



*Vigilandum est semper; multae insidiae sunt bonis.*

## CMI Newsletter

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The editors of this News Letter, Dr Rosalie Balkin and Miss Evelien Peeters, hope you enjoy reading this edition of the News Letter and that you are keeping safe and well.

### Tokyo Conference Update

## Message from the President:

The Tokyo Conference and Assembly remain on schedule for 26-30 September 2021 and to this end the Tokyo Conference Organizing Committee continues to meet on a monthly basis via Zoom video conferences, and the venue (New Otani Hotel), substantive work programme, and social events remain much the same as outlined in the Welcome Letters from President Kenjiro Egashira of the Japan MLA, and Rosalie and me, which were attached to my correspondence of 18 March 2020, and can be accessed on the CMI website under "Correspondence of the President."

We hope to go live with the conference registration website in mid-March 2021, by which time we should have more clarity on the availability of a COVID-19 vaccine and delegates' willingness to travel. The 2021 Tokyo Conference Organizing Committee is also mindful that the deadline for cancelling (without penalty) the contract with the New Otani Hotel is on or about 30 March 2021.

In sum, we remain optimistic that the 2021 Tokyo Conference and Assembly will take place as scheduled, look forward to welcoming delegates one year from now in Tokyo, and note the International Olympics Committee (IOC) President recently announced the delayed Tokyo Olympic games can be held even without a COVID-19 vaccine.

## Addendum by Tomotaka Fujita (Japan MLA)

The COVID-19 situation in Tokyo seems to be stabilizing these days although people are still cautious about participating in events involving large audiences. The Japanese government is relaxing an entry ban for business trips and the Conference Organizing Committee is carefully examining ways of making the Conference as safe as possible.

## Note by the Secretary-General:

The Conference Organising Committee is meeting on a regular basis. The programme we are planning will be a very full and interesting one. We are going full steam ahead in our arrangements on the basis that it will be safe to travel to Japan but of course we are keeping the COVID-19 situation always in our minds.

## IWGs

## Judicial Sales update October 2020

The last Newsletter was issued in April of this year bang in the middle of the COVID-19 Pandemic which has effected I am sure the lives of each and every one of us.

In that newsletter I informed you all that the UNCITRAL 37<sup>th</sup> Working Group V1 meeting scheduled for April in New York had been cancelled. Of course this was a great shame because a great deal of work had been done in preparation for that meeting and to progress the excellent work done so far on the 2<sup>nd</sup> revised Beijing Draft on Judicial Sales.



Picture: Ann Fenech working remotely on Judicial Sales of Ships

However, notwithstanding the fact that the meeting was not held, we continued with our discussions with the Secretariat. We were then informed that the indications were that the 14<sup>th</sup> to 18<sup>th</sup> December 2020 session, scheduled to be held in Vienna, would proceed probably in a hybrid form taking into account that persons who would already be in Vienna would attend in person and persons from outside Vienna would participate virtually. We are still to be informed on exactly how it is going to work out and I will of course be informing all the NMLAs as soon as I have any information.

However and in the meantime with a view to keeping the momentum going the UNCITRAL Secretariat sent each and every delegation a request for comments on the latest draft and notes which it circulated. Any delegation wishing to comment had until the end of September to revert.

As far as our IWG is concerned, we put our thinking caps on and produced a set of Notes similar in style to the ones we had produced prior to the Vienna UNCITRAL meeting in December 2019. We circulated these Notes on the 2<sup>nd</sup> Revised Draft to the NMLAs in the hope that their country delegates would find them useful in the preparation of their response to the Secretariat.

Therefore and as far as work on the 2<sup>nd</sup> Revised Draft is concerned, very good progress has been made notwithstanding the fact that the New York Session was not held and the CMI is eagerly awaiting the next session to be held in December. I have had a number of informal discussions with persons very much in the know as to how work at UNCITRAL progresses and they are very impressed with the speed with which this Draft is progressing.

Finally, you may recall that in March of this year, the Croatian Presidency of the European Council had intended to organise a Colloquium on the matter. This was cancelled. However Natasa Saric Maloseja, from the Croatian Ministry of Justice still went ahead and together with the Croatian Maritime Law Association, held a very interesting Colloquium in Dubrovnik at which I was invited to speak. There were a number of very interesting speakers including Jose Angelo Faria from the UNCITRAL Secretariat, Petar Kragic and Gordon Stankovic past President and President of the Croatian MLA, Harman Hoek representing the IBA, Peter Laurijssen representing ICS, Laura Carbello Pinero and Juan Pablo Rodriguez Delgado – academics, Jonathan Warring from ITF and Merle Stilkenbaumer representing the Liberian Flag in Hamburg who all contributed with interesting perspectives and observations. Miso Mudric and Igor Vio moderated the Colloquium. There were a number of attendees including representatives of the European Commission. It was very clear indeed that there was substantial support for and a clear understanding of the need for such a Convention. Congratulations to our Croatian members for organising a very interesting Colloquium.

The next important milestone is of course the meeting in Vienna between the 14<sup>th</sup> and 18<sup>th</sup> December. We will be getting in touch with all NMLAs prior to Vienna with the latest updates.

Finally many thanks indeed to all the NMLAs who are acting on all the various memos we are sending out and really keeping in touch with the respective government delegates to UNCITRAL to ensure that we keep the momentum going with a view to achieving the optimum results. Keep well and keep safe.

