



Vigilandum est semper; multae insidiae sunt bonis.

CMI News Letter no.2 2018

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Letter from Publications Editor Taco Van der Valk

I am happy to inform you that CMI's new website has gone live.

More than a year ago it became clear that maintenance of our former website was becoming problematic due to the rather outdated software the old site was running on.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

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

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

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

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

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

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

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

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

Taco van der Valk

Vale Francesco Berlingieri



Little did we realise when organising the meeting in Genoa last September to honour Francesco Berlingieri that it would be the last opportunity that CMI would have to host such an event. Even less did we realise, those of us who attended that meeting, that there would not be another opportunity for the CMI to meet, talk or listen to Francesco Berlingieri. The website which holds the material for the Genoa meeting has film of the opening speech which I made, which outlined Francesco's life and his service to the CMI. After presenting him with a Silver Salver Francesco took to the podium and made a short speech. Both were recorded and are on that website. My speech will appear in the next issue of the Yearbook as a permanent memorial to an outstanding man. He will be sorely missed by the international legal community. Reproduced below is a homage from a fellow Executive Councillor of Francesco, Luis Cova of Venezuela.

The Executive Council has decided to inaugurate an occasional memorial lecture to be given at CMI events in honour of Francesco Berlingieri. We will, of course, further memorialise Francesco and the two honorary members of the Executive Council of the CMI, Jan Ramberg and Jose Ray who have both passed away since our last meeting, at the Assembly meeting in London.

Stuart Hetherington
President

Francesco Berlingieri speech at CMI Assembly Meeting 2017 in Genoa

My speech will be very short. I should like to thank all of you; but I would like to say how I became the President of the CMI. There was a dinner reception in Brussels and the President of the CMI was Albert Lilar who had been the President for 30 years, and there was a moment when Albert Lilar approached my wife. I did not realise why and then she told me why. He approached her to ask her permission to nominate me as the new President of the CMI and my wife was not so happy but she said: "How can I refuse to give you my permission?" And when the permission was granted Madam Lilar approached me and told me that she would be delighted if I would replace her husband, who was rather tired after 30 years of Presidency; so that was the way in which I was nominated. I did not expect that and I did not expect also to last so long a time. Now everything is not over because the CMI is quite alive and I am delighted to be still here, notwithstanding my age, to congratulate not me but the CMI on what the CMI has done after I left the Presidency. Thank you and do some good work today.

Francesco Berlingieri

Announcement



CMI Assembly Meeting at London - 9 November 2018

Rosalie Balkin foreshadowed in her report of the Genoa meeting in the Newsletter of January this year that the Assembly meeting will be taking place in the IMO Building on the morning of 9 November 2018. Although the only event which the CMI is organising is the Assembly meeting there will be, as you will have seen from both the CMI website and the BMLA website, a number of activities taking place on 8 and 9 November 2018.

Apart from a number of meetings of International Working Groups and Standing Committees, some being held as International Sub-committee meetings and therefore open to all MLA members, and Consultative members of the CMI on Thursday (all day) and Friday (afternoon) on 8 and 9 November, there will also be the Donald O'May Lecture organised by the Institute of Maritime Law at the University of Southampton on Thursday evening. It will be held in the Law Society building in Chancery Lane and will be given by Sir Nicholas Hamblen of the High Court of England and Wales, followed by the BMLA Dinner in the Inner Temple (both in the heart of "legal London" and near the Royal Courts of Justice on the Strand).

In a departure from usual CMI Assembly meetings, the morning of 9 November will commence with a welcome from Lord Phillips, the President of the BMLA and the inaugural Memorial lecture for Francesco Berlingieri, to be given by Sir Bernard Eder QC.

Delegates are asked to be at the IMO at or soon after 8 am to enable all necessary security checks to be completed in plenty of time before the scheduled start at 8.45 am. I shall be writing to MLA Presidents shortly requesting information about your delegation which will hopefully speed up the process and ease congestion at the check in desk at the IMO.

As you will appreciate, these meetings give an opportunity to experience a dinner in one of the traditional legal venues in the heart of the English legal community at the Inner Temple, as well as attending the Assembly meeting in the IMO Building in London.

I look forward to seeing you there.

Stuart Hetherington
President

PROGRAMME

**Thursday and Friday, 8 and 9 November 2018****CMI Executive Council meeting(closed meeting)**

Venue: Caledonian Club, 9 Halkin Street, London

Time: 9.00 am to 4.30 pm

CMI International Working Groups and International Sub-Committee meetings:

See below for details

Donald O'May Lecture**Venue**

The Law Society, 113 Chancery Lane WC2A 1 PL

Speaker

Sir Nicholas Hamblen

Time

5:30 pm: Registration

6.00 pm - 7.00 pm: lecture

RSPV: [here](#)

BMLA Dinner

Venue: Inner Temple Crown Office Row EC4Y 7HL

Time: 7.00 pm: Drinks

8.00 pm: Dinner

Cost: £125 per person (numbers will be limited and tickets allocated on a first come first served basis)

RSPV: [here](#)



CMI Assembly Meeting

Venue: IMO, 4 Albert Embankment, Lambeth SE1 7SR

Times:

08:00 am | Registration

08.45 am to 09.00 am | Welcome Lord Phillips (President of the BMLA)

09.00 am to 09.40 am | Inaugural Francesco Berlingieri Lecture: Sir Bernard Eder QC

09.45 am to 10.30 am | Assembly Meeting

10.30 am to 10.45 am | Morning Coffee

10.45 am to 01.00 pm | Assembly Meeting (continued)

01.00 pm to 02.00 pm | Lunch

There is no registration or cost to attend the Assembly but usual notification of delegates to be sent to CMI (Evelien Peeters - admin-antwerp@comitemaritime.org).

How to get there



If coming from South of the Thames get to either Waterloo Station or Vauxhall Station. If Waterloo Station then walk along the Embankment as far as the Lambeth Bridge and it is on the south side of the road that runs alongside the Thames. If coming from Vauxhall Station then walk along Embankment towards Lambeth Bridge. Alternatively if coming from north of the Thames take the tube to Westminster Underground and then either walk alongside the Embankment on the north side of the Thames to Lambeth Bridge and cross Lambeth Bridge or across Westminster Bridge on leaving the tube and then walk alongside the Thames along the Embankment on the south side of the river.

Executive Council Meeting (closed meeting)

Venue: IMO Building (room to be advised)

Time: 2.00 pm - 2.45 pm



Polar Shipping IWG (closed meeting)

Date and time: Thursday, 8 November 2018 at 9:00 am

Venue: International Group of P&I Clubs, Peek House, 20 Eastcheap, London

Ship Financing Security Practices International Subcommittee (open meeting)

Date and time: Thursday, 8 November 2018, 9:00 am

Venue: Reed Smith, Broadgate Tower, 20 Primrose St, London EC2A 2RS

Ship Nomenclature IWG meeting (closed meeting)

Date and time: Thursday, 8 November 2018, 11:00 am

Venue: Reed Smith, Broadgate Tower, 20 Primrose St, London EC2A 2RS

Marine Insurance Standing Committee International Subcommittee (open) meeting

Date and time: *Thursday, 8 November 2018 at 2:30 pm*

Venue: Thomas Cooper LLP, Ibex House, 42-47 Minories, London EC3N 1HA

Young CMI Seminar

Date and time: *Thursday 8 November 2018, 2:00 pm 4:00 pm*

Venue: Stephenson Harwood offices, 1 Finsbury Circus, London EC2M 7SH

RSVP: Blythe Daly, blythe.daly@hklaw.com

Groups: Joint International Subcommittee meeting of the IWGs on Maritime Law for Unmanned Ships and Cybercrime, and the International Standing Committee on Marine Insurance: The Challenging Convergence of Modern Technology, Crime and Marine Insurance (open meeting)

Date and time: *Friday, 9 November 2018 at 2:00 pm*

Venue: IMO Building (room to be advised)

Group: Restatement of the General Principles of the Lex Maritima IWG (closed meeting)

Date and time: *Friday, 9 November 2018 at 2:00 pm*

Venue: IMO Building (room to be advised)

Group: Wrongful Arrest International Subcommittee (open meeting)

Date and time: *Friday, 9 November 2018 at 2:30 pm*

Venue: Thomas Miller & Co Ltd, 90 Fenchurch Street, London EC3M 4ST

And other International Working Group and Standing Committee meetings dates, times and venues will be advised on CMI website (<https://www.comitemaritime.org>) and the BMLA website (<https://www.bmla.org.uk>).

The references to "closed" or "open" meetings indicates that closed meetings are only for members of the relevant Executive Council, IWG or Standing Committee. If an International Subcommittee meeting is organized it is open to CMI MLA members, CMI Consultative members and other invited participants.

Il Professore FRANCESCO BERLINGIERI (1922-2018) - by Luis Cova Arria

La sua devozione al diritto marittimo internazionale

The edition published on Saturday, March 10th 2018, of the newspaper called *Il Secolo XIX* titled on its first page, said the following: "*Addio a Berlingieri, vita eroica tra guerra e diritto marittimo*", and on its 23rd page it had no hesitation in describing him as "*Il padre del diritto marittimo*". In that fashion did such a distinguished Genoese newspaper review the sad passing of Professor Francesco Berlingieri, which occurred on March 6th 2018 at the age of 96 years old in his beloved native city of Genoa, Italy. He was born in that same city on February 20th of 1922.

The same Genoese newspaper also referred to the large number of people, aside from his family members, who attended his funeral, which took place in the Church of *Nostra Signora del Carmine e Sant'Agnese* of Genoa, where there was an honor guard of the Italian Navy beside his coffin, which was covered with the flag of that country. There, emotional words were said, which remembered, among other things, the profound love between him and his wife Anna Teresa Origone Berlingieri-Origone, whose marriage took place in 1947, and who passed away in 2015 at the age of 91. Of the Berlingieri-Origone union, four children were born: Giorgio, Andrea, Paolo and Matteo. In turn, they blessed them with eight grandchildren: Chiara, Francesca, Andrea, Giuseppe, Francesco, Anna, Pietro and Giorgio, as well as eight great grandchildren: Matilde, Giulia, Gorgia, Alice, Vittoria, Alberto, Oliviero and Joseph.

Professor Francesco Berlingieri was not only one of the most distinguished jurists specialized in Maritime Law of recent years, but also an Officer of the Italian Navy. He practised both careers with unmatched devotion.

Indeed, he was at the Naval Academy from 1943 to 1945, during which he participated in various military actions in the course of the Second World War. His actions, described as "*an example of decision, courage and dedication beyond the duty to the Homeland*", earned him the Silver Medal for Military Valor.

This was only the beginning of an extraordinary life, and soon after receiving such a deserved decoration, at the early age of 34 years old, he acted as the defending lawyer of the "*Società Italia di Navegazione*", which he represented in the trial arising as a result of the collision in waters near Nantucket, between the "*Andrea Doria*" and the "*Stockholm*".

