



Vigilandum est semper; multae insidiae sunt bonis.

CMI Newsletter

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REPORT ON CMI ASSEMBLY AND COLLOQUIUM MEXICO CITY 30 SEPTEMBER-2 OCTOBER 2019 ROSALIE BALKIN, CMI SECRETARY-GENERAL

The 2019 Assembly of the CMI took place, as planned, in Mexico City on the afternoon of Wednesday 2nd October 2019. It was preceded by a (closed) meeting of the CMI Executive Council on Sunday 29th November, followed by a two and a half day colloquium organized jointly by the CMI and the Mexican MLA. The venue for all these events was the iconic Camino Real Hotel in Polanco, situated in the heart of this vibrant city, enabling those fortunate registrants with some time to spare the opportunity of exploring Mexico City's historic centre and its surrounds.



The Colloquium was preceded by an evening reception which took place in the charming hotel terrace. Guests, who included all participants and accompanying persons, were treated to traditional Mexican canapes and other finger food, washed down by cocktails, with a live band playing on bravely in the background.

Picture: President of the Mexican MLA Ignacio Melo and his wife Rosy Hidalgo de Melo.

The Colloquium was formally opened by the CMI President, Chris O.Davis and the President of the Asociacion Mexicana de Derecho Maritimo, Ignacio Melo. Mr Luis Cova Arria (Venezuela) then delivered a moving tribute to the late Francesco Berlingieri, in which he traced Francesco's remarkable career and achievements.

The Colloquium itself was comprised of a mix of subject matter, all related in some way to the current work of CMI and its International Working Groups and Standing Committees. The first session off the mark was "The Offshore Energy Industry 40 Years Post-IXTOC I", in which representatives from the offshore energy sector, inter-governmental agencies and insurance companies discussed how technological and regulatory changes have affected the shipping industry and environment over the past 40 years, as well as governments'

and insurers' responses to the ever-increasing risks associated with the offshore energy sector.

Another session, entitled "Proposals for Future Unification of Maritime Law", consisted of a series of short presentations on the subject from a Latin American point of view and included a presentation on the restatement of the principles of Lex Maritima.

In this age of increasing instances of cybercrime across the board, the Colloquium also aptly included a session on "Cybercrime and Insurance Coverage Issues". This was delivered by representatives from maritime insurance companies who addressed the risks associated with cybercrime in today's shipping industry as well as coverage issues associated with those exposed to such risks.

Of especial interest to the many women participants in the Colloquium (but by no means limited to those of the fairer sex) was the session entitled "Women in Today's shipping World" which explored women as catalysts for positive change in an industry previously dominated by men. It sought to answer questions including what influence women could bring to bear on the shipping industry of 2019 and its challenges and why some women were moving to other industries. This topic was particularly apt in view of the theme for 2019 World Maritime Day chosen by the International Maritime Organization (IMO) being "Empowering Women in the Maritime Industry" and aimed at raising awareness of gender equality and highlighting the important yet underused contribution of women within the maritime sector.

Also of interest was the session entitled "The Future of Shipping Lawyers", which analysed recent trends in the maritime legal profession and explored how the practice of maritime law will inevitably change for both senior and junior maritime lawyers. This session marked a turning point in the relationship between CMI and Young CMI lawyers in that it was presented by them as an integral part of the Colloquium proceedings rather than, as in the past, as a side event. It is intended in future to integrate Young CMI activities even further into the CMI mainstream.

Another young lawyer and rising star, Ms Maja Radunovic, Judicial Adviser of the Commercial Court of Montenegro, delivered a paper on her thesis "Maritime Liens in Bankruptcy Proceedings: A Legal Analysis of the Need to Harmonize and Amend the Montenegrin Legislation", as part of her award of the CMI Prize for Best Overall Performance at the IMO International Maritime Law Institute's 30th annual graduation ceremony. A copy of her dissertation can be found on the CMI website.

As part of an effort to attract young maritime lawyers to the work of the CMI, the CMI Charitable Trust also funded a separate prize for the best young CMI essayist, which was won this year by Ms Helen Niemann, who was unfortunately not able to attend the Colloquium but who will be afforded another opportunity to present her essay at the 2020 CMI conference.

The final two sessions of the Colloquium were taken up by a two-part topic entitled "Civil Liability, IOPC Fund and HNS Conventions—Is it Time for Latin American Governments to Ratify These Conventions?" The aim of these sessions was to explore the obstacles in Latin American countries to ratification of the 1992 Civil Liability and Fund Conventions as well as the 2003 Supplementary Fund Protocol and the 2010 HNS Convention. To this end, the second session was devoted to hearing the views of practising maritime lawyers from the region, some of whom expressed very candid opinions as to the reasons why their countries had not yet participated as fully as they might have in the very successful international regime for liability and compensation for damage caused by the spill of oil (and HNS) at sea.

Delegates and accompanying persons were treated on the afternoon of Tuesday 1st October to a special luncheon followed by an excursion to the UNESCO listed Teotihuacan Pyramids, where the more adventurous among them were able to scale both the Pyramids of the Sun and the Moon and to enjoy a panoramic view of the pre-Columbian Mesoamerican city of which these wonders of the ancient world were part. Following this, delegates were afforded a further treat, in the form of participation in an ancient Aztec ceremony connecting participants to nature.



The annual meeting of the Assembly took place on Wednesday 2nd October, the object of which, as usual, was to enable national maritime law organizations to meet to discuss the business of CMI.

The meeting commenced with tributes being paid to three CMI members who had passed away since the last Assembly, namely Angelo Boglione (Italy), Rucemah Leonardo Gomes Pereira (Brazil) and Domingo Martin Lopez Saavedra (Argentina).

Titulary membership of CMI was unanimously conferred on Frank Stevens (Belgium); Yuzhuo Si (China); Victor Carrion (Ecuador); Stephane Miribel (France); Bernardo Melo Graf, Juan Carlos Merodio, Ignacio Luis Melo Graf, Jose Luiz Hernandez Abdalah and Enrique Garza (Mexico); David Farrell and Martin Davies (USA); Maria Grazia Blanco, Gustavo Omana Pares and Patricia Martinez de Fourtoul (Venezuela) in light of their valuable service to the organization.

Items of interest included a report on the activities of the Charitable Trust, which continues to fund a prize for the best IMLI student in any one year, consisting of the payment of all travel expenses to a CMI event, together with an attendance allowance and a book. Reference has already been made above to this year's prize winner, Maja Radunovic (Montenegro). Reference has also been made above to Helen Neumann, the winner of a second prize, the yCMI Essay Prize, which was established in November 2018, also sponsored by the Charitable Trust, and which is open to anyone under the age of 35. The Prize is designed to promote research and writing in the field of maritime law. Helen's essay, entitled "Cyber-risks in unmanned vessel industry and adapting current US and international framework to new challenges" is also to be found on the CMI website.

It was decided not to nominate a specific topic for the 2020 yCMI Essay Prize but rather to "invite essays on any current issue of maritime law. The essay may cover either (or both) private and public law" and the date for submission of essays is 1st May, 2020. The Rules relating to the Prize are to be found on the CMI website.

The Trust also funds the costs of travel of a number of IMLI lecturers, eight in all for this year, who between them gave a total of 32 lectures at the Institute.

CMI acquired one new member--the Assembly voting unanimously to admit the Paraguay Maritime Law Association to the CMI "family", while the membership of the Maritime Law Association of the Democratic Peoples Republic of Korea was reinstated. The Assembly was further advised that, although Sri Lanka had formed a Maritime Law Association, which was already planning to hold an event, the recent terrorist bombings in that country had prevented it from submitting the necessary documentation in time for its membership to be considered at this Assembly.

As usual, a large part of the Assembly meeting was taken up by the presentation of papers by the Chairs of the respective International Working groups and Standing Committees, outlining the progress they had made since the last Assembly in London (November 2019) and their plans for future work. These will be published on the CMI website in due course.

