

# COMITE MARITIME INTERNATIONAL

1997 - 2022

STUART HETHERINGTON



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## **Dedication and Thanks.**

This work is dedicated to the memory of the founders of the Comité Maritime International and all their successors who have devoted so much of their personal time to the uniformity of maritime law and in particular to all those mentioned in this history of the last 25 years who have served as officers of the CMI, board members and members of MLAs, Consultant members, Chairs of IWGs and ISCs and those who have written papers or spoken at meetings. All have contributed to the enrichment of our knowledge of maritime law.

I am also indebted to my personal assistant, Melissa Matheson, who assisted me during my Presidency of the CMI and with the preparation of the abridged history of the last 25 years of the CMI and this lengthier version. It can be said in all honesty that it would not have happened without her, and the support of our law firm Colin Biggers and Paisley.

Stuart Hetherington March 2023

Frontispiece: "The Shipowners' House" of the Royal Belgian Shipowners' Association. The restoration of the historical building at the Ernest Van Dijckkaai 8 in Antwerp Belgium. Reproduced from its magnificent publication of that name with the kind permission of the Royal Belgian Shipowners' Association.



## **The Comité Maritime International**

**1997 - 2022**

Stuart Hetherington

### **Introduction.**

This is a longer version of the history of the last 25 years that was incorporated in truncated form with the history of the period 1972-1997 and published for the 125 Anniversary Conference in Antwerp in 2022. It includes the materials contained in that earlier version (with some modifications) which had focused on the Conferences and meetings of the CMI, and some of the work done at those meetings. This version looks in greater depth at the operations of CMI during the period including Assembly and Executive Council meetings, work product, finances and the people involved in order to see the challenges that arose, particularly in relation to financial management but also in the administration of the organisation as a whole and the work of the various International Working Groups and Sub-Committees. I hope the electronic version will facilitate those carrying out research into the CMI's activities and work during this period.

### **Chapter 1**

#### **The Presidency of Patrick Griggs June 1997-June 2004.**

Foreword The Presidency of Patrick Griggs CBE. This chapter recounts significant meetings, including Conferences at Singapore and Vancouver, Colloquia at Toledo and Bordeaux and Assembly meetings in London and New York; events, administrative changes (including to accounting record keeping and development of a website); financial concerns and work done by the CMI (especially on Issues of Transport Law and a revision of the York Antwerp Rules (YAR)).



Patrick Griggs CBE.

#### **The President is off and running.**

Patrick Griggs, who had been extensively involved in the preparations for the 1997 Centenary Conference in Antwerp in June 1997, in particular in relation to the work described as "The Future of CMI", was clearly up and running and ready to take on the Presidency of the CMI, from Allan Philip, on his appointment at the Antwerp Conference. The new President had sent two letters during the course of 1997 to MLAs informing

them, firstly, of the discussions that had taken place at the Antwerp Conference in relation to the Future of the CMI and seeking their further input into those matters and, secondly, explaining what steps had been taken by the Executive Council in the light of their further correspondence, such as<sup>1</sup>:

- CMI would follow the lead recently set by the IMO Legal Committee to spend more time trying to have Conventions ratified;
- CMI would concentrate greater efforts on liaison with UN Agencies and individuals were given specific bodies to be responsible for;
- MLAs were urged to liaise with their applicable government departments;
- a Planning Committee would be established to identify topics for further work by the CMI; holding a Conference only every three or four years, and international or regional meetings to be held in between;
- for new projects where uniformity of maritime law is sought CMI would search for areas in which there are practical problems for which solutions can be found;
- proxy voting would not be introduced;
- a CMI brochure would be prepared and distributed to MLAs for marketing use;
- Conference documents and News Letters would continue to be published in English and French;
- the Nominating Committee was being requested to appoint younger members;
- new Rules and Guidelines for Nomination and Appointment of Titulary members would be prepared;
- some reductions would be made in allowances paid to Executive Councillors for attending CMI meetings;
- email capability had been installed in the Antwerp CMI office and a paid employee had been taken on to assist the Administrator;
- some changes to individual subscriptions of MLAs would be introduced and CMI would be more disciplined in following up arrears from MLAs.

The new President had assumed office carrying on from where he left off at the Antwerp Conference, putting into place in his first few years as President some of the ideas generated at the session on *The Future of CMI* in which he had played a significant role with Allan Philip in developing. These included: a greater concentration on ratification of conventions, continuing greater liaison with UN Agencies, an increased emphasis on younger members of MLAs, tightening up allowances made to Executive Councillors, an email capability in the CMI office in Antwerp, the development of a website, a greater spread of geographical representation on the Executive Council, tightening up of debtor controls on subscriptions from MLAs, and encouraging Executive Councillors to visit other jurisdictions and their MLAs. The President himself made many such visits, including to Oslo which led to the establishment of an IWG on Marine Insurance, which today is a Standing Committee.

On the work front the Carriage of Goods liability regimes received the greatest attention and development in the early years (under the leadership of Francesco Berlingieri, Stuart Beare, and Alexander von Ziegler). But the IMO's review of the Athens Convention 1974, Classification Societies, Offshore Operations, International interest in mobile equipment and its relevance to ships (what became the Cape Town Convention project), Enforcement of Measures against Piracy (under Frank Wiswall's watchful eye), the new Marine Insurance IWG, and of course the Arrest Convention 1999 (led by Francesco Berlingieri) all engaged a large amount of time and human resources.

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<sup>1</sup> CMI News Letter No 4 1997

In relation to administration considerable work was done concerning CMI's finances in the setting up of an Audit Committee under Senator David Angus QC of Canada, the computerisation of the accounts, and the incremental increases in MLA subscriptions. In addition Nigel Frawley took over the role of Chair of the Nominating Committee when Bill Birch Reynardson stepped down.

Together with five other members of the Executive Council the new President attended the MLAUS Fall meeting in October 1997. On 4 November 1997 he attended a meeting of the Swedish MLA and on 19 November he attended a meeting hosted by the ICC to discuss the future of the International Maritime Arbitration Organisation (IMAO), which was a joint ICC/CMI scheme to provide arbitration services for determining maritime disputes. The history of this venture is well captured in an article in the CMI News Letter by Rafael Jakoba, (special counsel ICC International Court of Arbitration)<sup>2</sup> in which he accurately described it as "under-utilised and remains somewhat obscure".

The President also attended a Judges' seminar organised by the Canadian MLA and started the new year by attending a meeting of the Belgium MLA on 29 January 1998. On June 4-6 1998 he attended a Marine Insurance Symposium organised jointly by the CMI and the Norwegian MLA<sup>3</sup> which was to lead to CMI appointing an IWG to consider Issues of Marine Insurance which is now a Standing Committee with a wide remit, and on 24-28 June 1988 he addressed the International Conference on Arbitration and Maritime Law held in Barcelona<sup>4</sup>. Also in 1998 he addressed the Hong Kong Shipowners Association and the Singapore Shipping Association on the topics of the "History, role and current work of the CMI"<sup>5</sup>: He also attended meetings of the IMO Legal Committee and regularly reported on them in the News Letter, as did Richard Shaw on the IOPC Fund meetings.

#### **Executive Council Meeting at the offices of Ince and Co London, UK 14-15 November 1997.<sup>6</sup>**

The matters discussed at the first full Executive Council meeting chaired by the new President are instructive. In one important respect it represented a changing of the guard. The President warmly thanked Henri Voet for his "amazing work in preparing financial statements and keeping the Treasury of the CMI in good order over all these past years." He handed over responsibility to Paul Goemans as the new Treasurer at the end of the year. In relation to finances the Minutes noted that a considerable reorganisation of contributions to be made by MLAs was being undertaken by a "Contributions Committee" with movements being recommended within the different categories of the membership. It is also noteworthy that a surplus of Pounds 38,000 was made from the Centenary Conference.

#### *Work in progress*

##### *Uniformity of the law relating to maritime transport.*

This was the first topic discussed under Work in Progress. The Secretary-General (Alexander von Ziegler) reported on a Steering Committee meeting held in Palm Springs at the MLAUS Resort Meeting (where 6 members of the CMI Executive Council were present, including most of the members of the CMI IWG on Maritime Transport) and they had discussed the most effective framework or structure for its work in this area by dividing it into three parts: Liability chaired by Francesco Berlingieri; the work identified by UNCITRAL in its report on Electronic Commerce, considering the relationship between contracts of carriage and sale contracts; and the EDI group. In relation to the former Francesco Berlingieri reported on concerns being expressed by the IGP & I about the MLAUS having submitted a revised US COGSA and seeking CMI's intervention. The Executive Council whilst recognising these concerns and the proliferation of Hague Rules' variants took the position that it could not intervene but also noted that these developments "proved to the contrary that there is an urgent need for CMI and the international community to find a new basis for uniformity in this area."

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<sup>2</sup> CMI New Letter No 1 1997

<sup>3</sup> Report of speakers and summing up given at the Symposium by Patrick Griggs at CMI Yearbook 1998 "Issues of Marine Insurance" :pages 186 189 at which it is noted that at the Executive Council meeting in November it was decided to set up an IWG chaired by Thomas Reme

<sup>4</sup> CMI News Letter No 3 1998

<sup>5</sup> CMI News Letter No 4 1998

<sup>6</sup> CMI News Letter No 4 1997

### *Classification Societies*

Frank Wiswall reported on the difficult discussions which had taken place between the Classifications Societies (IACS) and the International Chamber of Shipping (ICS).

### *Offshore Operations*

The President reported feedback obtained from his attendance at the MLAUS meeting to the effect that there was "great resistance from the off-shore industry to this project."

### *Wreck Removal and Bunkers at the IMO*

Reports were made on each of these two items of business on the IMO agenda. The News Letter also contains a lengthy report from the President on the 76th Session of the Legal Committee in particular on the topics of: Provision of financial security (previously Compulsory Insurance); Compensation for pollution from Ship's Bunkers; and the Draft Wreck Removal Convention.

### *IMAO*

The Secretary- General reported on a meeting he and the President had attended in Paris on the revision of the IMAO rules and identified the problems associated with this ICC and CMI venture into the world of arbitration

### *International Interests in Mobile Equipment.*

Thomas Reme reported that the term "registered ship" remained in brackets in the draft text, despite the strong views of the CMI that they should be deleted. He was requested to investigate further.

### *Carriage of Passengers and their Luggage by Sea*

### *The Athens Convention 1974 and its Protocols.*

Ron Salter reported that the IMO had decided to carry out a study to amend the Athens Convention.<sup>7</sup>

### *Salvage Convention*

Erik Japikse reported that the London market was working on a compromise to the controversial aspects of the Convention.

### *Arrest Convention*

Francesco Berlingieri reported on recent developments and would prepare a draft Position Paper for the Working Group and Executive Council.

### *Third Party Liability Convention*

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<sup>7</sup> CMI News Letter No 1 1998 reported that following the Executive Council meeting in November 1997 it had set up a small working group consisting of the President, Jan Ramberg and Karl Gombrii to prepare a Questionnaire on this topic. It was designed to assist in carrying out a comprehensive review of the Athens Convention. The reason for this is explained in the Questionnaire that was sent to MLAs. The IMO had decided to look at the possibility of amending or replacing the Athens Convention to achieve three main aims, namely (i) the carrier or performing carrier to accept strict liability for loss of life or personal injury to passengers; (ii) the carrier or performing carrier to be required to maintain evidence of the ability to pay claims either by way of production of a certificate of insurance or by producing other evidence of financial responsibility; and (iii) passenger claimants having the right to pursue their claims directly against the liability insurers or the person who has provided evidence of financial responsibility who would only have very limited defences available. The Legal Committee was also looking at an alternative scheme which would involve amending or replacing the Athens Convention to require the carrier or performing carrier to take out Personal Accident Insurance for each passenger, issuing an insurance certificate to each passenger giving direct insurance cover with a reputable insurer up to the maximum amount of the carrier's contractual or statutory liability.

Francesco Berlingieri had asked Professor Bonassies to prepare a draft text for such a possible Convention but expressed the view that it might prove to be too ambitious and not feasible.

## The Future of CMI

The Minutes also noted wide ranging discussion concerning this topic, based on the President's report summarising all the points made by the National Associations prior to, during and subsequent to the Antwerp Conference. The News Letter contained a transcript of the President's letter to MLAs.

Pascale Sterckx's title was changed to Administrative Assistant and Frank Wiswall's draft principles on Titular membership and Provisional membership in CMI was discussed which led to some changes to be circulated later by him.

### **CMI Assembly Meeting Trinity House London, UK 15 May 1998.**

This meeting took place at the home of the charity dedicated to safeguard shipping and seafarers which has been in this location since 1796 at Tower Hill, near the Thames and has been a much loved and enjoyed venue for the BMLA's annual dinner on many occasions.<sup>8</sup>

There were 37 attendees at this meeting which saw: Pakistan, and the Gulf States (admitted as a Regional Association) as members; Jean- Serge Rohart was elected for a second term to the Executive Council and Hisashi Tanikawa was elected for a second term as Vice President. It was announced that an email version of the News Letter would be produced, and annual subscriptions were increased by 3%.

### *Work in progress*

*Carriage of goods:* This work project continued apace, led by Francesco Berlingieri, Stuart Beare, (appointed the Chair of a newly established IWG with Professor Michael Sturley as the Rapporteur) and Secretary-General Alexander von Ziegler. This team (with the assistance of course, of members of the IWG, such as Prof Van der Ziel) carried, what ultimately became the Rotterdam Rules, through to its completion within the CMI and then UNCITRAL over many succeeding years. A Report of the first meeting of a "round table" meeting on 11 May 1998, 3 days before the Assembly meeting, attended by representatives from IAPH, IGPI, FIATA, ICS, BIMCO and FONASBA is in the News Letter.<sup>9</sup> Mr Sekolec of UNCITRAL who was granted Observer status at all meetings of the IWG, was also present and explained the general concerns that delegates to UNCITRAL had concerning maritime transport law and he welcomed the studies which CMI was initiating to clarify and highlight the many transport issues identified and indicate possible solutions.

*Classification Societies:* Frank Wiswall reported to the Assembly on the topic of Classification Societies and the CMI Model Contractual clauses covering the liability of Classification Societies and explained that it had not been possible to reach consensus between the shipowners (ICS) and the Classification Societies in relation to the amount of the limitation of liability to be applied. The Assembly unanimously adopted the Texts of Model Contractual Clauses (with the limitation figure left blank for the time being) as well as the Principles of Conduct.

*Salvage:* At the Executive Council Meeting in November 1997 in relation to the IWG on Salvage Erik Japikse had reported that the London market was working on a compromise to the controversial aspects of the Convention. Patrick Griggs reported on developments in relation to the so called SCOPIC Clause in the context of the LOF<sup>10</sup>. A more detailed Report<sup>11</sup> explained that the further work the Working Group had intended to carry out arising from the Antwerp Conference had been overtaken by "recent developments in the market," the bottom line of which was that as a result of negotiations involving P&I and other underwriters and the ISU progress was being made towards a compromise on various issues that had arisen under the Convention, and the agreements that it was hoped to reach early in 1998 would involve a regime that would apply everywhere without territorial distinction (thus removing the geographic restriction contained in Article 1.d) for the applicability of the special compensation, as well as to apply in all cases

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<sup>8</sup> CMI News Letter No 3 1998:Minutes of the Assembly

<sup>9</sup> CMI News Letter No 2 1998

<sup>10</sup> CMI News Letter No 3 1998

<sup>11</sup> CMI News Letter No 1 1998

whether or not there was clear evidence of the threat of damage to the environment. The new regime was also intended to provide in advance all rates for equipment and personnel, thereby producing greater clarity than was present under Article 14.3.

*Off-shore Operations:* Richard Shaw reported that the Working Group would draw on the Antwerp Conference papers in order to prepare a report for the IMO Legal Committee.

*IMAO:* Following the meeting attended by the President with ICC to discuss a revision of IMAO Rules on International Maritime Arbitration a Questionnaire would be sent to MLAs seeking advice about the needs and expectations of such a supranational maritime arbitration system.

*International Interests in Mobile Equipment:* Francesco Berlingieri advised that he would publish an article in the CMI News Letter pointing out the problems an international securities register on ships would pose. Thomas Reme reported on the decision taken by UNIDROIT to have the principal rules contained in a draft Convention and separate Protocols for special equipment, the one for aircraft having been drafted.

*Arrest Convention:* Professor Berlingieri had submitted his draft Position Paper and the responses received from MLAs, and after discussion he was authorised to revise the paper before submission to the IMO/UNCTAD Diplomatic Conference in March 1999 in Geneva.

*Marine Insurance:* Karl Gombrii reported on the Symposium in Oslo and envisaged that the results of the discussions would form a basis for further work by the CMI.

*Piracy:* Frank Wiswall reported on this new subject. He advised that a meeting was planned for a small group of representatives of international organisations to discuss a project to assist in the enforcement of measures against piracy.

#### **Executive Council Meeting London, UK 17 November 1998.**

Bill Birch Reynardson had advised the President of his intention to retire from his role as Chairman of the Nominating Committee and Nigel Frawley was nominated to replace him. Francesco Berlingieri proposed the publication of the News Letter and Part 1 and 111 of the Yearbook on a website. This prompted a decision to establish a website. The President tabled a paper containing Guidelines on recoverable expenses for Executive Councillors, which was welcomed. The problem of "unrepresentative MLAs" and "How to tackle" it was discussed.

#### *Work in progress*

*Off-shore structures:* Hirashi Tanikawa reported that at the IMO Legal Committee meeting which had received the report of the CMI following the Antwerp Conference it had decided to discuss further action at its 1999 meeting.

*Salvage:* It was looking at the impact of the UNESCO project on Underwater Cultural Heritage and considered that a Protocol to the Salvage Convention may be a solution.

*International Interest in Mobile Equipment:* It was agreed to write to UNIDROIT objecting to the inclusion of ships in the draft Convention.

*Athens Convention:* Responses to the Questionnaire showed a majority to be against strict liability, only a minority in favour of an increase in limits, a majority in favour of direct action against insurers being available, and a majority against a personal accident insurance scheme.

*Marine Insurance:* An IWG was set up to carry out a comparative study of national law on selected topics with the aim of offering governments assistance in making changes to their law by way of preferred solutions.

*Piracy:* Frank Wiswall informed that a Model Law with a system of reporting crimes would aim to unify the treatment of piracy cases.

*LLMC Implementation:* Professor Berlingieri reported on the interesting responses to the Questionnaire showing the different methods of implementation and enactment of procedural provisions. A possible outcome may be the production of Guidelines for the implementation of LLMC 1976.

### **1998 Yearbook.**

The 1998 Yearbook has papers on the following topics:

- Issues of Transport Law, Report of the Steering Committee by Alexander Von Ziegler.
- CMI Position Paper on the Draft Articles for the Convention on Arrest of Ships by Francesco Berlingieri.
- Panayotis Sotiropoulos Carriage of Passengers and their Luggage by Sea the Athens Convention 1974 and its Protocol. Synopsis of the Replies to the Questionnaire.
- Richard Shaw Offshore Craft and Structures: Report to the Legal Committee of the International Maritime Organisation from the International Sub Committee of the CMI. This contains a short valuable survey of the CMI involvement in this project since the Rio draft Convention of 1977, and a discussion of the 9 subjects considered appropriate by MLAs for inclusion in a Convention, in response to a Questionnaire distributed and responded to prior to the Antwerp Conference and reported on at that Conference in 1997.
- Frank Wiswall Uniformity of the Law of Carriage of Goods by Sea: Report of the Fifth Session of the International Sub Committee. This meeting had taken place on 9 and 10 November 1998. 14 MLAs were represented and delegates from 4 Consultative Members were present.
- Patrick Griggs Issues of Marine Insurance Report on Oslo Symposium in June 1998. There had been approximately 50 delegates attending from nine countries and there were nine presentations, which are listed. The purpose of the Symposium was to seek to identify the issues of marine insurance which most commonly gave rise to problems.
- Frank Wiswall Uniformity on the Law of Piracy. This reported on the first meeting on 8 July 1998 of the Joint IWG to determine whether a Model National Law on Piracy would be a useful tool in combating modern piracy, which was agreed together with Guidelines for its application.

### **Arrest Convention 1999.**

An event took place at the beginning of 1999 which has turned out in the intervening years not to have been as auspicious as might have been expected at the time. This was the adoption in Geneva on 12 March 1999 at a Diplomatic Conference of a new International Convention on Arrest of Ships. A report on the Convention by Francesco Berlingieri and the Convention itself occupy about three quarters of the first News Letter that year. The reasons for the changes and any differences between the ultimate provisions from the CMI Lisbon draft are discussed.<sup>12</sup> The provisions of the new Convention, as the author noted, had been rearranged in a more orderly fashion, whilst clarifying others (especially Article 3), from some of the provisions of the 1952 Convention.

Patrick Griggs delivered a paper at a Conference organised by the Centre for Oceans Law and Policy-University of Virginia and the IMO which is contained in the CMI News Letter.<sup>13</sup> In his paper he described the work methods of the CMI, and contrasted them with that of the IMO Legal Committee. He also, by using the Salvage Convention 1989 as an example, showed how public international law provisions have been crafted onto what is essentially a private international law instrument. (environmental salvage). He also referred to the CLC Convention 1969 as exemplifying a departure from traditional insurance law and the indemnity principle for its direct action provisions against insurers. In referring to provisions in Conventions specifying a requirement for compulsory insurance he highlighted the need to make clear in such Conventions the liabilities which were required to be insured.

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<sup>12</sup> CMI News Letter No 1 1999

<sup>13</sup> CMI News Letter No 1 1999

#### **MLAUS Centennial Meeting New York, USA 7 May 1999.<sup>14</sup>**

The MLAUS celebrated its centenary in New York on May 7 1999. A special meeting took place to honour the occasion and a number of local speakers including former President Nicholas J Healy and current President Howard McCormack spoke, as well as two international guests who made speeches of congratulation, CMI President Patrick Griggs and English Admiralty Judge David Steel. The latter in his characteristically amusing way entertained the audience and explained that he had had to seek permission of the Lord Chief Justice to attend and to that end produced the letter of invitation from the President of MLAUS which in his words "appeared to bear the message that I would be, in some strange way, greatly honouring the Association by drinking continuously with its members over a period of 4 days". Patrick Griggs paid tribute to former President of the MLAUS and Honorary Vice President of the CMI Nicholas Healy and concluded his remarks by saying he "would like to know how it is that your Association came into existence 9 years before the British MLA".

#### **CMI Assembly Meeting Century Club New York, USA 8 May 1999.**

Coinciding with the celebration of the MLAUS Centenary the Assembly meeting was held in New York. There were 60 attendees. Guatemala was approved as a new member, while Egypt, India, and Sri Lanka were expelled for non payment of their subscriptions. A source of concern to the new Administration was the accounts of the CMI which were somewhat opaque and outdated in their record keeping.

A decision had been made to appoint an Audit Committee consisting of Allan Philip, David Angus, Alexander Von Ziegler and Paul Goemans to review accounting procedures and a consultant was to be employed to assist in the reorganisation of the book keeping and budgeting methods.

The accounts up to 31 December 1998 showed receipts of Euro 246,843.60 and expenses of Euro 222,232.80. The Assembly was asked to approve an increase in subscriptions by a factor of 2.5%.

On the issue of Titulary Membership Frank Wiswall referred to the decisions made by the Assembly in 1997 and 1998 to establish Guidelines and a structure of procedures for the election of Titulary members. In particular he referred to the removal of the limits of the number of Titulary members for each MLA and that the applications were to be reviewed by EXCO. He also referred to the fact that there would no longer be a necessity that the nomination came from a national association and emphasis was placed on the fact that the criteria should be a direct contribution to the work of the CMI or its goals and evidence produced in support. He also indicated that the status of Provisional members was to be reviewed every 3 years. All of those proposed changes and the Guidelines which had been prepared for the meeting were approved by the Assembly.

The Assembly warmly showed its appreciation for the distinguished service that Bill Birch Reynardson had given to the CMI, in so many roles, including that of Chair of the Nominating Committee and Trustee of the Charitable Trust from which he also stood down. Nigel Frawley was formally appointed as Chair of the Nominating Committee. Luis Cova was elected for a second term to the Executive Council, Eric Japikse did not wish to serve a second term and John Hare was appointed for his first term.

The Assembly was informed that the Executive Council had decided to initiate a CMI website at a cost of approximately Euro 4,000.

#### *Work in progress*

*Carriage of Goods:* Alexander Von Ziegler reported on Issues of Transport Law and the progress made by the study group into the issues raised by UNCITRAL for uniformity in areas related to electronic commerce and a Questionnaire was being prepared in that regard. He also referred in his presentation to the Issues of Liability which were being discussed in the ISC under Francesco Berlingieri and explaining that the two groups would merge in the not too distant future. Alexander Von Ziegler also referred to the EDI working group which was supporting UNCITRAL's work in this area. Alexander Von Ziegler asked to be released from heading up that

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<sup>14</sup> Booklet The Maritime Law Association of the United States Special Proceedings of the Centennial Meeting May 7 1999



group and Johanne Gauthier was appointed to take over. Francesco Berlingieri reported that the review of the liability system had become part of a wider project.

*Classification Societies:* Frank Wiswall confirmed that no compromise had been made in relation to the limitation amounts which would be left in blank. Philippe Boisson thanked Frank Wiswall for his efforts and asked that the door remain open for further discussions.

*Offshore Structures:* Patrick Griggs reported that the work based on the CMI report remains on the working program of the IMO.

*IMAO:* Alexander von Ziegler reported that from the responses to the Questionnaire there was no need for an ICC/CMI arbitration system. A survey carried out by ICC obtained similar results so it was decided that no further work needed to be done on revision of the rules of arbitration and that no further marketing needed to be done for this Institution.

*Athens Convention 1974:* Panos Sotiropoulos reported that the results from the Questionnaire had been sent to the IMO and had been well received by the Legal Committee.

*Marine insurance:* Thomas Reme referred to the establishment of an IWG following the Oslo Symposium and that a Questionnaire had been sent out. A synopsis of replies would then be prepared.

*Piracy:* Frank Wiswall reported that there was a consensus amongst the international associations involved in the project that there could be a CMI Model Law on "Maritime Violence" and a Questionnaire had been sent to MLAs on that topic.

*Status of Ratifications of International Conventions:* Francesco Berlingieri reported that there were ongoing discussions with the IMO as to how to ensure ratifications, and implementation and interpretation of conventions being made in a way that uniformity is accomplished.

*YAR:* Thomas Reme reported that IUMI had asked CMI to revise the Rules to reflect the traditional function, namely "common safety".

*Creation of a Working Group on Future CMI Projects:* It was reported that a small working group to consider new areas of work for the CMI would be set up prior to the Singapore Conference 2001.

There were reports of significant developments in the News Letter in 1999, one being a series of administrative changes and the other work related which would both have a bearing on the CMI in the foreseeable future: Firstly, Patrick Griggs wrote to MLAs on the expiration of the first two years of his Presidency.<sup>15</sup> He referred to the: computerisation of CMI accounts undertaken by Paul Goemans since he took over from Henri Voet in 1997; the resolution made at the Antwerp Conference for the Nominating Committee to enlarge the spread of geographical representation of MLAs on the Executive Council; and to the fact that the threat of expulsion had been successful in a number of unpaid contributions being made or agreements entered into for payment.

Richard Shaw reported on the Annual Meeting of the Association of Average Adjusters in London at which, instead of the usual learned paper by the outgoing Chairman, a debate was organised on the issue of YAR reform which had been sought through CMI by IUMI. The Report is headed: "Whither General Average?".<sup>16</sup> In it Richard Shaw noted that the reform which was sought was to restrict allowances in GA to those expenses incurred while the vessel was actually "in the grip of a peril" and to exclude port of refuge expenses (including crew wages, fuel and stores), temporary repairs and costs of transshipment of cargo. Lord Donaldson chaired the debate. Nicholas Gooding, cargo underwriter of the Wellington Syndicate, had proposed the motion that "This House proposes that the scope of general average be restricted to the concept of common safety". Gooding was seconded by John Wilson, retired member of the Association of Average Adjusters, formerly of Richards Hogg International and those opposing the motion were Richard Cornah and Richard Shaw. An indicative show of hands showed a substantial majority against the motion.

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<sup>15</sup> CMI News Letter No 3 1999

<sup>16</sup> CMI News Letter No 3 1999

## 1999 Yearbook.

- Francesco Berlingieri: Uniformity of the Law of the Carriage of Goods by Sea Report on the Work of the International Sub Committee<sup>17</sup> In his Introduction Francesco Berlingieri highlights the decrease in uniformity that was occasioned by the Hague Visby Rules which was then exacerbated by the Hamburg Rules and continued its downward spiral as some States legislated hybrid versions of each. The learned author then provides a most useful summary of the path followed by CMI since then up to late 1998 to bring the liability regime back to a better, more unified place.
- Stuart Beare: Issues of Transport Law Introductory Paper<sup>18</sup> takes the story further, starting with the setting up of the International Sub Committee in November 1999 and outlining its Agenda into 2000 to consider areas of transport law not presently covered by international liability regimes with a view to achieving greater uniformity; the background, as he explains it, being UNCITRAL's Model Law on Electronic Commerce in which CMI had been involved in the drafting of Articles 16 and 17. This work had highlighted the effects that such developments had on bills of lading and relationships between buyers and sellers.
- Annex 2 International Sub Committee on Issues of Transport Law Issues For Discussion<sup>19</sup>
- Annex 3 Professor Michael Sturley Scope of application, duration of coverage, and exceptions to coverage in International Transport Law Regimes.<sup>20</sup>
- Questionnaire<sup>21</sup>
- Responses to the Questionnaire<sup>22</sup>
- Minutes of the 2nd Meeting of the "Round Table" on Issues of Transport Law 30 June 1999.<sup>23</sup>
- Stuart Beare: Intermodal Liability<sup>24</sup>
- The Statement of the CMI<sup>25</sup>. This discusses: the "Trend Towards Disuniformity"; the Draft Bill to amend the US COGSA 1936; Intermodal Transport; A new Transport Convention; An "Overriding" Regime; and the Current Work of the CMI.  
This is an interesting and highly significant historical document as it traces the history of the CMI in relation to carriage of goods. Starting in 1907 and moving to the Hague Rules and the Visby Protocol leading to the disunity that started with the failure by many nations to ratify the Visby Protocol, which was then exacerbated by the Hamburg Rules which came into force in 1992, and then further disunity being occasioned by many countries that introduced domestic legislation adopting non-uniform versions of the Hague-Visby Rules. It dates the CMI involvement in seeking to restore uniformity to a questionnaire sent out in 1994, in answer to which the majority of MLAs agreed that the proliferation of legal regimes was unacceptable. This led to the setting up of the International Sub-Committee which had five meetings and expected to conclude its work in 1999. There was a clear decision made at that time that a new Convention was necessary. At the same time the MLAUS had been drafting a bill to amend the U.S. COGSA legislation. An issue that had arisen at this time which added another layer of complexity related to combined transport, a draft Convention of which had been prepared by the CMI at its Tokyo Conference in 1969. In 1973 the ICC drafted rules for combined transport which was revised in 1975 and in 1980 there was a UN Convention on

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<sup>17</sup> CMI Yearbook 1999 (pages 105 to 116)

<sup>18</sup> CMI Yearbook 1999 (pages 117-120)

<sup>19</sup> CMI Yearbook 1999 (page 121)

<sup>20</sup> CMI Yearbook 1999( pages 122-131)

<sup>21</sup> CMI Yearbook 1999 (pages 132-138)

<sup>22</sup> CMI Yearbook 1999 (pages 139-319)

<sup>23</sup> CMI Yearbook 1999 (pages 320-323)

<sup>24</sup> CMI Yearbook 1999 (pages 324-326) Report of European Commission meeting on intermodal liability 19 January 1999

<sup>25</sup> CMI Yearbook 1999 (pages 326-332) 14 January 1999

International Multimodal Transport of Goods which was then followed by the UNCTAD/ICC Model Rules in 1992.

- Letter from Professor R.E Japikse to MLAs; Draft Convention on the Protection of the Underwater Cultural Heritage; Questionnaire; Synopsis of Replies to Questionnaire; and Draft Protocol for the Salvage Convention 1989 by the late Geoffrey Brice QC.<sup>26</sup>
- Thomas Reme: CMI Working Group on Marine Insurance- Challenges for the Future.<sup>27</sup> This report attests to the fact that CMI has never studied marine insurance and recounts the history of a change in this regard from the June 1998 meeting in Oslo referred to earlier, although he does not mention the first tentative steps taken at the Sydney Conference 1994. It refers to a reform movement in Australia to amend its equivalent to the Marine Insurance Act 1906 in its legislation of 1909. and describes the reasons the Questionnaire was drafted in the way it was.
- YAR Questionnaire on an eventual revision of YAR 1994.<sup>28</sup>

The President found time to speak at the Maritime Law Association of Australia and New Zealand's annual Conference in September 1999 on the topic of the "Future Role of the CMI in the Harmonisation of International Maritime Law". He described both the current work programme of the CMI, as well as its historical role and achievements, concluding: "I believe strongly that the CMI has an important role both as an initiator of projects of unification and, increasingly importantly, as a consultant to other international organisations who have the power to create new international instruments but may not have the knowledge to make them workable."

#### **Executive Council Meeting London, UK 12 November 1999.<sup>29</sup>**

It was reported that a vacant position on the Nominating Committee, for appointment by the Vice Presidents, had been offered to Professor Zhu Zengjie; the Executive Council also approved the President approaching those whom he had identified to serve on the newly established Planning Committee, and Francesco Berlingieri advised that the CMI website was up and running.

The Norwegian MLA celebrated its 100th Anniversary on 29 November 1999 and Professor Selvig gave a paper which is reproduced in the News Letter on "The International Shipping Law of the 20th Century".<sup>30</sup>

It is fair to say that at the end of the 20th Century CMI was contributing to an enormous extent and doing a great deal of work in key areas in which uniformity was greatly needed, some areas it had been grappling with for many years, such as Carriage of Goods, YAR (Thomas Reme has been appointed to Chair the new IWG), Arrest, and Offshore Structures, but also in new areas, at least for CMI, such as: Marine Insurance (which had been first given an opportunity to show its colours at the Sydney Conference in 1994, and that had been reactivated by the Oslo Symposium in 1998), Piracy, Classification Societies and Interests in Mobile Equipment, which had arisen.

An interesting and extensive Report of the Secretary-General of UNCITRAL dated 31 March 2000 (Document A/CN.9/476) on Carriage of Goods was published in the CMI News Letter.<sup>31</sup> This report, "Transport Law: possible future work" contains a comprehensive review from the perspective of UNCITRAL on the recent work done by the CMI and UNCITRAL in relation to Transport law following the previous work on Electronic Commerce in 1996 and was in preparation for the meeting of the ISC in April in London and the Colloquium in New York in July 2000. It is a sad commentary on the importance, or lack thereof, given to it by States that over 22 years later and after many years of work by the volunteers of the CMI and representatives of national governments attending UNCITRAL meetings that the liability regime that was completed in 2008 continues to gather dust.

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<sup>26</sup> CMI Yearbook 1999 (pages 333-362)

<sup>27</sup> CMI Yearbook 1999 (pages 363-367)

<sup>28</sup> CMI Yearbook 1999 (pages 368-369)

<sup>29</sup> CMI News Letter No 1 2000

<sup>30</sup> CMI News Letter No 1 2000

<sup>31</sup> CMI News Letter No 2 2000

## **CMI Assembly Meeting Watermen's Hall London, UK 11 May 2000.**

The first Assembly meeting<sup>32</sup> of the new millennium was held at the delightful 18th Century Georgian Hall near the Thames in the City of London. The first item on the agenda was to excuse the assistant administrator Pascale Sterckx from attendance, as she was having a baby. There were 53 attendees, (which included the President, two Past Presidents, three future Presidents, two future Secretary-Generals and one future Vice-President.)

The Netherland Antilles was welcomed as a new member; Ron Salter's two terms on the Executive Council expired and Panayotis Sotiropoulos had indicated he would not seek a second term. Stuart Hetherington and Gregory Timagenis were elected to replace them.

David Angus, the Chair of the Audit Committee, reported on the efforts to correct and reorganise the financial accounting of the CMI in order to clarify its financial situation. The accounting methods had been reviewed by outside accountants and changes made to the form of financial statements and to a simplified presentation of them. A 3% rise in subscriptions was suggested and accepted by the Assembly. It was also reported that there were ongoing problems with unpaid contributions.