Professor Berlingieri is a part of the history of modern Maritime Law. He attended in Naples, in 1951, his first Conference of the International Maritime Committee, which is made up of the Maritime Law Associations of almost all of the countries of the international community, whose primary function is to search and bring about the uniformity of International Maritime Law.

Later, Professor Berlingieri reached the Presidency of the said Committee, which he held from 1976 to 1991. At this last mentioned date, he was declared President Ad Honorem, a position he held until his death. He was also the Honorary President of the Italian Maritime Law Association, as well as a Doctor Honoris Causa for the Universities of Bologna, Antwerp and Athens. His labour in the teaching of Maritime Law as the Titulary Professor of the University of Genoa was outstanding, a position he held from 1954.

His work as a lawyer led him to attend the English *Commercial Court Committee* from 1977 to 1999. His labour there, as well as his important role in the unification of Maritime Law, earned him the title of *Honorary Official of the British Imperial Order*, bestowed by Queen Elizabeth II.

The dedication and devotion of Professor Berlingieri to the CMI, and to the unification of Maritime Law is difficult to put in words. More than a personal dedication, it's a family tradition. From his father, Giorgio Berlingieri, who was also the President of the Italian Maritime Law Association, to his son, Giorgio, who is currently the President of the Italian Maritime Law Association, Vice-President of the CMI and Vice-President for Italy of the Iberoamerican Maritime Law Institute, the whole Berlingieri family have dedicated their lives to the work of the CMI and the unification of Maritime Law.

The CMI recognized his work with the silver salver given to him in the Seminar held in Genoa in his honor in 2017, which was inscribed with the following:

"Francesco Berlingieri, member of the Executive Council from 1972 to 1991, President Ad Honorem from 1991, in recognition and gratitude for his service and devotion to the CMI"

In the address he made to delegates in Genoa (and copied to all the Presidents and Titulary Members of the CMI), Australian lawyer Stuart Hetherington, current President of the CMI, highlighted the devoted service given by Francisco Berlingieri during his long and fruitful life, in the pursuit of the unification of International Maritime Law, but he also remembered one of his virtues, that of being a "*Consummate Gentleman Diplomat*", as was remarked by Kate Lannan of UNCITRAL on the occasion of Francesco's 88th birthday.

He was also Editing Director of the well known maritime publication "*Il Diritto Marittimo*", and was, until recent years, in charge of the CMI's publications: its *News Letter* and *Yearbook*.

On January 10th 2001, the International Maritime Law Institute (IMLI) of the International Maritime Organization (IMO), conferred on him the title of Honorary Professor of International Maritime Law in recognition of his contribution to the international maritime legal community.

He was one of the members of the group of experts designated by the late Chandrika Prasad Srivastava, General Director of the IMO, to draft the First "Syllabus" of IMLI.

He published several articles and books, including his text book "*Berlingieri on Arrest of Ships*", which has been required reading, for numerous generations of lawyers, insurers, professors and students of Maritime Law.

In 2010, a worldwide tribute was paid to him with the publication of a two-volume book titled "*Scritti in Onore di Francesco Berlingieri*", to which I had the honor to contribute.

Francesco Berlingieri visited Venezuela for the first time in 1977, the year in which we founded the Venezuelan Maritime Law Association, which was incorporated into the CMI following the XXXI Conference of the International Maritime Committee (CMI) in Rio de Janeiro, celebrated in May of that same year, in which I had the pleasure of meeting him along with other great Maritime Law jurists, such as the recently deceased José Domingo Rey. On that occasion, he participated in the First Seminar on Maritime Law celebrated in Venezuela under the auspices of the Central University of Venezuela. Besides Professor Berlingieri, the late eminent foreign professors Nicholas J. Healy, Kaj Pineus and José Doming Rey participated. That Seminar constituted the ímpetus for the studies of Maritime Law in our country to begin

to develop. Since then, Professor Berlingieri became a friend and collaborator of our country in the task of unifying the International Maritime Law.

In that first Seminar of 1977, Professor Berlingieri honored us with two magnificent speeches, both published in the first issue of the Venezuelan Maritime Committee's magazine, published in January 1980. One of the speeches dealt with the foundation and the tasks of the CMI, of which he had assumed the Presidency the year before, and the other spoke about the then project to amend the Rules to regulate the responsibility of the carriers of goods by sea, with the end goal of replacing the so-called "*Hague-Visby Rules*", of the 25th August, 1924 and the 23rd February, 1968. That project became, the following year, the Convention on the Transport of Goods by Sea, known as the "*Hamburg Rules*", which were approved on the 31st March, 1978, by the *United Nations Commission on International Trade Law* (UNCITRAL).

In his paper about the CMI, Professor Francesco Berlingieri stated that "*the demand for the international unification of Maritime Law has always been present over the course of the centuries, proof of which is the Mediterranean and Nordic medieval codes, as well as the special jurisdiction recognized in England by the Admiralty Court, which did not apply Common Law but Merchant Law, originating from Roman Law, and the formation of which showcased the demand for a unified Maritime Law*".

In 1980, he visited us again to participate in the first International Seminar of the CMI celebrated in Ibero-America, also organized by the Venezuelan Maritime Law Association and celebrated on the Island of Margarita. In that Seminar, Professor Berlingieri spoke about the differences between the Hipotecas, of Latin origin, and the Mortgages, of English origin, the text of which is published in the second issue of Venezuelan Maritime Committee's Magazine, in August 1982. That article is very interesting, because it "*establishes a comparison between the two types of assurances used in the majority of maritime countries regarding the financing of ships*", as was stated by Berlingieri himself, basing the comparison "*in the hipoteca as is regulated by Italian Law (similar to how it is regulated in Venezuela) and the mortgage as is regulated by England and the United States*".

He was admitted as a Corresponding Member for Italy by our Academy of Social and Political Sciences, presenting an essay about "*The International Maritime Law Conventions and their role in Internal Law*", published on pages 252 to 281 of our Special Bulletin #140, dedicated entirely to the essays of our Foreign Corresponding Members. His essay began with the following comment: "*It constitutes a generally recognized principle that every State is free to choose the modality of adaptation of its internal law in order to comply with international obligations*", also adding his philosophy about the necessary unification of Maritime Law in the following way: "*...My firm and profound conviction is that it is necessary to continue with the efforts...in favor of the unified Maritime Law. It is not more useful that the norms that rule Maritime Law Institutes be similar, than the same rules be applicable in the different legal systems. Only through international conventions of uniform law may this goal be reached... the ratification of a convention is certainly not enough -and sometimes not even necessary- in order to assure unification*".

This article is also required reading in the subject-matter "*Conflict of Laws and Maritime Jurisdiction*", in the Specialization on Maritime Law and International Commerce of the Post-Grade in the Faculty of Legal and Political Sciences of the Central University of Venezuela.

As you may all see, the contributions we have received through the leadership of Professor Berlingieri regarding the uniformity of International Maritime Law is invaluable, but he was also a great human being, a gentleman, a true English Lord, or, as was pointed out by Kate Lannan, a "*Consummate Gentleman Diplomat*". He was always kind, receptive, and with his dear wife Anna, were great hosts in the events and Conferences of the CMI.

I have witnessed the passing of two great friends and eminencies of Maritime Law in these days, Professors Ray and Berlingieri. The Divine Providence has dictated that their passing be consecutive. Both widowers, born and passed in the same years, and also, linked to this Academy as Foreign Corresponding Members. But, Academics, as you have seen and heard, there is no room to mourn a loss, but to celebrate a legacy, the great legacy left behind by Professor Berlingieri with his untiring work in the unification of Maritime Law. Or, as was stated by "*Il Secolo XIX*", "*quando muore una <<leggenda viviente>>, rimane la leggenda*".

May his Soul rest in the Peace of the Lord.

Luis Cova Arria
March 20th, 2018



Il Professore FRANCESCO BERLINGIERI (1922-2018) - by Luis Cova Arria

La sua devozione al diritto marittimo internazionale

La edición del sábado 10 de marzo de 2018, del Diario Il Secolo XIX de Génova, Italia, titulaba, en su primera página lo siguiente : "*Addio a Berlingieri, vita eroica tra guerra e diritto marittimo*" y luego en su página 23, no dudaron en calificarlo como "*Il padre del diritto marittimo*". Así reseñaba este importante Diario genovés el sensible fallecimiento del Profesor Francesco Berlingieri, ocurrido el pasado 6 de marzo de 2018 a la edad de 96 años en su amada ciudad natal, Génova, Italia. Había nacido en esa misma ciudad, el 20 de febrero de 1922.

También reseñaba, esa edición del diario genovés, la inmensa cantidad de personales, además de sus familiares, que acudieron a sus funerales, los cuales tuvieron lugar en la Iglesia *de Nostra Signora del Carmine et Sant' Agnesa*, de Génova, en donde hubo al lado de su féretro una guardia de honor de la Armada Italiana, cubierto con la bandera de ese país. Allí mismo, se pronunciaron emocionadas palabras, recordándose, entre otras cosas, el profundo amor que hubo entre él y su esposa Anna Teresa Origoni de Berlingieri, con la cual había contraído nupcias en 1947, fallecida en el 2015, a la edad de 91 años. De esa unión Berlingieri-Origoni, nacieron sus cuatro hijos: Giorgio, Andrea, Paolo y Matteo. Estos, los habían bendecidos con ocho nietos, Chiara, Francesca, Andrea, Giuseppe, Francesco, Anna, Pietro y Giorgio y, ocho bisnietos, Matilde, Giulia, Giorgia, Alice, Vittoria, Alberto, Oliviero y Joseph.

Destacaba, asimismo, dicho Diario, que el Profesor Francesco Berlingieri, como buen genovés, fue no sólo uno de los más destacado juristas especialista en Derecho Marítimo de los últimos años, sino que además fue Oficial de la Armada Italiana. Ambas profesiones las ejerció con inigualable devoción.

En efecto, estuvo en Academia Naval, desde 1943 a 1945, habiéndole tocado participar, durante la segunda guerra mundial, en varias acciones militares, por cuya actuación, calificada como "*ejemplo de decisión, coraje y dedicación más allá del deber a la Patria*", se le confirió la Medalla de Plata al Valor Militar.

Esto sólo fue el inicio de una vida extraordinaria, pues después de recibir esa merecida condecoración y, sólo a los 34 años de edad, como abogado de la "*Società Italia di Navegazione*", la defendió en el juicio surgidos como consecuencia del abordaje en aguas cercanas a Nantucket, entre el "*Andrea Doria*" y el "*Stockholm*".

El profesor Berlingieri, es parte de la historia del derecho moderno de la navegación. Asistió en 1951, en Nápoles, a su primera conferencia del Comité Marítimo Internacional (CMI), la cual está conformada por las asociaciones de casi todos

los países de la comunidad internacional, y, cuya función primordial es la uniformidad internacional del derecho marítimo.