As became apparent, there was no shortage of venues for CMI Assemblies for the foreseeable future. The 2020 Assembly is to take place in Tokyo in the last week of October (during the holiday season). The Assembly was treated to a short promotional video presentation by Professor Egashira, President of the Japanese MLA, who mentioned that it has been 51 years since the Assembly last met in Japan. Preparations are already well in hand, the conference website is up and running and finances are in good shape. The Japanese MLA is already working together with the CMI Organizing Committee on arrangements both academic and social for the accompanying 4 day event which might include a half day cruise of Tokyo harbour.

It has also been decided that the 2021 Assembly is to be held in Montreal, Canada from 16-19 June at the downtown Sheraton Hotel. The Assembly was advised that, although Montreal could not boast any pyramids, nevertheless there were many other local attractions which might well be a satisfactory substitute.

The 2022 Assembly is to take place in Antwerp, Belgium from 19-21 October, to commemorate the 125th anniversary of the establishment of the Belgian MLA. Antwerp is of course the Headquarters of CMI and has its share of interesting buildings and places of interest.

The Assembly also approved the Executive Council's recommendation of Gothenburg, Sweden as the host of the 2023 Assembly. In so doing it noted that this date would commemorate the centenary of the last CMI event to be held in that historic city, as well as 60 years since Sweden had hosted the Assembly (in Stockholm).

As for 2024, Chris O.Davis introduced Luis Felipe Galante, the President of the Brazilian MLA, who screened a short presentation promoting Rio de Janeiro as the host of the 2024 conference. Luis Felipe noted that Brazil had originally intended to host the 2020 Assembly but had withdrawn its invitation in favour of Japan. He reminded the Assembly that it had last been held in Rio in 1977, when it had been presided over by the late Francesco Berlingieri.



Picture: Delegates of the CMI Colloquium at the Gala dinner reception.

The 2019 Assembly proceedings were brought to a successful conclusion with the gala dinner for all delegates and accompanying persons being held in the lovely outdoor setting of the Hacienda de los Morales. In a break with tradition, the CMI banner did not feature at the dinner, but had already been ceremonially passed, at the closing of the Assembly, by the Mexican MLA to the Japanese MLA, which, as has already been announced, is to play host in Tokyo, Japan to the 2020 Assembly from 20-24 October 2020. See you all there!

CMI/AMDM MÉXICO COLLOQUIO 2019

**In tribute to the late
FRANCESCO BERLINGIERI
(1922 - 2018)**

**La sua devozione al
diritto marittimo internazionale**



Before I begin these words, I should express my gratitude to the Executive Council of this Comité Maritime International (CMI), in the person of its President, Dr. Christopher Davis and the other members of the same, for the honor they have given me by inviting me to pronounce in this Colloquium these words in posthumous tribute to who was my great friend, Doctor and Professor Francesco Berlingieri, one of the great Presidents who contributed with his tireless work to the fundamental purpose for which the CMI was founded, the international unification of maritime law.

Also and, for the same reasons, I thank the entire board of the Mexican Maritime Law Association, co-organizer of this Colloquium, in the person of its President, Dr. and Professor Ignacio Luis Melo Ruiz, whose book in his tribute, we presented last Saturday 28th of the current month in this city.

I also take the opportunity of these words, to congratulate the Italian Maritime Law Association (IMLA), for the celebration of the 120th anniversary of its foundation, to which Francesco Berlingieri lent his invaluable material and intellectual contributions, not only as its president, but as one more member, as his son Giorgio has brilliantly outlined in his article on the history of the IMLA, which you will find on the CMI website. I thank Giorgio for providing me with the informative sources to write these

short words. To him, as much as he wanted it, was impossible to attend this Colloquium. However, his son Andrea is with us, who not only represents the entire Berlingieri family, but his grandfather, to whom we pay tribute today.

I would never have imagined, in May 1977, when presiding over the Venezuelan Maritime Law Association, recently founded, attending the XXXI CMI Conference in Rio de Janeiro, which was chaired by Francesco Berlingieri, that 42 years later I would have to say a word in his posthumous tribute, today here at the CMI, and, in March 2018, at the Academy of Political and Social Sciences of Venezuela.

Those of us who had the good fortune to meet Francesco Berlingieri personally, and, also those who did not, still felt his presence through his books and his works, in the international meetings where he advocated, not only the international legislative unification of maritime law, but the correct uniform interpretation of its norms, contained, not only in international conventions, but in national laws adapted to them, and to the rules, customs and customs, born of the already more than centennial unifying work of the CMI.

Therefore, it is likely to remember here the edition of Saturday, March 10, 2018, of the *Il Secolo XIX* newspaper of Genoa, Italy, which entitled on its first page, the following: “Addio a Berlingieri, vita eroica tra guerra e diritto marittimo” and then on page 23, they did not hesitate to describe him as “Il padre del diritto marittimo”. This is how this important Genoese newspaper outlined the sensitive death of Francesco Berlingieri, which occurred on March 6 of last year 2018 at the age of 96, in his beloved city, Genoa, where he was born, on February 20, 1922.

It was also reviewed by such edition of the Genoese newspaper, the immense number of people, in addition to their relatives, who attended his funeral, which took place in the Church of Nostra Signora del Carmine and Sant’Agnese, in Genoa, where there was at the side of his coffin an honor guard of the Italian Navy, covered with the flag of that country. There, emotional words were pronounced, remembering, among other things, the deep love between him and his wife Anna Teresa Berlingieri-Origone, with whom he had married in 1947, who died in 2015, at the age of 91 years. From that Berlingieri-Origone union, their four children were born: Giorgio, Andrea, Paolo and Matteo. They had blessed them with eight grandchildren, Chiara, Francesca, Andrea, Giuseppe, Francesco, Anna, Pietro and Giorgio and, these grandchildren, in turn, with eight great grandchildren, Matilde, Giulia, Giorgia, Alice, Vittoria, Alberto, Oliviero and Joseph.

Francesco Berlingieri, not only was one of the most prominent jurists specializing in Maritime Law in recent years but was also an Officer of the Italian Navy. Both professions were exercised with unparalleled devotion.

In fact, he was at the Naval Academy, from 1943 to 1945, having had to participate, during the Second World War, in several military actions, for whose performance, qualified as “example of decision, courage and dedication beyond duty to the Fatherland”, the Silver Medal for Military Value was conferred.

This was only the beginning of an extraordinary life, because after receiving that deserved medal and, only at 34 years old, as a lawyer of the “Società Italia di Navigazione”, he defended it in the trial arising as a result of the collision which occurred in waters near Nantucket, between the “Andrea Doria” and the “Stockholm”.

Francesco Berlingieri is part of the history of modern maritime law. He attended his first CMI conference in Naples in 1951.

After the “Torrey Canyon” incident in 1967, when the IMO commissioned the CMI to study the liability for oil pollution damage resulting from spills from tankers, Francesco Berlingieri, contributed to the CMI International Sub Committee, which was chaired by Lord Devlin. That work was decisive for the 1969 CLC Convention and the 1971 Fund, whose drafts were drawn up at the 1969 Tokyo Conference.

Later, Francesco Berlingieri reached the Presidency of the CMI, a position he held from 1976 to 1991. On this last date, he was appointed President Ad Honorem, a position he held until his death. He was also Honorary President of the Italian Maritime Law Association, and Doctor Honoris Causa of the Universities of Bologna, Antwerp and Athens. He had, in addition, very outstanding work, since 1954, in the teaching of maritime law as Professor of the University of Genoa.

His work as a lawyer led him to act before the English Commercial Court Committee, from 1977 to 1999, for whose work and, in recognition of his important role in the unification of maritime law, Queen Elizabeth II granted him the title of Honorary Officer of the Order of the British Empire.