Stuart Hetherington and the Honourable Senator David Angus  
CMI Sydney Conference 1994

### *Work in progress*

*Issues of Transport Law:* Stuart Beare reported that the Working Group had been entrusted by the ISC to prepare a first draft of an Instrument to be discussed in New York in July 2000, and a working paper on Liability Issues would also be prepared. The two topics would then be integrated into one Instrument. The project would cover multi modal transport. He also reported that cooperation with UNCITRAL had been excellent.

*GA:* Thomas Reme advised that IUMI had asked CMI to conduct a complete review and 15 responses to the Questionnaire had been received. Some were in favour of this and some did not consider a complete review was necessary.

*International Interests in Mobile Equipment:* Thomas Reme reported that the draft Convention no longer made reference to registered ships as mobile equipment. Patrick Griggs advised that container interests had expressed interest in having a Protocol.

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<sup>32</sup> CMI News Letter No 2 2000

*Classification Societies:* Frank Wiswall reported that Model Clauses and Code of Conduct had been approved in New York in 1999 but no limitation figure had been agreed. The "Erika" casualty had put pressure on the parties to reach agreement -if they did the Joint Working Group would be reconvened.

Patrick Griggs reviewed the work being done at IMO Legal Committee and advised that it was likely there would be a Diplomatic Conference in 2001 on the Bunker Convention and that discussions on the Passenger Liability regime is being given less priority.

### **Colloquium Hotel Beatriz Toledo, Spain 17-20 September 2000.**

In the beautiful city of Toledo the CMI was welcomed with true Spanish hospitality to its first meeting in that country since the Conference in 1955 at a well organised Colloquium by the Spanish MLA. The City of Toledo is a World Heritage site and known as "The Imperial City", from being the main venue of the Court of Charles V, the Holy Roman Emperor; as well as the home of El Greco in the later stages of his life. It was delightful in being set apart from a large city but close enough for delegates to visit Madrid, if desired.

This successful Colloquium was attended by over 175 delegates and 50 accompanying persons. The social events commenced with a cocktail function in the hotel gardens on the Sunday night, followed by a welcome reception at the Town Hall followed by an evening guided street walk in Toledo; later in the week a function was held at the University of Castilla-La Mancha in Toledo; the Executive Council and speakers were entertained for dinner by the Spanish Maritime Law Association in the magnificent grounds of the Cigarral de las Mercedes; and an excursion, described as the Don Quixote route, included observing windmills and wine sampling, lunch at the "Venta del Quijote" restaurant and a visit to an old theatre Corral de Comedias to watch a melodrama; and the meeting concluded with a black tie Gala dinner at the Hotel Beatriz.

This meeting took place over three days. During the business sessions the topics discussed were: Implementation and interpretation of maritime Conventions, chaired by José-Mariá Alcántara and Francesco Berlingieri with speakers: David Angus, José Goñi, Professor Carmen Alonso and Professor José Luis Gabaldón; Issues of transport law chaired by Stuart Beare and Jose Domingo Ray, with Rapporteur Michael Sturley, and speakers Karl Gombrii, Luis Cova Arria, and Dr Jernej Sekolec (of UNCITRAL); Issues of Marine insurance chaired by John Hare and Jean- Serge Rohart with Trine-Lise Wilhelmsen as Rapporteur and Speaker; General Average chaired by Thomas Reme and Pierre Latron with Rapporteur Richard Shaw and speakers Eamonn Magee, Geoffrey Hudson and Professor Anibal Sanchez; and Current issues of international maritime law chaired by Patrick Griggs and Frank Wiswall with speakers Rosalie Balkin and Dr Gao Jianning.

### **Executive Council Meeting Toledo, Spain 17 September 2000.<sup>33</sup>**

It was noted that Benoit Goemans had been appointed as Acting Treasurer in preparation for formally taking over the responsibilities of Treasurer from his father, who had himself taken over "a quite unusual bookkeeping and accounting system, and this in a period when CMI was in urgent need of major restructuring efforts in its financial affairs".

In an attempt to spread the management tasks of the CMI specific roles were nominated for Executive Councillors in relation to both the administrative and work aspects of the CMI, as well as liaison with particular geographic areas of MLA members.

Frank Wiswall produced designs for a new logo and letterhead for the CMI.

### ***Work in Progress:***

*Issues of Transport Law:* Alexander von Ziegler reported on the remarkable progress being made, and the Colloquium held in New York<sup>34</sup>, the ISC meeting and the CMI intervention at the UNCITRAL Commission meeting following that event. It had been decided to start work on a Draft outline of an Instrument for discussion at the next ISC meeting but the Executive Council decided that the Singapore Conference in early 2001 should not be involved in drafting an Instrument but in discussing the general principles.

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<sup>33</sup> CMI News Letter No. 3 2000

<sup>34</sup> CMI News Letter No 3 2000: The Opening Statement of the President of CMI at the Colloquium

*UNESCO Draft Convention on Underwater Cultural Heritage:* The potential of this project to affect the law of salvage had been identified by John Kimball in a paper and it was decided that an ISC should be created to investigate in what ways the Protocol drafted by Geoffrey Brice QC could solve the problems.

*Issues on Marine Insurance:* The report of Trine Lise Wilhelmsen on the replies to the Questionnaire would be published in the CMI Yearbook Singapore 1 for discussion at the Conference.

### **37th CMI Conference Pan Pacific Hotel Singapore 11-17 February 2001.**

The Welcome reception took place in the historically significant Raffles Courtyard, Raffles Hotel. During the week there was a night safari at the zoo with dinner and the opportunity to watch the nocturnal animals in the still warm but cooler evening. The Gala dinner was held in the International Convention & Exhibition Centre. On the Wednesday afternoon delegates enjoyed a tour of Sentosa Island. On other evenings delegates were wonderfully entertained by the local legal profession either at their homes or local establishments, including on Valentine's night.

The Conference ran smoothly and was a delight for the 354 delegates (and 93 accompanying persons) who luxuriated in the comfortable venue and was very well organised by the Singapore MLA (only formed less than 10 years before) under the leadership of its President Arul. As the CMI President pointed out in his Opening Speech<sup>35</sup> holding the Conference in Singapore was a recognition of the growing involvement of the Far East in international shipping and trade, whilst also noting that CMI had only twice branched out to the Far East before, (to Japan in 1969 and Sydney in 1994). At the Opening ceremony addresses were also given by Professor David Attard who spoke about IMLI and its focus on producing maritime lawyers around the world capable of developing maritime legislation, giving them drafting skills and the ability to participate in international maritime fora, and Professor Jayakumar, Minister for Law and Minister for Foreign Affairs in Singapore. He highlighted the long maritime tradition of Singapore and its position as the world's busiest port and the services it offers, including maritime legal and arbitration. He also made reference to the menace of piracy and Singapore's desire to be a world class insurance centre.<sup>36</sup>

As President Griggs said in Welcoming delegates the principal topics at the Conference were Issues of Transport Law, Issues of Marine Insurance, Piracy and General Average, with the possibility that all might produce a draft Instrument, Convention, set of Rules or Code to favour the international harmonisation of maritime law.

The materials available to delegates at the Singapore Conference are contained in CMI Yearbook 2000 Singapore 1 Documents for Conference<sup>37</sup>

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<sup>35</sup> CMI Yearbook 2001 Singapore II (pages 171-175)

<sup>36</sup> CMI Yearbook 2001 Singapore II (pages 177-180)

<sup>37</sup> Yearbook 2000 Singapore 1

CMI Yearbook Singapore 1 (pages 107-111) Report of the CMI Planning Committee (Issues of Transport Law (pages 112-289)

Stuart Beare: Introduction (pages 112-113); Agenda Paper (pages 114-117); Door to Door Transport (pages 118-121); Draft Outline Instrument (pages 122-171); Electronic Commerce Implications of the Draft Outline Instrument (172-175); Report of First Meeting of ISC on Issues of Transport Law (27 and 28 January 2000) (pages 176-201); Report of Second Meeting of ISC on Issues of Transport Law (6 and 7 April 2000) (pages 202-233); Report of Third Meeting of ISC on Issues of Transport Law (7 and 8 July 2000) (pages 234-262); Report of Fourth Meeting of ISC on Issues of Transport Law (12 and 13 October 2000) (pages 263-289); GA (pages 290-324); Thomas Reme: Report of the CMI Working Group (pages 290-291); Questionnaire on an eventual Revision of YAR 1994 (pages 292-293); Eamonn Magee General Average Reform The IUMI Position (pages 294-314); Geoffrey Hudson Lets Be Realistic (pages 314-324)

Marine Insurance

John Hare: The CMI Review Initiative (pages 325-329); CMI Questionnaire on Marine Insurance 1999 (pages 330-331); Trine Lise Wilhelmsen: Duty of Disclosure, Duty of Good Faith, Alteration of Risk and warranties (pages 332-411)

UNESCO Draft Convention on Underwater Cultural Heritage Note and Text of Draft Protocol (pages 412-414)

Uniformity of Law Concerning Piracy and Acts of Maritime Violence

Frank Wiswall: Report of the Joint IWG (pages 415-417); Model National Law on Acts of Piracy and Maritime Violence. (pages 418-423) List of Participants (pages 424-425); Abbreviated Responses to Questionnaire (pages 426-434)

Implementation and Interpretation of the 1976 LLMC Convention

Francesco Berlingieri, Richard Shaw, and Panayiotis Sotiropoulos: Draft Report (pages 434-445); State Parties to LLMC Convention (page 446); Legal Committee 80th Session Agenda item 10 (page 447); 21st IMO Assembly Administrative, Financial and Legal Committee (page 448); Questionnaire (pages 449-450); Responses to Questionnaire (pages 451-523); Implementation

**CMI Yearbook 2001 Singapore II** reports the conclusions reached and papers given at the following sessions:

- *The Report of Committee A on Issues of Transport law*:<sup>38</sup> noted that four papers had been prepared for the Committee's meeting in Singapore: A Draft Outline Instrument; a paper entitled Door to Door; a report produced by the E-Commerce Working Group "Electronic Commerce Implications of the Outline Instrument"; and an Agenda Paper which identified the particularly important issues for discussion, namely: Scope of Application (Type of Instrument, Period of Responsibility, Door to Door Transport and Through Transport); Liability (Basis of Liability, General or Detailed Provisions, Exemptions, Burden of Proof, Performing Carrier's Liability, Delay, Loss of Right to Limit Liability, and Shipper's Responsibility and Liability); Transport Documents(Transfer of Rights and Obligations and Rights of Control; Cargo Information in Transport Documents) and Electronic Commerce.<sup>39</sup>

The Resolutions of the Conference are reproduced in both the CMI News Letter and Yearbook.<sup>40</sup>

In respect of *Issues of Transport Law* it was requested that the ISC undertake further work on the basis of the Draft Instrument and the conclusions of the Conference, to complete the Outline Instrument so as to facilitate the needs of electronic commerce, to consult Member Associations and the Consultative Members of the CMI as well as sectors of the industries involved and revise the Outline Instrument upon collection of the replies, as well as requesting the Executive Council to report on the work of the CMI to the Secretariat of UNCITRAL at an appropriate time and in an appropriate form.

The conclusions and the debate at the Conference had been included in the report of Committee A, which was adopted by the Conference at the Plenary session leading to the decisions taken at the Assembly Meeting. The News Letter<sup>41</sup> also contains a letter from Stuart Beare to the President reporting that UNCITRAL was considering setting up a Working Group, potentially to begin work in 2002 to consider CMI's Outline Draft. In relation to electronic commerce, the Assembly had determined that the outline instrument should include principles and provisions to facilitate the needs of electronic commerce, it should apply to all contracts of carriage including those concluded electronically and the instrument must be medium neutral as well as technology neutral. That is, it should not be solely based on a registry such as Bolero. It must be suited to systems operating in a closed environment as well as those operating in an open environment and needed to be mindful that technology was evolving rapidly. There was also to be a clear statement in the instrument that one of the intentions of it was to remove paper based obstacles to electronic transactions by adopting the relevant principles of the UNCITRAL Model Law on Electronic Commerce, 1996. It is also noted that the introduction to that instrument does not contain any provisions dealing with jurisdiction or arbitration as those topics had not been considered by the ISC, it being thought to be premature before conclusions had been reached on the nature of the instrument, including its mandatory effect, the range of topics which it would cover and the scope of its application.

- John Hare in his report on *Marine Insurance* to the Plenary Session<sup>42</sup> referred to the *Discussion Paper* prepared in advance of the Conference<sup>43</sup> and noted that the Conference had been addressed by David Taylor, on behalf of the London market, Dr Gerfried Brunn, on behalf of the German market, Lord Mustill QC, Graydon Staring, Andrew Robinson, and Ian Davis of the Australian Law Reform Commission. By the Resolution of the Conference<sup>44</sup> it was agreed that the current study of the IWG was an exercise worth continuing from both an academic and practical perspective with a view to identifying and evaluating areas of difference in the national laws of marine insurance where a measure of harmonisation may be feasible and desirable, promote better knowledge and understanding of the differences and take into account in the study the role which marine insurance should be playing in promoting safety at sea, the

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of the LLMC Convention by State Parties (pages 524-617); National Rules of Procedure (pages 618-664); Passengers Carried By Sea: Paper of Walter Muller Passengers Carried By Sea. Should the Athens Convention 1974 be Modified and Adapted to the Liability Regime in Air Law? (pages-665 668)

<sup>38</sup> CMI Yearbook 2001 Singapore II (pages 182-187)

<sup>39</sup> CMI Yearbook Singapore 1 (pages 114-175)

<sup>40</sup> CMI News Letter No 1 January/April 2001; CMI Yearbook 2001 Singapore II (page 188)

<sup>41</sup> CMI News Letter No 1 January/April 2001

<sup>42</sup> CMI Yearbook 2001 Singapore II (pages 203-210)

<sup>43</sup> CMI Yearbook 2001 Singapore II (pages 189-202)

<sup>44</sup> CMI Yearbook 2001 Singapore II (page 211)

current economic structures within which marine insurance is underwritten and taking into account differences and similarities in common law and civil law systems.

- *Report of GA by the IWG and Resolution of the Conference.*<sup>45</sup> The meeting had been addressed by Nicholas Gooding of the London market, Lloyds Underwriter, with details of the background to the IUMI proposals for reform of the YA Rules. Geoffrey Hudson, the well known and respected average adjuster, presented his views and these two presentations aroused a lively discussion as to whether CMI should continue its work. The Resolution adopted at the Plenary meeting was for the IWG to continue its work to consider what, if any, revisions needed to be made in light of the deliberations and conclusions of the Committee meeting.
- *Report on the Model National Law on Acts of Piracy and Maritime Violence*<sup>46</sup>. In his report Frank Wiswall explained the history of this IWG since its formation in 1997, which had been tasked to draft a Model Law, referred to the seriousness of the issue under discussion, the involvement of IMO, INTERPOL and ICC-IMB and the other international organisations such as BIMCO, ICS, ITF, IUMI, IG P&I etc who had a keen interest in the issue, and its objectives to ensure that no act of piracy or maritime violence fell outside the jurisdiction of affected States to prosecute and punish these crimes, or alternatively to provide for extradition to another State. Another objective was to give full effect to the provisions relating to Piracy in the 1982 Law of the Sea Convention and to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Navigation ("SUA") for those States which have ratified that Convention.

Presentations had been made at the Conference by Captain Abhyankar, Sivakant Tiwari, Captain Thuillier, Linda Howlett, Detective Superintendent Suzanne Williams of the Metropolitan Police,<sup>47</sup> London, Rosalie Balkin, Gerhard Brunn, Peregrine Massey, and Dr. Samuel Menefee

The Resolution of the Conference<sup>48</sup> was to approve and endorse the concept of the Model National Law and the structure and provisions of the document<sup>49</sup>, subject to the points raised in the Conference Committee meeting; to transmit its final draft to the Executive Council and if approved by the Executive Council to transmit it to all MLAs and Consultative members of CMI with a request that they apply their utmost efforts to bring it to their governments' attention and urge them to enact the National Model Law, and to transmit it to the IMO for endorsement by the IMO Assembly.

- *Report of the CMI Working Group to the CMI Singapore Conference. Implementation and Interpretation of the 1976 LLMC Convention*<sup>50</sup> explains the prior history of the work undertaken by the Working Group and identifies the different methods adopted by States to give effect to the provisions (or some of them) of the LLMC 1976 and compares them. The Resolution of the Conference and Report to IMO by the CMI<sup>51</sup> approved the draft Report and resolved that it be sent to the IMO with a summary of the deliberations that had taken place and advice to the IMO that the CMI would be pleased to cooperate further with a view to finding ways to ensure that there is satisfactory implementation and uniform interpretation of the LLMC and other maritime conventions. The IWG was also asked to continue its work to develop measures to achieve that goal which could include: the establishment of a data base of court decisions on interpretation of the conventions, development of standard clauses dealing with implementation and interpretation for inclusion in Conventions, the establishment of a CMI Consultation service for such measures, training organisations such as IMLI where drafting of such measures is a curriculum subject, possible references to ICJ or other tribunals for rulings on interpretation in the course of litigation.
- *Passengers Carried by Sea*: This Conference session generated two papers:

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<sup>45</sup> CMI Yearbook 2001 Singapore II (pages 212-213)

<sup>46</sup> CMI Yearbook 2001 Singapore II (pages 214-220)

<sup>47</sup> CMI Yearbook 2001 Singapore II (pages 221-222)

<sup>48</sup> CMI Yearbook 2001 Singapore II (page 223)

<sup>49</sup> CMI Yearbook Singapore No.1 (page 418)

<sup>50</sup> CMI Yearbook 2001 Singapore II (pages 224-229)

<sup>51</sup> CMI Yearbook 2001 Singapore II (pages 230-233)



Charles Haddon-Cave QC: Limitation against passenger claims: medieval, unbreakable and unconscionable.<sup>52</sup>

Bernd Kroger: Passengers Carried by Sea-should they be granted the same rights as airline passengers?<sup>53</sup>

*The Resolution of the Conference* requested the Chairman of the Session to forward a report to the Executive Council summarising the discussions of the meeting and such report should be submitted to the IMO by the Executive Council for utilisation in discussions in preparation for the proposed Protocol to the Athens Convention 1974.

- *The Salvage IWG* met in Singapore and Eric Japiske's First Report on UNESCO Draft Convention on the Protection of Underwater Cultural Heritage was published in the Yearbook<sup>54</sup> which also contains the suggestion of the IWG that CMI recommend the adoption of the Brice Protocol by IMO.
- *Planning Committee*: The Resolution of the Conference was that the Executive Council implement the Committee's report and recommendations.<sup>55</sup>

#### **CMI Assembly Meeting Pan Pacific Hotel, Singapore 16 February 2001.<sup>56</sup>**

There were 62 delegates who welcomed a new member: Guatemala. Hirashi Tanikawa was stepping down as Vice President and David Angus and Karl Gombrii's terms as Executive Councillors had come to an end. President Griggs was elected for a second term, Frank Wiswall for a second term as Vice President and Karl Gombrii was elected as a Vice President; Thomas Reme was elected for a second term and Johanne Gauthier for a first term as well as Feng Liqi as Executive Councillors.<sup>57</sup> Both of those appointments were recognised at the time as innovative as Feng Liqi was the first Chinese Councillor and Johanne Gauthier the first female who had been elected to the Executive Council.

The longstanding administrator, Leo Delwaide, had tendered his resignation shortly prior to the Conference and the Assembly was informed that as an interim solution the Secretariat had moved to the same building as the Treasurer's office and Wim Fransen would oversee that transfer. Benoit Goemans was elected Treasurer, a role he would play successfully until 2014/2015, although he had, informally, already taken over the role on an interim basis from his father, and Alexander von Ziegler was elected for a second term as Secretary-General. The finances showed a surplus of Euro 3,694, but, worryingly unpaid contributions were in the region of Euro 180,000. It was decided to continue subscriptions for the succeeding year at the 3% increased rate that had been set for 2002.

The CMI Constitution was changed to bring it into line with legal and tax status requirements in Belgium. In the discussions concerning amendments to the Constitution it was suggested by one delegate that Executive Councillors' term should be reduced to three years, from four for each two year period that they might serve. (This suggestion was to be taken up a few years later as will be seen.)

Frank Wiswall announced that the Handbook on Maritime Conventions, would be given a second edition and was in the course of preparation.

In "News from the IMO"<sup>58</sup> the President reported that on 23 March 2001 a final text of a Bunker Pollution Convention had been agreed and provided a commentary on it.

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<sup>52</sup> CMI Yearbook 2001 Singapore II (pages 234-243)

<sup>53</sup> CMI Yearbook 2001 Singapore II (pages 244-252)

<sup>54</sup> CMI Yearbook 2001 Singapore II (pages 254-258)

<sup>55</sup> CMI Yearbook 2001 Singapore II (page 259)

<sup>56</sup> CMI News Letter 2001 No 2 May/August

<sup>57</sup> CMI News Letter No 1 September/November 2001 contains a tribute to Professor Feng Liqi who passed away in November 2001 at the age of 56

<sup>58</sup> CMI News Letter No 1 January/April 2001

Apart from the reports of the Conference the Yearbook contains many more papers and reports on the work of the CMI during 2001. These involved Issues of Transport Law; Model Law on Acts of Piracy and Maritime Violence; GA and Salvage.

On *Issues of Transport*, in particular, numerous meetings had taken place in 2001 after the Conference and responses received to the consultation paper and the CMI draft Instrument on Transport Law with explanatory commentary comprising 17 chapters: definitions, scope of application electronic communication, period of responsibility, obligations for the carrier, liability of the carrier, obligations of the shipper, transport documents and electronic records, freight, delivery to the consignee, right of control, transfer of rights, rights of suit, time for suit, general average, other conventions and limits of contractual freedom. As explained in the introduction to the draft instrument it had not been the subject of detailed consideration in Singapore as the meeting had concentrated on the main issues of principle.<sup>59</sup>

#### **Executive Council Meeting London, UK 7-8 December 2001.<sup>60</sup>**

It was reported that CMI had applied for the registration of the Constitution in accordance with Belgium's legal requirements for such organisations; on YAR: Frank Wiswall reported that there had been two meetings of the Joint Working Group since the Singapore Conference.

There was discussion about a new project that CMI had taken on with the IMO: *Places of Refuge*. The background to that being that at the 83rd Session of the Legal Committee of the IMO, in October 2001, a mandate was given to the Secretariat of the Legal Committee to work with the CMI to study this topic. This had followed the refusal of a number of States in the region of the Mediterranean to permit access to a place of refuge to a disabled tanker, the "*Castor*" in 1999, and the casualty of the "*Erika*" the same year. (Further impetus, if it were needed, was applied when the "*Prestige*" casualty occurred in December 2002 off the coast of Spain). In cooperation with the IMO Legal Committee CMI agreed to seek views on this issue. A Questionnaire to MLAs, drafted by the President Patrick Griggs and Richard Shaw, was circulated and an IWG set up under the Chairmanship of Stuart Hetherington, and including Gregory Timagenis (Deputy Chairman), Richard Shaw (Rapporteur), Derry Devine and Eric van Hooydonk.<sup>61</sup>

It was also reported that the topic of *Off Shore Mobile Craft* had been removed from the work programme of the IMO Legal Committee.

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<sup>59</sup> CMI Yearbook 2001 Singapore II (pages 265-621)

Issues of Transport Law: Report of the Fifth meeting of the ISC 16 18 July 2001 (pages 265-304); Report of the Sixth meeting of the ISC 12 13 November 2001 (pages 305-356); Draft Outline Instrument of 31 May 2001 (pages 357-378); Consultation Paper of 31 May 2001 (pages 379-382); Synopsis of Responses to the Consultation Paper and other Comments on Draft Outline Instrument. (pages 383-531); CMI Draft Instrument on Transport Law (pages 532- 597).

Model National Law on Acts of Piracy and Maritime Violence: Frank Wiswall Final Report of the Joint IWG, Model National Law on Acts of Piracy and Maritime Violence, and List of Participants (pages 598-607); The Final Report explains that the Model Law (as annexed) was redrafted taking into account the debate which had taken place in Singapore.

GA Report of the Chairman of the Joint IWG on Issues in General Average to the Executive Council on two meetings of industry representatives on 8 May and 5 December 2001(pages 608-614)

Salvage: UNESCO Draft Convention on Underwater Cultural Heritage: John Kimball Report to CMI IWG on Salvage of Historic Wrecks, including letter sent by President of the CMI to UNESCO (pages 615-621) This report was on the last sessions of the Fourth Meeting of Governmental Experts which ended with the approval of a Draft Convention and expressed the opinion that there was no prospect that the Brice Protocol would be considered. It contained a recommendation that the CMI President write to the Director General of UNESCO to record CMI's opposition to the draft Convention.

<sup>60</sup> CMI News Letter No 1 September/November 2001

<sup>61</sup> CMI News Letter No 1 September/November 2001: News from Intergovernmental and International Organisations , 83rd Session of the IMO Legal Committee

**CMI News Letter No 3 September/November 2001** contains a report and commentary on the CMI Draft Instrument on Transport Law, which records that it had been delivered to UNCITRAL on 11 December 2001, and a paper by Patrick Griggs "CMI in the 21st Century", which includes a summary of the current work projects of the CMI.

#### **Executive Council Meeting London, UK 9 May 2002.<sup>62</sup>**

Guidelines for Future CMI Conferences as initially drafted by Patrick Griggs and Stuart Hetherington and amended as a result of Executive Council input was finalised.

Frank Wiswall presented a short but historically significant report to the Executive Council on "Development of the present structure of the Executive Council". He described the following stages: between 1897 and 1899 the CMI met annually in Conference, and the Conference elected the Bureau (officers) on an annual basis. From 1889 until 1955 the governing body of the Comité was the "Bureau Permanent", elected by the (quadrennial) International Conference. The Bureau Permanent normally met annually and comprised the President, one Vice-President, one or more Secretaries and one representative of each of the national member associations chosen from among the Titulary members. This was increased in 1955 to include one or more Vice-Presidents, one or more Secretaries-General, and a Secretary Administrative. The Bureau of Officers - with the exception of the Vice-Presidents - was constituted as an "Administrative Council" and was delegated substantially all of the functions of the (then 28-member) Bureau Permanent. The 1972 amendments to the Constitution replaced the Bureau Permanent structure which elected, for terms of three years a Bureau consisting of a President, one or more Vice-Presidents, a Secretary-General Executive, a Secretary-General Administrative (a.k.a. "Administrative Officer"), and a Treasurer. In addition to the Bureau a new interim governing body, an Executive Council of six members was established, each being elected for staggered terms of three years. It became the custom to limit the terms of the members of the Executive Council to two but there were no set term limits in the 1972 Constitution. It also became the custom to elect ten "International Vice-Presidents" who were invited to attend and vote at meetings of the Executive Council as well as the Assembly. The positions of Secretary-General Administrative and Treasurer were effectively combined so that a full attendance at Executive Council was 19 in person. By 1990 it was concluded that a more efficient structure was needed which would ensure a turnover of the governing body but would at the same time preserve the continuity of both administrative and operative experience. The 1992 Constitution therefore provided that all members of the Executive Council were officers of the Comité and that all offices were held for terms of four years without the possibility of succession in the same office for more than one additional term save for the offices of Secretary-General, Administrator and Treasurer and no term limits were imposed. At the same time the number of Executive Councillors was increased from six to eight, with specified criteria for election and the number of Vice-Presidents was reduced to two. In addition, the Immediate Past President was made an officer of the CMI with the option to attend Executive Council meetings, thus reducing the size of the Executive Council from 19 to 15. There was an expectation at the time of the adoption of the 1992 Constitution that there would be a progression from service as an Executive Councillor (or one of the other offices) to service as a Vice-President to service as President, recognising that to make a progression in office could theoretically span 32 years. That was expected to be highly unlikely. It was also the expectation in formulating the 1992 Constitution that one of the Vice-Presidents should be a long term officer, serving for a span of 16 years, as an information resource owing to continuity of experience. The 1992 Constitution entered into full effect at the Sydney Conference in 1994.

#### *Work in progress*

On *Issues of Transport Law* it was reported that a paper on "Door to door transport" was being prepared with UNCITRAL; on *Classification Societies* it was reported that the EU had issued a Directive regulating the liabilities of Classification Societies which could cause the CMI initiative to be reinvigorated and on *Places of Refuge* it was reported that the IMO Legal Committee had asked CMI to prepare a Synopsis on the legal consequences resulting from a refusal to grant a place of refuge.

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<sup>62</sup> CMI News Letter No 3 September/December 2020

### **CMI Assembly Meeting Watermen's Hall London, UK 10 May 2002.<sup>63</sup>**

This was attended by 44 delegates and Wim Fransen was appointed Administrator; Jean Serge Rohart concluded his terms of office and there was a further vacancy on the Executive Council due to the passing of Professor Feng. Jose Alcantara and Henry Li replaced them.

The Toledo Colloquium and Singapore Conferences had produced a healthy surplus, which allowed a liquidity fund to be established.

#### *Work in progress*

On *Issues of Transport Law* it was reported that UNCTAD and UNECE had reacted unfavourably to the CMI Draft Instrument, especially concerning the "door to door" coverage, and there was some scepticism within the Freight Forwarding industry; on *Issues of Marine Insurance* Professor Clarke was taking over the role of John Hare; It was reported that following the events on 9/11 in New York IMO was considering producing rules providing for greater transparency on ownership and control of ships, and on *Places of Refuge* there is a short report<sup>64</sup> on this topic to the effect that the initial CMI report to the IMO Legal Committee had been submitted in September 2002,<sup>65</sup> and the further issues on liability and compensation which arise when a state refuses a place of refuge, that the IMO expressed interest in exploring, had generated a further Questionnaire being sent to MLAs. (In 2002 and 2003 the IMO worked on and produced its Guidelines on Identification and Access to Places of Refuge for Ships in need of assistance.) It was also reported that the text on the *2002 Protocol to the Athens Convention 1974* had been finalised and adopted on 1 November 2002.

### **Executive Council Meeting Antwerp, Belgium 6-7 December 2002.<sup>66</sup>**

John Hare was welcomed back to duties having taken leave from the Council due to his wife's serious illness. It must be reported however that it was on this visit to Belgium that he took a train from Brussels to Antwerp which he found out, after the doors had closed, was destined for Paris. (The expression "mad professor" may have been mentioned when the meeting commenced!) John Hare raised the topic of terms of Executive Councillors. He supported a term of 3 years, extendable by a similar second term to replace the current 4 year terms. The majority preferred the status quo but were agreeable to changes in the make up of the Nominating Committee and its processes.

Alexander von Ziegler reported that UNCITRAL had set up an Expert Group to prepare a paper on the door to door issue in *Transport Law*.<sup>67</sup>

The News Letter contained an article by Patrick Griggs entitled: "International Maritime Law-A Busy Schedule" in which he discussed the status of a large number of International Conventions and other activities within IMO, IOPC, and work being undertaken by CMI in the areas of General Average/YAR, Marine Insurance and Criminal Acts on Foreign Flag Ships, as well Implementation of Conventions.<sup>68</sup>

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<sup>63</sup> CMI News Letter No 3 September/December 2002

<sup>64</sup> CMI News Letter No 3 September/December 2002

<sup>65</sup> CMI Yearbook 2002 (pages 117-146) and CMI News Letter No 2 May/August 2002

<sup>66</sup> CMI News Letter No 1 January/April 2003

<sup>67</sup> CMI Yearbook 2002

Places of Refuge:

Report of the CMI to IMO September 2002 (including Annexed Summary of relevant legislation. (pages 117-125); CMI Paper detailing responses from MLAs to Questionnaire September 2002 attaching a summary of responses in tabular form, a Schedule of Casualty experience, Guidelines of the State of Queensland and Extract from the US Coast Marine Safety Manual (pages 126-146); Criminal Offences committed on Foreign Flagged Ships Questionnaire, and IMO Legal Committee Paper submitted by Japan (pages 147-153)

Patrick Griggs and John Kimball Paper: Consideration of the UNESCO Convention on the Protection of Underwater Cultural Heritage March 17, 2003 (pages 154-157)

Patrick Griggs The Nicholas J Healy Lecture Obstacles to Uniformity of Maritime Law (pages 158-173)

The UNCITRAL Draft Instrument on the Carriage of Goods (by sea) and other Transport Convention Comparative Tables (pages 175-305)

<sup>68</sup> CMI News Letter No 1 January/April 2003

## **Colloquium Bordeaux, France 10-13 June 2003.**

The next CMI gathering took place at Bordeaux where a Colloquium was held between 10-13 June 2003. Despite the facts that the Colloquium took place whilst enormous infrastructure building works were taking place in the middle of the City, there was a national transport strike, a garbage disposal workmens' strike and temperatures of 40 degree were encountered the report of the Colloquium<sup>69</sup> described it as a "great success". That says much about the content of the work that was done, the organisation of the French MLA and the social activities that were organised.

There were 263 delegates (and 63 accompanying persons) from 30 MLAs and 3 Observers attending. The social programme included an excursion around a Bordeaux vineyard and tour of the medieval City of Saint-Emilion and a Gala Dinner at Chateau Giscours, including a visit to the wine cellars.

The business of the meeting took place in Hangar 14 on the banks of the river Garonne where the work topics were:

### *Trade and Transport Law in the Electronic Age*

Chair: Johanne Gauthier. Papers were given by Paul Mallon and George Chandler on how information technology is currently used in the maritime community; Phillipe Garo reviewed the impact of recent EU directives and UNCITRAL model laws dealing with electronic commerce and signatures; Luis Cova reported on implementation in South America of the UNCITRAL model laws; Gertjan van der Ziel analysed possible approaches to be taken in the discussions on the CMI-UNCITRAL Instrument to make it medium neutral so that contracts of carriage can be concluded electronically and panel discussions followed.

### *General Average*

Chair: Bent Nielsen. No conclusions were reached in relation to the following subjects referred to in the Working Group's Report: Common benefit, Redistribution of salvage charges, Time bar, Interest, Commission and miscellaneous "tidying-up issues". Subjects such as Absorption clauses and separate treatment of sacrifices of property were considered finalised.

### *Transport Law and the Draft Instrument*

Chair: Stuart Beare. Speakers included Professors: Philippe Delebecque, Michael Sturley, Francesco Berlingieri, who all spoke on different aspects of the CMI Instrument and the discussions at UNCITRAL as well as possible conflicts with European liability regimes covering land carriage, and Professor Ralph de Wit and Stuart Hetherington discussed jurisdiction clauses.

### *Marine Insurance*

Chair: Malcolm Clarke and John Hare. Papers had been prepared by Andrew Tulloch on Utmost Good Faith; Prof Trine Lise Wilhelmsen on misconduct and identification; Graydon Staring on Warranties and Conditions; and Malcolm Clarke on Alteration of Risk.

### *Places of Refuge*

Chair: Stuart Hetherington. Papers were given by Stuart Hetherington on the work done by CMI and the liabilities of States under international law; Richard Shaw spoke on the incidents involving the "Castor" and "Prestige", the relevant provisions in international Conventions and the recent IMO Guidelines dealing with Evaluation of Risks; Alfred Popp queried whether a new Convention was appropriate, and Gregory Timagenis focussed on contingency planning, storage and reception facilities for residues, and dock facilities for distressed ships.

### *Developments in International Maritime Law.*

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<sup>69</sup> CMI News Letter No 2 May/August 2003

Patrick Griggs discussed: Registration of Bareboat Charters, LLMC 1976 and 1996 Protocol, and Athens Convention 2002; and Alfred Popp spoke about the :HNS Convention, Bunkers Convention, IOPC Fund Working Group on revision of CLC and FC, Amendments to SUA Instruments and Wreck Removal.

#### **CMI Assembly Meeting Quai des Chartrons Bordeaux, France 13 June 2003.**

The attendance was 81 delegates. Bulgaria was readmitted as a member, and Luis Cova's terms having expired John Hare was appointed for a second term and Jose Tomas Guzman for a first term to the Executive Council, as Alexander von Ziegler was not seeking a further term Marko Pavliha was appointed Secretary-General. A substantial surplus was recorded for 2002: Euro 41,385 and new auditors Messrs De Mol Meuldermans and Partners were appointed, Kris Meuldermans being the partner in charge. He continues in that role (albeit at Vandelanotte) at the present time and the CMI owes a great debt of gratitude to Kris Meuldermans for his longevity and sound advice over the intervening years.

MLAs were asked to express their views on various alternative suggestions as to the method and numbers of publications they wished to receive. A preliminary decision was taken that News Letters would be distributed by email and placed on the website.

The President invited delegates to nominate members for the Planning Committee whose role would be to explore and consider areas of future work for CMI in the lead up to the Vancouver Conference.

