



Vigilandum est semper; multae insidiae sunt bonis.

CMI Newsletter

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PRESIDENT'S WELCOME LETTER

CMI ASSEMBLY AND COLLOQUIUM MEXICO CITY

30 SEPTEMBER – 2 OCTOBER 2019

The 2019 Assembly of the CMI will take place in Mexico City, Mexico on the afternoon of Wednesday, 2nd October 2019, preceded by a two-day colloquium organized jointly by the CMI and the Mexican MLA. This is in accord with the tradition and historical format of holding a full international Conference only once every four years, with Seminars and Colloquia in intermediate years, coinciding with our annual Assembly. The next Conference will be in Tokyo, Japan in 2020.

As many of you know, Mexico City is a cosmopolitan city with a long and layered history, and world-class museums, restaurants and hotels. The programme for Mexico City begins with a welcome cocktail reception for delegates and their partners at the [Camino Real Hotel](#) in Polanco, and elegant and iconic hotel-museum designed by the renown and late architect Ricardo Legorreta, which is a short walk from some of the City's trendiest boutiques and best restaurants, and close to Chapultepec Park and Castle, as well as the world-famous Museum of Anthropology.

We have reserved a block of rooms at the Camino Real Hotel, where the Assembly and Colloquium programme will take place. Topics to be discussed during the Colloquium will include the offshore energy industry 40 years post-IXTOC I, women in today's shipping

world, the future of maritime lawyers, cybercrime and insurance coverage issues, and whether it is time for Latin American Governments to ratify the Civil Liability, IOPC Fund and HNS Conventions. We are including a number of Young CMI speakers in the substantive programme and sessions to ensure yCMI members can attend the Assembly on Wednesday afternoon, 2nd October 2019 (this will be a departure from prior CMI Seminars and Colloquia where the yCMI programme was held at the same time as the Assembly).

There will be a break in the Colloquium programme after the Tuesday morning session on 1st October 2019, to allow delegates and their partners to visit the ancient city of Teotihuacan (and the Pyramids of the Sun and Moon), a UNESCO World heritage site which, according to historians, was the largest city in the Western Hemisphere prior to the Fifteenth Century. Teotihuacan is a short one-hour drive from Mexico City, where we will have lunch before touring the archeological site.

The Colloquium will conclude with the traditional Gala Dinner for delegates and their partners which will take place on Wednesday evening, 2nd October 2019, at Hacienda de los Morales, one of Mexico's finest restaurants which exudes Spanish colonial architecture and old world charm. We have set up an event website at www.cmi2019mexico.org where you will find the current programme with details of the sessions and speakers. The site will be expanded and updated as more detail becomes available. The CMI's Executive Council holds its annual meeting on Sunday, 29 September 2019, the day before the start of the Colloquium. We anticipate that meetings of some CMI International Working Groups and International Standing Committees will take place before, during or after the Colloquium. If you are an IWG or ISC Chair and would like to reserve a venue for a meeting of your committee, please contact the CMI Secretary General.

Beginning on or about 25 March 2019, you will be able to register for the Colloquium via the CMI event site for yourself as delegate and for your partner as an Accompanied Person, and to book a hotel from those listed. Please note "early bird" registration will close at midnight GMT on 31 May 2019.

Mexico City is awaiting to charm and enchant you, and we look forward to seeing all of you at the Assembly and Colloquium. And of course, there will be pre- and post-event tours available to some of the other wonderful cities, fascinating archaeological sites, and beautiful beaches Mexico has to offer.



Tulum : iconic of Yucatan and the Mayan culture

The event's designated tour agency, In World Travel Agency (inworld.com.mx) and tour executives Juanita Cortez (jcortez@inworld.com.mx) and Lourdes Zugarazo (lzugarazo@inworld.com.mx) will be happy to assist you in making bookings for tours, both before and after the Colloquium.

We look forward to welcoming you to Mexico City.

Christopher O. Davis
President, CMI

Rosalie Balkin
Secretary-General, CMI

Ignacio L. Melo
President, Mexican MLA



PRELIMINARY PROGRAMME: MEXICO COLLOQUIUM

Sunday September 29th, 2019

Registration

Venue: Hotel - *Camino Real Polanco*

Time: 10.00 am to 07.00 pm

CMI Executive Council Meeting (closed meeting)

Venue: Hotel meeting rooms - *Camino Real Polanco*

Time: 09.00 am to 05.00 pm

Welcome Cocktail

Venue: Hotel Terrace - *Camino Real Polanco*

Time: 06.00 pm to 08.00 pm

Monday September 30th, 2019

Venue: Hotel Meeting Rooms - *Camino Real Polanco*

Buffet Breakfast (all delegates) & Latin American MLA Breakfast

Time: 08.00 am to 09:00 am

Colloquium Business Session 1: Opening of the Colloquium

Welcome speeches by Mr. Christopher O.Davis, President of the Comité Maritime International, and Mr. Ignacio Melo, President of the Asociación Mexicana de Derecho Marítimo,

Speeches by guests-of-honour: Mr. Javier Jimenez Espriu, Secretary, Communications and Transport Ministry and Mrs. Josefa González-Banco, Secretary of the Environment and Natural Resources Ministry.

Speech by Mr. Luis Cova Arria, Luis Coa Arria & Asociados, Venezuela, in tribute to the late Francesco Berlingieri.

Time: 09.00 am to 10.30 am

Coffee break

Time: 10.30 am to 11:00 am

Colloquium Business Session 2: The offshore Energy Industry 40 years Post-IXTOC I

Representatives from the offshore energy sector, inter-governmental agencies, and insurance companies will discuss how technological and regulatory changes have affected the industry and environment over the past 40 years, and governments' and insurers' response to the ever increasing risks associated with the offshore energy sector.

Moderator: Mr. Jorge Radovich, Chair of the CMI Offshore Activities international working group

Speaker 1: Mr. Frank Goynor, Gard, New York

Speaker 2: The Honourable Justice Steven Rares, Judge, Federal Court of Australia

Speaker 3: Mr. Rafael Murillo, Franco Duarte Murillo Arredondo, Mexico

Speaker 4: Mr. Godofredo Mendes Vianna, Co-Chair, Maritime and Transport Law Committee, International Bar Association

Speaker 5: Capt. Francisco Javier Fernández Perroni - General Director of Merchant Marine

Time: 11.00 am to 01.00 pm

Lunch

Time: 01.00 pm to 02:30 pm

Colloquium Business Session 3 (yCMI): The Future of Shipping Lawyers

Legal practice, like the maritime industry itself, has undergone substantial change over the last twenty years. Futurists predict that future legal practice will be automated and perhaps involve artificial intelligence. Others say that containerization, safety at sea and unification of maritime law mean that tomorrow's shipping practice will involve new or unexplored areas of maritime law. Join Young CMI as they analyze recent trends in the profession and explore how the practice of maritime law will change for junior and senior lawyers.

Moderators: Mr. Robert Hoepel, AKD, the Netherlands and Mr. Lawrence Teh, Administrator, CMI

Speaker 1: Adj. Professor Massimiliano Musi, University of Bologna, Italy

Speaker 2: Mr. Bernardo Melo Graf, Melo & Melo Abogados, Mexico

Speaker 3: Mr. Javier Cardoso Andrade, Apolo Abogados, Ecuador

Speaker 4: Ms. Morgane Roussel, DelViso-Avocats, France

Time: 02.30 pm to 04:00 pm

Coffee break

Time: 04.00 pm to 04:30 pm

2019 IMLI CMI Prize recipient

Ms. Maja Radunović of Montenegro will give a short presentation on her thesis "Maritime Liens in Bankruptcy Proceedings: A Legal Analysis of the Need to Harmonize and Amend the Montenegrin Legislation"

Time: 04.30 pm to 05:00 pm

Colloquium Business Session 4: Proposals for future unification of maritime law

This session will involve a series of short speeches or presentations on various proposals for future unification of maritime law, including a restatement of the principles of Lex Maritima

Moderator: Mr. Aurelio Fernandez-Concheso, Clyde & Co., Venezuela

Speaker 1: Lex Maritima by Professor Eric van Hooydonk, University of Antwerp, Belgium

Speaker 2: Uniformity of Maritime Law from a Latin American perspective by Mr. Ignacio L. Melo, Sr., Melo & Melo, Mexico

Speaker 3: Lex Maritima from a Latin American perspective by Mr. Jose Vicente Guzman Escobar, Esguerra Asesores Juridicos, Colombia

Time: 05.00 pm to 06:00 pm

Tuesday October 1st, 2019

Venue: Hotel Meeting Rooms - Camino Real Polanco

Buffet Breakfast (all delegates) & MLA President's breakfast

Time: 08.00 am to 09:00 am

Colloquium Business Session 5: Women in Today's Shipping World

Exploring women as catalysts for positive change: what influence can women bring to bear on the shipping industry of 2019 and its challenges; why are women moving to other industries?