The delivery, dedication and devotion of Francesco Berlingieri to the CMI, and therefore to the unification of Maritime Law, is difficult to review in a few words. More than a personal dedication, it is a family bulwark. Making use of the historical investigation of the presence of the Berlingieris in the CMI, from 1900 to the present day, made by who was our President, Karl-Johan Gombrii, to which he made the same reference in the tribute he was paid In Genoa, in 2017, there was a young maritime lawyer from Genoa, named Francesco Berlingieri, attending the CMI Conference in Paris in 1900, who when he was to preside the Italian delegation, at the Copenhagen Conference in 1913, with him, in that Italian delegation, was a young lawyer by name, Giorgio Berlingieri. Then, in 1959 at the Rijeka Conference, in addition to this Giorgio Berlingieri, another young Genoese lawyer, named Francesco Berlingieri, attended and, in 1977 at the Rio de Janeiro Conference, the latter being Francesco, President of the CMI, another young Genoese lawyer, named Giorgio Berlingieri, attended. That is, they were already or had been involved with the CMI, two Francescos and two Giorgios. One of them, Francesco, is to whom we pay this posthumous tribute and the other one, Giorgio, is our former Vice-President who could not attend this symposium. The other two, Francesco and Giorgio, are the grandfather, great-grandfather and great-great grandfather of the young lawyer Andrea Berlingieri, who today is with us and. Finally, our esteemed Giorgio Berlingieri, is currently President of the Italian Maritime Law Association (AIDM), and Vice-President for Italy of the Ibero-American Institute of Maritime Law, having been until October of last year, First Vice-President of the CMI. Therefore, we can say that the Berlingieri caste, which has dedicated its life to working with the CMI in the international unification of maritime law, has remained alive, not only with Giorgio, but also with Andrea.

Returning, to the tireless work that Francesco Berlingieri did for the Italian Maritime Law Association, he assumed its presidency in 1982, when he moved his headquarters from Rome to Genoa. Immediately and, in that same year, he organized the CMI Venice Colloquium of 1982. Then, he organized an Assembly of the same in Genoa, on June 27 1992, preceded by a Conference on contemporary issues related to maritime transport, jointly coordinated with Ricardo Monaco, then President of UNIDROIT.

Another event that, with these roles organized, also in Genoa, was a Seminar that took place from September 21 to 25, 1992, on the liability for marine oil pollution damages. The Seminar was followed by two meetings of the CMI Executive Council, with the adoption of a new Constitution of the same.

Francesco, during his long life, did not cease his extraordinary activity in the search for the uniformity of maritime law. From there, it is important to mention his contribution in the drafting work of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, later approved as "Rotterdam Rules", being delegate of the Italian Government to UNCITRAL and attending the sessions of the same in New York and Vienna. From his performance, in the UNCITRAL Project on the Rotterdam Rules, nothing better than bringing here the words of Kate Lannan, a UNCITRAL official, contained in her article "Francesco Berlingieri: The Gentleman Diplomat", inserted in the book published in tribute to Francesco in 2010, which brought together the essays of 90 academics from all over the world, on the occasion of his eighty-eight birthday (Scritti in Onore di Francesco Berlingieri). Kate points out that, "Professor Berlingieri has left his mark not only on the Convention itself but on so many of us associated with the Rotterdam Rules and with their negotiation in the international area. His professionalism, his unflagging enthusiasm, his tireless efforts, his diplomacy and his willingness to compromise to achieve the greater good are recognized by us all".

For all of this at the Seminar in his honor, held in September 2017 in Genoa, the CMI recognized his high merit, in the plaque that they delivered there, which reads as follows:

"Francesco Berlingieri, member of the Executive Council from 1972, President from 1976 to 1991, President Ad-Honorem since 1991, in recognition and gratitude for his service and devotion to the CMI".

He was Editor-in-Chief of the renowned maritime publication "Il Diritto Marittimo", and, until a few years ago, the person in charge of the CMI publications: Newsletter and Yearbook.

On January 10, 2001, the International Maritime Law Institute (IMLI), of the International Maritime Organization (IMO), conferred on him the title of Honorary Professor in 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 appointed by the now deceased, Secretary-General of the International Maritime Organization (IMO), Chandrika Prasad Srivastava, to write in 1988 the draft of the First "SYLLABUS" of the International Maritime Law Institute (IMLI).

He published many articles and books, being his textbook "Berlingieri on Arrest of Ships", a mandatory reference by numerous generations of lawyers, insurers, professors and students of maritime law.

Before finishing, with everyone here gathered in this beautiful and modern mega-metropolis of Mexico City, externalizing our tribute to whoever was one of our prominent Presidents, I want to remember that we are only a few days from October 8 of this year, date in which five hundred years of the entrance to it will be fulfilled, when it was called "Mexico-Tenochtitlan" and was the capital of the Aztec empire, of the conquering and adventurous hosts of Hernán Cortes, who were dazzled before the sight of the same, which was a city, for the time, larger than Naples and Constantinople (the ancient Byzantium, today Istanbul), considered the largest in the European world of that year of 1519.

For this reason and, since we are in Ibero-America, makes sense that we make a brief relationship of the contacts that Francesco Berlingieri had with our Ibero-American world, for the support of our associations of maritime law and our countries, because he was a true friend and collaborator in the work of unification of International Maritime Law.

I will begin with his visit to Madrid in 1955, representing for the first time the Italian association at the XXIII CMI conference where the so-called "Madrid Draft Convention of Limitation of Shipowner Liability" was approved, which in 1957 was signed in Brussels as Limitation of Owners of Sea-going Ships, a substitute for the 1924 Brussels Convention, given the problems posed by the limitation of liability, both in terms of setting the limits of liability, and in the inclusion of all those that could eventually be considered beneficiaries.

In May 1977, as I said at the beginning of these words, Berlingieri went to Rio de Janeiro to preside over the XXXI CMI Conference, an opportunity in which we met and began our friendship. In that conference, the first one and only one CMI conference held in a Latin-American country, two draft conventions were approved, on matters to which he showed a great devotion, one on Jurisdiction, Choice of law and Recognition and Enforcement of Judgements in Collisions Matters, and, the other, on Off-Shore Mobile Craft. It appears that the next CMI Conference to be held in a Latin-American country will be in 2024, also in Rio de Janeiro.

After his visit to Rio de Janeiro, Francesco Berlingieri, the same 1977, was in Caracas, to give some lectures at the Faculty of Law and Political Sciences of the Central University of Venezuela, together with other great jurists, members and executives of the CMI, now deceased, José Domingo Ray, Nicholas J. Healy and Kaj Pineus.

In Caracas, he honored us with two magnificent presentations. One about the foundation and the works that had been imposed by the CMI, and the other on what, by that date was only Draft Rules to regulate the liability of the carrier of goods by sea, in order to replace the "The Hague-Visby Rules", the today "Hamburg Rules".

In his conference about the CMI, Francesco Berlingieri, told us that "the requirement of an international uniformity of Maritime Law has always been present over the centuries, and this is evidenced by medieval and Nordic medieval codifications, and in the special jurisdiction recognized in England to the Admiralty Court, which did not apply the Common Law but the Merchant Law, whose formation clearly showed the uniformity requirements of Maritime Law and whose origin was based on Roman Law."

These Journeys constituted the engine by which they began to develop studies of modern maritime law in Ibero-America.

In 1980, he visited us again to participate in the first event, supported and sponsored in a Latin-American country by the CMI, similar to the one that is inaugurated today, here in Mexico City, held in Margarita Island, Venezuela. In that international event, he spoke about the differences between Mortgages of Latin origin, and the Common Law Mortgage.

