



COMITE MARITIME INTERNATIONAL

PRESIDENT

30 March 2016

Presidents of NMLAs
Titulary Members

EMAILED
30/3/16

Dear Sir/Madam

Ad Hoc Committee Report

I **attach** the report of the Ad Hoc Committee which was set up following the Beijing Conference, at the suggestion of the President of the MLAUS at the time, to review the future of the CMI and its role.

It has been arranged that at the Presidents of MLAs breakfast meeting in New York on Thursday, 5 May from 7.30 to 8.30am there will be an opportunity for you to provide feedback on the attached materials which have been prepared by Liz Burrell and her Committee. I urge you to participate in that breakfast meeting and to provide comments to enable the Committee to complete their report to the Executive Council.

I look forward to seeing you in New York. If you are not attending, please ensure that your nominee is fully briefed with the position of your MLA in relation to these materials.

Yours faithfully

A handwritten signature in dark ink, appearing to read "Stuart Hetherington", is written over a light blue horizontal line.

Stuart Hetherington

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COMITÉ MARITIME INTERNATIONAL
Report of the *Ad Hoc* Committee on the Role of the CMI
29 March 2016

Introduction

The *Ad Hoc* Committee is composed of the following individuals:

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

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 vigor of Young CMI.¹

¹ 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. Several of the resulting recommendations 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 Programme also were shaped by the NMLA responses indicating an interest in projects involving commercial and insurance issues that come up regularly in practice.

These efforts were followed by a session at the October 2012 Beijing Conference chaired by President 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 (Attachment 1) describing the earlier efforts to perpetuate the CMI's vigor in a changed world.

Beyond the challenges shared by other organizations, the CMI faces the difficulty of accommodating the diversity of its constituent members.² 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 Endeavor

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:

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

² As summarized in Attachment 1:

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 organisations in the shipping or insurance industries as members. Some, such as the South American NMLAs belong to other organisations such as Instituto Ibero Americano de Derecho Maritimo (IIDM). Some publish their own journals and newsletters. Some operate through standing committees.

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 United States 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. 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
2. Meetings³
 - 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?
3. Relations with international, governmental and other maritime or legal groups or entities (IMO, IOPC Fund, UNCITRAL and other UN branches, WTO, EMSA)
4. Publications

³ Current meetings include:

- Conferences (<http://www.comitemaritime.org/Guidelines-for-Conferences/0,27142,114232,00.html>) (Monday to Friday)
- Colloquia (www.comitemaritime.org/Guidelines-for-Colloquia/0,27141,114132,00.html) (Monday to Wednesday)
- Symposia (www.comitemaritime.org/Guidelines-for-Symposia/0,27136,113632,00.html)
- Working Group Meetings (for details of existing WGs, see (www.comitemaritime.org/International-Working-Groups/0,2758,15832,00.html)).

5. 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
6. 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
7. Governance
 - Role and operation of the ExCo
 - Role of NMLAs in governance
 - Leadership positions and turnover
8. Finances
 - Dues
 - Reserves
 - Events
9. Communication and transparency, especially to increase awareness of the CMI's capabilities and activities
10. 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 centering 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:

- The extent to which resources should be 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.

- 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 NMLAs⁴ 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

⁴ Articles of the CMI Constitution concerning the ExCo and NMLAs are appended.

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

Attachment I

CMI - The Future of the CMI in the Decades to Come –

Beijing: October 2012

The Centenary Conference of the CMI, held in Antwerp in 1997 devoted a session to a discussion of the Future of the CMI. Essentially it was intended to discuss the working methods of the CMI and the subjects which CMI should work on. It is proposed to hold a similar discussion at the Beijing Conference in October 2012: "Future of the CMI in the Decades to come" and this paper has been prepared to assist delegates in their deliberations at that time.

Executive Summary

The session to be held at the Beijing Conference is an opportunity for NMLAs to comment on any matters relating to the workings of CMI and its relationship with NMLAs. This paper canvasses some of the Governance issues raised at the CMI Centenary Conference in Antwerp in 1997, the work done by the Steering Committee of the Executive Council which was set up in 2007, changes and developments which have taken place since 1997 and as a result of the Steering Committee's Report; i.e. the Current Work Projects and Future Work Programme; the Website and Technology; Development of new NMLAs (including the setting up of a Regional office of the CMI in Singapore for a three year trial period); Young Lawyers; Future Conferences, Symposiums and Colloquia Venues and Improvement in Relationships with International Organisations.

Centenary Conference: Antwerp 1997

Annex 1 to this paper is the document which was prepared to assist delegates at the Centenary Conference. The documentation which was prepared for the Centenary Conference and the results of those deliberations can be found in CMI Yearbook 1997, Antwerp II at pages 377 to 394. The speech made at the opening of the conference by Professor Allan Philip, the President of the CMI, can be found in the same issue of the Yearbook at pages 143 to 147. He noted the changed role which CMI had had to adopt since the formation of International bodies that had taken over the Convention drafting role of the CMI. CMI is now the link between the public and private sectors. It provides a bridge to Government, both local and international. A question for delegates is whether we are carrying out that role effectively enough. How can we improve?