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

### **CMI Database: milestone: a thousand cases published**

A note received by the President and the Secretary-General, among others, from Stephen Girvin, MPA Professor of Maritime Law and Director, Centre for Maritime Law, National University of Singapore, sent on 1 October 2020, contained the very welcome news of a significant milestone concerning the *CML CMI Database of Judicial Decisions on International Conventions*, as follows:

I am pleased to announce that the *CML CMI Database of Judicial Decisions on International Conventions* has now reached the significant milestone of 1,000 cases (as of today, 1,004 cases).

I want to highlight the pivotal role being played in this enterprise by our CML research staff and especially my colleague, Paul Myburgh, who as editor has played the major role in ensuring the overall quality and breadth of coverage of jurisdictions in the database. The largest civil law contribution continues to be from our Dutch colleagues and we have Taco (van der Valk) to most sincerely thank for that.

Note by the Secretary-General: By way of response, the President asked Stephen to extend the CMI Executive Council's appreciation and thanks to Paul and the CML research staff for their excellent work on this important project. He has written to NMLA Presidents, Titulary Members and Consultative Members, encouraging them to continue contributing cases of interest to the Database, which was likely to remain the CMI's signature project for decades to come.

## **International Maritime Organization (IMO): World Maritime Day**

As most of our readers are no doubt aware, IMO has for many years adopted the practice of having an annual theme which underscores its major activities for that particular year. For 2020, the annual theme is "Sustainable Shipping for a Sustainable Planet". IMO also celebrates World Maritime Day on the last Thursday in September each year, during which the annual theme is highlighted. This year's World Maritime Day was celebrated on 24<sup>th</sup> September 2020.

In this regard, we have reproduced below IMO CIRCULAR LETTER 4323 of 15 September 2020 as well as the IMO Secretary-General's Message which accompanied the Circular Letter.

IMO CIRCULAR LETTER 4323 of 15 September 2020 reads as follows:

Further to Circular Letter No.4198 of 31 January 2020, which included a background paper on the [IMO's] theme "Sustainable Shipping for a Sustainable Planet", the Secretary-General has the honour to enclose herewith the text of his message on the occasion of World Maritime Day 2020. This year's celebration will take place on 24 September 2020 in the form of an online event, due to social distancing measures put in place at IMO Headquarters as a result of the current situation caused by the COVID-19 pandemic.

The message will be available for downloading in all of the Organization's official languages (Arabic, Chinese, English, French, Russian and Spanish) and the background paper is available in the Organization's three working languages (English, French and Spanish). Additionally, a video containing the Secretary-General's message is now available on the IMO website at [www.imo.org](http://www.imo.org).

You can watch the Secretary-General's video message [here](#)

In addition, the Secretary-General wishes to remind all Member States and international organizations of the Calendar of Events on the IMO website, which can be accessed at [www.imo.org/en/About/Calendar](http://www.imo.org/en/About/Calendar).

The Calendar of Events provides the opportunity for greater visibility of the many events held around the world in support of World Maritime Day and the Day of the Seafarer. In the current situation caused by the pandemic, it presents an effective and easy-to-use platform to inform other Member States and international organizations, in advance, of relevant celebrations in support of both days, particularly online events that may be more widely attended. More information on the Calendar of Events is enclosed in Circular Letter **No.3889**.

In order to promote the Day more widely, the Secretary-General encourages the authorities concerned to organize suitable events throughout the year to celebrate the Day, and inform the Secretariat of any such activities, including listing them on the calendar as described above. The information will then be included in a report to be prepared for submission to the Council.

Social media participation is also encouraged via Twitter, by using the hashtag #WorldMaritimeDay. Photographs of any events can also be sent to: [media@imo.org](mailto:media@imo.org).

**THE IMO SECRETARY-GENERAL  
MESSAGE ON WORLD MARITIME DAY**

24 September 2020

The theme of this year's World Maritime Day – sustainable shipping for a sustainable planet – has gained extraordinary resonance as shipping has continued to transport more than 80 per cent of world trade, including vital medical supplies, food and other basic goods that are critical for the COVID-19 response and recovery.

The COVID-19 pandemic has also highlighted the professionalism and sacrifice of the two million seafarers who serve on the world's merchant fleet.

I remain very concerned about the growing humanitarian and safety crisis facing hundreds of thousands of these indispensable workers. Despite the unprecedented conditions brought about by the pandemic, seafarers have continued to tirelessly support the often invisible global logistics chain.

Physically and mentally exhausted, away from their families and loved ones, their time at sea has now been extended far beyond the standards stipulated in international conventions, with some tours of duty now stretching more than 17 months. Fatigued seafarers cannot operate indefinitely, and disruptions to international shipping would have devastating consequences.

I renew my appeal to Governments to address their plight by formally designating seafarers and other marine personnel as "key workers", ensuring safe crew changes and implementing the protocols developed by UN agencies, as well as the International Chamber of Shipping and the International Transport Workers' Federation, allowing stranded seafarers to be repatriated and others to join ships.

In the longer term, a sustainable shipping industry is vital. Shipping will play a central role in achieving most, if not all, of the seventeen Sustainable Development Goals. But shipping activities must be balanced with the long term health and biodiversity of the oceans. The UN's International Maritime Organization (IMO) has developed global standards which support cleaner and greener shipping. Governments and IMO must continue to work together to support the decarbonization of shipping and improved energy efficiency; the facilitation of shipping through increased digitalization, involving ports; and efforts to ensure the sustainability and protection of the workforce, including a focus on diversity.

Shipping can and must continue to make its contribution to the global economy without upsetting nature's delicate balance. The maritime sector underpins world trade and will continue to be essential for building a sustainable future for people and planet."