On the occasion of the CMI XXXIII Conference, held in Lisbon in May 1985, a group of Ibero-American lawyers attending it, over which Francesco Berlingieri presided, with his approval was subscribed what we call the "Lisbon Declaration", of which I was one of its drafters, sponsoring the Creation of a Private Association of Ibero-American Associations with the purpose of promoting the unification of maritime law in our region. That statement was the seed that gave birth to the Ibero-American Institute of Maritime Law (IIDM), whose Constituent Assembly, convened by the then President of the Spanish Association of Maritime Law and who was a prominent member of the CMI, José Luis Goñi Etchevers, was held in the city of Seville, in October 1987. Francesco Berlingieri as President of the CMI attended that Constituent Assembly, as a guest of honor, offering us words of greeting and good wishes to the nascent Institute.

At the beginning of 2001, Francesco Berlingieri, was admitted as a Corresponding Member by Italy of the Academy of Political and Social Sciences of Venezuela, presented for this purpose, an Essay on "The International Maritime Law Conventions and their role in domestic law" in which states its philosophy of the necessary unification of maritime law with these words, "... My firm and deep conviction is that it is necessary to continue the efforts... in favor of a uniform maritime law. It is no more useful that the rules that regulate the institutes of maritime law are similar, that the same rules are applicable in the different ordinances. Only through international conventions of uniform material law can this result be achieved... the ratification of a convention is certainly not enough - and sometimes even necessary - to ensure uniformity".

This journey of Francesco through Latin America was not only his, always accompanied by his beloved Anna. Ignacio (Nacho) and Ana Luisa Melo, hosts of this event remember with much affection and nostalgia the tourist visit of both, where they were accompanied, more than 45 years ago, to Taxco and Acapulco.

As you can see from that journey of Francesco through our Latin American countries, his contribution through his leadership, in the search for the uniformity of international maritime law, was undoubtedly invaluable. But he was not only present in our countries in this titanic work, but he did so in almost all other CMI member countries. Just to remember one of his last efforts is the database on Maritime Jurisprudence which the University of Singapore had already implemented.

To finish this posthumous tribute to Francesco Berlingieri, it is necessary to point out that he was a great human being, a gentleman, a true English Lord. His treatment was always kind, receptive, and, along with his beloved wife Anna, they were great hosts at the CMI events and conferences, so we must bring up the communication, which on March 6, 2018, our former President, The Australian lawyer, Stuart Hetherington, sent to all the titular members, announcing his death, where he highlighted his great work, developed during his long and fruitful life, in the interest of the unification of international maritime law, remembering some of his virtues, the of being, as had highlighted in 2010, Kate Lannan, on the occasion of the celebration of her 88 years, a "Consummate Gentleman Diplomat".

The time that has been granted to me to present this posthumous tribute to Francesco Berlingieri, is not enough to review the great legacy he left us in his stubborn work in the unification of maritime law, but I do not want to miss to remember his visionary and still present words, pronounced in Caracas in 1977, when referring to the future of the CMI said that it depended on its constant sensitivity to economic legal problems that arise or may arise, and above all to competition and devotion to the cause of the unification of Maritime Law that all its members have always demonstrated, that they have dedicated and continue to dedicate the best of themselves to the cause of the international unification of Maritime Law.

Finally, and to conclude, using the headline of the Genoa newspaper "Il Secolo XIX", of March 10, 2018, "quando muore una <<leggenda vivente>>, rimane la leggenda".

Gentlemen and Ladies, thank you very much for your attention.

Luis Cova Arria
Mexico City, September 30, 2019

International Effects of Judicial Sales

Report on the proceedings of the 2nd meeting of Working Group V1 of UNCITRAL on The Judicial Sale of Ships Vienna 18th to 22nd November.

Dr. Ann Fenech
Vice President CMI
Co-Chair of the IWG on Judicial Sales of Ships
Co-Ordinator for CMI for the project at UNCITRAL

1. Introduction.

As the CMI co-ordinator for this project I am delighted to report that the progress on the first revised draft of the Beijing Draft, which took place at UNCITRAL in Vienna between the 18th to the 22nd of November, was substantial. This 2nd meeting of Working Group V1 brought together no less than 50 State delegations and 13 international organisations, inter-governmental organisations and non-governmental organisations, under the capable and steady Chairmanship of Dr. Beate Cherwenka supported by the ever present and ever constructive UNCITRAL Secretariat led by Mr. Jose Angelo Estrella Faria.

In my report to you all during our Assembly meeting in Mexico City in September, I had noted that the result of the deliberations at the very first Working Group V1 meeting was a first revised draft of the Beijing Draft which was carried out by the UNCITRAL secretariat.

The entire scope therefore of the 2nd meeting held in Vienna was to continue to fine tune and discuss the provisions of the revised draft. In preparation for this 2nd meeting the International Working Group on Judicial sales prepared the Vienna Meeting Notes containing some preliminary considerations of the CMI on the revised draft.

The revised draft, as published by UNCITRAL, (document no. A/CN.9/WG.VI/ WP.84) provided essentially for two scenarios. As stated in note no. II. 1. (a) of this document: *"In keeping with this decision, the first revisions follow the form and structure of the Beijing Draft considered by the Working Group at its thirty-fifth session, but includes, in italicized text, drafting options for a model law to help the Working Group visualize such an alternative."*

It was therefore anticipated ahead of the Vienna meeting that at some stage of the discussions there would be deliberations on the form of the instrument as well.

2. Level of participation.

The entire week was taken up with interesting debates on the various articles of the draft which were open for discussion. It was hugely gratifying for the CMI to see such active participation by numerous state delegations and member organisations which put paid to the rather sceptical views of the past that this draft convention would not attract the interest of UNCITRAL member states. Intense daily pertinent and constructive interventions were made by Switzerland, China, Japan, Spain, Argentina, Russia, Iran, Korea, Italy, Singapore, United States, Belgium, Canada, Morocco, Croatia, France, Malta, Ukraine, Cyprus, Panama and Sri Lanka. The other non-state delegations present including the IMO, the IBA, the International Association of Judges, Law Asia, BIMCO, ICS, the International Law Institute, ITF, and the Moot Alumni Association, all contributed significantly to the debate by sharing experiences of the practical effect and results of situations effecting crew, creditors, owners and financiers explaining what the practical on the ground effect would be of the various articles under discussion.

Throughout the entire week CMI participated fully in the debate of each and every article and paragraph discussed, offering background and likely effect of each of the clauses as they were being deliberated.

3. Progress on the first revised draft.

Substantial progress was registered during the entire week on the first revised draft and deliberations and discussions were held on Articles 1,2, 3, 4, 5 ,6,7, 9, and 10. The extent of the progress was principally due to the fact that most delegations in Vienna had the benefit of having attended the first meeting in New York and time within which to become much more familiar with the subject matter and its objectives. There was clearly a much greater appreciation in the room for the entire *raison d'être* of the convention which was to ensure that a vessel sold free and unencumbered in a properly held judicial sale, must have the same effect in all state parties to the convention and that the failure of such an effect would have devastating and chaotic repercussions on international trade.

Thus it would probably be accurate to say that most of the discussions revolved around this central theme with a view to ensuring that this would be precisely the end result of the convention.

Clean title with no exceptions and the qualified sale conundrum

Extensive debate was held on whether or not the wording in the revised draft which spoke of a "clean" title except for those charges

“assumed by the purchaser” was of any benefit at all. It was agreed that if the convention is to reach its objective, we had to continue to speak about absolutely clean titles with no assumptions being made either by the purchaser or by the law of the judicial sale. With the constant deliverable being certainty, it was widely acknowledged that it would be totally counterproductive to speak of “clean title” whilst in the same breadth providing for exceptions. It was therefore agreed that the convention would only apply to judicial sales which conferred clean title to the buyer – a title which was completely free and unencumbered. This was also acceptable to those countries where there existed very specific and limited circumstances in which a judicial sale may not be totally free and unencumbered. In such countries such sales would and could continue to happen, however such sales would not be within the scope of the instrument. Ultimately a buyer of such a ship in such a country would be fully aware of the risks he would be taking and would know that he is NOT purchasing a ship which was totally free and unencumbered which would be undoubtedly reflected in the purchase price. It was stressed that the convention should not be there to offer protection to buyers who are fully aware that the ship they are purchasing is not free and unencumbered but to offer certainty to buyers who purchase ships free and unencumbered.