#### **Executive Council Meeting London, UK 18 November 2003.<sup>70</sup>**

##### *Work in progress*

Francesco Berlingieri and Karl Gombrii reported on the *Transport Law* ISC meeting, which had taken place on 17 November 2003. Reference was made to the October meeting of UNCITRAL in Vienna, (and the Working Paper which had been prepared for that meeting) at which Door to Door coverage seemed to have been accepted. The following core issues were discussed and how they were to be treated in the Instrument: Scope of application, Basis of carrier's liability; Liability of Performing parties, Limitation of liability, and also Freedom of contract and Ocean Liner Service Agreements, (which were explained as including: Volume Contracts and Charter parties). The Reports of the 7th and 8th meetings of the ISC held in London on 27 and 28 February 2003 and 17 November 2003 together with a Report of the 12th session of UNCITRAL Working Group III held in Vienna from 6-17 October 2003 are attached to the Minutes.

Patrick Griggs reported that a YAR ISC had met in London on 17 November and had discussed whether the changes being sought warranted a new set of Rules.

On *Places of Refuge* Stuart Hetherington reported that an ISC meeting had taken place in London on 17 November at which a Discussion Paper he had prepared focussed attention on the questions for the meeting: (i) Is there something that CMI can do to assist in this area? (ii) If so, should it begin work on a Convention, Protocol to an existing Convention, a Model law, Guidelines or some other Instrument and (iii) what should be the content of any such documents. The meeting had answered positively to question (i), concluded that there may be areas in which a Convention or Protocol was appropriate and others in which a Model law might be appropriate to question (ii), and to assist with question (iii) it had identified 8 topics for consideration which are listed in Appendix B to the Minutes.

#### **Executive Council Meeting Vancouver, Canada 30 May 2004.**

It was announced that Messrs Berlingieri, Philip and Ramberg wished to retire from the Nominating Committee and Bent Nielsen had agreed to take on the Chair. In addition the Secretary-General Marko Pavliha had asked for leave of absence for 6 months when he expected to have certainty about his recent political appointment. After discussion the Executive Council determined that CMI needed a full time Secretary -General, especially given that a new President was about to take office, and could not hold the position in abeyance.

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<sup>70</sup> CMI News Letter No 3 September/December 2003

### **38th CMI Conference Westin Bayshore Resort and Marina Vancouver, Canada 30 May-5 June 2004.**

This was held at the beautifully situated and delightful Westin Bayshore Resort and Marina in Vancouver where in excess of 384 delegates and 120 accompanying persons convened. (If they lived locally the hotel permitted guests to bring their dogs). Delegates could watch the seaplanes take off and land from just outside the hotel and ferry passengers to the islands off the coast, (some delegates took sightseeing flights in a sea plane.) Guests could equally enjoy an easy walk into the City or nearby parks. It was a magical setting and extremely well organised under the watchful eye of the Chair of the Canadian Organising Committee, Michael Bird and his assistants Barry Oland, Douglas Schmitt, Peter Bernard QC and others, and President of the Canadian MLA Peter Cullen.

The social program involved a Welcome reception in the poolside garden of the Conference hotel, a delightful afternoon cruise to Granville Island on the Wednesday, a cocktail party at the Vancouver Aquarium and an Enchanted Rainforest Gala Banquet dinner in the ballroom of the hotel, (where the ballroom had been transformed with fir branches and other local colour into a woodland clearing.)

The Opening ceremony commenced splendidly with a traditional honour guard, provided by the Delta Police Pipe band and presentations including a Native Talking Stick by a First Nations Chief. The keynote speaker for the Conference was the Right Honourable Beverley McLachlin. PC the Chief Justice of Canada.

As Richard Shaw in his report<sup>71</sup> on the Conference noted the climate was exceptionally good for Vancouver the entire week. Richard Shaw also noted that Professor Marko Pavliha had been appointed his country's Minister of Transport and was thereby unable to continue the role of Secretary-General and that Nigel Frawley, Past President of the Canadian Maritime Law Association and Chairman of the Nominating Committee of the CMI had been appointed in his place. His report also contains summaries of the work done by the working Committees. As is traditional the materials to assist delegates for the Conference were published in CMI Yearbook 2003 Vancouver I. <sup>72</sup>

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<sup>71</sup> CMI News Letter No 2 May/August 2004

<sup>72</sup> CMI Yearbook 2003 Vancouver I Documents for the Conference - Transport Law

Stuart Beare Introduction (pages 120 to 121)

Draft Instrument on Carriage of Goods (wholly or partly) (by Sea) (pages 122 to 190)

Report of 7th Meeting of the CMI International Subcommittee on the issues of transport law held in London on 27-28 February 2003 (pages 191 to 198)

Draft Report of the 8th Meeting of the CMI International Subcommittee on the issues of transport law held in London on 17 November 2003 (pages 199 to 207); Phillipe Delebecque The UNCITRAL draft instrument on the Carriage of Goods by Sea (pages 208 to 229); Michael Sturley Transport Law: the treatment of the performing parties. (pages 230 to 244); Stuart Hetherington: Jurisdiction and Arbitration (pages 245 to 249); A Guide to E Commerce features and the draft Instrument on the Carriage of Goods (wholly or partly) (by Sea) (pages 250 to 259); Gertjan van Der Ziel the Legal Underpinning of E commerce in Maritime Transport by the UNCITRAL draft Instrument on the Carriage of Goods by Sea (pages 260 to 271);

General Average - Report by the CMI International Sub Committee on General Average (pages 273 to 311);

Places of Refuge - Stuart Hetherington Introduction April 2004 (page 314); Report of ISC meeting of 17 November 2003 (pages 315 to 326); Report of IMO with responses to second Questionnaire (pages 327 to 328); Richard Shaw: Places of Refuge International Law in the Making attaching IMO Guidelines on Places of Refuge for Ships in need of assistance (pages 329 to 343); Richard Shaw: Recent Developments Update as at August 2003 (pages 358 to 360); Stuart Hetherington Prestige Can the law assist?(pages 371 to 374); Gregory Timagenis: Places of Refuge as a legislative problem (pages 375 to 379); Stuart Hetherington: Discussion Paper (with three appendices) for ISC meeting London 17 November 2003 (pages 380 to 402); Eric Van Hooydonk: The obligation to offer a place of refuge to a ship in distress (pages 403 to 445); Richard Shaw: Designation of Places of Refuge and Mechanism of decision making (pages 446 to 456); Stuart Hetherington: Civil liability and monetary incentives for accepting ships in distress (pages 457 to 467); Frank Wiswall: Penal liability (pages 468 to 469); Gregory Timagenis: Reception facilities for ships in distress (pages 470 to 478); Welmoed Van Der Belde: The Position of Coastal States and Casualty Ships in International Law (pages 479 to 498)

Marine Insurance - Malcolm Clarke: Alteration of Risk (pages 500 522); Graydon Staring: Harmonisation of Warranties and Conditions: Study & Proposals (pages 522 to 533); Andrew Tulloch: Utmost Good Faith (pages 534 to 539); Trine Lise Wilhelmsen: Misconduct of the Assured and Identification (pages 548 to 572); Report on the IWG meeting in London in November 2003 (pages 573 to 574); Pollution of the Marine Environment: Colin de la Rue: Review of the Civil Liability and Fund Conventions (pages 576 to 580)

Criminal Acts on the High Sea: Frank Wiswall: Summary of current national laws applicable to the jurisdictional issues re criminal offences committed on board foreign flagged ships and Annex Working Paper for the Committee on Maritime Security re Criminal Offences committed on Foreign Flagged Ships (pages 582 to 585)

In his opening speech<sup>73</sup> President Griggs referred to the fact that Vancouver, and Western Canada, are well situated to benefit from the centre of gravity of the shipping industry having moved to the Far East (on which he had commented in his opening speech at the Singapore Conference in 2001). He also referred to the fact that the immediate Past President to the CMI Allan Philip had been prevented by ill health from attending the Conference and Francesco Berlingieri at the age of 82 was under doctor's orders not to take long haul flights and so was also not in attendance. That being the first Conference that he had not attended since 1951 in Naples. In his speech at the Assembly meeting<sup>74</sup> Patrick Griggs made reference to two of his contemporaries who had done so much work to assist the CMI in the past six years, they being Stuart Beare who had chaired the IWG and ISC on Transport Law and Richard Shaw who had been involved in so many of the activities of the CMI. He also made reference to Professor John Hare who had in the absence of the Secretary-General taken over his duties on a temporary basis, unknowingly gaining a very clear insight into what was required when he took over the role formally many years later.

The working sessions of the Conference and the reports of them are contained in Yearbook 2004 Vancouver II.

### *Transport Law*

This Committee met for two days during the Conference under the Chairmanship of Alfred Popp QC. The additional Papers for the meeting are also in the Yearbook Vancouver II.<sup>75</sup>

The work concentrated on certain portions of the UNCITRAL draft instrument, being the six topics identified in the agenda paper: the basis of carrier's liability, right of control, jurisdiction and arbitration, delivery to the consignee, transport documents, and rights of suit. For the carrier's liability a small working group redrafted Article 14 and the Committee concluded that that text should be made available to UNCITRAL delegates. On the issue of right of control the Committee concluded that a chapter addressing that topic was needed in the draft instrument but that the current Article 55 was unsatisfactory. On jurisdiction and arbitration, the writer had the distinct privilege of delivering the paper written by Allan Philip which he was unable to deliver in person due to illness. Differing views were expressed during the discussions in relation to both the jurisdiction and arbitration provisions. On the topic of delivery to the consignee (a topic not previously covered in Transport Conventions) the Committee concluded that chapter 10 was generally acceptable in principle but had some drafting comments.

On transport documents, the provisions contained in the UNCITRAL draft were very similar to those originally drafted by CMI but with some differences which were discussed at the meeting. On the right of suit the Committee favoured the deletion of the current Article 63 leaving this question to national law.<sup>76</sup>

### *YAR*

The Papers that were available at the Conference are in the Yearbook Vancouver II.<sup>77</sup>

The Committee report, (which includes the YAR 2004)<sup>78</sup> confirmed that a complete revision of the York Antwerp Rules had been achieved and a new text approved at the Plenary session at the end of the Conference, to be referred to as York-Antwerp Rules 2004. Amendments related to Rule VI Salvage Remuneration, Rule XI Expenses at Port of Refuge, Rule XIV Temporary Repairs, Rule XX Provision of Funds, Rule XXI Interest on Losses, Rule XXIII Time Bar and tidying up the text of the YAR. The writer recalls in the

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<sup>73</sup> CMI Yearbook 2004 Vancouver II (pages 349 to 351)

<sup>74</sup> CMI Yearbook 2004 Vancouver II (pages 352 to 354)

<sup>75</sup> Agenda paper (pages 132-139); Background papers: Francesco Berlingieri: Basis of the Carrier's liability (Article 14) (pages 140 to 146); Karl Johan Gombrii: Right of Control (pages 147 to 156); Allan Philip: Jurisdiction and Arbitration (Chapters 15 and 16) (pages 157 to 165); Gertjan Van der Ziel: Delivery to the Consignee (Chapter 10) (pages 166 to 174); Luis Cova Arria: Report on Implementation of Electronic Commerce Transport documents in Ibero-American countries (pages 175 to 181); Summary report on the 13th session of UNCITRAL Working Group III (Transport Law) held in New York 3 to 14 May 2004 (pages 182 to 186).

<sup>76</sup> Final report of the Transport Law Committee CMI Yearbook 2004 Vancouver II (pages 355 to 362).

<sup>77</sup> General Average - Position of AIDE and the eventual revision of the York Antwerp Rules 1994 (pages 188 to 194); Position Paper by the International Chamber of Shipping (pages 195 to 200); Position Paper by the Italian Maritime Law Association (pages 201 to 206)

<sup>78</sup> CMI Yearbook 2004 Vancouver II (pages 363 to 385)



lead up to the Plenary session concerns being expressed around the corridors of the Conference venue as to the likely closeness of the voting in relation to this new version of the YAR and distinctly remembers the question being asked as to whether the regional association of the CMI, the Maritime Law Association of Australia and New Zealand, might have more than one vote as it included two separate countries. This perhaps gave an indication as to the likelihood of the vote being somewhat divided. History was to prove that YAR 2004 did not find support in the shipping community and as a result was not picked up and incorporated in carriage documents to any great extent, if at all, in succeeding years, necessitating another review of YAR being carried out between 2012 and 2016.

### *Places of Refuge*

This Committee met for one complete day. Additional papers available at the meeting are in the Vancouver II Yearbook.<sup>79</sup>

The Report of the International Sub-Committee on Places of Refuge (including report on Places of Refuge submitted by CMI to the IMO Legal Committee) is also in the Vancouver II Yearbook

The five principal papers given were in relation to the topics of:

1. The obligation to offer a place of refuge - Eric Van Hooydonk
2. Penal liability - Frank Wiswall
3. Reception facilities - Gregory Timagenis
4. Civil liability and monetary incentives - Stuart Hetherington
5. Designation of places of refuge mechanism decision making - Richard Shaw

Perhaps one of the most impressive presentations this writer has ever had the privilege of witnessing at a CMI meeting was that of Eric Van Hooydonk whose paper was also published in the *Lloyds Maritime and Commercial Law Quarterly*.<sup>80</sup> In that paper he set out the traditional and historical view that there was a customary law recognition that ships in distress had a right to be granted a place of refuge and delightfully contrasted it with the "not in my front pond syndrome." (Aldo Chircop in *Places of Refuge for Ships*<sup>81</sup> referred to Ulysses as being the first recorded (Homer circa 800 BC) example of a navigator being refused a place of refuge by the Cyclops.)

In the report which was sent to the IMO<sup>82</sup> it was concluded that what was needed was either an international Convention, or amendments to existing international Conventions, or Guidelines covering the topics described in the Report. These were the options that suggested themselves to the meeting as potential solutions to this issue. The Report refers to the issues that had been identified, the legal deficiencies in the present system and concerns identified therein with the possible solutions.

### *Marine Insurance*

This Committee met for a 3 hour session under the Chairmanship of John Hare and Thomas Reme with George Strathy as Rapporteur. The Report of the meeting is in the 2004 Yearbook Vancouver II.<sup>83</sup> In this Report John Hare brought the work of the IWG to a close, he rehearsed the origins of the IWG, summarised the work that had been done, the options for reform, identified the need for reform in some areas and the differences in approach by common lawyers and civil lawyers. He singled out the hard work of Trine-Lise Wilhelmsen, and gave thanks to Professor Clarke who had stood in for him for a year and Thomas Reme.

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<sup>79</sup> Places of Refuge: Henrik Ringbom: Places of Refuge and Environmental Liability and Compensation with particular reference to the EU (pages 208-233); IMO Guidelines on shipowners' responsibilities in respect of maritime claims (pages 234-235); Discussion Paper of the International Association of Ports & Harbours (IAPH) (pages 236-246)

<sup>80</sup> *Lloyds Maritime and Commercial Law Quarterly* 2004 Part 3 pages 347-374.

<sup>81</sup> *Places of Refuge for Ships* edited by Aldo Chircop and Olof Linden, published by Martinus Nijhoff Publishers, 2006

<sup>82</sup> CMI Yearbook 2004 Vancouver II (pages 389-393)

<sup>83</sup> CMI Yearbook 2004 Vancouver II (pages 248-260)

## *Criminal offences*

There were three panel sessions chaired by Frank Wiswall on related topics: Amendments to the 1988 SUA Convention, in which the speakers were Rosalie Balkin and Mark Gauthier<sup>84</sup>, the Enforcement of the ISPS Code in which the speakers were Mark Gauthier and Calvin Lederer;<sup>85</sup> and Criminal Offences Committed on Board Foreign Flagged Ships with Chair and Speaker Frank Wiswall, and Mark Gauthier. Further materials were available at the Conference which are in the 2004 Vancouver II Yearbook.<sup>86</sup>

By Resolution in the Assembly the CMI endorsed and commended the work of the Legal Committee of the IMO in formulating amendments to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol of 10 March 1988, and in particular fully supported the extension of the scope and the applicability of the Convention to prohibit and suppress both acts of terrorism against, on or from ships, and the maritime transport of weapons of mass destruction, and the endeavour to accomplish these objectives while respecting and securing the rights of innocent seafarers and the obligations of State Parties to protect their sovereign and commercial interest.

In relation to *Criminal Offences Committed on Board Foreign Flagged Ships* it was recommended to the Assembly, and approved, that a Joint IWG be established to draft a Model national law for such offences and which should then be promulgated to MLAs.

*Pollution of the Marine Environment-Proposed Revision of the CLC and Fund Conventions*; This topic occupied one session and was chaired by Colin de la Rue and Jean-Serge Rohart with Mans Jacobsson as the speakers. As the Programme document explained the session was to be split it two-one to discuss the review of the international compensation regime being conducted by the IOPC Fund (explained by the Director of the IOPC Fund, Mans Jacobsson and Jean-Serge Rohart explaining the Application of the Fund Criteria with reference to the "Erika" incident) and the other to review aspects where there has been inconsistent international application of the regime.<sup>87</sup>

Gregory Timagenis's comments were made from the perspective of lack of uniformity being derived from lack of uniform implementation and differing interpretations. The views and opinions are long supported by Francesco Berlingieri on the causes of lack of uniformity in international maritime law relating to the manner in which international conventions are implemented and he related those comments and the ratification techniques to potential reforms of the Fund Convention. One method he suggested which would reduce the diversity of implementation practices could be the use of the tacit acceptance procedure for amending international conventions. He referred to the possibility of establishing a fund in respect of the discussions taking place on the topic of places of refuge as well as the possibility of the CMI draft Guidelines.

## *Offshore IWG*

There was an informal IWG meeting of the Offshore IWG in Vancouver. The Yearbook contains Minutes of the Meeting and a short Report by Richard Shaw.<sup>88</sup> No work was currently being carried out by the Group due to the fact that the IMO had taken it off its work programme in 2001. The Canadian MLA had prepared a Draft Convention complete with a narrative of events starting with the Rio de Janeiro draft of 1976 and a

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<sup>84</sup> CMI Yearbook 2004 Vancouver II (pages 395-400)

<sup>85</sup> CMI Yearbook 2004 Vancouver II (pages 400-413)

<sup>86</sup> Criminal Acts on the High Seas: Measures to protect crews and passengers against crimes committed on vessels Submitted by Japan (pages 344 and 345)

<sup>87</sup> The materials for the Conference are published in CMI Yearbook 2004 Vancouver II (pages 262-341) together with Comments made by Gregory Timagenis on the "Proposed revision of the CLC and Fund Conventions"

Pollution of the Marine Environment: Proposed Revision of the Civil Liability and Fund Convention Review of the International Compensation Regime Uniform Application of the Conventions, Discussion Paper (CMI Yearbook 2004 Vancouver II pages 262 to 273); Mans Jacobsson: The International Regime on Liability and Compensation for Oil Pollution Damage Revisited (CMI Yearbook 2004 Vancouver II (pages 274 to 285); Jean Serge Rohart Application of the Fund Criteria for the Admissibility of Claims: the Example of the "Erika" Incident (CMI Yearbook 2004 Vancouver II (pages 286 to 292); IOPC Documents: Report on the 7th meeting of the Third Intercessional Working Group (CMI Yearbook 2004 Vancouver II (pages 293 to 320); Review of the International Compensation Regime Uniform Application of the Conventions (CMI Yearbook 2004 Vancouver II (pages 321 to 330); Record of Decisions of the first session of the Administrative Council (CMI Yearbook 2004 Vancouver II( pages 331 to 341)

<sup>88</sup> CMI Yearbook 2004 Vancouver II (pages 419-421)

commentary on provisions of the Draft. These materials were subsequently published in the CMI News Letter.<sup>89</sup>

### *UNESCO Underwater Cultural Heritage*

This short report<sup>90</sup> noted that the Convention had been adopted on 2 November 2001 and it was at this stage uncertain as to how many maritime countries would support it or when it would come into force.

### *Salvage*

There was a short session on Implementation of the Salvage Convention given by Gregory Timagenis and a Synopsis of the Responses to the Questionnaire and a Provisional Report by the CMI to IMO is in the Yearbook.<sup>91</sup>

### *Bareboat Chartered Vessels*

This report<sup>92</sup> represents the outcome of research into this topic by the IMO Secretariat and CMI following the revision of the Athens Convention 2002 which included a resolution calling on the Secretariat of the IMO to carry out a study of the issuing of certificates in the context of the Athens Protocol attesting that insurance or other financial security was in force with regard to the question of bareboat charterers. A possible solution suggested that registered owner be defined as including the bareboat charterer but if that was not thought sufficient it might be necessary to introduce the new definition of owner based on the HNS Convention definition which refers to owner as the persons "registered as the owner of the ship or as the bareboat charterer, or in the absence of registration, the person or persons actually owning the ship."

### **CMI Assembly Meeting Westin Bayshore Resort and Marina Vancouver, Canada 4 June 2004.**

Delegates honoured, in absentia, Allan Philip by electing him "President Honoris Causa" and Henri Voet as "Treasurer Honoris Causa" in recognition of their respective contributions to the CMI. In the Memorials Margaret Healy, wife of Former President of the MLAUS and Vice President of CMI, Nick Healy was remembered with great affection.

Senator Angus, in his role as the new Chair of the Nomination Committee, highlighted the contributions made by Patrick Griggs, whose terms in office were expiring and particularly in the early part of his Presidency when the formal structures and operation of the CMI presented enormous challenges. Senator Angus referred to the fact that Patrick Griggs was "leaving a rejuvenated and refinanced CMI, thanks to his efforts during his Presidency". Senator Angus then proposed a vote of thanks to Patrick Griggs, who was given a standing ovation by the Assembly. He also proposed Jean-Serge Rohart for the Presidency.

Richard Shaw noted in his report of the Conference that the Gala dinner witnessed the handing over of the Presidency of the CMI after seven years by Patrick Griggs to Jean-Serge Rohart together with a ceremonial Talking Stick donated to the Conference at its opening session by the chief of the local tribe of Native Americans. Richard Shaw also noted that as a practising lawyer in active practice in his Paris firm, "Jean-Serge will need all the magic of the Talking Stick to lead the CMI into the coming years", and then continued "but his wit and Gallic charm will no doubt be of great value, in addition to his undoubted skills in the field of maritime law." That wit and Gallic charm was in evidence at these ceremonial moments. Those who had been involved in the management of the CMI during the Griggs Presidency were well aware of how fortunate they had been in having a President for 7 years, who not only had the benefit of a small office in his former law firm (and access to a PA, Lesley Canning, to assist with typing) but was also able to devote as much of his time to the CMI as he wished, untrammelled by the business requirements of that practice, having fully retired.

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<sup>89</sup> CMI News Letter 2004 No I January/April 2004

<sup>90</sup> CMI Yearbook 2004 Vancouver II (page 400)

<sup>91</sup> CMI Yearbook 2004 Vancouver II (pages 422-439)

<sup>92</sup> CMI Yearbook 2004 Vancouver II (pages 441-446)

Senator Angus thanked Nigel Frawley for his contributions as past Chair of the Nominating Committee. Both Stuart Hetherington and Gregory Timagenis who had completed their first terms were re-elected for a second term.

As the Treasurer reported thanks to :reduced expenditure in relation to the salary paid to the Assistant secretary (who had reduced her working hours from full time employment), reduced air fares and the greater use of email a surplus was again recorded and the liquidity fund could be increased from €50,000 to €100,000. Cash invested was Euro 286, 771, and subscriptions were held at the same level as the previous year.

It was reported that by Royal Decree on 9 November 2003 the King of Belgium had granted juridical personality to the CMI.

Frank Wiswall reported that the new editions of the Handbook on Maritime Conventions had been received and could be ordered from the Secretariat.

The Resolutions of the Assembly as recommended by the Plenary session are attached to these Minutes in the CMI News Letter No 2 May/August 2004.

### **Conclusion: The Presidency of Patrick Griggs.**

The appointment of Patrick Griggs as President in 1997 can be seen in hindsight, as perhaps a watershed moment or at least as an important stage in the life of CMI. The organisation in celebrating its Centenary when he was appointed inevitably looked back and congratulated itself at its longevity. But with its session on "The Future of CMI " in 1997 there was a genuine attempt to consider how things could be done better and the correspondence with MLAs the new President entered into in his early years showed clearly that he was taking a new broom to the organisation and wanted to take the membership with him. The electronic age was advancing and with it CMI had to advance as well. The digital age was to provide new challenges. It also provided an opportunity to improve the manner in which services were provided and delivered. The ubiquitous computer, the photocopier, and the voice recognition technology provided both a challenge and an opportunity. It has been seen how the financial systems were greatly improved with a resulting improvement in finances, email correspondence was introduced into the CMI office, and a website was initiated. Patrick Griggs oversaw those changes and his successors were well placed to take CMI to new levels.

Whilst the Minutes of the Executive Council and Assembly meetings held during the Presidency of Patrick Griggs record considerable unease about the finances and quality of the record keeping of the CMI it is only when the heartfelt tribute Patrick Griggs paid to Allan Philip, shortly after the conclusion of his own Presidency, that the seriousness of the problem becomes apparent. He made reference to Allan Philip having "had a very sharp financial brain" and being a member of the Audit Committee appointed to "oversee a modernisation of our finances" and then "In the dark days when the future of the CMI was in some doubt he always retained his faith in the importance of the work done by the CMI and encouraged us to think positively as well. Without his steadying influence things might have turned out differently". Whilst David Angus and his team on that Audit Committee, including Allan Philip, are deserving of much praise it cannot be overlooked that it was the leader, Patrick Griggs, who pulled it all together so that he could with some justice say to the Assembly<sup>93</sup> "In handing over the responsibility to Jean-Serge, I am relieved to report that the CMI is financially on a sound footing."

### **Chapter 2. The Presidency of Jean-Serge Rohart June 2004-October 2008.**

Foreword: The Presidency of Jean-Serge Rohart. This chapter recounts significant meetings, (including the Athens Conference, Colloquium at Cape Town, South Africa, Symposium at Dubrovnik and Assembly meeting in Paris), events, administrative changes (including the reforming work of the Steering Committee and Email meetings of the Executive Council) and work done by the CMI (especially on Issues of Transport Law at UNCITRAL, and Places of Refuge) during the Presidency of Jean-Serge Rohart.

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<sup>93</sup> CMI Yearbook 2004/Vancouver II (page 352)



Jean-Serge Rohart

**Executive Council Meeting Vancouver, Canada 4 June 2004.**

At this second Executive Council meeting the appointment of Nigel Frawley as acting Secretary-General pending the next Assembly meeting was approved, and so began a 10 year term of office to the great benefit of the CMI. An allowance of €10,000. "Disbursement allowance" was also approved for Nigel Frawley. A position on the Nomination Committee had fallen vacant, and it was to be filled by the sitting Executive Council making the appointment. It was decided that Professor Zhu Zengjie be asked by the Executive Council to serve on the Nominations Committee.

**Allan Philip President Honoris Causa (1927-2004)**



Allan Philip (left) and Berthe Philip (right) CMI Sydney Conference (free day) 1994.

Only a few months after the Vancouver Conference the sad news that the recently appointed President Honoris Causa Allan Philip had passed away reached his colleagues and friends at the CMI. There are tributes paid to Allan Philip by two former Presidents of CMI (Francesco Berlingieri, whom he succeeded as President and Patrick Griggs who had just concluded his terms of office after him) in the CMI News Letter<sup>94</sup>. As Francesco recounted Allan Philip had graduated from the University of Copenhagen School of Law and had become a Professor and Dean of that Law School. He had lectured at the Hague Academy of International Law and was a member of the Danish Labour Court. He had represented Denmark at many Diplomatic Conferences on maritime and private international law. He became President of the CMI in 1991. He was remembered by Patrick Griggs as a "gentleman and a true friend". CMI President Allan Philip and Henri Voet, the Administrator and Treasurer at that time were an excellent team. It is fair to say that Henri Voet dealt with the details of the budgets and the arrangements for the meetings but although the President left Henri Voet to convey the messages and handle the detail, as any good President does with an able Secretary-General or Administrator there could be confidence that whatever he said had been approved by Allan Philip.

Allan Philip and his wife visited Sydney prior to the CMI Conference in 1994, as his wife Birthe had a position within local government in Denmark and in that role she was visiting Sydney to meet with Australians. Allan Philip was therefore her "accompanying person", which he clearly enjoyed explaining and was keen to take the opportunity to see the venues that had been identified for social occasions at the CMI Conference and the hotels that were under consideration. He also spoke, resplendent as always in bow tie, charmingly, to the New South Wales Branch of the Maritime Law Association of Australia & New Zealand, the first CMI President to do so, while he was in Sydney. He was, truly, a gentleman. He had a very keen and alert legal mind and was quick to identify holes in arguments that were presented or to identify where there was uniformity at a meeting. In concluding discussion on particular points he would often sum up the majority view and would end with words to the effect "I do not hear a contrary view, that seems to be the case" and quickly move on to the next point. Another side to Allan Philip which emerges from another tribute in the CMI News Letter, was the extensive interests he had in the business and cultural lives of Denmark and elsewhere. He was a Chairman of a publishing house, a legal adviser to the Danish Academy, a Chairman for more than 30 years of the Louisiana Museum of Modern Art and a member of the Karen Blixen Foundation. The tribute paid by the pastor at his funeral perhaps sums him up as well as anything when he said "a special gift ran through all Allan Philip's work with other people, which meant everything also in his family life and made him a cherished partner in life and an excellent father: his ability to allow his fellow human beings freedom of action, to support them and bring out the best in them. He showed deep respect and tolerance for other people, whether colleagues, family members or partners in Denmark or internationally, there was room for everyone and therefore you felt comfortable in his company". He referred particularly to Allan Philip's family life, his wife of almost 50 years, their four daughters, sons in law and grandchildren. As Francesco Berlingieri concluded his tribute: "the Comité Maritime International has lost one of its most illustrious members and I have lost a dear friend".

#### **Executive Council Meeting Hamburg, Germany at the offices of the International Tribunal of the Law of the Sea 6 November 2004.<sup>95</sup>**

In conjunction with this meeting a short seminar was organised by the German MLA and it also provided an opportunity to note the contributions made by Thomas Reme over many years to the CMI and whose terms of office on the Executive Council were coming to an end. This meeting also provided a wonderful opportunity for Executive Councillors to view this modern building and site of this significant international Court, and see the principal Court Room, unlike 10 years later during a visit by delegates at the Hamburg Conference when it was not open to visitors and was undergoing renovation work. The meeting commenced with a sad explanation for the absence of John Hare whose wife, Caerli, was again extremely ill, as well as a tribute to Allan Philip.

It was reported that the surplus from the Vancouver Conference which would come to the CMI (50%) was likely to be in the vicinity of USD70,000 and it was decided that USD25,000 of that in the equivalent Sterling amount would be paid to the Charitable Trust.

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<sup>94</sup> CMI News Letter 2004 No 3 September/December.

<sup>95</sup> CMI News Letter 2004 No 3 September/ December.

On Places of Refuge there was much discussion as to whether CMI should continue with the work if the IMO puts that work into abeyance. The consensus being that "CMI should act independently and take the lead where necessary and appropriate. If there are gaps in existing Conventions with respect to ships seeking places of refuge, then the CMI should feel free to try and fill those gaps with appropriate measures."

#### **Patrick Griggs CBE.**

On the 9 March 2005 Her Majesty Queen Elizabeth II appointed Patrick Griggs a Commander of the Order of the British Empire (CBE) for services to the maritime industry.

#### **Executive Council Meeting Paris, France 15 April 2005.<sup>96</sup>**

##### *Work in progress*

*Criminal acts committed on board foreign flagged ships, piracy, maritime violence:* Frank Wiswall reported that at a meeting with many outside associations there were strong feelings that the Model Law on Piracy needed to be revisited since the events of 9/11 had changed everything and it was felt that the Model Law should cover terrorism, kidnapping, ransom from ships, SUA and piracy and any violent act.

*Places of Refuge:* Stuart Hetherington proposed the CMI continue its work with the IWG drafting the outline of an instrument by September/October 2005 for debate at the Cape Town Colloquium; that Patrick Griggs or Richard Shaw would speak to the CMI report on this subject at the IMO Legal Committee's meeting in April and that the IMO should be informed that the CMI intends to do further work on the topic.

*General Average:* Thomas Reme reported that some shipowners were expressing concerns about YAR 2004.

*Classification Societies:* Frank Wiswall had reported that there had appeared to be some general interest amongst shipowners and Classification Societies to do further work on this topic but the CMI should be patient.

*Fair Treatment of Seafarers in the event of a Maritime Accident:* The President reported that Edgar Gold had taken on this work with great vigour and an IWG had been appointed and had sent out a Questionnaire to which there had been a number of replies.

*Future Topics* were discussed, including: the status of ships agents, notices of termination of contracts, and maritime liens in their favour, the Arrest Convention where countries do not have any arrest rules, stowaways, clarification of terminology in certain conventions (eg performing party), pilotage and jurisdiction in collision matters.

The meeting concluded with a tribute to Frank Wiswall (and his wife Libby), who was retiring as Vice-President, having been first elected to the Executive Council in 1989 and became Vice-President in 1997.

The contributions made by Thomas Reme, who was also retiring after 8 years as an Executive Councillor, were also extolled.

#### **CMI Assembly Meeting Automobile Club De France Paris, France 16 April 2005.**

There were 41 attendees at the Automobile Club de France on 16 April 2005 for the Assembly Meeting.<sup>97</sup>

The first matter referred to by President Jean-Serge Rohart on opening the meeting was to inform the Assembly of the honour referred to above, that had been bestowed on Patrick Griggs by Queen Elizabeth II recently at Buckingham Palace.

When the meeting formally commenced as usual with memorials to those who had passed away the President paid tribute to Allan Philip who died in September 2004. Tribute was also paid to Justice Richard

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<sup>96</sup> CMI News Letter No 1 January/April 2005

<sup>97</sup> CMI News Letter No 2 May/August 2005

Cooper of the Federal Court of Australia who had been a great supporter of the Maritime Law Association of Australia and New Zealand and a regular attendee at CMI Conferences.

As Frank Wiswall's terms as Vice-President had come to an end Stuart Hetherington was elected to replace him. Karl Gombrii was elected to a second term as Vice-President, Nigel Frawley to his first term as Secretary-General and Benoit Goemans to a second term as Treasurer. Thomas Reme had completed two terms as an Executive Councillor and although John Hare had sought to resign for personal reasons due to his wife's illness it was decided to hold his position open at least until the Colloquium. Christopher Davis and Sergej Lebedev were elected for their first terms as Executive Councillors. The much liked former Vice President of the CMI and President of the Russian MLA Anatoliy Kolodkin then spoke highly of the qualities of Mr Lebedev who was then serving as the Deputy Chairman and Vice-President of the Russian MLA.

The President paid tribute to the long service and work done by Frank Wiswall Jr and Thomas Reme, the former who served on the Executive Council for a total of 16 years and made important contributions in a number of different areas not least his contributions in relation to the CMI Constitution, the preparation of the materials published in the Handbook of Maritime Conventions and his publication at the time of the 1997 Centenary Conference, but also his chairing of topical and significant areas of the law in which the CMI could be useful, including Piracy and Crimes at Sea, as well as Classification Societies. He had also played a significant role in ISCs as Rapporteur. His wife Libby who accompanied him to all the various CMI meetings that her husband had attended over the years was almost as much of a fixture as he was. He was presented with a telescope with the greatest thanks of the CMI. The President also paid tribute to Thomas Reme who had served for 8 years on the Executive Council and he extolled his virtues as a lawyer, poet and Executive Councillor, presenting him with a chronometer as a gift.

#### *Work in progress*

In relation to the *Issues of Transport Law* working group it was reported that Stuart Beare and Michael Sturley were attending the meetings in New York at UNCITRAL.

On the topic of *Maritime Security* Frank Wiswall advised that it was necessary in the light of 9/11 to revisit the Model of National Law on Piracy so as to extend it to cover terrorism, kidnapping, ransom from ships, SUA, piracy and any violent attacks. He had prepared a report to the IMO Legal Committee.

In relation to the topic of *Places of Refuge* it was reported that 8 issues had been identified and discussed at the Vancouver Conference and these had been embodied in a report to the IMO. A short Supplemental Report on preventive measures was also going to be sent to the IMO.

Work had also been done in relation to the revision of the *CLC/Fund Conventions* and the Supplementary Fund which had entered into force on 3 March 2005.