**NMLA Bulletin Board**

## **Activities**

- **The MLA of Australia and New Zealand: President's Message - by David Goodwin**

The activities of MLAANZ ([press here for link to newsletter](#)) over the past few months have revolved primarily around online seminars organised by our Western Australia and Victoria Branches. A Western Australia Branch seminar held on July 23 attracted a large number of participants from the eastern states and from New Zealand. The presenter was Philip Teoh, a partner with the Malaysian law firm Azmi & Associates. He addressed a range of maritime arbitration issues, from a Malaysian vantage point. Mr Teoh has also kindly contributed, for publication in this Semaphore newsletter, an article summarising principles of conflict of laws that can arise in maritime cases and maritime arbitration.

The Western Australia Branch has subsequently held two further seminars. On August 13

Margot Matthews of the LNG Marine Fuel Institute was guest speaker discussing a “Two-Pronged Approach to Decarbonisation” (covered in this edition), then on September 23 Matthew Harvey SC presented on “Does a Defective Passage Plan Render a Ship Unseaworthy?”. Both events drew large online audiences. In addition to a host of Australian and New Zealand MLAANZ members, there was interest from as far afield as Scotland, India, Chile, Japan and Singapore.

On September 16 the Victoria Branch hosted a successful panel-style maritime arbitration webinar, which featured: • Bronwyn Lincoln, partner of Corrs Chambers Westgarth – “Due Process in Virtual Arbitral Hearings” • Corina Song, partner with Allen & Gledhill, Singapore – “Current Issues in Singapore Maritime Arbitration” • Matthew Harvey SC, of the Victorian Bar – “Is an Arbitration Clause in a Draft Bill of Lading Effective?”

In addition, we have been pleased to promote two other interesting recent webinars. In a broadcast from London on September 16 hosted by LSLC (The Forum for Shipping, Commercial Law and Dispute Resolution) panelists debated the subject of good faith. This discussion was chaired and moderated by Sir Bernard Eder, who delivered the keynote address “The Relevance of Good Faith in Shipping Disputes” at our Melbourne conference in 2017. On September 23 the Australian Academy of Law hosted an online event “World in a Box – 50 Years of Containerisation in Australia” which celebrated the development of container shipping. The speakers included, from the Federal Court of Australia, The Hon Chief Justice James Allsop AO, The Hon Justice Angus Stewart and The Hon Justice Sarah Derrington, together with author Martin Orchard. A number of our members took the opportunity to tune in to these stimulating presentations.

The combined effect of this diverse range of online events has been to maintain a strong sense of community amongst the MLAANZ membership, despite the challenges presented by the COVID-19 pandemic and the postponement of our annual conference until next year. Our thanks go to all of our speakers and those who have worked hard to organise these “virtual” seminars.

Coming up, the Victoria Branch is planning a further online seminar to be held on Thursday November 19, commencing at 5pm. The topic will be “Competing Liability Rules” and the seminar will include a Copyright 2009-2020 Maritime Law Association of Australia and New Zealand S E M A P H O R E discussion of Rotterdam Rules possibilities. Panellists will include Matthew Harvey SC, Stuart Hetherington and myself and, we hope, an Australian Government official. At the conclusion of the November 19 event we will conduct the Annual General Meeting of our association, which all MLAANZ members are encouraged to dial in to. A formal notice of meeting will be issued next month.

Also included in this edition of Semaphore we continue our profiling of presentations from last September’s Auckland MLAANZ conference with an article headlined “Ship Arrest and Undertaking as to Damages – is it Time for a Change?” kindly contributed by Gregory Nell SC of New Chambers, Sydney. Additionally, the publication features messages from both the New Zealand and New South Wales Branches, we mark the passing of Captain Barry Thompson, congratulate MLAANZ member Dr Damien Cremean on the recent publication of the Fifth Edition of his text “Admiralty Jurisdiction” and report on Port of Melbourne’s operational performance during recent pandemic restrictions.

Finally, members should note three important recent sets of governmental communications. The first is a communiqué from the Australian Government’s Department of Infrastructure, Transport, Cities and Regional Development, issued this month, concerning the next stage of consultations on coastal trading reform, following the lapse earlier this year of the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017. The “Coastal Trading Reform for Cargo Vessels – Discussion Paper” dated September 2020 seeks feedback via E-mail to [coastaltrading@infrastructure.gov.au](mailto:coastaltrading@infrastructure.gov.au) by close of business Friday October 9, 2020. It makes the point that opening the coast, introducing a strategic fleet and high cost subsidies are not on the table as they have been deemed out of scope. Secondly, a submission has been made by MLAANZ vice-president Michelle Taylor, with the support of the MLAANZ board, in response to the Federal Government’s “Discussion Paper on Australia’s Accession to the Nairobi Convention on the Removal of Wrecks”. Details of the submission will shortly be posted on the MLAANZ Website. If there are any additional views or observations a member would like to see expressed on behalf of MLAANZ, please contact Michelle at [Michelle.Taylor@cbp.com.au](mailto:Michelle.Taylor@cbp.com.au). Thirdly, earlier this month we received correspondence from the Comité Maritime International on the status of the ongoing project to negotiate a judicial sales instrument with meeting notes for the UNCITRAL Working Group meeting planned to be held in Vienna from December 14 to 18, 2020 provided. These materials will soon be posted on the MLAANZ Website for the convenience of our

members. On behalf of the committee, I thank you all for your ongoing support and commitment to the mission of MLAANZ.

- **Venezuelan MLA: Brief summary of the activities – by José Sabatino**

Since the beginning of the restrictions due to the pandemic, which were issued in Venezuela on 13 March 2020, the Venezuelan Maritime Law Association (Asociación Venezolana de Derecho Marítimo (AVDM)) jointly with the Venezuelan Branch of the Iberoamerican Institute of Maritime Law (Instituto Iberoamericano de Derecho Marítimo (IIDM)), set to analyze the effects in the maritime industry of COVID-19 via a series of virtual events with international guests in order to raise awareness through the opinions of experts on the subject matter.