This was considered to be a major breakthrough in the discussion because an agreement on catering solely for judicial sales in which vessels are sold free and unencumbered effectively led to a significant sprucing up of the entire document and effected Articles 2 (2), 4 (1), 4 (2), 5 (1), 5 (2) (g), 5 (2) (h), 7 (2) and (8) (3) on Scope of Application, Effects of Judicial Sale, Certificate of Judicial sale, Deregistration of a ship, and Arrest of a ship.

This led to extensive discussions on the appropriateness of amalgamating article 4 on the effects of judicial sale in the State of judicial sale with Article 6 on the effects of judicial sales outside the State of judicial sale. This was felt necessary to reflect the view which appeared to receive substantial support being that a judicial sale which confers free and unencumbered title in the state of a judicial sale must have the same effect in all states parties. At the same time there was wide support for ensuring that the new wording would maintain the existing safeguard in article 4 (3) that nothing would affect the rights of any creditors in any ranking of creditors procedure or any *in personam* rights they may have against the old owner. The UNICTRAL Secretariat will be working on appropriate revised wording.

Notice of Judicial Sale

Another extensive debate took place in connection with Article 3, being the Notice of Judicial Sale. Numerous constructive suggestions were made with a view to improving the content of the notice requirements. With regard to the effect of failure to notify, it was widely accepted that it was of paramount importance not to place unrealistic burdens on registrars of ships who simply could not be expected to verify whether or not notice periods have been honoured. It was further acknowledged given the debate on Article 4 that it would be very challenging indeed in view of the different legal regimes involved to prescribe the legal effect of non-compliance and the common view was that this was a matter best left to domestic law.

Challenge to a Judicial Sale

In considering and deliberating Article 9 a very interesting discussion was held on the very obvious practical difficulties that would ensue in the event that a judicial sale transferring a vessel to a third party was challenged. Realistic scenarios related to the position of the new mortgagees, the difficulties in retracing or getting back any funds paid out from the proceeds of the purchase price to creditors, the position of any charterers of the newly purchased vessels and an infinite number of realistic scenarios were deliberated.

As a result there was at the end of the debate wide support for limiting article 9 to one which indicated clearly the appropriate court in the event of a challenge, limiting the article effectively to a jurisdiction clause whilst leaving all other matters to the domestic law of that court.

Circumstances in which a Judicial Sale has no effect.

An interesting debate took place on a number of issues effected by article 10 focusing on the importance of stressing that one was here talking about “international” effect and not in the state where the judicial sale was held. Similarly, on the issue of timing and whether or not it was at all advisable that there should be any questioning of the international effect beyond the time when the judicial sale was confirmed by the state of judicial sale in the act of issuing the Certificate, and this to limit the chaotic effects that would ensue if such a sale would be declared as having no effect. There was also wide support for ensuring that the grounds did not increase the risk for re-arrest to the detriment of the bona fide purchaser, possibly leading to the resale of the same vessel with all the further uncertainties and complications that brought with it. It was underlined that great caution had to be exercised to ensure that this article was not misused by unscrupulous arresting parties who knew they had no legitimate rights whatsoever against the ship owned by the new bona fide purchaser, aimed solely at illegitimately extorting funds from the new bona fide purchaser who may be coerced into giving in, in order to avoid disruption of his commercial arrangements. As a result of these deliberations there was wide support for the secretariat, in its further drafting exercise, to consider making a distinction between the limited ground of public policy in the case of the arrest of a vessel previously sold free and unencumbered in a judicial sale and grounds that would apply in the context of deregistering the vessel.

Convention v Model law

On the last day the Chair expressed the view that it would be of benefit to get a feel for the mood of the room in so far as concerns the form of the instrument and whether the instrument should take the form of a convention or a model law.

Of course, both Switzerland as the proponent of the instrument and CMI as the drafter of the Beijing Draft, made it abundantly clear that it is only a Convention that can achieve the purpose for which the Beijing Draft was intended. We underlined that the success of the entire project depended on the harmonization of the law of states on this very subject and that the only instrument that could lead to that was a convention and that leaving it up to each state to adopt at its leisure a Model Law would get us no closer to our objective than where we are today. The very mobility of ships, the multiplicity of jurisdiction which each ship typically touches or effects or is effected by in a typical voyage, made it all the more important that the subject matter is at the very heart of an international convention.

It was indeed gratifying to hear one state delegation after another and one organisation after another express the view that the appropriate form of the instrument must be a Convention with only one state delegation out of 50 state delegations participating at Vienna expressing a preference for a Model Law.

4. Conclusion

The above is intended to give a broad overview of the more important issues discussed. There were several other deliberations on a number of other matters. It was in conclusion agreed that the Secretariat would now work on a 2nd revised draft taking all the week's deliberations into account. This is not a task for the faint hearted given the amount of work and views expressed. Sincere thanks therefore go to the Secretariat and the Chair of Working Group V1 for their determination, perseverance and guidance and we look forward to the 2nd revised draft.

In addition, sincere thanks must go to CMI members who were part and parcel of a number of State delegations or international organisation delegations. Myself representing CMI apart, these were Alex von Ziegler the representative of Switzerland, Henry Li adviser to the Chinese delegation, Beiping Chu member of the Chinese delegation, Frank Nolan adviser to the American delegation, Manuel Alba adviser to the Spanish delegation, Tomotaka Fujita representative of the Japanese delegation, Jan Erik Poetschke adviser to the German delegation, Peter Laurijssen representative for BIMCO and IACS and Harmen Hoek representative of IBA. The contributions of all were crucial to the development of the debate.

Finally sincere thanks to all the national maritime law associations who assisted greatly in persuading their governments to attend and to take an active part in the deliberations in Vienna. There is of course, still a great deal of work to be done in preparation for the 3rd meeting of Working Group V1 which will be held between the 20th and 24th of April 2020. As soon as the Secretariat finalises the 2nd draft we will again be communicating with all the national maritime law associations so that they can again reach out to their respective governments in order that they may assist them with the preparations for the next meeting in New York in April.



Picture: (from left to right) Top row: Harmen Hoek, Manuel Alba, Frank Nolan, Alexander von Ziegler, Peter Laurijssen. Bottom row: Beiping Chu, Tomotaka Fujita, Ann Fenech, Henri Hai Li, Jan Erik Poetschke.

Cooperation between CMI and AMD: Vice President Dieter Schwampe attends the XXXIst General Assembly of the Association Mondiale de Dispatcheurs (AMD) in Koblenz/Germany – 22-24 September 2019

Dieter Schwampe, Vice-President CMI

AMD and CMI have entered into a direct relationship a while ago with AMD being a Consultative Member of CMI. ADM does not have corporate membership of other organisations, but CMI Vice President Dieter Schwampe attended AMD's 2019 General Meeting both on behalf of CMI as well as in his capacity as a Consultative Member of AMD. As a further guest, Mr. Phillip Norwood of the International Union of Marine Insurance attended. Mr. Norwood is the Chairman of IUMI's Salvage Forum, which deals with Salvage and GA matters.

AMD is the International Association of Average Adjusters with 53 members. Membership is for individual persons, not for companies. Apart from the formal relationship between the two organisations, there are close contacts on a personal level, with a number of AMD members, as members of National Maritime Law Associations, being actively involved in CMI work.