On *Maritime Security* the Secretary-General reported on a recent meeting of the Joint Working Group in London and the strong views expressed to revisit the Model Law.<sup>98</sup>

There was bad news on the YAR front when Bent Neilsen reported that BIMCO had recommended to members that they not use Vancouver 2004 and he was not optimistic of their success.

The topic of *Wreck Removal* which was being studied in the context of the Salvage Convention would be discussed at the Cape Town Colloquium.

Frank Wiswall suggested that the topic of *Classification Societies* may be revisited in the future but there was no requirement at the present time.

A new working group under Edgar Gold's Chairmanship was studying the question of *Fair Treatment of Seafarers* and a Questionnaire had been sent to MLAs following the harsh criminal sanctions being used

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<sup>98</sup> CMI News Letter No 2 May/August 2005 carried the report of the 5th Session of the Joint IWG on Uniformity of Laws Concerning Acts of Piracy and Maritime Violence held in London on 12 April 2005 as well as a Questionnaire on the implementation on the Model National Law on Acts of Piracy and Maritime Violence that had been issued in May 2005



against seafarers following a casualty. It was stressed that there was a clear distinction between a maritime crime and an inadvertent act leading to a casualty.

Johanne Gauthier was pioneering a "starter kit" for new Maritime Law Associations and it was announced that it was hoped to award a Young Members Prize to be awarded in Cape Town, and that the BMLA was making a strong effort to attract young members.

**Inaugural Executive Council Email Meeting from the office of the President Paris, France week commencing November 28 2005.**

The CMI News Letter<sup>99</sup> carried the exciting news that the Executive Council had moved into the digital age with its first Executive Council meeting being held by email over the period of a week, chaired by the President from his office in Paris, thereby saving the travel and accommodation costs of the 15 members.<sup>100</sup> This was to have a hugely beneficial effect on the finances of the CMI, and the President is to be congratulated for having inaugurated this momentous change in the administration of the CMI.

Opening the meeting the President noted wisely that "nothing can replace the immediacy of a physical meeting where the members of the Executive Council can openly discuss all the topics, an email Conference had the main benefit of substantially reducing cost of attendance". This has been proved to be entirely accurate, especially in so far as making a significant contribution to placing the CMI in the very satisfactory financial position in the succeeding years.

The process worked by the circulation of an agenda and supporting papers, with commentary where necessary by the President to Executive Councillors and seeking their votes on certain items and comments, which on receipt are then put into a second round document which is circulated 2 or 3 days into the meeting seeking comments of the matters raised by the other participants and those responses are then put into an amended document which if necessary is sent around for supplementary comments or votes on the new matters and from the final version the Minutes are prepared and resolutions recorded.

The President reported that he had represented CMI at the BIMCO Centenary and meetings in Copenhagen in May 2005 as well as attending the Centenary Conference of the Argentina MLA in Buenos Aires in June. He had also given a lecture on the work the CMI at the meeting of International Loss Adjusters organised by the French insurance market in June. He also attended a meeting of the Supreme Court of the Peoples Republic of China and the Chinese Maritime Law Association where again he spoke about the work of the CMI in September. He also referred to the fact that he had been appointed to the board of the governors of the World Maritime University.

Johanne Gauthier circulated a draft letter containing information that could be forwarded to a new MLA for amendment by Executive Councillors, as the proposed "Starter Kit".

Stuart Hetherington reported that the IMO Legal Committee had decided to place its work on Places of Refuge "on hold" but a proposed draft instrument for discussion, which was in the course of preparation, would be considered at the Cape Town Colloquium notwithstanding this development.

The CMI News Letter<sup>101</sup> as well as announcing the honour bestowed on Patrick Griggs of a CBE also announced that Edgar Gold had been awarded the Order of Australia (AM) for services to maritime law and the protection of the environment as a policy developer and adviser, and through academic roles and involvement in international maritime organisations.

In the same issue of the News Letter Stuart Beare reported on the XVI session of the UNCITRAL Working Group on Transport Law held in New York from 18 to 28 April 2005.

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<sup>99</sup> CMI News Letter No 1 September/December 2005

<sup>100</sup> CMI News Letter No. 3 September/December 2005 Minutes of the Inaugural email meeting of the Executive Council.

<sup>101</sup> CMI News Letter No 1 January/April 2005

## **Colloquium Arabella Sheraton Grand Hotel International Convention Centre Cape Town, South Africa 12-15 February 2006.**

The Venue for the Conference was a new state of the art Centre. Many delegates took the opportunity to take Safaris in the Kruger National Park, or other venues in southern Africa, before or after the Colloquium, which made the experience of visiting this country so memorable for many. There were over 130 delegates and 52 accompanying persons.

The social occasions were, not surprisingly, equally memorable, especially the visit (on Valentines day) to Groot Constantia wine estate in the beautiful Constantia wine region, for the Winelands Excursion where an al fresco lunch in the lovely grounds was taken and guests either "chilled out" on the lawns or attended wine tastings or visited the wine cellars and museum.

The Welcome reception was held on the Observation Deck at the V and A Waterfront Clock Tower. The Gala dinner was held in the Arabella Sheraton Grand Hotel with entertainment provided by a jazz quartet.

In greeting delegates at the Opening of the Colloquium Andrew Pike, President of the South African MLA, reminded delegates that this was the first CMI event in South Africa and, indeed, Africa. He also mentioned that he had suffered weekly reminders from the secretary of the MLA, James Mackenzie, that he might be the first President to plunge the South African MLA into bankruptcy- a fear shared by Presidents of many host Associations over the years!

Any MLA hosting a CMI event and needing guidance as to what a Colloquium (or indeed Conference) handbook might best contain could do worse than seek to obtain a copy of the Colloquium handbook produced by the South African MLA at this Colloquium.

Only Jean-Serge Rohart could commence his opening speech with the words "It was a dark and stormy night" and get away with it. He then regaled the audience with the naming by Bartholomew Dias in 1488 of the turbulent seas in which he found himself as the: "Cape of Storms"- soon afterwards renamed the Cape of Good Hope. In his Welcome Jean Serge-Rohart described the period from 1897 to 1967 as the golden age of CMI's activity brought to an end by the *Torrey Canyon* disaster off southwest England in 1967 and the coming into being of the international regulators of the IMO and the need for international law to deal with oil pollution liability and compensation. He referred to a new third party breaking up a longstanding marriage between ship and cargo and interposing itself in a "ménage à trois", the third party being the land whose threatened environment was of growing concern to national authorities.

The first day of the Colloquium was devoted to various aspects of *Fair Treatment to Seafarers in the Event of an Accident* chaired by Edgar Gold. In the first he was assisted by David Hebden and Michael Chalos; in the second by Colin de la Rue and the third by Rosalie Balkin and Alfred Popp. The papers (both in preparation for, and at the Colloquium) are to be found in CMI Yearbook 2005-2006.<sup>102</sup> Rosalie Balkin described the work done by the Joint IMO/ILO Ad hoc expert group to date and the differing views expressed as to the contents and structure of Guidelines that were being worked upon. Edgar Gold addressed the practical issues that arise, the definitional issues around "maritime accident", and those that lead to potential criminal action, the rights of Sovereign States to take such actions but as he pointed out the concerns arise in the administration of those rights which can lead to "unfair treatment" of seafarers who are not at fault. David Hebden gave a presentation on the Summary of the findings from the CMI Questionnaire and Michael Chalos discussed investigative and criminal prosecution regimes operated by the authorities in respect of environmental regulation violations and their modus operandi. Colin de la Rue spoke about the prosecution of seafarers after oil spills and the relevant provisions in both UNCLOS and MARPOL and the difference between operational discharges and accidental spills. Professor Mukherjee discussed the relevant pollution regulatory regimes as well as article 230 of UNCLOS and referred to examples of seafarers being treated as scapegoats, that some States are unilaterally and blatantly violating international law, and that fundamental human

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<sup>102</sup> CMI Yearbook 2005 -2006: Speaking notes of Dr Rosalie Balkin The work of the Joint IMO/ILO Ad hoc Expert Working Group (pages 168-173), Edgar Gold "The Practical Issues (pages 174-179); The first report of the CMI IWG by Edgar Gold (pages 180-187); The CMI Questionnaire and circular letter by the President of CMI (pages 188 -192); Summary of responses of CMI members to the Questionnaire by David Hebden (pages 193-276); A Marine Insurance Perspective by Kim Jefferies (pages 277-282); Criminalisation and Unfair Treatment: the Seafarers Perspective by Proshanto K Mukherjee (pages 283-297)

rights of foreign seafarers are not being observed; examples given related to incarceration, absence of access to lawyers, deprivation of shore leave and undue harassment.

On the second day the morning session was taken up by *Places of Refuge* in which papers were given in the first session, chaired by Stuart Hetherington and in the second session delegates were invited to discuss the issues raised in a session chaired by Stuart Hetherington and Richard Shaw, Rapporteur of the IWG. The materials for the sessions and the Report of them are in the CMI Yearbook 2005-2006.<sup>103</sup>

In the first session Quintus van der Merwe, in an educational and entertaining presentation, spoke from the South African perspective and described his country's national contingency plan for the prevention and combatting of pollution and recent examples of practices applied by SAMSA in recent casualties; Eric Van Hooydonk referred to recent developments in the EU which unlike the IMO was moving proactively in this area and in particular proposed amendments to the traffic and monitoring directive; Rosalie Balkin, Director of Legal Affairs and External Relations at the IMO spoke on "IMO and Places of Refuge", in particular the "wait and see" approach that the IMO was taking consequent on its promulgation of Guidelines adopted in December 2003; and Richard Shaw spoke about the Draft Instrument and summarised the discussions that had ensued.

The report to the IMO on the work that had been done prior to and during the Cape Town Colloquium concluded with confirmation that the IWG intended to conclude its work on the draft instrument so that it might be available for future use and to explore what steps could be taken through the national associations of the CMI to expedite the implementation of the liability conventions (CLC, Fund, HNS, Bunker and ultimately Wreck), as well as whether any adaptations to the law and practice of salvage could provide greater incentives to States to assist vessels in distress.

On the final day a range of topics were discussed and the papers are in the CMI Yearbook 2005-2006. They included: the draft *Wreck Removal Convention* by Patrick Griggs; *Issues of Marine Insurance*<sup>104</sup> by John Hare<sup>105</sup>; *Procedural Rules Relating to Limitation Conventions* by Gregory Timagenis<sup>106</sup>; and *UNCITRAL - Issues of Transport Law* by Stuart Beare.<sup>107</sup>

Patrick Griggs reminded delegates of the history of the Wreck Removal Convention which had been first mooted by the IMO Legal Committee in 1974 - 1975 but nothing came of that and was then next raised in 1993 but work had continued sporadically thereafter. In 1994 delegations of Germany, the Netherlands, and the United Kingdom submitted a paper on the topic which argued that an international treaty on wreck removal was necessary in order to establish uniform rules for the wreck removal operations in international waters. The CMI only became actively involved in the project from 1996 in a working group under the Chairmanship of Bent Nielsen. He then looked at the principal provisions such as Article 6 on "reporting" of maritime casualties; the Convention "area" ie the EEZ; but not territorial waters; the meaning of "wreck"; "warning" (Article 8) to be given; "hazard" (Article 7); steps to be taken-all reasonable steps to mark the wreck (Article 9); rights and duties (Article 10); financial obligations (Articles 11 and 13); and time limits (Article 14). (All references to Articles being to the then draft Convention).

On *Issues of Marine Insurance* John Hare recounted the history of the IWG and its watching brief on international developments on Marine Insurance reform which according to his review had clearly stagnated after a brief surge of optimism in previous years that some reform, at least in the principal areas researched by the IWG might take place, such as duty of good faith, duty of disclosure, alteration of risk and warranties.

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<sup>103</sup> CMI Yearbook 2005 2006 Preparatory Material: Letter of the President of the CMI to MLAs (page 140); Letter of Stuart Hetherington to the President of CMI (pages 141-144) and Draft Instrument on Places of Refuge (pages 144-149); Cape Town Colloquium Introduction to Sessions by Stuart Hetherington (pages 150 to 153); The IMO Position with Respect to Places of Refuge Speaking Notes by Rosalie Balkin (pages 154-158); Report of Session on Places of Refuge by Richard Shaw (pages 159-162); Report by Stuart Hetherington (pages 163-164); and Subsequent Action: Report of Places of Refuge submitted by CMI to IMO 24 March 2006

<sup>104</sup> CMI Yearbook 2005 2006 (pages 376 to 383)

<sup>105</sup> CMI Yearbook 2005 2006 (pages 386 to 392)

<sup>106</sup> CMI Yearbook 2005 2006 (pages 386 to 392)

<sup>107</sup> CMI Yearbook 2005 2006 (pages 394 to 400)

*On Rules of Procedure in Limitation Conventions* Gregory Timagenis showed in his Introduction to the Presentation of the Responses to the Questionnaire how important consistent implementation of Conventions by States is as an aid to uniformity and can lead to harmonisation and the IWG had been exploring the possibilities of the co-ordination and harmonisation of procedural rules of the Limitation Conventions, not only the 1976 LLMC but also the CLC 1969, 1976 and 1992 Protocols. The paper includes an analysis of the responses to the Questionnaire and a Digest of those Responses.

*On Issues of Transport Law* Stuart Beare summarised the work done by the CMI since 2001 when it handed a Draft Instrument to UNCITRAL with particular reference to electronic commerce and door to door coverage and also topics that had not originally been touched on by CMI such as Jurisdiction and Arbitration, and Freedom of Contract (that relates to Volume contracts).<sup>108</sup> He concluded his report by saying that the core provisions of the UNCITRAL draft Convention largely followed the principles which had been put forward in the original CMI draft and the remaining are still to be considered in detail by the UNCITRAL Working Group.

#### **CMI Assembly Meeting Cape Town, South Africa 15 February 2006.**

46 delegates attended this meeting and welcomed new Members Tunisia and Kenya. Unfortunately Poland was expelled due to failure to pay subscriptions.

Alfred Popp QC, who has held the position as Chairman of the IMO Legal Committee for the previous 13 years was elected as a member *Honoris Causa* and he was given a standing ovation by the Assembly. He expressed his gratitude to the CMI and that he had always been a believer in the strong relationship which existed between the IMO and the CMI and that the work that the CMI does is very important and it should continue its excellent preparatory work for the drafting of international conventions.

The level of subscriptions for 2006 was agreed to remain the same as for 2005. Wim Fransen was elected for a second term as Administrator and Henry Li and Jose Maria Alcantara for second terms as Executive Councillors.

On the Salvage Convention Richard Shaw reported slow progress in a number of countries giving the force of law to the Convention and the responses to the Questionnaire on Implementation of the Salvage Convention which had been received had been provided to the IMO Legal Committee. He also reported that the ISU had developed a paper on the concept of salvage remuneration for saving the environment from pollution damage. He pointed that there are clearly many practical difficulties not least being who will pay and the CMI might well wish to monitor developments and make a constructive contribution to the debate.

Jose Maria Alcantara reported on the topic of *Bareboat Chartered Vessels* and advised that a document had been prepared for submission to the IMO Legal Committee relating to the provision of financial security by bareboat chartered vessels and the consequences if the word "owner" was extended to bareboat charterers in a range of maritime liability conventions. The CMI has recommended against amending the definition of "owner" to include bareboat charterers.

Andrew Taylor of the BMLA advised that a seminar was being organised for young members in London in May 2006. Gregory Timagenis advised that he would investigate whether a Young member session could be incorporated at the 2008 Athens Conference.

#### **Executive Council Email Meeting from the office of the President Paris, France week commencing 27 November 2006.**

The Minutes of this meeting are reproduced in the CMI News Letter.<sup>109</sup>

This was the second of the Email meetings held by the Executive Council. It was reported that the CMI Secretariat had moved to Everdijstraat 43 and a meeting had been held at that address with the President, the Treasurer, the Administrator and M/s Sterckx.

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<sup>108</sup> CMI News Letter No. 2 May/July 2006: the working paper submitted by the CMI to UNCITRAL Working Group 3, being an explanatory document on the treatment of Volume contracts.

<sup>109</sup> CMI News Letter No. 3 September/December 2006

Discussion took place as to whether a Questionnaire should be sent to MLAs in order to ascertain whether the CMI was serving its membership as well as it could reasonably be expected and what steps could be taken in that regard. Discussion also took place concerning contributions by Titulary members. Nigel Frawley also reported that he had prepared a second draft of Guidelines for the organisation of meetings based on the experiences learned at Cape Town. Guidelines had also been produced in relation to Observers at international meetings.

The CMI News Letter<sup>110</sup> contains a Report of the IWG on *Uniformity of Law re Maritime Criminal Acts 2005-2007* by Frank Wiswall and its annexes "Draft Guidelines for National Legislation, Background Paper" and Introduction, followed by the Guidelines.

The same News Letter contains the *Guidelines on Fair Treatment of Seafarers in the event of a Maritime Accident*, which had been adopted by the Joint IMO/ILO ad hoc body.

### **Symposium Hilton Imperial Hotel Dubrovnik, Croatia 10-12 May 2007.**

This Joint Symposium between the CMI and Croatian MLA took place alongside the beautiful and remarkable City (a UNESCO listed World Heritage site) and the sparkling waters that surround it. It was attended by 128 delegates (and 20 accompanying persons) and well organised by the President and his organising Committee headed by Igor Vio, combining opportunities to mix with old friends in wondrous surroundings, such as the Welcome reception, after a walk around the legendary walls of the City, taking place within those walls, and an excursion to the Konavle Region and the Old Town CAVTAT.

Delegates were as usual welcomed by the President of the CMI and the President of the Croatian MLA, Peter Kragic. In his Welcome Message in the booklet received by delegates Peter Kragic referred to the fact that Dubrovnik, "in the history of maritime trade known under its Latin name of Ragusa with its white walls, towers and churches, shining against the sunny blue waters of the Mediterranean Sea, is like a stone sculpture of the Renaissance spirit. A perfect stage for a maritime Conference that wants to question and promote ideas". He referred back to another booklet dating from 1568 containing "the oldest known systematically written Act on marine insurance *Ordo super assecuratoribus*". Its origins go back to a Statute of Dubrovnik from 1272. He also noted that in the Middle Ages Dubrovnik was one of the major players in the busiest trade routes of the world, the Mediterranean Sea, and reminded delegates that the CMI held a meeting in Croatia in 1959 in the city Rijeka.

Jean-Serge Rohart, in his opening, described the choice of Dubrovnik as being made by the Executive Council of the CMI in order to take the annual Assembly meeting to newer places, rather than the cities at which they have traditionally been held. Also there were to be short working sessions and situated around a weekend. An attempt was being made to attract younger members too.

A series of Panel meetings took place. One under the championship of Igor Vio on the topic of the *Maritime Law-Unification, Legislation and Implementation* which enjoyed hearing Patrick Griggs speak about the Draft Wreck Removal Convention; Ignacio Arroyo on the Implementation of the Arrest Convention; Aleksandar Brabar on The Influence of Tanker traffic on the Marine Environment of the Adriatic Sea and Igor Vio on the New Croatian Maritime Code.

In the second Panel under the Chairmanship of Peter Kragic on the topic of *Maritime Transport Law* he spoke about Issues of transport law: to regulate or not to regulate - that is the question; and Stuart Beare spoke about the UNCITRAL Draft Convention - the outstanding issues; Dragan Bolanca spoke about Carriage of Passengers in Croatia - National Legislation and EU law; whilst Marija Pospisil Miler spoke about IMO Reservation and Guidelines for Implementation of the Athens Convention 2002.

On the second day the third Panel discussed *Rules of Procedure in Limitation Conventions*: a new topic in the work programme of the CMI at which Francesco Berlingieri and Gregory Timagenis explained their work in this area.

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<sup>110</sup> CMI News Letter No. I January/April 2007

The fourth Panel discussed the topic of *Places of Refuge*. Stuart Hetherington provided an Update on Places of Refuge; Chris Davis spoke on The Changing Seascope of Salvage Law and Archie Bishop on Places of Refuge -Environmental salvage.

The fifth Panel discussed the *Promotion of Quality Shipping* under the Chairmanship of Karl Gombrii. He spoke about the IOPC Fund Study on Non Technical Measures to Promote Quality Shipping for Carriage of Oil by Sea and Jose Maria Alcantara spoke about Sharing Information on Clients, Competition Law and Practice as Key Factors for Encouraging Quality Shipping.

#### **CMI Assembly Meeting Hilton Imperial Hotel Dubrovnik, Croatia 11 May 2007.**

62 delegates attended this meeting. The membership of the Pacific International Maritime Law Association (PIMLA) had accepted the offer to be a Consultative member of the CMI. The Gulf States and Malaysia were expelled for their unpaid subscriptions.

Thomas Guzman was elected for a second term as Executive Councillor and Mans Jacobsson was elected to replace John Hare whose two terms had come to an end. (Mans Jacobsson was the retiring Director of the IOPC Fund). The President paid a warm tribute to the service that John Hare had given to the CMI during his eight years on the Executive Council and Chair of the Marine Insurance IWG.

The accumulated surplus amounted to €143,916 and assets stood at 650,000 Euros and the recommendation, which was accepted by the Assembly, was that a 5% reduction of annual subscriptions be applied to the following year and a further 5% reduction by way of early bird discount also be applied.

The Secretary-General paid tribute to Senator David Angus QC, who had announced that he would step down from his position as Chairman of the Audit Committee, and described the dedication, hard work and reforms that he had achieved during his tenure.

The President also reported that a study group had been formed to review the CMI's healthy financial situation and make recommendations as to whether new levels of subscription should be formulated and whether the method of assessment be changed from a tonnage based system to an ability to pay system. The President urged MLAs to respond to the inventory or stock taking of each MLA which had been sought from the Questionnaire and urged them to respond as soon as possible.

#### *Work in progress*

Insofar as the *UNCITRAL draft instrument* was concerned Grtjan van der Ziel reported that the work was difficult and the subject was progressing.

The *Maritime Criminal Acts* IWG had now concluded its work and covered not only acts of piracy but also criminal acts committed on foreign flag ships. All NGOs represented on the working group had ratified draft Guidelines and these were unanimously approved by the Assembly and were being sent to the IMO.

Although it was noted that BIMCO had advised its members not to adopt the *YAR 2004* they have been urged to reconsider that and it was to be debated shortly after the Assembly meeting in Croatia. (The Minutes record that BIMCO had subsequently advised that the decision will not be changed.)

On *Places of Refuge* Stuart Hetherington reported that an ISC meeting would be taking place in London on 22 May 2007.

Patrick Griggs reported that a Diplomatic Conference on the draft *Wreck Removal* Convention was scheduled for Nairobi on 14 May 2007. He also referred to a new topic that would be raised in the United Kingdom as to a charterer's rights to limit liability on indemnity claims from shipowners under the 1976 Limitation Convention.

On *Fair Treatment of Seafarers* the Secretary-General reported that David Hebden had taken over the Chairmanship of the IWG and that IMO's Fair Treatment Guidelines came into effect on 26 June 2006.

The Secretary-General also reported the CMI had submitted a paper on the *Draft Convention on Recycling of Ships*.

Patrick Griggs reported that a 9% return on investments had been achieved by the *Charitable Trust*. Funds had been allocated to meeting travel expenses for CMI Lecturers visiting IMLI and WMU, some CMI publications and the website

#### **Executive Council Meeting Hilton Imperial Hotel Dubrovnik, Croatia 10 May 2007.**

With the benefit of hindsight there were two particularly significant discussions at this meeting. The first related to Administration and the second to a potential new work topic. The first generated a lively broad discussion on the subject of the "Future of CMI" including the method of levying subscriptions, the provision of hard copies of publications, setting up a data base of the CMI's work product, individual memberships, encouragement of regional associations, elimination of Titulary membership fees, fostering closer relationships with MLAs, terms of office holders and the like. The President proposed that a package of reforms should be developed by a Steering Committee of three Executive Councillors. It was suggested that the two Vice Presidents and the Secretary-General would be appropriate.

The second was raised by Henry Li who expressed concern about the enforcement of Judicial Sale orders of ships and referred to a Japanese case where a bona fide purchaser for value on the sale of a ship in China was not recognised. Francesco Berlingieri suggested that a study group look at the subject and that an article should be published in the Yearbook and the matter could be reserved to the agenda of the Athens Conference.

The American Bureau of Shipping had expressed interest in reviving the *Classification Society* IWG for further discussion on a formula for limitation of liability.

Patrick Griggs and Richard Shaw sought further guidance on their mandate when attending IMO and IOPC Fund meetings and the inadequacy of the Observer Guidelines.

The topic of monitoring MLAs was referred to the Steering Committee to consider.

The CMI News Letter<sup>111</sup> contained news from UNCITRAL, a lengthy report by Stuart Beare on the development of the Draft Convention on the Carriage of Goods. The issue of Volume contracts had been resolved (despite Australia and France having sought to reopen the matter and the working group had rejected the attempt to reopen debate on Article 89) and considerable progress made in relation to "delay" in carriage and door to door carriage since the Cape Town Colloquium. Outstanding issues that he referred to included limit of liability in door to door carriage and jurisdiction and arbitration which had yet to be considered at UNCITRAL.

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<sup>111</sup> CMI News Letter No. 2 May/August 2007

### **Henri Voet (1914-2007).**



On the 23 August 2007, Henri Voet, a key figure in the Administration of the CMI over many years passed away. As Francesco Berlingieri recorded in the CMI News Letter at the time<sup>112</sup> he had died at the age of 93 and had divided his available time between CMI and the Association Internationale des Dispatcheurs Européens (AIDE). That organisation had been founded by his father in 1961. He became its Honorary President. He had become a Titulary member of the CMI by 1951 and by 1955 his firm Henry Voet-Genicot had become the Administrative Secretary of the CMI and he himself was made a member of the Bureau Permanent. He became the Treasurer in 1988 until 1997. He had been elected Treasurer Ad Honorem.

### **Executive Council Email Meeting from the office of the President Paris, France week commencing 19 November 2007.**

The President referred to his attendance at the First Seoul Maritime Forum organised by the Korea Ministry of Maritime Affairs and his participation at the XXth Anniversary of the Instituto Iberoamericano de Derecho Maritimo in Seville in November.

There were concerns expressed by the high level of accumulated surplus.

Stuart Hetherington reported on the ISC meeting held in London on *Places of Refuge* in May 2007 and the IWG would meet in London again at the end of the year.

### **Steering Committee 2007/2008.**

The three Executive Councillors who formed this Committee were the two Vice-Presidents, Karl Gombrii and Stuart Hetherington, and the Secretary-General, Nigel Frawley. This would be an appropriate place to explain how it worked and the outcome of its deliberations that took place over 18 months.

Not surprisingly some of the matters identified at the Centenary Conference in Antwerp in 1997 were revisited by this Committee, especially that relating to subscriptions. In the course of its deliberations the Committee sent two Questionnaires to MLAs in order to have a better understanding as to how MLAs raised funds to finance their operations and managed themselves in order to assist them in considering their brief.

The Committee had first met in London on 3 December 2007 and produced a draft report for the consideration of the Executive Council at its scheduled meetings in New York on 30 April and 1 May 2008.

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<sup>112</sup> CMI News Letter No 2 May/August 2007



**Executive Council Meeting at the offices of Curtis Mallet-Prevost, Colt & Mosle LLP, New York, USA 30 April and 1 May 2008.**

There was considerable discussion about the Steering Committee's Draft Report. In relation to annual subscriptions, the Executive Council decided that the method of computing annual subscriptions for each MLA would not be changed but some MLAs which had clearly grown in stature and influence would pay more by way of subscriptions although their amounts were not substantially greater than they might otherwise have been paying. During the discussion there was considerable debate about annual subscriptions of individual countries and the Steering Committee agreed to revisit some of the subscription amounts and report further at the Athens Conference.

In relation to Titulary fees and qualification, some concerns were expressed at abolishing the Titulary member fee and the President proposed that there be a one-time application fee which he asked the Steering Committee to consider.

The Steering Committee had mooted a possible handover from Francesco Berlingieri over time in relation to the website by a professional IT person and this clearly needed to be handled with care as the website was very much the creation and the baby of Francesco Berlingieri.

The Executive Council approved the recommendation of the Steering Committee that no individual memberships be considered or permitted but did agree to the recommendation that regional associations, where circumstances warranted it, should be encouraged.

There was support for the ongoing relationship between the CMI and WMU and IMLI but otherwise the Executive Council thought that MLAs were best placed to have the direct relationship with their own universities.

In so far as the recommendations were concerned concerning closer contacts with MLAs, Executive Councillors were asked to make any further recommendations they could to the Steering Committee.

No decisions were taken by the Executive Council concerning the recommendations made on publications but the Steering Committee was asked to prepare a draft list for circulation so the Member Associations could indicate how many hardcopies of publications they wished.

There was general agreement with the Steering Committee's recommendation that the terms of all Officers and Executive Councillors be reduced from four years to three years.

Insofar as young lawyers were concerned, the Executive Council generally agreed with the comments made by the Steering Committee and noted with approval the initiative taken by young lawyers for meetings at the Athens Conference.

The Secretary-General proposed that the Assembly be invited to approve the appointment of Stuart Beare as Member Honoris Causa at the next Assembly meeting. This was unanimously approved by the Executive Council.

The Executive Council were also in general agreement with the recommendation concerning the appointment of a communications and public relations officer.

At this Executive Council meeting the President announced that he would not be seeking an extension into a second term of his Presidency at the Athens Conference.

**The Nairobi Wreck Removal Convention** was adopted at a Diplomatic Conference which took place between 14 and 18 May 2007 and there is a report identifying the contribution made by the CMI to this Convention by Richard Shaw in the News Letter.<sup>113</sup> The report notes the preparatory work for this Convention had taken 12 years and the CMI had played a significant part. He referred to there being some controversy after the *Torrey Canyon* oil spill in 1967 concerning the adoption of the Intervention Convention in 1969 which provided for

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<sup>113</sup> CMI News Letter No 1/2 January/August 2008

limited rights of intervention by a Coastal State outside the Territorial Sea. Subsequently however incidents occurred outside the territorial waters of the State, to which Richard Shaw refers and, in the early 90s various States sponsored the suggestion that in accordance with Article 221 of UNCLOS the gap existing in international law for States to intervene in international waters near their coasts needed to be filled. The author points out that Article 56 to 75 of UNCLOS gave certain rights to States in their EEZ.

The CMI became actively involved in this topic in 1996 when a small IWG was set up under the Chairmanship of Bent Nielsen to study the proposed Wreck Removal Convention and a Questionnaire was sent to MLAs. Responses to the Questionnaires suggested that national laws in relation to the regimes for wreck removal within territorial waters may have some similarities making it possible to seek to achieve uniformity in that area within the scope of the Wreck Removal Convention. Considerable discussion then took place during 2006/2007 in which the CMI was involved in seeking to resolve areas of disputation such as a proposed "opt in" provision. He concluded his report in saying that "the careful balancing of the rights of the flag States with those of the affected coastal State was the continuing theme of the debates leading to the adoption of the text of this Convention."

#### **Executive Council Meeting Astir Palace Hotel, Vouliagmeni Athens, Greece 12 October 2008.**

The International financial crisis was having an affect at this time. The Executive Council was appreciative of the steps taken by the Treasurer to preserve the assets of the CMI and the Charitable Trust reported a significant effect on its investments.

There were a number of potential new CMI members which were discussed at this meeting including: Estonia, Malaysia, Morocco, Portugal, Poland and Egypt.

The plans which were being made for an event to take place around the Rotterdam Rules signing ceremony, scheduled for Rotterdam in September 2009, were explained by Gertjan van der Ziel. Chile had also offered to host a Colloquium in 2010 and correspondence had been received from the China MLA offering to host a Conference in 2012.

The minutes noted that Patrick Griggs and Frank Wiswall continued to provide lectures at IMLI and the President advised that he had attended the WMU, and that Karl Gombrii and Benoit Goemans had lectured there.

There was no discussion of works in progress which was deferred until after the Conference had taken place.

Francesco Berlingieri and Patrick Griggs thanked the President for his many valuable contributions to the CMI, this being his final meeting, as President, of the Executive Council. As Jean-Serge Rohart would become the Immediate Past President this would be the final attendance at an Executive Council meeting of Patrick Griggs. He was then thanked by the Executive Council for his outstanding contributions to the CMI. As Gregory Timagenis was also concluding his service on the Executive Council he too was thanked for his many contributions.

#### **39th CMI Conference Astir Palace Hotel Vouliagmeni Athens, Greece 12-17 October 2008.**

The opening ceremony and reception took place at the Megaron, the Athens Concert Hall on Sunday, 12 October 2008 and musical entertainment was also provided. There were 368 registered delegates and 112 accompanying persons at this Conference.

In his welcoming speech, in the presence of the Secretary-General of the IMO, Jean-Serge Rohart reminded delegates that the last CMI meeting in Greece was in 1962. Having outlined the contents of the meeting and subjects under discussion he bravely quoted a humourist who once said that: "If you had to identify, in a single word, the reason why the human race never achieves its full potential, that word is "meetings"".

He gave thanks and congratulations for all their work in arranging the Conference to the President of the Hellenic MLA, its President Anthony Antapassis as well as the host Committee "animated by" John Markianos

-Daniolos, Deucalion Rediadis, Vassilis Vernicos and Gregory Timagenis, not least for their choice of "this brilliant Concert Hall" but "in locating the rest of the Conference in the magnificent premises of the Astir Palace in Vouliagmeni, just far enough away from the busy hubbub of down town Athens and Piraeus to entice you all to spend the whole week in restful and salutary surroundings, for the benefit of the unification of maritime law."

The hotel venue was idyllic, the weather was mild, the whole day cruise on Wednesday, 15 October provided a wonderful opportunity to meet with old friends, dinner on another night at the foot of the Acropolis will be remembered for years and the Gala dinner took place within the gracious Astir Palace Hotel, which was situated in a wonderful location near the sea with a yacht club nearby.

The papers for the Athens Conference are to be found in Yearbook 2007-2008 Athens 1.<sup>114</sup>

### *Places of Refuge*

This Conference saw the completion of the work by CMI on Places of Refuge. A draft Instrument was completed. The materials made available prior to the Conference are contained in CMI Yearbook 2007-2008 Athens I.<sup>115</sup>

A day and a half were spent discussing the topic. Initially presentations were given by: the Chairman Stuart Hetherington; Lizabeth Burrell, on developments in the United States and the United States Coastguard practices in relation to this topic; Eric van Hooydonk discussed recent developments in the European Union; Franz Zoelen, the Chair of the Legal Committee of the IAPH; Andrew Bardot, representing the International Group of P&I Clubs; Fritz Stabinger representing IUMI; and Archie Bishop representing the International Salvage Union. All spoke from the perspectives of their organisations and the Rapporteur Richard Shaw discussed the principal provisions of the Draft Instrument. The Presentations are contained in CMI Yearbook 2009 Athens II. All provided differing perspectives on the need for and what might be included in an international instrument on this topic. Considerable debate was engendered after these presentations. The text which was finally approved in the Committee sessions was supported in the Plenary session and resolved that it be submitted to the IMO Legal Committee noting that it contained options in two articles for alternative provisions to be adopted in any text which that Committee may consider appropriate at some future occasion. (16 delegations supported the instrument, 10 voted against, with 2 abstentions).<sup>116</sup> The final Report to the IMO and the Draft Instrument was submitted to the IMO on 15 January 2009. The Conference Documents and Reports of the sessions of the Athens Conference dealing with these topics can be found in Yearbook 2009 Athens II.<sup>117</sup>

### *Summary of principal provisions in Draft Instrument on Places of Refuge*

Article 3 of the Convention contains a number of options as to the exceptions to be applied to what is stated at the commencement, that is, that "any competent authority shall permit access to a place of refuge by a ship in need of assistance when requested".

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<sup>114</sup> CMI Yearbook 2007 2008 Athens 1

<sup>115</sup> CMI Yearbook 2007 2008 Athens 1 Introduction by Stuart Hetherington (pages 126-127); Draft instrument (pages 128-136); Report to the Executive Council Meeting November 2006 on the third Questionnaire (pages 137-141); United States Coastguard Places of Refuge Policy (pages 142-163); United States National Response Team "Guidelines for Places of Refuge Decision Making" (pages 164-183)

<sup>116</sup> The writer recalls receiving pearls of wisdom from Francesco Berlingieri during a break in the meetings to the effect that "there is considerable merit in the use of square brackets."