Posteriormente, Berlingieri alcanzó la Presidencia del mismo, cargo que mantuvo desde 1976 hasta 1991, siendo posteriormente designado su Presidente ad Honorem hasta la fecha de su muerte. Fue igualmente, Presidente honorario de la Asociación Italiana de Derecho Marítimo, y Doctor Honoris Causa de las Universidades de Boloña, Amberes y Atenas. Fue, además, muy destacada, su labor, desde 1954, en la enseñanza del derecho marítimo como Profesor Titular de la Universidad de Génova.

Su labor como abogado lo llevó a actuar ante el *Commercial Court Committe* Inglés, desde 1977 a 1999, por cuya labor y, en reconocimiento a su importante rol en la unificación del derecho marítimo, la Reina Isabel II, le concedió el título de *Oficial Honorario del Orden del Imperio Británico*.

La entrega, dedicación y devoción de Berlingieri al CMI, y por ende a la unificación del Derecho Marítimo es difícil de reseñar con palabras. Más que una dedicación personal, es un baluarte familiar. Desde su padre, Giorgio Berlingieri, quien también fue Presidente de la Asociación Italiana de Derecho Marítimo, hasta su hijo, Georgio, quien actualmente, es Presidente de la Asociación Italiana de Derecho Marítimo, Vice-Presidente Primero del CMI y Vice-Presidente por Italia del Instituto Iberoamericano de Derecho Marítimo, y así, toda la casta Berlingieri han dedicado su vida al trabajo del CMI, y, por ende a la unificación internacional del derecho marítimo.

Así se lo reconocía al Profesor Berlingieri, el CMI en la placa que le entregaría en el Seminario en su honor celebrado en septiembre de 2017 en Génova, la cual reza así:

“Francesco Berlingieri, miembro del Comité Ejecutivo desde 1972, Presidente desde 1976 hasta 1991, Presidente Ad-Honorem desde 1991, en reconocimiento y gratitud por su servicio y devoción al CMI”.

En la comunicación, que el pasado 6 de marzo, el actual Presidente del CMI, el abogado australiano, Stuart Hetherington, enviara a todos los Presidentes y Miembros Titulares del CMI, destacó la grandiosa labor desarrollada por Francesco Berlingieri, durante su larga y fructuosa vida, en aras de la unificación del derecho internacional de la navegación, pero, además, recordó unas de sus virtudes, la de ser, como había destacado en el 2010, Kate Lannan, de UNCITRAL, con ocasión de la celebración de sus 88 años, un *“Consummate Gentleman Diplomat”*.

Fue Director Editor de la reputada publicación marítima *“Il Diritto Marittimo”*, y, hasta hace pocos años, el encargado de las publicaciones del CMI: su *Newsletter* y su *Anuario*.

El 10 de enero de 2001, el Instituto de Derecho Marítimo Internacional (IMLI), de la Organización Marítima Internacional (OMI), le confirió el título de Profesor Honorario en Derecho Marítimo Internacional en reconocimiento a su contribución a la comunidad jurídica marítima internacional.

Fue uno de los miembros del grupo de expertos designado por el ya fallecido, Director General de la Organización Marítima Internacional (OMI), Chandrika Prasad Srivastava, para redactar en 1988 el borrador del Primer *“SYLLABUS”* del Instituto de Derecho Marítimo Internacional (IMLI).

Publicó muchos artículos y libros, siendo su libro de Texto *“Berlingieri on Arrest of Ships”*, de consulta obligatoria por numerosas generaciones de abogados, aseguradores, profesores y estudiantes de derecho marítimo.

En 2010, se le rindió homenaje mundial con la publicación de un libro de dos volúmenes, titulado *“Scritti in Onore di Francesco Berlingieri”*, en el cual tuve el honor de participar.

Berlingieri visitó por primera vez nuestro país en 1977, año en que fundamos la Asociación Venezolana de Derecho Marítimo y la incorporamos al CMI, luego de la XXXI Conferencia del Comité Marítimo Internacional (CMI) de Rio de Janeiro, celebrada en mayo de ese mismo año, en donde tuve el placer de conocerlo, junto a otros grandes juristas del derecho marítimo, como el recientemente fallecido doctor José Domingo Ray. En esa oportunidad, participó en las Primeras Jornadas de Derecho Marítimo, celebradas en Venezuela, con el auspicio de la Universidad Central de Venezuela. Además del Profesor Berlingieri, asistieron los eminentes profesores extranjeros Nicholas J. Healy, Kaj Pineus y José Domingo Ray, todos ya fallecidos. Esas Jornadas, constituyeron el motor por el cual se comenzaron a desarrollar los estudios de derecho marítimo en nuestro país. Desde entonces, el Profesor Berlingieri, se convirtió en amigo y colaborador de nuestro país en la labor de la unificación del Derecho Marítimo Internacional.

Pues bien, en esas Primeras Jornadas de 1977, el Profesor Berlingieri, nos honró con dos magníficas ponencias, ambas publicadas en el número primero de la Revista del Comité Marítimo Venezolano, publicado en enero de 1980. Una sobre la fundación y las tareas que se había impuesto el CMI, cuya Presidencia había asumido el año anterior y, la otra, sobre lo que, para esa fecha era sólo un Proyecto de Reglas para regular la responsabilidad del transportista de mercancías por mar, con el fin de sustituir las llamadas *“Reglas de La Haya-Visby”*, aprobadas ambas por el CMI, la primera el 25 de agosto de 1924 y, la segunda, el 23 de Febrero de 1968. Ese Proyecto, el cual nos reseñó, con mucha amplitud y claridad, el Profesor Berlingieri, se transformó, el siguiente año, en un Convenio de las Naciones Unidas sobre el Transporte de Mercancías por Mar, actualmente conocido como las *“Reglas de Hamburgo”*, aprobado con fecha 31 de marzo de 1978 por la *Comisión de las Naciones Unidas para el Derecho Mercantil Internacional (CNUDMI/UNCITRAL)*.

En su conferencia sobre el CMI, el Profesor Francesco Berlingieri, nos decía que *"la exigencia de una uniformización internacional del Derecho Marítimo ha estado siempre presente en el curso de los siglos, y de ello hacen fe las codificaciones medievales mediterráneas y nórdicas, y la jurisdicción especial reconocida en Inglaterra a la Corte del Almirantazgo, la cual no aplicaba la Common Law sino la Law Merchant, cuya formación traslució claramente las exigencias de uniformidad del Derecho Marítimo y cuyo origen se basaba en el Derecho Romano."*

En 1980, nos visitó nuevamente para participar en el primer Seminario Internacional del CMI, celebrado en Iberoamérica, organizado también por la Asociación Venezolana de Derecho Marítimo y celebrado en la Isla de Margarita. En ese Seminario, el Profesor Berlingieri, disertó sobre las diferencias entre las Hipotecas de origen latino, y el Mortgage, de origen anglosajón, cuyo texto escrito está publicado en el segundo número de la Revista del Comité Marítimo Venezolano, publicado en agosto de 1982. Ese artículo, es muy interesante, pues allí, como lo señala el mismo Berlingieri, se *"establece una comparación entre los dos tipos de garantías que se usan en la mayoría de los países marítimos con respecto al financiamiento de buques"*, fundamentando la comparación *"en la hipoteca conforme se regula en el derecho italiano (similar al venezolano) y sobre la mortgage como se regula en Inglaterra y los Estados Unidos"*.

Fue admitido como Miembro Correspondiente por Italia de nuestra Academia de Ciencias Políticas y Sociales, presentado a tales efectos, un Ensayo sobre *"Las Convenciones Internacionales de Derecho Marítimo y su rol en el Derecho interno"*, publicado en las páginas 252 a 281, de nuestro Boletín especial # 140, dedicado íntegramente a los Ensayos de nuestros Miembros Correspondientes Extranjeros. Comenzaba dicho Ensayo, comentando que *"Constituye un principio generalmente reconocido que cada estado es libre de escoger la modalidad de adaptación del propio derecho interno a los fines de cumplir con las obligaciones internacionales,"* agregando, su filosofía de la necesaria unificación del derecho marítimo con estas palabras, *"...Mi firme y profunda convicción es que es necesario continuar los esfuerzos... a favor de un derecho marítimo uniforme. No es más útil que las normas que regulan los institutos de derecho marítimo sean similares, a que las mismas normas sean aplicables en los distintos ordenamientos. Solo mediante convenciones internacionales de derecho material uniforme se puede alcanzar este resultado....la ratificación de una convención no es ciertamente suficiente – y a veces siquiera necesaria- para asegurar la uniformidad"*.

Ese artículo, es de lectura obligatoria en la materia *"Conflicto de Leyes y Jurisdicción Marítima"*, dictado la Profesora Patricia Martínez de Fortoul, quien por varios años tuvo labores en la Secretaría de nuestra Academia, en la Especialización de Derecho de la Navegación y Comercio Exterior del Post-Grado de la Facultad de Ciencias Jurídicas y Políticas de la Universidad Central de Venezuela.

Como podrán ver, la contribución que hemos recibido del Profesor Berlingieri a la uniformidad del derecho marítimo internacional a través de su liderazgo es invalorable, pero, además era un gran ser humano, un caballero, un verdadero Lord Inglés, o, como señaló Kate Lannan, un "Consumado Caballero Diplomático". Su trato siempre fue amable, receptivo, y, junto con su querida esposa Anna, quien, como dijimos al comienzo de estas palabras falleció en el 2015, fueron grandes anfitriones en los eventos y conferencias del CMI.

He visto partir a dos grandes amigos y grandes eminencias del derecho marítimo en estos días, los Profesores Ray y Berlingieri. La Divina Providencia, ha querido que sean consecutivos. Ambos viudos, nacidos y fallecidos el mismo año, y, además, vinculados a esta Academia como miembros correspondientes extranjeros. Pero, señores académicos, tal como han visto, no hay espacio para reseñar una pérdida, sino para celebrar un legado, el gran legado que el Profesor Berlingieri deja con su empeinado trabajo en la unificación del derecho marítimo. O, como señaló *"Il Secolo XIX"* el pasado 10 de los corrientes, *"quando muore una <<leggenda vivente>>, rimane la leggenda"*.

Su alma descanse en la Paz del Señor.

Luis Cova Arria

20 de Marzo de 2018

The Queen's visit to the IMO: 70th Anniversary



Patrick Griggs and I were honoured to be present when Her Majesty, Queen Elizabeth II unveiled a commemorative plaque for the 70th Anniversary of the IMO at the IMO building in London on 6 March 2018. Afterwards, Her Majesty was shown around an exhibition at the IMO by Secretary General, Kitack Lim and Fred Kenney, Director of External Affairs at the IMO. The Convention on the International Maritime Organisation was adopted on 6 March 1948 at the UN Maritime Conference held in Geneva, Switzerland. It came into force 10 years later from 17 March 1958. The IMO held its first meeting in London on 6 January 1959. The foundation stone for the IMO headquarters building was laid by His Royal Highness, the Duke of Edinburgh in 1979 and was opened by Her Majesty in 1983.