AMD's outgoing President Joern Groninger (Germany), whose two-year term ended after the General Assembly, is Chairman of CMI's Standing Committee on General Average. Further, ADM members Richard Cornah (UK), Michael Harvey (UK), Jonathan Spencer (USA) and Esteban Vivanco (Argentina) are members of

this Standing Committee. Jonathan Spencer is also a member of CMI's Standing Committee on Marine Insurance.

After dealing with AGM matters such as finances and approval of previous minutes, the Assembly heard reports from ADM members on activities of other organisations, namely, IUMI (Michael Harvey); IGP&I (Michael Harvey); BIMCO (newly elected President Vibeke Kofoed/Denmark); UNCTAD (Joern Groninger); ISU (Secretary General Marc Dekeukelaere/Belgium); and CMI (Jonathan Spencer).

This was followed by reports by three ADM Working Groups, namely, on "Autonomous Ships and the Impact on Insurance Claims and GA" (Michael Harvey); "Piracy and the 'Longchamp'" (Miles Duncan(UK)/Joern Groninger); and "General Average Problems" (Jonathan Spencer).

On the second day of the event, which took place on a ship on river Rhine, Dieter Schwampe and Phillip Norwood gave introductions into the work and activities of CMI and IUMI.

All attendants agreed that future close cooperation between the three organisations will be fruitful.

Report of the IWG on Piracy and Maritime Violence 1 Jan – Jun 2019

By Andrew Taylor

Overall the pattern of acts of piracy and maritime violence is slightly improving but the issue remains a blight.

Incident statistics

In the first half of 2019, 78 incidents of piracy and armed robbery were reported, significantly fewer than the 107 incidents reported for the same period in 2018. 78% of incidents (57) involved boarded ships, 3 ships were hijacked and 9 were fired upon. In stark contrast with the first half of 2018, during which 23 attempted attacks were reported, this year only 9 such attacks have been recorded.

Violence to crew statistics

Incidents of crime against crew members have also declined: 83 incidents were reported in the first semester of 2019, compared with 136 in 2018. Among those incidents, 38 involved crews taken hostage, 37 members of crews were kidnapped, 2 were injured and 1 was killed. There were no fatalities in 2018.

Location statistics

The vast majority of incidents took place in West Africa (28), particularly in Nigeria (21). In terms of crime statistics, 16 members of crew were taken hostage in Guinea, 12 hostages were reported in Nigeria and 14 kidnappings took place in Nigeria. Overall, 73% of global kidnappings and 92% of global hostages are attributed to the Gulf of Guinea region. To this day it remains the riskiest area for mariners.

INTERNATIONAL MARITIME ORGANIZATIONS. THE IOPC FUNDS: MEETING OF THE GOVERNING BODIES (October 2019)

Report by Patrick Griggs, CBE

The meeting of the Governing Bodies took place at IMO Headquarters on October 28th – 31st 2019 and was attended for CMI by Patrick Griggs and Rosalie Balkin.

Incidents involving the 1992 Fund.

The Prestige

(Doc. IOPC/OCT19/3/2)

This case needs no introduction.

As previously reported in December 2018 the Spanish Supreme Court delivered a judgment awarding damages in respect of this incident. The sums awarded were subsequently amended (in January and March 2019) and now stand at EUR 1,439.08 million (EUR 884.98 million for pollution damage and EUR 554.10 million for pure environmental and moral damages). In the judgment it was recognised that the damages for pure environmental and moral damage were not recoverable from the 1992 Fund.

On the other hand the Court found that the London P. & I. Club was liable for all the awarded damages, including pure environmental and moral damage, up to its limit of USD 1,000 million.

At its April 2019 session the Executive Committee had authorised the Director to pay to the Spanish Court EUR 28 million less EUR 800,000 to be held available to meet any judgment of the French Courts and EUR 4,800 to meet judgments of the Portuguese courts.

The Fund had made a payment of EUR 27.2 million into court in Spain in April 2019 leaving it to the court to distribute compensation between the claimants.

Civil proceedings continue in France with 19 actions still pending with claims totalling EUR 1.2 million.

It will be recalled that an action against the American Bureau of Shipping (ABS) is pending before the French Courts. ABS is denying liability by pleading sovereign immunity. This defence has been dismissed by the French Court of Cassation on the grounds that the negligence of ABS lay in its failure to carry out proper periodic surveys and not in its certification role for the flag state (Bahamas).

The case has now been referred back to the Court of First Instance in Bordeaux to consider the general merits of the claim against ABS. The Court will also be considering the merits of the Fund's recourse action against ABS.

Solar 1

(Doc. IOPC/OCT19/3/3)

The sinking of the Solar 1 in the Guimaras Strait, Philippines on August 11th 2006 involved the loss of 2,000 tons of industrial fuel oil.

32,466 claims had been received and payments have been made of PHP 987 million in respect of 26,870 claims. Three groups of claims remain outstanding: pollution claims made by the Philippine coast Guard, claims made by 967 fishermen and claims by a group of municipal employees.

Settlement of the Philippine Coastguard's claim for PHP 104.8 million was agreed in February 2016 between the Solicitor General and a representative of the Shipowners Mutual P. and I Club however the signature of the Solicitor General to the agreement is still awaited. It transpires that the settlement requires the approval of both the Lower and Upper Houses of Congress. Despite threats from the judge in charge of the case to dismiss claim for lack of prosecution the matter is still unresolved in the absence of Congressional approval.

As to the fishermen's claims the court has throughout insisted that it is the responsibility of the claimants to prove their losses. Their lawyers have, on several occasions, produced witnesses but in each instance the court has dismissed the claims on the basis that they had no factual or legal basis. It is not clear whether these claims will be pursued further.

97 individuals employed by the municipality of Guimaras commenced proceedings against the local mayor, the ship's captain, ship and cargo owners and the 1992 Fund claiming that they had not been paid for work which they did in relation to the pollution clean-up. At a series of hearings the claims were examined by the court and dismissed for lack of proof. Whilst the cases are still pending it seems unlikely that the Fund will be called upon to make payments.

Hebei Spirit

(DOC. IOPC19/3/4).

On December 7th 2007 the Hebei Spirit was struck by the crane barge Samsung no.1 off Taeon of the west coast of the Republic of Korea. Approximately 11,000 tons of crude oil escaped from the Hebei Spirit and serious pollution of the coastline resulted. 127, 483 claims were lodged in a limitation action commenced before the Seosan Court by the owners of Hebei Spirit. The Court determined that the limitation amount to be deposited should be KRW 230.9 billion or £157 million (being the calculated limitation fund of Hebei Spirit plus interest). The Court issued a table showing how the CLC fund was to be distributed between claimants.

In April 2019 a bilateral agreement was signed by the Government and the Fund whereby, on transfer of the balance of the amount available to pay claims, the Government would take over responsibility for their settlement. The Government of the Republic of Korea has confirmed that the few remaining pending court actions will shortly be withdrawn.

As between the Fund and the Skuld Club a provisional balancing payment was made in April 2019 leaving a small balance outstanding pending a final reconciliation of costs.

A recourse action against the bareboat charters of the crane barge was commenced by the Fund in March 2009. This claim will rank against the limitation fund of the barge which has been assessed at KRW 5.6 billion including interest.

This very complicated case is now more or less concluded and the delegation from the Republic of Korea paid tribute to the Skuld Club and to the Fund for the manner in which the claims had been handled. For its part the Chairman of the Fund Committee remarked that the Courts in the Republic of Korea had been extraordinarily efficient in dealing with the huge numbers of claims.

Redferm

(DOC. IOPC19/3/5).

The barge Redferm sank in March 2009 at Tin Can Island near Lagos, Nigeria following an incident during a transshipment operation involving the MT Concep causing pollution. In October 2013 a claim for \$26.25 million was lodged on behalf of 102 communities which claimed to have been affected by the spill. Because of the 3 year delay in submitting claims and the consequent difficulty in assessing the validity and amount of claims, the Director had advised that the claims should be rejected. In February 2014 the Director wrote to the claimants rejecting the claims on the grounds that (a) Redferm was not a "ship" within Article 1(1) of the 1992 CLC; (b) there were many discrepancies between the claimed losses and other sources of evidence; and (c) there was a lack of information about the claimants' identities and occupations.