It is of interest to revisit some of the comments made by the NMLAs in responding to the President of CMI's invitation to comment on certain issues prior to the Centenary Conference and to what was said by delegates at the Conference. **Annex 2** identifies the concerns raised at the time of the Conference and comments on developments since then have been inserted in bold type beneath each concern. Delegates are asked to comment on any of these matters and state whether they consider that the concerns are still valid, whether enough has been done to respond to them or whether more needs to be done to address them.

Governance Issues

The Executive Council appointed a Steering Committee in 2007 to develop a package of reforms. Two questionnaires had been sent to NMLAs prior to the Steering Committee's Report being completed. The first questionnaire sought:

- Historical data about each NMLA, such as date of formation, year of joining CMI, whether incorporated and the number of its members
- Its work practices, such as whether it restricted itself to CMI work and if not what other work or projects it engaged in
- The age profile of its membership and whether it makes special arrangements for younger members in terms of membership fee and whether it organises conferences and seminars with younger members in mind
- Whether it has any affiliation with other organisations
- Financial information such as whether it raises funds other than by way of annual fees
- Whether it would like to host a CMI event or has done in the past
- Whether its CMI subscription is paid from general revenues and how annual fees are assessed for its membership
- Whether it is satisfied with the CMI "Questionnaire" policy
- Whether it has any problems with the management functions of the CMI or any suggestions for improvement

- Whether it is involved in the regular workings of the CMI via IWG's and ISC's
- Whether it had any advice for the CMI as to how NMLAs could become more involved in the decision making processes of the CMI
- Whether its membership was increasing or declining and whether there were any ways in which the CMI could help improve the NMLAs

A review of NMLA responses to the First Questionnaire was attached as Annex 6 to the Report and Recommendations made by the Steering Committee in September 2008.

Twenty nine NMLA's responded to this Questionnaire. They have about 11,000 members. Some 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 organisations in the shipping or insurance industries as members. Some, such as the South American NMLAs belong to other organisations such as Instituto Ibero Americano de Derecho Marítimo (IIDM). Some publish their own journals and newsletters. Some operate through standing committees.

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.

The responses generally suggest that NMLAs are somewhat conservative and may not make the most of the opportunities to organise seminars for industry, as well as their membership, which could generate funds to defray CMI subscriptions and/or in sponsoring education or other initiatives. In relation to the operation and management of the CMI there was an overwhelming

endorsement of the modus operandi of CMI in issuing Questionnaires, although many NMLAs, apologetically, recognised that they often needed more time (or failed to respond at all).

Some of the suggestions made in response to the Questionnaire included:

- Greater use of email communication and websites
- Providing an easily accessible forum for the consideration and discussion of international maritime law through the CMI website
- Publication by NMLAs on their own or on CMI website of periodic updates of maritime legislative changes and current jurisprudence in their own jurisdiction
- The shortening of periods in office of CMI councillors
- Enlarging the size of the Executive Council
- Direct contact with members of NMLAs by CMI
- Greater interaction between the CMI executive person responsible for a particular NMLA and/or regional NMLAs
- Establishment of a regional subcommittee
- Advertising for speakers for conferences, seminars, colloquia, IWG and ISC
- Making sure that CMI events do not coincide with other international or national events
- Greater consultation with NMLAs
- Discussion of the costs structure and the fairness of fees paid (including cutting costs by greater use of electronic dissemination of materials), including the introduction of three levels of fees
- Invitation to delegates to preparatory meetings and costs sharing
- Holding a CMI function in the Americas as the Central and Southern American NMLAs feel cut off

- Reintroduction of the French language
- More timely feedback in relation to responses to questionnaires once collated by CMI
- The encouragement of younger people from more national associations in the workings of CMI
- Reporting annually a summary of the relevant and focused activities, and
- Greater frequency of communication about all CMI matters, with requests for comments by NMLAs.

A Second Questionnaire was sent to NMLAs, which was responded to by 17 of them. The questions posed in this Questionnaire were more focussed and, essentially, sought information on the following topics:

- The subscriptions paid to the CMI.
- The website, whether NMLAs consulted it, whether they would be prepared to provide a regular newsletter to the CMI and whether they would be prepared to provide email addresses of their members to enable direct communication between the CMI and NMLA members.
- Young members, seeking suggestions as to how to make the CMI more relevant to younger members.
- CMI publications, such as the Yearbook and the Newsletter and how NMLAs would prefer to receive such materials.
- CMI conferences, what attracts attendance at such conferences.
- Future work agenda subjects.
- The internal organisation of NMLAs for CMI work projects and its general operation, whether it has a designated person to work with the CMI, and whether it has a contact person to work with government departments in its own jurisdiction.

In general NMLAs responded favourably to the recommendations which had been made for variations to subscriptions. Many associations confirmed that they had websites containing useful information about the legal system in its jurisdiction and links to universities, legislation and case law etc. Many agreed to provide email addresses of their members, although some were concerned about privacy issues, and to provide regular newsletters. However it did appear that many members of NMLAs were unlikely to consult the CMI website.