Moderators: Ms. Liliana Monsalve, IOPC Funds; Ms. Ann Fenech, Vice-President, CMI

Speaker 1: Ms. Pamela Tansey, Consultant in Gender and Development

Speaker 2: Ms. Katerina Vuskovic Pérez, Vyalaw, Peru

Speaker 3: Ms. Despina Panayiotou Theodosiou, Tototheo Maritime, Cyprus

Speaker 4: Ms. Elizabeth Salas Jimenez, Colombia

Time: 09:00 am to 10:30 am

Coffee break

Time: 10.30 am to 11:00 am

Colloquium Business Session 6: Cybercrime and Insurance Coverage issues

Representatives from marine insurance companies will address the risks associated with cyber-crime in today's shipping industry, as well as coverage issues associated with exposure to these risks

Moderators: Mr. Joe Grasso, Chair of the CMI Marine Insurance international working group, Mr. Juan Carlos Merodio, M&L Estudio Legal, Mexico

Speaker 1: Ms. Shelley Chapelski, Norton Rose Fulbright, Canada

Speaker 2: Ms. Borianna Farrar, American P&I Club, U.S.A.

Speaker 3: Mr. Hernán López Saavedra, Manzano, López Saavedra & Ramírez Calvo, Argentina

Time: 11:00 am to 12:00 noon

12:15 TRANSPORT DEPARTS TO TEOTIHUACAN PYRAMIDS

Lunch, Tour of the Pyramids, Return

Time: 01:30 pm to 08:00 pm



Teotihuacan: Birthplace of Gods

Wednesday October 2nd, 2019

Venue: Hotel Meeting Rooms - Camino Real Polanco

Buffet Breakfast (all delegates)

Time: 08.00 am to 09:00 am

Colloquium Business Session 7: Civil Liability, IOPC Fund and HNS Conventions - Is it Time for Latin American Governments to Ratify These Conventions? (Part 1)

This is the first of a two-part session that explores the obstacles to ratification of the 1992 Fund; the 2003 Supplementary Fund Protocol and the 2010 HNS Convention; and why more Latin American countries should join The international Liability and Compensation regime

Moderator: Dr. Rosalie Balkin, Secretary-General, CMI

Speaker 1: Mr. Jose Maura, IOPC Funds

Speaker 2: Mr. Jan de Boer, International Maritime Organization

Speaker 3: Ms. Kiran Khosla, International Chamber of Shipping

Speaker 4: Mr. David Baker, International Group of P&I Clubs

Time: 09.00 am to 10:45 am

Coffee break

Time: 10.45 am to 11:00 am

Colloquium Business Session 8: Civil Liability, IOPC Fund and HNS Conventions - Is it Time for Latin American Governments to Ratify These Conventions? (Part 2)

This is the second of a two-part session that explores the obstacles to ratification of the 1992 Fund; the 2003 Supplementary Fund Protocol and the 2010 HNS Convention; and why more Latin American countries should join The international Liability and Compensation regime

Moderator: Ms. Liliانا Monsalve, IOPC Funds

Speaker 1: Mr. Luiz Leven Siano, Siano & Martins, Brazil

Speaker 2: Mr. Jose Manuel Zapico, Mackay & Cia, Chile

Speaker 3: Mr. Javier Franco, Franco & Abogados Asociados, Colombia

Speaker 4: Dr. Jose Modesto Apolo, Apolo Abogados, Ecuador

Speaker 5: Mr. Francisco Linares, Morgan & Morgan, Panama

Speaker 6: Mr. Aurelio Fernandez-Concheso, CMI Executive Council member, Venezuela

Speaker 7: Captain Jose Luis Hernandez Abdalah, Mexico

Speaker 8: Dr Diego Chami, Chami Di Menna & Associates, Argentina

Time: 11.00 am to 01.00 pm

Lunch

Time: 01.00 pm to 02:30 pm

CMI Assembly

The Assembly of the CMI is an event where national maritime law associations and other members of the CMI meet to discuss the business of the CMI. Unless invited by the CMI to do so, only members of the CMI may participate in the Assembly. There will be limited space for delegates to observe the proceedings.

Time: 02.30 pm to 04:00 pm

2nd CMI EXCO meeting (closed meeting)

Time: 04.00 pm to 04:30 pm

06:00 PM TRANSPORT TO GALA DINNER

Gala Dinner

Venue: Hacienda de los Morales

Time: 06.30 pm to 09:30 pm

Cocktails

Venue: Camino Real Polanco

Time: 09.30 pm to 11:00 pm



The palacio de Bellas Artes (Palace of Fine Arts) a neo-classical building, has been called the "Cathedral of Art" in Mexico.



A signature landmark of Los Cabos, El Arco or "The Arch" is a limestone arch carved by time, tide and wind, located at the tip of the Baja California Peninsula.

The CMI IMLI Prize for the Best IMLI Student 2019 and the yCMI Essay Prize:

The Role of the CMI Charitable Trust

The CMI Charitable Trust is thrilled to support the International Maritime Law Institute (IMLI) in a number of ways each year. First, we are able to fund the travel to Malta of a number of lecturers so that CMI experts in maritime law are able to lecture students in areas of their expertise. This has proved to have been a very successful programme and we are happy to support IMLI in their work.

For the past few years we have also awarded the CMI IMLI prize for the best IMLI student. This has been an exciting and very satisfactory project where the brightest IMLI graduates have been honoured and rewarded by the CMI Charitable Trust. This year the prize was awarded to Ms. Maja Radunović of Montenegro whose thesis is entitled "Maritime Liens in Bankruptcy Proceedings: A Legal Analysis of the Need to Harmonize and Amend the Montenegrin Legislation".

The prize for Maja is a trip to the CMI Colloquium in Mexico City with all her fees for travel and accommodation paid for while she is there. For Maja, she has to give a presentation on the subject of her presentation, so it is what we call a "double edged sword"!

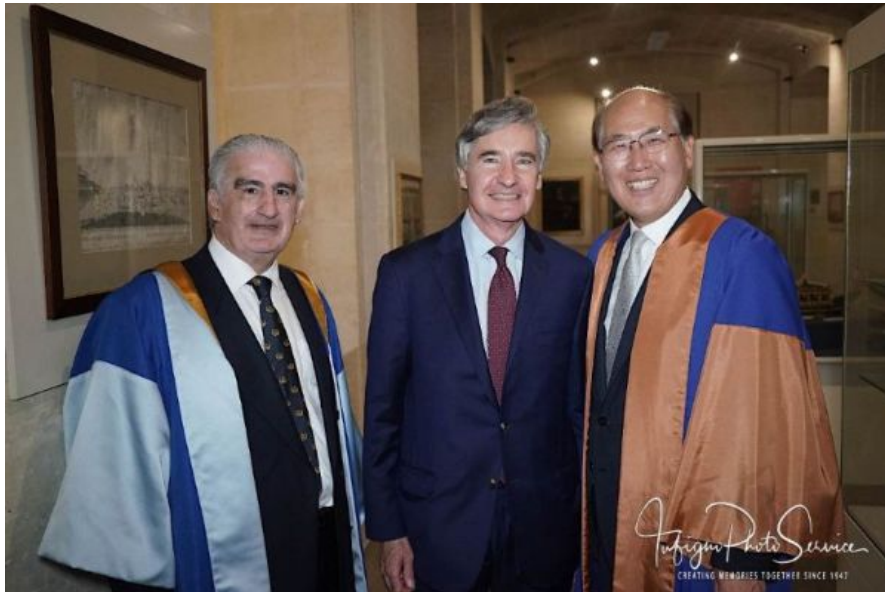
In addition to the IMLI Prize, the CMI is also sponsoring the yCMI Essay Prize, which is open to anyone under the age of 35. The subject of the Essay Prize is: *"Unmanned ships and cybercrime: how will technology and a new crimewave rock the boat of traditional maritime law and marine insurance practice and principle. How can the regulatory framework of the shipping industry adapt to cope with these challenges?"*

Again, the CMI Charitable Trust will fund the attendance of the winner in Mexico City, with the same double edged sword attached!

