Antwerp conference (1997)**

The CMI's working methods and focus were discussed at the CMI Centenary Conference in Antwerp in 1997 and studied by a Steering Committee set up by the Executive Council in 2007. The Steering Committee consulted the NMLAs through comprehensive questionnaires<sup>1</sup>. Several of the resulting recommendations<sup>2</sup> produced very positive outcomes, like the transformation of the website and greatly increased presence of Young CMI, both on line and in person. The Steering Committee's report also was responsible for substantial discounts on subscriptions, elimination of dues for titular members, reduction of Executive Councillors' terms from four to three years, and efforts to develop better communication with NMLAs and to encourage and assist in the creation of new NMLAs (India, Egypt, Poland, Indonesia, Honduras, Kenya and Malaysia). Current Work Projects and the Future Work Program also were shaped by the NMLA responses indicating an interest in projects involving commercial and insurance issues that come up regularly in practice.

#### **1.2 The Beijing conference (2012)**

These efforts were followed by a session at the October 2012 Beijing Conference chaired by President Karl Johan Gombrii at which the NMLAs were invited to express their views on all aspects of the CMI. In preparation for the discussion, President Gombrii circulated a paper describing the earlier efforts to perpetuate the CMI's vigour in a changed world (Attachment 1 to this Report).

Some of the statements in the report are reflected in the following summary:

Some NMLAs have special arrangements for reduced fees for younger members. Some Northern European countries participate in annual regional meetings of their young lawyers with topical issues being discussed. For example, the 2011 meeting in London included a shipping mediation workshop and a case study and panel discussion on legal issues arising out of piracy. Some provide financial support to students studying maritime law. Some have close working relationships with Government, including having government employees on their Board or Executive Council. Some have regular annual conferences and raise additional funds from their annual subscriptions from hosting such events. Some obtain sponsorship for such events.

Other NMLAs organise purely social events for their membership. Some do not hold any functions or seminars. Some include other organizations in the shipping or insurance industries as members. Some, such as certain members of the South American NMLAs belong to other organizations such as Instituto Ibero Americano de Derecho Marítimo (IIDM)<sup>3</sup>. Some publish their own journals and newsletters. Some operate through standing committees.

---

<sup>1</sup> The questionnaire can be found as Annex 1 to Attachment 1 of this Report, see documents presented at the Beijing Conference – section 1.2 below.

<sup>2</sup> Annex 2 to the same Attachment 1 of this Report identifies concerns raised at the time of the Antwerp Conference and comments on subsequent developments prior to the Beijing conference in bold types.

<sup>3</sup> The NMLAs of Latin American Countries, however, are not members of the IIDM, see its Website.

About a third of the NMLAs who responded do not raise funds other than by way of subscriptions. Of the rest, apart from raising funds from seminars or conferences some obtain donations for particular expenditure and some from sponsorship.

A wide variety of methods of work within NMLAs was evident from the responses to the questionnaire. Some, such as the US MLA have Standing Committees which are much broader than the CMI IWGs, others only set up working groups for specific purposes, such as responding to questionnaires or preparing for Conferences and Colloquia. Very few had any formal arrangements with government bodies. The Netherlands has seats on its Executive Board reserved for representatives of the Ministry of Justice, Ministry of Transport, Public Works and Water Management.

**1.3 The original mandate and establishment of the Ad Hoc Committee on the Role of the CMI and its’ report with update at the Hamburg conference in June 2014.**

Following the CMI meeting in Beijing in October 2012 the Ad Hoc Committee on the Role of the CMI was established (the "Committee") in 2013. The background for and the composition of the Committee appears from the below report dated 5 June 2014 submitted in advance of the CMI conference in Hamburg in June 2014:

**"Introduction**

The Working Group is presently composed of the following individuals:

Diego Esteban Chami	Argentina
The Honorable Johanne Gauthier	Canada
Iannis Markianos-Daniolos	Greece
Stephen Knudtzon	Norway
John Markianos-Daniolos	Greece
Karel Stes	Belgium
Yingying Zou	China
Lizabeth L. Burrell	Chair, USA

At the meeting in Beijing in October 2012, President Gombrii scheduled a session during which the NMLAs could express their views on all aspects of the future of the CMI. In preparation for the discussion, President Gombrii circulated a paper (Attachment 1) describing efforts to perpetuate the CMI’s performance of its vital role in harmonizing maritime law in a world vastly different from that in which the CMI was born. These efforts included as a session at the CMI’s Centenary Conference in 1997 devoted to the CMI’s future and the appointment in 2007 of a Steering Committee to gather responses from NMLAs about their views on the role of the CMI and its governance and activities. The discussion in Beijing was expressly intended to provide "an opportunity for NMLAs to comment on any matters relating to the workings of CMI and its relationship with NMLAs".

After the Beijing meeting, President Hetherington drafted a paper summarizing that discussion (Attachment 2) and appointed this Working Group to examine the current workings and activities of the CMI and to make recommendations to maintain the strength of the CMI.

The WG has met by teleconference on seven occasions. Among the items we are considering are:

- How the CMI might further its primary goal of promoting uniformity of maritime law internationally in today's legal environment.
- The role of the CMI vis-à-vis promoting new conventions and "soft" law, as well as encouraging the ratification of conventions.
- How the CMI can better communicate the work it is doing and has already done to both its members and the world in general.
- How to accommodate the differences among and find common benefits for NMLAs that are each unique in their structure, operating methods, and styles and that operate in unique legal environments.
- How to strengthen the bond between the CMI and the NMLAs.
- How to harness CMI resources to benefit all the interests related to the shipping industry.
- How to determine the work and projects that will be undertaken.
- How to enhance the relationships between the CMI and other international organizations.
- How to make best use of the body of expertise found among the participants.
- How to encourage the participation of young lawyers.
- The number, length, and character of meetings.
- How to foster general participation in an increasingly cost- and time-conscious era in legal practice.
- How to make the CMI a rich and continuing source of networking.
- How the CMI can support its activities, whatever they may be, going forward.

As is evident from the number and character of the issues to be addressed — and of course, there are others as well — the Working Group is still in the throes of its deliberations and is currently examining ways to collect input from CMI members. Therefore, at this stage, the Working Group is not yet in a position to make any substantive recommendations.

Respectfully submitted this 5th day of June 2014.  
Working Group on the Role of the CMI  
Lizabeth L. Burrell, Chair"

#### **1.4 The report from the Ad Hoc Committee at the New York conference in March 2016**

Some of the members of the Committee met for a working session at the CMI conference in Istanbul in June 2015.

A new report was submitted by the Committee in March 2016 in preparation of the CMI conference in New York, from which the following is quoted:

"Like many other venerable organizations, the CMI has had to meet the challenge of maintaining its traditions, values, and purpose in a world that has changed radically over the last century and at accelerating rate. The CMI has responded to this challenge by concerted efforts to develop new ways to accomplish its mission, some of which have been strikingly successful, as in the vigour of Young CMI. Beyond the challenges shared by other organizations, the CMI faces the difficulty of accommodating the diversity of its constituent members. CMI's willingness to embrace differences among its members as sources of strength is demonstrated in the novel structure and content of the upcoming joint meeting with MLAUS in New York, which honors MLAUS's characteristic customs and values.

#### **Current Endeavour**

This Working Group was formed to make recommendations that will assist the CMI in maintaining the vitality and stature it has enjoyed since its founding. We have had several telephonic meetings and an in-person meeting in Istanbul in June 2015.

The achievement of our objectives requires consideration of how the CMI should direct its resources and to seek ways of providing value to members as disparate in form, function, and size as the constituent NMLAs. In the course of our study, we will consider the following issues:

Whom do we wish to attract as participants in CMI activities? Should we attempt to involve more:

- Academics
- Judges
- Practicing maritime lawyers
- Lawyers in insurance-related entities
- Lawyers in national or international industry associations
- Lawyers working in finance institutions
- Lawyers in classification societies
- Maritime arbitrators
- Lawyers in government and intergovernmental organizations

#### *1 Meetings*

- Number and timing
- Location

- Should there be regional meetings?
- Format and duration

Lawyers find it increasingly difficult to sacrifice billable hours and incur travel expenditures without providing a concrete (financial) reward to their firms.

- Balance of substantive and social events
- How to attract attendance when other groups compete (The Maritime and Transport Group of the IBA): Should the CMI cooperate or coordinate its meetings with other organizations or events?

2 *Relations with international, governmental and other maritime or legal groups or entities (IMO, IOPC Fund, UNCITRAL and other UN branches, WTO, EMSA)*

3 *Publications*

4 *Work program: How to allocate resources?*

- What has been learned from recent projects on Places of Refuge, Recognition of Judicial Sales, Criminalization of Seafarers?
- Who decides what projects to undertake?
- What resources can be called upon to accomplish projects in an association of volunteers?
- To what extent should CMI be involved in treaty/convention drafting, and if so, on its own initiative or in cooperation with other organizations (primarily IMO, UN branches)
- To what extent should CMI be involved in trying to promote ratification of conventions
- To what extent CMI should direct itself towards international unification of private agreements, such as YAR, Rotterdam Rules
- Assisting other organizations that promote standardized agreements (e.g. BIMCO, Intertanko, Lloyds)
- Scholarship and database on conventions and decisions
- Composition of working groups
- Working group methodology

5 *Use of the website*

- to promote participation and to move projects forward
- to foster communications among member organizations
- to involve younger members
- to generate public interest in the CMI

6 *Governance*

- Role and operation of the ExCo
- Role of NMLAs in governance
- Leadership positions and turnover

7 *Finances*

- Dues
- Reserves
- Events

8 *Communication and transparency, especially to increase awareness of the CMI's capabilities and activities*

9 *Increasing the involvement of younger lawyers*

The Committee members have had preliminary discussions of many of these subjects.

All agree on the value and importance of the CMI's mission of unification and there appears to be general agreement on the following goals and strengths:

- The CMI needs to achieve greater visibility, especially to increase awareness of the CMI's accomplishments;
- More communication is required between the ExCo and the NMLAs;
- The CMI is a valuable forum for learning and exchange among lawyers from different nations;
- The CMI is a wide and deep reservoir of expert legal knowledge, and has the potential to become a primary source of scholarship and research materials on international maritime law, particularly as a database for international conventions, their status, and judicial decisions interpreting them; and
- The CMI should consider devising more soft law rules.

We will develop specific recommendations based on these goals and strengths.

Nevertheless, there remain substantial differences in opinion about how the CMI should use its human and financial resources centring on how to effect its mission and the relative roles of the NMLAs and the ExCo. Some are matters of truly opposing views; others are matters of degree:

10 *The extent to which resources should continue to be devoted to drafting and/or promoting the ratification of instruments*

Some believe that CMI's role in drafting and/or promoting the ratification of conventions should be significantly reduced or revised, with its activities restricted to assisting IMO or other governmental entities when requested. Most doubt that CMI can be an effective "lobbying" organization for the ratification of conventions.