In so far as young members were concerned a number of useful suggestions were made, including making topics more relevant to day to day practice, keeping prices as low as possible (including reduced or zero registrations for seminars etc), involving young members in IWGs and ISC meetings, and adapting the website for greater interaction with young members.

In general NMLAs were in support of eliminating or reducing the use of hard copy publications.

In relation to the CMI Conference, price and location were considered to be the most significant factors. In terms of future agenda projects, cross-border insolvency, seafarers' issues, including personal injury, death and illness, maritime labour law, a model agreement for post casualty work and piracy were all suggested. There was a view that IWGs and ICSs needed to attract a wider representation from Asia, as well as the Executive Council, in order to reflect better the global situation.

A wide variety of methods of work within NMLAs was evident from the responses to the questionnaire. Some, such as the United States 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.

The Steering Committee Report included the following recommendations and conclusions:

- (1) Reductions to annual subscriptions
- (2) Abolition of titular membership subscriptions and a more formalised approach to the appointment of titular members by the preparation of a proposal form highlighting the

need to show the contributions made by those whose appointment was sought to the work of the CMI or their NMLAs.

- (3) The reform of the website so as to include texts of conventions, pro forma letters to potential NMLAs, guidelines for conference organisers, the newsletter and yearbook and preparation of a brochure. It was also suggested that an annual report be prepared by the President of the CMI. It was also suggested that direct communication take place between the CMI and NMLA members for the distribution of materials, such as yearbooks and newsletters.
- (4) Not amending the Constitution to permit individual membership, but it supported the setting up of regional associations in exceptional cases only.
- (5) Supported the continuing contact between the CMI and universities such as WMU and IMLI.
- (6) Encouraged closer contacts between Executive Councillors and NMLAs and encouraged the creation of new NMLAs in countries where they had ceased to be effective, such as Poland, Romania, India, Malaysia, UAE, Egypt, Algeria, Israel, Cyprus, Estonia, Latvia, Lithuania, Ivory Coast, Benin, Ghana, Gambon, Cameroon.
- (7) The only publication to be produced in hard copy was the Yearbook.
- (8) Not to recommend increasing the size of the Executive but it did recommend reduction in the terms of Executive Councillors from 4 to 3 years.
- (9) Future conferences devote sessions and social occasions to young lawyers.
- (10) An Executive Councillor be appointed to have responsibility for communications and public relations.

As a result of the Steering Committee Report, the following actions have been taken:

- There have been substantial reductions in subscriptions., Some subscriptions have been reduced significantly. Overall subscriptions have been reduced by at least €40,000. (At the same time the reserves of the CMI have been reduced from about €1million to €700,000).
- Fees for titular membership have been reduced to zero.
- The website has been significantly upgraded and made more informative.
- NMLAs have been asked to provide email addresses of their memberships.
- Executive Councillors have been active in seeking the creation of new NMLAs in places such as India, Egypt, Poland, Indonesia, Honduras, Kenya and Malaysia.

- The terms of officers and Executive Councillors have been reduced from 4 to 3 years.
- Conferences as well as Seminars, Symposiums and Colloquia have included sessions and social occasions for young lawyers.

Current Work Projects

- (1) Acts of Piracy and Maritime Violence
- (2) Arctic and Antarctic Issues
- (3) Cross Border Insolvency
- (4) Fair Treatment of Seafarers
- (5) Implementation and Interpretation of International Conventions
- (6) Jurisprudence on the interpretation of maritime conventions
- (7) Limitation of liability/procedural rules
- (8) Marine insurance
- (9) Recognition of foreign judicial sales of ships
- (10) Issues relating to the Rotterdam Rules
- (11) Salvage Convention 1989
- (12) York Antwerp Rules

Future Work Programme

Of the topics listed only two will be debated at the Beijing Conference with a view to producing a draft instrument if that is what the delegates decide upon (**Recognition of Foreign Judicial Sales of Ships** and **Salvage Convention 1989**). Their work may or may not conclude in Beijing. Most of the other topics are likely to continue in one form or another after the Beijing Conference.

Arctic and Antarctic Issues and Cross Border Insolvency

These topics will be discussed at the Conference and are likely to form a significant part of the ongoing work of the CMI after the Conference.

Whilst the other topics do have an end product in mind for the most part, some of them, such as **Acts of Piracy and Maritime Violence, Marine Insurance and Fair Treatment of Seafarers** are bordering on being more akin to a Standing Committee having a monitoring role on international developments.

One of the discussion points in the Centenary Conference of 1997 was the suggestion that more use be made of correspondence in the work of an ISC. This has been taken up to a certain extent but could, if still thought appropriate, be something that the Beijing Conference could decide should be further developed in the future.

The holding of more regional meetings by NMLAs, and for ISCs or IWGs to meet in more widespread geographical locations have also been referred to on various occasions. The recent joint conference of the NMLAs of US, Canada, Australia and New Zealand was declared an enormous success and the annual Asian Conference hosted by the MLA of Singapore has become a regular feature of the Conference calendar.

One topic which it is thought greater focus could be given to by the CMI is **Ratification and Implementation of International Conventions**.