Tom Birch Reynardson

CMI Prize for Best Overall Performance

by Chris Davis



CMI President Christopher O.Davis (in the middle) with IMLI Director David J. Attard and IMO Secretary-General Kitack Lim

CMI President Christopher Davis attended the 30th graduation ceremony of the IMO International Maritime Law Institute on 15th June 2019, which was held at the Malta Maritime Museum in Vittoriosa, Malta. The IMLI Class of 2019 included graduates from states and territories worldwide, with diverse and multicultural backgrounds, and with professional women constituting slightly more than half the graduating class (reinforcing IMLI's long-standing commitment and policy of reserving 50 per cent of the Institute's places for deserving female professionals).



CMI President Christopher O.Davis and Ms. Radunovic

During the graduation ceremony, Mr. Davis presented the CMI Prize for Best Overall Performance to Maja Radunović of Montenegro (also pictured above with Mr. Davis), whose dissertation focused on maritime liens in bankruptcy proceedings. The CMI Prize is awarded every year to the student with the best overall performance at IMLI, is funded by the CMI Charitable Trust, and includes a stipend (covering airfare, hotel, registration fee, and miscellaneous expenses) which will allow Maja to attend the 2019 CMI Mexico City Colloquium, and deliver a presentation on the subject of her dissertation.

The yCMI Essay Prize, 2019

Winner: Ms Helen Nieman

The yCMI Essay Prize is an initiative of the CMI aimed at drawing younger maritime lawyers into the CMI fold. It has its roots in a project approved at Toledo many years back, but was reformulated last year by the London Assembly with a firm set of guiding rules.

The rules allow for the appointment of a panel of judges from which three judges are appointed for each year. The panel was duly appointed by EXCO, drawn from a broad spectrum of expertise and jurisdictions. Prof John Hare was tasked with running the project.

As envisaged by the Rules, the London Assembly approved for the 2019 yCMI Essay Prize the title *Unmanned ships and cybercrime: how will technology and a new crimewave rock the boat of traditional maritime law and marine insurance practice and principle. How can the regulatory framework of the shipping industry adapt to cope with these challenges?*

The CMI office prepared and sent out a flier inviting entries, and we are pleased to confirm that nine scripts were duly and timeously submitted. Each under an anonymous number allocated by the secretariat. This was to ensure that the judges did not know the identity of the candidates until after the assessment process was complete.

The CMI is grateful to Professors Bülent Sozer, Henrik Ringbom and Filippo Lorenzon for agreeing to adjudicate this year. The process was driven by Prof Hare as moderator.

Scripts were then submitted electronically and in hard copy to the judges. Each was asked to send their assessments only to Prof Hare, so that none would see the opinions of the other two. With the texts, Prof Hare sent to the judges a template for their assessments. This allows a more meaningful comparison, as judges are all invited to look for the same things in each work.

Collating the marks and considering the comments of the judges upon each, Prof Hare was able to present to EXCO a unanimous view that the winner of the 2019 yCMI Essay Prize is Ms Helen Nieman. Ms Nieman is to be congratulated on her win. Her essay will soon be published on the CMI website.

As part of her prize, Ms Nieman will be invited to attend the next international CMI event in Mexico City in November 2019, and there to present an edited version of her essay. Her travel and accommodation costs will be met by the CMI Charitable Trust, while her registration fee for the event will be covered by the CMI.

The CMI would like to thank all who submitted essays. Some authors have been advised that they should consider publication. And we can remind future candidates that they may enter as often as they wish.

The Mexico Assembly later this year will be asked to approve a topic for the yCMI Essay Prize, 2020 which will be publicised after the Assembly. The 2020 prize will be an invitation to attend the Tokyo Assembly in late 2020.

Professor John Hare

International Recognition of Judicial Sales: Report on the Proceedings of the 1st meeting of Working Group V1 of UNCITRAL on Judicial Sales of Ships

Ann Fenech

Vice President CMI

Co-Chair of the IWG on Judicial Sales of Ships

Co-Ordinator for CMI for the project at UNCITRAL



Pic: Ann Fenech



Pic: Alexander Van Ziegler

Introduction

The week between 12 to 17 May 2019 was indeed a most exciting week in the calendar of the CMI. This is because we saw what was no less than 11 years of very hard work culminating in a full discussion by UNCITRAL with a view to finally turning the draft convention on the international recognition of Judicial Sales of ships into an international instrument.

As those following the project know only too well, it was in 2017 that the CMI submitted a proposal to the Secretariat of UNCITRAL on

possible future work by UNCITRAL on cross-border issues related to the judicial sale of ships. Whilst a number of delegations supported the proposal and expressed interest, it was suggested that CMI might seek to develop and advance the proposal by holding a colloquium so as to provide additional information to the Commission and allow it to take an informed decision.

It was therefore decided to co-host a joint Colloquium between the CMI, the Malta Maritime Law Association and the Maltese Government. The Colloquium was attended by over 180 delegates from over 50 countries representing banks and financiers, ship owners, ship repairers, crew, tug operators, salvors, providers of provisions, bunkers, harbour authorities, flag registries, the ITF, members of the judiciary from various jurisdictions who deal with judicial sales, BIMCO, FONASBA as well as maritime lawyers who have had to deal with the very serious challenges presented by the chaos caused when judicial sales are not recognised. An overwhelming case was made by each and every one of these groups, encouraging the creation of an international instrument which would, once and for all, regulate this area and inject a degree of stability and certainty.

In the words of Tillmann Stein of Deutsche Bank, who spoke at the Malta Colloquium on behalf of another eleven German Ship Finance banks:

"Without a reliable international basis for recognition of judicial sales of vessels, buyers would need to be satisfied with the risks when obtaining title, which would drive down the sale price. This would be a very bad thing for any bank needing to sell the vessel in a judicial sale."

The Swiss Proposal

The detailed conclusions of the Malta Colloquium constituted the very basis of the proposal of Switzerland to UNCITRAL. So, in July 2018, Stuart Hetherington the (then) President of CMI and I attended the 51st Assembly of UNCITRAL in New York for the purposes of supporting the Swiss proposal presented by Alexander von Ziegler which included the CMI draft convention. As it turned out another 7 proposals were also made to UNCITRAL at the same time and the Chair made it very clear that the Assembly could only approve 3 new projects. It was only at the end of that week that we were informed that our project had been accepted for future work at UNCITRAL and that the first working group to finish its current work would be allocated this project. The project was later given to Working Group V1 and that the first meeting of working Group V1 was held between 13 to 17 May, 2019.

Meeting in New York



From left to right; Henry Li, Frank Nolan, Chu Beiping, Peter Laurijssen, Ann Fenech, Alexander von Ziegler, Tomotaka Fujita, Eduardo Albers

The invitees to this first meeting of the Working Group were the 60 states members of UNCITRAL. Countries are elected to UNCITRAL for a three year period so that there is a rotation of states every three years. However, all member states of the UN may attend the meeting without voting rights. Apart from the member states, a number of NGOs might also attend and express their views on the subject matter but also without voting rights.

The NGOs attending this first meeting of the Working Group in New York were the CMI, the Grupo Latinoamericano de Abogado Para el derecho del comercio Internacional, the International Association of Judges, the International Bar Association, the International Chamber of Shipping, the International Law Institute, the International Union of Marine Insurance, the Moot Alumni Association, the New York Bar Association and the Law Association of Asia and the Pacific and BIMCO.

States were in the main represented by their own diplomats resident in New York. Therefore most of the delegates did not have a shipping background. That said, there were a number of important jurisdictions which were accompanied by maritime lawyers who contributed significantly to the debate. The Swiss delegation – the proponent of the proposal, was headed by Alexander von Zeigler, President of the Swiss Maritime Law Association and CMI EXCO member. The US delegation had Frank Nolan, the President of the USMLA; The Japanese delegation had Japanese MLA council member and past member of CMI EXCO, Tomotaka Fujita; the Spanish delegation had Eduardo Albers, the President of the Spanish Maritime Law Association; the Chinese Delegation had Henri Li, President of the Chinese Maritime Law

Association and co-chair of the IWG on Judicial Sales as well as Professor Chu Bei Ping, current CMI EXCO member.