Many advocate redirecting CMI's unification efforts towards "soft" law, persuasive scholarship, or other means suited to the talents of active members and more likely to be used.

## 11 *Fixing priorities*

Some questioned the utility and quality of recent products, particularly those that have languished, and have suggested that the NMLAs should play a greater role in deciding what work to pursue.

Many consider it valuable to include new "branch" areas of law within the CMI's ken.

- The degree to which CMI should develop new and existing relationships with IMO, other UN agencies, and other governmental or quasigovernmental entities, and what type of role to play in these organizations

The degree to which CMI should cultivate relationships with industry groups (e.g., BIMCO, IUMI) and stakeholders (e.g., shipowners, terminal operators, agents, brokers, forwarders, financiers)

- What kind of support can be expected from NMLAs?
- What degree of recognition, if any, should be given to the differences among the NMLAs?

Should CMI attempt to provide a basket of benefits or be content to focus on a core, with the risk that support may be lost or diminished?

- How the work is accomplished: Working groups or standing committees or both?
- Meeting frequency and format
- The relationship and relative power of ExCo and NMLAs in matters of
  - Work program and its execution
  - Insiders/outsideers
  - Elections

Making intelligent decisions about the CMI's activities and management requires extensive knowledge and considered deliberation. Substantial time and financial commitments are required to acquire that knowledge and reach wise decisions.

ExCo members have made those commitments. Should NMLAs be entrusted with important matters if they are not prepared to devote the resources and develop the knowledge necessary to guide the CMI's path successfully?

On the other hand, if NMLAs do not play a significant role in shaping the direction and functioning of the CMI or see a prospect of doing so, there is little motivation to become deeply informed. Moreover, regardless of their desire to do so, the ability of NMLAs to participate in person may be constrained by financial limitations or competing commitments to its members.

There are excellent reasons for differing positions. We will attempt to reach consensus on all issues hope that our diversity will produce recommendations likely to be accepted by both the ExCo and NMLAs.

## **Request for Input**

We thank President Hetherington and Secretary General Hare for accommodating our request to meet with the NMLA presidents in New York during the May 2016 Conference in order to have the benefit of their views. The discussion will take place at the usual Presidents' breakfast, which will be hosted by MLAUS President Bob Clyne, on Thursday 5 May from 7:30 to 8:30 a.m. Of course, the meeting will be short and there will be many in attendance so we will follow up with a questionnaire, which will allow the NMLAs to comment generally on the issues being considered by this Committee. We ask the NMLA presidents consider their comments very carefully beforehand, to limit their remarks to a single subject, and to take just a few minutes because of the severe time constraints.

Respectfully submitted this 29th day of March 2016  
Ad Hoc Committee on the Role of the CMI  
Lizabeth L. Burrell, Chair"

### **1.5 The discussions at the New York conference (2016)**

The minutes from the ExCo meeting on 3 May 2016 reflect the following:

*"Correspondence between Liz Burrell and the Presidents of MLAs was tabled and duly noted. The President reported that Ms Burrell would be meeting with NMLA Presidents at the breakfast to be hosted by MLAUS President Bob Clyne later this week, and encouraged MLA Presidents to participate."*

The following is reflected in the minutes of the Assembly Meeting on 6 May 2016:

*"Ms Liz Burrell, chair of this Committee and member of the Planning Committee of the New York Conference, submitted her report to the Assembly. This report will be made available to NMLAs on the CMI website in due course as it is of fundamental importance to the CMI. Ms Burrell was able to address and hear input from the NMLA Presidents attending the New York conference at a working breakfast, hosted by the MLAUS. She reported that this was a lively and useful exchange, the import of which will be carried further into her continuing work with this Committee. The following goals and strengths could be identified at this time:*

- The CMI needs to achieve greater visibility, especially to increase awareness of the CMI's accomplishments;*
- More communication is required between the EXCO and the NMLAs;*
- The CMI is a valuable forum for learning and exchange among lawyers from different nations;*
- The CMI is a wide and deep reservoir of expert legal knowledge and has the potential to become a primary source of scholarship and research materials on international maritime law, particularly as a database of international conventions, their status and judicial decisions interpreting them; and*
- The CMI should consider developing more soft law rules.*

*The Committee would continue to develop specific recommendations based on these goals and strengths."*

### **1.6 The Genoa conference (2017)**

At the Genoa conference it became apparent that the Ad Hoc Committee had not had any further meetings since the New York conference in 2016 and it was decided to establish the current Task Force ("Task Force") to complete the work that the Committee had initiated.

The Task Force was appointed by Stuart Hetherington, the President of the CMI with the following members: Stephen Knudtson (chair), Jesús Casas, Edmund Sweetman and Harold Watson.

### **1.7 The work in the Task Force**

The Task Force has had monthly telephone conferences in the period from September 2017 until April 2018. Minutes from these telephone conferences were reflected in a "Master Document" that was updated.

The Task Force decided to address the same issues as were set out in the above referenced report from the Committee in March 2016.

None of the members of the Task Force have held positions in the governing bodies of the CMI, and therefore lack in depth knowledge of how the day to day work and all the tasks in the CMI is performed and followed up. The members of the Task Force only have experience as chairmen or members of the board of their respective NMLAs. It was therefore felt that there was a need to interview individuals that have experience from the work in the CMI.

In May 2018 the work in the Task Force had reached a stage, where it was felt that the time had come to interview individuals and for the Task Force to meet physically.

The members of the Task Force met in London for a two-day session on the 10<sup>th</sup> and 11<sup>th</sup> May 2018. Before this meeting the Task Force had prepared a questionnaire to be submitted to the persons to be interviewed. In London the Task Force had the opportunity to meet with Patrick Griggs.

The interviews were followed up before and after the summer vacations in 2018. The following persons have been interviewed, either by all or some of the members of the Task Force:

Patrick Griggs, Stuart Hetherington, K. Blythe Daly, Giorgio and Andrea Berlingieri, Karl Johan Gombrii, John Hare, Rosalie Balkin and Taco van der Valk.

Some interviews have taken place in physical meetings, but mostly in telephone conferences.

The Task Force has not requested written statements from those interviewed, and has encouraged all to frankly state their views. These views are used as input to our assessment below, without reference to any source. The Task Force would express sincere thanks to all persons interviewed for their frank cooperation, which is considered very valuable.

### **1.8 Recommendations**

The Task force has decided not to make any strong recommendations, but to propose ideas and to express some reflections on what has been good and not so good for the CMI.

ExCo should consider how to treat the recommendations below. One suggestion could be to consider whether it is appropriate to send out a new questionnaire, since it is 10 years since the Steering Committee sought comments from the NMLAs on similar issues in 2008.

## **2 SOME OBSERVATIONS IN RESPECT OF THE CMI**

### **2.1 Our mandate**

The Task Force has reflected on the scope of its task and inquiries connected with that, i.e., to what aspects of the CMI should the Task Force address itself? The name of the original Ad Hoc Committee indicates that it should focus on the "role" of the CMI and we should certainly

explore whether there are new functions to be taken up or traditional ones that need redirection.

We will therefore shortly first describe and reflect on who are the members of the CMI and what professional background the active individuals have (see section 2.2 and 2.3 below).

## **2.2 Members of the CMI** (see articles 3 to 7 of the Constitution)

The Voting Members of the CMI are the National Maritime Law Associations ("**NMLAs**") who are admitted as members to the CMI and have the voting rights at the Assembly (Voting Members). The members of the NMLAs are not direct members of the CMI, but in principle represent the active contributors to the CMI, having for example been elected as officers, members of Working Groups or delegates or attendees at CMI conferences. Almost all the work of these individuals is done as volunteers and only with a few exceptions a modest salary is paid for functions such as that of the Secretary General. Members of ExCo are only paid their travelling expenses.

It is estimated that the members in the NMLAs comprise approx. 8.000 – 10.000 individuals in total. The biggest NMLA is in USA (MLAUS) with approx. 2.600 – 2.700 members, compared to for example Canada with approx. 300 – 350 members, Spain 183 members, Ireland approx. 130 members, Norway 101 personal members and 22 corporate members<sup>4</sup>), just to name the jurisdictions of the Task Force members.

The CMI currently has seven Members Honoris Causa and three Honorary Officers elected for outstanding services to the CMI in the past.

The CMI has 26 Consultative Members, which includes for example: IMO, BIMCO, IACS, IOPC, IUMI and Intertanko.<sup>5</sup>

Nationals from states, where there is no NMLA, can be elected Provisional Members.

The CMI has also a number of Titulary Members of a honorary nature, individuals proposed by their respective NMLAs for their services to the CMI and/or to their services rendered in legal or maritime affairs in furtherance of international uniformity of maritime law or related commercial services.<sup>6</sup>

It follows from the above that the CMI is mainly an "umbrella organization" for NMLAs, with no rights for individuals to exercise voting rights other than on behalf of their respective NMLA, which in turn sustain the CMI by paying in as much as approx. 95% of its' yearly income.

## **2.3 The active individuals in the CMI**

The active individuals in the CMI are mainly the members in the respective NMLAs and the representatives from the Consultative Members. Most of these NMLA members will be maritime lawyers or individuals with a marine insurance background. To illustrate the diversity of the individuals, the Task Force has set out some examples of the varying professional background of these individuals:

- Academic lawyers working at universities

---

<sup>4</sup> The number of personal members has declined from above 200 members 10 years ago to this lower figure, because all lawyers in a corporate member have the same rights to attend meetings of Sjørettsforeningen, as the personal members.

<sup>5</sup> For more details see <http://comitemaritime.org/national-maritime-law-association/>.

<sup>6</sup> For more details see <http://comitemaritimeorg.webhosting.be/members/titulary-members/>

- Judges
- Practicing maritime lawyers working in law-firms or in their own offices as in-house counsel to shipping companies
- Lawyers in insurance companies – Hull, P & I; War Risk and FD & D
- Lawyers in national shipowners associations
- Lawyers working in banks and other finance institutions
- Lawyers in classification societies – DNV GL, Lloyds, Bureau Veritas, ABS etc
- Maritime arbitrators
- Lawyers in government offices and intergovernmental organizations like IMO, IOPC Fund and the EU;
- Lawyers in non-governmental organizations like BIMCO, INTERTANKO, INTERCARGO, IG (P & I), IACS, ICS, IUMI, OCIMF and ECSA

This variety is both a benefit, providing a broad expertise base, and a challenge, when choosing subjects of interest to such a broad spectrum.

Some of the experienced persons interviewed by the Task Force pointed out that the CMI is open to the participation of non-lawyers and some NMLAs admit as members other associations, companies and other professionals from their respective maritime sectors.

