



Vigilandum est semper; multae insidiae sunt bonis.

CMI Newsletter

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**COMITÉ MARITIME INTERNATIONAL
PRESIDENT**

6 April 2021

MLA Presidents
Titulary Members
Consultative Members

Re: Postponement of 2021 Tokyo Conference to 4-8 April 2022

Dear Presidents, Titulary Members and Consultative Members,

I hope this letter finds you, your families and colleagues in good health and spirits, and trust that the roll-out of the COVID-19 vaccines in your respective countries is well underway.

The purpose of this letter is to advise you that the Board of the Japanese Maritime Law Association (which met last week) and the Tokyo Conference Organizing Committee (which met earlier today via videoconference) have decided to postpone the 2021 Tokyo Conference by six months to 4-8 April 2022. The new dates coincide with the Cherry blossom season.



Given the New Otani Hotel's cancellation deadline to avoid incurring a substantial monetary penalty (which expired last week and the Hotel was unwilling to extend or waive), and the inability to predict what requirements will be in place by the Japanese Government in September 2021 to allow foreign delegates to enter Japan (even if they have been vaccinated which, according to medical reports, may not preclude reinfection of the virus and/or mutations), the Japanese MLA Board and Tokyo Conference Organizing Committee concluded we simply could not commit to holding the Conference

this year.

At this juncture, it appears unlikely we will be able to conduct an in-person Assembly in 2021 and, thus, we will schedule another correspondence Assembly (as was done in 2020) or, alternatively, conduct the Assembly via Zoom or Microsoft Teams on or about 30 September 2021. I will provide more details in this regard after the Executive Council holds its next virtual meeting during the week of 24 May 2021.

Please note we are likely to have two CMI events in 2022, six months apart and on different continents, since we will be meeting in Antwerp during the third week of October in 2022 to commemorate the CMI's 125th anniversary. We also anticipate convening an extraordinary Assembly in Antwerp on or about 20 October 2022 to vote on changes to the CMI Constitution (including a change in fiscal year) which are required to remain in compliance with the new Belgian Companies' Act.

On behalf of the Executive Council, thank you for your continued participation in the work of the CMI, and we very much look forward to seeing you in Tokyo and Antwerp in 2022.

Faithfully yours,



Christopher O. Davis

Note Bene: The venue for the Tokyo Conference remains the New Otani Hotel and the Tokyo Management Committee is exploring various options for socially-distanced indoor and outdoor social and work programmes.



Picture: Members of the Tokyo Management Committee. Top row left to right: Tomotaka Fujita, Dieter Schampe, Lawrence Teh, bottom row left to right: Prof. Kenjiro Egashira, Rosalie Balkin, Chris O. Davis



COMITÉ MARITIME INTERNATIONAL

Internationale Vereniging Zonder Winstoogmerk (Non-Profit Association)

Ernest Van Dijckkaai 8 2000 Antwerpen

Enterprise no. 0867.385.381

MINUTES OF ASSEMBLY HELD ON 30 JUNE 2020

In the year two thousand and twenty on 30 June 2020 an Assembly meeting was held remotely/ without physical presence of Members pursuant to the Royal Decree of 9 April 2020, amended by the Royal Decree of 29 April 2020.

The meeting opened at 1200 hours (GMT) under the Chairmanship of Mr Christopher Davis, President of the Comité Maritime International who was also appointed as President of the meeting by the Assembly.

The Assembly chose as Secretary and Scrutineer Dr Rosalie Balkin, Secretary-General of the Comité Maritime International.

1. Agenda

Executive Council Appointments and Resignations.

2. Convocation of the Assembly

The Assembly recognised that the convocation of the meeting had been issued on 15 May 2020 according to the forms that are prescribed by the Constitution and that the agenda for this meeting had been communicated in a timely manner to the Member Associations.

3. Presence quorum

The Assembly recognised that more than five Member Associations entitled to vote had returned the voting form, so that a quorum as prescribed by Article 12 of the Constitution was constituted.

4. Decisions

With effect on 30 June 2020:

The Assembly noted that:

- The appointment of Dr Rosalie Balkin as Director and Secretary-General had ended.
- The appointment of Mr Aurelio Fernandez-Concheso as Director and Executive Councillor had ended.
- The Assembly unanimously decided that:

- Dr Rosalie Balkin be reappointed as Director and Secretary-General.
- Mr Aurelio Fernandez-Concheso be reappointed as Director and Executive Councillor.

All appointments / reappointments are until the Assembly Meeting of 2023.

5. Power of Attorney and Special Mandate

There being no further business, the Assembly closed at 1600 hours (GMT).

The Assembly unanimously gave a Power of Attorney and Special Mandate to Mr Jean Francois Peters, Advocaat, whose office is at Jan Van Rijswijcklaan 232, 2020 Antwerpen to fulfil all legally required formalities in relation to the decisions taken by the Assembly and to sign all documents that are required thereto including the filing and publication in the Moniteur Beige, Legal Persons Register and the Crossroad Bank for Enterprises.

The President of the meeting

The Secretary of the meeting and Scrutineer




III. EXCO Virtual Meeting November 2020 – Highlights – by Rosalie Balkin



COMITÉ MARITIME INTERNATIONAL
SECRETARY- GENERAL

Highlights from the Minutes of Virtual E-Meeting of the CMI Executive Council from 9-13 November 2020, Chaired by the President, Christopher Davis, from his Office in New Orleans

1. Opening Remarks by the President

The President welcomed EXCO members to the second virtual e-meeting in 2020, noting that the ongoing Pandemic and postponement of the Tokyo Conference precluded holding an in-person meeting.

The President informed EXCO of his participation in an interesting webinar held on 11 November 2020, sponsored by the IIDM and Peruvian MLA in an effort to prompt discussions by the Peruvian Government on the new cargo legal liability regime which should be adopted over the next year given the Government's denunciation of the Hague Rules on 12 May 2020 (the denunciation becomes effective on 12 May 2021). Kate Lannan of UNCITRAL and CMI's former Secretary General and Executive Councillor, Alexander von Ziegler, also participated in the webinar, along with a number of IIDM members and Prof. Rafael Illescas of Spain who headed Working Group III at UNCITRAL and was charged with drafting the Rotterdam Rules. Kate, Alex, Rafael, and himself, as well as a number

of the Latin American speakers, advocated in favour of the Rotterdam Rules and referenced ongoing efforts to promote ratification, including the CMI's recent submissions to IMO's Marine Safety Committee via the CCC Sub-Committee and FAL Committee.

2. Financial and Administrative Reports

a. Operations Report and Ancillary Documents Prepared by the Treasurer/Head Office Director

In approving the revised COVID-19 Budget and the 2021 Budget, EXCO noted that CMI's cash reserves remained healthy as of 31 October 2020, despite the fact that 25% of the 2020 subscriptions had yet to be received (presumably due to the Pandemic, although reminders were sent to those NMLAs which had not yet paid).

b. Audit Committee

Resolved: that Mans Jacobsson be reappointed as Chair and that Peter Cullen, Luc Grellet and Andrew Taylor be reappointed as Members of the Audit Committee.

3. Collections of Subscriptions

EXCO expressed concern about those NMLAs that were late with their subscriptions and noted in this connection that two MLAs would most likely need to be expelled at the next Assembly if payment of their arrears was not forthcoming.

4. New MLAs

Sri Lanka MLA and the new Russian MLA update

EXCO discussed the requirements for the Sri Lanka MLA and the new Russian MLA being admitted to membership of CMI.

5. Future Meetings:

a. Assembly and Conference in Tokyo 2021

A deadline of no later than 29 March 2021 for both EXCO and the JMLA was set to decide on whether to go forward with 2021 Tokyo Assembly and Conference and, if so, the format (actual or virtual) for same. [NOTE: see President's Letter above for the latest developments].

b. CMI Event in Antwerp 2022

Resolved: that EXCO's proposal to proceed with the 2022 event in Antwerp to mark the 125th anniversary of the CMI be approved / confirmed and that the Belgian MLA should be informed accordingly.

c. CMI Event in Montreal in 2023

EXCO noted confirmation that the date of the Montreal event would be 14-16 June 2023.

d. CMI Event in Gothenburg in 2024

Resolved: that the organizers of the 2024 Gothenburg event be referred to the CMI Guidelines on hosting events; and that EXCO looked forward to receiving from them an update in due course regarding planning for the meeting.

6. International Working Groups

EXCO discussed those reports that had been provided by the Chairs of the IWGs. In so doing, the observation was made that it would be particularly useful for IWG Chairs to prepare a very brief resume of their work to enable a better understanding by others.

Re IWG on Offshore Activities, the discussion was focussed on whether the IWG should begin drafting a convention on this subject. In light of the differing views expressed as to whether the IWG should begin work on a draft convention, EXCO's decision was deferred until its next virtual meeting. EXCO confirmed Alessandro Lopes Pinto of Brazil as a new member of the Group.

Re IWG on Cybercrime, the topicality of this issue was noted as was the fact that regulators the world over are tightening the wording on cyber coverage in insurance policies. Moreover, various markets were working on new cyber clauses, and cover might become restricted by exclusions, and buy-in might become available at additional cost and with lower limits.

Re IWG on Judicial Sale, Ann Fenech was congratulated on her excellent work on this interesting topic.

Re IWG on Ship Financing Security Practices, EXCO noted that the IWG's work had concluded, and it had morphed into another group called "Security Interests Over Shipping Containers".

Re IWG on Cross-Border Insolvency, it was resolved that the IWG be dissolved as per the Chair's recommendation.

Re IWG on Unified interpretation on the test for breaking the owner's right to limit liability under the IMO liability and compensation conventions, it was noted that this IWG, chaired by John Markianos- Daniolos and Dieter Schwampe, working with IWG members Kiran Khosla (ICS) and David Baker (IGP&I), had prepared submissions to IMO. A questionnaire had also been prepared and had been sent out to the NMLAs by the President. The questionnaire and the ten answers so far received were available on the website <https://comitemaritime.org/work/unifie-interpretation-on-the-test-for-breaking-the-owners-right-to-limit-liability-under-the-imo-conventions/>

The IWG had requested respective EXCO members to remind their MLAs to respond to the questionnaire.