On the first day we were welcomed by Mr. Jose Angelo Estrella Faria, Principal Legal Officer and Head, Legislative Branch of the UNCITRAL Secretariat, who was assisted by Mr. Ryan Harrington and Mr. Alexander Kunzelmann. The Working Group elected Professor Beata Czerwenka from Germany as its Chair.

Alexander von Zeigler introduced and explained the CMI's proposal. On my part and as co-ordinator of this project for CMI at UNCITRAL, I explained in detail how CMI operates, how it conducts its research through its extensive network, the work which had been done by the CMI to bring the project to the Draft Convention stage, the case law which had shown the need for certainty in this important aspect of international trade and the CMI's reaction.

Much needed focus and attention was paid to the underlying *raison d'être* of the draft convention, namely, that international trade demands certainty, buyers need clean title to be able to register their new acquisitions and have any previous registrations and mortgages deleted and to ensure that their ships are not arrested by the vessel's previous creditors.

Following this extensive introduction, the Secretariat expressed the view that, given the amount of work conducted and the draft text, it made good sense for the Working Group to use the draft prepared by CMI as its basic working document from which to develop the international instrument. The four days that followed were dedicated to an explanation of the *raison d'être* behind each and every article, with numerous interventions from the floor. Since most delegations did not have the benefit of a maritime background, this was a good opportunity for us CMI representatives to explain and delve into the specificities of maritime law including, for instance, explanations on how financiers of ships protect their interests by means of mortgages; how numerous jurisdictions would give maritime liens to a number of maritime service providers; the differences between voyage, time and bareboat charters; how a judicial sale has nothing to do with the action on the merits prior to the sale or the distribution of the proceeds following the sale; how the practicalities of having a vessel under arrest awaiting a judicial sale actually work out in real terms; and how such circumstances have a very big effect on the crew serving on such vessels, on the creditors and on the defaulting owners themselves.

In explaining each article in the draft convention, specific reference was made to how, in the view of CMI, such drafting would assist in solving a number of the practical problems that arose as well as a number of the concerns raised from the floor.

The Secretariat took note of the various concerns of those who spoke and prepared a report of the proceedings of the entire week, which was read out in draft during the last afternoon. It is understood that when the draft is finalised by the Secretariat, this will be available on the UNCITRAL Working Group V1 website.

The Secretariat will now prepare another draft taking into account those considerations and comments for which there was clearly support around the room. I would say that most of these are drafting issues and do not effect much the substance of the draft or its aim, being to ensure that a vessel sold in a judicial sale is sold free and unencumbered provided that the minimum criteria prior to the sale are satisfied. The next draft will be the subject matter of further discussion at the next Working Group meeting in Vienna in November.

There is no doubt that by the end of the week, delegates were much better informed on the background and need for such an international instrument. However, as we advance in our discussions, it becomes all the more important for states which will be attending and participating in this working group to be well informed about the details and, if possible, to be accompanied by maritime lawyers who can immediately grasp the issues at stake.

I would therefore like to ask all National Maritime Law Associations to make representations to the appropriate authorities in their countries to ensure that they are properly prepared and, if possible, to be accompanied by maritime lawyers at all future meetings that are to be held.



From left to right: Frank Nolan, Peter Laurijssen, Henri Li, Eduardo Alborn and Tomotaka Fujita

Cooperation with other international organizations

CMI has intensified its relations with various other international organizations. This spring there was a meeting in London with the International Chamber of Shipping (ICS) and the International Group of P&I Associations (IGP&I) to identify common goals and projects. One of the areas all three organizations have in common is the IMO's work of Maritime Autonomous Surface Ships (MASS), where ICS, IGP&I and CMI are all heavily involved. Not less important is an initiative of the IGP&I at the 106th session of IMO's Legal Committee relating to the Unified Interpretation (UI) of the shipowner's right to limit liability under the IMO Conventions. This is an area where CMI with its 55 member organizations and thousands of maritime legal experts can give valuable assistance. The three organizations also share the goal of promoting ratification of international conventions. Here CMI can assist with the expertise and local contacts of its national member organizations.

Further closer cooperation was agreed with the International Union of Marine Insurance (IUMI). Lars Lange, Secretary General of IUMI, and Mr. Charles Fernandez, Chairman of IUMI's Legal & Liability Committee recently met with CMI President Chris Davis and CMI Vice President Dieter Schwampe in London, and it was agreed that Charles Fernandez will join CMI's International Working Group on Unmanned Ships.

Ties were also strengthened with the International Association for the Representation of the Mutual Interests of the Inland Shipping and the Insurance and for Keeping the Register of Inland Vessels in Europe (IVR), whose Judicial Commission met during IVR's annual

conference in Prague in June, where closer cooperation and mutual exchanges with CMI were discussed and envisaged.

Finally, CMI, being the guardian of the York-Antwerp Rules, will deepen its cooperation with the Association Mondiale de Disputeurs (AMD), of which many members are already actively participating in Committees and Working Parties of CMI.

*Professor Doctor Dieter Schwampe
Vice-President CMI*

IBA Maritime and Transport Law Conference – Opportunities and Risks in Shipping 2019 Oslo - 20th to 22nd May 2019

I was very honoured indeed to have been invited by the Maritime and Transport Law Committee of the IBA to deliver the luncheon address at the IBA Maritime and Transport Law Conference in Oslo on Wednesday 22nd May, only three days following the end of the UNCITRAL meeting in New York. My thanks go to the Co-Chairs Godfredo Mendes Vianna and Richard V. Singleton and Senior-Vice Chair Johannes Grove Nielson and all the committee.

The entire three day event was superbly organised with top quality presentations by maritime legal practitioners and associated industry guest speakers whose presentations covered a vast array of practical maritime law issues ranging from Arbitration to financing of maritime ventures to maritime insolvency and restructuring, sulphur emissions, marine insurance to maritime claims against governments, vessel scrapping and anti-corruption measures and sanctions.

I took the opportunity of informing the over 150 maritime practitioners in attendance of the latest developments at UNICTRAL related to our project on the international recognition of judicial sales. I thanked the IBA for their participation at the UNCITRAL Working Group V1 meeting through Mr. Richard Singleton and Miss Muge Anber Kontakis, underlining the very extensive synergies that exist between the IBA Maritime and Transport Committee and the CMI and how very fruitful and effective it is for the two to work together on such important projects, enabling both organisations to fulfil their commitments to the international maritime community by working towards a better understanding and unification of international maritime law.

The audience, being composed of maritime practitioners, was totally supportive and fully appreciative of the vital importance of having an international convention on the international recognition of judicial sales because most of them know only too well the huge challenges and difficulties and complete chaos which emerges when properly conducted judicial sales are not recognised. It was the perfect venue to explain the progress made to date and to invite each and every one of them to get in touch with the correct government administrations in their respective countries with a view to explaining how important it was for their governments to send the right persons with the right information to the UNCITRAL Working group V1 meetings.

The CMI very much looks forward to the continued extensive liaison between the CMI and the IBA on this and other important international maritime law issues.

Ann Fenech

“IMLI 30th Anniversary Celebrations at IMO”



*Report by Patrick Griggs CBE
Past President CMI*

In 1987 the then Secretary-General of IMO, Dr. Srivastava, publicly expressed his concern at the fact that the IMO had no power to enforce the conventions which it produced. In order to give life to its conventions it had to rely on member states to implement them through national legislation. Of further concern to him was absence of personnel in member states with the drafting skills needed to undertake this task. A meeting between Dr. Srivastava and the Maltese Parliamentary Secretary, engineered by the current IMLI Director, Professor David Attard, led to an offer from the Maltese Government to provide premises in Malta at which lawyers would be trained in international maritime law and taught the art of legislative drafting. Premises, which included residential accommodation, for twenty students were built within the campus of Malta University at Msida and the first group of students (19 in number) arrived in 1989 to study for a Master of Laws Degree in International Maritime Law.

Since that low key start IMLI has gone from strength to strength. At the latest count 781 students from 136 countries have successfully undertaken studies in the Institute's LLM programme. The number of students in the academic year 2018/2019 was 47.

Many students have gone on to occupy important positions within their own countries and internationally and IMLI graduates are to be found as members of many national delegations to IMO committees – with a particularly strong representation in the Legal Committee.

To celebrate the 30th Anniversary of IMLI's foundation the Secretary-General of IMO Mr. Kitack Lim, offered to host an event at the Headquarters of IMO in London. This took place on June 25th 2019.