The virtual events have touched upon several issues such as maritime contracts, marine insurance, maritime labour, and we have virtually hosted international panels with hispanoamerican guests-speakers with aim of informing the attendees about the internal laws of each country, represented in the events, about the effects of COVID-19 in the maritime industry. Well known attorneys, specialized in Maritime Law, from over 14 countries - inter alia Germany, Argentina, Chile, Colombia, Costa Rica, Spain, United States, Great Britain, Mexico, Panama, Peru, Dominican Republic, Uruguay and Venezuela – kindly answered to our invitation and shared their knowledge and stance on the different areas the Coronavirus may affect in their respective countries.

This has been a rewarding experience for the attendees, and has also served with AVDM's objective to promote and disseminate the study of maritime law, even during these times of quarantine in which many countries have been on lockdown and working from home. The result of these virtual events have provided attendees the opportunity to learn in detail about the treatment, defences and the legal theories that can be alleged under several perspectives. We have discussed the issues of insurance such as hull and machinery, P&I, cargo, interruption of business and cyber risks; issues of maritime contracts such as charter parties, contracts of carriage, cruise contracts, crew labour agreements and contracts for construction of vessels; analysed practical cases such as those of the cruise ships Greg Mortimer in Uruguay and the Diamond Princess in Japan; and have also studied other non-COVID-19 related issues, such as inter alia, the Discovery under Venezuelan and Panamanian Law, and the study of legal issues with Ports in the region.

The activities and research on the subject matter have also provided us in the AVDM with useful information which we decided to share on our website [www.avdm-cmi.com](http://www.avdm-cmi.com) in a dedicated tab called "COVID-19". The virtual events or webinars (fifteen so far) are also available to the public in general via the YouTube Channel of our Association (Asociación Venezolana de Derecho Marítimo) which to this date has had over 6800 views. Unfortunately, the events are only in Spanish.

It is important to state that this collective effort could have not been possible without the organization and dedication of many of our Members led by our Vice President Dr. Gustavo Omaña and our Chairman of Publications and Events Dr. Juan J. Itriago.

Finally, it is the intention of our Association to continue to host these virtual events on different issues - on the short term focused on: arrest of vessels; the use of electronic evidence in Venezuela; and the fishing industry - in order to broaden the areas being covered and its virtual analysis from the Maritime Law perspective.

We hope our friends and colleagues of the National MLAs continue to be safe and healthy.

- **Sénégal MLA: New developments in its international organization and membership – by Aboubacar Fall**

The Senegalese Maritime Law Association is experiencing new developments in its internal organization and membership.

Founded about 35 years ago, it has always been led by the first generation of maritime lawyers and other shipping practitioners including port officials, local P&I representatives, marine insurers, shipping companies, forward agents, cargo surveyors etc. These people were generally trained in Europe, mainly in France.

The last ten years have witnessed a paradigm shift and a game change insofar as the human resource is concerned. Indeed, several universities in Senegal both public and private now offer maritime law as well as law of the sea programmes at the graduate level. Furthermore, a group of new lawyers and maritime professionals have now been trained in the UK and the USA.

In the 2019-2020 academic year, two Senegalese professional lawyers were granted a fellowship for graduate studies in maritime law. Mr Etienne Waly DIOUF was awarded an International Maritime Organization (IMO) Fellowship while Mr Souleye Oumar BA was granted a fellowship by Lloyd's Register Foundation (LRF). They both were admitted at the Malta based International Maritime Law Institute (IMLI).

With the prospect of the developments of the new offshore discoveries of hydrocarbons resources in Senegal, the two graduates have selected topics in connection with the exploitation of these offshore resources.

Mr Diouf's dissertation project is entitled "*Security of Offshore Oil & Gas Infrastructure : a Critical Analysis of the Senegal Legal and Institutional Framework*" while his Legislation drafting project is on "*Incorporating the International Convention on Civil Liability for Bunkers Oil Pollution Damage, 2001 into the Laws of the Republic of Senegal and Providing for the Effective Implementation Thereof*"

Mr Souleye Oumar's dissertation project is entitled : "*Offshore Oil & Gas Exploitation in Senegal : Legal Analysis of Environmental aspects*". Further, his Legislation drafting project relates to the following topic : "*Incorporating and Implementing Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973 as Modified by the Protocol of 1978 Relating Thereto (MARPOL) into the laws of Senegal.*"

It is therefore worth noting that there is a new generation of maritime lawyers as well as other maritime professionals in Senegal who, given their high level training, will constitute invaluable assets for the membership and activities of the Senegal MLA.

The Young CMI should reach out to these new maritime law graduates and professionals from Africa to bring about more diversity in the international organization.

The reorganization of the Senegal MLA is underway and we will report on the developments as they are unfolding.

Staying safe & keeping well.

- **The Maritime Law Association of the Philippines, Making waves in 2020 - by Gino Carlo M. Cruz, Corporate Secretary**



Picture: MARLAW Executive Officers and Board Members at the Supreme Court of the Philippines

Maritime Law Association of the Philippines [MARLAW] makes headway amidst the pandemic



year proving itself as a resilient and potent driving force in the Philippine Maritime Industry. Founded in 1982, MARLAW was established to promote progress in the maritime legal practice and to advance the interest of the Philippine maritime profession and the maritime industry as a whole.