It was provisionally planned for the IWG to run a session at the Tokyo Conference under John M-D's chairmanship, with Kiran and David being speakers on developments at MO and IWG member Sabine Rittmeister presenting the results of the answers to the questionnaire.

EXCO noted these developments with thanks.

Re the IWG on Security Interests over Shipping Containers, EXCO was reminded that CMI now had a relationship with CINS -- (<http://www.cinsnet.com/>) the members of which were most of the box liner operators. CINS dealt with container safety but there might be an interest in cooperating with CINS with a view to attracting the attention of the container finance people who were CINS members.

7. Standing Committees

Re SC on Carriage of Goods, EXCO stated its appreciation of the work done by the Croatian MLA but supported the Chair's recommendation that the Croatian MLA's recommendation to revisit the Rotterdam Rules be declined.

Re SC on General Average and Interest Rates, EXCO supported the proposal of the SC that the interest rate for the period 1 January 2021-31 December 2021 remain unchanged at 2.75%.

Re SC on Young CMI members, EXCO noted that the yCMI was aiming to schedule a joint on-line seminar for young members of the AAA and CMI. It was suggested that the yCMI Chair, Robert Hoepel, liaise with the SC Chair on General Average, Jorn Groninger, to see if and how that SC might support or otherwise contribute to this work.

Re Database of Judicial Decisions on International Conventions, EXCO congratulated Stephen Girvan, Paul Myburgh and all those involved in the production of the database, which was also expressed to be a fitting memorial to Francesco Berliengieri's pioneering work. It was further suggested that a text be prepared which NMLAs could send to their individual members, highlighting the existence and use of the database for the benefit of all members.

Re SC on Nominating Committee, it was resolved that EXCO's nomination of Frank Steven as Treasurer to replace Peter Verstuyft be approved and that the Secretary-General communicate this to the Nominating Committee not less than 14 weeks prior to the 30 September 2021 Assembly.

Re SC on Planning Committee, the Secretary-General, Rosalie Balkin, noted that she would write to the NMLAs to see if they had any suggestions for CMI's future work programme.

Re SC on Constitution Committee, it was resolved that Peter Marcon's recommendations be noted with thanks, that further study of the recommended amendments and comments on same be invited prior to EXCO's next virtual meeting, and that the consensus was to put the proposed amendments before the Assembly for a vote in Antwerp in 2022.

In so doing it was noted that several of the proposed amendments were required for the CMI to remain in compliance with the new Belgian Code on Companies and Associations. The amendments also included the recommendation that a quorum should require at least 50% of Associations in good standing and with the right to vote and the suggestion that the new financial year run from 1 May to April 30.

8. Publications:

a. Newsletter

Rosalie Balkin noted that she and Evelien Peeters were aiming to put out three Newsletters each year—so far this year two had been issued, the latest on 31 October, which was later than they had intended, but the advent of COVID-19 seemed to dry up any other news. For the last two issues they had added a column on NMLA news, which had attracted favourable comments, and which had proved to be rather popular, so their intention was to make this a regular feature. They had also received favourable comments about the Newsletter in general, which had been very welcome.

EXCO expressed its appreciation to Rosalie and Evelien for all their work in publishing the Newsletters.

b. Updated history of CMI (1972—2022) to be authored by Giorgio Berlingieri and completed by 2022 Antwerp Assembly

EXCO resolved that Giorgio be thanked for undertaking this substantial and worthwhile endeavour and agreeing to author such an important piece for CMI's 125th anniversary.

9. CMI Regional Office in Singapore

EXCO expressed its appreciation to Lawrence Teh for the time and effort he had devoted as Administrator and as the representative of the Singapore Office for promoting the work of the CMI in Southeast Asia.

10. CMI-The Future

EXCO resolved that Taco van der Valk's appointment to the Task Force be approved.

11. Clarify and/or Tighten Requirements for Titulary Membership

EXCO discussed whether the requirements / qualifications for Titulary Membership should be tightened to make it clear to MLAs in proposing candidates that the appointment as a Titulary Member was not only an honorary distinction but also a commitment to further the aims of CMI.

Resolved: in view of the differing views expressed by EXCO Members, that further discussion ahead of the next EXCO virtual meeting might be in order, with a view to making recommendations to the Assembly either in Tokyo (2021) or Antwerp (2022).

12. Miscellaneous Correspondence:

Notification from IMO about the death of the former Secretary-General, William (Bill O'Neil

EXCO noted with sadness the passing of William (Bill) O'Neil, former Secretary-General of IMO and expressed their condolences to his wife Olga and Bill's family.

It was noted that a copy of the letter of condolence with regard to the passing of Bill O'Neil signed by the President and Secretary-General of CMI and expressing deep sympathy on the part of the Assembly and EXCO had been sent to his wife, Olga, who had written back to the Secretary-General thanking her for doing so.

13. IMO and UNCITRAL Meetings:

a. IMO Legal Committee (LEG)

EXCO noted that the 107th session of LEG was scheduled to be held remotely from 27 Nov to 1 Dec 2020. The CMI delegation which the Secretary-General had registered to attend with IMO was comprised of herself, Robert Veal, Anna Petrig and Valeria Eboli.

b. IMO Maritime Safety Committee (MSC)

EXCOI noted that the 102nd session of MSC had been held remotely from 4-11 Nov 2020. The CMI delegation comprised of Tom Birch-Reynardson, Henrik Ringbom, Chris Davis and Robert Veal.

c. IOPC Funds

EXCO noted that the IOPC Funds meeting was scheduled to be held remotely from 2-4 December 2020 and would be attended by Patrick Griggs, Chris Davis and the Secretary-General.

d. UNCITRAL

EXCO noted that the 37th session of Working Group (WG) VI on Judicial Sale of Ships was scheduled to take place from 14-18 December 2020. Ann Fenech had been liaising with the UNCITRAL Secretariat regarding the Annotated 2nd Revision of the Beijing draft convention and in so doing had stressed the need for the outcome of the deliberations to be a convention and not merely guidelines.

14. Closing Remarks by the President

The President thanked all who participated in the 9-13 November 2020 virtual meeting, and looked forward to everyone's "virtual" participation at EXCO's next meeting during the week of 15 March

2021. In the meantime, councillors should feel free to raise by email any matter they deemed appropriate or which required EXCO approval, which could be dealt with via email exchange. Last, but not least, he extended his best wishes to everyone for the upcoming Holiday Season.

IV. Amendments to the CMI Constitution – by Jean-François Peters

In 2019 Belgium adopted a new Code of Companies and Associations.

The new Code applies to both commercial companies and not-for-profit associations. Therefore the new Code also applies to international not-for-profit associations (IVZW/AISBL) such as the CMI.

The old statutory framework applicable to international not-for-profit associations (the Act of 27 June 1921 as amended) has been repealed.

The new Code is in force since 1 May 2019 in respect of new companies / associations (that is, companies and associations that have been set up since 1 May 2019).

In respect of existing companies / associations (such as the CMI), the mandatory provisions of the Code apply automatically since 1 January 2020. Existing entities are required to bring their statutes / constitution in line with the new Code on the occasion of the first amendment of their statutes/constitution and by 1 January 2024 at the latest.

The new Code is not revolutionary in respect of international not-for-profit associations. Therefore to a large extent the current Constitution does not need to be amended.

One of the points that needs to be revised, however, relates to the accounting year of the CMI.

In this connection, the new Code stipulates that the annual accounts of an IVZW/AISBL have to be submitted for approval to the Assembly within 6 months after the end of the accounting year (article 3:47 §1 of the Code of Companies and Associations).

As the CMI assembly meeting usually coincides with large annual CMI events traditionally taking place in the second half of the calendar year, the CMI cannot currently comply with this new statutory requirement.

In order to be able to comply with the new Code and at the same time to keep the CMI events in the second half of the calendar year, EXCO is currently examining the need to change the accounting year from the 1st of May to 30 April of the next calendar year (instead of as is currently 1st of January to 31 December).

V. Getting to Know your EXCO – Profile Dieter Schwampe



What is your function within the CMI?

After having served two terms as an Executive Councillor, I am currently one of the two Vice Presidents of the CMI. Together with John Markianos-Daniolos I am chairing the IWG on Unified Interpretation. I used to chair the Standing Committee on Marine Insurance for a number of years, and I am now a member of that SC. I am also member in the Standing Committee on General Average and the IWG on MASS (Maritime Autonomous Surface Ships). Finally, I am a member of the Tokyo Conference Organizing Committee.

And what do you do if you do not work for CMI?

I am a partner of the German law firm of Arnecke Sibeth Dabelstein, where I am the Senior Insurance Partner. My practice areas are marine insurance and shipping – mainly in respect of salvage, collisions, general average etc.. Finally, I am also a President of the German Maritime Law Association, and I am a professor at the University of Hamburg, teaching transport law and marine insurance law (my next course on marine insurance starts next Tuesday, and 70 students have registered). Due to COVID-19, all lectures will be digital, unfortunately. I like the direct contact with my students.

What do you consider to be the biggest challenge facing CMI today?

CMI's biggest challenge is that its member associations, the National Maritime Law Associations, and their members, and the wider public continue to consider CMI to be relevant. There does exist a huge number of associations and organizations, all of which try to attract attention and participation in their work. CMI needs to remain interesting enough to attract the brightest minds in shipping to engage in CMI work. CMI's traditional role had been the drafting and preparation of international conventions in the area of maritime law. CMI is still very active in this field – best example is CMI's preparatory work for a convention of recognition of Judicial Sale of ships, which is now part of the work program of UNCITRAL, where CMI's other Vice President Ann Fenech and International Working Group members provide much appreciated assistance. Generally, however, drafting of conventions is now in the hands of IMO or other UN bodies. CMI had to find, and I think found, its own role now in assisting IMO, and other law making UN bodies, in the drafting and preparation of new conventions and assessment of existing conventions. Good examples are CMI's work for the IMO Legal Committee in respect of Maritime Autonomous Surface Ships, where CMI engages in screening existing conventions for the need of changes in respect of autonomous vessels; CMI's assistance to the Legal Committee in respect of a uniform interpretation for the test of breaking the shipowner's right to limit liability. These activities distinguish CMI of all other groups and associations.