Considerable work has been done on this topic over many years. It was the subject of a joint report by Professors Francesco Berlingieri and Anthony Antapassis at the Athens Conference, 2008. (See CMI Yearbook 2007-2008 Athens p.308). The work these two distinguished Professors undertook sought to identify what inhibits uniformity being achieved and to that end they investigated the methods used for implementing international conventions and then considered what occurs after adoption. A Questionnaire sought information from NMLAs as long ago as 1987 concerning the procedures for implementation and the interpretation of a number of specific Conventions, such as Collision (1910); Salvage (1910); Protocol to Salvage Convention (1967); Hague Rules (1924); Hague Visby Protocol (1968); Liens & Mortgages (1916); Collision (1952); Arrest (1952); Limitation (1957); Protocol to Limitation (1979); Rights under Construction

(1967); Liens & Mortgages (1967); CLC (1969); Protocol to CLC (1976); Athens Passengers (1976); Limitation (1976); Hamburg (1978).

There is clearly a role for CMI to play in monitoring and disseminating information concerning the implementation and interpretation by National Courts of International Conventions but it is thought that there is a further role which the CMI can undertake through NMLAs.

It is thought that the CMI and NMLAs could, with others, seek to have international conventions more widely adopted. This work could be carried out on a number of different levels. A meeting with the International Chamber of Shipping in London in May attended by the President, Karl Gombrii, the Secretary-General, Nigel Frawley, and the two Vice-Presidents Johanne Gauthier and Stuart Hetherington, agreed to investigate the possibility of working with the ICS and its affiliated members around the world with a view to identifying the most significant conventions that are failing to achieve sufficient ratifications, ascertaining why countries who have not ratified them have not as yet done so and offering to assist those countries in understanding the conventions better, clarifying any issues which they have with them and generally offering to assist where possible in having those conventions ratified. Discussions were also held with Rosalie Balkin the Assistant Secretary-General/Director Legal Affairs and External Relations Division of the IMO Legal Committee in London in May and she also expressed keenness for the IMO Legal Committee to be involved in such a process.

In order for such work to be effective it will be necessary for an International Working Group or Standing Committee (or Joint Standing Committee with ICS, IMO Legal Committee) to be set up which will work together with the IMO Legal Committee and the ICS. Their task would be to identify significant conventions and the countries that have not ratified them, and then to identify those countries which have both representatives of the ICS and NMLAs who would then be put in touch with each other. Those representatives would, it is hoped, jointly approach the relevant government departments in their country to ascertain why their country has not ratified each of the identified conventions and what help could be given in order to assist in their ratification.

Members with an interest in public international law would be extremely useful in this project. Young lawyers should be encouraged to join also. It may also emerge from such work that some countries, particularly developing countries, would be assisted in having summaries of the

relevant conventions, details of those countries that have ratified them, guidelines as to what they need to do in order to ratify them as well as guidelines or suggestions as to how they might be given effect to by their national law.

The ICS has already produced a brochure "Promoting Maritime Treaty Ratification". It identifies the following Instruments to target:

- International Convention on Control and Management of Ship's Ballast Water 2004
- Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims 1976
- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 and Protocol of 2010
- International Convention for the Safe and Environmentally Sound Recycling of Ships (Hong Kong) 2009
- Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974
- Marpol Protocol of 1997 (Marpol Annex V1 - Prevention of Atmospheric Pollution by Ships)
- United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules) 2009
- Maritime Labour Convention 2006
- Seafarers Identity Documents Convention (Revised) 2003
- IMO Anti-Fouling Systems Convention
- IMO Bunker Spill Liability Convention

The ICS has members in the following countries which have an NMLA:

Australia; Belgium; Brazil; Chile; China; Croatia; Denmark; Finland; France; Germany; Greece; Hong Kong; India; Ireland; Italy; Japan; Korea; Mexico; Netherlands; Norway;

Philippines; Singapore; Spain; Sweden; Switzerland; Turkey; United Kingdom; United States.

To the extent that some of the above Conventions have not been ratified and given effect to domestically by any of the above countries it is thought that NMLAs together with the ICS member in that country could make contact with the relevant government departments to ascertain why they have not been implemented and what assistance they could be given.

It is also hoped that such a project would assist NMLAs to develop closer links with relevant government bodies.

If work upon such a project finds favour with delegates at the Beijing Conference the Executive Council would be looking for volunteers to be involved in this process, either as members of the Standing Committee or IWG or as a representative from their country who will liaise with the ICS affiliate in their country once the preliminary work by the Standing Committee has taken place. Delegates views as to how this project could best be structured would be extremely useful.

Website and Technology

The Effectiveness of the Website is only as good as the Chairs of the International Working Groups in keeping them up to date and refreshed with information. This is a vital role for the Chairs of IWGs, and the young lawyers section.

Communication with Members of the NMLAs is essential to make the CMI relevant to its membership. Whilst it is recognised that some NMLAs have privacy issues in that regard they have indicated that they have no difficulty forwarding any materials received from the CMI to their entire membership. The CMI needs to be provided with the details of the nominated person in that regard. All NMLAs are urged to provide the requisite information, which was sought by the President in his letter of 17 April 2012 to NMLAs.