<sup>117</sup> CMI Yearbook 2007 2008 Athens 1: United States National Response Team "Guidelines for Places of Refuge Decision Making" (pages 164-183); Annex 1: Policies of the United States Coast Guard and National Response Team Lizabeth L Burrell (pages 163-180); Annex 2: An Instrument on Places of Refuge from a Ports' Perspective Frans van Zoelen (pages 181-195); Annex 3: Places of Refuge for Ships in Distress - the P&I Insurer's Perspective by Andrew Bardot (pages 196-200); Annex 4: Places of Refuge by Archie Bishop (pages 201-203); Annex 5: Places of Refuge by Fritz Stabinger (pages 204-207); Annex 6: Notes on Clauses of Draft Instrument on Places of Refuge by Richard Shaw (pages 208-211); Annex 7: Submission of Report and Instrument to IMO by Richard Shaw (pages 212-226); Resolution adopted by the 39th CMI Conference in connection with the Draft Instrument on Places of Refuge in Athens 17 October 2008 (page 227)

Option 1 contains a provision that the competent authority could deny access, following an assessment which on reasonable grounds establishes that the condition of the ship is such that it and/or its cargo is likely to pose a greater risk if permission to enter a place of refuge is granted than if such a request is refused, but also said that the competent authority shall not deny access to a place of refuge on the grounds that the shipowner fails to provide an insurance certificate, letter of guarantee or other financial security.

Option 2 provides an exception to the primary obligation in Article 3 if following assessment and having regard to the following factors - the issue of whether the condition of the ship is such that it or its cargo is likely to pose a greater risk if permission to enter a place of refuge is granted than if such a request is refused, and the existence or availability of an insurance certificate, letter of guarantee or other financial security, but the absence of such insurance certificate, letter of guarantee or other financial security shall not relieve the competent authority from the obligation to carry out the assessment, and is not itself sufficient reason for a competent authority to refuse to grant access to a place of refuge by a ship in distress, and the requesting of such certificate, or letter of guarantee or other financial security shall not lead to a delay in accommodating a ship in need of assistance.

Option 3 would permit denial of access to a place of refuge in a situation in which following an assessment which on reasonable grounds establishes that the condition of the ship is such that it or its cargo is likely to pose a greater risk if permission to enter a place of refuge is granted than if such a request is refused, or on the grounds that the shipowner fails to provide an insurance certificate, or a letter of guarantee or other financial security in respect of such reasonably anticipated liabilities that it has identified in its assessment.

Article 4 provides immunity from liability to a competent authority where it reasonably grants access to a place of refuge and loss or damage is caused to the ship, its cargo or other third parties or their property, the competent authority should not have any liability arising from its decision to grant access.

Article 5 provides that a competent authority that refuses to grant access to a place of refuge shall have a liability to another State, the shipowner, the salvor, the cargo owner or any other party that prove that it suffered loss or damage by reason of such refusal for the loss or damage occasioned to it or them, unless it is able to establish that it acted reasonably in refusing such access.

Article 6 provides that, in ascertaining whether a State or competent authority has acted reasonably, courts shall take into account all the circumstances which were known (or ought to have been known) to the competent authority at the relevant time having regard, inter alia, to the assessment made by the competent authority.

Article 7 identifies various options as to the form of the letter of guarantee that could be acceptable.

Article 8 directs States to draw up plans to accommodate ships in need of assistance in appropriate places under their jurisdiction around their coasts which should contain the necessary arrangements and procedures to take into account operational and environmental constraints to ensure that ships in need of assistance may immediately go to a place of refuge, subject to authorisation by the competent authority.

Article 9 provides that States designate the competent authority to whom a request from a ship in need of assistance for admission to a place of refuge should be made.<sup>118</sup>

Although the IMO Legal Committee determined in April 2005 that although this topic was important and needed to be kept under review it did not warrant the drafting of an International Convention the Executive Council of the CMI decided that in view of all the research, discussion and work that had been done into this topic in many forums around the world, including CMI, it would seek to draft a frame work document.

The papers for the Athens Conference in October 2008 (including an Introduction by the Chairman, papers by Liz Burrell, Frans van Zoelen, Andrew Bardot, Archie Bishop, Fritz Stabinger, the responses of MLAs to the third Questionnaire and the CMI's final Report to the IMO Legal Committee, attaching the Draft Instrument

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<sup>118</sup> CMI News Letter No. 1 January/April 2009 "Overview of the Draft Instrument on Places of Refuge" by Rapporteur Richard Shaw.

which by Resolution of the Plenary meeting and the Assembly meeting were approved on 17 October 2008) can be found in the CMI Yearbooks.<sup>119</sup>

Significant features of the debate that took place over the 8 years of the existence of this IWG were the following:

- The International Group of P&I Clubs (whose members it was sought to benefit) did not throw its weight behind CMI's discussions. The only explanation that could be obtained for this decision was that the International Group of P&I Clubs did not want a further potential convention to distract from ratification of what it regarded as the framework liability and compensation Conventions, such as the CLC, Bunker, Wreck and HNS Conventions.
- The second feature was the change of heart of the IAPH once it became clear that any instrument that CMI might produce would place responsibility on States to carry out as thorough and comprehensive an investigation of the problems and risks posed by the stricken ship as possible before making their decision to refuse entry of the ship, especially where a financial burden might be placed on a State which failed to comply with its responsibilities in that regard.
- The third surprising feature in the course of the CMI IWG's work was the decision made by the IMO not to consider developing any further regulatory intervention beyond the "Guidelines" which it had promulgated.

As a footnote to this topic, it was noticeable in subsequent years that there have been subsequent incidents when States did not carry out detailed investigations and/or refused access to a safe haven to stricken ships in a timely fashion.

A further review of the draft instrument on Places of Refuge by Richard Shaw can be found in the CMI News Letter.<sup>120</sup>



Stuart Hetherington and Giorgio Berlingieri in a break from a Places of Refuge session.

#### *Procedural Rules relating to Limitation of Liability in Maritime Law.*

Running simultaneously with Places of Refuge on the first two days of the Conference were sessions on Procedural Rules relating to Limitation of Liability in Maritime Law, Chaired by Gregory Timagenis with Helen

<sup>119</sup> CMI Yearbook Athens I 2007 2008 (pages 126-183) and Athens II 2009 (pages 158-227)

<sup>120</sup> CMI News Letter No 1 January/April 2009

Noble as Rapporteur. Materials available to delegates prior to the Conference are in CMI Yearbook 2007-2008 Athens I.<sup>121</sup>

Additional materials for the Conference are in CMI Yearbook 2009 Athens II.<sup>122</sup>

*UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*

On the afternoon of the second day the sessions were devoted to this topic. The papers made available prior to the Conference are in CMI Yearbook 2007-2008 Athens I.<sup>123</sup>

The papers presented at the Conference are in CMI Yearbook 2009 Athens II.<sup>124</sup>

There were two sessions on the second day of the Conference respectively described as Overview of the Convention Chaired and "Industry and the Clubs Speak". In the former Stuart Beare and Kate Lannan, the UNCITRAL representative, discussed the Background to the Convention and the Way Forward; Michael Sturley identified Changes from the Existing Regimes; Professor Hannu Honka discussed the Scope of Application Volume Contracts, and Philippe Delebecque discussed the Civil law perspective on the Draft Convention. In the second panel, chaired by Francesco Berlingieri Knud Pontoppidan, Executive Vice President of AP Møller-Mærsk, Nicos Efthimiou, President of the Union of Greek Shipowners, Jan Ramberg, FIATA's representative, and Hugh Hurst of the International Group of P&I Clubs were speakers.

On the fourth day of the Conference there were two further Sessions. The first described as the Balance of Risk was chaired by Tomotaka Fujita at which Professor Berlingieri spoke on Carriers' obligations and liabilities; Kofi Mbiah spoke on Convention Liability and Limits of Liability; and Ingeborg Olebakken spoke on Shippers' Obligations and Liabilities. The final session entitled New Elements was chaired by Michael Sturley and was addressed by Johanne Gauthier on the Facilitation of Commerce in the Convention; Gertjan van der Ziel on Door to Door.

Other sessions of the Conference discussed the varied topics of *Non-Technical Measures to Promote Quality Shipping*, which was chaired by Karl Gombrii with Nigel Carden, and Richard Shaw, Rapporteur. Karl Gombrii's paper explains the significance of this topic. The 1980s in particular, had been an era in which sub-standard shipping had caused international regulatory bodies great concern. Steps had been taken to improve the technical side of ship operations (reflected in SOLAS and MARPOL Conventions). The human factor side had also been recognised (STCW Convention). Notwithstanding these matters, there were still major casualties such as the "*Braer*", "*Exxon Valdez*" and other casualties. The focus then turned to management systems and the failure to meet required minimum standards ( (International Safety Management Code (ISM Code)). Enquiries identified that there was a proliferation of information gathering

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<sup>121</sup> CMI Yearbook Athens I 2007-2008 (pages 186-220) Draft Guidelines February 2008; Report on the ISC's first meeting (Dubrovnik 12 May 2007) (pages 221-223); Report on the ISC's second meeting (Paris 13-14 September 2007) (page 224); Letter to the MLAs (26 February 2008) (pages 225-227); Chairman's report on additional issues (26 February 2008) (pages 228-233); Memorandum of Måns Jacobsson (6 February 2008) (pages 234-239); Comments by MLAs Japan; and Republic of Korea (pages 240-253).

<sup>122</sup> Additional documents contained in CMI Yearbook 2009 Athens II: Letter of Gregory Timagenis to MLAs dated 1 October 2008 attaching Draft Guidelines and a Digest of the Comments of MLAs (pages 124-150) and Remarks of the Danish, Norwegian and Swedish MLAs (pages 230-236); Memorandum of the Canadian MLA (pages 237-240) and the Resolution adopted by the Conference on 17 October 2008 together with the Guidelines there referred to (pages 241-249)

<sup>123</sup> CMI Yearbook Athens I 2007-2008: UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, Changes to Existing Law by Michael Sturley (pages 254-263); The Civil Law Perspective by Philippe Delebecque (pages 264-276); Introduction by the Chairman Tomotaka Fujita (pages 277-278); Carrier's Obligations and Liabilities by Francesco Berlingieri (pages 279-286); Convention Liability and Limits of Liability by Kofi Mbiah (pages 287-299); Shippers Obligations and Liability by Ingeborg Olebakken (pages 300-306)

<sup>124</sup> CMI Yearbook 2009 Athens IIA brief history of the involvement of the CMI (pages 252-254); Scope of Application, Freedom of Contract, by Hannu Honka (pages 255-270); Overview of the Convention the UNCITRAL Perspective by Kate Lannan (pages 271-276); UN Convention on Contracts for International Carriage of Goods Wholly or Partly by Sea, by Jan Ramberg (pages 277-281); Shipowner's View on the UNCITRAL Convention on Contracts of International Carriage of Goods Wholly or Partly by Sea, Summary and Speech by Knud Pontoppidan (pages 282-291); Speech by the President of the Union of Greek Shipowners, Mr Nicos D. Efthymiou (pages 292-295); the New Elements the Facilitation of Electronic Commerce by Johanne Gauthier (pages 296-300); Multimodal Aspects of the Rotterdam Rules by Gertjan van der Ziel (pages 301-313); Report of the Discussions and Resolutions (pages 314-315).

which was not necessarily available to all parties (Classification Societies, Flag States, Port States and to some extent Coastal States). Since 1992 the IOPC Fund had been turning its attention to these issues. Consideration had been given as to whether it was necessary to amend the CLC Convention. This did not find sufficient support so the 1992 Fund Assembly established the working group to develop proposals in respect of non-technical measures and guidelines for contracting States in the industry in order to promote quality shipping. Issues discussed were the feasibility and impact of differentiated insurance rates and premiums to encourage quality shipping, possible measures for denial or withdrawal of insurance cover in order to improve the safe transport of oil and the factors that prevent the sharing of information between marine insurers and efforts to develop a common policy or other measures that would facilitate such sharing of information. In relation to the third issue an invitation was extended to the CMI to undertake a study with the following aims: to allow, require, prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices, and to identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil. It was determined that the CMI should focus solely on the difficulties, if any, faced by hull underwriters. A Questionnaire was sent out to MLAs. Part of the CMI's work also considered the possibility of Flag States withdrawing a CLC certificate if it had indications that the quality was less than satisfactory and the introduction of economic incentives such as reduced port tariffs and fewer ship inspections of quality shipping representatives. None of those proposals gathered sufficient support within the working group. By the time of the Athens Conference the 1992 IOPC Fund seemed to have lost interest in the topic for the time being. What, however, emerged from the Questionnaire to MLAs was that competition law, data protection law and the law of defamation were dealt with very differently in the nine States whose MLAs had responded to the Questionnaire.

In another session, Patrick Griggs spoke on *Charterers' Rights of Limitation*. In his paper he identified the issues that had arisen in the two English decisions of the "*Aegean Sea*" (1998) 2 Lloyd's Rep 39 in which Thomas J had held that a charterer could not limit its liability against a claim made by the owner, which decision was followed by Steele J in the "*CMA Djakarta*" (2004) 1 Lloyd's Rep 460 in which an indemnity claim by a shipowner against a charterer for damage to the ship itself was held could not be the subject of limitation but the Court of Appeal held that a charterer could limit liability provided it could establish that the claim being brought against it was within Article 2, and an indemnity for a cargo claim that fell within Article 2 could be the subject of limitation by the charterer.

Henry Li spoke on the *International Recognition of the Judicial Sale of Ships*; Måns Jacobsson spoke on the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996*; and Nigel Frawley spoke on the *Draft Convention on Recycling of Ships*.<sup>125</sup>

*The Wreck Removal Convention*, chaired by Bent Nielsen and Richard Shaw Rapporteur heard from Jan de Boer and Linda Howlett.<sup>126</sup>

Francesco Berlingieri and Anthony Antapassis spoke on the *Implementation and Interpretation of International Conventions*. Materials for this session are in CMI Yearbook 2007-2008 Athens I.<sup>127</sup>

### **CMI Assembly Meeting Astir Palace Hotel Vouliagmeni Athens, Greece 17 October 2008.**

Francesco Berlingieri paid tribute to Henri Francois Voet at the commencement of the Assembly meeting.<sup>128</sup>

<sup>125</sup> CMI Yearbook 2007 2008 Athens 1: Draft Convention on Recycling of Ships: Summary of the Chairman Nigel Frawley (page 368); Summary of Presentation by Charlotte Breide (page 369); Summary of Presentation by Michael Stockwood (page 370)

<sup>126</sup> Wreck Removal Convention 2007 CMI Yearbook 2007 2008 Athens 1: The Nairobi Perspective: Nairobi International Convention on the Removal of Wrecks 2007 by Jan E de Boer (pages 333-340); Nairobi International Convention on the Removal of Wrecks 2007 by Linda Howlett (pages 341-345); Nairobi International Convention on the Removal of Wrecks 2007 (pages 346-363); Resolutions of the Nairobi Conference (pages 364-366)

<sup>127</sup> CMI Yearbook 2007 2008 Athens I: Implementation and Interpretation of International Conventions - Introduction by Anthony Antapassis and Francesco Berlingieri (pages 308 313); Annex I: Questionnaire on the Implementation of International Conventions (page 314); Annex II: Analysis of the Provisions of the Draft International Convention on the Contract of Carriage of Goods Wholly or Partly by Sea that refer to domestic laws (pages 315-319); Annex III: A Short Analysis of Certain Rules on the International Convention of Maritime Liens and Mortgages 1993 (pages 320-332)

<sup>128</sup> CMI News Letter No 2 May/August 2007

Morocco was elected as a CMI member. Karl Gombrii was elected to succeed Jean-Serge Rohart as President, Johanne Gauthier was elected Vice President in a rare contested election. The President convened a formal election process during the course of the Assembly meeting as José María Alcántara had been nominated by the MLA of Panama as Vice President, independently of the Nomination Committee, as the Constitution provides for, and Johanne Gauthier was elected by 20 votes to 11. New Executive Councillors, Louis Mbanefo and Andrew Taylor, were elected. Gregory Timagenis's second term as Executive Councillor concluded at this meeting.

A surplus of €101,000 was achieved for the year, and as a result of the Global Financial Crisis, a reduction in subscriptions was made from the current 5% to 10% for those that paid their subscriptions within the "early bird" period. Also due to the Global Financial Crisis, the Charitable Trust's securities and cash on hand had fallen from £430,000 in May 2008 to £347,000 in October 2008.

Liz Burrell gave the Report of the Audit Committee, having taken over the role that David Angus had performed so successfully as the Chair of the Audit Committee since the previous Assembly, and was to hold that position very successfully until 2014 when the baton was passed to Mans Jacobsson.

Gregory Timagenis reported that the Guidelines in respect of Procedural Rules Relating to Limitation of Liability in Maritime Law were adopted at the Plenary session on 17 October and the work of the International Sub Committee would continue.

The Young Members had had a breakfast meeting during the Conference with speakers on a variety of issues and had organised a social evening out during the Conference.

Gertjan van der Ziel reported on arrangements being planned for the signing ceremony in Rotterdam of the UNCITRAL Convention on Contracts for the Carriage of Goods from 21 23 September 2009 and that there would be a CMI Symposium, Executive Council meeting and Assembly on that occasion. The signing ceremony would be held on the SS Rotterdam.

The Report of the Steering Committee was then provided by Stuart Hetherington, it having been circulated to MLAs prior to the Assembly and reviewed its recommendations. A review of all subscriptions payable by MLAs was being undertaken but due to the Global Financial Crisis the Report on that would be submitted the following year.

At the conclusion of the meeting Jean-Serge Rohart made a short speech thanking the Executive Council, the delegates and all MLAs for their assistance during his term of office. Patrick Griggs reported that he would not be serving any further on the Executive Council as Jean-Serge Rohart would now become the Immediate Past President although he would continue to represent the CMI at IMO Legal Committee meetings. He thanked Jean-Serge Rohart for his valuable contributions to the CMI and all those present for their assistance and co-operation over the many years he had served on the Executive Council and was met by a great round of applause and Karl Gombrii thanked him for all of his service to the CMI.

The Secretary-General then called upon Stuart Beare and thanked him for his more than ten years of service to the CMI by chairing the Issues of Transport Law IWG and he was elected a Member Honoris Causa and presented with a ship's clock, to considerable acclaim by the Assembly.



#### **Executive Council Meeting Astir Palace Hotel, Vouliagmeni, Athens, Greece 17 October 2008.**

It was foreshadowed that future work for the CMI could include a possible Protocol to the Salvage Convention concerning environmental salvage; Charterers' rights to limit liability, Preparation of a Practical Manual on Bills of Lading, Letters of Guarantee and Indemnity; UNCITRAL Convention "residuals"; and electronic data interchange above and beyond the provisions of the current wording.



The Executive Council 2008.

#### **Conclusion: The Presidency of Jean-Serge Rohart.**

This was a very different four years to the seven of Patrick Griggs. That was inevitable. Jean-Serge Rohart was still in active private practice, juggling the work of the CMI with that of his business life. He relied on Nigel Frawley and others to perform a lot of the day to day tasks of a CMI President. The work of the CMI continued, the events were productive and varied (Cape Town, Dubrovnik, and Athens) and the introduction of electronic (Email) Executive Council meetings saved a considerable sum in travel and accommodation fares for Executive Councillors, especially as the geographical pool from which they were being elected was being extended. In addition the reforms of the Steering Committee benefited the organisation and its members considerably. The finances of the CMI, building on the considerable efforts of the Patrick Griggs era enabled the CMI to weather the financial storm that hit the world in 2008/2009, to the extent that subscriptions holidays or reductions could be given to Members.

In a revealing full page article published in Lloyds List on 15 October 2008, Jean-Serge Rohart spoke about his Presidency and the CMI. In the interview he revealed that he had enjoyed his four years as President but welcomed the opportunity to return to full time legal practice. He referred to the fact that he had sought to travel as much as possible to visit MLAs. He identified as important his encouragement of young lawyers in the participation of the work of the CMI and the greater involvement of the MLAs of Korea (1978) and China (1988) in the work of the CMI. He had commented to the author of the article that "The CMI is not a place of power. It is not a governing body. It is just a tool, a gathering of experts, bringing their knowledge, talent and experience for the benefit of international organisations and particularly, of the IMO." Jean-Serge had gone on to explain to the author the readiness of lawyers and others like himself to work for the public good via the CMI. He had additionally noted that it is an organisation that provides learning opportunities for those who seek them and ultimately recognition of their expertise in the international maritime community. He had continued: "They learn about the maritime law of other countries than their own and are able to make comparisons between the legislative provisions of different countries, before putting their knowledge to work in the drafting of new international instruments through their work in the CMI's working groups and

sub-committees and, finally, its Plenary Conference sessions". He acknowledged, nevertheless, that there is a club-like atmosphere in the organisation, which the author surmised is apparently not displeasing. As John-Serge had remarked its work depends heavily on personal relationships, "like in a club", he said, adding perhaps a little mysteriously: "people know how to recognise each other". The author also quoted Jean-Serge Rohart as saying "Our strength, our modernity is based on our tradition. We have a tradition of 110 years of intense intellectual work without having been tempted to exercise any sort of political influence".



Jean-Serge Rohart and Karl Gombrii at the conclusion of the Athens Conference.

### **Chapter 3 The Presidency of Karl Gombrii October 2008- October 2012.**

Foreword: The Presidency of Karl Gombrii. This chapter recounts significant meetings, including the Conference at Beijing, Colloquia at Buenos Aires and Rotterdam, and Assembly meeting in Oslo and events, administrative changes, including putting into effect the recommendations of the Steering Committee that he had been involved in, and taking steps towards an administrative presence in Singapore, and work done by the CMI, especially the signing of the Rotterdam Rules, and initiating moves to reform the YAR to the satisfaction of all the players involved, during the Presidency of Karl Gombrii.

#### **Review of the Salvage Convention December 2008.**

In December 2008 Archie Bishop, former senior partner of Holman Fenwick & Willan, and highly respected casualty and salvage lawyer, as well as legal adviser to the International Salvage Union (**ISU**), approached the CMI with the suggestion that it would be timely to review the Salvage Convention 1988 which was approaching its 20th birthday. An IWG was set up in 2009 under the Chairmanship of Stuart Hetherington, Diego Chami (Rapporteur) Archie Bishop, Mans Jacobsson, and Jorge Radovich.

In the time honoured fashion a Questionnaire was sent to MLAs in July 2009 and an IWG meeting held in London in September 2009 by which time 7 responses had been received from MLAs. A Discussion Paper was prepared by the Chairman in advance of an International Sub-Committee meeting on May 2010 in London by which time a further seven MLA responses had been received.

The Discussion Paper including summaries of the responses to the Questionnaire can be found in CMI Yearbook.<sup>129</sup> The Discussion Paper recalls that CMI had set up an IWG, chaired by Professor Selvig in 1979 and it had drafted a Salvage Convention for the consideration of the CMI at its Conference in Montreal in 1981 to replace the 1910 Salvage Convention. A draft text had been approved and submitted to the IMCO (which changed its name to IMO in 1982). In the course of his work Professor Selvig had prepared a "Report on the Revision of the Law of Salvage" in 1980. In it he canvassed a concept which was described as "liability salvage"; whereby, in order to facilitate the viability of salvage, salvors might be compensated in respect of benefits conferred on a shipowner in the salvage operations by the reduction in their potential liabilities to third parties. Typically envisaged were activities that prevented damage to the environment.

The Convention which was adopted in 1989, and which came into force in 1995, was the result of a compromise of these intentions.

Salvage interests were complaining about the operation and interpretation of Salvage Convention Articles: 13.1 (b), which identified as a criteria to be taken into consideration when fixing a salvage reward "the skill and efforts of the salvors in preventing or minimising damage to the environment", and Article 14, which allowed "special compensation to salvors" where a salvor "has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under Article 13 at least equivalent to the special compensation assessable in accordance with this article he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined".

Essentially, it was suggested by salvors, that these provisions were not benefitting the salvors in a way which made them fit for purpose twenty years after they were agreed. They pointed in particular to the greater significance being required in all salvage operations at the present time of protection of the marine and ecological environment; the enlarged scope of responsibility of the salvors both at common law for negligence and criminal prosecution arising from the conduct of their activities; the absence of incentives to invest in research, training, manpower and equipment for the benefit of the environment, and Article 13.1(b) was ineffective as any significant uplift by reason that that provision was still limited to the value of the ship. As far as Article 14 was concerned it was said that it had proved to be expensive and time consuming to operate, uncertain in outcome and a deterrent to the salvor rather than an incentive. The necessity to prove that on a balance of probabilities damage would have been occasioned to the environment but for the salvage services being particularly onerous.

The "last straw", according to some, being the House of Lords' interpretation of Article 14 in the *"Nagasaki Spirit"*<sup>130</sup> in which no element of profit was permitted in the calculations under Article 14.3. It had been replaced in 1999 by the industry led SCOPIC agreement.

Archie Bishop therefore proposed to the IWG that a new award be drafted into the Salvage Convention by way of an "environmental award for prevention or minimising oil pollution". This had distinct similarities to what Professor Selvig and his earlier IWG had initially discussed and which had been termed "liability salvage".

#### **Executive Council Email Meeting from the office of the President Singapore week commencing 16 March 2009.**

This was the first Email Executive Council meeting conducted by Karl Gombrii and like those conducted by his predecessor was extremely successful. As an employee of the Norwegian Defence Club Nordisk Karl Gombrii had taken up a position running its Singapore office for a two year period, and he and his wife revelled in the opportunity this presented.

The President reported on his schedule, including attending the Second Asian Maritime Law Conference and a meeting of the Steering Committee in Sydney, and referred to a forthcoming Inter Pacific Bar Association meeting in Manila he hoped to attend. He also referred to the Arab Society for Commercial and Maritime

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<sup>129</sup> CMI Yearbook 2010 (pages 384-456)

<sup>130</sup> (1997) 1 Lloyd's Rep. 323

Law which will host a Conference on the Rotterdam Rules in Alexandria, Egypt in April 2009<sup>131</sup>. UNCITRAL assisted the organisers with programme and speakers. Nigel Frawley and Stuart Beare will participate. The Slovenian Maritime Law Association is organising a round table on the Rotterdam Rules in May 2009 and also a Congress being organised on the Rotterdam Rules for Madrid in September 2009 at which Stuart Beare and Chris Davis will represent CMI. Reference was also made to the Colloquium that was being organised by the Dutch Foreign Ministry at the Port of Rotterdam on September 21, 2009 under the auspices of UNCITRAL and CMI.

The following potential topics for study were also mentioned:-The implementation by States of UNCLOS and SUA provisions on Piracy; A Comparative Study of Admiralty Rules; Liability of Pilots; Rotterdam Rules "Residuals"; A Manual on bills of lading, letters of guarantee, letters of indemnification; E-Commerce and the Rotterdam Rules and the possible need to expand those provisions; Cross-Border Insolvencies in which it was decided that a preliminary study should be made within the CMI to collect and report on whether or not it should be established; Salvage in which it was decided that a Working group chaired by Stuart Hetherington should be asked to consider the need, or viability of any proposals to be made in relation to environmental issues and the existing Salvage Convention; and Charterers rights to limit liability; the impact of "*Erika*" and "*Prestige*" decisions; Competition law and Contracts of affreightment. These last topics did not seem suitable for work by the CMI at this stage.

Although the reforms of the Steering Committee were concluded it was decided to postpone decisions until after further deliberation by email exchanges on the recommendations in relation to Titulary membership fees and the new subscriptions and then to put them to the Assembly at Rotterdam, in early September 2009 for approval.<sup>132</sup>

**Nicholas J Healy Honorary Vice President (1910-2009).**



Portrait of Nick Healy by Everett Raymond Kinstler, which hangs in the Faculty Lounge at NYU Law School

<sup>131</sup> CMI News Letter No 1 January/April 2009 Report on the 3rd Arab Commercial Maritime Law Alexandria

<sup>132</sup> CMI News Letter No 1 Jan/April 2009, Minutes of Executive Council meeting held on 16 March 2009

A moving tribute was paid to Nick Healy, the doyen of the US Maritime Legal profession of the 20th Century by his old friend Francesco Berlingieri in the CMI Newsletter<sup>133</sup>. He had died at his home at the age of 99 and been a member of the CMI Executive Council from 1977 to 1979, a Vice President from 1985 to 1991 and subsequently an Honorary Vice President. He was made President of the US Maritime Law Association in 1964 and was President when the CMI held its Conference in New York in 1965. At the special proceeding at the Centennial meeting of the MLAUS on 7 May 1999, Patrick Griggs, an invited guest, paid tribute to "the very remarkable man, and his equally remarkable wife; and, of course, I'm talking about Nick and Margaret Healy." He referred to the fact that he was welcomed into the Healy household and the Healy firm as a part time trainee in 1961. Nick Healy himself, as Patrick Griggs pointed out in his remarks, was only 10 years younger than MLAUS so spoke at that meeting. He was a delightful companion at CMI and the MLAUS meetings for many years and the Maritime Law Association of Australia and New Zealand was particularly pleased to have both Nick and Margaret present at the CMI Conference in Sydney in 1994 (still wearing high heels at an advanced age she and Nick insisted on walking around the rim of the Blue Mountains during the excursion in the rest day of the Conference).

He was the author of many books including cases of the Law of Admiralty and the Law of Marine Collision, co-authored with Joseph C Sweeney. Both Patrick Griggs and Giorgio Berlingieri had worked in the New York office of the firm that bore his name, Healy and Baillie, like many other international lawyers who were privileged to enjoy that experience.

#### **Colloquium, including Rotterdam Rules Signing Ceremony, Rotterdam, Holland 20-23 September 2009.**

The Colloquium commenced with a Welcoming Reception and Buffet at the Rotterdam City Hall on Sunday 20 September. On the Monday there was a welcome address by the Minister of Justice of the Netherlands and by Renaud Sorieul, Secretary-General of UNCITRAL and Karl Gombrii. That evening there was the official dinner at the Saint Laurens Church. On Tuesday 22 September there was a presentation on Rotterdam World Port World City at the New Luxor Theatre, followed by Saluting the Flags at the Flag Parade, then a cruise through the Port of Rotterdam on a paddle steamer including lunch and then a reception at the Maritime Museum. On Wednesday the signing ceremony of the Rotterdam Rules took place at the Van Nelle Design Factory followed by an international press conference and an official lunch. The Assembly of the CMI took place later that afternoon. Contemporaneously with the Assembly meeting was a meeting for Young CMI with keynote speakers, Yingying Zou, Manuel Fernandes, Pierre-Jean Bordahandy, Fiona Gavin and Jolien Kruit. The previous evening the Young CMI delegates had met socially.

In its press announcement, UNCITRAL said that the Convention:

"Aims to create a modern and uniform law concerning the international carriage of goods which include an international sea leg, but which is not limited to port-to- port carriage of goods. In addition to providing for modern door-to-door container transport, there are many innovative features contained in the Convention, including provisions allowing for electronic transport records, and other more technical features to fill the perceived gaps in existing transport regimes. It is expected that harmonisation and modernisation of the legal regime in this area, which in many countries dates back to the 1920s or earlier, will lead to an overall reduction in transaction costs, increased predictability when problems are encountered, and greater commercial confidence when doing business internationally."

This is an extensive re- write of the law in this area. It is of note that the original Hague Rules, comprised 9 articles, the Hamburg Rules contained 26 articles and the UNCITRAL Convention comprises 96 articles. It is a mammoth document for those used to dealing with a relatively simple text.

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<sup>133</sup> CMI News Letter No. 2 May/September 2009

## **Summary of the major provisions of the Rotterdam Rules with reference to any differences between this Convention and its predecessors.**

### *Tackle to Tackle*

As has already been mentioned, one of the aims is to extend the regime to which it applies from tackle to tackle, as it was under the Hague Rules, from the period during which the carrier is in charge of the goods at the port of loading to the similar time at the port of discharge, as under the Hamburg Rules.

This is accomplished in article 12 of the Convention, which provides that the period of responsibility of the carrier "begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered." It will be appreciated that this instantly brings to the fore a new description which is not found in either of the previous regimes, that of the "performing party". Such a person is defined in article 1, paragraph 6, as meaning:

"A person other than the carrier that performs or undertakes to perform any of the carrier's obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, keeping, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly at the carrier's request or under the carrier's supervision or control."<sup>134</sup>

That definition goes on to confirm that a "performing party" is not anyone who is retained by a shipper or consignee.

### *Obligations of Carrier*

In so far as the obligations of the carrier are concerned, much of the wording of the Hague Rules, which has of course been the subject of considerable judicial interpretation, has been retained. For example, in article 13, paragraph 1, the carrier, during the period of responsibility under article 12, is required to:

"properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods."

The words "receive" and "deliver" are of course new to the Hague Rules regime.

Pursuant to article 13, paragraph 2, the parties are at liberty to agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper or consignee, but such an agreement is to be referred to in the "Contract particulars", which expression is defined in article 1, paragraph 23, as meaning: "any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record."

"Transport document" is defined in paragraph 14 of article 1 as meaning:

"a document issued under a contract of carriage by the carrier or a performing party that satisfies one or both of the following conditions:

- (a) Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; or
- (b) Evidences or contains a contract of carriage."

"Contract of carriage" is itself defined in paragraph 1 of article 1 as meaning:

"a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage."

UNCITRAL came under attack when it commenced this work from its related United Nations body, UNCTAD, which has the responsibility for some of the land based Conventions (CMR for road, CIM for rail). This

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<sup>134</sup> CMI Yearbook 2013 Beijing II (page 267) notes the correction made to the original text by the insertion of the word "keeping".



definition is no doubt there to ensure that it is not seen to be treading on the toes of those other regimes. This has led some commentators to be critical, on the one hand, on the basis that it is principally a maritime Convention drafted by CMI, and on the other, it potentially leaves room for arguments as to which regime is to apply where there is overlap (article 82 seeks to resolve that issue).

Article 14 also contains familiar provisions with significant additions. It provides that the carrier is bound before, at the beginning of and during the voyage by sea to exercise due diligence to make the ship seaworthy, properly crew, equip and supply the ship and make and keep the holds and all other parts of the ship in which the goods are carried, including any containers supplied by the carrier, in or upon which the goods are carried, fit and safe for their reception, carriage and preservation. (Interestingly, the words "refrigerating" and "cool chambers" have been deleted from the Hague Rules wording). Thus the carrier is required to maintain the seaworthiness of the vessel, properly crew, equip, supply the ship and keep the holds fit and safe for the cargo throughout the voyage.

### *Liability Regime*

The carrier's liability is dealt with in article 17. It is framed in a slightly different fashion to the Hague Rules but much of the language of article 4 in the Hague Rules is reproduced. Paragraph 1 of article 17 is different however. It provides as follows:

"The carrier is liable for loss of or damage to the goods, as well as for delay and delivery, if the claimant proves that the loss, damage or delay, or the event or circumstance that caused or contributed to it, took place during the period of the carrier's responsibility as defined in chapter 4." (articles 11 to 16).

Paragraph 2 of article 17 is also framed in slightly different language to article 4 Rule 2 of the Hague Rules, which commences with the words "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from...". Paragraph 2 of article 17 reads:

"The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage or delay is not attributable to its fault or to the fault of any person referred to in article 18".

Paragraph 3 of article 17 provides an alternative source of relief for the carrier. (It would seem that in proving one of the events to which reference will be made in paragraph 3 of article 17, a carrier would inevitably bring itself within paragraph 2 of article 17). It is paragraph 3 which reproduces in large part the exclusions of liability contained within article 4 Rule 2 of the Hague Rules, the familiar list of exceptions. The list of exceptions does not include nautical fault (article 4 Rule 2(a) of the Hague Rules).

It does however include Act of God, Perils of the sea, War, Quarantine restrictions or governmental acts, Strikes, Latent defects not discoverable by due diligence, Act or omission of the shipper, Wastage in bulk or weight, or any other loss arising from an inherent defect, quality or vice of the goods, Insufficiency or defective condition of packing, Saving or attempting to save life at sea, Reasonable measures to save or to attempt to save property at sea, Reasonable measures to avoid or attempt to avoid damage to the environment and Acts of the carrier pursuant to the powers conferred by articles 15 and 16 (they relate to the taking of measures where goods are a danger to persons, property or the environment or sacrificing goods at sea when it is made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure).

In addition, fire has been retained but without the proviso that was in article 4 Rule 2(b) of the Hague Rules "unless caused by the actual fault or privity of the carrier", presumably because of what is contained in paragraph 4 of article 17, which goes on to provide that the carrier remains liable if the claimant proves that the fault of the carrier, or of a person referred to in article 18 caused or contributed to the event or circumstance on which the carrier relies.