In May 2018 an amended Statement of Claim was filed increasing the claim to \$92.26 million. At that stage the Fund felt obliged to file a defence. Since then there have been no further developments but the delegation from Nigeria took the floor to confirm that the action was on-going.

Haekup Pacific

(DOC. IOPC19/3/6 and IOPC19/3/6/1).

On April 20th 2010 the Haekup Pacific was in collision with the Zheng Hang off Yeosu, Republic of Korea. The Haekup Pacific was laden with 1,135 metric tons of asphalt and carried bunkers of 23.37 metric tons in the form of intermediate fuel and 13 metric tons of diesel oil. Haekup Pacific was a "relevant ship" within STOPIA 2006 with the result that the limit was SDR 20 million (\$28.14 million).

Initially there was a small leakage of fuel oil which caused minor pollution and the UK P. & I. Club paid \$136,000 for clean-up and preventative measures.

In May 2010 the Yeosu City and Marine Police ordered the owner to remove the wreck. In order to protect the 3 year time limit the owner and the insurers commenced proceedings against the Fund in the Seoul District Court. It was subsequently agreed between the parties that, as the cost of the wreck removal operation had not yet been incurred, the claim was subject to the 6 year time limit under Article 6 of the 1992 Fund Convention rather than the 3 year limit and the proceedings were accordingly withdrawn.

A survey conducted on behalf of the owners concluded that the wreck with its cargo could safely be left where it lay as it did not represent a pollution risk.

In April 2016 the owners and insurers, against the possibility that the authorities might still insist on the removal of the wreck, issued further proceedings against the Fund, this time in order to preserve the 6 year time limit. The claim was for \$53.27 million (later amended to \$25.13). In April 2017 these proceedings were stayed until further notice.

In September 2019 Yeosu City issued a document urging owners and insurers to comply with the wreck removal order and requiring them to provide details of their plans by February 2020.

As one delegation pointed out, the survey had revealed that the wreck was not a hazard to the environment and therefore the removal order could only be justified if the wreck was a hazard to navigation. If this was the case the Fund would not be liable for the cost under the convention though it would be liable for the cost of removing the bunkers.

Proceedings between the owners of the two vessels involved in the original collision are on-going. It follows that this potential claim is still alive and further developments are awaited.

Alfa 1

(DOC. IOPC19/3/7).

On March 5th 2012 the Alfa 1 struck the wreck of the City of Mykonos whilst crossing Elefsis Bay near Piraeus. She was carrying 1,800 tons of oil cargo. 13 kilometres of shoreline suffered pollution. Clean-up operations were undertaken. As the Alfa 1 is less than 5,000 tons the limitation amount under the CLC is SDR 4.51 million (EUR 5.51 million). The tanker had an insurance policy which was limited to EUR 2 million and only covered "non-persistent" oil. Claims for clean-up expenses were received from two contractors amounting to EUR 16.15 million and a further small claim was received for EUR 220,000 from the Greek State. In May 2015 the main contractor was awarded EUR 14.4 million by the Piraeus Court of First Instance. This claim was finally settled by payment by the Fund of EUR 12 million. The Fund is claiming the CLC limit of SDR 4.51 from the insurers.

The insurers were put into liquidation in February 2018 by the Bank of Greece.

Whilst there are on-going hearings to determine whether there is an obligation to insure where the quantity of oil cargo carried is less than 2,000 tons, the real issue is whether the Fund can position itself favourably in the liquidation to effect a meaningful recovery from the insurers.

Nesa R3

(DOC. IOPC19/3/8).

On June 19th 2013 the Nesa R3, which was carrying 856 tons of bitumen, sank off Port Sudan Qaboos, Muscat, Sultanate of Oman. The ship spilled an unknown quantity of oil causing pollution along 40 kilometres of shoreline. Clean-up operations were not concluded until June 2014. As the Nesa R3 carried less than 2,000 tons of cargo she was not required to carry compulsory insurance but despite this her owners had taken out liability insurance with the Indian Ocean P. & I. Club, Sri Lanka. The limitation amount under the CLC is SDR 4.51 million (£4.9 million).

In October 2013 the Omani Government commenced proceedings against the shipowner and insurers in the Court of Muscat on the grounds that neither party had met its obligations under the CLC. In February 2016 the Fund became a party to these proceedings. In a judgment of December 2017 the Court ordered owners and insurers to pay OMR 4,154,842.80 (£8.5 million) to pay OMR 1,777,113.44 (£3.6 million) BHD 8,419.35. This judgment is subject to appeal by both sides.

The Fund is now involved in seeking to effect a recovery from the shipowner and the insurer which involves proceedings in Sri Lanka against the insurers and in the UAE against owners.

Trident Star

(DOC. IOPC19/3/9).

On August 24th 2016 the tanker Trident Star spilled an unconfirmed quantity of marine fuel oil at the ATT Tanjung Bin Oil Terminal, Port Tanjung Pelepas, Malaysia during loading operations.

The adjacent container terminal and several vessels were oiled and some of the berths in the container terminal had to be closed. Clean-up operations were undertaken by the terminal's oil spill response contractor. The shipowner carried liability insurance

provided by the Shipowners' P.& I Club. The shipowner is a party to STOPIA but it is thought unlikely that claims will exceed the SDR 20 million threshold to trigger the agreement.

The owners commenced limitation proceedings in the High Court of Malaysia and a limitation decree was issued in February 2017 and the limitation fund was constituted in the court in March. Nine claims have been submitted against the fund and are being processed. As the Fund will be paying the claims it has intervened in the limitation proceedings.

The claims will exceed the vessel's CLC limit and it follows that the Fund will have to pay compensation with a right of recovery over against the shipowner's insurers under STOPIA.

The meeting authorised the Director to settle all legitimate claims.

Nathan E. Stewart
(DOC. IOPC19/3/10).

On October 13th 2016 this articulated tug-barge (consisting of tug Nathan E. Stewart and the tank barge DBL 55) ran aground at the entrance to Seaforth Channel, west of Bella Bella, British Columbia in Canada. Substantial quantities of fuel oil and lubricants escaped the hull of the tug. The DBL 55 was in ballast but on the previous voyage it had carried jet fuel and gasoline.

This scenario raised several interesting legal issues. Was the Nathan E. Stewart/DBL55 a "ship" within the definition contained in Article 1(1) of the 1992 CLC? The barge was not carrying oil in bulk at the time of the incident and it had not been established whether during any previous voyage it had carried any persistent oil in bulk as cargo. Its last known cargo was jet fuel and gasoline which are non-persistent. If the barge carried only non-persistent oil on previous voyages, the CLC and Fund Conventions would not apply and, since the oil spill came from bunkers, it followed that the Bunkers Convention 2001 would apply and its tonnage based limitation fund. No claims have been received by the Fund to date.

It is reported that the shipowners have made some payments to a "first nation community" affected by the spill and further undertakings have been provided to these claimants by the Ship-source Oil Pollution Fund (SOPF) .

In October 2018 civil proceedings were commenced on behalf of the claimants before the Supreme Court of British Columbia naming the owners, operators and the master and crew. Named third parties are SOPF, the 1992 Fund and the 2003 Supplementary Fund. In these proceedings the owners seek an order that the Bunkers Convention should be applied. Alternatively they plead for the application of the 1992 CLC and the 2003 Supplementary Fund and for payment of any excess above the Bunkers Convention limit by the two Funds. To complicate matters further the shipowners applied to stay the proceedings in the Supreme Court and to transfer of the case to the Federal Court of Canada on the basis that this is properly a Federal Court matter. It is notable that the claimants are no longer alleging that the barge had at any relevant time carried persistent oil in bulk and it follows that they must accept that the CLC 1992 and Fund Conventions do not apply.