On January 2020, during its Annual General Assembly, MARLAW elected its new set of Board Members and Executive Officers with Beatriz Geronilla-Villegas of Villegas Law as the President. An astute admiralty practitioner, Beatriz Geronilla-Villegas obtained her law degree at the venerable San Beda College of Law in Manila.

During the election, President Beatriz Geronilla-Villegas outlined MARLAW's activities throughout the year, which were later on had to be recalibrated to respond to the world-wide pandemic.

*Picture left: MARLAW President Beatriz Geronilla Villegas*

Induction of new Officers and Board Members were held at the Supreme Court of the Philippines with Supreme Court Associate Justice Andres B. Reyes Jr., administering the oath of office.



The Induction ceremony was later followed by a reception at the historic Manila Yacht Club, where the first Board Meeting was held to inaugurate the term.

*Picture right: Induction of Officers and Board Members*



Priorities and activities were re-evaluated when the Coronavirus Pandemic struck. MARLAW held its last face-to-face Executive Officer's Meeting on February until government Stay-at-Home Orders were lifted. MARLAW's sense of duty and compassion turned towards the maritime community who were affected by the lockdowns and the health crisis. Through MARLAW's indefatigable efforts, it donated countless medical supplies to hospitals by partnering with the Office of the Vice President of the Philippines and

the Integrated Bar of the Philippines Southern Luzon Region.

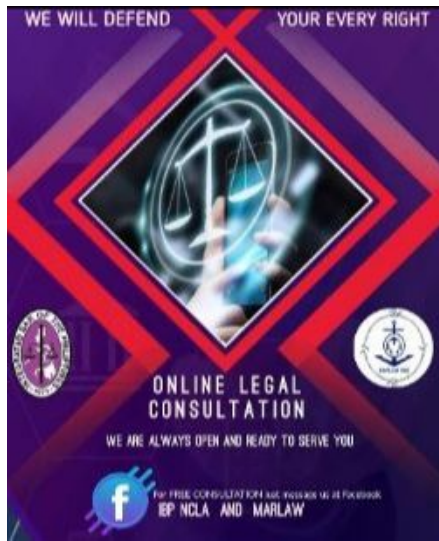
*Picture left: MARLAW Member Eugene Salonga, Executive Officers Gino Carlo Cruz ((Secretary), Beatriz Geronilla-Villegas (President) and Arjel De Guzman (VP for Publications) at the Induction Ceremony.*

In addition to the donation of medical supplies, MARLAW likewise extended assistance to stranded seafarers during the Stay-at-Home Orders. The assistance to seafarers ran for a significant amount of time with the support of the Office of the Vice President of the Philippines.

*Picture right: Last Meeting of the Executive Officers before pandemic restrictions*



A virtual consultation during the height of pandemic was launched in partnership with the Integrated Bar of the Philippines Center for Legal Aid. MARLAW Board Members and Executive Officers Gino Carlo Cruz (Secretary), Arnold Lugares, Pedrito Faytaren, Arjel De Guzman, Earl Masacayan and Nikki Santos personally took time to extend participation and help in the said project.



Mindful of the hazards of the health emergency, MARLAW distributed its own MARLAW face mask to its general membership.



MARLAW, in responding to the interim normative conduct introduced by the pandemic in the Philippine Maritime Industry, organized an online symposium with top maritime physicians and epidemiologists as speakers. The online symposium was attended and viewed by at least 17,000 people all over the country as of writing. The online symposium was treated with

extensive media coverage. Media partners like The Manila Times and Rappler ran articles covering the event. This online symposium was developed through the assistance of Topnotch Medical Board Prep, Inc. and the Phi Kappa Mu Fraternity of the University of the Philippines College of Medicine. A transmission of the said MARLAW symposium can be viewed through this link: <https://www.facebook.com/watch/?v=741772406378440>



500 years since the first circumnavigation of the world, the Philippines took a commanding place in the maritime world ushering in globalization as early as the Age of Discovery. The Maritime Law Association of the Philippines, as a premier maritime professional organization, supports the Philippines' pre-eminent and special place in the maritime industry. MARLAW empowers all local maritime stakeholders to ensure that progress from each sector is achieved. MARLAW cares for the sectors that are in need to equality and social justice. MARLAW supports. MARLAW empowers. MARLAW cares.

Picture: MARLAW publicity for the Online Symposium

- AEDM / Spain MLA activities during 2020 – by Jesús Casas

On the 15<sup>th</sup> March, since months ago at the time of writing this short briefing, our Government, like many others locked-up the country as a preventive measure against the quick growing of the COVID-19 pandemic. Thus, 2020 has been quite a difficult year in Spain both socially and economically, causing not all the targets of the SMLA have not been complied on time. The Annual National Congress and Assembly which were scheduled to take place by the middle of June, according to our well-established tradition, was suspended due to the Emergency State. All public acts were prohibited and cancelled and are still suffering relevant limitations.

However, in difficult times imagination and hard work lead to new initiatives and the SMLA organized two interesting virtual conferences on two relevant matters in which the CMI is working intensively:

- On the 4th May, 2020, a virtual session regarding “Unified interpretation of the test of evidence to break the limitation rights in the IMO Convention”. We had the privilege to have with us Mr. Victor Jiménez, the Spanish permanent representative of Spain at IMO, who offered a very interesting Conference on this topic. Mr. Manuel Carlier, General Director of the Spanish Shipowners Association, acted as moderator of the colloquium. This virtual conference had a great number (list) of attendants and the colloquium thereafter was of high interest (see the open links to the video and presentation: <http://vimeo.com/417123282> and [https://www.aedm.es/media/files/Jornada%20virtual%20AEDM-IME\(1\).pdf](https://www.aedm.es/media/files/Jornada%20virtual%20AEDM-IME(1).pdf) )
- In June a second virtual session was also organized by the SMLA regarding “Forced sales of ships”. In this case, two solicitors Mrs. Laura Peláez and Mr. Nicolás Nägele from Uriá & Menéndez and the professor at the Carlos III University, Dr. Juan Pablo Rodríguez Delgado, intervened as speakers. The colloquium was moderated by Mr. Jesús Casas. This virtual conference had as well a great list of attendants and the colloquium thereafter was of high interest(s) (the links are also open to non-members: <https://www.aedm.es/es/jornada-sobre-la-venta-forzosa-de-buques--junio-2020>).