CMI is meeting these challenges. For example, an important, and ongoing, project is the CMI CML Database on Judicial Decisions on International Conventions (<https://comitemaritime.org/publications-documents/database-judgments/>), which CMI and the Centre for Maritime Law at the National University of Singapore are building up. This is an excellent source both for maritime practitioners and

scientists.

Furthermore, in a major exercise, since a number of years, CMI is discussing internally its future, and various reports have been submitted to various assemblies. I think it is very important, that the NMLAs consider these reports and give their input – which already leads to your next question.

What do you see as the role of the NMLAs in relation to that of EXCO and the Assembly?

The NMLAs are vital for CMI's ability to master the challenges of the future. CMI is no better and not more relevant than the personalities through which it acts. These personalities mainly are very active members of their NMLAs. Keeping the NMLAs interested and engaged in CMI work, thus, is one of the most crucial factors for CMI's success in the future. Personally, I would appreciate it if the NMLAs engage much more in the work of CMI, for example by raising topics for discussions both on EXCO and Assembly level. One could think, for example, to offer the NMLAs to make comments on EXCO and Assembly agendas well in advance of meetings so that the input of the NMLAs can be taken into account.

Is there anything you would like to see the NMLAS/EXCO/Assembly do differently or better?

My answer is linked to my previous answers. I believe more interaction between CMI, in particular the EXCO, and the NMLAs would be beneficial for both. EXCO needs to know what the NMLAs deem relevant. At times, it is difficult to assess this for NMLAs, which are not represented in the EXCO, which is the clear majority. What NMLAs can improve, and I dare saying this because as the President of the German MLA this is a request also to myself, is informing their members more closely of CMI's work. Ideally, the NMLAs form within their own associations committees, which reflect the SC and IWG of CMI. This helps keeping contact.

One of the major tasks, both for CMI and the NMLAs, is continuing to be relevant for the next generations. I think CMI has rather successfully won the support of younger members of the NMLAs, which work in CMI under the heading "Young CMI" or "yCMI". This is where the future lies. Being 64 years old myself, I agree that for certain jobs a certain seniority is helpful, if not required. CMI, as well as the NMLAs, however, should do what they can to allow their young members to feel, and be, relevant. Not only by shouldering work, but also by being entrusted with positions.

Do you have a view on the current status of maritime treaty implementation?

Obviously, this is a matter which must be the core interest of CMI. Unification of maritime law does not end when a Convention gets into force, but for its real relevance, it needs wide implementation. This requires ratification by states. Much in this respect lies on the shoulders of NMLAs. And I am of course aware that the scenarios differ from country to country, with some NMLAs having the ear of the law makers, and others being far away. Those MLAs who are successful in this respect, could help others in finding the right approach, and CMI should be the ideal forum for such exchange

Two personal questions at the end: what do you like doing when not working, and what was your strongest experience in these times of COVID-19?

Well, those two questions for me are somewhat linked. Me and my wife love traveling, and this is the one thing which was for all practical purposes impossible during the last year (and potentially also for a while from now on). Otherwise, I love sport (cycling and golf – though I warn anyone who wants to play a round with me: "I love Golf. Unfortunately it does not love me back"). And I enjoy reading.

As to my COVID-19 experience, there is one outstanding matter. A couple of weeks ago one of my sons married his French fiancée. They both live in Amsterdam, which at that time was in rather strict lock-down. My wife and I could travel to the Netherlands, merely due to an exception, which allowed parents to meet their children. The civil law wedding (no church, no parties allowed) took place in the local magistrate's building. Only the best man and maid of honor were allowed to attend the ceremony. But it was held on the ground floor with large windows, so we were standing outside, holding our smart phone, because the best man (the twin brother of our son) was allowed to "broadcast" the ceremony by an app not only to us, standing outside the building, but to dozens of friends and family around the globe, and in all time zones. No doubt, we would have preferred it differently. But this was a wedding ceremony, which no one (who had managed to connect through the app!) will ever forget.

- **SC on General Average – by Jorn Gröninger**

The Standing Committee on General Average has arrived at a fruitful working routine with rather regular virtual meetings every two to three weeks. The main task of this SC is to suggest standard wording for general average securities and indeed, after intense discussions, new forms of G/A bond and guarantee for cargo have been internally agreed. We are currently trying to obtain approval of our drafts from industry bodies (mainly IUMI and ICS through their representatives on the SC) before presenting them to EXCO.

Next steps will be the development of further security forms to be used for ship, bunkers and freight, as well as a fresh review of the CMI Guidelines on General Average which will be supplemented by a short, practical, easy-to-read guidance for quick information in acute cases.

- **SC on Carriage of Goods: Developments in Peru – by Tomotaka Fujita**

Since the sudden denunciation of The Hague Rules in May 2020, the Standing Committee on Carriage of Goods has carefully monitored developments in Peru. Recently, it was informed that the Peruvian Government had decided to accede to the Hamburg Rules. See, *Decreto Supremo que ratifica el “Convenio de las Naciones Unidas sobre el Transporte Marítimo de Mercancías, 1978” (Decreto Supremo N° 006-2021-Re)*

This is, at least from CMI’s viewpoint, a regrettable result. If the denunciation was motivated by the digitalization accelerated under the global epidemic of COVID-19, it was expected that the Rotterdam Rules would be one of the most feasible. Although the reasons for the choice by Peru are not clear, we hope that other states will not follow this path.

- **IWG on Fair Treatment of Seafarers –by Valeria Eboli**

Comité Maritime International
International Working Group Fair Treatment of Seafarers’
Sub-Committee on Maritime Law and Refugee Migration at Sea

Report 15 March 21

During the last months the Sub-Committee has been preparing a questionnaire to collect information on the relevant national practice of the States about refugee migration at sea. The first part of the questionnaire is about general issues, such as the conduct of rescue activities and their impact on merchant vessels. The second part is about how the pandemic affected refugees and migrants at sea and how the States dealt with them.

In particular it is aimed at collecting information about the eventual practice in relation to topics such as the compensation for merchant vessels conducting government-directed rescues during a mass migration, to identify and share good practices.

It is supposed to be submitted to the EXCO for the approval and then sent to the NMLAs. Then the output is supposed to be discussed in the framework of the meeting of the Sub-Committee to be held in Tokyo next year.

In November, the Chair of the Sub-Committee participated in the IMO LEG 107th session.

Valeria Eboli

VII. NMLA Bulletin Board

- **Latin American MLA – by Aurelio Fernandez Concheso**

Latin America
Aurelio Fernandez-Concheso
Executive Councilor



During the last two years, the CMI has significantly extended its relationship with Latin America. Our president Christopher Davis has had a close connection with the region over the years.

The different Latin American Maritime Law Associations are significantly active and some of them have carried out a number of events over the last year.

The Venezuelan MLA held at least five webinars during 2020 and produced two very valuable maritime law publications. The Argentinian, Colombian and Mexican MLA's were also very active.

A good degree of activity in Latin America has also been fostered by the Ibero-American Maritime Law Institute which groups maritime lawyers throughout the region, Spain, Portugal and special members from Canada, the US and France as well.

The Institute is currently presided for a two-year period by Katerina Vuskovic, from Peru. Katerina has been energetic in continuing to ensure that the Institute becomes a channel for the development and unification of maritime law throughout the Latin America region, with continuous events in spite of the difficult circumstances through the year.

Some of the events the Institute has held are the following:

- Covid-19 v The Environment
- Maritime Industry v Covid-19. Experiences and Challenges.
- Claims and P&I Coverage.
- First Virtual Pan Hispanic Forum on the Teaching of Maritime Law.
- Law on Ports throughout Ibero America.
- New Technologies in the Maritime Industry.
- Regional Waterways: Judicial and Economic Matters.
- Opening Spaces, Closing Divides – Women in the Maritime Industry.
- Entrenchment, Risks and Navigation Accidents.
- Present and Perspectives on the Rules of Carriage of Goods by Sea.
- The Impact of IMO 2020 beyond the Bunker Market.
- Multidisciplinary Forum on Maritime Medicine.
- Opportunities for the Port and Maritime Industries and International Commerce.
- Ratification of the Hamburg Rules by Peru.

Below Katerina is seen with our president, Chris Davis



▪ **Webinar Italian MLA – by Giorgio Berlingieri**

April 16 2021 - Urto di navi: disciplina attuale e possibile evoluzione della normativa internazionale uniforme

Various issues are to be discussed relating to provisions in the international instruments on collision of ships, and a possible revision of the 1910 Convention is also to be considered.

For information regarding the participation please contact Italian MLA: presidenza@aidim.org



Teleseminario

Genova 16 aprile 2021 - ore 17-19

Urto di navi: disciplina attuale e possibile evoluzione della normativa internazionale uniforme

| | |
|-------------------|--|
| Saluti | Giorgio Berlingieri |
| Moderatore | Alfredo Antonini |
| Introduzione | Francesco Siccardi L'urto di navi: normativa vigente e proposte del Gruppo di lavoro di AIDIM |
| RELAZIONI | |
| Marcello Maresca | Dal concetto di "nave in colpa" all'individuazione sul piano giuridico dei soggetti responsabili |
| Pierangelo Celle | L'urto nella navigazione da diporto |
| INTERVENTI | |
| Andrea Bergamino | Profili concernenti la giurisdizione |
| Carlo Corcione | La giurisprudenza inglese e il caso Evergreen Marine Ltd - Nautical Challenge Ltd |
| Donato Di Bona | Urto di navi e soccorso |
| DIBATTITO | |

▪ Senegal MLA --by Aboubacar FALL PhD, LLM

On March 25th the Senegalese International Law Society (SILS) has been launched. It will become the local chapter of the International Law Association (ILA) once the latter would have approved its application.