The Secretary-General, in opening the proceedings, spoke of IMLI's service to the rule of international law and highlighted the impact which IMLI graduates had had on the implementation of IMO Conventions. He also highlighted the importance (in the year when IMO is celebrating the position of women in the maritime community) of the provision in the IMLI Constitution which requires 50% of places at the Institute to be reserved for women.

Professor David Attard offered the Director's view of the Institute's growth and achievements during his long period of service. He also paid tribute to the many sponsors who support the work of the Institute by providing scholarships and funding chairs. In this context he singled out for special mention the Nippon Foundation and ITF.



Mr. Kitack Lim presenting an award to Prof. David Attard on the occasion of IMLI's 30th anniversary.

The Prime Minister of Malta, the Honourable Dr. Joseph Muscat, spoke of Malta's pride in the Institute's success and of his government's continuing commitment to its work.

The President of the International Tribunal of the Sea (ITLOS), Mr. Jin-Hyun Paik, emphasised the importance of the Institute's work in building national capacities in developing countries.

In a video message Dr. Yohei Sasakawa, Chairman of the Nippon Foundation expressed the Foundation's commitment to the sustainable development of maritime transport and its continuing support for IMLI.

Finally, Mr. Jim Harrison, long serving Vice-Chairman of the IMLI Governing Board and Chairman of the Finance and Human Resources Committee, gave an account of the development of IMLI during his association with the Institute.

The meeting was well attended and at the close a call was made for all IMLI graduates present to come forward to the dais for a photograph. At a

quick count there were over 60 graduates in attendance - a tribute, in itself, to the significant role which IMLI has played, and continues to play, in the maritime world and the strength of the network to which graduates belong.

The IOPC Funds

Meetings of the Governing Bodies (April 2019)

Report by Patrick Griggs

The meetings of the governing bodies took place at IMO Headquarters on April 1st and 2nd 2019 under the chairmanship of Mr. Gaute Sivertsen (Norway).

Mr. Jerry Rysanek.

Reference was made to Circular IOPC/2019/Circ.2 which announced the death of Jerry Rysanek (Canada), Chairman of the joint Audit Body, on January 30th 2019. Mr. Rysanek represented Canada at meetings of the IOPC Funds' governing bodies from 1995, was Chairman of the 1992 Fund Executive Committee (2002-2004) and Chairman of the 1992 Fund Assembly (2005-2011). A minute's silence was observed and then time was made available for colleagues to pay tribute to the work of Mr. Rysanek. He had been a friend and mentor to many present at the meeting.

Incidents involving the 1992 Fund.

The Director of the Funds was invited to review incidents involving 1992 Fund.

"Prestige" (Docs. IOPC/APR19/3/2 and IOPC/APR/3/2/1)

The Director reminded delegates that the amount of compensation available under the 1992 Civil Liability and Fund Conventions was Euros 171.5 million of which Euros 120.7 million had already been paid by the 1992 Fund and a further Euros 28 million was available from the Fund. A further Euros 22.8 million was available from the amount deposited by the shipowners' P. & I. insurers, the London Steam-Ship Own Mutual Insurance Association Ltd. It was reported the 1992 Fund had already levied all the contributions payable in relation to this incident.

The breakdown of the payments made to the countries affected by the spill were as follows:

Spain Euros 114.6 million.

France Euros 5.8 million.

Portugal Euros 328,488.

The Director reported that civil proceedings continue in France and in Spain.

In the Spanish proceedings the Supreme Court, in December 2018, awarded Euros 1,357.14 million to the Spanish State including Euros 554.10 for environmental and moral damages plus interest and costs plus VAT. However, the court recognised that the environmental damages were not recoverable from the 1992 Fund. The Court awarded Euros 67.5 million to the French State and Euros 14.44 million to individual French claimants who had also commenced proceedings in Spain.

The Supreme Court also held that the P. & I. insurers were liable for damages (including environmental and moral damages) up to their policy limit.

By a further order, the Spanish Court in charge of enforcing the judgment had ordered the master of the ship, the shipowner and the P. & I. insurers to pay the amounts awarded by the Supreme Court and ordered that the 1992 Fund should pay a further Euros 28 million.

Of the 42 actions pending in the French courts, 32 were also pursued in Spain and it is assumed that these 32 actions will now be withdrawn before the French courts. The remaining actions in France total Euros 1.2 million. To date judgments have been given in a number of claims from individuals amounting to Euros 1.2 million and the Fund has paid these out at the rate of 30% of their value.

In commenting on these developments, the Director had strong words of condemnation for national courts that choose to ignore the letter and spirit of the various conventions which the international community had devised to deal with oil spills. He spoke of "dangerous precedents" being set. Unsurprisingly, the delegates from Spain and France defended the right of national courts to interpret the law and stated that it was inappropriate for the Director to criticise decisions of national courts. Several delegates from other member states supported the right of the Director to criticise decisions of national courts where he considered that the purpose of international conventions was being thwarted. The delegate from the International Group of P.& I. Clubs expressed the Group's agreement with the comments of the Director and stated that the judgment of the Spanish Supreme Court set a dangerous precedent for the sustainability of the international regime. He also expressed the Group's disappointment that the Funds' governing bodies had been unable to tackle the issue of uniform application of the international regime. The Group would like to see time set aside for considering this important issue.

It was finally agreed by the Executive Committee that the director should be authorised to satisfy the judgment of the Spanish Supreme Court by paying a further Euros 28million less Euros 800,000 to be kept to pay any judgments by French courts and Euros 4,800 to pay the Portuguese Government.

"Hebei Spirit" (Docs. IOPC/APR19/3/3 and IOPC/APR19/3/3/1).

It was confirmed that all claims appeared to have been resolved and the sum of KRW 432.9 billion had been awarded to claimants. However, it was reported that two claimants had applied to the court in Seosan for a retrial. The total sum available to meet claims was KRW321.6 billion from the 1992 Fund and a further KRW 186.8 billion from the Skuld Club.

In November 2018 the Seosan Court had issued the CLC fund distribution table which apportioned the limitation funds amongst claimants. A number of claimants had challenged the figures and in particular the amounts paid by the Skuld Club.

In an effort close off this matter it was proposed by the Director and agreed by the Committee that the Fund would make a further balancing payment to the Skuld Club and would enter into a bilateral agreement with the Government of the Republic of Korea whereby, in exchange for a further payment of KRW 27,486,198,196, the Government would take over responsibility for settlement of all outstanding claims and would enter into a "hold-harmless" agreement with the fund.

"Alfa I" (IOPC/APR19/3/4).

On March 5th 2012 this Greek registered tanker, carrying 1,800 tons of cargo hit a submerged object in Elefsis Bay, near Piraeus and sank. Oil came ashore and affected 13 kms of the shoreline including several local beaches. Clean-up operations were undertaken. The tonnage of the vessel was less than 5,000 and the limitation amount available under the 1992 CLC was SDR 4.51 (Euros 5.49 million). The vessel had an insurance policy limited to Euros 2 million but only covering claims involving non-persistent oils.

Claims from clean-up contractors amounting to Euros 16.15 million were made against the shipowner and his insurers. There was a further claim for clean-up expenses in the amount of Euros 222,000 made by the Greek State.

In May 2015 a court in Piraeus awarded Euros 14.4 million to the main clean-up contractor (against a claim of Euros 15.8 million). In April 2016 the 1992 Fund Executive Committee authorised the Director to settle this claim for Euros 12 million and to claim back from the insurers the 1992 CLC limit of SDR 4.15 million.

This payment was made to the main contractor but the shipowner and the insurers appealed against the judgment of the Piraeus Court and the contractor also appealed in an attempt to get the original award of Euros 14.4 increased to Euros 15.8 (the amount originally claimed).

In December 2016 the Director received notice that the insurer would be going into voluntary liquidation. In February 2018 the Bank of Greece revoked the insurers licence and placed the company in liquidation.

In March 2018 the Piraeus Court of Appeal issued its judgment dismissing the insurer's appeals and holding that it was necessary to distinguish between the carriage of more than 2,000 tons of oil (to which the 1992 CLC limits would apply) and the carriage of less than 2,000 tons. In either case there was an obligation to insure and there was a right of direct action against insurers. The Court also increased the amount due to the contractor to Euros 15.8 million.