In a decision in July 2019 the Federal Court of Canada directed that, until the limitation issue had been determined, actions in the Supreme Court should be stayed. The Court also directed that the limitation fund calculated on the basis of the Bunkers Convention (LLMC 76/96) should be constituted based on the combined tonnage of tug and barge. The Federal Court will be expecting to see evidence regarding previous cargoes carried on the barge to determine whether the CLC/Fund Conventions might apply.

It is not expected that the Fund will have much further involvement but it is seeking further information about previous cargoes carried in the barge and hopes to be able to apply to the Court for a declaration that the incident does not fall within CLC/Fund and seeking to be dismissed from the proceedings.

Agia Zoni II
(DOC. IOPC19/3/11).

The Agia Zoni II sank in mysterious circumstances in the Piraeus Anchorage area on September 10th 2017, escaping heavy fuel oil, bunkers and lubricants caused serious and extensive pollution.

With the ship re-floated and dry-docked an investigation got under way and the wreck was placed under arrest by the Public Prosecutor. In a report prepared by the Technical University of Athens it was concluded that the ship had sunk as the result of an on-board explosion. A separate inquiry conducted by ASNA for the Prosecutor took an apparently different view and decided that the ship had been deliberately sunk by the opening of cargo tank valves which had been sealed at the terminal after loading was completed. ASNA noted that the vessel, whilst seaworthy at the time of her loss, was 45 years old and that it would not have been worth the owners while doing the necessary work to maintain her seaworthy status. The unanimous decision of ASNA was that the loss was due to the deliberate acts of the shipowner, the ship manager, two crew members and (rather surprisingly) the salvors and one of the pollution clean-up contractors. So, we may be looking at a rather unusual "scuttling" case. The matter is now back in the hands of the Public Prosecutor who must decide what further steps he should take.

The 1992 Fund has received 373 claims amounting to EUR 94.64 million and \$175,000. Of these claims 312 have been assessed by the Fund's experts and 307 approved. To date the Fund has paid out EUR 11.27 million to 136 claimants.

In July 2019 two of the clean-up contractors commenced legal proceedings in Piraeus claimed the balance of unpaid claims amounting to EUR 30.26 million and EUR 24.74 respectively. In September 2019 claims were submitted on behalf of 78 fishermen totalling 2.18 million.

Given the Funds primary responsibility for paying the claims arising from this incident, delegates were keen to know what prospects there might be of recovering money from the owners and insurers of the ship. The Director advised that the owners appeared to have no assets and that he was not optimistic about the substance of the insurers. The Director also advised that in view of the ASNA report any further claims from the salvors would be viewed with suspicion.

Bow Jubail

(DOC. IOPC19/3/12).

On 23rd June 2018 the oil and chemical tanker Bow Jubail collided with a jetty in Rotterdam Harbour resulting in a bunker spill. It is anticipated that claims will exceed \$50 million.

At the time of the incident Bow Jubail was in ballast and that the oil spilled was bunker oil. An application was made by the owners to the Rotterdam Court to establish their right to limit liability in accordance with the Bunkers Convention 2001 (the LLMC76/96 limits). The court found that the owners had not succeeded in establishing that there were no residues of previous persistent oil cargoes still in the tanks. (It was accepted by owners that the burden of proof lay on them to prove this negative.) If the shipowners could prove the absence of residues, the Bunkers Convention would apply and the CLC and Fund would not be involved. If they could not prove the absence of residues, the CLC and Fund Conventions would apply. A final decision on this issue is expected before the end of the year. If the CLC applies the limit would be SDR 15,991,676 but as the ship is a party to STOPIA the shipowners will indemnify the Fund up to SDR 20 million. If the Bunkers Convention is found to apply the LLMC limitation fund will be SDR 14,312,384.

The Fund awaits the decision of the Rotterdam Appeal Court but the expectation is that, since the shipowners had effected a "deep clean" of the ship's tanks in order to be able to carry "clean" cargo, he is unlikely to be able to persuade the Court that residues of persistent oil remained. If this is the decision of the Court the involvement of the Fund in the case will continue.

Other matters of general interest.

The HNS Convention 2010

(DOC. IOPC19/8/2).

Nine years on and counting. The history of the HNS Convention has not been a happy one. In 1996 the IMO agreed the terms of a Convention to deal with issues of liability and compensation for claims arising from the escape of hazardous or noxious substances from ships. Over the next 3 years it became apparent that there were aspects of the Convention which made it unlikely that it would ever be ratified and adopted by a sufficient number of countries to bring it into force internationally. The IMO Legal Committee decided to review and revise the Convention in order to produce a more "user-friendly" version. This exercise produced the 2010 Protocol.

The Protocol will enter into force 18 months after at least 4 states, each with not less than 2 million units of gross tonnage, have ratified the Convention and after the IMO has been notified that 40 million tonnes of contributing cargo have been received by those liable to contribute funds to the general account under the Convention in the preceding 12 months.

On July 15th 2019 the Republic of South Africa deposited an instrument of accession and thereby became the fifth state to ratify. The other states which have ratified the Convention are Canada, Denmark, Norway and Turkey. Four of these states have reported more than 2 million units of gross tonnage and it follows that the first entry into force condition has now been met.

The five states have been reporting to IMO the total quantities of HNS contributing cargo they receive each year. For 2018 this amounted to 9,794,535 tonnes. It follows that the second entry into force requirement has not been met. At the Fund's meeting several states indicated that they were working towards ratification in 2020 or 2021.

A Resolution attached to the 2010 Convention requested the 1992 Fund Assembly to instruct the Fund's Director to set up the International Hazardous and Noxious Substances Fund (HNS Fund) which will fulfil the same functions in connection with HNS incidents as the IOPC Fund does for oil spills. Since then the Director has reported to meetings of the Fund's Executive Committee on the preparatory steps taken to set up the machinery for an HNS Fund.

The HNS Convention Fund now has its own website (www.hnsconvention.org) which contains much useful information for states working towards ratification. There is also an online HNS Finder database which identifies what are contributing cargoes for purposes of the Convention.

The Fund Secretariat continues to make preparations for the setting up of the HNS Fund's Headquarters. (It is not clear whether the HNS Fund will be an entirely separate unit or whether it will share staff and facilities with the present IOPC Funds secretariat.)

Current Status of the Fund Convention and the Supplementary Fund Protocol.

At this juncture 115 states are members of the 1992 Fund. With the addition of the Republic of Guayana in 2020 the total will rise to 116 states.

As to the Supplementary Fund, 32 states are members.

Information Services

The Fund Secretariat has always been very open in making information about its activities available to anyone who may be interested. On its website (www.iopcfunds.org) will be found regular up-dates on claims which are being dealt with. Reports on meetings are also available.

The Secretariat reported on the very substantial amount of traffic which the website generates. It is not necessary to register in order to gain access to the website though those who do register will receive regular email up-dates on any new documents which are published.

One useful addition to the website is a section containing "Country Profiles". The intention is that member states will submit for inclusion in this section copies of relevant domestic legislation which will be made available in the original language though states are encouraged to provide texts in English, French and/or Spanish.

Of interest to practitioners will be the new edition of the 1992 Fund Claims Manual which sets out claims assessment criteria. The Guidelines for presentation fisheries and tourism claims have also been up-dated.



The 2019 year is fast drawing to a close and it remains only to wish all our readers a very happy and healthy festive season and all the best for 2020.

From your editorial team-Rosalie Balkin, Evelien Peeters and Taco van der Valk



Picture: A typical Christmas scene in Canberra - some furry neighbours of Rosalie relaxing on the local golf course

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