#### **2.4 The "outside world" the CMI is interacting with**

The CMI interacts with a great number of international, governmental and other maritime or legal entities and groups.

To illustrate the variety of these entities the Task Force has chosen to divide them into the following categories:

- a) Government and international agencies that are "lawmakers" or produce conventions
- b) Organizations that represent certain interests
- c) Organizations that hold conferences that are also attended by CMI or NMLA members

##### Ad a): Government and international agencies that are "lawmakers" or produce conventions

The following stand out as examples within this category:

- IMO – all regulatory requirements for vessels, such as SOLAS and MARPOL

- UN – for example in respect of "UNCLOS"<sup>7</sup>
- IOPC Fund – produces guidelines for compensation following oil spills from tanker vessels
- UNCITRAL – for example in respect of the "Rotterdam Rules"
- UNIDROIT
- WTO
- EMSA
- ILO – producing work environment and employment conditions for seafarers
- EU – DG Transport, Shipping and Environmental, EMSA, DG Mare
- Ministries and Shipping Directorates in various countries – for example MSA (Maritime Shipping Authority) in Singapore and the FMC (Federal Maritime Commission) in the US
- UNCTAD
- HCCH - The Hague Conference

As far as we know the only formalized relationship the CMI has with any of the above organizations is an observer from the CMI with NGO status in the IMO. As mentioned above a representative from a ministry has a seat on the board of the NMLA in The Netherlands, and although not formalized the same has applied in Norway with a representative from Ministry of Justice in charge of preparing maritime legislation. There is a so called "EU Representative" in the meetings of the CMI but we have not identified to what extent he (Dr. Vincent Power) is an actual formal representative of the EU Institutions before the CMI. He has no mandate to represent the CMI before those Institutions.

The Task force will address the law-making role of the CMI below in section 3.2.

---

<sup>7</sup> Some of the interviewed persons noted that the CMI should not be afraid of analyzing the Law of the Sea in addition to Shipping or Maritime law. We have identified no international association playing the same role on the Law of the Sea as the CMI does in Maritime Law.

Ad b): Organizations that represent certain interests

As examples of such organizations are:

- IACS – International Association of Classification Societies
- ICS – International Chamber of Shipping (the forum for the Shipowners Association)
- Intertanko – representing tankervessel owners
- Intercargo – representing dry cargo vessel owners
- International Group of P & I Clubs
- IUMI – International Union of Marine Insurers
- FONASBA – representing the shipbrokers
- BIMCO – the world's largest international shipping association, with around 2,000 members in more than 120 countries, which includes shipowners, operators, managers, brokers and agents
- NSA - Norwegian Shipbrokers Association
- ISU – International Salvage Union
- ITF – International Transport Federation and other seaman organizations
- CEFOR – representing the Nordic marine insurers

Some of these organizations produce standard documents that are widely used, such as BIMCO in respect of charter parties and various charter party clauses, NSA in respect of the Norwegian Salesform, and CEFOR in respect of the Nordic Marine Insurance Plan.

The CMI has no clear role in these organizations, but should be interested in following the work done in these organisations. Conversely many of these organizations are Consultative Members of the CMI and play an active role, for example in connection with the various revisions of the YAR (York Antwerp Rules) – where the ICS and IUMI strongly advocated their respective views.

Ad c): Organisations that hold conferences that are attended by NMLA members

There are a large number of other organizations that hold conferences that are attended by NMLA members. Because the time available for those interested to attend conferences is limited, the CMI will have to "compete" with these other organizations for attendees.

Examples of such other organizations and conferences are:

- IUMI – that organizes yearly conferences for its members from marine underwriters – expensive conferences, with an impressive program and large attendance, held in all parts of the world, and with limited access for maritime lawyers
- IBA (International Bar Association) has a Maritime and Transport Law Committee that produces regular publications and sessions at the yearly IBA conference

- Scandinavian Maritime Institute at the University of Oslo holds up to 8 seminars in Oslo, "competing" with the Norwegian NMLA, and these seminars are well attended also by maritime lawyers from Denmark, Sweden, Finland and Island. Every 4<sup>th</sup> year a Scandinavian conference is held, with rotating venues within Scandinavia. These seminars to a large extent make regional meetings between the Nordic NMLAs superfluous.
- University of Southampton.
- Tulane University.
- The Federal Court in Australia holds periodic seminars which are broadcasted via video-link around the various State capital cities.

It should be mentioned that some of the above organizations listed in a), b) and c) are Consultative members that attend the CMI conferences regularly.

### **3 IDEAS AND REFLECTIONS ON VARIOUS SUBJECTS**

#### **3.1 Format and duration of conferences and meetings organized by the CMI**

##### *3.1.1 Conferences, Colloquia and Symposia and the Guidelines for such*

This issue has to be analysed according to the kind of meeting being considered.

The CMI has a fairly rigid system with Guidelines for organising each of Conferences, Colloquia and Symposia<sup>8</sup>, referred to collectively as the "**Annual Meetings**").

- **Conferences** are supposed to run from Monday to Friday, be able to accommodate at least 350 - 450 delegates, with 150 accompanying persons, and the registration fees should generate at least USD 20,000 in profits to be split 50/50 between the arranging NMLA and the CMI.
- **Colloquia** are supposed to run from Monday to Wednesday, with capacity for at least 250 delegates including accompanying persons, and the registration fees should generate a modest surplus to be split 50/50 between the arranging NMLA and the CMI.
- **Symposia** would typically last for 1 – 2 days, with capacity for at least 250 delegates including accompanying persons, and the registration fees should generate a modest surplus to be split 50/50 between the arranging NMLA and the CMI.

The Guidelines are non-binding, but seem to contain good practical advice reflecting many years of experience. The New York conference (2017) deviated substantially from the Guidelines, with only two days of meetings. There are certain aspects that the Task Force would like to comment on below.

The Guidelines all suggest that an ExCo meeting is held in connection with the Annual Meetings. It seems sensible that this is done the day before the official start of the Annual Meetings.

##### **3.1.1.1 Format and duration of Annual Meetings - recommendations**

- The Task Force thinks it makes sense to hold the CMI Assembly on the last day of the Annual Meetings, or the day after the end of the substantive program, but does not agree that sessions with presentations are held in parallel with the Assembly. In Genova (2017) the

---

<sup>8</sup> See for details: <http://comitemaritime.org/governance/rules-constitution-guidelines/guidelines/>

sessions prepared by Young CMI were held at the same time as the Assembly. We recognize that the lectures and discussions are recorded and may subsequently be viewed online, but this is no substitute for attending the sessions and most of the delegates interested in the subject would probably read the papers of special interest to him or her anyway, when published in the Yearbook after the Annual Meetings. We consider it an improvement that in London (2018) the session organised by the Young CMI is held the day before the Assembly.

- In the view of the Task Force it would make more sense that the meeting between the President and other ExCo members and the various presidents of the NMLAs is held at the end of the conference, allowing for a dinner with a smaller group consisting of those who want to stay over or are attending the Assembly meeting on the subsequent day. While we recognize that the Assembly is an important part of the Annual Meetings, the number of persons actually attending is limited, although the previous restriction that each NMLA could only be represented by 3 delegates at the Assembly no longer applies.
- The internet and requirement to be available via email, creates an expectation that all professionals should attend urgent matters even when away from the office attending conferences. Many fee earners complain that they cannot be away for more than a couple of days if they have to meet requirements in respect of billable hours. Fee earners have to be able to show results from non-billable marketing events, in the form of new cases and assignments being acquired on the basis of "referrals". It has become normal that young couples both pursue professional careers. When they have small or younger children, this restricts travelling over weekends and for long periods. Another feature that has been referred to, is that junior lawyers in sectors other than law firms are "competing" with their seniors for the funding to participate in meetings, due to cutbacks or limited resources in government agencies and other organizations (such as insurance companies).
- On the other hand, there are participants who may use the opportunity to bring their spouses to an interesting place and a social program that both can attend. It is therefore appreciated that there is a program for spouses during conference days, and a social program that both the delegates and their partners can attend together. It is recommended that the social program which includes both the delegates and their partners, should take place during the weekend before or after the Annual Meetings.
- The Task Force therefore recommends that the Annual Meetings do not have a duration of more than 2 – 3 days (excluding the ExCo and Assembly days).
- It is also recommended that the formal dinner is held on the second last day of the substantive program, to allow delegates to return home once that ends.
- The program should be as flexible as possible to cater for these conflicting priorities. The social program could therefore for example be at the start or end of the conference.

#### 3.1.1.2 Frequency of meetings – recommendations

- The Task force recognizes that there is no scope for holding more than one "big" meeting per year (the Annual Meeting), except when there is a meeting designated to one sole subject, at the occasion of which an ad hoc meeting can be organized, such as the recent meeting in Malta to discuss the subject of the "Recognition of Judicial Sales". These smaller conferences may be successful, and local NMLAs willing to organize such meetings should be encouraged to do so. Invitations to such meetings can be extended and result in participation from representatives from International or Governmental bodies interested in the topics to be discussed or the law and soft law promoted by the CMI.

#### 3.1.1.3 Location of Annual Meetings and local contribution - recommendations

- The Task Force recommends that the Annual Meetings continue to be located in all parts of the world and rotate between the continents.
- It is recognized that the NMLA in charge of organizing Annual Meetings has a heavy burden both administrative and financial. This burden should alternate between the NMLAs. The Task Force also realizes that the ability and access to raising funds from potential sponsors varies in different parts of the world. The ambitions should therefore be adjusted to what is realistic.
- The Task Force also recognizes the need for a substantive local content in the program, both in order to attract local delegates and to give the organizing NMLA an opportunity to present itself and address matters of local interest. There should be a balance with subjects of international interest and speakers from other parts of the world.

#### 3.1.1.4 Objectives of the Annual Meetings – recommendations

- The objective of the Annual Meetings should be to provide for a program that attracts, as much as possible, the interest of as many of the constituent members of the various NMLAs. Lessons can be learned from other organizations organizing conferences. The Maritime and Transport Group of the IBA focuses on issues of interest to practicing lawyers, which include "new" subjects like competition law in the maritime sector or "hot" international issues as done in Genoa (2016) with a bankruptcy in the bunker sector (OW Bunkers) and the Cybercrime journalists issue and Costa Concordia salvage in New York (2017).
- Conference attendance could possibly be promoted by giving more attendees the opportunity to speak. It should therefore be considered to have shorter presentations with panel discussion.
- Traditionally, at events organized by NMLAs there has been emphasis on events and issues of local interest. It is suggested that one should strive to strike a balance, and perhaps some consideration should be given to the CMI having greater control over the academic program of general interest.
- The program should seek to examine and debate new or relevant topics to enhance the common culture of the maritime law community.
- It should be an objective of the CMI to improve participation from younger people. The CMI should consider lower registration fees for students and young professionals. NMLAs should be encouraged to sponsor young professionals who take active part in Working Groups or give presentations at the Annual Meetings. In the words of one of the persons interviewed, the less experienced attendees should have the opportunity to meet the more experienced ones and exchange points of view in order to keep the vitality of the CMI.