There followed a series of actions taken by the Fund in an attempt to register mortgages against various properties owned by the insurers. These actions are on-going and the Director was requested to report to the Executive Committee on any further developments.

“Nesa R3” (Doc. IOPC/APR19/3/5).

On June 19th 2013 this 858 ton tanker carrying 840 tons of bitumen sank off Port Sudan, Oman. About 40 kms of the Omani coast was affected by the oil which escaped from the wreck. Clean-up was completed in June 2014.

As the “Nesa R3” carried less than 2,000 tons of persistent oil it was not required to carry compulsory liability insurance. However, the owner had entered his ship with Indian Ship Owners Mutual P.& I. Club. The limitation fund under the 1992 CLC was SDR 4.51 million (£4.9 million). In October 2013 the Government of Oman commenced an action against the shipowners and insurers as they had refused to meet their obligations under the 1992 CLC. In February 2016 the Fund joined the legal proceedings claiming amounts paid for the clean-up operation.

In December 2017 the Court of Muscat awarded £8.4 million to the Government of Oman and awarded £3.6 million and BHD 16,000 to the Fund. Both the Government and the Fund have appealed this decision.

The Fund has received claims amounting to £12 million from 33 claimants. £6.7 million has been paid out to 28 claimants and the outstanding claims have been assessed at nil.

“Trident Star” (Doc.IOPC/APR19/3/6).

On August 24th 2016 the “Trident Star” spilled a quantity of fuel oil at the oil terminal at Tanjung Bin in Malaysia as the result of the overfilling of no. 5 cargo tank. An adjacent container terminal and several vessels were oiled. The terminal operators called in their oil spill service responder to clean-up.

The shipowner was entered with the Shipowners’ Mutual Protection and Indemnity Association which is a member of the International Group of P.& I. Clubs.

It is anticipated that claims for pollution damage will exceed the ship’s limit under the 1992 Civil Liability Convention and that the 1992 Fund will be called upon to pay compensation. The shipowner is a party to STOPIA 2006 which means that the shipowner will be required to indemnify the Fund for the difference between the 1992 CLC limit and the amount paid by the 1992 Fund up to a limit of SDR 20 million.

Twenty one claims totalling USD 17 million and RM 31.9 million (USD 7.8 million) have been received. These claims are being assessed by experts employed by the Shipowners’ Club.

Progress in assessing claims will be reported at the next meeting.

“Agia Zoni II”.

This product carrier sank at its moorings outside Piraeus Harbour on September 10th 2017. The cause of the sinking has not yet been determined by the local enquiry. Some 500 tons of the heavy fuel oil cargo as well as bunkers, lubricants and chemicals are estimated to have escaped.

Severe pollution was caused to 20-25 kilometres of the mainland and 3-4 kilometres of Salamina Island. Clean-up operations involving over 400 personnel continued throughout the autumn of 2017. In November 2017 the wreck was raised and towed to the salvors’ yard where the Public Prosecutor required that it be cleaned so that it could be inspected as part of the inquiry into the cause of the sinking. This cleaning process occupied much of March and April 2018. The wreck remains at the salvors’ yard and the owner has refused to accept re-delivery.

The inquiry conducted by the Third Marine Accident Investigation Council has been concluded and delivered to the office of the Public Prosecutor but the report has not been published. There were press reports that an unexplained explosion occurred shortly before the ship sank and also suggestions that the ship sank as the result of the opening of sea-ballast valves.

The 1992 Fund has been notified of 361 claims amounting to Euros 92.4 million and USD 175,000. Of the claims submitted the Funds experts have assessed 219 and the Fund has paid out Euros 10.9 million to 70 claimants. The process of assessment continues on the outstanding claims.

“Bow Jubail” (IOPC/APR/3/8).

On June 23rd 2018 the oil and chemical tanker “Bow Jubail” struck the jetty at the LBC Tank Terminal in Rotterdam. Fuel oil escaped from the starboard bunker tank causing pollution damage to nearby vessels, adjacent property and to the environment. The shipowner applied to the Rotterdam District Court for leave to limit in accordance with the LLMC ‘76/’96, arguing that the incident was covered by Art. 1.8 of the Bunkers Convention 2001. The Court concluded that the shipowner had not discharged the burden of proof in establishing that the “Bow Jubail” did not contain residues of persistent oil at the time of the incident and that therefore the “Bow Jubail” qualified as a ship under Art. 1(1) of the CLC 1992. This decision was appealed to the Court of Appeal in The Hague.

The ship is insured with the Gard P.& I. Club which is a member of the International Group of P. & I. Clubs. The limitation amount applicable to the “Bow Jubail” if the 1992 CLC applies would be SDR 15,991,676 but the shipowner is party to STOPIA 2006 whereby the shipowner would indemnify the 1992 Fund for the difference between the limitation amount applicable under the 1992 CLC and the amount of compensation paid by the 1992 Fund up to a limit of SDR 20million.

To date 150 claims have been received but these have not yet been quantified. They are expected to exceed the limit under the 1992 CLC in which case the both the 1992 Fund Convention and the Supplementary Fund Protocol would apply. However, if the shipowner establishes to the satisfaction of the Court of Appeal in the Hague that there were no residues of cargo on board, the incident would be covered by the Bunkers Convention 2001 with the consequence that the limits under the LLMC 76/96 will apply.

The decision of the Court of Appeal is awaited with interest.

2010 HNS Convention. (IOPC/APR19/5/1)

At the international conference in April 2010, which adopted the 2010 Protocol to the HNS Convention 1996, it was resolved that the Director of the IOPC Funds should take the necessary steps to set up the HNS Fund Secretariat to handle future HNS claims.

The Director reported on developments with this project.

As at March 2019 four states have become contracting parties to the HNS Convention (Canada, Norway, Denmark and Turkey). Each of these states has more than 2 million units of gross tonnage which means that one of the entry into force conditions for the Convention has already been met. These four states are now required to submit, annually, data on the total quantities of contributing cargo liable to contribute. The deadline for submitting this data is May 31st each year. The four states will take this opportunity to test their recording and reporting systems.

An HNS Convention website has been set up on the CMS (WordPress) platform to which the IOPC Funds website will also shortly be moved. The HNS website is intended to be used by states who are considering ratifying the Convention and need help with the task.

There is also an *HNS Finder* database available on-line which identifies all substances falling within the definition of HNS. This is updated annually and will be the subject of a full review during 2019.

The Secretariat of the HNS Funds is also working through a list of tasks which will need to be completed before a fully functional HNS claims handling system can go live. In this work they are in close consultation with IMO and with the International Group of P.& I. Clubs.

Finally the Director welcomed the fact that IMO was continuing to organise national and regional workshops to promote ratification of the HNS Convention.

Maritime Autonomous Surface Ships: An update from MSC 101, 5-14 June 2019

Report by Robert Veal

Background

In 2018, at the 99th Meeting of the IMO's Maritime Safety Committee (MSC), after input from a number of Member States and NGOs (including the CMI), the MSC recognised the need to be proactive in its approach to the regulation of Maritime Autonomous Surface Ships (MASS). To that end, it agreed to conduct a Regulatory Scoping Exercise (RSE) firstly, to identify any provisions in the extant regulatory framework that require reform to enable MASS operations, and, secondly, to consider how MASS may be most appropriately addressed through such reform. The CMI's International Working Group on Unmanned Ships concluded its own regulatory analysis in 2018 and submitted this to IMO at MSC 99. At MSC 100, the Committee approved provisional definitions and a framework for the RSE developed by the MASS Working Group, in which the CMI has been an active participant. It was also recognised that there was a need for some interim guidelines, specifically pertaining to the testing of MASS technology, while the RSE continues.

Developments at MSC 101

Against that background, the MASS Working Group convened at MSC 101 with two principal tasks, these being, first, to consider the progress made on the RSE and, secondly, to finalise interim guidelines for MASS trials. With regard to the review of progress of the RSE, the initial review of volunteering Member States has been conducted and the review is now open to comment from all IMO Members, including NGOs. The MASS Working Group noted the differing approaches adopted by participating Member States. The RSE is still on-going and comments on the first stage of the RSE will be considered by a newly formed MASS Intersessional Working Group. The IWG is scheduled to be held between 2 and 6 September 2019.