Both virtual sessions were organized by the SMLA with the kind support and collaboration of the Spanish Maritime Institute (SMI, [www.ime.es](http://www.ime.es) ) and were introduced by Mrs. Mercedes Pardo (CEO of the SMI) and by Mr. Eduardo Albors, President of the SMLA.

Our ExCo met monthly in virtual sessions to keep the pace and the pulse of the Association and we maintained continuous communication via Webmail with our membership.

On the 5<sup>th</sup> October the SMLA will hold its annual Assembly in a hybrid format (both face-to-face for a limited number of attendants according to the preventive measures in force and others by videoconference, according to the changes in the companies and other legal entities emergency law reforms, including elections to its Executive Committee and to candidates to be proposed in Tokyo 2021 as new(s) Titulary Members of the CMI, as Spain has suffered a relevant number of deceases during the past years, the last of which was our respected friend and peer Fernando Meana, so far the only victim of the Covid-19 pandemic in our Association.

It is expected that the present ExCo will be renewed for another four years until October 2024.

At the time of drafting this update our Annual National Congress has been scheduled for the 2nd December 2020, also in a hybrid format. The Congress of this year (coronavirus permitting) shall be limited to (a) one day only, instead of the usual two days with gala dinner set-up). Interesting topics like possible reform of the Spanish ports and maritime navigation law, international sales contracts and Incoterms 2020, maritime arbitration, decarbonization, climate change and CO2 emissions commerce, and its influence on maritime field at (on) the light of the last initiatives, and COVID 19 (in charge of the Young SMLA members) are in the agenda of the Congress.

We also managed to refurbish and update our Website ([www.aedm.es](http://www.aedm.es)) that is being used as our hub in these times in which personal direct contact – even with social distancing – is difficult.

Our membership is stable in number and we are promoting participation through national working groups in the questionnaires received from the CMI’s IWGs and others (for instance, the reform of the arrest of ships under Spanish Law). We have responded to all questionnaires received from the CMI and circulated to our members almost all the letters and documents received from the CMI’s President.

- **Nordic Offshore and Maritime arbitration – Cooperation between the Nordic MLAs to promote Maritime and Offshore arbitrations – on behalf of the Swedish MLA, Jörgen Almelöv, past President**

This article will address an interesting joint concept and arbitration project within the Nordic countries Denmark, Norway, Finland and Sweden. In 2014/15, through the joint efforts of the Maritime Law Associations in their respective countries, a working group was established for the purpose of trying to achieve joint rules for maritime and offshore arbitration in the Nordic countries. This working group included representatives from both law firms and the maritime and offshore industry.

The background and main reasons for the initiative can be summarized as follows. Maritime arbitration in the Nordic countries are mainly conducted by way of ad hoc arbitrations in each country and there exists no arbitration institute to which maritime (or offshore) arbitrations are generally referred (although the Stockholm Chamber of Commerce arbitration institute - "SCC" - receives its fair share of international gas—and oil related disputes in addition to occasional shipbuilding disputes).

Notwithstanding our long tradition of maritime and offshore industry in the Nordic countries, disputes have increasingly been referred to arbitration in London. With a growing concern about complexity and costs of resolving disputes in London the question arose whether the Nordic legal maritime community may offer the maritime and offshore industry an attractive alternative.

Furthermore, through the years it has been a growing concern, in a long term perspective, whether it would be possible to maintain quality and a sufficient number of competent arbitrators and lawyers in the Nordic countries to serve the maritime and offshore arbitration segment of the market.

The Nordic Offshore and Maritime Arbitration Association was established on 28 November 2017 ("NOMA"). In April 2018 NOMA launched an agreed set of Rules, Best Practice Guidelines and a Case Management Conference Matrix ("NOMA Rules"). NOMA is not an arbitration institute as such, but provides useful tools to enable consistent and efficient ad hoc arbitration conducted pursuant to the NOMA Rules. A highly qualified and experienced board of academics, judges and lawyers, overlook the NOMA Rules and ensure that the system can be adjusted/amended whenever desired or required.

There are some key elements which have been important to achieve the successful implementation of NOMA. The Nordic countries have a long tradition of an established joint case law base for maritime arbitration. A series of law reports under the title Nordisk Domme i Sjøfartsanliggender (ND) ("Nordic Maritime Judgments") has been published for more than 110 years. This has been important to develop a common legal approach to ensure predictability and conformity regarding legal rules within the maritime sector.

There are further close connections within the maritime legal community between academics, judges, lawyers within the government and private practicing lawyers whether in law firms, insurance companies etc. The foundation for this is the Scandinavian Institute of Maritime Law in Oslo, Norway. For many years this has been (and still is) the heart of the maritime and offshore legal education and development in the Nordic countries. Accordingly, many lawyers know each other on a more or less personal basis which has been an important factor for speaking the same language and cooperation, placing competition and personal gains on the sideline, leading up to the establishment of NOMA.