The most significant addition to the website that has been identified by the Executive Council (and a number of NMLAs) would be the principal international conventions in the maritime area as well as up to date information concerning ratifications. Perhaps the most useful publication for judges, academics and practitioners that the CMI has ever produced is the Handbook of Maritime Conventions. A further, updated, version of that book is currently in the course of preparation by

IMLI. When that book is ready for publication the material will also be placed on the CMI website. That will be a significant improvement to the website.

A recent new feature is the uploading of lectures given by leading academics and practitioners. (This was "launched" with the President's letter to NMLAs of 17 April 2012). It is hoped that these will be useful for generating meetings within NMLAs that will not only be educational to their members but encourage younger persons, whether lawyers or others connected with the maritime industry to become aware of the existence of an NMLA. In addition it would provide a social opportunity for networking amongst such persons within the country of that NMLA as well as providing an opportunity to raise finances from such events. The CMI is very grateful to the academics and others who have thus far agreed to make DVDs of their lectures available for putting on the CMI website. If any NMLA is hosting a function with an informed and distinguished speaker please have it filed and send the DVD to Stuart Hetherington for uploading onto the website.

The suggestion has been made that the CMI should set up a chat room, join LinkedIn, Facebook and make greater use of the website and technology.

The CMI Executive Council looks to delegates of the Beijing Conference to advise and recommend on any further additions or aspects of the website that make it more meaningful to NMLAs and their members.

Development of New NMLAs

At the Assembly Meeting in Oslo in September 2011 the President reported that the Executive Council, at the invitation of the MLA of Singapore, was considering establishing a representative office for Asia, including India, on a 3 year trial basis. The thinking, as explained by the President, was that as a shipping hub for Asia, Singapore is an important and well placed MLA. There is a need in that region to galvanise current National Maritime Law Associations, as well as a need to recruit further member associations. In addition, there is work to be done to seek to obtain unification of maritime law in that region. It was thought that a representative office would provide a platform for that. The Assembly gave approval to the project, subject to approval by the Executive Council of the final agreement with the MLA of Singapore. Discussions regarding

practicalities are ongoing and the aim is to reach a final agreement later this year and start operations in 2013.

Further, it should not be overlooked that CMI is poorly represented throughout Africa, and the Middle East and much needs to be done to encourage the formation of MLAs in those areas. Visits by members of the Executive Council to NMLAs or putative MLAs have taken place and should be continued as one way to develop these organisations, whether already formed or embryonic. Apart from that, CMI is dependent on already established MLAs to help their neighbouring countries to set up their own MLAs where they do not exist. Maybe we should set a target of developing new MLAs in Africa and the Middle East, as well as Asia.

Young Lawyers

There is clearly a lot more which can be done at an International (CMI) and National (NMLA) level to encourage the participation of young lawyers. The Regional Annual Meetings held in North Western Europe provide a precedent which could be adopted in other regions: Asia, South America, etc. Making the website more interactive and informative would clearly assist in this process. Encouraging young lawyers to join Standing Committees, IWGs or ISCs would assist CMI to identify its future leaders. Should it be obligatory that at least one young lawyer be appointed to IWGs? Should they be made Rapporteur or Joint Rapporteur?

Future Conferences, Symposiums and Colloquia

It has been decided to hold the 2016 Conference in New York. Suggestions for venues for Symposiums or Colloquia between the Beijing and New York Conferences include Dublin, Berlin, Tokyo, St Petersburg and Istanbul. The views of delegates as to their preferred venue and topics (current issues, especially) to be discussed would be welcomed by the Executive Council.

Improvement in Relationships with other International Organisations

The IMO, UNCITRAL, UNCTAD, UNIDROIT, IBA, IOPC Funds, ICS, International Group of P&I Clubs, ISU, IAPH, ICC, IUMI, EU, IIDM are all organisations that CMI could (and arguably should have) regular contact with. Contacts with IMO and IOPC Funds take place regularly thanks to the attendance at their meetings of Patrick Griggs and Richard Shaw. It is thought that with the IMO and other organisations a regular high level meeting should take place between officers of the

CMI and most, if not all of those organisations, and reports made to the CMI Executive which can be included in newsletters so members of NMLAs can become aware of their work programmes and the areas in which CMI might be able to work with them. Delegates views on how these relationships can be more formalised and improved would be welcome. A concerted plan to develop links and forge relationships with all such organisations need to be developed and NMLA members with such contacts need to volunteer their services in these projects.

Stuart Hetherington

Vice-President, CMI

July 2012

Annex 1

The document ANTW/97 Future 2 was prepared in advance of the Conference. It posed the following issues for debate:

1. **Method of Work including IWGs, ISCs and Standing Committees**
 - A How to give a clear mandate to CMI observers working with UN agencies and other bodies?
 - B Whether CMI should set up Standing Committees and if so, what subjects should be covered?
 - C Should International Working Groups and International Sub-Committees be replaced (where possible) by correspondent groups in order to increase opportunities for National Associations to participate?
2. **Future Work**
 - A Should CMI set up a Committee to monitor and encourage implementation of its own (and other) international codes, conventions etc?
 - B Should CMI actively develop its cooperation with UN agencies and other bodies in the drafting of conventions, model laws, guidelines etc?
 - C Should National Associations be encouraged to liaise with their national governments to identify topics of concern to them in the field of private international maritime law?