Among the SILS specialized committees, a Committee on Maritime Law & the Law of the Sea was set up.

It is noteworthy that the membership of this Committee mirrors that of the Senegal MLA. The Governing Board of the SILS (including the Committee on Maritime Law and the Law of the Sea) will send a request to the President of the CMI with the objective to be granted the status of observer at the CMI.

VIII. yCMI – by Robert Hoepel

**YOUNG CMI / ASSOCIATE
MEMBERS OF THE AAA**

It is with great pleasure we invite you to join us for a panel discussion surrounding key legal and adjusting insights into:-

- Collision claims (practical aspects and claim adjusting)
- Off spec bunkers and LSFO issues

The session will include thoughts from a variety of speakers on practical and topical issues from a legal and adjusting perspective.

Further details on speakers and topics to be circulated shortly.

In the meantime, please register your attendance by e-mail to: admin@average-adjusters.com

**Registration is limited to Associate members of the AAA and Young CMI members.*



150

ASSOCIATION OF
Average Adjusters

SAVE THE DATE!
YOUNG CMI / AAA
WEBINAR
29 April 2021
10:00 BST / 11:00 CEST
(9:00 UTC)



Dear young maritime friends of the CMI and Associate members of the AAA,

It is with great pleasure that we announce the Association of Average Adjusters and Young CMI have joined forces in setting up an interesting webinar upcoming in April! Both the average adjuster and the lawyer have their own specialist role in maritime incidents. Bringing them together will provide for key legal and practical insights and will no doubt spark an inspiring discussion. What's on the menu?

1. Obtaining a clearer understanding of the average adjusters' and lawyers' roles following a major collision: the importance of evidence collection, options for securing evidence, obtaining General Average and/or Salvage security, establishing apportionment of fault (single versus cross-liability), apportioning legal costs as per adjusters' rules of practice, adjusting claim and counter claim as per applicable policy conditions.
2. Off-spec bunkers and some of the legal and adjusting issues faced when off spec bunkers have been consumed, causing subsequent break downs and salvage operations, the prospects of a recovery from the bunker supplier, authorities seizing the ship for using bunkers with wrong grades. Issues surrounding LSFO and potential impacts on claims.

But there is more... the Chairman of the AAA, Michiel Starmans, will dive into the history of the respective associations and provide some entertaining insights!

Young members of the AAA and the CMI are invited to participate the webinar on **29 April 2021 at 10.00 GMT / 11.00 CEST (9:00 UTC)**.

If you are interested in attending, please register by sending an e-mail to admin@average-adjusters.com

More information on speakers will follow in due course.

Best regards,

Michiel Starmans (AAA), Robert Hoepel (Young CMI) Amy O'Neill (AAA)

IX. Reports of Meetings of Other International Organizations:

- **UNCITRAL Working Group VI — Judicial Sale — by Ann Fenech**

37th Meeting of UNCITRAL Working Group V1, Vienna 14th – 18th December 2020.

In our last newsletter published in October 2020 I had explained that all was set for the 37th UNCITRAL Working Group V1 meeting in Vienna currently debating the 2nd revision of the Beijing Draft on the effect of Judicial Sales.

I can say that we could not have asked for a more fruitful meeting notwithstanding the fact that the meeting took place remotely with all the delegations participating virtually and that for a number of delegates coming from totally different time zones, particularly those from the East and America, the 11 am to 5 pm Vienna time certainly presented them and us with challenges.

Congratulations are in order to the Chair of the meeting, Prof. Beate Czerwenka, and the UNCITRAL Secretariat under the leadership of Joseangelo Estrella Faria and indeed all the delegations whose level of preparedness enabled us to have one of the most constructive and decisive meetings ever. Substantial progress was registered enabling numerous previously undecided matters to be deliberated and concluded resulting in what is now a highly streamlined text. The progress registered was sufficient for the Chair to express the view that the Working Group may be in a position to complete a final draft of the instrument in 2021 which would then be circulated to governments for comments before being submitted to the Commission for approval and transmitted to the General Assembly for adoption in the second half of 2022.

In the meantime I can confirm that all the points and recommendations made and raised by the CMI prior to the meeting and circulated to all NMLAs in the form of the **Vienna Meeting Notes 2020** were debated, deliberated and accepted by the Working Group. First on the list was the decision and agreement of the Working Group that the instrument needs to take the form of a Convention if it is to achieve its objective.

From a CMI co-ordination perspective, this session certainly produced challenges in terms of the ability to reach out to delegations for the purposes of discussing and agreeing detail in real time given the absence of the normal “time out” physical opportunities substituted by lengthy phone calls which had to take into account time zone differences which in some cases were as great as 10 hours! A great deal of effort was put into this exercise by so many so my very sincere thanks to all delegations but particularly those who had to burn the midnight oil in their time zones to support us and to assist in making this session such a success.

Another very important development which in fact took place prior to the 37th Vienna meeting was the IMO Legal Committee meeting held in London also remotely in the week of the 1st December. CMI was given the opportunity to actively support the idea that the already established IMO Global Integrated Shipping Information System (GISIS), be used as the digital Repository of both the Notice of Judicial Sale and the Certificate of Judicial Sale as contemplated in article 12 of the draft Convention. A copy of the text of the intervention I made on behalf of the CMI can be found on the CMI Website amongst the materials related to the Judicial Sale project. This received support from a number of delegations resulting in the IMO Legal Committee inviting the IMO secretariat to make the necessary arrangements to host the repository as an additional GISIS module and to report back to the IMO Legal Committee at its next sessions scheduled for July 2021. This was in turn discussed by the Working group V1 and there was indeed wide support for the idea and it was left that the Secretariat would be liaising with the IMO to take this forward. The setting up of an international repository is not only a good idea in itself but it ensures that any party interested in a particular vessel can, with the click of a button, find out all details regarding whether or not that vessel is about to be sold in a Judicial Sale.

Following the meeting all delegations received a communication from the Chair attaching a draft summary of the proceedings. This document is now up on the UNCITRAL Working Group V1 web site. Also put up on the website only last week is the Agenda for the next (38th) meeting as well as the 3rd Revision of the Beijing Draft.

The next meeting is scheduled to be held in New York in April 2021. It is however more than likely that that will not happen, although as already emphasised by the Secretariat, the fact that the session may not take place in person will not stop further deliberations from taking place and will not stop the momentum which the discussions of this international instrument has garnered.

Once again the hard work in the run-up to this session has paid off. Once again CMI members were active participants in a number of state delegations. Starting with Alex von Zeigler, the representative for Switzerland; Frank Nolan, a member of the US delegation; Tomotaka Fujita, the representative for Japan; Henry Li, the representative for China; John O'Connor, a member of the Canadian delegation; Jan-Erik Poetschke, a member of the German delegation; Manuel Alba, a member of the Spanish

delegation; and Peter Kragic, a member of the Croatian delegation. An equally important role was played by other CMI members who were not State representatives but represented important NGO's - Peter Laurijssen, the representative for the International Chamber of Shipping and BIMCO; and Harmen Hoek, the representative for the IBA. I would also like to mention specifically Margo Harris from Law Asia and Mr. Justice McKerracher as the representative of the International Association of Judges for their support and interventions. Thanks must also go to the support offered by Jan de Boer, the representative of the IMO and Angele Sears Debono, the representative of the European Union.

In conclusion, now that the 3rd Revision to the Beijing Draft has just been published, the CMI IWG on Judicial Sales will be considering it in great detail and will, as with the previous two revisions, issue the **New York Meeting Notes 2021** in advance and ahead of the April meeting.

Finally a big thank you to all NMLAs who have worked hard in helping us raise the profile of this project by impressing upon state delegations the importance of this project to international trade. Please keep up your good work.

Keep well and keep safe.

Ann Fenech
Co-Chair IWG on Judicial Sales
Co-ordinator of CMI for the project at UNCITRAL

▪ **IMO Meetings—by Patrick Griggs**



IMO Legal Committee – 107th Session, 27th November – 1st December 2020.

The 107th Session of the IMO Legal Committee took place remotely between the above dates. Mr Volker Schofisch (Germany) was Chair and Ms. Gillian Grant (Canada) was Vice-Chair. The Session took place in accordance with Interim Guidance Rules for remote meetings introduced in all IMO committees due to the Covid-19 pandemic.

The Session was opened by the IMO Secretary-General, His Excellency Kitack Lim, and was attended, remotely, by 93 delegations.

The Chair welcomed delegates and outlined the order in which he intended to deal with agenda items. *(Please note that all the documents referred to in this report are available on the IMO website though it may be necessary to open an IMODOCS account at webaccounts.imo.org in order to obtain access.)*

Abandonment of Seafarers.

This topic is revisited at each session so that delegates can be made aware of the latest information on the IMO/ILO database which contains details and status reports on all reported incidents where seafarers find themselves stranded in foreign ports due to financial or other problems encountered by shipowners.

In 2019 the total number of reported cases was 40 of which only 6 had been resolved by December 31st. In 2020 a total of 65 new cases were reported. Of these new cases 17 were attributable to the Covid-19 pandemic which had made crew changes more complicated. As at 30th November only 18 of these new cases had been resolved.

Delegates were invited to review the IMO/ILO data and to provide updates on any cases in which they

were directly or indirectly involved. Several delegates expressed their concern that the 2014 amendments to the Maritime Labour Convention 2006, which came into force in 2017, were not being implemented and seafarers rights were still being ignored. Concern was also expressed at the failure to implement the requirement on shipowners to provide security for payment of repatriation expenses. It was suggested that the information contained in the database should include details of the company providing such security by way of insurance or otherwise. During discussions a number of delegates were able to report that certain cases listed as unresolved on the database had in fact been resolved and the seafarers involved had been repatriated. Nonetheless, all delegates agreed that there were still far too many cases in which seafarers rights had been infringed.

Compulsory insurance under IMO conventions.