Also, in accordance with paragraph 5(a) of article 17, the carrier remains liable if:

"(a) The claimant proves that the loss, damage or delay was or was probably caused by or contributed to by:

- (i) the unseaworthiness of the ship
- (ii) the improper crewing, equipping and supplying of the ship or
- (iii) the fact that the holds or other parts of the ship in which the goods are carried (including any containers supplied by the carrier in or upon which the goods are carried) were not fit and safe for reception, carriage and preservation of the goods; and
- (b) the carrier is unable to prove either that:
  - (i) none of the events or circumstances referred to in subparagraph 5(a) of this article caused the loss, damage or delay; or
  - (ii) that it complied with its obligations to exercise due diligence under article 14. "

Under paragraph 6 of article 17, it is provided that when the carrier is relieved of part of its liability pursuant to this article, it is liable for only that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to the article.

Thus it will be seen that the "ping- pong" effect of the burden of proof is alive and well, deriving in part from the judgment of Lord Esher in the *Glendarroch*<sup>135</sup>, but now overruled and criticised by Lord Sumption in the Supreme Court in the *Volcafe* case.<sup>136</sup>

It had been well accepted that if goods have been damaged during the tackle to tackle period and the consignee/plaintiff tenders a bill of lading and proves the damage, the burden of proof is placed on the carrier to bring itself within one of the exclusions in article 4 rule 2, and thereafter, the consignee/plaintiff may wish to adduce evidence that the carrier is disentitled from relying on any of those provisions by reason of its negligence or failure to exercise due diligence under article 3 to make the ship seaworthy. Those same evidentiary burdens would seem to apply under the Convention.

Paragraph 1 of article 17 seeks to preserve that position of presumed fault by the carrier, where it is established that the loss and damage took place during the carrier's period of responsibility. This was explicitly set out in article 5 of the Hamburg Rules. The difference between the Hamburg Rules and article 17 is really the inclusion of the words "if the Claimant proves" etc. Hamburg referred simply to: "if the occurrence which caused the loss, damage or delay took place"...without specifying who needed to prove it.

Article 18 is headed "Liability of the carrier for other persons". It confirms that the carrier is liable for the breach of its obligations caused by the acts or omissions of any performing party, the master or crew of the ship, employees or agents of the carrier or a performing party or any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

There are provisions dealing with the liability of "Maritime performing parties", who are separately defined in article 1, paragraph 7. Article 19 deals with the liability of maritime performing parties, who can take the benefit the carrier's defences and limits of liability if it received the goods for carriage in a Contracting State or delivered them in such a State or performed its activities with respect to the goods in a Port in such a State and the occurrence that caused the loss, damage or delay took place (i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship and either (ii) while it had custody of the goods; or (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.<sup>137</sup>

### *Delay*

Another change from the Hague Rules regime, is the inclusion in article 21 of a definition for "delay" which is somewhat more restrictive than the Hamburg Rules provision. That contained a definition in article 5, paragraph 2, which referred to a time expressly agreed upon or in the absence of such agreement, the time "which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case".

<sup>135</sup> (1894) P.226 at 231

<sup>136</sup>(2019) 1 Lloyds Rep. 21

<sup>137</sup> CMI Yearbook 2013 Beijing II (page 268) where the correction to the original text is recorded.



Article 21 of the Convention reads:

"Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed."

Article 17 expressly provides that the carrier "is liable for loss or damage to the goods, as well as for delay in delivery... ", which is unlike the Hague Rules, which only expressly refers to loss or damage to goods and there are arguments as to whether or not they encompassed loss to a shipper or a consignee brought about by delay.

#### *Notice of Loss*

The provisions dealing with Notice of Loss will not be unfamiliar to those experienced in the current regime. However, the period of three days in article 3 Rule 6 of the Hague Rules for the giving of notice where damage was not apparent at the time of delivery has been extended to seven days under article 23, paragraph 1. Such notice is not required however, where the loss or damage has been ascertained in a joint inspection of the goods (article 23, paragraph 3). There is a special 21 day period within which notice is required to be given where a claim for loss due to delay is made (article 23, paragraph 4).

#### *Time Bar and Identification of Carrier*

Time for suit is covered in article 62, and the current one year period has been extended to two years in paragraph 1. That period may however be extended by the person against whom a claim is made at any time during the running of the period (article 63); and an action for indemnity may be instituted after the expiration of the period, provided it is done within the time allowed by the applicable law in the jurisdiction where proceedings are instituted or within 90 days commencing from the day when the person instituting the action for indemnity has either settled a claim or been served with a process in an action against itself earlier (article 64).

There is also a further time provision (article 65) which is related to articles 36 and 37, which are new provisions. Article 36 specifies what is required to be inserted in a transport document or electronic transport record. Amongst that information is included the "name and address of the carrier" (article 36, paragraph 2(b)).

Article 37 makes ineffective anything else in the transport document which is inconsistent with the identification of the carrier in the contract particulars (paragraph 1). Pursuant to paragraph 2 of article 37, it is provided that if no one is identified as the carrier, as required under article 36, but the contract particulars do identify a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter and it identifies the bareboat charterer and its address, in which case the bareboat charterer is to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address (the same applies to the bareboat charterer). None of the above prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of article 37 is the carrier.

Article 38 requires a transport document to be signed by the carrier or a person acting on its behalf.

Returning to the time limitation provisions, as related to article 37, it is provided that an action against a bareboat charterer or the person identified as the carrier under article 37, paragraph 2, may be instituted after the expiration of the two year period, provided it is within the later of either the time allowed by the applicable law in the jurisdiction where proceedings are instituted or 90 days after the carrier has been identified or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier (article 65).

#### *Jurisdiction*

Article 74 provides that the provisions on Jurisdiction are only binding on States if they declare in accordance with Article 91 that they wish to be bound by them. Unless the contract of carriage has an exclusive choice of court agreement, proceedings against the carrier may be instituted, pursuant to article 66 (a): in a court

which is either in the domicile of the carrier, the place of receipt agreed in the contract of carriage, the place of delivery agreed in the contract of carriage or the port where the goods are initially loaded on the ship or the port where the goods are finally discharged from the ship. Under article 66(b) they can be instituted in a competent court or courts designated by an agreement between the shipper and the carrier for the purpose of deciding a claim against the carrier that may arise under the Convention.

However exclusive choice of court agreements under article 66 (b) can only be entered into provided they are contained in a volume contract and there are specific provisions dealing with what such contracts are required to state. It is however provided in article 67, paragraph 2, that a person who is not a party to a volume contract is only bound in certain circumstances, including that it is given timely and adequate notice of the court where the action shall be brought. It will be interesting to see how that provision is interpreted. For example will it be sufficient if the bill of lading simply states that information and the person concerned has received a copy of the bill?

### *Arbitration*

There are also new provisions dealing with arbitration. They are contained in articles 75 to 78, but article 78 specifies that those provisions will only be binding on contracting States that declare, in accordance with article 91, that they will be bound by them (ie this is also an opt in provision).

The scheme of the provisions dealing with arbitration is the same as for jurisdiction and permits arbitration proceedings, at the option of the person asserting a claim against the carrier, to take place at any place designated for that purpose in the arbitration agreement or any place situated in a State where any of the following places is located: the domicile of the carrier, the place of receipt agreed in the contract of carriage, the place of delivery agreed in the contract of carriage or the port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship. (article 75, paragraph 2).

However, article 75, paragraph 3, provides that the designation of the place of arbitration in the agreement is binding on the parties if it is contained in a volume contract that contains certain provisions.

Article 75, paragraph 4, is somewhat differently worded from what it might be assumed is intended to be its equivalent provision relating to jurisdiction in article 67, paragraph 2. Article 75, paragraph 4, says:

"When an arbitration agreement has been concluded in accordance with paragraph 3 of this article, a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:

- (a) The place of arbitration designated in the agreement is situated in one of the places referred to in subparagraph 2(b) of this article;
- (b) The agreement is contained in the transport document or electronic transport record;
- (c) The person to be bound is given timely and adequate notice of the place of arbitration; and
- (d) Applicable law permits that person to be bound by the arbitration agreement."

### *Live Animals*

Article 81 reflects the current position under the Hague Rules in so far as "live animals" are concerned, and provides that the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party in relation to such cargo unless "the claimant proves that the loss of or damage to the goods or delay in delivery resulted from an act or omission of the carrier or of a person referred to in article 18, or of a maritime performing party done recklessly and with knowledge that such loss or damage, or that the loss due to delay, would probably result".

### *Special Circumstances*

Article 81 also seeks to reflect the final paragraph of article 6 in the Hague Rules and permits a special regime to apply where:

"The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods."

### *Electronic Documentation*

The use of electronic transport documents has obviously taken place since the Hague, Hague Visby and even Hamburg Rules regimes were agreed. Article 8 of the Convention recognises that anything that is required under the Convention to be in or on a transport document may be recorded in an "electronic transport record" which like "electronic communication" is defined in article 1, paragraphs 18 and 17 respectively.

They provide as follows:

17: "Electronic Communication" means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.

18: "Electronic Transport Record" means information in one or more messages issued by electronic communication under a contract of carriage by a carrier or performing party, including information logically associated with the electronic transport record by attachment or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier or a performing party, so as to become part of the electronic transport record that:

- (i) Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; and
- (ii) Evidences or contains a contract of carriage.

Article 9 then goes on to identify the procedures for the replacement of either negotiable transport or negotiable electronic transport records.

Articles 50 to 56 (Chapter 10) are also new and relate to electronic documents. They deal with the "rights of the controlling party". That term is defined in paragraph 13 of article 1 as meaning "the person, that pursuant to article 51, is entitled to exercise the right of control" and "right of control" is defined in paragraph 12 of article 1 as meaning "the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with Chapter 10".

Article 50 limits the right of control to giving or modifying instructions in respect of the goods that do not constitute a variation of the contract of carriage, the right to obtain delivery of the goods at a scheduled port of call, or in respect of inland carriage, any place en route; and the right to replace the consignee by another person including the controlling party.

Pursuant to article 51 paragraph 1 (a) the shipper is in general the controlling party, and when a non negotiable transport document is issued that indicates it shall be surrendered in order to obtain delivery of the goods the shipper is also deemed to be the controlling party, (article 51 paragraph 2) but may transfer the right of control. When a negotiable transport document is issued the holder is the controlling party (article 51 paragraph 3.)

The transfer of rights provisions are also new. They confirm in article 57, paragraph 1, that when a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person and also, in article 58, makes it clear that a holder (which term is defined in paragraph 10 of article 1, as being a person that is in possession of a negotiable transport document, and if the document is an order document, it is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed, or if the document is a blank endorsed order document or bearer document is the bearer thereof) that is not the shipper and does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.

### *Limits of Liability*

This introduces new amounts to which the carrier is entitled to limit its liability. It goes beyond the Hamburg limits and specifies a limit to the carrier's liability of 875 units of account (40 more than under the Hamburg Rules) per package or shipping unit or 3.0 units of account per kilogram for gross weight of the goods (.5 of a unit more than the Hamburg Rules) (article 59).

The limit for the amount that can be recovered for delay is two and a half times the freight on the goods delayed, and the total amount that can be recovered under articles 59 and 60 is no more than for the total loss of the goods.

The right to limit is lost in similar circumstances to that under the Hague and Hamburg regimes (ie. where there has been a personal act or omission of the person claiming a right to limit done with the intention to cause such loss or recklessly, and with knowledge that such loss would probably result (article 61)).

### *Deck Carriage*

Deck carriage is covered by article 25, which provides that goods may be carried on deck only if:

- "(a) Such carriage is required by law
- (b) They are carried in or on containers on decks that are specially fitted to carry such containers; or
- (c) The carriage on deck is in accordance with the contract of carriage or the customs, usages, and practices of the trade in question."

Where sub- paragraphs 1(a) or (c) apply, the carrier is not liable for the loss of or damage to such goods or delay in their delivery "caused by the special risks involved in their carriage on deck" (article 25 paragraph 2).

Where, however, goods are carried on deck in situations other than those identified in paragraph 1 of article 25, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck and is not entitled to rely on any of the defences (ie the listed exceptions) contained in article 17.

Paragraph 4 of article 25 provides that the carrier cannot invoke sub-paragraph 1(c) of article 25 against a third party that has acquired a negotiable transport document or negotiable electronic transport record in good faith "unless the contract particulars state that the goods may be carried on deck".

Paragraph 5 of article 25 provides that the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage or delay resulted from their carriage on deck, where the carrier and shipper have expressly agreed that the goods would be carried under deck.

### *Shipper's Liability*

There are some significant provisions dealing with the basis of the shipper's liability to the carrier in Chapter 7, articles 27-34. The current regime has very little to say about the duties and obligations of shippers. Article 3, Rule 5 of the Hague Rules, deems the shipper to have guaranteed the accuracy of the information that it supplies in relation to the goods and contains a right of indemnity by the carrier against the shipper arising from any loss, damage or expense that it suffers as a result of inaccuracies in those particulars. Under article 27, it is provided that:

"Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property."

Article 28 requires that the carrier and the shipper co-operate in providing information and instructions and article 29 says:

- "1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:
- (a) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and
  - (b) For the carrier to comply with law, regulations or other requirements of public authorities ....."

Under article 30 there is a general provision in paragraph 1 that makes the shipper liable for loss and damage sustained by the carrier if the carrier proves that it was caused by a breach of the shipper's obligations under the Convention. One of those obligations is contained in article 31 paragraph 1, and that is to provide accurate information for the compilation of the contract particulars, such as are required under article 36 (Contract particulars).

Paragraph 2 of article 31 replicates the position under article 3 rule 5 in the Hague Rules, whereby the shipper is deemed to have guaranteed the accuracy of the particulars.

Article 32 contains "Special rules on dangerous goods". They provide that:

- "(a) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform; and
- (b) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure."

The current provisions in article 4 rule 6 of the Hague Rules are not as explicit. They simply provide:

- "6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed in any place or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent should become a danger to the ship or cargo, they may in like manner be landed in any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any."

The new provisions on dangerous cargo surprisingly do not replicate the right given to the carrier under the present regime to discharge or destroy or render innocuous where the carrier has not consented to carry them, although articles 15 and 16 provide the carrier with sufficient rights in that regard.

Article 33 makes a documentary shipper subject to the same liabilities as a shipper. (A documentary shipper is defined in article 1 paragraph 9 as meaning a person who "accepts to be named as "shipper" in the transport document or electronic transport record". Article 34 makes the shipper liable for the acts of anyone to whom it has entrusted the performance of any of its obligations, (but not those of the carrier or a performing party to which it has entrusted any of its obligations).

#### *Transport Documents and Electronic Transport Records*

There are some important provisions in Chapter 8, articles 35 to 42. They include the shipper's entitlement to obtain from the carrier a non-negotiable transport document, or non-negotiable electronic transport record

or an appropriate negotiable transport document, or negotiable electronic transport document (article 35). Article 39 deals with the topic of "Deficiencies in the contract particulars"; article 40 with "Qualifying the information relating to the goods in the contract particulars", and article 41 the "Evidentiary effect of the contract particulars."

Article 42 is headed "Freight prepaid" and confirms what the law of estoppel has to say about the inability of a carrier to seek freight from the holder of a bill of lading or a consignee when the bill of lading has been endorsed "freight pre-paid", unless of course the holder or the consignee is also the shipper.

### *Volume Contracts*

This is an area which is new to the cargo liability regime. A "volume contract" is defined in paragraph 2 of article 1 as follows:

"Volume contract means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, maximum or a certain range."

The significance of such contracts has already been seen in relation to the jurisdiction and arbitration provisions, and the fact that article 80 provides:

"1. Notwithstanding article 79, as between the carrier and the shipper, a volume contract to which this Convention applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Convention."

However, the volume contract must contain a prominent statement that it derogates from the Convention, it must be individually negotiated, prominently specifies the sections of the volume contract containing the derogations, the shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with the Convention without any derogation, the derogation is not incorporated by reference from another document, or included in a contract of adhesion that is not subject to negotiation, a carrier's public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract pursuant to paragraph 1 of article 80, but a volume contract may incorporate such documents by reference.

By article 80, paragraph 4, it is provided that a carrier cannot in a volume contract exclude itself from liability to make and keep the ship seaworthy, properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage (article 14); a shipper cannot contract out of its obligations to provide information, instructions and documents under article 29, nor from its obligations in relation to dangerous goods under article 32 and nor can a carrier contract out of article 61, that is, the provision which identifies the circumstances in which the loss of the benefit of limitation of liability can be achieved.

Article 80 goes on to say that the terms of the volume contract which derogate from the Convention, which satisfies the article can also apply between the carrier and a person other than the shipper, provided that such other person received information that prominently states that the volume contract derogates from the Convention and gives its express consent to be bound by such derogations and that such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record.

By paragraph 6 of article 80, it is provided that the party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

### *Validity of Contractual Terms*

Under article 79, it is provided that any term in a contract of carriage is void to the extent that it directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention, or for breach of an obligation under this Convention, and also provides that it is void to the extent that it directly or indirectly excludes limits or increases the obligations under the Convention of the

shipper, consignee, controlling party, holder or documentary shipper, or in respect of the breach of any of their obligations under the Convention (ie not dissimilar to article 3 rule 8).<sup>138</sup>

### **CMI Assembly Meeting Van Nelle Design Factory, Rotterdam, Holland 23 September 2009.<sup>139</sup>**

Francesco Berlingieri delivered a warm tribute to his old colleague and friend, Nicholas Healy who had died on 20 May 2009 at the age of 99 years.<sup>140</sup> He was the doyen of the New York maritime legal profession. His last legal work was to testify at the "*Titanic*" salvage litigation. He never officially retired from his old firm and remained on the payroll into his late 80s. Francesco Berlingieri noted that Nick, (as he was known by everybody) had been a member of the CMI Executive Council, a Vice President of the CMI and subsequently an Honorary Vice President; he was the author of many treatises on maritime law; he was the most approachable, and charming person; his views deserved the greatest attention at all times; he employed trainees from all around the world in his office at Healy & Baillie, including Patrick Griggs and Giorgio Berlingieri and he and his wife Margaret were fixtures at CMI Conferences for many, many years. They had six children from whom they had 21 grandchildren and 22 great grandchildren and they had celebrated a diamond wedding anniversary.

Chet Hooper, a past President of MLAUS also paid tribute to Gordon Paulsen, another past President of the MLAUS and a Titulary member of the CMI. The President also paid tribute to Professor Sjur Braekhus, a founder of the Scandinavian Institute of Maritime Law, an outstanding legal scholar and a Titulary member of the CMI.

Stuart Hetherington was elected for a second term as Vice President and Chris Davis and Sergej Lebedev for second terms as Executive Councillors. Nigel Frawley, as Secretary-General, and Benoit Goemans, as Treasurer, were also elected for second terms. Giorgio Berlingieri was elected as an Executive Councillor for a first term.

Reforms proposed by the Steering Committee and recommended by the Executive Council were approved by the Assembly, including: abolishing fees for Titulary members (at the same time cautioning the Executive Council to be more rigorous in considering nominations for Titulary membership in case nominations should increase considerably as a result); adjustment of the scheme for annual subscriptions resulting in a reduction for the most part of annual subscriptions; reduction of the length of service of members of the Executive Council from four to three years; an improvement in the level of communications within the CMI and the MLAs, including an improved website with the assistance of the University of Southampton, (which did not proceed); that the Yearbook should generally be the only hard copy publication to be distributed; that the News Letter and all other CMI documents being distributed on the internet; and more encouragement to be given to young lawyers. The Steering Committee Report to the Executive Council contained a number of annexures, some of which have been posted on the CMI website but others have proved useful to Councillors generally. Apart from material relating to proposals for subscription variations they included:

1. Proforma letter to potential Maritime Law Associations from the CMI;
2. CMI Guidelines for monitoring of National MLAs by the responsible Executive Councillors;
3. Guidelines for the formation of National MLAs;
4. A pro forma letter sent by John Hare to the President of a National MLA;
5. Summary of responses received from MLAs to the first questionnaire.

The Summary provided a useful history of each of the 30 MLAs who responded and identifies them as having at least 10,698 members of which 430 were corporations. It also identified the topics covered by the first Questionnaire which included: the membership of the MLAs; how they raise revenue in order to meet CMI subscriptions; what activities they put on for young members; the general membership of the MLA; how revenues are raised; their satisfaction with the operations of the CMI and the Questionnaires that they receive; the organisation of the CMI and their involvement in events outside the CMI and within the CMI.

The Dutch Inland Waters Organisation, IVR was unanimously approved as a Consultative member of the CMI.

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<sup>138</sup> As at February 2023 Togo, Spain, Congo, Cameroon and Benin had ratified the Rotterdam Rules.

<sup>139</sup> CMI News Letter No 3 October/December 2009

<sup>140</sup> CMI News Letter No 2 May/September 2009

A surplus of €104,726 had been achieved in 2008. The reserves of the CMI exceeded €900,000. The CMI donated €40,000 from its share of the Athens Conference surplus to the Charitable Trust and applied a 20% "early bird" discount retrospectively to 2009 and prospectively to 2010.

Stuart Hetherington reported that the ISU had asked the CMI to consider reviewing the Salvage Convention 1989 with particular regard to environmental salvage. A Questionnaire had been issued to all MLAs and the IWG had met in London shortly prior to the Assembly meeting to review the answers to the Questionnaire that had been received.

The Secretary General, Nigel Frawley, had been invited by Dr Nader Ibrahim of the University of Alexandria to attend the Third Arab Conference for Commercial Maritime Law in the Bibliotheca, Alexandria, Egypt, 18-19 April 2009, which attracted about 250 delegates from around the Middle East. Other speakers included Kate Lannan of UNCITRAL and other well-known members of the CMI including Stuart Beare, Tomotaka Fujita, Phillippe Delebecque, Knud Pontoppidan and Kofi Mbiah. They had been the driving force behind having the Arab Society of Commercial & Maritime Law become a Consultative member of the CMI.

#### **Executive Council Meeting Town Hall Rotterdam, Holland 22 September 2009.<sup>141</sup>**

At its commencement a member of the staff at the University of Southampton with whom contact had been made with a view to seeking to improve the usefulness of the CMI website and for the storage of jurisprudence on international maritime Conventions was introduced to the Executive Council. Jorge Radovich was also introduced to the Executive Council who explained the arrangements that were being made for the holding of the Colloquium in Buenos Aires in October 2010. It was reported that the Audit Committee under the chairmanship of Liz Burrell was commencing a study as to the appropriate level of reserves for an organisation such as the CMI.

Despite the Global Financial Crisis the Treasurer reported that CMI reserves were €923,673. He also reported that he had transferred significant amounts of funds from Bank deposits to safe European Union and Industrial Bonds and non European Bonds. The surplus for 2008 had been €104,726, which was greatly assisted by the surplus from the Athens Conference.

Nigel Frawley reported that he had been in discussions with Patrick Griggs over a donation to be made by the CMI to the Charitable Trust from the surplus obtained from the Athens Conference, in view of the losses sustained in investments within the Charitable Trust by reason of the global financial crisis. Patrick Griggs had indicated that would be very welcome.

The Executive Council decided, also in relation to the Steering Committee Report, that it would recommend to the Assembly that there be no more fees charged to Titulary Members and that a second Questionnaire be distributed as part of a consultation process with member associations, that young members be encouraged further and the changes to the CMI Constitution be made to accommodate decisions taken on reforms. They also decided to reduce Executive Councillors terms from four years to three years from immediate effect and to ensure that the Constitution was changed to reflect that.

Stuart Hetherington reported that an ISC meeting of the Salvage IWG had been held in London on 18 September 2009 and another meeting was planned for London in May 2010 in preparation for the Buenos Aires Colloquium.

On the HNS Convention Mans Jacobsson reported that there would be a Diplomatic Conference to approve the Protocol in London in April 2010.

As to future work Cross Border Insolvencies and Arctic/Antarctica issues were foreshadowed subject to further enquiries being made in relation to them.

It was also reported that UNIDROIT had put out feelers to see whether the CMI would like a Protocol prepared in relation to ships. After considerable discussion the Executive Council agreed that no work should

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<sup>141</sup> CMI News Letter No 3 October/December 2009



be done by the CMI in order to widen the scope of the UNIDROIT Convention to include ships or ships equipment.

It was also reported that active steps were being taken to encourage new membership to the CMI including countries such as Ghana, Cameroon, Benin, Poland, India, Malaysia, Indonesia, Estonia, Ukraine, Algeria, UAE and Egypt.

The CMI News Letter<sup>142</sup> contains an article by Sir Michael Wood KCMG of a speech delivered at the BMLA annual dinner on 13 October 2009 titled "Piracy and International Law", and another issue of the News Letter<sup>143</sup> contains an article by Sarah Derrington "A Concept of Certainty in Maritime Law."

### **Steering Committee Final Report.**

Following decisions taken at the Executive Council and Assembly Meetings in Rotterdam the final Report was issued in September 2009. The Report identified the following 9 topics:

#### **1. Annual subscriptions.**

It considered the question of annual subscriptions and did not recommend any changes to the methods by which subscriptions were calculated but did recommend significant reductions to the amounts being charged to most MLAs by seeking to streamline the tiers of subscriptions and the amounts payable by each of them. These reductions were made possible by the significant savings achieved by limiting the number of annual face to face Executive Council meetings. Although there were no tiers or bands previously identified there were a number of MLAs which were broadly paying similar amounts by way of subscriptions. Utilising the structure of tiers or bands created by the Steering Committee the broad changes can be seen in the following reductions made from pre to post 2009:

Tier 1	Euro 20,856.70 to Euro 15,000
Tier 2	Euro 17,443.84 to Euro 12,000
Tier 3	Euro 12,736.59 to Euro 10,000
Tier 4	Euro 7,242.74 to Euro 6,500
Tier 5	Euro 2,916.67 to Euro 2,500
Tier 6	Euro 2,256.07 to Euro 1,500
Tier 7	Euro 1,587.62 to Euro 1,000
Tier 8	Euro 500.00 remained the same. <sup>144</sup>

As part of the subscriptions' review the Steering Committee discussed whether the administrative expense in the collection of fees from Titulary members was justified or indeed fair. It decided that such fees should be scrapped. The work done by the Steering Committee found that there was an inconsistency in the manner in which MLAs dealt with such fees. Some left the members to pay their own fees and other MLAs paid them from their own resources. There was also a failure by MLAs to keep in touch with their Titulary members when they retired from practice or employment and to report their deaths, adding to the Administrative task. The Committee also considered that the levy of a fee for what was regarded as an honourable recognition of voluntary contributions to the work of MLAs and CMI which benefitted both their home nation and the international community generally should not carry a fee. It was also suggested that the Executive Council should be more rigorous in its examination of applications for such honours.

With some minor changes and the addition of some new members the income of the CMI has remained at about Euro 180,000 since the turn of the century and expenses have by and large remained at or about the same figure. Where small surpluses have been achieved from CMI meetings the reserves have been supplemented and there has been no need to rely on the Charitable Trust to meet some Conference expenditure as had been the case in earlier years. The CMI has also shared some part of such surpluses with the Charitable Trust. The health of the CMI reserves has at times resulted in an embarrassment of riches necessitating a waiver or reduction in subscriptions in some years after the introduction of the Steering

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<sup>142</sup> CMI News Letter No 2 May/September 2009

<sup>143</sup> CMI News Letter No 3 October/December 2009

<sup>144</sup> CMI News Letter No. 3 October/December 2009 annexes a schedule of Contributions from Member Associations 2009, which also identifies the prior 2008 subscriptions.

Committee's reforms. With the imposition of stricter discipline of expulsion where MLAs fell behind with the payment of 3 years of subscriptions the financial health of the CMI has been maintained. In the last twenty years there have only been two meetings as a result of which the CMI has had to assist the host MLA financially.

## **2. Database and website.**

The greater use of email communication and the internet were strongly recommended by MLAs and this was endorsed by the Committee. It was recommended that the CMI website be adapted for greater interaction with members. In a similar way to the previous Executive Council plea following the Centenary Conference referred to above, that MLAs provide contact details to CMI of their membership for publicising its publications, the Committee suggested that email addresses of the membership be provided to enable such contact between CMI and MLA members. On the second iteration of the CMI website such a facility was incorporated in the website and for a time communications were sent direct to the members of those MLAs that had provided their members' contact details. Unfortunately they were not updated and the lack of support from other MLAs meant that this facility was not carried through to the most recent version of the website initiated in 2018. (Privacy issues had influenced some MLAs in their decision not to supply individual members' contact details and these had become more pressing issues around the world generally by 2018.)

The Committee also proposed that consideration be given to the texts of Conventions being included on the website as well as the lists of maritime conventions and their ratifications which were published in the Yearbook. It also suggested that documents relating to the formation of MLAs, Guidelines for organisers of Conferences (and other meetings), Reports from the President as presented in each Assembly meeting dealing with the activities of the CMI during the past 12 months, the regular publication of the News Letter every 3 months and the Yearbook should all be placed on the CMI website and a brochure produced identifying the aims and objectives of the CMI as well as details of Executive Council members and MLAs. (as had been suggested as a result of the Centenary Conference review.) A brochure was in fact produced in 2018 for presentation to delegates at the Malta Colloquium and at UNCITRAL (both relating to the Judicial sales project in that year.

## **3. Individual membership and Regional Associations.**

The Steering Committee also examined the question as to whether individual membership of the CMI should be adopted and rejected it. It also examined the question of regional associations and considered that this should be encouraged where circumstances warrant it. The Gulf States and some countries were suggested within North and East Africa as potentially being appropriate.

## **4. Universities.**

In response to the suggestion that the CMI's connections with universities be expanded around the world it was considered by the Steering Committee that the existing connections with IMLI and WMU were well worth continued support but felt that MLAs were in a better position to manage relationships in their own jurisdictions.

## **5. Closer contacts with MLAs.**

The Committee recommended a more focussed responsibility on Executive Councillors so that each would have a designated group of MLAs within their geographical region to make regular contact with and keep informed of developments taking place within the CMI, especially Executive Council meetings.

The Steering Committee also identified a number of countries, some of which had previously had MLAs but which had ceased their membership, but had the potential to become members of the CMI again. Some of the countries named have since become full members of the CMI (including Poland, Romania, India, Malaysia and Cameroon). It was suggested that individual Executive Councillors be asked to follow up and liaise with such countries as were identified to facilitate the formation of MLAs within those jurisdictions.

## **6. Publications.**

The Steering Committee addressed the issue as to whether in the ever expanding digital age hard copies of CMI documents still needed to be produced. It considered that the Yearbook should continue to be published in hard copy form but distributed in greater numbers to MLAs, and should be supplied as a matter of course and gratis to Universities.

## **7. Summary of responses to First Questionnaire, including the size of the Executive Council, their terms of office and geographic representation.**

The Report attached a summary of the responses received from MLAs to the first Questionnaire (to which 35 MLAs had responded out of a total of 55). It estimated that the global membership of the MLAs exceeded 11,000 persons. In response to the Questionnaire, MLAs had suggested that consideration be given to enlarging the size of the Executive Council and also reducing the terms in office of Executive Councillors. The Steering Committee did not think that the current workload of the Executive Council warranted increasing the number of members but was very conscious of the desire of some MLAs to widen the geographical representation of the Executive Council. It was noted that the entire continent of Africa (since John Hare had ended his term of office as an Executive Councillor), the Middle East and the Near East as well as Central America were not represented. The Steering Committee recommended reducing the terms of all officers to a maximum of six years, that is three years followed by a further three years, down from the then current four years plus a further four years at that time.

## **8. Young Lawyers.**

Another issue considered by the Steering Committee was the involvement of young lawyers. It commended the efforts of the MLAs of the UK, France, Netherlands, Germany and Belgium which had inaugurated a regional annual seminar amongst their younger members, as well as the MLAUS, the Canadian and Norwegian MLAs who all had strong measures in place to encourage young lawyers. It was suggested that a session be devoted at future Conferences to presentations by representatives of young lawyers. The plan for the forthcoming Athens Conference was to include a social event for young lawyers and that was recommended by the Steering Committee.

## **9. Communications and Publications officer.**

It was suggested by the Steering Committee that a member of the CMI Executive Council be appointed to have responsibility for communications and public relations.

With the exception of the latter all the recommendations of the Steering Committee were in some way or another adopted and put into effect, or are currently in the process of being given effect to, for example the next publication of the Maritime Conventions Handbook and its availability on the website.

## **Executive Council Email Meeting from the office of the President Singapore week commencing 15 March 2010.**

The President reported that he had spoken at the World Maritime University in Malmo, Sweden in September 2009, and also at the international conference on maritime law in Shanghai in November 2009, where he had met with senior officers of the China MLA to discuss preparations for the 2012 CMI Conference in Beijing. He had also spoken on the topic of Rotterdam Rules at an event organised by the Singapore Shipping Association, and had participated in the 88th birthday celebrations for Francesco Berlingieri in February 2010 in Genoa.

It was noted that the Audit Committee under the Chair, Lizabeth Burrell, had been asked to comment on the CMI reserves. Unpaid subscriptions amounted to Euro 33,602.77, a slight increase over the previous year.

On new membership, it was reported that attempts were being made to bring Portugal back into the CMI, and discussions were also taking place with maritime lawyers in Poland, India, Malaysia, Estonia, Indonesia, Ghana and Cameroon.

It was decided to formally disband the Steering Committee; work was to be commenced on the construction of a new website in Australia; 600 copies of a CD-Rom were to be ordered containing the CMI archives for distribution to MLAs, Titulary members, Consultative members, universities and libraries.

As to the work of the CMI consideration was given to the Rotterdam Rules IWG investigating whether it should examine other areas not covered by the Rules; approval was given to a new work programme of the Marine Insurance IWG which included mandatory insurance, transfer of title, and political risks; the Fair Treatment of Seafarers IWG should participate in a round table discussion. In relation to future work a working group was to be established to consider the proposal made by the Australian delegation to the IMO to increase the limits to the LLMC 1996; a new IWG under the chairmanship of Chris Davis was to be established on Cross Border Insolvencies; a new IWG was to be established on Arctic/Antarctic issues, the Secretary-General having tabled a report on legal regimes in the Arctic and Antarctic. Finally it was noted that Young CMI programme was to be established for the Buenos Aires Colloquium.

#### **Executive Council Email Meeting from the office of the President Singapore week commencing 21 June 2010.**

The President had attended and given presentations at the Inter Pacific Bar Association, the Third Asian Maritime Law Conference and the University of Southampton Maritime Law and Practical Course. In a revolutionary (and highly approved) move the Executive Council decided that subscriptions for 2011 be set at zero given the extent of the CMI reserves and the difficult economic times for the shipping industry and many member associations. It was also decided to terminate the "Liquidity Fund" which had been set up in more difficult times in the late 1990s. The Executive Council was highly appreciative of the work done by the Audit Committee in its research of "not for profit" organisations in the context of current practices in maintaining reserves. The Executive Council approved a draft CMI submission to the IMO Legal Committee in relation to the proposals made by Australia for increased limits to the 1996 LLMC, which had been prepared by Mans Jacobsson, Richard Shaw and Patrick Griggs with Francesco Berlingieri and Giorgio Berlingieri as an informal reference group.<sup>145</sup>

The President and both Vice-Presidents (Johanne Gauthier by telephone) met with the Secretary-General in Singapore and discussed the following topics: the size of the CMI Reserve, which they considered should be between Euro 300,000 and Euro 500,000. It was suggested that that could be achieved by extending the moratorium on subscriptions beyond 2011, but that might cause difficulties for a future Executive Council to reinstate subscriptions at an appropriate level. Alternative proposals were to extend expenses on such things as: website development, marketing the CMI by greater travel by Executive Councillors to MLAs and potential new members to make presentations; more generous allowances for expense remuneration to members of IWGs and ISCs attending meetings, by financing academic members of MLAs to make videos and/or travel to other MLAs or potential MLAs to give educational seminars; the provision of Directors & Officers and defamation insurance cover; the establishment of a Young Member Prize, and the CMI making contributions to the Charitable Trust.

Other matters discussed at this Management Committee meeting were the format for the Oslo meeting in 2011; the substantive programme for the Beijing Conference, "Residual" work on Rotterdam Rules, and the topic of Procedural Rules on Limitation Conventions.

#### **Steering Committee Follow up.**

On 14 June 2010 a second Questionnaire was sent to MLAs in order to gain a better understanding of the Member Associations, improve dialogue between the CMI and MLAs and ensure that the future work programme better reflected the wishes of the membership. In relation to Conferences the responses showed that some favoured a reduction in the time spent from 5 to 4 days but most were satisfied with the formats of the Conferences. In relation to Young Members the following suggestions were made: reduced registration fees and increased speaking opportunities at CMI events; appointing young members to IWGs, and organising social events directed to Young Members;

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<sup>145</sup> CMI News Letter No. 3 October/December 2010: Annex B to the Minutes of the Executive Council meeting held on October 24, 2010.