Stuart Hetherington
President

The IOPC Funds' meeting of the Governing Bodies (April 2018) - by Patrick Griggs

The meetings of the Governing Bodies took place at IMO Headquarters on April 30th, May 1st and 2nd. The 1992 Fund Executive Committee first examined the incidents which currently concern the 1992 Fund.

Prestige – 13th November 2002.

A full account of the present status of claims will be found in Documents IOPC/APR18/3/2 and IOPC/APR18/3/2/1. In brief summary the present position is that the compensation amount available under the 1992 Convention is Euros 171.5 million. Euros 121 million have already been paid out to victims of the spill which leaves Euros 27.7 million of compensation still available from the 1992 Fund. The balance is made up by a further Euros 22.8 million which is available from the amount deposited with the Criminal Court in Corcubion by the shipowners liability insurers, the London P & I.
Criminal proceedings in Spain.

Quantification of the claims was referred by the Spanish Supreme Court to the Court in Coruna. These had been assessed at Euros 1,652,564,284 broken down as to Euros 1,573,622,828 for the Spanish State (to include environmental and "moral" damages), Euros 61,258,854 for the French State and Euros 17,682,603 for the remainder of the claimants (including private individuals and regional and local organisations). Following a request from several parties for clarification of these awards, the Court in Coruna had confirmed the awards to the Spanish and French Governments but had reduced the sum due to other claimants to Euros 1,648,255,701. This figure substantially exceeds the claim estimate made by the 1992 Fund for Spain, France and Portugal.

Appeal to the Supreme Court.

An appeal against the quantum of the award had been lodged. Several grounds of appeal were cited and in particular that the Court had ignored the criteria fixed by the Spanish Supreme Court for assessing damages. It is further alleged that the assessment was based on a report prepared by a firm of surveyors who ignored issues of causal links between the expenses incurred and the contamination. It is even suggested that the surveyors failed to question whether some of the expenses claimed even related to the *Prestige* incident. The Supreme Court has been asked to note that the Fund's liability does not include pure environmental damage and "moral" damage which are not heads of damage recognised by the 1992 Fund Convention. In its application to the Supreme Court the Fund has assessed the losses as Euros 3000,471,622 to the Spanish State and Euros 42,174,451 to the French State. Judgment is expected later in 2018.

The Spanish State has submitted a petition to the Coruna Court requesting provisional enforcement of the November 2017 decision (as amended in January 2018) against the Master, owners, the London P & I Club and the 1992 Fund in the amount of Euros 1,573,622,827 plus 30% for costs giving a total of Euros 2,045,709,697. (Credit against this figure would be given for the amounts already paid.)

Meanwhile, in France, the civil actions of 82 claimants in the amount of Euros 74 million remain pending. 174 French claimants have joined in the criminal proceedings in Spain.

In response to the reports submitted by the Funds' Secretariat, the Spanish delegation stated that they would not wish the Executive Committee to become involved in detailed discussions about any aspects of the claims arising from the *Prestige* incident on the basis that these are all *sub judice*. It urged the Secretariat to continue to report developments objectively and, as far as possible, without comment. The delegation invited the Director to avoid subjective comments under the heading "Director's considerations".

Several delegations took the floor to state that they supported the importance of having the "Director's considerations" which gave Fund Member States the chance to understand the reactions of the Secretariat to the numerous and complex claims arising from this spill.

The Director defended the right of the Secretariat to comment on claims. He also drew attention to the fact that the total damages now claimed was higher than the amounts of compensation available under the Conventions and that the 15% cap on payments on account now looked too high given the amounts awarded by the Spanish Court.

The Hebei Spirit.

This claim was the subject of a report from the Secretariat in IOPC/APR18/3/3.

This incident had generated 127,483 claims totalling KRW 4,227 billion which had all been submitted to the Limitation Court in the Republic of Korea. The total amount available under the Fund Convention was SDR203 million (equivalent to KRW 321.6 billion) including an amount of KRW 186.8 billion which had been paid by the Skuld Club. The Fund had made payments totalling KRW 107 billion to the government of the Republic of Korea.

There followed an analysis of claims assessed, paid or pending and it was agreed that the 60% ceiling on contributions made by the Fund had been appropriate and would be maintained until all claims had been assessed.

Nesa R 3.

This case was the subject of a report submitted by the Secretariat in IOPC/APR18/3/4.

At its October 2013 session the Executive Committee had authorised the Secretariat to make compensation payments in respect of this incident and to claim reimbursement from owners. 32 claims totalling OMR 5,932,703 were received by the 1992 Fund and of these 23 had been settled for OMR 1,777,113.4 and BHD 8,419.35. The remaining claims had been assessed at nil.

The Government of Oman had commenced proceedings against owners and their insurers in the Muscat Court in February 2016 and the 1992 Fund had joined these proceedings. In December the Muscat Court gave judgment confirming that the owners and insurers were liable to pay compensation to the 1992 Fund and the Omani Government totalling, respectively, OMR 1,777,113 plus BHD 8,419.35 and OMR 4,154,842. This judgment is subject to appeal both by the Omani Government and by the Fund.

There followed a debate, launched by the Indian delegation, concerning the fact that many claims are now over inflated. The delegation also expressed its concern at the number of cases (generally involving small tankers) where the insurance company involved has proved to be unreliable and unresponsive to claims.

It was suggested that these matters also affected the 1992 CLC and might well be matters for the IMO Legal Committee to consider.

Double Joy.

This claim was covered in a paper submitted by the Secretariat IOPC/APR18/3/5.

The limitation fund for this vessel (insured with the Shipowners' Club) under the 1992 CLC is SDR 4.51 million but the vessel was also a party to STOPIA 2006.

In November 2017 an agreement on interim payments had been signed with the Shipowners Club.

The total amount of claims was US\$ 9.6 million which exceeded the 1992 CLC limit but was well within the STOPIA2006 limit of SDR 20 million. On this basis the 1992 Fund would be fully reimbursed by the Shipowners' Club under STOPIA 2006.

In 2017 civil proceedings had been commenced in the High Court of Malaya on behalf of 8 claimants against the owners, the Shipowners' Club and the 1992 Fund. The total amount of the claims is US\$ 7.6 million but certain aspects of the claims are suspect and, at present, unsubstantiated.

Trident Star.

This claim is the subject of a paper submitted by the Secretariat in IOPC/APR/3/6.

This ship was also insured by the Shipowners' Club. The 1992 CLC limitation fund is SDR 4.51 million but the owner is a party to STOPIA 2006 with the result that the 1992 Fund will be indemnified for the difference between the CLC 1992 limitation amount and the compensation paid by the 1992 Fund up to SDR 20 million.

Seven claims have been received totalling US\$ 19.6 million. Of these two have been assessed and settled by the Club for US\$ 2.5 million. There is a further substantial claim from the Port of Tanjung Pelepas (US\$ 8.2 million) for losses suffered at the container terminal due to temporary closure. This is currently being assessed. There are other unsubstantiated claims (amounting to US\$ 7.9 million) for the cost of cleaning the hulls of vessels in the port which were contaminated.

Agia Zoni II.

IOPC/APR18/3/7 is a submission from the Secretariat giving a full account of this 2017 incident.

The Agia Zoni II sank at her moorings at 0200 on September 10th 2017 in a position just outside the northern part of the designated Piraeus anchorage. This elderly bunkering tanker was carrying 2,580 metric tons of oil, bunkers and chemicals. 4 kilometres of the coastline of Salamina Island and 20 – 25 kilometres of the coastline south of Piraeus Port and Athens suffered pollution. The vessel was refloated (causing further pollution) and taken to the salvor's shipyard on November 30th and remains there whilst investigations continue into the cause of the sinking. The outcome of the investigation is unlikely to be known for some time. Pollution clean-up continued through the 2017/18 winter. The Agia Zoni II was insured under a policy with a claim limit of US\$ 5 million to cover both oil pollution and wreck removal claims. The ship was in possession of a "blue card" and the insurance company involved established a limitation fund of US\$5.41 in October 2017. It is claimed that the shipowner was offered additional cover but decided to "self-insure".

The 1992 Fund has established a Claims Submission Office in Piraeus and by 30th April had already received 82 claims totalling Euros 65.6 million and US\$ 175,000. (These did not include a claim from the Central Port Authority of Piraeus.) Payments on account of been made on 4 claims. Of most concern in relation to this incident is the serious extent of under-insurance which may lead to a wider debate on the quality and quantity of insurance cover for smaller tankers. Questions will also be raised about how the shipowner managed to get a 2 month extension of the vessels certificate of seaworthiness shortly before she sank.

The delegation from India questioned whether, given the circumstances of the case, the 1992 Fund had any obligation to pay any claims. Questions were also raised about the system whereby the authorities are required to check the solvency of the insurer issuing the "blue card" but do not seem to be required to check the adequacy of the insurance cover offered.

Another delegation questioned whether the cost of raising the vessel was a legitimate claim against the 1992 Fund. On this issue the Director advised that it was a long-standing policy of the Fund that if the primary purpose of wreck removal was to prevent pollution the cost could be recovered. However, if the operation had the dual purpose of saving of ship/cargo and preventing pollution the costs would be apportioned.

This case is going to raise all manner of awkward fundamental questions about how the compensation regime can be expected to work if there is non-compliance with the Conventions or with national legislation.

Alfa I.

Information regarding this incident is contained in a submission from the Secretaria IOPC/APR18/3/8. This was another case involving an "untrustworthy" insurer. Efforts to register a "prenotated" mortgage against buildings owned by the insurer having failed the Fund was left with no alternative but to register its claim for Euros 851,000 in the liquidation of the company.

One delegate questioned whether, in these circumstances, the Fund was under any obligation to pay. The Director pointed out that Article 4(1) of the 1992 fund Convention made it plain that these were exactly the sort of circumstances in which the fund was expected to come to the rescue.

The Plate Princess.

A note submitted by the Secretariat provided an update on this old case, based on a report from the Vice President of the Commission of Energy and Petroleum, National Assembly of the Republic of Venezuela. The subject of the report is a claim for compensation presented by the Puerto Miranda

Union of Fishermen and a judgment which they obtained against the Fund in February 2017. This judgment has not been honoured and it is reported that the National Assembly of Venezuela has commenced an inquiry into the matter.

It is alleged that in the Record of Decisions from the 1971 Fund Assembly held in 1997 it is recorded that the organisation assumed responsibility for the consequences of the incident – not only for the oil spill but also the obligations imposed on the owner of the vessel under the 1969 CLC. It is further alleged that this amounted to a guarantee of equal standing with a guarantee given by a contracting state to the CLC Convention. This is disputed by the Fund.