Traditionally liability insurance cover for shipowners has been provided by P.& I. Clubs (IG) which are members of the International Group of P.& I. Clubs. In recent times a number of non-I. G. insurers have been offering liability cover on less comprehensive terms. In addition there have been insolvency problems with non-I.G. members and some have proved unco-operative in dealing with claims. These problems were highlighted in a paper jointly submitted to the Legal Committee by Canada, Denmark, Italy, Japan, Norway and the Republic of Korea.

The Committee invited these states to submit proposals at the next Session of the Legal Committee for revision of the existing *Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P. & I. Clubs)*.

Uniform implementation and interpretation of IMO conventions.

At the 106th Session of the Legal Committee a group of states submitted a paper inviting the Committee to include in its future work programme the preparation of Unified Interpretation of a test for breaking the right of shipowners to limit liability under the 1992 CLC Protocol, the 2010 HNS Protocol and the 1996 LLMC Protocol. The aim of this exercise would be to ensure consistency of interpretation and implementation amongst States.

Australia and France jointly submitted a document at the 107th Session suggesting that this work should be extended to consideration whether the current limitation regime gives sufficient recognition of the needs of all parties, meets the expectations of claimants and properly applies the “polluter pays” principle. To this end it was suggested that if there is to be a more general review of the issue of limitation it would be essential to collect evidence of cases in which the right to limitation had been invoked and analyse whether a proper balance is being maintained under the present regime between those who have suffered damage and those required to pay for it.

The Committee welcomed this initiative and invited Australia and France to submit proposals at the next session of the Legal Committee on how this data collection process might be managed. It was agreed that the data collection process would embrace both the narrow issue of the test for breaking the right to limit and the more fundamental issues of limitation.

Fraudulent registration of ships and fraudulent registries.

At the 106th Session of the Legal Committee it was agreed to set up a Correspondence Group on Further Measures to Prevent the Fraudulent Registration and Fraudulent Registries of Ships. This Group was to be coordinated by the United States.

In its first report the Group recorded that it had started with efforts to define exactly what was meant by “fraudulent registration” and “fraudulent registry” but had not got much further with its work.

During discussions attention was drawn to the impact which this fraudulent activity was having on the fishing industry where it led to a great deal of unregulated and unreported fishing. It was also suggested that port state personnel needed to be trained to identify fraudulently registered ships.

The impact on the lives of those serving on these fraudulently registered ships should also be a matter of concern as their rights were unprotected.

Several delegates reported on specific cases of fraudulent registration which had come to their attention. For example, an illegal Samoan Ship Registry has been set up and is issuing illegal certificates of registration.

A remote intersessional group was established (again co-ordinated by the United States) to continue collecting data with a view to reporting at the next meeting of the Legal Committee with suggestions as how these fraudulent activities might be prevented in future.

Unmanned ships, otherwise known as maritime autonomous surface craft (MASS).

It has for some years been recognised that with the rapid development of unmanned ships adjustments might need to be made to existing maritime conventions to accommodate the absence of human crews on ships. In 2017 the Comité Maritime International (CMI) selected 8 international conventions which might require amendment to accommodate these new types of ship and submitted a summary of its work to the IMO Maritime Safety Committee (MSC) which decided to take this review into its work programme.

At LEG 105, the Committee also agreed to introduce this topic into its work programme to operate in parallel with MSC. It was agreed that the first step would be an analysis of all maritime law conventions to establish which would need to be amended. The title given to this exercise was *“Regulatory scoping exercise and gap analysis of conventions emanating from the Legal Committee with respect to maritime autonomous surface craft.”*

The Maritime Safety Committee (which deals with the technical aspects of ship operations) will be reviewing its regulations/rules to determine what changes will need to be made to accommodate crewless ships. The results of this exercise will be reviewed at MSC 102.

At its 106th Session the Committee agreed the ground rules for this scoping exercise and delegations were invited to “adopt” a convention and prepare a report on the implications for that convention of the introduction of crewless ships. The reports were to conform to a template agreed by the Committee.

The Facilitation Committee (FAL) is also carrying out a study of its own regulations and will review the results at FAL 44.

All three scoping exercises have been carried out using the same methodology.

Papers were submitted to the 107th Session covering the following conventions: Wreck Removal Convention 2007, Maritime Safety Convention and FAL, Suppression of Unlawful Acts 1988, Bunker Oil Pollution Damage 2001, Limitation of Liability for Maritime Claims 1996, Salvage 1989, Civil Liability Convention for Oil Pollution Damage 1992, International Oil Pollution Compensation Fund 1992, the Athens Convention on the Carriage of Passengers 1974/2002 and the Convention on Liability and Compensation in connection with the Carriage of HNS by Sea 2010.

It has already become apparent that there are several problems, common to many of the conventions/regulations. These have been usefully clarified by the CMI in its submission to LEG 107 (a document which is worthy of study) and have become known as the “horizontal issue” in that they apply to conventions across the board as opposed to issues which only arise under one or two conventions. In its paper the CMI identifies the issues of general importance applying to most conventions and these have been grouped under *Definitions, Liability and Certification*.

Definitions:

Under this heading the following issues will need to be addressed:

1. the role and responsibility of the master;
2. the role and responsibility of the remote-control centre;
3. the role and responsibility of the remote-control operator;
4. manual operations;
5. definitions/terminology of MASS.

Liability:

Under this heading there are a number of issues to be considered:

1. Fault/recklessness/intention etc.: these are all “human” features. A “decision” made by a machine cannot be negligent, at least not under generally accepted legal criteria.
2. Causation: even when human negligence can be proved (e.g. erroneous programming or maintenance) there may be difficulties in proving that it was “a” cause or “the” cause of the damage.
3. Vicarious liability: should shipowners be vicariously liable for the faults of third parties such as, in the MASS context, internet providers or software suppliers? Conventions may need to make suitable provision.
4. Personal act or omission: where these words appear in conventions (for example loss of the right to limit liability) how will the actions of those working in MASS control centres be judged?

Certification:

Many conventions require that a ship shall carry on board certificates covering all aspects of the ship’s

operations. Provision will need to be made for access to these certificates by electronic or other means.

In its paper the CMI goes on to consider several specific issues which arise under individual conventions. For example under the Athens Convention 1974 it will be necessary to clarify the meaning of “performing carrier” and under the Salvage Convention 1989 who is the “Master” for purposes of entering into a salvage contract.

Future work programme.

The Committee decided to include in its future work programme a new topic relating to the proper treatment of seafarers who are detained on suspicion of committing a maritime crime. The issues to be discussed would include the right to legal representation, access to medical care, consular access and general fair treatment. The intention would be to produce common guidelines to cover these issues.

Judicial Sale of Ships.

Some years ago the CMI requested the Legal Committee to take into its future work programme the drafting of an instrument on the recognition of foreign judicial sales of ships. After some debate the Committee had decided that there was no “compelling need” for such an instrument. The CMI then invited UNCITRAL to take this topic into its work programme which it agreed to do. At the 107th Session the UNCITRAL Secretariat approached the IMO Secretariat to explore the possibility of IMO hosting a centralised online repository for the publication of notices and certificates of judicial sale. The Committee authorised the Secretariat to make the necessary arrangements for this repository.

Interpretation of the Bunkers Convention 2001.

The Committee agreed to a proposal from the Islamic Republic of Iran supported by the International Group of P. & I. Clubs for the preparation of a Claims Manual for claims under the Bunkers Convention in order to achieve uniformity of practice in the handling of claims. The International Group was invited to produce more developed proposals at the 108th Session. Any state wishing to get involved in work on this project were invited to contact the International Group.

The virtual meeting was closed after a review of its draft Report.

▪ IOPC Funds Meetings of the Governing Bodies--by Patrick Griggs

CMI conveys their thanks to JIML for their kind permission to reproduce this report in our Newsletter

(1) Meetings of the Governing Bodies December 2020

The meeting of the IOPC Funds Governing Bodies took place via Kudo video link on December 2nd - 4th 2020. The Chair of the '92 Fund Assembly was Mr. Gaute Sivertsen (Norway), the Chair of the Executive Committee was Ms. Gillian Grant (Canada) and of the Supplementary Fund Assembly Mr. Sungbum Kim. The meeting was remotely attended by 71 signatory states to the '92 Fund and 26 state signatories to the Supplementary Fund and by numerous Observer Delegations.

Incidents involving the IOPC Funds.

***Prestige.* (Doc. IOPC/NOV20/3/2)[1]**

It is now 18 years since the *Prestige* broke up off Galicia, Spain causing pollution in Spain, France and Portugal. The Director of the Funds recalled that in December 2018 the Spanish Supreme Court had awarded (with subsequent amendments) EUR 2,439.08 million to cover pollution damage and pure environmental damage and moral damages. The judgment of the Supreme Court confirmed that moral and pure environmental damages would not be recoverable from the 1992 Fund.

In April 2019 the 1992 Fund had paid EUR 27.2 million into the Court in Corunna which was responsible for distribution of compensation to claimants from monies provided by the Fund and by the P. & I. Club (in respect of its liability under the CLC). Payments to claimants from these funds were made by the Court in November 2020.

In the USA in 2012 the Court of Appeals for the Second Circuit dismissed the action commenced in New York by the Spanish Government against ABS (the Classification Society of the *Prestige*) on the grounds that it had not been established that ABS had acted in a reckless manner. There has been no further action in the USA.

In France proceedings were commenced by the French Government against ABS in Bordeaux. ABS pleaded sovereign immunity but this plea was dismissed by the Cour de Cassation and the matter is now back with the Bordeaux Court to consider the merits of the claim.

The Bordeaux Court is also considering a recourse action against ABS commenced by the 1992 Fund. ABS has again pleaded sovereign immunity and will seek to persuade the Cour de Cassation that its previous decision on the French Government's case was wrong. Additionally ABS will plead that the decision of the Court in the USA dismissing the French Government's claim was binding on the Bordeaux Court. Alternatively they will plead that they are protected by Art. 111(4) of CLC 1992 or that the claim is time barred under Art. V11 of the CLC 1992. The Fund has been advised that in order to succeed in its recourse action it will need to prove that ABS was negligent in the way it carried out its classification work on the *Prestige*.