NOMA has so far been a success. The maritime industries have strongly supported NOMA and the 2019 version of the Nordic Marine Insurance Plan has introduced NOMA as the default solution where the claims leader is non-Nordic and as an option where the claims leader is Nordic. Industry players have also already started using the NOMA standard arbitration clause in their standard contracts. The NOMA Rules are under further development. Within short we expect that a set of rules for Fast Track Arbitration will be launched followed by rules for Mediation. The NOMA Rules are indeed the outcome of hard work and close cooperation which we expect to further strengthen the Nordic cooperation.

- **Peru's denunciation of the Hague Rules: Beating against the wind? - by Katerina Vuskovic Pérez, Lima, October 2020**

The worldwide trend is towards international agreement and a long-desired uniformity of maritime law that would bring certainty and a safe passage. Surprisingly, however, Peru has chosen to steer a different course at a difficult time, a course that will certainly lead to rough waters in the near future.

In the middle of the crisis triggered by the COVID-19 pandemic, on the 12th of May we learned from the official gazette El Peruano of the promulgation of Supreme Decree N° 012-2020 REE denouncing the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924, known world-wide as the Hague Rules.

Thus, without prior notice or official explanation we awoke on this cold May morning to find to our

surprise that we are no longer covered by an international convention that had applied to Peru for the previous 55 years. The Peruvian maritime sector was further astonished by the fact that the sole reason for this decree was that it was "in the interests of Peru". The question is: to whose interests does this legislation refer?

By way of introduction, let me briefly mention the country's existing relevant legislation. Peru has a Code of Commerce dating from the 15th of February 1902, the Third Book (Section) of which covers "maritime trade" and is practically the only survivor of a code now replaced almost entirely by later codes and/or laws. It should be noted that this Code was based on the Spanish Code of 1885, in turn deriving from the Napoleonic Code of Commerce of 1807 and -earlier still- Colbert's 1681 Ordinance of Marine, which regulated the maritime commerce of an earlier age when shipping containers, electronic data transfer, GPS and modern communications were beyond anyone's wildest dreams.

I should mention that there have been at least two past attempts at updating or modernising the legislation in question, but unfortunately neither came to fruition. The first attempt at regulatory modernisation was in 1988 with a draft replacement for the Third Book (Section) of the Code of Commerce produced by the Peruvian Maritime Law Association, backed by the United Nations Development Program (UNDP); the last attempt was a proposed Navigation and Maritime Commerce Act/Law in 1999, which has since been ignored by the Peruvian Congress. This draft was produced by a group of outstanding specialists in maritime affairs and as well as modernising domestic maritime legislation sought to incorporate the then novel, Hamburg Rules.

We know that regulatory reforms and the adoption of international agreements require years of studies, debates and discussions to understand and adapt to the actual circumstances of different countries, hence the concern on the part of Peruvian specialists of this subject.

The denunciation of an international agreement without the necessary debate and inclusion of those involved in shipping, maritime commerce and logistics -as well as professional bodies- has created huge uncertainty regarding the intentions of the Peruvian Government. Unfortunately the denounced documents from the Hague Rules were submitted to the Belgian government on the 19th of May and therefore from the 21st of May 2021 onwards Peru will join the list of countries not applying these rules. Nevertheless, most withdrawals from these rules have been because the states involved have ratified other conventions, but in Peru's case it is not clear whether any such ratification is planned and even if a decision is taken quickly, other conventions take time to enter into force: for example Hamburg Rules will take effect one year after ratification, therefore creating a period of uncertainty for the maritime industry.

The Hague Rules are nothing more than internationally agreed standard conditions for contracts of carriage by sea and specifically regulate liabilities for damage and losses to cargo. As we know, this convention also defines the liabilities of the shipowner and shipper.

Even though the Hague Rules took effect in Peru on the 29th of October 1965, their scope and application have seldom been accepted by Peruvian legislation, courts or operators, who have sought to limit them to port or customs issues.

We are unsure whether the Peruvian Government's intention was to reject the 1924 convention in order to adopt one of the more modern conventions governing ocean freight such as the Hague-Visby or Hamburg Rules or even the Rotterdam Rules, which would justify, to a certain extent, the promulgation of the supreme decree in question. Nevertheless, we suspect that the reason was to facilitate the application of legislative decree N° 1492, promulgated on the 10th of May (only two days before withdrawal from the Hague Rules), which seeks to approve provisions that would reactivate the foreign trade logistics chain under the circumstances created by the COVID-19 pandemic. Although this piece of legislation incorporates some important and necessary measures to speed up and facilitate ocean freight, such as digitalisation, it could generate doubts regarding contracts of carriage given that it concerns an international convention that would no longer be applicable.

This situation will certainly increase the sector's costs, such as freight rates and insurance, as ship owners and carriers will try to safeguard their own interests. At the end user will, of course, end up paying and we believe that this is the least desirable option given the health, economic and social crises in which we currently find ourselves.

We would like to believe that there is still time to delay the denunciation until discussions can be held with all those involved, leading to a decision more in line with the country's interests. A public debate and discussion will bring transparency and impartiality to the difficult mission of

regulating such important matters, especially if all the sectors involved participate.

We should be sailing downwind, not beating against it.

### **Obituaries:**

It is with profound regret and sadness that we inform our readers of the passing of the following four distinguished Titulary Members of the CMI family. We extend our heartfelt sympathy to their families and friends.