#### 3.1.1.5 Regional meetings – recommendations

- The CMI should encourage NMLAs to arrange regional meetings. Such meetings can typically be held in geographical areas that are close, such as the Iberian Peninsula (Spain and Portugal), Mediterranean (include also France and Italy, as presently done between the Italian and the Croatian NMLAs) and Northern Europe (The Netherlands, Germany and Scandinavia). Regional meetings should also be encouraged in places where there are newly formed NMLAs or where there are few members, as in some of the African and Pacific countries.

### 3.1.1.6 Importance of social events and time for networking - recommendations

- Almost all the work in the CMI is done by volunteers, and in order to promote projects a group of interested individuals have to take responsibility. Coffee and lunch breaks during the conference are well suited to establish contact both for future business cooperation and referrals, and cooperation on projects. There should be sufficient time for the necessary mingling at the conferences.<sup>9</sup>
- Some consideration should be given to whether the CMI should facilitate a situation that individuals who have ideas or common interest might be notified in advance and be allocated time and space to meet during the conferences if they wish. Persons who want to connect, could invite others to join for private sessions in the conference facilities.

### 3.1.1.7 Learning from other organizations

- The Task Force would encourage the CMI to look to other organizations on how they organize conferences, such as the IUMI and the IBA. Interactive solutions by the use of quiz programs like "kahoot.it" to provide feed-back and the use of conference Apps should also be encouraged.
- The CMI should look at the program for the conferences organized by these other organizations and consider whether in choosing the topics at the CMI conferences some inspiration could be gained. One of the challenges of the CMI is that it addresses itself mainly to maritime lawyers. As explained above that group is not homogenous and includes private practitioners, government officials, university representatives, underwriters, shipowners' representatives, representatives from international organizations, etc. It is therefore difficult to have a clear benchmark of what the delegates at conferences expect from the CMI.
- Other organizations could also be invited to present matters of general interest, for example allowing BIMCO to present their new SmartCon product that replaces IDEA, or EU representatives presenting the response plans in respect of oil pollution, with places of refuge, etc. Whilst it would not be desirable to convert the CMI meetings into trade fairs, specific book and software corners may help to finance the meetings as occurs in many international professional congresses and will help the attendants to keep updated.

### 3.1.1.8 Credits for education time

- In the view of the Task Force, consideration should be given to organising the CMI and NMLAs meetings in a way that the hours in the meeting might satisfy the minimum number of education hours or compulsory professional development required by the Bar Associations of each country or area or at least contribute towards the same.<sup>10</sup>

## 3.1.2 *ExCo , Committee and Working Group Meetings*

### 3.1.2.1 The Executive Council (Exco)

We have been advised that ExCo normally does not meet in person more than once a year, normally in connection with the Annual Meetings. Another meeting is held as an interactive (virtual) meeting, where over one or two weeks there is written communication between the ExCo members based on a meeting agenda and shared documents. This is a change from previous practice, where there were

---

<sup>9</sup> One of the persons interviewed stressed that during his years of hard work in the CMI he has made non breakable friendships

<sup>10</sup> For instance, the US NMLA takes this into account when organising meetings and is able to certify attendance to the interested persons

more physical meetings, which were found, however, to be less productive and involved travel expenses and lost time for many individuals.

The Presidents of the CMI have also established a smaller group of ExCo members who together form a Management Committee, originally consisting of the President, the two Vice-Presidents and the Secretary General, but lately consisting of the President, the Secretary General, the Administrator, a local representative and the secretary in Antwerp, who also meet once a year in person in Antwerp. We understand most of the other communication takes place by telephone and email.

The Task Force has no specific recommendations, but agrees that it should be very much up to the President to organize the work in ExCo efficiently without incurring unnecessary travel expenses. In view of the development of digital tools for organizing and setting up international meetings, we would however suggest that the President might consider obtaining advice in how the virtual meetings could be better organized, such as with specific multipoint non-expensive tele- and videoconferencing as well as document sharing.

### 3.1.2.2 International Working Groups, Standing Committees and Ad hoc Committees

Currently the CMI has the following<sup>11</sup>:

a) International Working Groups:

- Liability for Wrongful Arrest
- Liability of Classification Societies
- Maritime Law for Unmanned Ships
- Offshore Activities – Pollution Liability and related issues
- Cybercrime in Shipping
- Acts of Piracy and Maritime Violence
- Fair Treatment of Seafarers in the Event of a Maritime Accident
- Sub groups in respect of:
  - Maritime Law & Refugee Migration at Sea
  - Pandemic Responses at Sea
  - Recognition of Foreign Judicial Sale of Ships
  - Cross-Border Solvency
  - Polar Shipping
  - Ship Finance Security Practices
  - Ship Nomenclature

---

<sup>11</sup> <http://comitemaritime.org/governance/committees-2/>

b) Standing Committees:

- Standing Committee on Carriage of Goods (including Rotterdam Rules)
- Standing Committee on General Average
- Standing Committee on General Average Interest Rates
- Standing Committee on Marine Insurance
- CMI Young Members
- Collection of Outstanding Contributions
- Constitution Committee
- Implementation of International Conventions and Promotion of Maritime Conventions
- Planning Committee
- Publications: Yearbook, Newsletter, Linked-In, Website and CMI Handbook

c) Ad hoc Committees

3.1.2.3 The Future of the CMI Organization of these IWGs and Committees

It is very much left to the chairman and members of the IWGs and Committees to organize their work in an efficient manner. The impression of the Task Force is that most of the work is done by telephone and email, and meetings in person normally only take place in connection with the Annual Meetings.

It is the impression of the Task Force that this is an efficient manner to organize the work of the volunteers' IWGs, without incurring travelling expenses. The efficiency very much depends on the chairman and the members of the IWGs, but the work seems to be appropriately followed up by the President of the CMI or other members of Exco.

The work in the IWGs and Committees is reported at the Assembly. The subjects of the IWGs are often used as subjects in sessions at the Annual Meetings. Again, we call the attention of the President to the importance on analysing whether the IWGs could be guided about or provided with guidelines in the use of free or cheap digital tools to improve the organization of and progress in their work and its efficiency.

## **3.2 Relations with international, governmental and other maritime agencies or legal groups or entities – and the role of the CMI in preparing legislation**

### *3.2.1 Introduction*

In section 2.4 above we have listed some of the above institutions.

### *3.2.2 The IMO Legal Committee*

After the "Torrey Canyon" accident in 1967 it was widely recognised that the legal regime for oil pollution was not satisfactory and, on April 18th 1967 the British Government submitted a Note to IMCO (IMO since 1982) calling for changes in international law governing oil pollution. IMCO responded by setting up the Legal Committee charged, inter alia, with the task of producing an international convention to tackle the twin issues of liability and compensation for oil pollution. At about the same time the Comité Maritime International (since 1897 the only international organization

involved in the harmonisation of maritime law) set up an International Sub-Committee under the chairmanship of Lord Devlin to consider the private law aspects of oil pollution and to co-operate with the IMCO Legal Committee in producing a draft convention. The CMI draft convention was finalised at its Tokyo Conference in April 1969 and was immediately submitted to IMCO. In November 1969 an International Legal Conference on Marine Pollution Damage was held in Brussels. Delegates had before them the CMI draft and also one produced by the IMO Legal Committee. The Conference also considered the, so-called, TOVALOP agreement. This was a voluntary scheme set up jointly by the oil and shipping industries to provide compensation for oil pollution. In this way, the 1969 CLC, IMO's most successful legal maritime law convention ever, was created. This was shortly followed by the 1971 Fund Convention. Between them these two Conventions solved most of the legal problems which had been faced by the "Torrey Canyon" claimants.

For over 70 years the CMI had the field of private maritime law conventions to itself and it was a little put out when the Legal Committee became a permanent fixture and it was made plain that, if there were to be more international maritime law conventions, they would be produced by IMO or other UN bodies. The CMI has come to accept this situation and has, since the creation of the Legal Committee, assisted in the creation of many maritime law conventions by producing early drafts and by offering support from the side-lines during the drafting process.

That is the history of how the Legal Committee came into existence and inherited the mantle of the CMI.<sup>12</sup>

CMI has a representative in the Legal Committee of the IMO. The NGOs (Non-Governmental Organizations) are normally not allowed to speak until all the Member States representatives have stated their views. This can be a disadvantage for the CMI in that firm views may already be formed by the time the CMI's turn comes to make a contribution. Arrangements have been made, however, by the Secretariat from time to time, for the CMI to be heard out of turn. Furthermore, the CMI representatives have normally submitted their views in writing in advance of the meetings, and therefore their views are taken into account in the early phase of the discussions in the Legal Committee.

The representatives from the CMI have been Patrick Griggs and the late Richard Shaw, who have both done an outstanding job.

The CMI has had an important role in the Legal Committee, because the views presented have been well prepared and the expertise of the CMI representatives widely recognized. As an example, it has been mentioned that the CMI was able to present in writing the legal position in various jurisdictions on the basis of questionnaires that had been answered from the NMLAs.

The CMI has played an important role in promoting some International Conventions such as those relating to Oil pollution, (CLC with Protocol and Funds conventions), HNS, Salvage, Wreck Removal and Ship Recycling (Scraping).

Much of the work on the major conventions have now been completed. The Legal Committee met twice a year before, but in recent years has not had enough work to justify doing so. There is therefore now only one meeting per year.

---

<sup>12</sup> See Patrick Griggs article: <http://comitemaritime.org/wp-content/uploads/2018/05/Comite-Maritime-International-and-the-Legal-Committee-working-together-2.pdf>

Most of the new rules produced by the IMO are done as part of the SOLAS and MARPOL conventions. The amendments, updates and changes are adopted with the tacit amendment procedure: once adopted in the Legal Committee, member states have to object within a certain date to avoid the coming into force of the new rules. The same procedure is adopted in the other committees (Maritime Safety Committee and Maritime Environment Committee) in respect of changes to MARPOL. Most of these changes are of a technical nature, required to respond to new needs or technical developments.

It is also important that the CMI maintains a close relationship with the Director of Legal and External Affairs. Rosalie Balkin, who is now the secretary general of the CMI, served in this position for more than a decade until 4 years ago.

### *3.2.3 The IOPC Funds*

CMI representatives have also attended the meetings of the IOPC funds and contributed to their work with the extensive experience and success of the CMI in its contribution to the Oil Pollution Convention and protocols (see section 3.2.2 above).