Solar 1 (IOPC/NOV20/3/3).

On August 11 2006 this 998 Gross tanker sank in Guimares Strait, Philippines and spilled 2,000 tonnes of industrial fuel oil.

32,466 claims (mostly from fishermen) were lodged and payments totalling £10.79 million have been made by the Fund.

A claim by the Philippine Coastguard in an amount equivalent to £1.70 million was settled by negotiation in February 2016 and a settlement agreement was signed between the Shipowners' Club and the Coastguard by the terms of which the court proceedings which had been commenced by the Coastguard would be discontinued. Since then efforts have been made to obtain authorisation from the Philippines Congress to settle the claim at this figure but these have failed with the result that Judge has ordered that the proceedings should continue.

At a hearing in January 2020 the Coastguard was represented by a new lawyer who has advised that neither the Coastguard nor the Solicitor General now think that Congressional approval of the settlement is in fact needed. A further hearing was scheduled for June 2020 but this was postponed due to the Corona virus pandemic. The lawyer representing the Fund will continue to press for the settlement to be finalised.

As to the claim for £4.66 million made by 967 Guimares Island fisherfolk for property damage and economic loss, a series of witnesses were called before the court during 2019 but they were found not to have proved a factual or legal basis for their claims. Further hearings set for August 2019 had to be cancelled due to the threatened eruption of the Taal Volcano. Further witness hearings fixed for 2020 were cancelled due to the pandemic.

A group of municipal employees from Guimares submitted claims alleging that they had not been paid for their services. The claimants who have been examined in court to date have failed to prove any basis for compensation. Further witness hearings in 2020 were cancelled because of the pandemic. It seems probable that this case will continue to be active for some years to come.

Hebei Spirit. (IOPC/NOV20/3/4).

On December 7th 2007 the 146,848 GT *Hebei Spirit* was struck by the crane barge *Samsung no. 1* whilst at anchor off Taen, Republic of Korea. About 10,900 tonnes of crude oil escaped. Three provinces on the west coast of the Republic of Korea were seriously affected by the spill.

Claims from the Government of the Republic of Korea and private claimants have been settled by the payment of £216 million which is the maximum compensation available under the 1992 CLC, partly funded by the Skuld Club and partly by the 1992 Fund.

In limitation proceedings commenced on behalf of the owners of *Hebei Spirit* before the court in Seosan claims in the amount of £291 million were proved but subsequently the Fund entered into a bilateral agreement whereby in exchange for payment of the balance of the compensation payable under the CLC the Government of the Republic of Korea took over responsibility for the payment of claimants and issued a "hold harmless" to the Fund.

In a recourse action against the bareboat charterers of the crane barge and attendant vessels a

limitation action has been commenced against which the Fund will prove its claim alongside other private claimants.

The representative of the Republic of Korea intervened at the meeting to acknowledge the co-operation of the Skuld Club and the Fund with the Government in achieving settlement of this complex matter. It was noted that as soon as it is safe to do so a meeting will take place between the Fund and the Government to see whether lessons for the future handling of complex pollution cases may be learned.

Redferm. (IOPC/NOV20/3/5).

In March 2009 the barge *Redferm* sank off Tin Can Island, Lagos, Nigeria during a transshipment operation from the tanker *MT Concep* to a shore based power plant. Approximately 100 tonnes of cargo/residue of “low pour” fuel oil escaped causing contamination. The barge was never used in sea-going voyages.

As long ago as February 2014 the 1992 Fund rejected the claims which were submitted on the grounds that the barge *Redferm* was not a “ship” as defined in Art. 1 (1) of the 1992 CLC. Also the claims lacked clarity and the claimants had not properly identified themselves.

In March 2012 claims in the amount of USD 26.25 million were filed against the owners and agents of the *Redferm* and *Concep* and the Fund. An application by the Fund in February 2013 to be removed from the proceedings was rejected. The Fund appealed this decision but that appeal is still pending and in the meantime the Fund has been obliged to file a defence to the claim.

Haekup Pacific. (IOPC/NOV20/3/6).

This case involves the asphalt carrier *Haekup Pacific* which sank on April 21st 2010 following a collision with the *Zheng Hang* off Yeosu, Republic of Korea. The ship was carrying 2,135 metric tons of asphalt, 23.37 metric tons of fuel oil and 13 metric tons of marine diesel.

The ship was entered with STOPIA 2006 as a “relevant ship” which has the effect of increasing her limit of liability to USD 27.54 million.

There was a small spill of approximately 200 litres of oil from the sunken wreck and the UK P. & I. Club (with whom the ship was entered) paid USD 136,000 to cover clean-up costs.

In 2013 the City of Yeosu and Marine Police requested the shipowner to put forward a plan for the removal of the wreck and the oil remaining on board. The shipowners resisted this request on the grounds that the wreck presented no danger to the environment or to navigation.

Even though they had, at that time, incurred no expenses or liabilities the owners and insurers of *Haekup Pacific* commenced proceedings before the Seoul Central District Court against the 1992 Fund in April 2016 in order to preserve the time limit in Article 6 of the 1992 Fund Convention.

These proceedings remain pending. Proceedings were also commenced before the Seoul High Court against the owners of *Zheng Hang*. The Court ruled that even though the wreck removal operation had not yet taken place it was reasonable to deem that the damages, consisting of the cost of removal, had arisen. In July 2019 the Supreme Court confirmed this decision but has left it open for the lower court to consider whether the wreck’s removal is really necessary and, if not, whether the wreck removal order should be revoked.

In September 2019 the City of Yeosu again requested the owners of *Haekup Pacific* to implement the wreck and oil removal order. A salvage company was engaged to inspect the wreck and report on the feasibility of its removal. Once that report is available further discussions will take place with the City of Yeosu to determine whether the removal order can be revoked. It seems that this case will take some further time to resolve.

Alfa 1. (IOPC/NOV20/3/7).

On March 5th 2012 the *Alpha 1*, laden with 1,800 tonnes of oil struck the wreck of the *City of Mykonos* in Elefsis Bay near Piraeus and subsequently sank causing pollution to 13 kms of shoreline. As the *Alpha 1* is less than 5,000 tons the limitation fund under 1992 CLC is EUR 5.53 million. The tanker had an insurance policy for EUR 2 million but it contained a provision that only non-persistent oils would be covered.

Claims for clean-up were submitted by contractors in the amount of EUR 16.15 million and a claim for

EUR 222,000 was made by the Greek State. The 1992 Fund has settled the main contractor's claim for EUR12 million and is claiming back from the ship's insurers the 1992 CLC limit of EUR 5.53 million. However, in February 2018 the Bank of Greece revoked the insurer's licence and placed the company in liquidation for breach of the Greek solvency requirements. The Fund has filed a claim in the liquidation proceedings which has been dismissed though without any reasons being given. An attempt by the Fund to secure its claim by filing for "pre-notated mortgages" on property belonging to the insurers has only been partly successful. Further attempts are being made to secure the Fund's claim against the insurers.

In proceedings before the Piraeus Court of First Instance the Court held that since no limitation fund had been established the insurers were liable for the full amount of the contractors' claims. The insurers have lodged an appeal against this decision and the Fund has joined the action to establish that the compulsory insurance provisions contained in Article VII of the 1992 CLC apply. The hearing of this appeal is scheduled for February 2021.

Nesa R3. (IOPC/NOV20/3/8).

On June 19th 2013 the 856 G.T. tanker *Nesa 3* carrying 840 tonnes of bitumen sank off Port Sudan Qaboos, Muscat. As the vessel carried less than 2,000 tonnes of persistent oil it was not required to maintain compulsory liability insurance. The *Nesa 3* was entered with the Indian Ocean Shipowners Mutual P. & I. Club based in Sri Lanka. The limitation fund available under 1992 CLC is £5 million though no limitation fund was ever established.

Proceedings were commenced against the owners and insurers by the Omani Government in the Court of Muscat for failing to honour their obligations under the 1992 CLC to pay the claims arising from the sinking. The Fund joined in these proceedings seeking to recover the claims which it had settled totaling £3.7 million.

In December 2017 judgment was issued awarding £8.7 million to the Omani Government and £3.7 million to the 1992 Fund. This judgment is subject to appeal but no date for a hearing has yet been fixed.

The Fund is investigating the prospects of pursuing owners and insurers in, respectively, the UAE and Sri Lanka.

Trident Star. (IOPC/NOV20/3/9).

On August 24th 2016 the 3,177 G.T. tanker *Trident Star* spilled marine fuel oil at the oil terminal at the Port of Tanjung Pelepas, Malaysia during loading operations. The adjacent container terminal became oiled as a result and activities at the terminal were disrupted for about three weeks. The ship was entered with the Shipowners' Mutual P. & I. Club and the owner is a party to STOPIA 2006 which requires the shipowner to indemnify the 1992 Fund for the difference between the 1992 CLC limit and the amount of compensation paid by the 1992 Fund up to a limit of SDR 20million(USD 27.5 million). It is anticipated that claims will not exceed SDR 20 million.

Nine claims have been presented in the limitation action which has been commenced and the Fund has intervened to protect its rights. There remain outstanding claims from a group of shipowners which are currently being assessed by the Fund and the Club.

Since claims will exceed the 1992 CLC limit (USD 6.3 million) the 1992 Fund will pay compensation initially but will recover all payments later from the shipowner's insurers under STOPIA 2006.

Nathan E Stewart. (IOPC/NOV20/3/10).

On October 13th 2016 this articulated tug-barge ran aground at the entrance to the Seaforth Channel near Bella Bella, British Columbia, Canada. There were escapes of diesel bunker oil and lubricants.

This case has produced a fascinating dispute – was the tug-barge a "ship" under Article 1 (1) of the 1992 CLC? Additionally the barge was empty and not carrying oil in bulk as cargo and it has not been established whether during any previous voyage it had carried any persistent oil as cargo. Its last known cargoes were jet fuel and gasoline which are non-persistent. If the barge had only carried non-persistent oil on previous voyages the CLC and Fund Conventions will not apply but, since the spilled oil was from the ship's bunkers, the Bunker Oil Pollution Convention 2001 will apply.