The report indicates that the Commission is evaluating other evidence before submitting a final report to the National Assembly.

Patrick Griggs

Summary of Executive Council Minutes for E-Meeting commencing 16 April 2018 at the office of the President in Sydney, Australia

In preparation for the meeting held by email during the week commencing 16 April 2018 the President circulated the Agenda and supporting papers. In his opening remarks he welcomed Rosalie Balkin and Aurelio Fernandez-Conchesco who had not previously participated in such a meeting. He also congratulated Rosalie Balkin on the award given to her in the Australia Day's honours, inter alia, for her services to the maritime legal industry. He also recognised the loss of three Honorary members of the CMI since the Genoa meeting last year, each of whom had made significant contributions to the work of CMI and their respective country's Maritime Law Association. The President also reported that he had arranged for a floral tribute to be sent on behalf of the CMI for Francesco Berlingieri's funeral and an obituary to be placed in the Genoa newspaper. He also referred to the fact that at the Assembly meeting in London the CMI would inaugurate an occasional memorial lecture to honour Francesco Berlingieri.

The Executive Council noted with sadness the passing since the Assembly meeting in Genoa of Francesco Berlingieri (President ad Honorem), Jan Ramberg (Honorary Vice President) and Jose Ray (Honorary Vice-President) all of whom had made outstanding contributions to the CMI over many years.

Minutes of the Executive Council meetings in Genoa

The Minutes of the Executive Council meetings held in Genoa on 7 and 8 September were adopted.

Financial and Administrative Reports

1. In his report the Treasurer noted a surplus of €51,676 had been achieved in 2017 and that the sum of €661,798.40 was held in reserve at the end of 2017, and currently stands at €783,098.06.
2. In recognition of the good work that Evelien Peeters has been doing in the office in Antwerp the Executive Council agreed to increase her salary by €2,000 per annum.
3. In his report on the collection of financial contributions from MLAs, Chris Davis reported that both the East Africa and the Peoples Democratic Republic of Korea are now three years in arrears with their subscriptions and it was resolved that they would be put on notice that an expulsion motion will be moved at the Assembly in London on 9 November 2018 if their arrears are not paid in the intervening period.

Membership

The Executive Council unanimously approved to recommend to the Assembly meeting in November that the Association of Average Adjusters be admitted to Consultative membership of the CMI. An application for membership of the CMI had been received from the Congolese MLA and the Executive Council has requested that further information be supplied prior to the London Assembly meeting so that the Executive Council can consider the suitability of this application and make an appropriate recommendation to the Assembly meeting in London.

Future Meetings

The Executive Council noted the arrangements that were proceeding for the Assembly meeting in London on 9 November 2018, including the optional attendance on Thursday 8 November at the Institute of Maritime Law at Southampton University's Donald O'May lecture, followed by the British Maritime Law Association's annual dinner that evening. It was also noted that during the course of Thursday and Friday afternoon, events are being organised by IWGs and Standing Committees, including Young CMI, which will be populating the programme which is published on the BMLA and

CMI websites.

The report of the Sub-committee appointed by the President to liaise with the Mexico MLA in relation to the Colloquium to be held in 2019 was noted with approval.

The Mexico MLA was authorised to make bookings with the Camino Real Polanco, subject to the terms of any contracts being entered into being approved by the President, Administrator and Secretary-General.

A report on the progress in relation to the organisation for the Conference in Tokyo in 2020 was also noted. Considerable sponsorship has already been secured and possible venues have been identified as the Hotel New Ohteni and the Hotel Grand Prince Takanawa.

The Japan MLA was authorised to contract with the proposed event organizer and whichever hotel is ultimately recommended, once again provided the terms of any such agreements are authorised by the President, Administrator and Secretary-General.

International Working Groups:

(a) Acts of Piracy and Maritime Violence

Andrew Taylor's report noted that although piracy and armed robbery had reached a 22 year low the Gulf of Guinea continues to be an area of danger and Somali piracy has not disappeared, whilst reported incidents have doubled in the Philippines.

(b) Liability for Wrongful Arrest

This IWG is likely to be holding an international Sub-committee meeting after the Assembly meeting in London.

(c) Liability of Classification Societies

Karl Gombrii noted that there had been no recent developments in relation to this item and if any progress is to be made the Classification Societies will need to endeavour over the next six months to ignite the interest of ship owners in the work.

(d) Maritime Law for Unmanned Craft

The Executive Council expressed its thanks to Tom Birch Reynardson and his colleagues for the work they are doing on this important topic, which is likely to occupy time at both the Colloquium in Mexico in 2019 and, possibly, the Conference in Tokyo in 2020. It was noted that 20 responses to the Questionnaire have so far been received and the Executive Council encouraged MLAs who have not so far responded to do so as soon as possible. The IWG had made a submission to the IMO's Maritime Safety Committee in February and will be attending both the forthcoming Legal Committee and Maritime Safety Committee meetings in April and May this year. It is likely that this IWG will meet around the time the Assembly meeting is held in London, probably as an International Sub-committee, and possibly in conjunction with the Marine Insurance Standing Committee to consider the insurance ramifications of unmanned craft. (Since the EXCO meeting the Legal Committee had agreed to adopt a proposal by Canada that it should engage in a scoping exercise, such as that which the MSC had agreed to carry out when it had met last year.)

A number of further appointments were made to this IWG of Tim Howse (UK), Miso Mudric (Croatia), Beatriz Huarte Melgar (Spain), Cecilia Severoni (Italy) and Leven Siano (Brazil).

(e) Offshore Activities

The report of Jorge Radovich was noted and approved. This had referred to an option which is being pursued, namely to ascertain whether the United Nations Environmental Programme (UNEP) would be interested in working with the CMI in the preparation of an International Convention on Transboundary Pollution generated by Offshore Activities. A response to an approach which is being made on behalf of the CMI to the Executive Director of that organisation was awaited at the time of the Executive Council meeting.

(f) Cybercrime

There have been no developments in relation to the work being done by this working group.

(g) Fair Treatment of Seafarers in the event of a maritime accident (including Pandemic Response and Migration at Sea)

Paul Gill reported on the work being done in relation to Pandemic Response and the comparative analysis which was being prepared at the time on the responses to the questionnaire which had been received. It was also resolved to appoint Valeria Eboli (Italy) to this IWG.

(h) Judicial Sales

The Executive Council expressed their congratulations and thanks to Ann Fenech and Alexander Von Ziegler for all the work they had done in arranging and participating in the Colloquium, which UNCITRAL had requested the CMI to hold. The attendance of over 170 persons from 60 countries was a testament to the hard work that had been done in promoting the Colloquium, both internationally and domestically in Malta, where it was held. It was also noted that a number of Executive Councillors and MLAs have been active in seeking support from their governments for when this matter is next before UNCITRAL in New York on 29 June.

(i) Ship Financing Security Practices

Ann Fenech's report was noted and tabled. In it she noted that the IWG needs to engage with financiers to ascertain their views on the applicability and utility of the Cape Town Convention should it be extended to ship finance.

(j) Cross-Border Insolvency

There have been no recent developments in relation to this group.

(k) Polar Shipping

A comprehensive report from Aldo Chircop was noted by the Executive Council. In particular this group will be meeting in London at the time of the Assembly meeting. The Executive Council thanked Aldo Chircop for representing the CMI at the PAME meeting in February in Quebec City where he gave a paper on how the CMI can contribute to enhancing Arctic marine safety and was also invited to participate in the shipping expert group meeting. This is a topic which it is anticipated will be of considerable interest in the 2020 Conference in Japan. It was resolved to appoint Phillip Buhler (USA) to the IWG.

(l) Ship Nomenclature

The report of Frank Nolan noted that only four responses to the questionnaire had been received to date. MLAs are encouraged to respond to this questionnaire as soon as possible as it will soon be necessary to issue a second questionnaire. This group will be meeting in London.

(m) Restatement of the General Principles of Lex Maritima

Although there has been considerable email activity between the members of the IWG no work has not as yet been produced, but it is anticipated that this group will convene a meeting in London at the time of the Assembly. It was resolved to appoint Andrea La Mattina (Italy) and Leven Siano (Brazil) to the IWG.

Standing Committees

(a) Carriage of Goods

This report of Tomotaka Fujita noted that the issue of "blockchain" bills of lading was in the forefront of the minds of the Standing Committee. The Executive Council authorised the IWG to set up a sub-group within the Standing Committee to consider the issue and to appoint others to it, if necessary. The Standing Committee was requested to consider urgently whether the Rotterdam Rules adequately provides for carriage of goods transactions by means of technological innovations, such as blockchain, and if so, to liaise with UNCITRAL in formulating the press release or other document (which could be a paper) which can be released for dissemination to MLAs so that they can alert their governments and suggest that this is another reason why the Rotterdam Rules need to be ratified. (Since this meeting the President met with those who are championing the ratification of the Rotterdam Rules by the United States when he attended the New York Spring Meeting of the USMLA and as a result of those discussions, and with the help of Professor Michael Sturley, produced a short memorandum on the topic of the Rotterdam Rules and E-Commerce, together with Tomotaka Fujita, which was sent to MLAs and other relevant organisations and bodies on 21 May).

(b) General Average and Interest Rates

The report of Taco van der Valk was noted and in particular that a recommendation in relation to interest rates for the York-Antwerp Rules 2004 will be made in advance of the Assembly meeting in London.

(c) Marine Insurance

The report of Joe Grasso was noted, in which there were plans for the Standing Committee to meet in London on either 8 or 9 November. (The President had also met with Joe Grasso when attending the USMLA Spring Meeting in New York and encouraged plans for a joint meeting of the Standing Committee on Marine Insurance and the Unmanned Craft IWG whilst the CMI is meeting in London in November for its Assembly meeting.

(d) Young CMI Members

John Hare had circulated draft Rules for a CMI Young Persons Essay Prize which were being considered by this Committee. A number of comments were made on the draft Rules and it is hoped that the topic and the judges can be announced at the Assembly meeting in London in November.

(e) Implementation and Promotion of Maritime Conventions

No report was received by the Executive Council in relation to this topic.

(f) Database of Judicial Decisions on International Conventions

Lawrence Teh noted that only 12 MLAs had responded to his March 2017 request to nominate a responsible person to be the co-ordinator of responses from the MLA and only a few MLAs had provided material for the database.

(g) Nominating Committee

The Executive Council noted that the terms of the President, Vice-President, Giorgio Berlingieri and Executive Councillor, Tomotaka Fujita will expire at the Assembly meeting in London and that the first terms of Executive Councillors Taco van der Valk and Luc Grellet expire at the Assembly meeting in London. The Executive Council resolved to nominate Peter Verstuyft to the Nominating Committee for a further term as Treasurer and Head Office Administrator, as his initial term expires at the Assembly meeting in London.