### *3.2.4 The role of the CMI in producing conventions*

The CMI is no longer a driving force in producing conventions in the maritime law.

The CMI should therefore be selective when engaging in proposing new conventions.

The work on "Ports of Refuge"<sup>13</sup> and "Recognition of Judicial sales" shows that the projects could suffer delays and opposition when there is no political support from a "sponsor", such as one of the IMO member states. In this context it should be taken into account that the IMO has had its own problems with having recent conventions ratified and coming into force, which makes it reluctant to assume new projects.

It has been suggested that a new role for the CMI might be as an indirect promoter of international maritime law by virtue of the establishment and maintenance of a working relationship with the international organizations and by the NMLAs promoting ratification and implementation of instruments with their domestic authorities.

The role of the CMI and the NMLAs in the future is more likely to be as "advisor" and "maritime law expertise provider" into processes driven by others, such as was the case in preparation of the Rotterdam Rules. The CMI can provide valuable input to other international projects such as "Polar Shipping" and "Unmanned ships".

It is also important that the CMI requires the help of the NMLAs to promote conventions via the Member States and International Organizations such as UNCITRAL (as it is presently being done with the recognition of judicial sales). The pattern to follow may be found in other international private NGOs, such as ICS are quite active in organizing the local Shipowner Associations to follow up these aspects.

As a general observation it can be also said that the CMI is Europe focused and less Asia focused. It should not be forgotten that the emerging shipping markets are in Asia and Africa.

It has to be recognised that for some years the world of shipping has moved East. The CMI Conference in Beijing (with Shanghai add on) was a recognition of that. The China NMLA is very proactive, and the next CMI Conference is in Japan. The CMI has set up the regional office in

---

<sup>13</sup> For details see <http://comitemaritime.org/work/places-of-refuge/>

Singapore. Furthermore India has come back into the CMI fold and Singapore, India, South Korea, Philippines and Australia have active NMLAs. The first President from outside Europe has been Australian and the next is likely to be American. Perhaps Europeans are over-represented on ExCo. There is no balance of gender in ExCo with an under representation of women.

In some Conventions the EU will have to approve the instrument before the Member States can ratify it, and lobbying the EU therefore becomes an important task.

### 3.2.5 *The role of the CMI in promoting soft law*

CMI has already made good use of the so-called "soft law" tools. It has produced the following:

- Lisbon Rules (1987);<sup>14</sup>
- Uniform Rules on Sea Waybills (1990);
- The Rules for Electronic Bills of Lading (1990);
- Guidelines on Oil Pollution Damage (1994)<sup>15</sup>;
- A Model Law on Maritime Criminal Acts (2007);<sup>16</sup>
- Guidelines in respect of procedural Rules Relating to Limitation of Liability in Maritime Law (2008).<sup>17</sup>
- Unfair treatment of seafarers (2010)<sup>18</sup>
- Interim Payments within the International Regime Established by the Civil Liability and Fund Conventions (2012) <sup>19</sup>
- Acts of Piracy and Maritime Violence (2015)<sup>20</sup>
- Guidelines for Governments relating to mandatory Insurances under various international Conventions (2016)<sup>21</sup>

CMI's other work includes traditional and non-traditional topics such as, Cross-border insolvency<sup>22</sup>; Liability for wrongful Arrest<sup>23</sup>, Offshore Activities<sup>24</sup> and the Polar Code (related to Arctic and Antarctic issues)<sup>25</sup>.

---

<sup>14</sup> These rules deal with damages following a collision.

<sup>15</sup> See <http://comitemaritime.org/work/guidelines-on-oil-pollution/>

<sup>16</sup> See note 14.

<sup>17</sup> .

<sup>18</sup> See <http://comitemaritime.org/wp-content/uploads/2018/05/2010-09-29-CMI-Submissions-to-the-IMO-Legal-Committee-Leg-97-Final-as-submitted.pdf>

<sup>19</sup> See <http://comitemaritime.org/work/interim-payments-within-the-international-regime-established-by-the-civil-liability-and-fund-conventions/>

<sup>20</sup> See <http://comitemaritime.org/work/piracy/>

<sup>21</sup> See <http://comitemaritime.org/work/marine-insurance/>

<sup>22</sup> See <http://comitemaritime.org/work/cross-border-insolvencies/>

<sup>23</sup> See <http://comitemaritime.org/work/liability-for-wrongful-arrest/>

<sup>24</sup> See <http://comitemaritime.org/work/offshore-activities/>

<sup>25</sup> See for details <http://comitemaritime.org/work/polar-shipping/>

The work on these topics is done in the IWGs and includes questionnaires to the NMLAs compiling the responses and identifying legal issues of interest.

Guidelines of interpretation are also useful. This can be illustrated with the following examples:

Under the oil pollution regime, the courts of Member States have the jurisdiction to interpret the CLC and IOPC Fund conventions. This can result in differences of interpretation. The CMI has worked with the IOPC Fund to prepare the above guidelines that are adopted by the Assembly in respect of uniform interpretation.

Another example is the legal definition of a "ship". This may vary from convention to convention. International Guidelines on how to interpret what is a ship under a certain convention, may be helpful. To illustrate with an example in respect of an FPSO or FSU. Does it make a difference under the Fund Convention whether it lays fixed on an oilfield or is occasionally trading/sailing with oil onboard? These issues are being looked at by the IWG on Ship Nomenclature.<sup>26</sup>

### 3.2.6 *Promoting ratification of maritime conventions*

A joint project has been established between the CMI, the International Chamber of Shipping (ICS) and the IMO to promote ratification of a number of maritime conventions adopted through the IMO's Legal Committee. An international sub-committee of the CMI was asked to identify the reasons why the various states have failed to ratify these instruments and involved the NMLAs in that work.<sup>27</sup> This work resulted in a brochure in 2013 "Promoting Maritime Treaty Ratification" – The ICS/ISF and CMI Campaign.<sup>28</sup>

"Autonomous Ships" raise a number of new issues. An IWG has been working on this project and has produced a "Position paper on unmanned ships and the international regulatory framework" <sup>29</sup>. The CMI is working on this project with other IMO committees than the Legal Committee, both the "Maritime Safety Committee" and the "Technical Cooperation Committee".

When President Hetherington set up the Standing Committee on Promotion and Ratification of Conventions, he saw it principally as a guiding hand to encourage the NMLAs to get closer to their own governments. Only rarely, the CMI has been able to lobby. There are only a few examples of such international lobbying, such as when a CMI delegation did go to the State Department in the US a few years ago to lobby for Rotterdam Rules, and President Hetherington's visit to China at the request of the China NMLA to speak at their Conference on the same topic, essentially a lobbying pitch. There are therefore only very limited lobbying exercises done by the CMI internationally. Locally President Hetherington has continued to lobby the Australian government, together with the New Zealand NMLA on the same Conventions that have been nominated by ICS and CMI, and on the Recognition of judicial sales project. That further emphasises the need for the lobbying to be done essentially by NMLAs towards their own governments.

### 3.2.7 *CML CMI Database of Judicial Decisions on International Conventions*

In February 2017, the CMI entered into a formal collaboration with the Centre for Maritime Law of the National University of Singapore (CML) to create an electronic database of all the case law decisions

---

<sup>26</sup> See <http://comitemaritime.org/work/ship-nomenclature/>

<sup>27</sup> See <http://comitemaritime.org/work/maritime-conventions/>

<sup>28</sup> The brochure can be found on this link: <http://comitemaritime.org/wp-content/uploads/2018/05/Brochure-on-Promoting-Maritime-Treaty-Ratification-The-ICS-ISF-and-CMI-campaign.pdf>

<sup>29</sup> See <http://comitemaritime.org/wp-content/uploads/2018/05/CMI-Position-Paper-on-Unmanned-Ships.pdf>

arising from all the international conventions and protocols and other international uniform instruments sponsored by the CMI.

The Database, (the "CML CMI Database of Judicial Decisions on International Conventions")<sup>30</sup>, is intended to make these decisions more accessible to the worldwide maritime community, in the hope that this will foster comparative research and uniformity of interpretation of international maritime law. The database builds on the foundation laid by Professor Francesco Berlingieri in an earlier CMI Database of Jurisprudence on Maritime Conventions.

The Database compiles cases in the English language only, as the language most often used in maritime contracts and in the maritime industry globally. The Database includes an abstract of the case in English and a PDF and other cross-references to the full case judgment also in the original language where available.

### 3.2.8 *The York Antwerp Rules*

The York Antwerp Rules ("YAR") are the only instrument "owned" by the CMI. Following a revision in 2004, it emerged that the changes then adopted in Vancouver, were not widely accepted and in many documents the YAR 1994 continued to be referred to. Following a lengthy process, a new revision was adopted in 2016.

### 3.2.9 *The use of questionnaires*

The method used by the CMI to obtain input from NMLAs on legal issues, is to circulate questionnaires. However, not all NMLAs respond in a timely fashion and the CMI should seek to ensure that the NMLAs establish national working groups that take responsibility for responding to the questionnaires and consider circulating a protocol to the NMLAs to this effect. It has been suggested that the questionnaires should not be too comprehensive and dense so as to delay responses, but rather allow working in "layers" of information.

National working groups that are formed to complete the questionnaires of the IWGs of the CMI and follow-up the work, results in the members of the NMLAs being more directly involved in the CMI's activities, and it is a good way to involve younger persons. Involvement of younger members of the NMLAs in the work in progress of the CMI, can also be achieved inviting them to participate in the internal working groups formed to answer the questionnaires. For instance, one NMLA has named the female young member, who was invited to join the IWG of the CMI on this topic, as coordinator of its WG on unmanned craft .

### 3.2.10 *Conclusions and recommendations*

- The Task Force has concluded that it follows from the above presentation that the efforts in the field of soft law and comparative analyses are the most effective and give the best results.
- The Task Force notes that a lot of the current activities of the CMI aim at promoting harmonisation of maritime law, which falls within the object of the CMI pursuant to Article 1: "*to contribute by all appropriate means and activities to the unification of maritime law in all its aspects*" and are adequately organized, except for the response to questionnaires from some NMLAs.
- The Task Force recommends that the CMI should be cautious in not generally undertaking ambitious projects with the aim of producing draft conventions. The CMI does not always have

---

<sup>30</sup> Follow this link: <http://comitemaritime.org/publications-documents/database-judgments/jurisprudence-on-maritime-conventions/>

sufficient resources, and should not undertake such new projects unless there is a compelling need for the proposed rules and it is sufficiently supported by Member States of the CMI. Instead, the CMI and NMLAs could, working together, help with extensive and deep know-how and networking to improve and harmonise the maritime conventions and their amendments and protocols as promoted by the competent international and regional organizations, so extending the presence and influence of qualified representatives of the CMI in such organisations.