In October 2018 proceedings were commenced by 8 tribes from a First Nation community against the owners, operators, the Master and an officer from the tug before the Supreme Court of British

Columbia. Included, as third parties in the proceedings were the Ship-source Oil Pollution Fund (SOPF) and the 1992 Fund and Supplementary Fund.

The claimants argue that the Bunkers Convention 2001 should apply or, in the alternative, the 1992 CLC. In the latter case the claimants would seek compensation from the 1992 Fund and Supplementary Fund for any damages in excess of the 1992 Fund limit. A limitation action has been commenced on behalf of shipowners before the Federal Court of Canada

An application has also been filed on behalf of shipowners to transfer the First Nation action to the Federal Court of Canada on the basis that it is a more suitable forum for this type of claim.

In the limitation proceedings the Court has ordered that a limitation fund should be constituted under the Bunkers Convention (LLMC 76/96) on the basis of the combined tonnage of tug and barge. It is recognised that the issue of whether it is right to base limitation on the combined tonnage of tug and barge has still to be determined. A bank guarantee in the amount of £3.3 plus interest has been lodged by shipowners in court. The Court also ruled that there were, at present, no grounds for applying the 1992 CLC.

At present it is not looking as though the IOPC Funds will need to remain party to the proceedings.

Agia Zoni II. (IOPC/NOV20/3/11).

Regular readers of these reports will recall that this small and very old tanker sank in mysterious circumstances in the northern part of Piraeus anchorage area. Serious pollution was caused by the 500 tonnes of oil which escaped from the wreck. Since then the wreck has been raised and placed in dry dock. Two local investigations have reached different conclusions as to the cause of the sinking. One concluded that there had been an explosion on board but the other found that water had been deliberately introduced by opening ballast valves. This scuttling was planned, it is suggested, by the shipowner working in conjunction with the salvors and/or one of the clean-up contracting companies. A number of further investigations are on-going.

Against this background the IOPC Funds had to decide whether they were obliged to pay for the clean-up operations. The advice from the Funds' Greek lawyers was that Article 4(3) of the 92 CLC appeared to require that compensation be paid to innocent victims regardless of the cause of the spill. The lawyers further advised that the burden of proving that one of the clean-up contractors was complicit and therefore not entitled to be paid was a heavy one and that there was not enough evidence available at this stage to deny payment. Should there eventually be a finding of criminal activity by the shipowner or contractor a recourse action would be taken against them.

421 claims amounting to EUR 98.58 million have been received by the Fund and to date 179 claims have been settled in the amount of EUR 14.66 million. Civil proceedings commenced by the various clean-up contractors are on-going. Proceedings have been commenced on behalf of fisherfolk and fish traders. There are also claims outstanding from the tourism sector and from the Greek State.

In limitation proceedings the Limitation Fund Administrator has published his provisional claims assessment which is now subject to appeal by various claimants. The Fund is also a claimant in the limitation proceedings in respect of amounts already advanced to claimants.

In view of the circumstances of the sinking and the on-going investigations the Funds' Director has advised that it would not be appropriate to make any further payments to the salvors or to the clean-up contractor who is thought to have been complicit.

Bow Jubail. (IOPC/NOV20/3/12/1).

On June 23rd 2018 the tanker *Bow Jubail* collided with a jetty at the LBC Terminal in Rotterdam resulting in a spill of bunker oil which caused pollution to property and to wildlife. At the time of the incident the tanker was unladen and the shipowner applied to the Rotterdam District Court for leave to limit liability under the provisions of LLMC 76/96 on the basis that the incident was covered by the Bunkers Convention 2001. The Court concluded that the shipowner had failed to prove the absence of oil cargo residues in the cargo tanks and that, for this reason, the tanker qualified as a "ship" under 1992 CLC. This decision was appealed to the Court of Appeal in The Hague where the judgment of the lower court was upheld on the ground that the shipowner had failed to establish that the tanker did not contain any oil cargo residues – the onus in this respect being upon the shipowner.

The case is currently under appeal to the Supreme Court and discussions took place at the meeting as to whether the 1992 Fund should seek to intervene in the Supreme Court appeal. All delegations

recognised that it is very important that there should be a determination by a senior court of the definition of “residues” under the Convention and a consideration of what constitutes adequate cleaning of tanks to eliminate such residues. The Director recommended that the 1992 Fund should apply to join the appeal to ensure that the Court had all the assistance possible in reaching its decision. This recommendation was accepted by the Committee and the Director was authorised make that application.

In an intervention from the International Group of P. and I Clubs it was confirmed that the Group would continue to support owners in their efforts to prove that there was an absence of residues with the result that the Bunkers Convention 2001 would apply in this case. It was further suggested that consideration should be given to developing a standard procedure or guidelines for determining when a ship, which can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, when it ceases to be a “ship” under the 1992 CLC.

MT New Diamond.

The delegation of Sri Lanka reported that this VLCC had spilled oil in an area of pristine waters rich in marine life. Samples of the oil had been analysed and identified as bunker oil. The Director advised that in view of the high limit under CLC for this size of vessel it was very unlikely that the Fund would need to be involved. The delegation from Sri Lanka was advised to contact the West of England P. & I. Club with which the vessel was entered.

MV Wakashio.

Reference was made to this incident off the coast of Mauritius which had received wide press coverage. The Director confirmed that since the vessel involved was a bulk carrier claims would fall under the Bunkers Convention 2001 and the 1992 Fund would not be involved.

The Director’s Report.

William O’Neil:

The Director reported the passing of Bill O’Neil, the well respected former Secretary-General of IMO.

The 2010 HNS Protocol:

The Director reported that five states have now ratified the Convention, namely Canada, Denmark, Norway, South Africa, and Turkey. He further reported that positive progress towards ratification was being made by France, Germany, the Netherlands and the Republic of Korea. The Director confirmed that the Funds’ Secretariat was preparing itself for running the HNS Secretariat when the Convention comes into force.

The 1992 Fund convention – membership:

The Director advised that the 1992 Fund Convention had entered into force for the Republics of Guyana and the Gambia bringing the total number of 1992 Fund Member States to 117. It is anticipated that in 2021 the Republic of Nauru will also become a member. 32 States are now members of the Supplementary Fund.

1992 Fund Convention Contributions.

Of the total contributions levied since the establishment of the Fund a mere 0.19% remain outstanding and 0.05% to the Supplementary Fund – a good record.

Appointment of a new Fund Director:

The Director’s second term is due to end on December 31st 2021. Well before that date the Secretariat will send out a Circular Letter inviting Member States to submit nominations.

- **IOPC Funds Meetings of the Governing Bodies--by Patrick Griggs**

CMI conveys their thanks to JIML for their kind permission to reproduce this report in our Newsletter

(2) Meetings of the Governing Bodies - March 2021

The meeting of the Governing Bodies took place via Kudo video link on March 29th – 31st 2021. The Chair of the '92 Fund Assembly was Mr. Gaute Sivertsen (Norway), of the Executive Committee Ms. Gillian Grant (Canada) and of the Supplementary Fund Assembly Mr. Sungbum Kim. The meeting was remotely attended by 71 state signatories to the '92 Fund and 22 state signatories to the Supplementary Fund and by numerous Observer Delegations.

At the start of the meeting the Chair of the '92 Fund Assembly, Mr. Gaute Sivertsen, informed the governing bodies that he would be stepping down as Chair after 10 years and would be applying for the post of Director of the Fund on the retirement of the current Director, Mr. Jose Mauro, at the end of his second term in that role. With the post as Chairman of the Fund Assembly now vacant the meeting proceeded to elect Ambassador Antonio Bandini (Italy) as the new Chair – this by public acclamation.

In his Report the Director noted that the 1992 Fund Convention had entered into force in the Republic of Nauru on March 23rd 2021 which brought the number of Member States to 118.

2010 HNS Convention.

With no States having ratified the Convention since the meeting in November the total number of ratifications still stands at 5. However, during the meeting France, Germany, the Netherlands, Belgium and Estonia reported on steady progress towards ratification. The observer delegation of the International Group of P&I Clubs reported that it had been working with ICS, BIMCO and the European Community Shipowners Association to help the European Chemical Industry Council understand the Convention and its practical implications.

Work continues on an HNS Claims Manual which will be split into two sections, one dealing with the technical and the other with the legal aspects of the Convention.

The Secretariat confirmed that it had been able to be involved in on-line seminars designed to assist maritime administrations in understanding the full implications of this complex Convention. The Secretariat remains on course with its preparations to provide administrative services for the HNS Fund.

Appointment of the new Director.

The Director laid before the meeting the various alternative ways in which his successor might be chosen bearing in mind that the pandemic is likely to continue to make face to face meetings impossible. No final conclusion was reached but delegates remain hopeful that it will be possible to proceed with the appointment of the new Director by conventional means at the November 2021 meeting.

Incidents involving the IOPCFunds.

The Director advised that in view of the short gap between this meeting and the previous one he would only be submitting reports in new cases and ones where there had been significant developments. **(Please note that where this article refers to historic incidents the author has, for easy of reference, reproduced his previously published summary of the facts.)**

***Agia Zoni II.* (IOPC/MAR21/3/2).[2]**

This case involved a small and very old tanker which sank in mysterious circumstances in the northern part of Piraeus anchorage area. Serious pollution was caused by the 500 tonnes of oil which escaped from the wreck. Since then the wreck has been raised and placed in drydock. Two local investigations have reached different conclusions as to the cause of the sinking. One concluded that there had been an explosion on board but the other conducted by ASNA found that water had been deliberately introduced by opening ballast valves. This "scuttling" was planned, it is suggested, by the shipowner working in conjunction with the salvors and/or one of the clean-up contracting companies. Investigations are on-going.