With regard to the interim guidelines, it was decided that these should be kept at a high-level and goal-based. The guidelines should assist relevant maritime authorities in ensuring that trials of MASS are conducted safely, securely, and with due regard for the protection of the environment, at least to the same degree as provided by extant IMO instruments. The interim guidelines contain some particularly important provisions relating to risk management, the human element and MASS infrastructure. Amongst other things, they require steps to be taken to identify the risks MASS trials pose (including cyber) to safety and the marine environment and that measures are taken to reduce the risks to a reasonably practicable level, as well as effective emergency procedures. The guidelines state that compliance with the *intent* of mandatory IMO instruments should be ensured and that the scope of applicability of such instruments, as well as provisions for exemptions and equivalence, should be determined by flag state administrations in accordance with those instruments.

Specifically, the guidelines state that steps should be taken to ensure that the intent of minimum safe Manning requirements are met and that those responsible for remote controlling MASS in trials should be appropriately qualified to do so. Consideration should also be given to the important human-system interface. The guidelines also require the establishment of proper infrastructure to ensure the safety of MASS trials and that appropriate strategies should be implemented to mitigate the effects of system failures. Furthermore, details of MASS trials should be reported to the relevant authorities as early as practicable, so as to enable the dissemination of information on the trials to all impacted third parties.

The guidelines were duly approved in plenary and will be an important point of reference for maritime administrations and technology developers alike. The CMI continues to play an important role in this critical reform process.

IMO Legal Committee: 106th Session: 27-29 March 2019

The Legal Committee held its 106th Session from March 27th to 29th 2019 under the Chairmanship of Mr. Volker Schofisch. The Vice-Chair Ms. Gillian Grant was also in attendance. The Session was opened by the Secretary-General of IMO, Mr. Kitack Lim. In his speech he referred to the recent crash of Ethiopian Airlines Flt. ET 302 and drew attention to the fact that a number of UN staff members and delegates were amongst the victims. Amongst other disasters to have occurred he also mentioned the mosque shooting in Christchurch, New Zealand, the capsizing of the Mosul ferry in Iraq on March 21st and the Tropical Cyclone which struck Malawi, Mozambique and Zimbabwe also in March. The Committee joined the Secretary-General in extending condolences to the families of those who had died in these incidents.

There followed brief general statements concerning the political events in Venezuela which are appended to the Final Report of Legal Committee.

The HNS Convention 2010 – entry into force.

This Convention will, when it comes into force, fill the final gap in the international liability/compensation regime designed to protect governments and individuals from the consequences of maritime disasters.

It was reported that on June 28th 2018 Denmark had ratified the Convention which bringing the number of ratifications to four. Each of these states accounts for more than 2 million units of gross tons which means that the ship tonnage threshold for entry into force has already been reached. Eight more states need to ratify the Convention before it comes into force.

The IMO, in conjunction with IOPC Funds, continues to organise workshops which are designed to assist states in the undoubtedly difficult task of drafting implementation legislation and solving the logistical problems associated with data collection. The Canadian delegation offered to share with member states their experiences in implementing the Convention. Delegates were reminded that Art. 5 of the Convention allowed states to exclude certain small ships from application of the terms of the Convention.

There was encouraging news from several delegations who stated that they were at various stages of preparing for ratification and expected shortly to be in a position to start submitting data regarding HNS contributing cargo.

Should there be any doubt about the importance of this Convention it was noted that there had been incidents involving HNS cargoes. The ships concerned were the *Sanchi*, *Aulac*, *Fortune*, *MSC Zoe* and the *Cason* though, it was noted, the extent of damage was not known. In this context the International Group of P. & I. Clubs was requested to provide up-to-date information on the nature and extent of HNS related claims. In the meantime delegates were reminded of the existence of the brochures which had been published by the HNS Correspondence Group entitled "The HNS Convention: Why it is needed" and "Presentation of HNS Incident Scenarios".

As has been previously reported, the IOPC Funds Secretariat has been requested to provide a claims processing service for HNS claims. A report was received[1] on progress with this project in which the International Group of P. & I. Clubs was also closely involved.

Financial security in the case of abandonment of seafarers and shipowners' responsibility in respect of claims for personal injury to, or death, of seafarers – amendments to the ILO Maritime Labour Convention, 2006.[2]

This is a topic which has become a regular feature of Legal Committee meetings and, whilst there is wide support for the concept of treating seafarers better, there continue to be alarming reports of cases where it all goes wrong in practice. There has for some time now been in existence an IMO/ILO joint database of cases of abandonment but the problems of keeping this up-to-date are only too apparent. Those operating the database rely on information supplied by flag states, port states as well as seafarer states and try, as far as possible, to verify all information received before placing it on the database. Even so, there have been a number of instances when an abandonment situation has been resolved before the details are published on the database. It was noted that the database will, in future, indicate whether the shipowner concerned was covered for claims arising by insurance as is now required.

To give an idea of the scale of the problem the Committee was informed that as at December 31st 2018 there had been 366 abandonment incidents listed on the database since it was first published in 2004 involving 4,866 seafarers. Of these incidents 175 had been resolved, 77 cases were disputed and 52 cases were officially described as "inactive". There were still 52 cases listed as "unresolved". From 2011 to 2016 the number of cases listed, per year, ranged from 12 to 19. Disturbingly, in 2017 and 2018 the cases reported increased dramatically. In 2017 there were 55 cases reported, 14 of which were resolved in that year and 8 more were resolved in 2018. In 2018 the total number of reported cases was 44 and of those only 15 cases had been resolved as at December 31st 2018. Of the 2018 cases 8 involved states which had not ratified the MLC, 2006. Moving on to 2019, as at the end of March, there had been 13 new cases none of which had been resolved.

Harrowing details were given of particularly extreme cases. In one instance the period of abandonment had lasted 32 months. During these extended periods of "detention" lack of supplies for the crews involved was a huge problem and the families of the seafarers involved were often left unsupported when wages were not paid and therefore no funds could be sent home.

Further papers were submitted by ICS [3] and ITF [4]. The former provided information about the current global abandonment situation and called on states to provide information for the IMO/ILO database and also urged states, which had not already done so, to ratify MLC 2006. The latter paper looked at the requirements for the provision of financial security to cover the repatriation costs of seafarers as laid out in the Regulations attached to the MLC 2006.

A paper submitted by ILO developed an earlier proposal that a list should be created and made available of competent authorities and organisations able to assist in resolving cases of abandonment.[5]

In the general discussions which followed it was suggested that ILO and IMO might prepare guidelines for co-operation between flag and port states to resolve abandonment cases.

The International Group of P. & I. Clubs reported that since the 2014 amendments to the MLC, 2006 (requiring shipowners to carry insurance to cover cases of abandonment) members of the Group had been involved with 41 cases most of which had been resolved within a reasonable timeframe in co-operation with ITF. It was noted, in the context of insurance cover, that the P. & I. Clubs, whilst covering the cost of crew repatriation, do not cover the cost of crew replacements.

The final message from the chair on this topic was to encourage states to ratify the MLC 2006 and to embrace the provisions which deal with the problems of abandoned seafarers.

Fair treatment of seafarers in the event of a maritime accident.

This topic, which is closely associated with the subject of abandonment of seafarers, is currently meant to be dealt with by member states following the IMO *Guidelines on fair treatment of seafarers in the event of a maritime accident*. It is evident that some states are better at applying the Guidelines than others with the result that there remain cases where the human rights of seafarers who have been involved in a maritime are not being observed.

The Committee was advised that a regional meeting had been organised by ITF and held in Manila in November 2018 at which the participants agreed to promote awareness of the Guidelines, develop training and enhance cooperation among states. A report on the outcome of this meeting was submitted by ITF.[6]

Unmanned ships – otherwise known as Maritime Autonomous Surface Ships (MASS).

At LEG 105 the Committee had agreed to introduce a new topic to its future work programme to be known as “*Regulatory scoping exercise and gap analysis of conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface ships (MASS)*”. It was noted at the time that the MSC was also looking at the maritime safety aspects of unmanned ships but accepted that the work of the two committees should not be allowed to overlap.

The Secretariat submitted a list of the conventions which the Legal Committee might need to examine as part of this scoping exercise^[7] and also reported on the outcome of the two meetings of the MSC at which the topic had been considered.^[8]

The Canadian delegation submitted a document^[9] in which it suggested a framework and work plan for the scoping exercise which followed the framework adopted by MSC for its study. The delegation from China also submitted a paper suggesting that an Intersessional Correspondence Group should be set up to work on the scoping exercise between meetings of the Legal Committee.^[10] It also suggested that the study should recognise that a distinction needed to be drawn between manned (partially) and (totally) unmanned ships.