### **3.3 Publications and website**

#### *3.3.1 Digital publication*

It is a great improvement that publications no longer need to be published in hard copies, in respect of timing, accessibility and cost.

The CMI publishes different publications, some also in a limited number of hard copies and some on the website only.

#### *3.3.2 The CMI website*

The CMI website is found on <http://comitemaritime.org>.

When the Task Force started its work in 2017, it noted that the website was not very user friendly and a lot of information was outdated. New information was not published. The Task Force has learnt that the capacity and software of the website was outdated and is pleased to note that the current website was launched in the midyear of 2018.

The following statement was made in that respect in CMI Newsletter no 2 2018:

*"More than a year ago it became clear that maintenance of our former website was becoming problematic due to the rather outdated software the old site was running on. We were having more and more difficulties when adding or removing content. And as a result we were becoming rather more dependent on the assistance of the successor of the Australian company that had developed our website in the past.*

*As Evelien Peeters – Administrative Assistant at CMI's Antwerp headquarters – was and will be doing most of the upkeep of the website, we thought it wise to look for a new Antwerp based website developer to help us with creating a new website. We vetted several companies that could make a website on the basis of modern software, which would also offer Evelien a greater ease of use in the content maintenance process. We chose ViaVictor, the company that is also responsible for the website for the Royal Belgian Shipowners' Association, which hosts CMI's headquarters in Antwerp.*

*The new software has led to a fresh design, with more colour, but still giving a very maritime impression. The CMI website is now 'responsive', meaning that the pages of the site adjust themselves to a variety of devices and screen sizes (smart phone, tablet, computer screen), which makes it easier for the visitor of the site to find the needed information.*

*A lot of time was spent on rethinking the wireframe of the website. In order to minimize the time needed for future maintenance of the website, we decided to greatly reduce the duplication of information which was rather common on the old site. That same goal, together with the need to comply with the European General Data Protection Regulation (GDPR), were the reasons behind the removal of a lot of the personal details of people involved in the work of the CMI.*

*We have also tried our best to make the website less esoteric, providing easier access to relevant*

*information to visitors of our website who are perhaps less familiar with CMI and its many committees in which CMI's work is done. The many CMI work projects are now grouped together on pages with simple headings such as General Average and York Antwerp Rules, Carriage of Goods by Sea, and Seafarers. In addition, three topics that are of particular interest have been given an extra 'speed dial' button on the website's front page: General Average and York Antwerp Rules, Young CMI and the CMI/NUS-CML Database on Judicial Decisions on International Conventions.*

*We intend to further increase the usefulness of the website as a source of information on maritime law. We have now already uploaded the entire content of documentation and Yearbooks from 1897-2000 to the website. And apart from the Database on Judicial Decisions we intend to move the information on ratifications of international conventions to a Conventions Database on the website.*

*I think we have made a website that will offer more relevant information to the visitor, thereby raising CMI's profile.*

*I would like to thank Evelien Peeters, our temp Tinneke Elliot, Stuart Hetherington and Thomas Van Geel (ViaVictor) for their hard work and co-operation on this project.*

*I am sure Evelien and I will have a lot more to do on the website. Please do not hesitate to provide us with your comments and considerations. We rely on MLAs to keep us up to date with changes to your Officers and your contact details. Please let us know of any errors.*

[admin-antwerp@comitemaritime.org](mailto:admin-antwerp@comitemaritime.org)

**Taco van der Valk**

### 3.3.3 Information found on the website

The following information can be found on the website under "Publications"<sup>31</sup>:

- Yearbooks
- Newsletters
- Travaux Préparatoires
- Minutes
- Ratifications
- Judgment Database
- Documents of interest

Under "Work" can be found the results of the Work of the CMI: International Working Groups (past and present).<sup>32</sup>

In addition to the above, further relevant information can be found under the topics: News, Events, Governance, Members and Contact us.

The new website is user friendly and represents a great improvement compared to the old website.

---

<sup>31</sup> See <http://comitemaritime.org/publications-documents/>

<sup>32</sup> See <http://comitemaritime.org/recent-work/>

The Task Force has concluded that adequate information is found on the CMI website about the work done by the CMI as described in section 3.2 above. We note that some documents, such as the Newsletters, can be downloaded in PDF or similar format so that the users can read it later and print it if they so wish. It would be an advantage if all material would be available in a printable format.

#### *3.3.4 Details and information about NMLAs and their members*

Information about the NMLAs can be found on the CMI website in links to the homepages of the various NMLAs. The CMI Yearbook attempts to state the names of the members of the board of directors of the various NMLAs, but apparently some NMLAs do not routinely notify the CMI of changes in the composition of their boards, which makes it cumbersome to keep this updated. A form has recently been developed by the Administration in Antwerp and sent to the NMLAs so that their administrators and staff easily can update the data.

However, due to the increase of cybercrime, the CMI must take expert advice and review how the information about membership is published. There is a conflict between the transparency currently provided by the CMI (personal data and accounts are publicly accessible) and the need to comply with data protection regulations and to prevent cybercrime.

#### *3.3.5 Contact with the members of the NMLAs*

Ideally speaking the CMI should have available to it the contact details of all the members of the NMLAs, so as to be able to communicate news and be able to reach out to them. However, new legislation on privacy and the GDPR in the EU restricts the right to maintain registers of individuals and to approach individuals without their express consent.

Following several conferences in recent years the CMI tried to reuse the email addresses of the delegates from one conference to publicise the next conferences. It proved that a surprisingly large portion of the email addresses "bounced" because the individuals had changed addresses for a variety of reasons. The Task Force has considered recommending that a database with contact details of the members of the NMLAs be compiled, but realises this is not achievable in practice. Information from the CMI to the members of the NMLAs has to pass through the board of their NMLAs, and there are varying practices in how communications from the CMI is distributed. Some NMLAs represent a considerable bottle neck for distribution of the information, and perhaps the CMI should establish a protocol, recommendations or even a regulation covering the various aspects of relationship between CMI and NMLAs where specific contact persons are designated within each NMLA's ExCo to distribute news in the form of a link to the CMI news on the website of that NMLA, or an email alert to their members with a link to the news. This also applies to invitations to the Annual Conferences, which are often picked up randomly by those who do not regularly attend.

We consider that the CMI ExCo should appoint some of its members to produce a formal document regulating or, at least, recommending how the communication stream CMI-NMLAs-membership must work so as to achieve better coordination.

As the CMI is an "association of associations" (the NMLAs) and not of individuals (such as for example the Transport and Maritime Law sections of the IBA), the communications of the CMI should not bypass the NMLAs, but at the same time the boards of the NMLAs must be conscious that they have to share the information received from the CMI with their membership, as harmonisation comes from extended and continued cooperation and publication. This was specifically mentioned by some of the persons interviewed by the Task Force.

### 3.3.6 *Status of Conventions*

The CMI website also has a link to a PDF document with the Status of Conventions (as published in the most recent CMI Yearbook) consisting of 128 pages.

The Task Force has discussed whether this document could be produced in a more user-friendly manner, making it searchable. The Task Force has been informed that the publication in the present form will be discontinued from the next Year Book. Apparently, the Ministry of Foreign Affairs in Belgium, which is the depository agent for many conventions, does not keep an accurate register of the information on the status of ratification and the relevant dates and other information in respect of the old conventions. These may therefore contain errors.

In the future there will be links to the information in respect of the IMO "generated" conventions, but one of the future works of the CMI, in addition to the project with the database on interpretation of the international maritime conventions, could be to publish their official texts and amendments (consolidated versions) and their ratifications. The CMI could act as an information hub, collecting the data received from the international organizations and depositaries (the Secretary-General of the UN, Belgium, etc.). At the same time, the CMI should promote that the official texts of the maritime conventions be public and updated in the different maritime organizations' websites.

### 3.3.7 *Links to other organizations and information*

The CMI does not contain links to other organizations or useful information, other than the website of the Consultative Members. The Task Force has discussed whether it would have been a good idea to have hyperlinks to publications of maritime news (for example to the Lloyds List, Tradewinds, the Maritime Advocate and Lexology), and to academic maritime law institutions, such as the Scandinavian Institute of Maritime Law (Oslo), the University of Southampton and the Tulane University.

The same would apply to hyperlinks to widely used documents, to the extent that such documents are not protected by copyrights. A few examples of such documents are the various BIMCO charter party forms and clauses, Norwegian Salesform, Nordic Marine Insurance Plan, Lloyds Open Form and Scopic clauses.

While it could be nice to have such hyperlinks, the Task Force realizes that it will be difficult to maintain up-to date hyperlinks with the limited administrative resources that the CMI has. However, as a hub of legal maritime knowledge, it is worth studying how the CMI's website could disseminate legal information and whether this may be a source of future income via agreement with publishers, creating advantages (such as discounts) to the NMLAs' memberships which is the final "audience" of the CMI.

### 3.3.8 *Interactive use of the website*

The Task Force has discussed whether a more interactive use could be made of the website, with the aimsto, inter alia:

- promote participation and to move projects forward;
- foster communications among different NMLAs and their members;
- involve younger members; and
- generate public interest in the CMI.

The Task Force does not have the IT knowledge to propose a technical solution, but it would encourage the President and the ExCo to obtain expert advice.

A more interactive use of the website could possibly create a need for restrictions on availability. The question then arises whether general information should be available for everybody, including other information restricted to members or designated groups. The Task Force also queries whether all information from Assembly meetings should be generally available, or whether some information should be restricted, for example, the information about fraudulent payments reported at the Assembly meeting in Genova (see above section 3.3.4 ).

A question arising in connection with the above is whether members of the IWGs should communicate on the website and report more frequently about the work ongoing, perhaps designating someone to be in charge of doing such reporting.

### *3.3.9 Communication on Linked-In in and other social media*

The Task Force has noted the initiative taken by Taco van der Valk to create a CMI Group on Linked-In, which on 20 October 2018 had the impressive number of 1.398 members. This creates an opportunity to reach out to many members of the NMLAs. The Task Force has noted that the messages published appear with irregular intervals. A more active use of Linked-In could probably enhance communication between members of the NMLAs for the benefit of the CMI.

The Task Force recognizes that there is a great unused potential in using IT-based communication and artificial intelligence tools, and there is a need for the CMI to adapt.

### *3.3.10 Brochures*

At the initiative of President Hetherington, a brochure was produced with the purpose of having it available as handouts at the recent Malta seminar, as there were going to be about 50 IMLI students there who might not know much about CMI. He also brought copies of the brochure to UNCITRAL at New York. The brochure will also be available at the forthcoming London Conference in November 2018. The Task Force would encourage the attendees in London to provide feedback as to whether the brochures should be reproduced in future years and/or whether NMLAs would like to have them reproduced in their own countries and languages.

## **3.4 Governance**

### *3.4.1 The role and operation of the Executive Council (ExCo)*

As stated above, none of the members of the Task Force has any experience of how the ExCo functions.