(h) Planning Committee

Rosalie Balkin's report was noted and the Executive Council agreed with her suggestion that some younger CMI members of the CMI should be appointed to this Committee.

(i) Constitution Committee

The Executive Council noted the report of Jean Francois-Peters to the effect that the corporate housekeeping that had been carried out in Genoa had regularized the CMI's position and had been published in the Annexes du Moniteur belge of 16 November 2017. In addition the Constitutional amendments had also been published on 21 March 2018.

(j) Charitable Trust

Tom Birch Reynardson's report noted that the Charitable Trust had funds under management as at 3 April 2018 of £585,722 which is a 4% drop in value since August 2017.

Publications

(a) The first issue of the News Letter which Taco van der Valk and Evelien Peeters had produced since taking over the role from Giorgio Berlingieri was the subject of commendation by the Executive Council. Taco van der Valk's report noted that work is continuing with the developer Via Victor to update the website. The President noted that he had met with Via Victor when he had visited Antwerp after the Malta Colloquium. Preparations for the Yearbook 2017 and News Letter 2018/2 are also progressing. MLAs are encouraged to submit news and information to Taco van der Valk and/or Evelien Peeters for inclusion in the newsletter and also for the CMI LinkedIn page. Reports on seminars and meetings and links to papers which have been given and/or photographs of meetings or events should be sent to Evelien in the Antwerp office.

(b) CMI Brochure

A brochure containing basic information about the CMI had been prepared for the Malta Colloquium and can be used for future CMI events, as considered necessary but will need to be updated for future use.

CMI Regional office in Singapore

Lawrence Teh reported that approval had been granted by the Singapore authorities for the continuation of this office.

EU Representation

There was no report in relation to this item.

EU General Data Protection Regulation in force 25/5/18

Executive Councillors based in the EU were requested to confirm that the CMI is compliant or, if not, what it needs to do to achieve compliance as soon as possible.

CMI - The Future

The sub-group that was appointed in Genoa to take the work forward of this committee is progressing with that task and it is hoped it will conclude its work before November and the Assembly meeting in London.

Correspondence

Dieter Schwampe had sent information concerning cybercrime and the need for constant vigilance and this had been noted by the Executive Council. Correspondence had also been received from Cyprus concerning possible membership of the CMI and Ann Fenech was authorised by the Executive Council to liaise with those who have corresponded and enquired about Cypriot membership in the last couple of years.

List of IWGs and Standing Committees for review

It was noted that the lists will need to be amended in light of appointments made during the course of this meeting and it was also resolved that the Secretary-General, with the assistance of the President, will review the work of the IWGs and Standing Committees with a view to ascertaining whether the mandate given by the Executive Council and/or the scope for which the groups and Standing Committees were constituted is being performed or complied with and/or whether there are still activities to be carried out to achieve a final resolution and to report back to the Executive Council in London. It was also resolved to appoint Giorgio Berlingieri to the Standing Committee on Implementation and Promotion of Maritime Conventions.

Future Executive Council Meetings

There is to be an Executive Council meeting in London on 8 November 2018 and on the next day after the Assembly Meeting at the IMO.

IMO Future Meetings

The Executive Council noted that the IOPC Fund will be meeting between 30 April and 3 May 2018, the IMO Legal Committee between 23 and 27 April 2018 and the IMO MSC Committee between 16 and 25 May 2018.

General Business

It had been suggested that a prominent Egyptian lawyer from Alexandria might be an appropriate person to apply for a provisional membership with a view to seeking to form a Maritime Law Association in Egypt. Lawrence Teh was authorized, on a forthcoming visit to Egypt, to meet with him and discuss this possibility.

Closing remarks by President

In his closing remarks the President noted that Executive Councillors have a considerable amount of work to do before 29 June in order to seek to persuade as many governments as possible to support the Judicial Sales project being put on the UNCITRAL agenda on that date.

Malta Colloquium on the International Recognition of Judicial Sales, and UNCITRAL meeting - by Ann Fenech



From left to right: Ryan Herrington (UNCITRAL), Alexander von Ziegler, Suzanne Shaw, Ann Fenech, Stuart Hetherington

It was during the CMI Executive Council meeting in Genoa in September 2017 when the conclusions of the fiftieth session of UNCITRAL held in July 2017 were discussed. At that session UNCITRAL had noted the importance of a proposal by the CMI drawing attention to problems arising around the world from the failure to give recognition to judgements in other jurisdictions when ordering the sale of ships. Councillor Alex von Ziegler informed us that UNCITRAL appeared to be open to a dialogue on the subject of the international recognition of Judicial Sales. He advised how UNCITRAL suggested the holding of a Colloquium at which UNCITRAL through its secretariat would be happy to participate. The challenge in that suggestion being discussed at our September meeting, lay in the fact that if a Colloquium was going to be organised, this had to be done very early during 2018, by the very latest end of February, because the deliberations and conclusions of the Colloquium would have to be passed on to UNCITRAL to make it in time for a proposal to be tabled and discussed at the 51st meeting of UNCITRAL in June.

A discussion followed on the need to find a state which would be happy co-hosting such a Colloquium. I had explained that the subject of the recognition of judicial sales was something in which Malta would have a very serious interest. Our position bang in the middle of the Mediterranean on the rum line between Suez and Gibraltar means that we straddle one of the world's busiest shipping routes and as a result ships pass by Malta not only to load and discharge at our transshipment container port but also to pick up bunkers, supplies, effect crew changes and repairs. In addition Maltese law has a very robust law in favour of mortgagees. A mortgage under Maltese law is an executive title which has its roots in civil law and therefore a mortgagee can proceed directly to enforcement against a vessel in the event that the owner is in default. A mortgagee need not commence an action on the merits meaning that our courts are frequently called upon to order the judicial sale of ships by means of either a judicial

sale by auction or a court approved private sale. Our law provides that in a judicial sale, a clean title is given to the buyer and the purchaser buys free and unencumbered. With the volume of judicial sales held in Malta initiated by international financiers who have unsatisfied mortgages, Malta had an interest in such an international convention on the international recognition of judicial sales.

The idea of holding the Colloquium in Malta at very short notice gained ground and after establishing that the Maltese Ministry for infrastructure and transport would lend its support to such an event we put in maximum effort to draft a one day programme for the purposes of attracting around 30 maritime service providers who would be able to express their views on this project.

It was only in December that it was confirmed that the Colloquium would indeed be held in Malta organised by the Malta Maritime Law Association in conjunction with the CMI supported by the Ministry.

The Colloquium was held at the Maltese Chamber of Commerce on the 29th February and all the delegates were presented with an introductory paper by Stuart Hetherington, a list of cases which highlighted the legal uncertainty and interruption at great cost to the international trading chain when judicial sales are not recognised, together with the Beijing Draft Convention on the Foreign Judicial Sale of Ships and their recognition.

It was my pleasure as President of the Malta Maritime Law Association to welcome an impressive 174 delegates (not the 30 people we had originally envisaged) from 60 countries. The event was expertly moderated by Dr. Suzanne Shaw, Vice President of the MMLA and addressed by Stuart Hetherington the President of CMI, Minister Ian Borg, and Ryan Harrington, Senior Legal Adviser to UNCITRAL. Mr. Harrington made it clear that UNCITRAL was there to listen to the industry and to assess and consider its recommendations.

We adopted a two panel model moderated respectively by myself and Alexander von Ziegler, made up of expert practitioners and industry leaders. I remain eternally grateful for the co-operation of our expert panellists from all over the world who all agreed to come to Malta at a moment's notice to share their views on this important issue that effects international trade.

The panels were made up of Camila Mendes Vianna Cardoso, from Kincaid, Mendes Vianna Advogados Rio De Janiero, Jan-Erik Potschke from Ahlers and Vogel Hamburg, Lawrence Teh from Dentons Rodyk & Davidson Singapore, Charles Buss from Watson Farley and Williams London, Brooke Shapiro from Winston & Strawn New York, Tilman Stein from Deutsche Bank Hamburg, Peter Laurijssen from CMB Belgium, Cornelia Zammit German from Falzon Group Malta, Ivan Sammut the Maltese registrar of ships and Norman Martinez from the International Maritime Law Institute and Simon Ward from the Institute of Shipbrokers in London. The panellists were carefully chosen to ensure as wide a geographical and industry spread as possible.

They explained issues arising in their parts of the world and discussed difficulties ranging from how all creditors including mortgagees need to ensure that a vessel gets the best possible price in the quickest possible time and how this is in turn dependant on the importance and certainty of a clean title being passed on to a new owner; the suffering of crew who are literally at the coal face as a ship languishes in no man's land waiting to be sold in a judicial sale and the difficulties faced by harbour authorities when this happens; to the difficulties faced by a new owner if it is faced with the arrest of the vessel for its old debts under the previous owner and the difficulties faced by flag administrations engaged by a new owner following a judicial sale if the underlying flag administration fails to recognise the judicial sale. All agreed that this area is ripe for international co-ordination in order to establish uniform and international legal certainty which effects such an important link in the chain of international trade. They all agreed that given the very international nature of shipping it was crucial that the subject attracted a uniform solution through an international convention.

Peter Laurijssen from CMB identified four of the most important considerations in relation to judicial sales which was legal certainty, maximization of the asset value, availability of ship finance and the ease of registration after the sale has taken place. He made it clear that failure to resolve these considerations distorted the ship sale market and caused asset value destruction to the detriment of the industry as a whole. Tilman Stein from Deutsche Bank Hamburg shared the view of another 11 major banks from Hamburg underlining the need for certainty and highlighting the substantial value of the assets at issue.

The 174 delegates at the Colloquium which came from 60 different countries offered very interesting perspectives with their comments and observations highlighting the need for legal certainty. Delegates represented states and governments, the judiciary, the legal community, shipowners, bankers, port and harbour authorities, charterers, tug operators, ship agents, bunker suppliers and ship brokers. The Colloquium was also attended by BIMCO, the International Transport Federation and the Institute of Chartered Shipbrokers.

It was crystal clear that the participants and delegates at the Malta Colloquium all agreed that there was a very real need to address the issue and that the smooth operation of international trade depended on certainty. Thus there needed to be a serious discussion at an international level for a convention on the international recognition of judicial sales as had been suggested by the CMI.

In the days that followed the Colloquium there was a great deal of effort by Stuart Hetherington, Alex von Ziegler and myself, in co-operation with the Secretariat at UNCITRAL into putting together a Proposal for UNCITRAL which contained a report on the Malta Colloquium. The Proposal follows this report.

The Proposal of Malta and Switzerland was put on the agenda for the fifty first session of UNCITRAL in New York between the 25th June and 13th July. The Maltese and Swiss proposal was to be discussed in the morning of the 29th June.