These proposals were generally adopted by the Committee though in the context of the list of conventions to be examined it was agreed that the exercise should not focus exclusively on the most recent versions of conventions but should also look at older versions which still remain in force. It was agreed that UNCLOS and MLC should, at this stage, be outside the scope of the review.

Whilst outside the scope of the review of conventions, the Committee warned that as the work on this topic progressed sight should not be lost of the drastic effect which the introduction of MASS might have on seafarers.

In order to move this project forward it was decided to create a Working Group to work in the margins of the meeting to finalise the list of conventions to be reviewed, establish the final design of the framework to be used in the review and consider whether it would be helpful to create a full Intersessional Correspondence Group. The Working Group reported back to the plenary session at the end of the 106th session at which the Committee approved the framework to be used, invited states or observer delegations to volunteer to review specific conventions and requested the Secretariat to co-ordinate the review.^[11]

Piracy.

The Secretariat submitted one of its regular reports on the current situation in relation to piracy and other acts of violence committed at sea.^[12] This revealed that in 2017 only 203 incidents of piracy and armed robbery had been reported which is the lowest number for 20 years and represents an 8% reduction at the global level.

Work has been going on within an MSC working group to simplify and improve the framework for reporting incidents including the setting of “incident type definition standards” which serve as a guide to involved mariners. The Secretariat’s paper draws attention to MSC.1/Circ.1601 which contains the *Revised Industry Counter Piracy Guidance* which contains the latest thoughts on how to deter attacks.

The topic of Floating Armouries remains controversial and concerns the use of armed private security companies employed to protect ships from attack. The arrival of ships carrying such teams of armed guards has presented difficulties in several jurisdictions. The issues of licences and terms of engagement are under discussion within the UN Office on Drugs and Crime (UNODC) and it is anticipated that the latest thinking on this subject will be published as the second edition of “UNODC: Maritime Crime: A manual for Criminal Justice Practitioners”.

IMO continues to help states parties to the Djibouti Code of Conduct 2017 to develop local legal capacity to deal with local cases of maritime crime.

The welfare of innocent seafarers involved in a hijacking or other maritime crime has been a matter of concern to the IMO from the early days of hijackings when seafarers were often detained in poor conditions whilst efforts were being made to negotiate release. The latest development is that the Maritime Labour Convention, 2006 has been amended to provide for protection of seafarers wages and other entitlements whilst they are held captive on or off ships as a result of acts of piracy or armed robbery against ships. These amendments were notified to ILO member states in June 2018 and are expected to enter into force in December 2020.

Technical cooperation activities related to maritime legislation.

The Secretariat submitted a report^[13] which revealed that the Legal Affairs Office of IMO continues to organise workshops on IMO liability and compensation conventions to assist member states in the understanding of conventions and the development of implementation legislation. The most recent workshop had been held between 1st and 5th October 2018 and had been attended by 26 qualified lawyers, policymakers, legislative advisers from both civil and common law systems.

The Committee was advised that IMO Publishing had produced a reference book containing the texts of all the liability and compensation conventions produced by the Legal Committee since 1967. It was hoped that this publication would be of use not only to governments but also to non-governmental organisations and others.

In the ensuing discussions several delegations asked for official versions of consolidated texts of IMO conventions to be made available free of charge. Others, however, recognised that this might adversely impact the Technical Cooperation Fund. The Secretariat was asked to investigate the financial consequences of making official texts available free of charge. It was accepted that a decision on this issue could only be taken by the Council and the Committee invited the Council to make a decision on this.

International Maritime Law Institute (IMLI).

The Secretariat submitted its annual report^[14] on the activities of IMLI in Malta. By the end of academic year 2017 – 2018 a total number of

949 students from 140 different countries had passed through the Institute. Most of these had undertaken the Master of Laws (LL.M) and 9 students from 9 countries had studied within the Master of Humanities (M.Hum.) Programme.

During the current year 40 students from 28 countries were studying under the LL.M Programme and 7 students from 7 countries were studying under the M.Hum programme.

Significantly the Institute is this year marking its 30th Anniversary with a Commemorative Seminar at IMO Headquarters in London.

During the course of the Legal Committee meeting the IMO Secretary-General's Prize for Best Dissertation for the academic year 2017 – 2018 was presented to Mr. Watchara Chiemanukulkit who was attending the meeting as a member of the delegation from Thailand. (An indication, if any is needed, of the importance of IMLI to the work of IMO.)

Status of Conventions.

The secretariat submitted a report^[15] giving the latest status of all IMO Conventions as at March 2019.

Looking only at the conventions whose status has changed in the past 12 years:-

IOPC Fund Prot 2003. New Zealand has acceded to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. (Entry into force: March 2005). Number of Contracting States **32**.

SUA 2005. France, Benin and Denmark have approved, ratified or acceded to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Entry into force: July 2010). Number of Contracting States **45**.

SUA Prot 2005. The same 3 states have adopted the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Entry into force: July 2010). Number of Contracting States **39**.

Salvage 1989. Uruguay has acceded to the International Convention on Salvage, 1989. (Entry into force July 1996). Number of Contracting States **71**.

Bunkers 2001. Grenada, Georgia and Saudi Arabia have acceded to the International Convention on Civil Liability for Bunker Oil Pollution Damage. (Entry into force: November 2008). Number of Contracting States **91**.

HNS Prot 2010. Canada, Turkey and Denmark have ratified the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996. (The Convention has not yet entered into force). This brings the total number of ratifying states to 4.

Delegates from several countries took the opportunity of reporting on steps which they were taking towards ratifying various conventions. Both the Wreck Removal Convention 2007 and the Bunkers Convention 2001 featured prominently in these reports.

In the context of the 2002 Protocol to the Athens Convention, the International Group of P. & I. Clubs reminded delegates that, when ratifying this instrument, they should include the 2006 Reservation to ensure that war and terrorism liabilities are capped at US\$ 500 million, eliminating the need for two separate blue cards.

Report by Patrick Griggs

[1] LEG 106/3.

[2] LEG 106/4.

[3] LEG 106/4/1

[4] LEG 106/4/2

[5] LEG 106 /4/4

[6] LEG 106/5

[7] LEG 106/8

[8] LEG 106 8/1

[9] LEG 106/8/2

[10] LEG 106/8/3

[11] The CMI, which has been in the forefront of this review is working closely with the Secretariat and will play a prominent part in this project.

[12] LEG 106/9. Further detailed statistics are available in MSC 99/17.

[13] LEG 106/11.

[14] LEG 106 11/1.

[15] LEG 106/12.

Judicial Decisions on Maritime Conventions Database

The database known as "Judicial Decisions on Maritime Conventions", consisting of case law relating to all CMI Conventions and related Conventions was established in February 2017 by agreement between the CMI and the Centre for Maritime Law (CML), Faculty of Law, National University of Singapore. Under the agreement, CML would design and develop an online database and act as secretariat of the database which would be located in Singapore. CMI would support the development of the database and work with NMLAs to coordinate the supply of case summaries.

After the agreement was signed, letters were sent by the Administrator to all NMLAs informing them of the establishment of the database and encouraging NMLAs to make submissions of case summaries from their jurisdiction on CMI and related maritime conventions in the last three years. These letters contained instructions on how NMLAs could nominate representatives who could then access the web interface of the database and submit their case summaries.

In the meantime, the team at CML, led by Professor Stephen Girvin and Associate Professor Paul Myburgh, have been hard at work with their own efforts to summarize cases for the database.

Progress is going well on the database (although participation and submissions from NMLAs could be at a higher level). In June 2019, the database reached a significant milestone: the publication of 400 case summaries. These summaries, from 45 different countries, were accessed in the previous month alone by users from 71 different countries – from Australia through to Zimbabwe. There has also been a substantial amount of international traction and profile gained by the database over the past year – going from around 300 visitors per month to 850 per month.

The CMI and CML are both very proud of what has been together achieved through hard work, dedication and commitment to high professional standards.

NMLAs who have yet to submit case summaries, or yet to nominate representatives who will make submissions to the database are strongly encouraged to do so. Based on the current trajectory of usage, the database will be the leading point of reference for judicial decisions on maritime conventions soon. This would be even more meaningful if it comprised substantial submissions of case summaries from NMLAs.

Lawrence Teh

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