The Task Force has not identified any issues related to ExCo and has only been able to identify some potentially recurring questions that should be answered by those having opinions based on the relevant experience:

- should ExCo consist of fewer members – would better/more efficient decisions be taken with fewer involved?
- do the members have the desired geographical spread in respect of NMLAs?
- should there be smaller committees within ExCo or even sub-committees with defined tasks or regions to make it more efficient? (For example, the manner in which Young CMI is organized and a possible subcommittee with the task of continuously improving the IT platform)

- should the time in office be limited to two periods, and should it be possible to elect the President from ExCO members who have served two periods, in order to achieve both rotation and continuity? - as it takes time to learn, but turnover also gives more people a chance to contribute and participate, and more new ideas will surface.
- should one term be 3 or 4 years?
- rotation seems to be taken care of, with re-election of only some of the members of the ExCo at the same time, but it is not compulsory under the Constitution.
- whether to formalize that the Nominating Committee does not make a recommendation when there is more than one competent candidate for an ExCo position, leaving it to the Assembly to make the decision.

#### *3.4.2 The day to day management of the CMI*

The secretariat of the CMI is situated in Antwerp and is manned with one part time employee. Currently this is functioning well, but as with all small organisations, this arrangement is delicately balanced. A lot of the day-to-day work is done by the members of ExCO, and that of administrative nature by the Administrator and the Secretary General. In addition, there is the Singapore office charged with the task to promote the CMI in that part of the world.

The Task Force notes that the CMI has very modest resources to follow up all the tasks it has. The strengthening of the day-to-day function should be considered, for example by engaging an experienced NMLA member who has recently retired and would be willing to engage in the work in return for a modest remuneration. The Task Force realizes that this raises various issues, such as the job description and location of such person, and how the costs can be borne without increasing contributions. There is the possibility to finance a temporary position from the existing reserves to be able to see the results before the arrangement is permanently put in place.

#### *3.4.3 Role of NMLAs in governance*

When considering the role of the NMLAs, the Task Force has made the following observations:

- the NMLAs have voting rights at the Assembly of the CMI;
- there is a perception in the Task Force that some NMLAs filter the communication from the CMI and is also a bottle neck in communication between members from different NMLAs; and
- NMLAs are the main source of financing of the CMI.

#### *3.4.4 The composition and work in the IWGs*

The composition of the IWGs is often decided by the CMI without nomination or conference with the NMLAs. The Task Force sees the need to elect members to the IWG's that are dedicated and motivated to contribute, but their relevant NMLAs should at least be informed of and preferably consulted on the appointment of a member from that NMLA as a matter of courtesy. As explained, the NMLA members of the IWGs and other groups of the CMI can act as channels of communication with their respective NMLAs and members, so boosting fluidity of communication and increasing efficiency. This input from the NMLA on the composition of an IWG should be balanced against the importance of allowing the chair of the group to select a team with which he or she can work efficiently.

The Task Force has discussed whether a more standardised IWG working methodology should be developed. The Task Force would propose that it is discussed whether there is a need for Guidelines on standard methodology for the work in the IWG, with respect to how the IWGs are formed, what

projects are undertaken, how questionnaires should be developed and what report should be the end result.

The progress and efficiency of the IWGs very much depends on their composition and who serves in the functions as the chairman and possibly the secretary or rapporteur. Whilst this enriches the work with diversity, following recommended common methods (some of them as simple as a short style manual) may ease and harmonise the results of the work carried out in its entirety by volunteers.

When deciding what projects to undertake, the available resources should be considered since everything is based on hard work by volunteers. In addition to this, one must take into account the fact that the CMI has no administration that can run projects – the work is run by the members of the IWGs themselves with the means and staff of their Firms, companies and academic institutions.

The work in the IWGs is closely linked to the Work Program as described in section 3.2 above. One question for the CMI to decide, is whether its work program should be driven by an ideology, its potential "market" or the consumers of the same. We have to recognize that there is less space for the CMI to continue producing draft instruments of international law. This is where the contact with the IMO and other international organizations is important.

That raises the questions:

- Do we need to have a more editorial or analytical role in respect of the very valuable material produced by the IWGs in respect of the functioning of existing instruments of international maritime law?
- To what extent can the NMLAs perform a function of identifying "problems" or blockages to the approval of international instruments of maritime law / harmonization of maritime law?
- To what extent can NMLAs act as pressure groups on national governments?

#### *3.4.5 Work in the Committees*

Some of the issues discussed above in respect of the IWGs equally apply to the Committees.

As already stated, a question to be considered is whether there should be "stylistic" rules or guidelines for the committees. Different documents come in different fonts and formats. Perhaps it would be advisable to agree on standardized templates to give a better feeling of unity of the CMI work. This may seem a formal question, but unifying the appearance makes work easier and quicker and the results -or "work product" as named on CMI's website- more legible to third parties. Perhaps this is one of the works for the future: a CMI "Format Guide" so that newcomers understand better how it works, and how to work with and in the CMI. It may also be good to produce an animated video, power point or pamphlet (such as Lloyds of London and many other institutions do) and publish it on the CMI's and the NMLAs' websites explaining to anyone coming into contact with the CMI for the first time what it is, what its foundational aims are and how it works towards them.

#### *3.4.6 Titulary Members*

The Task Force has noted that the importance of having Titulary Members to a certain extent varies geographically. While most individuals in the Scandinavian countries would be indifferent, it seems to be more important in the US and the rest of Europe.

The Task Force has discussed whether individuals should continue to be Titulary Members when they are no longer practising and no longer come to CMI meetings. There is also a query whether someone should be a Titulary Member of the CMI without being a member of their NMLA.

Since Titulary members are nominated because of merits and long-term contributions, they will normally be elected towards the end of their professional careers, and it makes sense that the election as Titulary Member is for lifetime without an age limit. It should be considered whether Titulary Members should pay a nominal fee to maintain that membership, so individuals who are no longer interested in the work of the CMI cease to be Titulary Members. Otherwise, it might happen that a person no longer contributing to the CMI or the NMLA that proposed him, may keep the right to speak to the CMI and the honour of being a Titulary Member.

#### 3.4.7 IMLI

The Task Force notes that the CMI entertains a special relation with IMLI ("International Maritime Law Institute")<sup>33</sup>, and that the Charitable Trust financially supports travel expenses of CMI lecturers at the IMLI and the CMI/IMLI student prize. The Task Force supports these initiatives.

### 3.5 Finances

#### 3.5.1 Introduction

One of the matters drawn to the attention of the Task Force has been the situation and future of the CMI's Finances.

The following articles of the Constitution set out the framework for the management of the CMI's Finances:

Art.11, f), c), d), e) (functions of the Assembly); 19 (Treasurer); 22, f) and n) (functions of the ExCo), 28 (arrears of subscriptions) and 29 (fees and expenses).

#### 3.5.2 Comments on the accounts for 2016 and 2017

First of all, it is worth noting that the accounts of 2016 as approved in Genoa's Assembly and the accounts of 2017 to be submitted to the Assembly in London, received as attachments to the President's letter and e-mail to the NMLAs dated 27/09/18, show that sound prudent principles are observed by the Treasurer, the Executive Committee, and the Audit Committee (hereinafter AC, one of the Standing Committees of the CMI). As one report remarks:

"Reserves in relation to cost structure

*As a result of the low operational costs of the CMI, the predictable costs structure and the very low number of liabilities, the External Auditor considered that the level of reserves was more than adequate for an organisation such as the CMI.*

*(see page 4 of the Report of the AC, Attachment 4 to the said President's letter)."*

The AC itself (page 5), submits the following to the next London Assembly:

"Reserves

*Following an extensive report to the Executive Council and to the Assembly at its session in Buenos Aires in 2010, it was the policy of the CMI to reduce the reserves of the organization which had been built up over a number of years. Since 2013 the objective has been to have largely a break-even result, which has been achieved for the financial years 2014, 2015 and 2017 for which there were small surpluses of €10,320, €23,580 and €34,978, respectively, whereas for the financial year 2016 a small deficit of €23,595 was recorded.*

---

<sup>33</sup> See <http://www.imli.org/>

*In the Committee's opinion there is a comfortable level of reserves in view of the cost structure and operations of the CMI."*

#### Income, expenses and net result (based on the 2017 Accounts)

The Report of the Treasurer (attachment 3 to the said President's Letter) on the Accounts for the 2017 tax year shows a total income of €217,289 (adding the operational income to the event balance) and total expenses of €165,070 (using the same criteria) for a total result of +€51,616.

#### Joint analysis of reserves, income and expenses

The reserves shown in the 2017 balance sheet are €663,526, meaning that they are 4,019 (say, four) times the expenses of the CMI in one year.

Analysing this overall prudent approach and generously rounding off the figures, the CMI approximately keeps €600,000 on accounts (cash and bank), or a provision for 3 years of expenses even if these increased to 200,000€. In other words, the CMI could survive the next three years with the same (or higher) level of outgoings even if it received no income at all.

Looking at the different elements of the expenses, one can see that the main cost itself (€40,767) is the salary of just one person at the headquarters in Antwerp, working 24 hours per week.

We have been informed by John Hare and Rosalie Balkin- and this has been checked in the annual accounts- that the Secretaries of the Executive Committee receive an honorary amount (€15,000/year according to the accounts), the Treasurer is paid €6,050/year and the Administrator €769/year in consideration for the enormous workload.

The next figure in size relates to travel and accommodation expenses, being €35,157 in total. If we add the meeting expenses, representation expenses (non CMI-events) and IWG expenses the total figure for expenses paid or reimbursed on this heading is just €51,120 per year.

The administrative costs including office rent, telecommunications, supplies, audit, insurances and archives are around €17,000 (excluding extraordinary legal expenses faced in 2017 for €6,8k – related to adaptation of the Constitution to Belgian Law).

#### *3.5.3 Investment policy*

The investment policy of the CMI is detailed in the Guidelines on CMI Investment Policy, submitted by M. Jacobsson and A. Taylor on 06.11.2014 and approved by the ExCo.<sup>34</sup>

#### *3.5.4 Charitable Trust and Albert Lilar Foundation*

Apart from the CMI financial statements, there are two separate accounts for the Charitable Trust<sup>35</sup> and the Albert Lilar Foundation<sup>36</sup>.

The targets and aims of this are specific as stated in their foundation Deeds, so the Task Force has not entered into them in detail. However, the portfolio of the Charitable Trust has a value of around GBP 500,000 for an annual yield of around GBP 20,000. The report says that the income is around GBP 16,000 per year for expenses around GBP 14,000. We would encourage its Trustees, as was done at

---

<sup>34</sup> See <http://comitemaritime.org/governance/rules-constitution-guidelines/guidelines/guidelines-on-cmi-investment-policy/>

<sup>35</sup> See <http://comitemaritime.org/about-us/miscellaneous/charitable-trust-fund/>

<sup>36</sup> See <http://comitemaritime.org/about-us/miscellaneous/albert-lilar-foundation/>

Buenos Aires, to analyse whether the future of the Charitable Trust may need new income and require new expenditure.