There was little feedback in the way of concrete suggestions for future work topics. The need for constant revision, updating of the website and faster release of publications was suggested by some MLAs. Some volunteered contributions to the CMI News Letter on a regular basis but were divided as to their willingness to provide email addresses to enable CMI to communicate directly with their membership, due to privacy concerns.

### **The Protocol to the 1996 HNS Convention.**

In April 2010 the Protocol to the 1996 HNS Convention was adopted at the Diplomatic Conference. It was hoped that it had removed all obstacles for ratification of the Convention.

### **Colloquium Marriott Plaza Hotel Buenos Aires, Argentina 24 to 27 October 2010.**

There were 233 delegates, including speakers, 66 accompanying persons, and 37 young members registered for this Colloquium.

The organisation of this Colloquium by the Argentine Maritime Law Association under its President Alberto Cappagli was exemplary. As he pointed out in his introduction to the program, 2010 was an important year in the life of the Argentine as it represented the Bicentennial of the 1810 May revolution which was the first step towards Argentina obtaining its independence. Karl Gombrii reminded delegates that this was the second Colloquium held in South America, the first being in Venezuela in 1980.

The social programme included an opening reception at the Marriott Plaza Hotel complete with the Mora Gadoy Tango Show, a cruise on the Tigre Delta to the famous El Gatto restaurant for lunch and a Gala dinner at the Modero Yacht Club. As reported by Nigel Frawley<sup>146</sup> the young members organised a night on the town for themselves in a local bar, and "it is now confirmed from photographic evidence that a few older members joined them....It is also rumoured that some delegates took tango lessons". Some delegates managed to visit the Iguazu Falls on pre or post Colloquium tours. All enjoyed, what for many was their first visit to Argentina, enjoying the vibrant lifestyle of Argentinians.

### **Salvage Convention.**

One of the principal topics of discussion on the first day of the Colloquium was a panel discussion on the Review of the Salvage Convention which posed the question "Is it working? Does it protect the environment?" which was of great interest and somewhat controversial because of the opposing views expressed.<sup>147</sup>

In the time honoured fashion a Questionnaire was sent to MLAs in July 2009 and an IWG meeting held in London in September 2009 by which time 7 responses had been received from MLAs.

At the Colloquium the Chairman made some opening remarks on the topic: "Review of Salvage Law. Is it working? Does it protect the environment?";<sup>148</sup> Diego Chami's "Environmental Salvage Report" summarised the answers to the Questionnaire received from MLAs and the ISC meeting which had taken place earlier in the year;<sup>149</sup> Nicholas Gooding spoke on The Marine Property Underwriter's View<sup>150</sup>; Kiran Khosla, on behalf of the International Chamber of Shipping (ICS), spoke on Salvage Law - Is it Working? Does it Protect the Environment?"<sup>151</sup> and warned against "reviving the concept of environmental salvage"; Archie Bishop spoke on "Environmental Awards How They Could Be Achieved"<sup>152</sup> and in favour of reform showed how Article 13.1(b) could be deleted and a new Article 14 inserted into the Convention; Todd Busch, the President of the ISU, in speaking on "Fair Reward For Protecting the Environment The Salvor's Perspective"<sup>153</sup>; explained why the salvage industry sought reform; Hugh Hurst speaking on "Amending the Salvage

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<sup>146</sup> CMI Yearbook 2010 (pages 125-126).

<sup>147</sup> CMI Yearbook 2010 (pages 383 to 514)

<sup>148</sup> CMI Yearbook 2010 (pages 457 to 461)

<sup>149</sup> CMI Yearbook 2010 (pages 462 to 469)

<sup>150</sup> CMI Yearbook 2010 (pages 470 to 477)

<sup>151</sup> CMI Yearbook 2010 (pages 478 to 487)

<sup>152</sup> CMI Yearbook 2010 (pages 488 to 492)

<sup>153</sup> CMI Yearbook 2010 (pages 493 to 498)

Convention 1989 - the International Group of P&I Club's View" argued against upsetting the<sup>154</sup> compromises that had been agreed at Montreal and in particular against seeking to restore the concept of liability salvage that had not been accepted at Montreal; and Nick Sloane "The Eye of the Storm"<sup>155</sup> explained how the salvage industry had changed significantly since the Convention had been first drafted nearly 30 years before his presentation. CMI was very fortunate to have a salvor of the quality of Nick Sloane to speak.<sup>156</sup>

### Judicial Sales.

The other principal topic on the first day of the Colloquium was the first detailed discussion at a CMI meeting on *Recognition of Foreign Judicial Sales of Ships* which was addressed by Henry Li, Chairman, Jonathan Lux, Co-Chairman, Andrew Robinson, Rapporteur, Aurelio Fernandez-Concheso, Frank Smeele, Benoit Goemans and Louis Mbanefo.<sup>157</sup>

Henry Li gave a "A Brief Introduction to the Topic on Recognition of Foreign Judicial Sales of Ships".<sup>158</sup> This was the paper which Henry Li produced as a result of a discussion of this topic in the Executive Council meeting in 2007 and which satisfied the Executive Council that he had identified an area of study for the CMI and which could ultimately prove extremely useful in unifying this area of law, which hereto had relied on the comity of nations. As Henry Li showed this was not working in some jurisdictions, where a buyer at a Judicial Sale faced the rearrest of the ship in respect of claims which had been cleared by the Judicial Sale or had been unable to obtain deletion from the ship's original register in order to have the vessel reregistered under another flag. Aurelio Fernandez-Concheso<sup>159</sup> gave a "Presentation on the first set of questions" in the Questionnaire which had been responded to by twenty MLAs. Benoit Goemans gave a "Report on the key procedural elements on the Judicial Sales of Ships (second set of questions)".<sup>160</sup> Louis Mbanefo gave a "Commentary on Answers to the Third Group of Questions";<sup>161</sup> Frank Smeele presented on "Recognition of the legal effects on foreign Judicial Sales of Ships";<sup>162</sup> Andrew Robinson presented "The CMI Questionnaire in respect of recognition of Foreign Judicial Sales of Ships, Commentary on Answers to the fifth group of questions";<sup>163</sup> Jonathan Lux gave "A Brief Summary of the Session on Recognition of Foreign Judicial Sales of Ships"<sup>164</sup>; and Francesco Berlingieri produced "Questionnaire Synopsis of the Replies from the Maritime Law Associations" (of 22 Countries).<sup>165</sup>

On the second day a paper was given on the centenary of the Collision Convention in 1910 by Klaus Ramming<sup>166</sup>, which was followed by a paper on Piracy Today by Patrick Griggs<sup>167</sup>, and then a panel session on the topic: A Comparison of the Legal Regimes in the Arctic and Antarctic by Nigel Frawley and Mario Oyarzabal; they were joined by the deputy legal adviser in the Argentine Ministry of Foreign Affairs. They were followed by a panel discussion on the Harmonization of the Pollution Schemes of the Countries related to the Waterway Hidrovia Paraguay-Parana led by Jorge Radovich<sup>168</sup> and Power Point by Aldo Brandani.<sup>169</sup>

On the third day there was a panel discussion on the Rotterdam Rules<sup>170</sup> with a particular emphasis on its relevance to South America which was chaired by Chris Davis, with speakers including Stuart Beare "The

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<sup>154</sup> CMI Yearbook 2010 (pages 499 to 510)

<sup>155</sup> CMI Yearbook 2010( pages 511 to 514)

<sup>156</sup> Later appointed the President of the International Salvage Union in 2022 and a man who was to become better known as the salvor of the "*Costa Concordia*" and make a presentation about that remarkably complex exercise at the CMI Conference in New York in 2016

<sup>157</sup> CMI Yearbook 2010 (pages 199 to 382)

<sup>158</sup> CMI Yearbook 2010 (pages 200 to 206)

<sup>159</sup> CMI Yearbook 2010 (pages(207 to 211)

<sup>160</sup> CMI Yearbook 2010 (pages 212 to 219)

<sup>161</sup> CMI Yearbook 2010 (pages 220 to 224)

<sup>162</sup> CMI Yearbook 2010 (pages 225 to 234)

<sup>163</sup> CMI Yearbook 2010 (pages 235 to 244)

<sup>164</sup> CMI Yearbook 2010 (pages 245 to 246)

<sup>165</sup> CMI Yearbook 2010 (pages 247 to 382)

<sup>166</sup> CMI Yearbook 2010 (pages 522 to 528)

<sup>167</sup> CMI Yearbook 2010 (pages 529 to 534)

<sup>168</sup> CMI Yearbook 2010 (pages 547 to 556)

<sup>169</sup> [http://www.cmi2010buenosaires.com.ar/en/colloquium\\_documentation](http://www.cmi2010buenosaires.com.ar/en/colloquium_documentation)

<sup>170</sup> CMI Yearbook 2010 (pages 128 to 145) Questions and answers on the Rotterdam Rules

Need for Change and the Preparatory Work of the CMI"<sup>171</sup> Carlos Lesmi, Johanne Gauthier and Tomotaka Fujita "The Coverage of the Rotterdam Rules".<sup>172</sup> The second panel on the same topic was chaired by Jose Vicente Guzman and presenters included Jose Vicente Guzman "The Rotterdam Rules Shippers Obligations and Liability";<sup>173</sup> Manuel Alba Fernandez, Alberto Cappagli "Limitation of Liability in the Rotterdam Rules-a Latin American Perspective"<sup>174</sup>; Antonia Zuidwijk "The Proposed Rotterdam Rules and the Objections Contained in the "Declaration of Montevideo"";<sup>175</sup> "An analysis of the So-Called Montevideo Declaration"<sup>176</sup> and Michael Sturley.

Those discussions continued in the afternoon of that day followed by the Assembly meeting which also coincided with a Young Members programme whose organisers were Violeta Radovich, Hernan Lopez Saabedra and the moderator Yiannis Timagenis. Papers were given by Maria Pospisil on "P&I insurance in view of new developments in international maritime law", Eric Espinosa Sobarzo on the new Panama Canal: "The Better Way to Go"; by Violeta Radovich on "Legal Regimes of Offshore Platforms Environmental Concerns" and the "Rotterdam Rules-Some Controversies" by Stuart Beare.<sup>177</sup>

#### **CMI Assembly Meeting Marriott Plaza Hotel Buenos Aires, Argentina 27 October 2010.**

Fifty one delegates attended the Assembly meeting. Amongst the Memorials was former Secretary-General Norbert Trotz. The President advised that the Executive Council was recommending reducing subscriptions for 2011 (on a one-off basis) to zero in order to reduce the reserves. This was approved by the Assembly. Henry Li completed his two terms on the Executive Council and was thanked for all his efforts particularly in relation to the Judicial Sales project both at the Executive Council meeting and the Assembly meeting and would continue as the liaison person for the China Maritime Law Association and the Executive Council in relation to arrangements for the Beijing Conference in 2012. Wim Fransen was elected to a further term as Administrator and Song Dihuang replaced Henry Li on the Executive Council.

Giorgio Berlingieri, in relation to the *Fair Treatment of Seafarers* referred to a submission made by the IWG to the IMO which suggested that the IMO Guidelines and Article 230 of the UN Convention of the Law of the Sea (which provides that a custodial penalty is only permissible where a foreign seafarer is involved with a wilful and serious act of pollution) needed to be complied with.

On *Marine Insurance*, Dieter Schwampe, who had taken over as Chairman of the IWG said that the group was focussing on three issues: mandatory insurance, transfer of rights and insurance contracts and direct action against insurers. A Questionnaire on mandatory insurance had been distributed to MLAs and further replies were sought.

On the Colloquium debate in relation to the *Review of the Salvage Convention* Stuart Hetherington reported that there was a clear difference of view between shipowners and the P&I Clubs on the one hand, and salvors and the property insurance market on the other hand as to whether there was any need for a reform of the Salvage Convention. It had been arranged to hold an ISC meeting in London in May 2011 to discuss the various options. A new Questionnaire may be sent out in the future.

On the topic of *Judicial Sale of Ships* Henry Li reported on the discussions that had taken place at the Colloquium which had recognised that there were issues in relation to recognition of Judicial Sales, particular attention being given to the difficulties that are encountered in deleting registration after a Judicial Sale, half of the respondents to the Questionnaire saw a need for an international legal instrument but the other half tended to the view that the 1993 Convention on Maritime Liens and Mortgages was sufficient. It had been determined that the IWG should continue its work aiming to produce a preliminary draft international instrument, hopefully in Beijing in October 2012.

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<sup>171</sup>CMI Yearbook 2010 (pages 146 to 149); Kate Lannan ("Powerpoint presentations by Kate Lannan and Maya Albert Fernandez are referred to in the CMI Yearbook 2010 (page 557) as being able to be found at [http://www.cmi2010buenosaires.com.ar/en/colloquium\\_documentation](http://www.cmi2010buenosaires.com.ar/en/colloquium_documentation))

<sup>172</sup> CMI Yearbook 2010 (pages 150 to 155)

<sup>173</sup> CMI Yearbook 2010 (pages 156 to 162)

<sup>174</sup> CMI Yearbook 2010 (pages 163 to 175)

<sup>175</sup> CMI Yearbook 2010 (pages 193 to 198)

<sup>176</sup> CMI Yearbook 2010 (pages 176 to 192)

<sup>177</sup> CMI Yearbook 2010 (pages 515-520)

On the *Arctic/Antarctica* issues Nigel Frawley reported that he and the President would be establishing an ad hoc working group to investigate the legal issues of polar regions which might be a subject of a study by the CMI. He reported considerable enthusiasm for the subject at the Colloquium and several delegates have volunteered to be part of the process.

Dieter Schwampe tabled a Report on the impact on the shipping industry of the EU sanctions on Iran and a Report of the MLAUS on the impact of shipping by US sanctions on Iran. The President noted that whilst this was an unusual topic for the Assembly it was thought useful to have such a current topic brought forward to such a meeting although it may not be particularly relevant to the work of the CMI and uniformity but had interest to the shipping industry and its lawyers generally.

#### **Executive Council Meeting Marriott Plaza Hotel Buenos Aires, Argentina 24 October 2010.<sup>178</sup>**

It was reported that the new website which was under construction by web designers in Australia was almost ready to be launched and Pascale Sterckx was receiving training so that she could upload materials onto it and for additional fees the website could be adapted further to enable messages to be sent direct to MLA members, assuming their members' details could be supplied to CMI. Where privacy issues precluded that a single point of contact should be established from which distribution to the members of an MLA could take place. That subsequently took place but only a limited number of MLAs supplied the necessary details and then after a few years passed it became apparent that new members were not being added and changes of email addresses were not advised.

There was also considerable discussion as to the appropriate level of reserves for an organisation such as CMI. This had also been discussed at the informal Management Committee meeting between the President, Nigel Frawley and Stuart Hetherington in Singapore with Johanne Gauthier on the telephone in June 2010, at which a subscription holiday had also been discussed. At the Executive Council meeting Chris Davis expressed reservations about a subscription holiday but as to a reserve considered that 2-3 years expenses would be appropriate (ie Euro 450,000). Liz Burrell, the Chair of the Audit Committee, carried out valuable research on this issue which was of great assistance to the Executive Council.

The new IWG on Cross Border Insolvency was to consist of Chris Davis, Sarah Derrington and William Sharpe.

The Charitable Trusts assets had risen from GBP 371,000 to GBP 452,000.

Nigel Frawley reported that Richard Shaw had advised that Indonesia had suggested to the IMO Legal Committee that it should revisit the issue of liability and compensation for oil pollution damage resulting from offshore exploration following an oil spill from an Australian rig (the Montara: 21 August 2009)

On 7 May 2011 Patrick Griggs had conferred on him by IMLI the title of Doctor of International Law *Honoris Causa* for his service to the Institute and his life long service to the harmonisation and progressive development and codification of international maritime law.<sup>179</sup>, and CMI members were proud to read in the News Letter in 201<sup>180</sup> that IMLI had conferred this honour on him. It was noted that he had been instrumental to the work of the Institute through his active contribution to the IMLI governing Board and the IMLI Academic Committee in which he had been a member for many years, and since 1994, given much time and effort towards the Institute, annually delivering lectures on various topics relating to Port State control, shipping disasters, liability and compensation conventions adopted by the IMO. He had also acted as supervisor to the Institute's Doctor of Philosophy (Ph.D.) programme "thus contributing to the continued development of the Institute as a centre of academic excellence for the teaching of international maritime law".

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<sup>178</sup> CMI News Letter 2010

<sup>179</sup> CMI News Letter No 1-2 January/August 2011

<sup>180</sup> CMI News Letter No 1 January/August 2011



## **Executive Council Email Meeting from the office of the President Oslo, Norway week commencing 4 April 2011.**

Karl Gombrii had moved back to Oslo from Singapore. Mans Jacobsson and Chris Davis had attended the IIDM Conference in Panama in February 2011 and gave papers on the HNS Convention and the Unification of Maritime Law. The Executive Council welcomed that connection and discussion took place as to how that could be further improved during the course of the meeting.

Jean-Serge Rohart tabled a Report on an Abu Dhabi Conference where he had also participated in talks about the establishment of an MLA in the UAE.

Consideration was also given to publishing the next issue of the Handbook on Maritime Conventions jointly with IMLI.

The News Letter<sup>181</sup> includes a Report from the Italian MLA on a Colloquium and Round Table meeting on the Arrest Conventions 1952 and 1999 in June 2011 where the position between the EU and its Member States on Ratification of Conventions was discussed and the consensus was that Member States could not individually ratify or accede to the 1999 Convention unless authorised by the Council as had been the case for the Bunker Convention. Over 190 members attended the Colloquium and the subsequent Round Table.

CMI submitted a paper to the IMO Legal Committee in relation to Australia's attempt to increase the limits under the Limitation of Liability for Maritime Claims Convention.<sup>182</sup> This reviewed the history of the 66.33 ratio between the limitation fund available for personal injury claims and that available for property damage claimants and suggested that it made good logic to maintain that ratio in any proposed amendment.

News from the IMO and its April 2011 meeting<sup>183</sup> reported that following the Deepwater Horizon oil spill in the Gulf of Mexico in 2010 interest had been awakened on the subject of pollution for offshore activities at the IMO Legal Committee and the majority of delegations who took the floor spoke in favour of further work on that subject, which still does not remain on the agenda of the IMO. The Legal Committee requires the IMO Council to put it back.

On 4 April 2011 Nigel Frawley published an article, which is on the CMI website: "A brief history of the CMI and its relationship with the IMO, the IOPC Funds and other UN Organisations", which remains a useful document for understanding the symbiotic relationship between those organisations and the CMI.

In May 2011 Stuart Hetherington spoke at the Asian Maritime Forum on the topic "The CMI in Asia". He referred to the fact that the MLA Australia and New Zealand had held its annual Conference in Singapore in 1982 when he was Secretary of that Association, with a specific objective of helping the local profession create its own MLA. He referred to the discussions that had taken place between Karl Gombrii and himself with the Singapore MLA to host a regional office in Singapore, and how Singapore could assist in furthering the *raison d'être* of the CMI to bring greater uniformity to maritime law. He explained some of the early history of the CMI as well as the work in progress of the CMI.

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<sup>181</sup> CMI News Letter No 1 January/August 2011

<sup>182</sup> CMI News Letter No 3 October/ December 2010

<sup>183</sup> CMI News Letter No 1 2 January/August 2011



L-R: Jean Serge Rohart, Marian Griggs, Karl Gombrii, Vibecke Groth, Patrick Griggs

**CMI Assembly Meeting Oslo, Norway at the offices of the Norwegian Shipowners Association 27 September 2011.**

56 delegates attended this meeting in the magnificent Board Room of the Norwegian Shipowners offices with stunning views across the fjord.<sup>184</sup>

Before this meeting, on 22 July 2011, an appalling massacre had taken place in Norway and the President asked delegates to remember the victims whilst they also remembered those within the CMI family that had passed away, including Anatole Kolodkin, the exuberant past President of the Russian MLA and Executive Councillor.

Israel and Portugal having both applied to rejoin as members of CMI were duly elected. Jose Tomas Guzman had completed two terms as Executive Councillor and Mans Jacobsson was elected for a second term with Jorge Radovich elected in place of Jose Tomas Guzman. Those appointments were warmly received by the Assembly.

A surplus had been obtained from the Buenos Aires Colloquium, the CMI share being EUR 3239. There were no concerns raised that the CMI had operated at a deficit of EUR 36,892, as that expenditure related to the higher early bird discount which had been offered for subscriptions and in spending relating to CMI core functions, Conference speakers and operating expenses, and given that the CMI reserves stood at EUR 944,223. Subscriptions for 2012 were fixed at the amounts that had been sought at the Rotterdam Assembly meeting but with a 40% reduction as well as an early bird discount applied to it of 10%.

The Treasurer's presentation showed that the CMI income had varied from Euro 262, 905 in 2002 to Euro 196,604 in 2010; expenses over the same period had moved from Euro 221,520 to Euro 233,496 and the result from Euro 41, 385 to - Euro-36,892. The Audit Committee's Report included some factual information as to the varying views of different people and bodies for the recommended level of reserves for different types of organisations.

Tom Birch Reynardson reported that the *Charitable Trust* had funds under management of GBP410,318, income was projected to be GBP17,857 and expenses included GBP7,204 for publications and website administration for the CMI but he noted that the Executive Council had agreed to resume the responsibility

<sup>184</sup> CMI News Letter No 3 October/December 2011

as from 2012 for those items in light of the CMI's high reserves. The major expenditures for the Charitable Trust apart from those were travel expenses for those lecturing at IMLI and administration in the range of GBP5,000 per year.

#### *Work in progress*

Stuart Hetherington reported on a meeting of the ISC on the *Review of the Salvage Convention* in London on 13 March 2011 and the IWG was preparing a document outlining the pros and cons of various proposals to send to MLAs for discussion in March 2012 as a preparatory step to the Beijing Conference. The chief issue was identified as to whether a draft Protocol amending the 1989 Convention or whether simply a report be sent to the IMO on the work carried out.

In an important development the President reported that he and Bent Nielsen had met with representatives of BIMCO to discuss the fact that *YAR 2004* was not being used and whether a compromise could be found to rectify this. It was noted that the main problem was that salvage was basically exempted from General Average by reason of *YAR 2004* and BIMCO had decided as a result not to incorporate *YAR 2004* in the Charter Parties.

On the topic of *Judicial Sales* Henry Li reported that work was proceeding on the preparation of a preliminary draft of an international instrument using the 1958 New York Convention on Recognition of Foreign Arbitrary Awards as a model.

On *Cross Border Insolvency* Chris Davis reported that a Questionnaire was being prepared and that recent bankruptcies of Korea Line and Beluga Line showed that there is a need for work to be done in this area.

Nigel Frawley reported that there had been an ad hoc (potential new IWG) working group meeting in July on the *Arctic/Antarctic*. The topics that were being suggested for discussion included: Collision Regulations, Loadline Convention, STCW 1978, Maritime Search and Rescue 1979, Arctic Marine Oil Pollution Preparedness and Response as well as MARPOL 73 to 78. An IWG would be formed to consider those topics and review private international maritime law Conventions with respect to their applicability to Polar regions.

On the *Implementation and Interpretation of Maritime Conventions* it was reported that discussions were taking place for the drafting of Guidelines to assist States on the information they should provide to a depositary at the time of its ratification of acceptance. Francesco Berlingieri and Professor Antapassis were given a mandate to consider responses received to a note Francesco Berlingieri had prepared for circulation.

The President reported on his continuing discussions within the Executive Council on the possibility of establishing the CMI's representative office for Asia, including India, on a 3 year trial basis and that Lawrence Teh of the Singapore MLA had offered to assist. There was a need in that region for greater work towards unification of maritime law and to recruit further member associations, a representative office would provide a platform for such work. The Assembly meeting gave its unanimous approval to the project subject to the Executive Council's approval as the matter moved forward.

#### **Executive Council Meeting Nordisk Defence Club Oslo, Norway 25 September 2011.<sup>185</sup>**

It was a privilege for the Executive Council to meet in this historic building, which has been the home of Nordisk for many years.

The President referred to the informal Management Committee meeting held in London in May 2011.

It had been agreed with Patrick Griggs that the CMI would not require the Charitable Trust to contribute to the annual publishing costs in the amount of approximately GBP 7000 per annum.

In discussions about the Reserve funds of the CMI Messrs Jacobsson, Taylor and Hetherington cautioned against reducing these funds below Euro 500,000. The decision was made to utilise funds to video record

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<sup>185</sup> CMI News Letter No 3 October/December 2011

Professors in Maritime Law giving lectures for uploading to the CMI website. And the preparation of a CMI Brochure, particularly for use in the Singapore office if it came into being.

Andrew Taylor reported that there had been over 80 delegates at a Young Maritime Law Seminar in London (restricted to the 5 participating European countries.)

Nigel Frawley reported on a Workshop/ meeting he had attended in Fairbanks, Alaska on the topic of the future governance of the Central Arctic Ocean beyond National Jurisdiction.

The President reported that he and Bent Nielsen had met with BIMCO to discuss the impasse with YAR 2004.

The Secretary-General reported on a meeting attended by Richard Shaw in Indonesia for the IMO Correspondents Group on Transboundary spills (The Montara incident.) Whilst the Indonesians are keen to pursue that matter the International Association of Drilling Contractors' representative argued that international regulation was unnecessary and the IMO Legal Committee finds the definition of "installation" a difficulty and the fact that regulation of the offshore was not covered in the objects clause in the IMO Convention. The IMO may add it to the work programme in November 2011. An article by Richard Shaw on: "Transboundary oil pollution damage arising from exploration and exploitation of offshore oil. Do we need an international compensation convention?" is also in the CMI News Letter (No.3 October/December 2011).

Enquiries had been made in relation to D and O cover for CMI Officers.

#### **Seminar Oslo, Norway 26 September 2011.**

About 120 delegates attended this fascinating event put on by DNV at their head office outside Oslo at Hovik on the topic "A Futuristic view on Shipping-Mega Trends for the Future", to which delegates travelled by boat. The delegates were welcomed by Thor Winther, Vice-President and Head of DNV Corporate Legal Affairs, followed by presentations by: Thor Guttormsen from the Norwegian Shipowners Association on "Regulatory Challenges in the High North"; Turis Stemre from the Norwegian Maritime Directorate on "The Polar Code Negotiations - Power in Compromises"; Felix Tschudi, of Tschudi Shipping Company AS on "the Northern Sea Route - the Viable Commercial Alternative"; Elisabeth Harstad, from DNV Research & Innovation on "Technology Outlook 2020, a study on the mega trends of our future"; Eirik Nyhus from DNV International Affairs - Environment on "Shipping and the Environment: Drivers, Responses and the Implications of it all"; and finally Erik Rosaeg, from the Scandinavian Institute of Maritime Law on "Commercial Lawyer in a New Future".

All were thought provoking and the speakers sought to look into crystal balls in imagining the future.

As reported in the CMI News Letter<sup>186</sup> on the 5 May 2012 CMI was acclaimed by IMLI as "A most deserving candidate for the Award for Meritorious Contributions towards the Progressive Development and Codification of International Maritime Law", which was presented to President Karl Gombrii by Professor David Attard.

The same News Letter contains a detailed Report by Richard Shaw of the IMO Legal Committee and IOPC Funds meetings held in London between 16-20 April 2012 and 24-27 April 2012 respectively; at the former of which the issue brought forward by Australia, following the grounding of the "*Pacific Adventurer*" off the Queensland coast in 2009, for increased limits to the 1976 Limitation Convention, utilising the tacit amendment procedure under the 1996 Protocol, was debated. This resulted in a considerable increase in the limitation amounts (which are set out in the Report, but much less than sought by Australia). These would, sadly, turn out to be the last reports filed by Richard Shaw.

#### **Executive Council Email Meeting from the office of the President Oslo, Norway week commencing 23 April 2012.**

Consideration was being given at the time to the position of Administrator within the CMI. Wim Fransen had been debilitated with a serious illness and his term of office was shortly to expire. Discussions had taken place with the Singapore MLA and Lawrence Teh as to whether he would be available to take over the role of

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<sup>186</sup> CMI News Letter No 1 January/April 2012

Administrator and thus combine the position as heading the Singapore Regional Office . The Executive Council was alive to the concerns that might be expressed by some MLAs that such a move would create the impression that the CMI headquarters or head office would thus move to Singapore. No decision was taken at this Executive Council meeting and further discussion was reserved for the Beijing Conference.

It was resolved to recommend to the Beijing Assembly that Richard Shaw be elected as a member honoris causa.

#### **40th CMI Conference Kempinski Hotel Beijing, China 14-19 October 2012.**

There were 352 delegates and 60 accompanying persons who attended this first CMI event, let alone Conference, to be held in China, although many CMI Officers and Executive Councillors had been visiting China and giving lectures since the 1980s. The Kempinski Hotel was a modern Hotel ideally suited to holding a Conference of the size of CMI's Conferences. The organisers had chosen wisely as much larger venues had also been considered. A detailed Report of the Conference is in the News Letter.<sup>187</sup>

A great deal of planning had gone into preparations for this Conference by the President and Secretary.-General including a visit to China, and with the enormous assistance of Henry Li and Song Dihuang and the host Committee of the China Maritime Law Association, and Secretary-General Dr. Li Hu. The Conference was also well supported financially by the local sponsors, including COSCO, Sinotrans Ltd, CLPCT, PICC and China Shipping, amongst others.

Socially, delegates were entertained in typical Chinese style at the Welcome Reception and the Gala Dinner at the Hotel. The highlight for first time visitors was of course the mid week autumnal all day visit to the Great Wall with lunch on return at the GuiGongFu Royal Club in Beijing. Delegates also had the opportunity during the Conference to visit the Forbidden City, Tiananmen Square and the Summer Palace.

The President inaugurated a very successful get together of Presidents of MLAs at this Conference which was continued at successive meetings in Dublin, Hamburg, and Istanbul, usually prior to the welcome function at the commencement of the meeting. The purpose was to enable Presidents of MLAs to exchange news of their own Associations and, hopefully, perhaps provide opportunities, especially for newer MLAs, to be provided with ideas for the development of their own Associations.

The Director and President of COSCO, Mr Ma Zehua welcomed guests at the Welcome Reception, which was followed by a "Cultural Evening", performance which included Peking Opera, acrobats, face changing and performance of traditional Chinese instruments. At the Gala dinner addresses were made by the newly installed CMI President and Mr Zhao Huxiang, the Chairman of Sino Trans.

The Conference was breathtaking in the depth of its ambitious work programme put together by Nigel Frawley with many parallel sessions taking place, employing both traditional CMI Conference drafting working sessions as well as Panel discussions and seminar style presentations. Time will tell whether this was the last 5 day Conference for CMI (with a mid week excursion, thus 4 full days of work.)

Prior to the Opening Ceremony, there was a formal meeting and tea drinking ceremony with Mr Hua Jianmin , the Vice Chairman of the Standing Committee of the National Peoples Congress; Mr Wan Jifeng, Chairman of CCPIT; President of CMLA and Chairman of COSCO Captain Wei Jiafu; Vice President of CMLA and Vice Chairman of CCPIT Mr Dong Songgen; and other senior officers of the CMI and China MLA.

There was an anticipation before the Conference that work would be concluded on two topics: Judicial Sales and the Review of the Salvage Convention. Only the latter was concluded but not in a way that satisfied the salvage industry, and Judicial Sales ran out of time. In addition a large number of topics many of which were running concurrently, were discussed such as Rotterdam Rules, Offshore Activity and Pollution Liability, Fair Treatment of Seafarers, Piracy and Maritime Violence, Marine Insurance, Western and Eastern Cultural Influence on Maritime Arbitration and its recent development in Asia, Cross-Border Insolvency, Arctic/Antarctic Legal Regimes, the Ship Building Industry in Asia, problems and challenges. In addition there was a session on the "Future of CMI" the first such session since the 1997 Centenary Conference.

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<sup>187</sup> CMI News Letter No 3 October/December 2012

The work of the Conference and documents for the Conference are in CMI Yearbook 2011-2012 Beijing I.<sup>188</sup>

The Work of the CMI done at Beijing can be found in CMI Yearbook 2013 Beijing II<sup>189</sup>

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<sup>188</sup> CMI Yearbook Beijing I 2011-2012: *Judicial Sales*: Letter from the President to MLAs (pages 124 and 125); Commentary on the Second Draft of the Instrument on International Recognition of Foreign Judicial Sales of Ships (pages 126 to 131) and the Second Working Draft of the Instrument for Recognition of Foreign Judicial Sales of Ships (pages 131 to 136) *Review of Salvage Convention 1989*: Letter from Stuart Hetherington (pages 138 to 139) together with Report and attachments to MLAs. (pages 140-84); *Rotterdam Rules at Beijing* by Michael Sturley (page 286); *York Antwerp Rules*: Report to MLAs by Karl Gombrii, Richard Shaw and Bent Nielsen (pages 289 to 294) including Examples of Redistributions of salvage payments in GA June 2012 and Proposed Amendments to YAR 2004. (pages 295 to 299); *Regulation of Offshore Activity Pollution Liability and other Aspects*: An Introduction by Richard Shaw (pages 302 to 310); *Fair Treatment of Seafarers International Law and Practice* by Olivia Murray (pages 312 to 332); *Piracy Today* An Update by Andrew Taylor (pages 334 to 344); *Maritime Issues For and By Judges* : A First for CMI: A Session by Judges for Judges by Justice Johanne Gauthier (pages 346 to 347); *Marine Insurance* Report on the work of the IWG on Marine Insurance including Questionnaire on Mandatory Insurance under International Conventions (pages 350 to 364); *Cross Border Insolvency*: Letter by Karl Gombrii to MLAs (pages 366 to 367) and An Introduction to Cross Border Insolvency by Sarah Derrington (pages 368 to 372); Questionnaire (pages 373 to 380); *Arctic/Antarctic Legal Issues*: Comments by Nigel Frawley on Collision Regulations 1972 (pages 382 to 383); Comments by Douglas Davis on Load Lines (pages 383 to 384); Comments by Aldo Chircop on SAR Convention and Nuuk Agreement (pages 385 to 386); Comments by Donald Rothwell on EPR and MARPOL (pages 386 to 388); Legal Challenges for Maritime Operations in the Southern Ocean by Donald Rothwell (page 389); *Breaking the Ice* : Challenges for Arctic Shipping in an Evolving Governance Environment by Aldo Chirco (pages 390 to 391); *The Future of CMI*: Letter by Karl Gombrii to MLAs (page 394); The Future of the CMI in the Decades to Come by Stuart Hetherington (pages 395 to 406) and Annex I: Document ANTW/97 (pages 407 to 408) and Annex 2 (pages 409 to 415)

<sup>189</sup> CMI Yearbook Beijing II 2013: *Judicial Sale of Ships*. Opening Note Henry Li (pages 130 to 131); Concise summary of various commentaries received relating to the 2nd Draft Instrument by Andrew Robinson (pages 132 to 142); Judicial sale of ships in Germany as an example for a civil law concept by Jan Erik Pötschke (pages 143 to 149); Judicial sale of vessels in Asia Pacific common law jurisdiction by Lawrence Teh (pages 150 to 165); Towards an international instrument for recognition of Judicial Sales of ships policy aspects by William Sharpe (pages 166 to 181); Towards universal recognition of foreign judicial sales of ships? by Frank Smeele (pages 182 to 193); Comments and amendment proposals on the Second Working Draft of Instrument on recognition of foreign judicial sales of ships by James Zhengliang Hu (pages 194 to 208); Report of the CMI IWG on recognition of foreign judicial sales of ships (pages 209 to 211); Letter to Presidents re judicial sales of ships dated 25 March 2013 (page 212); A proposed draft international convention on recognition of foreign judicial sales of ships (known as the "Beijing Draft"), done at Beijing on 19 October 2012 (pages 213 to 219); Commentary on the Beijing Draft (pages 220 to 239); *Salvage Convention*: Report on discussions and decisions related to the 1989 Salvage Convention by Stuart Hetherington and Diego Chami (pages 230 to 253); ISU opening address and closing comments by Robert Wallis (pages 254 to 257); Salvage Convention review - Salvors' proposals for environmental salvage award by Kiran Khosla (pages 258 to 263); *Rotterdam Rules*: The Rotterdam Rules in Beijing by Michael Sturley (pages 266-272); Rotterdam Rules and the underlying sales contract by Alexander von Ziegler (p273 to 286); On the international transport laws' uniformity which the Rotterdam Rules aims for by Zhang Yongjian (pages 287 to 299); An analysis and assessment on the Rotterdam Rules in China's marine industry by Si Yuzhu, Zhang Jinlei (pages 300 to 309); Updating the rules on international carriage of goods by sea: the Rotterdam Rules by Kofi Mbiah (pages 310 to 321); The Limitation of liability of the carrier from an allocation of risks point of view by José Vicente Guzmán (pages 322 to 326); The UN Convention on the contracts of international carriage of goods wholly or partly by sea; The "Rotterdam Rules" Practical implications for carriers by Andrew Bardot (pages 327-331); Corrections to the original text of the Rotterdam Rules (pages 332 to 334); *York Antwerp Rules*: Report on the meetings of the CMI Ad Hoc Working Group on General Average by Bent Nielsen, Richard Shaw (pages 336 to 337); *Regulation of Offshore Activity Pollution Liability and Other Aspects*: An international convention on off shore hydrocarbon leaks? By Steven Rares (pages 340 to 359); *Fair Treatment Of Seafarers*: A report on the session at Beijing on Fair Treatment of Seafarers by Giorgio Berlingieri (pages 362 to 363); *Piracy*: Piracy today An update by Andrew Taylor (pages 366 to 376); *Marine Insurance*: Mandatory insurances in international conventions Dieter Schwampe, Pengnan Wang (pages 378-385); *The Impact of Western and Eastern Cultural Influence on Maritime Arbitration and its Recent Development in Asia*: Impact of eastern and western culture on arbitration and latest development of arbitration in China by Yu Jianlong (pages 388 to 395); The eastern and western cultural influences on maritime arbitration and its recent development in Asia by Philip Yang (pages 396 to 405); *Arctic/Antarctic Legal Issues*: Regulatory challenges for international arctic navigation and shipping in an evolving governance environment by Aldo Chircop (pages 408 to 427); Legal challenges for maritime operations in the Southern Ocean by Donald R Rothwell (pages 428 to 447); *The Shipbuilding Industry in Asia*: Trade financing laws and practices of China by Saibo Jin (pages 448 to 472); Standby letters of credit in China: Law and cases review by Saibo Jin (pages 473 to 483); Security risks arising from sale of ships (completed and under construction) by Peter Koh (pages 484 to 501); *The Future of the CMI in the Decades to Come* by Stuart Hetherington (pages 504 to 509); *Young CMI*: Arrest of ships and judicial sales of vessels South Africa by Patrick Holloway (pages 512 to 525); The Law and Practice of ship arrest in PRC Maritime Courts by Margot Luo (pages 526 to 533). A growing need for supply vessels in the offshore industry in South American countries: the "knock for knock" liability regime, is it the answer? by Javier Franco Zárate (pages 534 to 538); Offshore activity New regulations by Violeta Radovich (pages 539 to 547); Enforcement on shipping companies by creditors by Yiannis Timagenis (pages 548 to 562); Ship arrest in Germany by Olaf Hartenstein (pages 563 to 569); Report on Young CMI events in Beijing Conference by Yingying Zou, Yiannis Timagenis (pages 570 to 573); Shanghai Add On: Brief reflections of almost 20 years in Shanghai by Peter Murray (pages 576 to 579); Speech at the 40th International Conference of the CMI by Xie

On the *York Antwerp Rules* sessions the Proposed Amendments to YAR 2004 which had been prepared by the Ad hoc Working Group and forwarded to MLAs in July 2012 to try and resolve the impasse with 2004 YAR were not acceptable to the delegates. Accordingly it was decided that a new IWG should be appointed with a mandate to carry out a general review of the YAR. The review would include the laws governing Salvage and Crew's Wages at a Port of Refuge.