Much work was carried out prior to the meeting by Maritime Law Associations and members of the Executive Council with a view to ensuring the support of as many member states as possible at the UNCITRAL meeting. Unfortunately very shortly before the 51st session, the project suffered a set back. We received information to the effect, just 10 days prior to the 29th June, that Malta had been informed by the EU Commission that in its view the subject matter of the Proposal was an EU reserved matter because it dealt with aspects of jurisdiction. The Commission appears to have disregarded the fact that the Proposal was not recommending the adoption of any draft convention but was merely requesting that UNCTIRAL conducts future work on cross-border issues related to the judicial sale of ships. Furthermore it was unexpected that the EU Commission should adopt this stand as one would have thought that it was a perfect opportunity to give the existing EU Brussels 1 regulation and the Recast an international dimension in the area of judicial sale of ships.

Malta therefore was left with no option but to withdraw its proposal, leaving the Swiss Government to be the sole proponent of the Proposal before UNCITRAL.



Alex von Ziegler attended the meeting as the Swiss Delegate and Stuart Hetherington and I attended for and on behalf of the CMI. Alex von Zeigler introduced and explained the Proposal and what its motivations were in a succinct and expert manner. Stuart Hetherington then spoke about the conclusions reached by a cross section of the international trading community and the various circumstances which necessitated an international approach to an international problem. I read out the letter of support to the proposal by BIMCO and took the opportunity of explaining a real case of an illegal arrest of a ship in Malta that took place only three days before the meeting. (A vessel was arrested by a previous creditor of a vessel sold in a Judicial Sale in Jamaica in January of this year which caused havoc to the international trading chain.)

After the other proponents of other proposals presented their proposals for addition to the UNCITRAL agenda, there followed a very interesting debate. The Chair of the meeting made it very clear indeed that whilst all the proposals were interesting delegates had to speak in terms of what they considered a priority because it was impossible for the working groups at UNCITRAL to take on all the proposals being made.

A great number of delegations participated in the debate on CMI's Judicial Sale Proposal. The delegations from Argentina, Australia, Columbia, Singapore, China and India were very strong supporters of the Proposal. A number of delegations also spoke favourably however other proposals had a higher priority for them. Unidroit commended the efforts made by CMI. The EU representative only made a fleeting reference to the Proposal stating that: *"we should look a bit more carefully at the data and justification for such work and if the data is made available and are given more time for consideration we could possibly support work in the form of a soft law in this area."* It is a pity that the EU representative was clearly not informed that all the necessary data including the statistics and the volumes of case law had been made publicly available since CMI commenced to work in 2007 and more so following the Malta Colloquium in February.

The decision on which proposals were to be accepted was announced in the afternoon of the 29th June. To our great relief and great satisfaction, the proposal for future work by UNCITRAL on cross border issues related to the judicial sale of ships was accepted. UNCITRAL therefore gave a clear mandate to study the subject. It was declared that Judicial sales is one of the two top priorities of future work for UNCITRAL which would be assigned to the working group that is finishing first with its current business. It is likely therefore that it would be working group VI.

As well as all the Maritime Law Associations who lobbied their Governments, the International Working Group of CMI Chaired by Henry Li must be delighted and they must also be congratulated. It is precisely this type of result which reminds us of the very real scope and purpose of the CMI as the body which seeks the uniformity of international maritime law.

Ann Fenech
Executive Council Member

United Nations

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International Trade Law**
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Possible future work on cross-border issues related to the judicial sale of ships: Proposal from the Government of Switzerland

Note by the Secretariat

1. In preparation for the fifty-first session of the Commission, the Government of Switzerland submitted to the Secretariat a proposal for possible future work by UNCITRAL on cross-border issues related to the judicial sale of ships. The revised text received by the Secretariat is reproduced as an annex to this note.

Annex

Proposal of the Government of Switzerland for possible future work on cross-border issues related to the judicial sale of ships

1.Introduction

At its fiftieth session (Vienna, 3 to 21 July 2017), the United Nations Commission on International Trade Law noted the importance of a proposal ([A/CN.9/923](#)) of the Comité Maritime International (CMI) drawing attention to problems arising around the world from the failure to give recognition to judgments in other jurisdictions when ordering the sale of ships.¹ While a number of delegations supported the proposal and expressed interest in taking it up, subject to the availability of working group resources and any necessary consultation with other organizations, it was agreed that additional information in respect of the breadth of the problem would be useful. ²

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 in due course”.³ The Commission further “agreed that UNCITRAL, through its secretariat, and States would support and participate in a Colloquium to be initiated by CMI to discuss and advance the proposal ”. ⁴ The Commission agreed to revisit the matter at a future session.⁵

To that end, following a request from the Government of Malta, the UNCITRAL secretariat extended a formal invitation to all Member and Observer States of UNCITRAL to participate in a high-level technical Colloquium in respect of the cross-border judicial sale of ships, as well as the recognition of such sales.

Based on the outcome of the discussions during the Colloquium and based on the support of all represented industries, the government of Switzerland proposes that UNCITRAL consider taking up work on an international instrument to resolve cross-border issues on the recognition of judicial sales of ships

2.The Colloquium

The Government of Malta, through its Ministry for Transport, Infrastructure and Capital Projects, in collaboration with CMI and the Malta Maritime Law Association, co-hosted the Colloquium on 27 February 2018 at the Chamber of Commerce in Valletta, Malta. Panellists and attendees examined the scope of problems associated with judicial sales of ships, as well as possible solutions.

Participants were requested to elaborate on the proposal submitted by CMI to the Commission stating that “[p]urchasers, and subsequent purchasers, must be able to take clean title to the ship so sold and be able to de -flag the ship from its pre-sale registry and re-flag the ship in the purchaser’s selected registry so as to be able to trade the vessel appropriately without the threat of costly delays and expensive litigation. This, in turn, will enable the purchased ship to trade freely; and ensures that the ship will realize a greater sale price which will benefit all the related parties, including creditors (which could include port authorities and other government instrumentalities that have provided services to a ship owner) ”.⁶

3. Participation at the Colloquium

It was noted that the lack of certainty in recognition of judgment affected a broad spectrum of industries and States. The Colloquium had 174 participants, including delegates from 60 countries. Delegates represented Governments, including Governments of flag States; the judiciary; the legal community; a number of specific industries, such as shipowners, banks/financiers, shipbrokers, ship repairers,

shipbuilders, bunker suppliers, port and harbour authorities, charterers, tug operators, and ship agents; and a number of International Organizations, such as the Institute of Chartered Shipbrokers (ICS), BIMCO and the International Transport Workers Federation (ITF). The Colloquium also received a written submission by the Federation of National Associations of Ship Brokers and Agents. The participants shared how their industries and States were impacted by the lack of harmony among States in recognizing the judicial sale of a ship in another jurisdiction.

(a) Shipowners

A prominent shipowner representative identified four of the most important considerations in relation to judicial sales: (1) legal certainty; (2) maximization of the asset value; (3) availability of ship finance; and (4) ease of registration after the sale has taken place. It was stated that the failure to resolve these considerations distorted the ship sale market and caused asset value destruction to the detriment of the industry as a whole.

The presentations by shipowners, both as sellers and potential buyers, made clear that their primary interest was legal certainty, which was demonstrably absent from the current process of judicial sales. If greater certainty in the recognition process could be attained, it was thought to lead to a higher valuation in assets, in both auction and sale values, which would in turn result in greater availability of finance.

It was added that there was an interest of all involved in maritime trade (including cargo interests, trade-financing banks, insurers, and others) that the vessel employed not be stopped by unnecessary arrests instituted by former creditors or owners, despite the fact that the vessel had been sold by judicial sale. It was noted that any transit-interruption would be a nuisance to trade and shipping and would create costs and damages.

There was a clear statement by the shipowners that the situation needed to be clarified by way of an international instrument and that the points drafted by CMI could resolve the issue in a simple and pragmatic way.⁷

(b) Financiers/ship financing banks/shipbrokers

The support of many banks, regardless of their location, for an international regime to mitigate risk was emphasized. A leading ship financier, who shared the views of

11 major banks from his jurisdiction, agreed with the need for certainty and highlighted the substantial value of the assets at issue. From the perspective of lenders, it was felt that shipping markets are volatile. In light of these uncertainties, it was said that banks attempt to circumvent the problems by searching for amicable solutions, creating additional costs. Without a reliable international basis for recognition of judicial sales of vessels, it was stated that buyers would need to be satisfied with risks when obtaining the title, which would drive down the sale price.

(c) Ship registries

The registrar of the Maltese Flag, which has been the largest flag in Europe for a number of years with over 72 million tons, described the uncertainties that arise from a foreign judicial sale. It was noted that most registries are national systems designed to sell domestic ships in local courts, and the difficulty of having a ship deleted from a register if it had been sold in a foreign jurisdiction was explained. It was stated that circumstances would be greatly improved for all parties by the issuance of an internationally-recognized certificate of judicial sale by the State in which a sale takes place.

It was widely felt that the creation of an instrument that retained a narrow focus on the process leading to recognition (instead of a broad project covering rules on the actual judicial sale) would be a manageable project that would increase the likelihood of having an international instrument adopted efficiently.

(a) Legal community

Legal practitioners from common law, civil law, and mixed systems cited to numerous cases, particularly cases of abuse of the process of ship arrest, in jurisdictions around the globe to highlight the lacuna in international legislation in regard to the recognition of a judicial sale by a foreign court. There was a clear consensus that the number of proceedings created unnecessary costs and frictions, thereby further devaluing assets in the commercial world. From their practical experience representing clients from all aspects of the industry, participants shared the same request of filling the legal gap and enabling a friction-free transition from the former registry to the new registry, and to the new shipowner, freeing the sold vessel from all encumbrances she may have had prior to the judicial sale. Reference was made to the work undertaken by CMI. It was felt that CMI work not only consisted of valuable in-depth studies of the problems and their possible solutions but also demonstrated interest in adopting rules that would be suitable for industries and compliant with different legal traditions.

(b) Bunker suppliers/service providers

Typical ship creditors were represented at the Colloquium by bunker suppliers, who are often also bunker barge owners. The creditors highlighted the “need for certainty which in today’s economic

climate overshadows any other commercial consideration. " It was noted that the main concern of such creditors is the fact that they operate with very small margins and that any step undertaken outside of unified and clear patterns involve economically unjustifiable costs and risks. Support was expressed in favour of a recognition regime at the Colloquium, as a regime would introduce clear and harmonized rules and outweigh the interest in arresting the vessel after a judicial sale in an attempt to obtain funds.

(c) Crew interests

It was widely felt that seafarers on board vessels belonging to owners who had defaulted would benefit from a simplified recognition process. It was stated that the crew languish in various ports all over the world, unable to leave the vessel, and have very little by way of provisioning and fuel to keep generators going. It was felt that the longer the proceedings took, the greater the pain for the crew members, who would struggle to be paid and repatriated. The ITF Malta branch, which handles dozens of such cases, expressed its support for an instrument to mitigate the hardships endured by the seafarers and their families during such affairs.