- D Should CMI continue to look for new work topics outside the orbit of the UN agencies?
- E Should CMI create a committee to produce a long range work plan for CMI?
- F Is CMI perceived as principally representing the interests of shipowners and insurers? If so, should CMI seek to change its image?

3. **Confidence and Profile**

- A Should CMI change its current patterns of quadrennial conferences with colloquia in between?
- B Should CMI be prepared to sponsor conferences organised by National Associations?
- C Should CMI organise conferences which are more geared to the Commercial Conference Market?

- D Should CMI seek to establish a higher profile? If so, what image should it project?
- E Should CMI invite governments to send observers to conferences?

4. **National MLAs**

- A Should National Associations be able to vote at CMI Assembly Meetings by proxy and if so, with respect to what types of issue?
- B There is a perception the CMI is dominated by European nations. If this is correct, what can be done about it? Should members of the Executive Council make more frequent visits to member associations (time and cost permitting)?
- C Some National Associations are inactive and membership criteria are restrictive. Would National Associations welcome a review of their constitutions, memberships and functions by CMI officers, aimed at improving their effectiveness?
- D Why do many National Associations fail to respond to questionnaires?
- E Should CMI actively recruit new members, in particular from the Far East?

5. **Administrative Aspects including location and staffing of headquarters**

- A Is it generally agreed that the headquarters of CMI should remain in Antwerp?
- B Should CMI seek financial or material aid from Governments or other sources?
- C Are National Associations prepared to spend money on improving the methods of communication available to the CMI secretariat?
- D Should CMI incur the cost of setting up an enquiry office available to give advice to National Associations?
- E How important to National Associations (and their members) are the CMI publications?
- F Why do only 12 out of 52 member states distribute these publications to their members?
- G What suggestions do member associations have for maintaining or reducing the costs of running the organisation?

6. Executive Council Tenure, Frequency of Meetings and Communications

- H Should the size of the Executive Council be increased by one or two (despite the consequential increase and expense) to give the Council a broader international base?
- I Should the nominating committee be urged to appoint younger people to the Executive Council?
- J Should the Executive Council meet more than the current twice a year?
- K Should CMI develop its own website on an internet and develop an email capacity?

7. Payment of dues and finances

- L Should Member National Associations who do not pay their dues be permitted to attend Conferences, Assemblies or vote by proxy?

Annex 2

General

- The balance between the civil and common law countries was being lost.

This is an area that needs to be kept under constant surveillance.

- CMI should move away from being seen to be as principally a lobby group for shipowners and restore its impartiality.

It is believed that this has been achieved but, again, is a matter which needs to be kept under constant surveillance. Clearly the CMI should not be seen to be a lobby group for any particular segment of the maritime industry.

- CMI should develop closer relationships with IMO and other bodies.

The role played by Patrick Griggs and Richard Shaw at the IMO Legal Committee and IOPC Fund has clearly raised the profile of CMI in recent years. It is believed even more can be achieved in this regard and it is suggested that an annual meeting with officers of the IMO Legal Committee and the CMI should take place.

Members of the Executive Council particularly, but also others, should be delegated to make contact on a regular basis with such bodies and report back to the Executive Council.

- The CMI was Eurocentric.

The Eurocentric nature of the CMI and the perceived bias in favour of P&I Clubs and shipowners which was referred to at the Antwerp Conference are matters that Executive Councillors have sought to change. The present Executive Council has 6 of its 14 members based in Europe whereas in 1997 at the time of the CMI Centenary Conference there were 9. It is recognised that 6 may still be seen as a disproportionate number from one continent.

This has been addressed by enlarging the geographical area from which Executive Councillors are appointed.

- Some NMLAs were moribund and their memberships were too restrictive.

The Executive Council has taken steps to remove the membership of non-financial NMLAs and to impress upon potential new NMLAs that their memberships need to be taken from a wide spectrum of the maritime industry.

- Strengthen links with international organisations.

This has certainly occurred with the IMO (Legal Committee) and the IOPC Fund as a result of the activities of Patrick Griggs and Richard Shaw, as well as UNCITRAL due to the work done by the likes of Francesco Berlingieri, Stuart Beare, Michael Sturley, Alexander Von Ziegler and Gertjan Van der Ziel. It is thought that more could be done in the future.

- Hold International Sub-Committee Meetings outside Europe.

This has not occurred.

- Develop Asian membership.

Work has commenced in this regard particularly in relation to India, Malaysia and Indonesia.

- Suspend unfinancial members.

This has taken place with greater rigour in the last few years. It is hoped that the significant reduction in subscriptions will reduce this problem significantly.

Methods of Work

- CMI observers attending meetings of United Nations agencies needed to have a clear mandate.