- William "Bill O'Neill (IMO Emeritus Secretary-General and CMI Honorary Member)

Bill O'Neil, CMI Honorary Member and IMO Emeritus Secretary-General (1990-2004), passed away 29 October 2020 aged 93. Prior to joining IMO, he was Commissioner of the Canadian Coastguard, then President and Chief Executive Officer of the St Lawrence Authority, in which capacity he oversaw the construction of the St Lawrence Waterway. Starting in 1980 he chaired the IMO Council for five consecutive terms. In 1991 he became Chancellor of the World Maritime University (Malmö, Sweden) and Chairman of the Governing Board of IMLI (Malta).

A civil engineer by training, he received a number of awards and honours from his native Canada (including the Admirals' Medal, the Professional Engineers Ontario Gols Medal, the Golden Jubilee Medal, membership of the Engineering Alumni Hall of Distinction at the University of Toronto, and Member of the Order of Canada) as well as from the USA (including the Commodore Award from the Connecticut Maritime Association, the Halert C. Shephard Award, and the Vice Admiral "Jerry" Land Medal from the Society of Naval Architects and Marine Engineers).

His achievements over his lengthy career were also recognised by many other countries around the world which showered him with Honorary degrees and other awards. He was also recognised by the CMI which conferred on him the high distinction of Honorary Membership.

- Rolf Herber (Germany)

Prof. Dr. Herber was a partner with the law firm of Ahlers & Vogel in Hamburg, and an acknowledged expert and prolific author in the field of maritime, trade and transport law who trained generations of maritime lawyers. He served inter alia as Assistant Secretary of State in the Foreign Ministry of Justice; Director of the Institute of Maritime Law (Hamburg University); and Chairman of the Experts Commissions of the Federal Ministry of Justice for the Reform of Transport Law and Maritime Trade Law. Among the many honours and awards he received was the Grand Cross of the Order of Merit of the Federal Republic of Germany.

- Alikí Kiantou-Pambouki (Greece)

Prof. Emeritus of Commercial and Maritime Law at the University of Thessaloniki and long-standing Vice-President of the Hellenic Maritime Law Association, Prof. Kiantou-Pambouki specialized in the teaching of commercial Law, in particular, maritime law. Her extensive publications included a textbook on general maritime law, which ran into six editions. This textbook, together with her book on negotiable instruments, has been a standard reference work for a generation of lawyers.

- Nicholas G. Scorinis (Greece)

Following an eleven-year career at sea, licenced Master Mariner Nicholas G. Scorinis began his distinguished career in maritime and commercial law in 1969 which culminated in his retirement as the senior partner of Scorinis Law Offices in 2016. He was a member of the legal committees of the Union of Greek Shipowners and the Hellenic Chamber of Shipping and a founding member of the Piraeus Association for Maritime Arbitration. He also served as Vice-President of the Hellenic Maritime Law Association and was a founder member and later Vice-President of the Hellenic Society of Maritime Lawyers.

- Jan Theunis (Belgium)

Jan Theunis enjoyed a long career as an advocaat in Antwerp having founded a successful practice specializing in maritime, transport and international trade law. He was author, co-author or editor of several books on the arrest of ships and CMR and in the 1990s was actively involved in the transformation of the Belgian Maritime Law Association from an *association de*

*fait* into a not-for-profit association. On retirement he devoted himself to the study of philosophy at the University of Louvain.

## Upcoming meetings of interest to the CMI

- **IMO Legal Committee (LEG)**

The 107<sup>th</sup> session of the IMO Legal Committee is scheduled to be held from 27 November-1 December 2020. Due to COVID-19, the meeting will be held remotely—see document PROG/128/Rev.1 of 14 August 2020.

Robert Veal, Rosalie Balkin and Anna Petrig will be attending the meeting on behalf of the CMI. Anyone else who wishes to participate should liase with Rosalie who will also organize the registrations for the CMI delegation.

- **Maritime Safety Committee (MSC)**

The 102<sup>nd</sup> session of the IMO Maritime Safety Committee is scheduled to be held from 4-11 November 2020. Due to COVID-19, the meeting will be held remotely—see document PROG/128/Rev.1 of 14 August 2020.

CMI will be represented at this meeting by Tom Birch Reynardson, Robert Veal and Henrik Ringbom. Anyone else who wishes to participate should liase with Tom or Robert; Rosalie Balkin will be advised by them as to whom else will be attending the meeting as part of the CMI delegation and Rosalie will organize their registrations.

- **IOPC Funds**

The next meeting of the governing bodies of the IOPC Funds is scheduled to take place from 2-4 December 2020. Details may be found in document IOPC/2020/Circ.13. The meeting will take place remotely via virtual meeting platform KUDO. Further information, including on procedural matters, may be found on the IOPC Funds website.

Patrick Griggs, Chris Davis and Rosalie Balkin have been registered to attend the meeting and a report on its highlights will be made in the next edition of the News Letter.

- **UNCITRAL**

The next meeting of the 37<sup>th</sup> Working Group VI on Judicial Sale of Ships is tentatively scheduled to take place in Vienna from 14-18 December 2020. The meeting is likely to assume a hybrid format, with some participants who are in Vienna attending in person, while others may participate virtually--see document A/CN.9/1038--Decision on the format, officers and methods of work of the UNCITRAL working groups during the coronavirus disease 2019 (COVID\_19) pandemic adopted on 18 August 2020. Further details will be forthcoming including an annotated provisional agenda—document A/CN.9/WG.VI/WP.86/Rev.1

Anyone else who wishes to participate should liase with Ann Fenech; Rosalie Balkin will be advised by Ann of those who will be attending the meeting as part of the CMI delegation and Rosalie organize the registrations for the CMI delegation.

*General editors:*

*Dr Rosalie Balkin - AO - Secretary General CMI*

*Evelien Peeters - Administrative Assistant CMI*



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