Adding together the reserves and the Charitable Trust (whose aims do not differ much from those of the CMI), both entities manage funds of some 1,200,000€. It is suggested, as before, that the Charitable Trust be devoted more to research, teaching and publishing, and the assets of the CMI to the administration of the day-to-day and yearly work of the CMI itself.

### 3.5.5 *Recommendations*

- The main recommendation that the Task Force would like to submit to the President regarding Finances and the Future of the CMI is that, notwithstanding the fact that most of the CMI work is made by volunteers (members of the ExCo and other bodies as IWGs and Standing Committees), it seems possible to hire more staff (presently just 1 person 24h/week) or contract services to enhance communications (with NMLAs, standing committees, IWGs and so on) and deal with matters relating to the agenda, reminders, questionnaires, website, publications, social networking or any other matters. This may help the volunteers to work better without creating any financial risks, and foster both the substantial work of the CMI, and the ancillary tasks that may flow from the same.

This must be done and could be done without diminishing the financial stability of the CMI and the Charitable Trust and keeping prudence as the guiding principle in the governance of the Finances of this not for profit international private organization, considering the present level of reserves, expenses and income of the CMI.

- As a corollary of the above recommendation, we are of the opinion that the CMI could afford (having taken technical advice) this much needed investment to help such personnel, services providers and volunteers by giving them the necessary digital tools so as to match or improve the current means of communicating and working to that used by the younger generations of the international maritime community in a globalized World.

## **3.6 Communication and transparency**

The Task Force has addressed most of the relevant issues in section 3.3.4 and 3.3.5 regarding communication with the members of the NMLAs. Twitter, Facebook and other social media create further opportunities to communicate, but this is beyond the expertise of the Task Force and should be considered by the CMI.

The Task Force has discussed certain transparency issues related to the work in the IWGs in section 3.4.3 above. Appointments to the IWGs are currently made purely by "insiders", and there might be a discussion as to whether there should be more transparency and a more structured approach involving the NMLAs in the nominating process and not only on the basis of persons showing interest on a subject and being acquainted with those making the appointments.

## **3.7 Increase awareness of the CMI's capabilities**

The CMI itself has no capabilities, but it has the support of volunteers that have considerable expertise in maritime law and insurance. The challenge for the CMI is to organize how this potential capability is used in the most efficient and optimal manner. At the end of the day, it should not depend on the capabilities of specific or limited numbers of persons. The CMI should, at the very least, be concerned with ensuring the mentoring of its younger members by the most experienced members representing it, so as to guarantee its own future as an international organisation. Organisations are made up of persons and serve its members as well as the community, however the organisation could fail if its expertise is not shared and inherited by the younger generations of members.

To spread the word about the capabilities of the CMI inside the maritime community, it may be necessary to hire the services of a media or communications agency that would advise on how the CMI activities can reach more people and institutions at the lowest possible cost. The revised format of the News Letter is well suited to achieve this and the CMI should continue to solicit contributions from the NMLAs.

Building links with other international organizations at an official CMI level and entering agreements for the exchange of information could be a good way of receiving and sharing knowledge.

The capabilities of the CMI both have to be "marketed" internally- which is done in the Yearbook, the Newsletters and the use of the Website, Linked-in and other social networking- and to the external "users" and the outside world, who may have defined requirements.

The following observations are made in respect of the US MLA, and the Task Force thinks they equally apply to other NMLAs.

*"From a U.S. MLA perspective, knowledge about the CMI is limited to a rather small number of members of our Association—the officers and board of directors, the few titular members, and the members of our International Organizations, Conventions and Standards ("IOCS") Committee. While members attending our spring and fall general meetings will hear a report from the IOCS committee that will include an update on the activities of the CMI, only about 200 members attend the spring meeting, and somewhat less than that attend the fall meeting. Accordingly, the vast majority of our members know almost nothing about the CMI. We suspect that this may be true of other NMLAs as well.*

*Part of this problem is the lack of a protocol on the part of the CMI whereby the NMLAs receive written communications to pass on to their memberships and the lack of a protocol on the part of the U.S. MLA to generate a document on its own accomplishing this. Accordingly, it would be helpful to have periodic communications from the CMI that are drafted for the purpose of being circulated within the general membership of the NMLAs. When we sent out a Presidential Newsletter informing all of our members about certain changes to our by-laws, we had a lot of positive feedback from our members expressing appreciation about being informed of these developments. A periodic newsletter from the president of the CMI that outlines activities of the CMI, announces upcoming events, etc. sent to the presidents of the NMLAs with a request to circulate it to the general membership of the NMLAs would greatly increase awareness of the CMI, its activities and its capabilities."*

The CMI should also consider the possibility of change in the position of London as a maritime centre, following Brexit. How the position of London will develop after Brexit is questionable, attracting violently opposed views, see for example certain concerns voiced by the EU.<sup>37</sup>

In Scandinavia this has triggered an initiative to create a competitor to the LMAA arbitration agreement and infrastructure, named the Nordic Maritime Arbitration ("NOMA"). This joint initiative was launched in 2018 and is sponsored by the Scandinavian NMLAs.

There is a trend that the persons active in the CMI are those dealing with the "wet" maritime law and less those dealing with the "dry" work, such as F D & D and transaction lawyers. There is a trend in the legal profession that those maritime lawyers that do not deal with the transactional (including ship finance) work are not sufficiently profitable to be part of the bigger full-service law firms. The trend is increasingly becoming that maritime lawyers doing wet work are working in "boutique firms" or

---

<sup>37</sup> [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=607671](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=607671)

smaller firms. We have seen this trend in The Netherlands and in Scandinavia. It is to be noted, however, that in the UK the maritime law firms are specialized and often have a certain size. It might be feared that recruitment from smaller firms to work as volunteers for the CMI may become more difficult as a result of the above trend.

### **3.8 The Increased involvement of younger lawyers – Young CMI**

#### *3.8.1 The organization of Young CMI*

As mentioned above Young CMI is a Standing Committee within the CMI.

Young CMI seems to be organized differently in the various NMLAs.

In the US, the young lawyers seem to be very active. They are organized there in a young lawyers' committee.

In Norway, the Young CMI are organized with a separate board – they organize at least one out of four meetings in the NMLA per year. They also have one representative on the board of the NMLA.

In Spain the young lawyers are involved in many ways:

- answering questionnaires
- scholarships are available
- since 2017 a mock arbitration of University students is included in the annual Congress
- they are offered lower membership fees
- students of Shipping Law Masters may attend the Congresses at very low fees
- Linked-In news so that young non-members can follow-up the activities of the SMLA
- Currently the Spain's MLA is analysing how to encourage liaising with other Mediterranean MLAs and Portuguese young lawyers

In Ireland, there is no specific activity which can be ascribed to the young lawyers. However, it is the case that the younger lawyers have been increasingly more active in organising evening lectures and the newsletter. In respect of questionnaires, on occasion the IMLA has found that younger members are better able to find the time to prepare first drafts to questionnaires, but working later in conjunction with more Senior members of the association to complete the replies.

#### *3.8.2 Ideas on how to increase awareness and participation from young practitioners*

The issue is how to obtain increased awareness and participation from young practitioners in the CMI.

One challenge is to facilitate communication between the young practitioners. As explained above, communication between members of NMLAs has to pass through the bottle neck on occasion constituted by their NMLAs, unless direct contact is already established. Linked-In seems to be one of the few methods to establish direct contact.

Common challenges in all MLAs seem to be the following:

- young professionals should be able and be given the opportunity to spend time participating in CMI activities. Many, however, are fee earners or employed in law firms that require and measure fee earning activities.
- Payment of the costs of attending seminars, travel and registration fees may be prohibitive for those who do not have employers who cover these.
- Often it must be shown that the activity results in business for the firm – because of referrals or making a good impression during the CMI activities.

There is a need to increase the participation of young professionals in the CMI and possible ways of doing so are to:

- encourage them to attend meetings
- encourage them to give presentations and participate in IWGs
- involvement in answering questionnaires in the NMLAs
- ensure that the young members in the NMLAs are aware of CMI activities – is it possible to reach them with separate, specific messages sent through the NMLAs?
- understand how millennials and other young generations use social networking and update the CMI website to use social networking tools to be more visible to younger generations, including understanding if developing an "App" is feasible and useful.
- should the CMI consider supporting limited, regional, meetings of the younger members of the CMI to allow the younger lawyers develop their own momentum?

The CMI through its NMLAs should also consider recruitment by liaising with universities that have well respected master programs in shipping and maritime law so that the students and researchers have knowledge of the CMI's activities.

A statement that the Task Force has not been able to verify, is that the Young CMI is in a stronger state of health in the US and Northern Europe than in other parts of the world.

### 3.8.3 *Age limit*

It has been debated whether the age limit to be a member of the Young CMI should be 35 or 40 years. Many lawyers do not qualify until they have almost reached 30 years and it could be argued that it takes a few years of active work, before engagement in Young CMI is beneficial. On the other hand, Young CMI is meant to be for younger people and increasing the age, means that more experienced people may be dominant in the work in Young CMI, while it is the intention to promote younger and more inexperienced individuals to participate. The Task Force has no conclusion in respect of this issue. However, lowering the attendance fees for younger persons as some NMLAs already do, and encouraging them to contribute helping with their time, abilities and better knowledge of what is going on in their generations, may be a breath of fresh air, creating an inter-generations debate about maritime law and the CMI itself, because our future now will be the present of others' future.

## **3.9 New and old functions of the CMI**

Questions that are sometimes posed are the following:

- Are there any traditional functions that have been superseded or are no longer relevant?
- Are there any new functions that will enhance the CMI's prominence in international law?

The Task Force will not attempt to answer these questions, but refers to the discussion in the various sections above and in particular section 3.2.

The CMI is an international private organization of more than 100 years' old, an "association of associations" founded on know-how, expertise, networking and, why not, friendship. No revolution is needed but an evolution is advisable, to adapt and channel the work of the very many volunteers so as to fulfil and accomplish the Constitution's aims in a globalised, digitalized and high-pace changing World. The spirit, principles and fundamentals do not need to be changed, but looking to the future implies embracing some of the forms, tools and means that the XXIst Century offers, so that the new generations of the maritime legal community know that the CMI exists, so that they are moved to get involved in achieving the NMLA's and CMI's short and long term targets, while learning from the past and present notables that have devoted their efforts to the same goals thereby pushing back the horizon towards the unification of Maritime Law.