It is believed that this has been achieved but, once again, needs to be constantly monitored so that CMI observers are aware of the views of the Executive Council as to the role they should play.

- Consideration should be given to the appointment of standing committees on certain topics such as carriage of goods, limitation of liability, marine insurance, pollution and salvage.
- **The following Standing Committees currently exist:**

Audit committee, CMI Charitable Trust, CMI Archives, CMI Young Members, Collection of Outstanding Contributions, Conferences/Seminars, Constitution Committee, General Average Interest Rates, Liaison with International Organisations, National Associations, Nominating Committee, Planning Committee and Publications.

Perhaps, to be added to this list at the present time, would be Fair Treatment of Seafarers, Acts of Piracy and Maritime Violence, and Rotterdam Rules. Younger members, also, should be recruited to such Standing Committees and perhaps members of international organisations such as the IMO Legal Committee, ICS and others. After the Centenary Conference the then Executive Council decided against appointing standing committees, although as has been seen a number do now exist and it might be thought that some International Working Groups are more in the nature of Standing Committees, such as those dealing with the Rotterdam Rules, Acts of Piracy and Maritime Violence and Fair Treatment of Seafarers.

- **There should be greater use of video and teleconferencing.**

This has not been a matter that has been developed since the Centenary Conference. Only the Executive Council has to date taken advantage of technology to reduce the number of face to face meetings to one a year. It has one email meeting a year which takes place over a week or more.

- **International Sub-Committees should operate where possible as correspondent groups.**

Once again, this is not a matter that has been taken up in so far as ISC's are concerned since the Centenary Conference, although some IWG's have operated more extensively as a correspondent group than might have been the case in the past. One example is the Fair Treatment of Seafarers. Similarly both Places of Refuge and the Review of the Salvage Convention IWGs have relied extensively on correspondence between members of the IWG.

- **There should be a broader representation from Africa, Asia and Latin American countries on working groups and international subcommittees.**

This has been achieved to some extent but it is believed that more could be done.

- Consideration could be given to creating regional subcommittees to feed into international working groups.

This has not been adopted in practice.

Future Work Projects

- A planning committee to identify the long range work plan should be set up.

A planning committee was set up soon after the Centenary Conference which met with mixed success.

- More cosmopolitan areas of law should be looked at, such as marine insurance.

The topic of marine insurance was taken up and considerable work done under the chairmanship of John Hare. Under Dieter Schwampe, a different focus has been adopted. Another topic such as Cross-Border Insolvency and the Arctic and Antarctic are further examples of topical work being done within the CMI.

- CMI should offer expert assistance in relation to the implementation and ratification of conventions (is linked also with the suggestion that CMI should be more proactive in getting States to adopt instruments that it has worked on).

It is thought that this is an area in which the CMI can make a significant impact.

- CMI should move towards a greater emphasis on the production of model laws, guidelines etc.

This is something that needs to be considered whenever CMI works on a new project, and it is believed is taken into account.

Conferences and Profile

- Some concerns were expressed as to the length of conferences but there was general agreement that the conferences should be held every four years with a colloquium every two years.

Since 1997 conferences have been held at Singapore (2001), Vancouver (2004) and Athens (2008). There have also been colloquia, symposiums and seminars held since the Centenary Conference in Toledo (2000), Bordeaux (2003), Cape Town (2006),

Dubrovnik (2007), Buenos Aires (2010) as well as the signing ceremony of the Rotterdam Rules in 2009 and the Oslo Seminar in 2011 which coincided with Assembly meetings.

Role and importance of NMLAs

- CMI risked being dominated by wealthy nations and smaller nations having a limited say.

The greater geographical spread of the membership of the Executive Council is thought to have made some inroads into this perceived problem.

- Proxy voting should be allowed.

After the Centenary Conference the Executive Council decided not to recommend any amendments to the Constitution.

- Executive Councillors should be encouraged to attend functions being organised by NMLAs.

This has occurred to a limited extent but could, if thought appropriate, be increased. Executive Councillors have attended IIDM meetings, the Singapore MLAs annual meeting, the joint meeting of the US, Canadian and Australian and New Zealand MLAs, and others.

Administrative aspects, location and staffing of headquarters

It was suggested that:

- the head office could be moved to Brussels or London which were more readily accessible than Antwerp.

This has not taken place. Belgium is clearly the home of CMI, the place where it is incorporated and where its records are maintained.

- a permanent Enquiry Office under the supervision of the Secretary-General should be set up.

The Executive Council, after the CMI Conference, decided to ensure that the assistant to the administrator would convey any enquiries received to an Executive Councillor for response.

More resources should be given to publications.

The greater use of the website has perhaps made this unnecessary.

Executive Council Tenure, Frequency of Meetings, Communications

- It was suggested that the size of the Executive Council be increased with a view to moving away from the European bias and have representatives from South East Asia, Africa and China.

After the Centenary Conference the Executive Council decided not to recommend a change to the Constitution but to seek to widen the geographical spread of the membership of the Executive Council to take account of this concern. It made such a recommendation to the nominating committee, and it is believed that this has been achieved but more can perhaps be done.