Against this background the IOPC Funds had to decide whether they were obliged to pay for the clean-up operations. The advice from the Funds' Greek lawyers was that Article 4(3) of the 1992 CLC appeared to require that compensation be paid to innocent victims regardless of the cause of the spill. The lawyers further advised that the burden of proving that the salvors or one of the clean-up contractors were complicit and therefore not entitled to be paid for their services was a heavy one and

that there was not enough evidence available at this stage to deny payment. Should there eventually be a finding of criminal activity by the shipowner, salvor or contractor a recourse action would be taken against them by the Fund.

421 claims amounting to EUR 98.58 million have been received by the Fund and to date 186 have been settled in the amount of EUR 14.87 million. Civil proceedings commenced by the various clean-up contractors against the Fund remain on-going. With litigation being pursued before several different Courts the Fund obtained a ruling from the Piraeus Single-Member Court which directed that all proceedings should be stayed until the matter had been determined by the Piraeus Multi-Member Court

Claims amounting to EUR 3.35 million have been commenced on behalf of fisherfolk and fish traders. There are also claims outstanding from the tourism sector amounting to EUR 4.3 million and from the Greek State.

In limitation proceedings the Limitation Fund Administrator has published his provisional claims assessment which put the claims against the limitation fund at EUR 45.4 million (as opposed to the EUR 94.4 submitted). His decision is now subject to appeal by various claimants. The Fund is also a claimant in the limitation proceedings in respect of amounts already advanced to claimants.

In view of the circumstances of the sinking and the on-going investigations the Fund's Director has again advised that it would not be appropriate to make any further payments to the Salvors or to the clean-up contractor who is thought to have been complicit.

Bow Jubail. (IOPC/MAR21/3/3)

On June 23rd 2018 the tanker *Bow Jubail* collided with a jetty at the LBC Terminal in Rotterdam resulting in a spill of bunker oil which caused pollution to property and to wildlife. At the time of the incident the tanker was unladen and the shipowner applied to the Rotterdam District Court for leave to limit liability under the provisions of LLMC 1976/1996 on the basis that the incident was covered by the Bunkers Convention 2001. The Court concluded that since the shipowner had failed to prove the absence of oil cargo residues in the cargo tanks the vessel qualified as a "ship" under 1992 CLC. This decision was appealed to the Court of Appeal in the Hague where the judgment of the lower court was upheld on the ground that the shipowner had, indeed, failed to establish that the tanker did not contain any oil cargo residues – the onus in this respect being upon the shipowner.

The case is currently still under appeal to the Supreme Court and discussions took place at the November 2020 meeting to determine whether the 1992 Fund should seek to intervene in the Supreme Court appeal. All delegations recognised that it was very important that there should be a determination by a senior court of the definition of "residues" under the Convention and a consideration of what constitutes adequate cleaning of tanks to eliminate such residues. The Director recommended that the 1992 Fund should apply to join the appeal to ensure that the Court had all the assistance possible in reaching its decision. This recommendation was accepted by the Committee at its November 2020 meeting and the Director was authorised to make that application. This application has since been made on behalf of the Fund. A decision from the Supreme Court is awaited.

In an intervention at the November 2020 meeting by the International Group of P. and I Clubs it was confirmed that the Group would continue to support owners in their efforts to prove that there was an absence of residues with the result that the Bunkers Convention 2001 would apply in this case. It was further suggested that consideration should be given to developing standard guidelines for determining when a ship, which can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceases to be a "ship" under the 1992 CLC.

It is now estimated that claims arising from this incident might exceed EUR 80 million.

Under the CLC claims for compensation become time barred if proceedings are not commenced within three years of the incident. Under the 1992 Fund Convention a similar three year time limit applies. Under both Conventions in no case shall proceedings be brought after six years from the date of the incident. As the three-year anniversary of the incident is rapidly approaching those with potential claims are starting to consult the Funds lawyers with a view to protecting their rights should the Supreme Court decide that the Fund is potentially liable.

MT Harcourt.

On November 2nd 2020 the oil storage tanker *MT Harcourt* (26,218 GRT, built 1997) suffered an explosion in a ballast water tank whilst moored alongside the Elcrest Terminal at the Gbetiokun Oil

Field, Delta State, Nigeria. This incident resulted in the escape of approximately 31 barrels of crude oil. The extent of the spill was limited by the placing of oil booms and a successful clean-up operation was mounted by the terminal operators. This operation was monitored by a representative of the ship's P. & I. Club.

The owner of the *MT Harcourt* is a party to STOPIA 2006/2017 and as a consequence the limit of liability for oil spills is set at SDR 20 million. In view of the limited size of the spill it is unlikely that the Fund will be called upon to pay compensation.

Incident in Israel.

On February 19th 2021 the 1992 Fund was contacted by the authorities in Israel in connection with a mysterious spill of oil which had resulted in tar balls washing up on the coastline. Local analysis of samples concluded that the pollutant was crude oil. The source of the spill was not identified at the time but was thought to have originated from a tanker passing through the Israeli EEZ. Extensive manual clean-up operations (involving 7,000 – 12,000 personnel each day) were undertaken by Israeli Ministry of Environment. The clean-up costs are estimated at between USD 2.7 and USD 13.6 million. A two week fishing ban was imposed in the area affected.

The Fund has been able to send a technical expert to Israel to collect samples of the oil. The results of the analysis of the samples had not been received at the time of the meeting.

The Israeli authorities believe that, by searching satellite images and other available data on ship movements, they have identified an Iranian owned tanker, *MT Emerald*, as the source of the spill though this was hotly contested at the meeting by the representative from Iran. Due to a recent transfer of ownership it appears that the tanker may not have been entered with a P. & I. Club at the time of the alleged incident.

Before the Fund can become involved it will be necessary for the Israeli authorities to establish whether the pollutant is "oil" as defined by Art. 1(5) of the 1992 CLC and whether it came from a "ship" as defined in Art. 1(1) of the 1992 CLC.

The next meeting of the IOPCFunds Governing Bodies is fixed for November 8th – 10th 2021.

[1] These references are to incident reports prepared for the meeting and are available on the IOPCFUNDS website.

[2] These references are to incident reports prepared for the meeting and are available on the website of the IOPCFunds.

X. Obituaries

▪ Dr. Giorgio Cavallo - by the President

Dear Presidents, Titulary Members and Consultative Members,

It is with profound regret and sadness that I have to pass on to you that another beloved member of the CMI family, Giorgio Cavallo of Italy, passed away on 20 January 2021, at the age of 95 at his home in Genoa.

Dr. Cavallo was elected a Titulary Member of the CMI in 2000, and had a long and distinguished career as an average adjuster and expert in marine insurance. He participated in numerous CMI Assemblies, Conferences and Colloquia over the years.

Dr. Cavallo was an Officer of the Italian Maritime Law Association from 1992 to 1997, Past President of the Italian Association of Average Adjusters from 1988 to 1992, and a founding member of the Association Mondiale des Dispatcheurs. He was actively involved in the Italian Maritime Law Association, and was instrumental in proposing to the Assembly of that Association that Giorgio Berlingieri be elected President on 5 October 2005. I am indebted to Giorgio, as President of the Italian Maritime Law Association, for

advising us of Dr. Cavallo's untimely passing away. Dr. Cavallo will be remembered by his colleagues in Italy and many friends around the world for his charm and kindness, as well as his great professional qualities, and his tireless work in marine insurance and as an expert average adjuster.

I am conveying my heartfelt condolences and those of the CMI to the Italian MLA, and asking them to be passed on to Dr. Cavallo's family.

▪ **Julio Vegas-Sanchez - by the President**

Dear Presidents, Titulary Members and Consultative Members,

It is with profound regret and sadness that I have to pass on to you that another beloved member of the CMI family, Julio Cesar Sanchez-Vegas of Venezuela, passed away at his home in Caracas on 19 February 2021. Julio was a Titulary Member of the CMI, and had a long and distinguished career as a maritime attorney in Caracas, and a professor of marine and cargo insurance at various universities in Venezuela, as well as a visiting professor at a number of universities in Latin American countries, including Peru, Ecuador, Colombia and Panama. He participated in numerous CMI Assemblies, Conferences and Colloquia over the years.

Julio was the Immediate Past President of the Venezuelan Maritime Law Association, serving in that capacity from 2016 to 2019, and during his Presidency he worked tirelessly in promoting the uniformity of maritime law in Venezuela, Latin America, and around the world. I am indebted to the current President of the Venezuelan Maritime Law Association, Jose Alfredo Sabatino Pizzolante, for his letter of 19 February 2021, advising of Julio's passing away.

Julio is survived by his wife Tamara, two sons, Julio Antonio and Tomas, and a daughter, Tamara. He will be remembered by his many maritime friends around the world, as well as the countless students he mentored, for his great professional qualities, and his tireless work towards the uniformity of maritime law. I am conveying my heartfelt condolences and those of the CMI to the Venezuelan MLA, and asking them to be passed on to Julio's family.

▪ **Javier Galiano - by Eduardo Albors, President of the SMLA**

Dear friends and colleagues,

JAVIER GALIANO

It is with great sorrow and regret that the Spanish MLA informs of the passing away last 5th April of our dear colleague and friend, Javier Galiano. Javier commenced his professional life as Legal Director of Contenemar, containers shipping company based in Madrid. In 1985, Javier joined the law firm of Meana Green and in 1991 founded Albors Galiano & Portales. Javier was a Member of the SMLA and a Titulary Member of the CMI. He was an excellent shipping lawyer, with great negotiating skills. He ignored the extremes and was always willing to compromise to find the better of outcomes. Javier also acted as Arbitrator.

Above all, he was an extraordinary human being. He was full of generosity and good humour, always willing to focus on the bright side of life. Javier leaves behind his beloved wife, Virginia, his daughter Vir and a beautiful granddaughter. He also leaves behind a great group of friends and colleagues who will miss him dearly and will never forget him.

May his soul rest in peace.

Sincerely yours,

Eduardo Albors
President of the SMLA



Your editorial team comprising Rosalie Balkin and Evelien Peeters wish to thank all contributors to this edition of the Newsletter and hope that all our readers are keeping safe and well in these dark times of COVID-19.



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