(d) Ports/port service providers

The Malta Harbour Master explained how important it was for judicial sale procedures to be as smooth and as quick as possible to assist in the management of the phenomenon of abandoned vessels, which causes havoc in ports and undermines smooth trading operations.

(e) Maltese Government

Minister Ian Borg, Minister for Transport, Infrastructure and Capital Projects, explained that as a direct result of being the largest flag in Europe, and being in the centre of the Mediterranean, Malta heavily focused on the provision of services to the international trading community.

It was noted that Malta has a highly developed, robust and efficient legal regime providing for both judicial sale by auctions and a renowned system of court approved private sales. It was stated that all the industries, the financiers and shipbuilders who had mortgages registered in the Maltese Register of ships, as well as the hundreds of service providers, including ship repairers, bunker suppliers, suppliers of provisioning to ships, crew, cargo handling, trans-shipment, and services given to the oil and gas industry, needed the comfort of knowing that they could resort to judicial sales in Malta, in the event the owner defaulted, and that those sales would be recognized worldwide. This would provide certainty to interested buyers, thereby increasing the value of the vessel during the sale.

Minister Borg thanked CMI for their initiative in bringing together a cross section of the maritime industry with the aim of discussing the pertinent subject. He stated, "Having an international instrument on the recognition of judicial sales of ships is an important step which aims to introduce a substantial degree of stability and uniformity in an important aspect of maritime trade. Malta's participation in the discussion of this important instrument is imperative."

4. Possible Solutions and Feasibility

The Colloquium established that the main issues and obstacles witnessed in the trade and maritime environment were:

- The lack of legal certainty in relation to the clean title which a judicial sale is intended to confer on a buyer, leading to problems being experienced in the de-registration process in the country of the former flag;
- The obstacles in relation to the recognition of the effects of the judicial sale in respect of the clearance of all former encumbrances and liens;
- The increase of transactional costs in cases of friction in the enforcement of the ship's sale and the risk of costly proceedings and payments just for nuisance value by old creditors attempting to arrest vessels after the judicial sale;
- Factoring of those risks when evaluating the level of bidding in judicial sales, causing a loss on the recoverable assets to the detriment of all creditors (such as crew, financiers, cargoes, ports, agents, bunker suppliers, barge operators, etc.) of the old shipowner resulting from a less favourable judicial sale due to the lack of certainty in respect of its recognition by courts and authorities; and
- Reduced sales proceeds leading to a downwards trend on the brokers' vessel evaluation and thereby causing a general loss of vessel values in the entire market.

Among the delegates and panellists there was consensus that:

- All parties were affected negatively by the gap in legal certainty;
- The gap could be filled from a legal perspective by providing an instrument on recognition on judicial sale of ships;
- A draft instrument that had been prepared by CMI would provide a helpful reference if work were to be taken up on this topic by UNCITRAL;
- UNCITRAL was the appropriate forum to resolve issues involving pernicious effects on cross-border trade. It was noted that UNCITRAL has experience in closely linked issues such as

transborder insolvency issues and securities. The working methods of UNCITRAL, which permit close involvement of

- international industry organizations, would also facilitate the conclusion of an instrument that would be broadly supported across industries.

5. Conclusion

Broad consensus emerged from the Colloquium in support of an international instrument to remedy the problems arising from the lack of harmony among States in recognizing the judicial sale of a ship in another jurisdiction. For that reason, Switzerland proposes that UNCITRAL undertake work to develop an international instrument on foreign judicial sale of ships and their recognition. It is noted that CMI has undertaken significant work on identifying issues and possible solutions on this topic, and that this work has been endorsed by a number of industries and States. That work provides a useful starting point to further UNCITRAL work, providing guidance for a working group and indicating the direction that might be taken.

1 *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 456–465.

2 *Ibid.*, para. 464.

3 *Ibid.*

4 *Ibid.*, para. 465.

5 *Ibid.*

6 See para. 5, *A/CN.9/923*.

7 *Several references to the draft instrument were made by participants at the Colloquium. As noted in para. 3 of A/CN.9/923, "the topic has been discussed and a draft international instrument prepared at numerous meetings including the Beijing Conference in 2012, the Dublin meeting of 2013 and the Hamburg Conference of 2014 where a draft instrument was completed, and approved."*

- Find the original document [here](#) -

Report on IMO Technical Co-operation Committee meeting 18-20 June 2018 - by Rosalie Balkin

The Technical Cooperation Committee (TCC) of the IMO held its sixty-eighth session from 18-20 June 2018. It was attended for CMI by Maria Borg Barthet and Rosalie Balkin.

For those CMI members who are not familiar with the workings of this Committee, the TCC is that arm of IMO responsible for the provision of technical cooperation to those IMO Member States which, for one reason or another, request assistance in the implementation and application of the various rules and regulations developed by the Organization, the aim being the uniform implementation of International Maritime Law. In this, its mandate is similar to that of CMI.

Although this Committee has been in existence for many years, CMI has not previously participated in its deliberations, at least to any significant extent. Accordingly, the first task of the CMI delegation was to introduce CMI and our work to the Committee, particularly that relating to the development, ratification and implementation of maritime conventions.

In this connection, we informed the TCC of the long-standing relationship between CMI and the IMO Legal Committee as well as CMI's more recent forays into the world of the Maritime Safety Committee (MSC). We noted the expertise available amongst the CMI members which could potentially be utilized through the TCC for the benefit of IMO Member States, particularly in the provision of technical assistance related to the drafting of maritime legislation aimed at implementing IMO conventions and other instruments, as well as other maritime conventions not developed under the aegis of IMO, such as the Rotterdam Rules.

The Committee responded with interest to this introduction and, after the close of business on day two of its work, several delegations approached the CMI with requests for possible assistance, including from Zimbabwe, Kenya and the Caribbean. It remains to be seen whether any of these requests are followed up—Rosalie suggested that this be done in writing.

CMI was also approached by our neighbour in the room, namely, the International Association of Marine Aids to navigation and Lighthouse Authorities (IALA), to see if we were willing to assist that organization from time to time in the interpretation of national maritime legislation. Apparently, while

IALA has many experts, it nevertheless lacks the legal skills necessary in this regard. While the focus of IALA's work is perhaps more technical than that of the CMI, it may be useful for us to explore whether and to what extent CMI and IALA have scope for coordination of our respective activities.

Of possible relevance to CMI's work are the following:

- The discussion about the IMO's Regional Presence Offices in Cote d'Ivoire, Kenya, Trinidad and Tobago and the Philippines (agenda 6(a)). A non-permanent office has also recently been set up in Suva, Fiji, which was greatly welcomed by delegates from the region. If CMI is not already working with these bodies, it may be useful to explore whether there is any scope for coordination.
- The discussion on Country Maritime Profiles (CMPs) (agenda 5(b)). This was an initiative introduced by Koji Sekimizu, the previous Secretary-General, the aim being to achieve a more targeted approach to the delivery of TC assistance rather than merely to respond to ad hoc requests for assistance. Work by the IMO secretariat on the development of a revised and restricted CMP module is ongoing. One issue with this module is the confidential nature of the information provided by governments, prompting the IHO to make a plea for non-sensitive information to be released to enable organizations other than IMO to assist IMO and its member states in the delivery of their TC activities.
- The discussion on the advancement of women in the maritime sector (agenda 5(d)). IMO has played a significant role in the achievement of the UN's Millennium Development Goal 3 (MDG3): Promote Gender Equality and Empower Women but much still remains to be done. One delegation suggested that the IMO secretariat prepare a comprehensive document for TC 69, providing data on women in the maritime sector such as those employed in maritime administrations and female graduates from WMU, IMLI and other training institutions. It may be an interesting exercise for CMI to prepare similar data in relation to our own membership, committees and officers.
- The discussion on the IMO Audit Scheme (agenda 7). While this Scheme is aimed at providing IMO and its Member States with detailed, relevant information on the implementation by those states of the major IMO conventions, as previously informed to CMI by IMO's Legal Office and confirmed at TC 68, the problem is that this information at the moment is confidential and is not generally accessible to Member States other than the Member State subject to the audit. It is therefore unfortunately not accessible by the CMI. The Legal Office has advised us that it is looking into this but prospects for change at the moment are slim.
- The discussion on the identification of IMO consultants (agenda 8). Detailed information on the internal processes for the validation and recruitment of consultants was provided by the secretariat, which indicated that these processes would be subject to the wider review and reform of technical cooperation currently underway by the TC Division. Currently, prospective consultants are required to log into the IMO website and fill in their details on line—this replaces the paper trail which was previously the system. The information thus provided by the prospective consultants is then reviewed by the IMO secretariat who are also responsible for appointing consultants for any particular exercise. The secretariat advised that the IMO fee (of \$100 per day plus travel plus accommodation), although low by industry standards and not equivalent to free market rates, is in line with fees paid throughout the UN system. Very few consultants have been known to refuse jobs on the basis of low pay. CMI members may wish to consider adding their names and CVs to the IMO roster. The IMO secretariat has also previously been advised by CMI's Standing Committee on the Implementation and Promotion of Maritime Conventions of the availability of CMI legal experts for TC missions.

Rosalie Balkin
Secretary General



Report on visit to the International Maritime Law Institute (IMLI) – by Ann

Fenech

A number of Executive Council members of the CMI visited Malta for the Colloquium on the 29th of February and Professor David Attard, the Director of the International Maritime Law Institute therefore extended an invitation to the Executive Council Members to visit IMLI on the 1st of March and meet with the students who have just graduated this June.

This was a perfect opportunity for the President of CMI, Stuart Hetherington and Vice President Giorgio Berlingieri together with Exco members Luc Grellet and Ann Fenech to visit IMLI and interact with the students.

After meeting all the students, Professor David Attard spoke of and explained the very strong ties and links between the CMI and IMLI stating that the CMI provide IMLI with a number of expert lecturers as well as with sponsoring the CMI prize for the best dissertation. Stuart Hetherington on his part stated what a pleasure it was for him to be at IMLI personally and to be able to interact with the students who come from so many different parts of the world. He explained the ethos and purpose of the CMI and given the recent Colloquium explained how important it was for each and every student to convince its government of the benefits of an international convention on the international recognition of judicial sales and to encourage their governments to endorse the Proposal that would be made to UNCITRAL. He also referred to the long history of interaction between CMI and IMLI particularly in the persons of Patrick Griggs, Bent Nielsen, Professor Francis Reynolds and more recently Andrew Taylor, and in the past Bill Birch Reynardson, Frank Wiswall and Francesco Berlingieri as guest lecturers.

Stuart Hetherington also congratulated IMLI and the students on the work that they were doing to improve the awareness of the importance to the uniformity of maritime law that states ratify conventions.

Ann Fenech



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