- The regular turnover of councillors and younger councillors were also recommended.

The Steering Committee (set up by President Jean-Serge Rohart which comprised the two Vice-Presidents and the Secretary-General) recommended a reduction in terms of councillors from 4 to 3 years, with the potential to serve two terms. The Constitution was amended in Rotterdam to achieve this.

- Two meetings per annum were considered by some to be insufficient and the use of video and technology was recommended.

Notwithstanding these concerns in the interests of economy the Executive Council only meets face to face once a year, together with an email meeting which has been referred to above. The practice has also developed, arising from the setting up of the Steering Committee in 2008, for an inner cabinet (known as the Management Committee) to meet annually. This consists of the President, two Vice-Presidents and Secretary-General. This is thought to have been a useful innovation particularly where the President is not someone who is fully retired.

Payment of dues and finances

- A number of suggestions were made for a review of administrative expenses at the Centenary Conference.

Whilst greater discipline was attached to the finances of the CMI after the CMI Conference it was noted at the time that the expenses of running the office in Antwerp

were about 48% of the total expenses incurred annually and the expenses for the Executive Councillors, including the President and other officers were running at approximately 35% of the total expenses. It was not considered there was very much room for economy in expenses. Changes have been made not least the substantial reduction in NMLA subscriptions, the reduction in Executive Council expenses and the greater use of the Internet etc. As a result the CMI has a healthy reserve.

Report of the Plenary Session

- New ways should be developed of consulting with NMLAs, such as more seminars, bilateral meetings etc.

To an extent this has been achieved (see the list of conferences, colloquia and seminars listed above). Consideration could perhaps be given to more regional meetings for NMLAs being organised in areas such as South America, Central America, Europe and Asia.

- CMI should be a leader and not a follower and encourage more youthful representation.

Serious attempts have been made to encourage younger members to participate in the CMI. Special events (both scholastic and social) have been organised at conferences and colloquia. The Northern European Regional Grouping has held extremely successful functions for young lawyers. The Singapore MLA hosts an Asian meeting once a year.

- CMI's domination by European nations does not take account of the growing economies of Asia.

Some far sighted delegates at the Centenary Conference highlighted the need to give greater emphasis to establishing NMLAs in Asia. At the Assembly meeting in Oslo in 2011 the President reported on an approach that had been made by the Singapore MLA to establish a representative office for three years in that country. At the time of preparation of this paper discussions are still taking place in that regard.

This has been addressed by enlarging the geographical area from which Executive Councillors are appointed but it is believed more can be done in the future.

- CMI should make itself "really international".

Steps have been taken to broaden the geographical membership of the Executive Council. Efforts are being made to encourage the setting up of MLAs around the world.

- CMI should embrace modern communications.

The Executive Council, after the Centenary Conference, decided to install email and investigated establishing a website. Francesco Berlingieri is to be commended for the enormous work that he put into establishing the first website. The Steering Committee recommended investing more in changing the website but clearly more can be done. The Executive Council has certainly embraced modern communications, as has been referred to above in relation to one of the two Executive Council Meetings which takes place annually and the website has been significantly improved. There are clearly further matters that can be done to improve the website and embrace technology.

- Relationships with international bodies should be structured on a more formal basis.

Whilst steps along this path are being taken it is thought more can be done.

- Developing countries should be assisted in implementing existing conventions by CMI providing technical assistance.

This is under review.

- CMI should nominate representatives to liaise with the United Nations Agencies.

This has been done, but once again it is believed more can be done.

Conferences

- One week was too long for a conference.

The Executive Council has continued to follow the traditional format for 4 yearly conferences.

- Seminars etc should be used to raise funds for the CMI and be of no more than 3 to 4 days.

The CMI has adopted this suggestion. See the list above of conferences, colloquiums, symposiums and seminars which have taken place.

NMLAs

- Guidelines for membership of NMLAs should be produced.

These are on the website "Guidelines for the formation of national maritime law associations".

- Executive councillors should be encouraged to visit NMLAs.

This has been done (see comments above).

- There should be a recruitment drive for new NMLAs in the Far East.

This is happening.

Administration

- Better use of the internet.

If NMLAs would provide their members contact details (or at least one central repository for messages from CMI to be forwarded to their members) more could be done in this regard.

Size of the Executive Council

- Wider representation rather than increase in size.

See comments which have been made above.

Attachment 2

The Future of the CMI

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

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

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

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

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

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

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

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

(a) The normative function of CMI

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

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

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

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

b) Monitoring function

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

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

c) Keeping the spirit of the origin

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

2. Organisation of the CMI

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stuart Hetherington
President

30 November 2012

Excerpts from CMI Constitution

Part II The Assembly

Article 4

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

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

Article 7 - Functions

The functions of the Assembly are:

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

Part III Officers

Article 14

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

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

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

Article 15 Nominating Committee

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

The Nominating Committee shall consist of:

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

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

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

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

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

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

Part IV Executive Council

Article 18 Functions

The functions of the Executive Council are:

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

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

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

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

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

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

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

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

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

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

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

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

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