In relation to the *Review of the Salvage Convention* with one exception none of the proposed reforms to Articles 14; 1(b); 5; 11, 13 and 21, 16, and 27 and the Brice Protocol (designed to ameliorate the problems of the UNESCO Convention on Underwater Cultural Heritage) found favour with delegates. The proposed potential amendment to the Salvage Convention which did find favour with delegates related to the deletion of the words "coastal or inland waters or areas adjacent thereto" in Article 1(d) of the Salvage Convention 1999. This was clearly a disappointing result for the International Salvage Union. The process had also caused considerable angst within the P&I Clubs, some of whom were critical of the CMI for taking on this project without their approval. Whilst the International Group of P and I Clubs has had considerable input (and membership) of IWGs in recent years where their members' interests are involved there has been a noticeable drop off in engagement by the P&I Clubs themselves with the CMI and its Executive Council since the retirement of Bill Birch Reynardson in particular, and perhaps a lack of understanding at the higher levels of the P&I Club Managers of how CMI operates. It seems likely that the CMI would have proceeded with its review of the Salvage Convention given the depth of feelings about the problems being identified in the salvage industry and the changes that had occurred since the Convention had been adopted even if representations had been made on behalf of shipowners at an earlier point in time.

The work done on the *Judicial Sale of Ships* did not complete its work in Beijing but it was hoped that by the time of the next meeting in Dublin completion might be achieved.

*Offshore Activities:* Richard Shaw with the assistance of Justice Rares of the Federal Court of Australia's paper calling for an international Convention did much to resurrect this topic which, as Richard Shaw explained, had lain dormant as far as the CMI IWG was concerned since 1998 but events in 2010 involving the rig Deepwater Horizon in the Gulf Of Mexico and the Montara incident in the Timor Sea in 2009 had brought it back into focus for the international regulators.

The *Rotterdam Rules* sessions which involved a number of panels discussing different aspects of the topic were presented by many speakers who had been intimately involved in their drafting. One of those papers, which particularly offers hope of future ratification, was the realistic and objective presentation made by Andrew Bardot, the Executive Officer of the International Group of P&I Associations in which he discussed "practical implications for carriers". In his introductory remarks he said as follows:

"The provisions of the Convention, the "rules", extend and modernise the present international rules governing contracts of maritime carriage of goods. The objective is that the rules will replace the Hague Rules, the Hague-Visby Rules and the Hamburg Rules, and that they will achieve uniformity of law in the field of maritime carriage and, hopefully, head off the ever present threats to all concerned interests of a patchwork of disparate domestic and regional legislation relating to the carriage of goods by sea. A worthy objective, but of course one which self-evidently is entirely dependent upon significant and wide-spread support by states through the ratification process. Currently there are 24 signatory states but only 2 ratifications of the required 20 to bring the rules into force. Therein lies the real challenge."

He identified the "Negative implications for carriers" as being:

"Loss of the carriers 'nautical fault' exception from liability; More stringent seaworthiness obligations; Increased package/unit of weight liability limits; The extension of time limits for commencing suit; Maritime Performing Parties; Dispute resolution forum choice and Club cover ramification."

As to "Positive implications for carriers" he identified:

"A multi-modal convention; Some beneficial aspects of existing Conventions and regimes retained; Shippers' obligations and liabilities in relation to cargo description and particulars and in relation to dangerous cargo; Deviation; Deck cargo application; Liability for delay; Delivery of goods; Greater freedom of contract in liner trades; and Provisions for electronic cover."

He concluded his comments as follows:

"From both the carrier and the Club perspective, widespread ratification and adoption of the rules would promote uniformity/consistency and help to head off threats of conflicting and disparate national and regional legislation and regulation of carriers' rights and obligations. As an objective, this is desirable and welcome.

There is general support for the rules from ship owner organisations including ICS, ECSA, BIMCO and WSC. Such support indicates that from the carriers' perspective, the rules are viewed positively notwithstanding the negative ramifications of certain aspects of the rules.

Undoubtedly, application of the rules would increase the cost of claims to carriers and their P & I insurers, but this would be viewed as a price worth paying if widespread ratification promotes the cause of uniformity and consistency in the approach towards assessment of carriers' liabilities."

Other papers included a report on the Conference by Michael Sturley which included the welcome from the CMI President Karl Gombrii who had read a message from Renaud Sorieul, the Secretary General of the United Nations Commission on International Trade Law (UNCITRAL) who had noted that an UNCITRAL working group had drafted The Rotterdam Rules "based on the CMI's preliminary text, to harmonise and modernise the Law of International Carriage of Goods by Sea". He added that both developing and developed countries, as well as shipper and carrier nations, had indicated their acceptance of the Convention, and he looked forward to the future. As Michael Sturley remarked a number of speakers reported on regional developments. He himself noted that many States seemed to be waiting to see what the United States did, but also that in Europe, Denmark, Norway and The Netherlands the political decision had been taken to ratify the Rotterdam Rules. For example a number of African states had incorporated the rules into their community code (Cameroon, Congo, Gabon, Equatorial Guinea, The Central African Republic and Chad).

Alexander Von Ziegler set out the lengthy history leading up to the Rotterdam Rules, particularly highlighting the movement towards electronic commerce as being a key driver of a need for a new international convention in this area.

Kofi Mbiah, the Chairman of the Legal Committee of the IMO noted that for developing countries, mostly consumers of shipping services, the Hague Rules which had held sway for so many years were unfair and worked against their interests. He then discussed some of the key reforms included within the Rotterdam Rules such as:

Scope of application, period of responsibility, electronic transport records, the liability of the carrier, delay, deviation, deck cargo, obligations of the shipper, limitation of liability, time for suit, jurisdiction and arbitration and volume contracts which he described as the most controversial.

He concluded by describing the Rotterdam Rules as a "mixed bag" but added: "The Rules thus represent a compromise and like all compromises no-one group leaves completely satisfied but all leave in the hope that they have taken something away. That is the spirit of the Rotterdam Rules which must be made to reflect in the judicial interpretation of the Rules" For shipper interests, he pointed out, they would find comfort in "the deletion of the nautical fault rule, the continuing obligation of due diligence and seaworthiness, the inclusion of provisions on delay, jurisdiction and arbitration (albeit under an opt-in-opt-out) clause" and he suggested "shippers would also find satisfaction and solace in the provisions on deck cargo, the extension of the time of suit, increased limitation amounts, the provisions on



delivery, the widened scope of application and responsibility of the carrier, not to mention the clarity of language in a number of provisions even if they suffer from verbosity".

For shipowners he suggested that "the adoption of the format of the Hague-Visby Rules with respect to the basis of liability of the carrier, with the litany of exculpatory clauses, the reversed burden of proof on the claimant, the increased scope for limitation of liability (breaches of its obligations), the flexibility of a network liability regime, the Himalaya protection (now clearly covering maritime performing parties) are indeed welcome". In addition ship owner interests, he pointed out, "have the benefit of flexibility in volume contracts, the provision of detailed rules on all documentary aspects, as well as the detailed provision and obligations of the shipper, strict liability of the shipper with respect to dangerous goods etc. Indeed these are some of the underlying tenets of compromise reflected in the spirit of the rules" He also highlighted the "extensive consultations with major stakeholders" which had taken place.

Papers presented on *Fair Treatment of Seafarers*, and *Piracy and Maritime Violence*, updated delegates on what was happening around the world in these two areas that affect the daily lives of seafarers.

*The Marine Insurance* session discussed the responses received to the Questionnaire on Mandatory Insurance.

*Cross Border Insolvency* was in the nature of an information gathering exercise from various jurisdictions as to how they contend with the troubling overlap between the UNCITRAL Model Law and rights of suit in Admiralty.

The *Arctic and Antarctic Legal Regimes* generated considerable interest by the erudition of the papers given and showed that there was much work for this recently established Group to do.

The sessions that sought to be educative on *Chinese legal and procedural activities and culture* were very well attended and equally instructive and informative in relation to both Maritime Arbitration and Shipbuilding.

The *Young Lawyers* meeting carried out much work. Violetta Radovich, Zou Yingying, Ioannis Timagenis and a number of Chinese participants including Qi Ji of CMLA, Sun Jinsheng of COSCO and Zhai Jun of Sinotrans assisted with arrangements for a social event on 15 October and a seminar on 19 October attended by 60 delegates. The seminar topics including Ship Arrest and Judicial Sales as they take place in various jurisdictions including China, Germany, Panama and South Africa. Another session discussed the topic of Offshore Activities. On the first day of the Conference about 60 delegates joined a function at a bar on an open terrace about 20 Minutes from the Conference venue alongside the Chao Yang Lake. It provided an opportunity for young lawyers, mostly, to get to know each other before the Conference got underway. The social and work related activities were deemed a huge success by the delegates.<sup>190</sup>

The Conference was a significant and very successful one, due in large part to the preparation and hard work put into its organisation by President Karl Gombrii and Secretary-General Nigel Frawley. It will be remembered not only for being the first in China, but for the election of a President resident outside Europe, which together with the planned regional office of the CMI in Singapore were symbolic of changes taking place within the CMI, a recognition of the changing maritime world. There was also an inaugural 3 hour seminar arranged by Johanne Gauthier for 19 members of the Judiciary who were attending the Conference, who discussed topics such as the delivery of cargo without presentation of bills of lading, the use of foreign cases to interpret Conventions, and anti-suit injunctions.

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<sup>190</sup> CMI News Letter No 1 October/December 2012: Report on the Beijing Conference by Stuart Hetherington.



Karl Gombrii and Nigel Frawley.

### **CMI Assembly Meeting Kempinski Hotel Beijing, China 19 October 2012.**

68 delegates attended. Those memorialised included Paul Goemans (Former Treasurer of the CMI) Eric Japikse (referred to in these pages) and Kenneth Volk. Indonesia and Ukraine were elected as new members of the CMI. The Assembly warmly approved the nomination that Richard Shaw be appointed a member Honoris Causa for his exceptional services to the CMI. And the following further elections took place: Karl Gombrii having decided not to seek to extend his term Stuart Hetherington was appointed President, Giorgio Berlingieri as Vice President and Johanne Gauthier for a further term as Vice President, Andrew Taylor and Louis Mbanefo as Executive Councillors for second terms and Tomotaka Fujita as an Executive Councillor.

Stuart Hetherington then made a presentation to Karl-Johan Gombrii and extended thanks and congratulations to him for his term as President and to Nigel Frawley for the organisation of the Conference and all their numerous efforts made on behalf of the CMI.

The subscriptions, it was decided would remain at the 2009 level with the 10% early bird discount, and according to the budget deliver a deficit of approximately EUR 28,000.

The Resolutions made at the Plenary and approved in the Assembly are contained in the CMI News Letter.<sup>191</sup>

The Resolutions taken at the Plenary meeting in relation to the *Review of the Salvage Convention* were approved by the Assembly, namely the Report of the Conference was to be sent to the IMO Legal Committee and the CMI encouraged the industry, salvors, ship owners and their insurers to seek resolution on the issues discussed at the Conference in relation to environmental salvage and security for container ship casualties, as well as the other matters discussed.

In relation to *Judicial Sales of Ships* Jonathan Lux reported to the Assembly that in spite of working until late at night the IWG was not able to produce a final wording of the Draft Instrument and therefore the resolution at the Plenary to the effect that before the next CMI Assembly the IWG would submit a final

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<sup>191</sup> CMI News Letter No. 3 October/December 2012

1. A draft Convention on Judicial Sales of Ships would be submitted to the Executive Council during the course of 2013 in anticipation that the project would be completed by the time the next Assembly meeting in Dublin that year. 2. The work commenced earlier in the year to amend YAR to make the 2004 Rules more acceptable to industry be continued and expanded to encompass a wider review.

3. To report to the IMO Legal Committee that the meeting did not support the changes sought to the Salvage Convention 1989 by the ISU, with the exception of widening the geographical scope definition of "damage to the environment" in Article 1(d).

4. To set up a new IWG to consider Offshore Activities particularly in the light of the Deepwater Horizon and Montara casualties.

Beijing Draft Instrument to the Executive Council so that appropriate steps can be taken to finalise the work as soon as possible.

The Assembly was informed of the continuing discussions with the Singapore MLA on the establishment of a regional office in Singapore.

The new President congratulated the new members of the Executive Council and Richard Shaw, confirmed the continuation of the Management Committee with its new members, stressed the significance of establishing the regional office in Singapore for a trial period of three years with a view to seeking to have an Indian MLA re-established as well as other countries in the region such as Malaysia, Cambodia, Thailand, Vietnam and Laos; emphasised the need to improve the Young CMI section on the website and developing a data base of decisions on the Maritime Conventions on the internet, announced that a new IWG on YAR was to be set up and stressed the importance of the Implementation of Maritime Conventions and working with ICS and IMO to that end.



Karl Gombrii and Hua Jianmin

#### **Executive Council Meeting Kempinski Hotel Beijing, China 14 October 2012.**

##### *The Work of CMI*

On the work done on *Limitation of Liability* Gregory Timagenis who reported personally to the Executive Council Meeting was warmly congratulated on all the work that he had achieved.

On the topic of *Jurisprudence on Maritime Conventions* Giorgio Berlingieri reported that Francesco wished to be relieved of this work.

The President reported on the status of discussions to set up a *Regional Office in Singapore* and the Executive Council agreed that it was a very necessary step to be taken.

The President reported on the steps he had taken in relation to *YAR 2004*.

Hilde van de Wiele had taken over as Assistant Administrator in Antwerp from Pascale Sterckx.

The next issue of the *Handbook on Maritime Conventions* was discussed and IMLI had been identified as a possible publisher. Patrick Griggs was discussing this with IMLI.

## **Executive Council Meeting Kempinski Hotel Beijing, China 19 October 2012.**

The Treasurer reported on quotations that had been sought for Directors and Officers insurance cover for Executive Councillors.

The long standing issue concerning ICC/CMI arbitration arrangements raised its head again, as Patrick Griggs suggested he be replaced as a nominee on the panel for arbitration. The President agreed to approach the President of the French MLA to ascertain the interests of the ICC in continuing this arrangement which had not resulted in any appointments as arbitrators and seemed to be moribund.

It was decided to form a new IWG on *Offshore Activities* under the Chairmanship of Richard Shaw and another one to Review YAR under the Chairmanship of Bent Nielsen. Also a new Standing Committee on *Implementation of International Conventions* under the Chairmanship of Louis Mbanefo and Rapporteur Deucalion REDIADIS would be established, which would explore the creation of a Joint Standing Committee with ICS and IMO Legal Committee. The possibility of setting up a Standing Committee to be responsible for establishing a data base for Judicial decisions on Maritime Conventions and possibly employing someone to start off the legal research work were discussed. A French lawyer had been identified as being able to fill the role suggested by Benoit Goemans at the meeting on 14 October to assist in such a project. The decision was also taken to enlarge the membership of the Young Lawyers Group and establish a Standing Committee for that purpose. As two associations had been established in India discussions were to take place to see if they could be united so that India could rejoin the CMI.



The CMI Executive Council and China MLA and Board members.

### **The Future of the CMI in the decades to come.**

In preparation for the Beijing Conference at which time was to be set aside for discussion of the above topic Stuart Hetherington prepared a Discussion Paper which was sent by letter from President Karl Gombrii to MLAs in July 2012 to assist the deliberations in Beijing.<sup>192</sup>

The Report of the session in Beijing is also in Yearbook 2013 Beijing II.<sup>193194</sup> President Karl Gombrii had opened the meeting by referring to the Discussion Paper and the following broad headings referred to therein: Governance issues, Current work projects, Future work programme, Website and technology,

<sup>192</sup> CMI Yearbook 2011 2012 Beijing 1 pages 394-415: The letter and Discussion Paper (including its annexes: a document prepared to assist delegates at the 1997 Antwerp Conference and a document identifying concerns raised by delegates before and at that Conference)

<sup>193</sup> CMI News Letter No. 1 January/August 2013

<sup>194</sup> CMI Yearbook 2013 Beijing II pages 504-509

Development of new MLAs, Young lawyers and Improvement of relations with other international organisations. The Report contains the detail of the interventions that were made at that meeting, one of which being a suggestion by the President of MLAUS (Bob Parrish) that a Committee be appointed to look at all the issues raised in depth.

#### **Shanghai, China Add-on Conference.**

There were 105 delegates and 35 accompanying persons who continued to Shanghai after Beijing where there was a wonderful mix of social and intellectual entertainment. The train journey from Beijing to Shanghai was only matched by the shorter (and faster) journey from Shanghai to the airport during which this delegate photographed the speed monitor at 419 kph before he had to sit down.

A visit was made to a recently built container port at Yang Shan Port as well as the Shanghai Maritime Museum which was a highlight, located in Lingang New Town in a beautiful modern building and its collection of artefacts, with its centrepiece Ming Dynasty replica vessel. The visit to Shanghai also included a visit to the modern Shanghai Maritime Court where a senior judge and local practitioners, Peter Murray and Wang Hongyu explained the developments which have taken place in maritime jurisdiction in China since the Maritime Code's introduction 20 years earlier. There was also a seminar to celebrate the 30th anniversary of the Southampton University Institute of Maritime Law and the Tulane Maritime Law Centre at New Orleans which was addressed by Sir Bernard Eder of the High Court in London as well as Eldon Fallon of the US District Court in the Eastern District of Louisiana in the delightful Shanghai Club at the old Shanghai Conference Hall. There was also a magical dinner cruise on the river between the skylines of the Bund and Pudong Districts.

#### **Conclusion: The Presidency of Karl Gombrii.**

Karl Gombrii, like Jean Serge-Rohart, was a full time working legal practitioner. During his term as President the finances of the CMI continued to flourish; the Executive Council meetings held by email continued to benefit the finances of the CMI with no noticeable adverse effect on its management, there were very successful Colloquia in Rotterdam for the signing of the Rotterdam Rules (fitting for someone who had given so much time to this topic since the early 1990s) and Buenos Aires; Assembly meetings in Oslo and the extremely well organised and successful Conference in Beijing and the Shanghai add-on; as well as the fulfilment of the reform plans that he had been a key participant of on the Steering Committee, the near completion of the work on Judicial Sales; the conclusion of the Review of the Salvage Convention, the initial steps to break the dead lock of YAR reform (which was then completed 4 years later), the initiation of the Singapore representative office, paving the way for an Administrator to be appointed who is not based in Belgium, thus enabling another geographical area to be represented on the Executive Council, weathering the global financial crisis and assisting MLAs to do so as well, and the instigation of reviewing the Future of CMI to see if CMI was match ready to meet that future. These were all achievements that benefitted the CMI.

#### **Chapter 4 The Presidency of Stuart Hetherington October 2012 to November 2018.**

Foreword: The Presidency of Stuart Hetherington. This chapter recounts significant meetings, including Conferences at Hamburg and New York, Symposium in Dublin, Colloquium in Istanbul, Seminar in Genoa and Assembly meeting in London; events, administrative changes (including the movement to new Headquarters in Antwerp, the location of the Administrator and CMI Far Eastern representative office in Singapore) the continuation of the Executive Council meetings held by email and maintenance of healthy finances without a need to increase subscriptions, the introduction of a President's Report as part of the Assembly papers, the publication of a CMI Brochure, reforms of the CMI website, and the work done by the CMI, especially on Judicial Sales where UNCITRAL took on the project and a revision of the York Antwerp Rules (YAR 2016) as well as many new endeavours including Unmanned Craft (now MASS).

Following the example set by his predecessor Patrick Griggs, Stuart Hetherington wrote to MLAs in November 2012 and forwarded the report which he had prepared of the Beijing Conference and asked for support from the MLAs in a number of key areas, particularly the Implementation of Conventions, the provision of names and email addresses of their members to facilitate communication between the CMI and individual members of MLAs, the usage and development of the CMI website, and the database on Conventions. He also attached a summary of the discussions on the Future of CMI which had been held at the Beijing Conference. He



advised that a Committee looking into the issues raised was being set up and that on Implementation of Conventions correspondence was being entered into with the IMO and ICS as to pooling resources in this area. He also reported on the status of the discussions concerning the Regional office in Singapore (in which a draft Heads of Agreement was being discussed, which identified the principal role of the Office as being the promotion of the CMI in the region, emphasising its mandate of contributing to the unification of maritime law) and the organisation of regional meetings for young Lawyers and the need for the Continent of Africa to have greater visibility within the CMI.

### **Headquarters of CMI.**

At the instigation of the President a meeting was called in April 2013 attended by the Administrator (Wim Fransen), the Treasurer (Benoit Goemans) and Presidents of the Belgium (Karel Stes), French (Philippe Boisson), Swiss (Alexander von Ziegler), Dutch (Taco van der Valk) and Italian (Giorgio Berlingieri) MLAs to discuss some key issues relating to the management of the CMI. Concerns had been expressed that such reform moves would deprive Belgium of its historical place as the home of the CMI and this meeting was called to allay those fears. The President reported on the financial status of the CMI, described the roles of the Administrator under the Constitution and that a large number of the tasks identified by the Constitution for the Administrator were being performed by the Secretary-General. The top priorities related to the location of the headquarters of the CMI (and the person performing administrative functions in Antwerp), the regional office arrangements in Singapore, and the roles of Administrator and Treasurer, both of them currently being held by members of the Belgium MLA.

The meeting took place in the magnificent boardroom of the recently refurbished building occupied by the Royal Belgian Shipowners Association at Ernest Van Dijckkaai 8, Antwerp. As a result of that meeting the Royal Belgian Shipowners Association offered space within the building for a minimal annual fee which was sufficient to meet the needs of the CMI. The Executive Council approved the arrangements and the offer was gratefully accepted in June 2013.



The board room of the Royal Belgian Shipowners Association.

As part of the changes made arising from that meeting the title of the Treasurer's role was changed to "Treasurer (and head office Director)" to reflect the decisions also made at the meeting that, on Wim Fransen stepping down from his role as Administrator, a non Belgian would take over that role, enabling another member of the Executive Council to be chosen from outside Belgium, and the Treasurer would also take responsibility for the direct management of the Administrative assistant employee, a role largely taken de facto by the Treasurer, Benoit Goemans in whose offices the administrative assistant was then located.

The location of the CMI headquarters within the Royal Belgian Shipowners Association's offices not only enabled the Administrative assistant to be provided with her own space but also provided for the housing of CMI texts, (Yearbooks, News Letters, Travaux Préparatoires and other publications) some storage and availability for a meeting room for the Executive Council or Management Committees of the CMI should the need arise. In the succeeding years many such meetings have taken place there. Also, fortuitously when Benoit Goemans asked to be relieved of his responsibilities as Treasurer, the former CEO of the Royal Belgian Shipowners Association, Peter Verstuyft, who had made the above changes possible, on his retirement took over the role of Treasurer.

Simultaneously with those arrangements being put in place the registered office of the CMI was then identified as being within the building occupied by the Royal Belgian Shipowners Association. The headquarters of the CMI thus became situated in the most magnificent building. It was constructed in 1896 by Gustave Albrecht who had a fine townhouse built for his small family from which he conducted on the ground floor his office of ship owner, shipbroker, shipping agent and importer of coal. The house continued to be used for residential purposes for some of the 20th Century but also had various other uses, including a Michelin Star restaurant from 1962 until 1976. It was added to the list of protected monuments in 1981 because of its exceptional interiors. From 2005 until 2008 it was vacant when it was acquired by the Royal Belgian Shipowners Association who had carried out considerable restoration work, which has melded an efficient office with the historical charm of the old homestead. It is now eminently suitable business premises but also has the aura of the late 19th Century in its boardroom and meeting rooms, overlooking the Scheldt in a central Antwerp location, near its magnificent cathedral.

A most convivial reception was organised that evening by the Belgium MLA in the delightful Eugeen Van Mieghem Museum on the ground floor of the Royal Belgian Shipowners Association building

#### **The Far Eastern representation: Singapore office.**

This was an initiative of Karl Gombrii who spent a part of his time when he was President of the CMI living and working in Singapore and conceived and put forward the suggestion that the CMI should appoint someone in the Far East who would have responsibility, inter alia, to encourage countries that did not have MLAs to do so and join the CMI in order to broaden the geographical reach of the CMI. The Heads of Agreement between the CMI and Singapore MLA was signed in March 2013. Part of the costs of the Office were to be met by the Singapore Maritime and Port Authority (MPA), for which the CMI has always been very grateful. The only person who has held the role as heading the Representative Office since its commencement in 2013 has been Lawrence Teh, now the Administrator of the CMI. Since taking over that role he was made many visits on behalf of the CMI (added to business meetings that he was otherwise attending, thus minimising the costs to CMI) to great effect. As Administrator Lawrence Teh has taken some of the workload off the shoulders of the Secretary-General who, since at least the time of Nigel Frawley has largely had the responsibility for the organising of Conferences and international meetings as well as overseeing the academic work output of the CMI. Both Nigel Frawley and his successor John Hare, fulfilled both roles with extraordinary diligence and skill.

The CMI News Letter contained papers presented by Patrick Griggs and Mans Jacobsson at the 100th session of the Legal Committee of the IMO on April 18, 2013.

Patrick Griggs's paper was titled "CMI and the Legal Committee - Working Together" and Mans Jacobsson's paper was entitled "Bridge over Troubled Water: The Legal Committee's Voyage in a Changing World".

#### **Executive Council Email Meeting from the Office of the President Sydney, Australia week commencing 27 May 2013**

The utility of the meeting held in Antwerp in April, followed by the further extensive discussions of the Management Committee in New York (which amount to 16 pages of text) can be seen in the breadth of decisions taken by the Executive Council in this Email meeting. The contributions made by all participants in those meetings helped forge the path of the CMI for the rest of this Presidency.

This meeting took place after the meetings of the Management Committee comprising the President, the two Vice-Presidents (Johanne Gauthier and Giorgio Berlingieri) and the Secretary-General (Nigel

Frawley) in New York on 4 May 2013 which had been an extensive meeting at which the President reported on his visit to Antwerp to which reference has already been made, in April.

At the Email meeting of the Executive Council the accounting news was that a loss of Euro 129,596 had been incurred against a budgeted loss of Euro 118,593 and CMI investments had only fallen from Euro 611,393.25 to Euro 621,292.11 as at 31 December 2012.

The report from the Beijing Conference noted that the contributions made by the founding members of the China MLA had greatly improved the financial result of the conference which had exceeded expectations by way of greater than expected anticipated costs including publications and speakers expenses. At this meeting Johanne Gauthier advised that she had decided to stand down as Vice-President in Dublin and the Executive Council extended their grateful thanks to her for her many years of service to the CMI. Likewise Wim Fransen had announced that he would be stepping down as Administrator in Dublin and his contribution was also recognised with thanks. It was agreed by the Executive Council to nominate Lawrence Teh as Administrator and to recommend to the Assembly in Dublin the election of Jean Serge Rohart as President Honoris Causa and Rosalie Balkin as Member Honoris Causa upon her retirement as Director of Legal Affairs and External Relations Division of the IMO. The applications made for Consultative Membership made by both IMLI and IACS (the latter of which was foreshadowed) was approved by the Executive Council for recommendation to the Assembly in Dublin.

The position of Administrative Assistant in Antwerp had been troublesome since Pascale Sterckx's employment had ceased shortly prior to the Beijing Conference. Her temporary replacement Hilda van de Wiele had been absent from work for long periods as a result of surgery. The Executive Council agreed to accept the invitation of the Royal Belgian Shipowners Association to move the registered office of the CMI on Wim Fransen's retirement as Administrator and the library and other such publications of the CMI to those offices at a nominal annual fee. It was also agreed to change the Treasurer's title to "Treasurer (and Head Office Director)" in view of the appointment of an Administrator that was not based in Antwerp.

The Secretary-General gave a report on the arrangements being made for the Dublin Symposium.

The President reported having sounded out opinions from former presidents and Frank Wiswall it was decided that the better view of the constitutional provisions of the CMI was that it will be necessary to hold a Conference to complete the proposed instrument on Judicial Sales after the Dublin Symposium and with that in mind it was suggested that the German MLA be invited to host a short seminar in either Hamburg or Berlin which could amount to a CMI Conference. The Executive Council also approved the making of a recommendation to the Assembly that a Colloquium be held in Istanbul in 2015 and that following the Management Committee meeting in New York, where representatives of the MLAUS had attended, arrangements were starting to be made for the New York Conference in 2016, particularly in so far as retaining an event organiser and determining the hotel at which the meeting might take place.

The Executive Council also agreed to support a prize to the top PHD student at the Ravena Summer School, a joint enterprise between a number of leading European institutions conducting courses in maritime law.

An application for membership of the CMI had been received from Romania.

The President reported that during his visit to the US in April 2013 he had visited the State Department, together with former MLAUS President Chester Hooper in order to ascertain the present position in relation to the ratification process for the Rotterdam Rules. The meeting took place with Keith Loken (Assistant Legal Adviser for private international law) and Mike Coffee (Attorney-Adviser office for private international law) who advised that the transmittal package has been developed and we are continuing to have discussions with various stakeholders to try and address concerns. On completion of the package there will be an inter-agency review, all of whom are well briefed on the Rotterdam Rules. It is hoped that that will be achieved in the relatively near future and the State Department will then be



in a position to go to their principals. The minutes of the Executive Council noted "the inter-agency review is thought likely to involve Department of Justice, Federal Maritime Commission and MARAD). On completion of that review the State Department was to forward the package to the President who then sends it to the Senate for the ratification process to be completed. Shortly after the meeting in Washington, Chet Hooper received advice that Mr Loken is to retire. After the meeting at the State Department, Chet Hooper and the President had lunch with members of the National Industrial Transport League and a consultant to the World Shipping Council who would be the principal lobbyists once the package reaches the Senate.

The President reported that on his visit to Antwerp in April he had attended a meeting with the Treasurer and the Administrator with the Ambassador-Director of the Cabinet of Foreign Affairs, Foreign Trade and European Affairs in Brussels where it had been indicated that the Belgian government would be interested in hosting a diplomatic conference for a topic such as Judicial Sales in the absence of some other suitable international forum.

The President reported that negotiations were taking place with a lawyer in France for a position as consultant for a period of six months to assist in the preparation of an extensive database on cases of conventions for placing on the CMI database. Taco van der Valk was appointed the new Chairman of Young CMI and he was congratulated by the Executive Council for his work in setting up a LinkedIn group which it was hoped would lead to greater interaction with young lawyer groups in MLAs in different parts of the world. There was also extensive discussion both in the Management Committee and the Executive Council in relation to the formation of the regional office in Singapore. Particular emphasis was given for the necessity that CMI extend CMI's influence in the Far East where the full weight of shipping power has moved in recent years. It was also noted that areas such as Latin American and Africa needed to be developed further in addition.

Discussion also centred around the establishment of an ad hoc committee to be known as "The Future of CMI" under the chairmanship of Liz Burrell of New York, as suggested by the then President of the MLAUS, Bob Parrish, in Beijing to consider the role of CMI. The need for closer relationships with ICS, IMO and other UN bodies was also discussed.

The speeches made by Mans Jacobsson and Patrick Griggs at a seminar held on the occasion of the 100th Session of the IMO Legal Committee were noted with appreciation by the Executive Council. The Planning Committee had noted the following topics being under consideration for work by the CMI: Review of UNCLOS deficiencies; Review of LLMC deficiencies; Unification of Admiralty Rules of Procedural Law; Competition Law as applicable to marine law; Choice of law rules as applicable to marine law; Rules and electronic waybills). In addition the planning committee had discussed the Collision Regulations (1972); whether there was a role in the CMI similar to ICC in relation to its banking committee as a source for explanation of UCP, in the context of conventions it has been involved in and in relation to Rules of evidence such as are being studied by the IBA (where shipping issues are exempted); Review of choice of law rules (eg Rotterdam Rules make reference to "applicable law" without indicating what law is intended to apply); Charterers Debts, which might involve consideration of the concept of "floating" jurisdiction clauses. Such issues, it was suggested, stem from a lack of uniformity regarding maritime liens which could be remedied by widespread ratification of the 1993 Maritime Liens & Mortgages Convention; and Crimes at Sea.

Steps were being taken to obtain D&O insurance for members of the Executive Council.

A paper prepared by Patrick Griggs on the subject of the 2002 Protocol to the Athens Convention was noted with appreciation.

The final issue discussed related to the suggestion made by a New York attorney to the President that there could be a role for the CMI to play in arbitration as an unaffiliated and independent body, which it was agreed by the Executive Council could be considered in an ad hoc committee of the CMI.

## Symposium Shelbourne Hotel Dublin, Ireland 29 September to 1 October 2013.

The highlight of the year was the Dublin Symposium held in the historic Shelbourne Hotel, established in 1824 in the centre of Dublin, where there were 238 registered delegates and 37 accompanying persons and which was superbly organised by the Irish MLA under its President Helen Noble and her organising Committee and where the delegates celebrated the 50th anniversary of the Irish MLA. All the delegates were made to feel extremely welcome. It was a busy few days as there were International Sub-Committee meetings on the topics of YAR and Judicial Sales, the latter seeking to finalise the work that was left unfinished in Beijing. There is a Report of this event by Nigel Frawley in the CMI News Letter.<sup>195</sup> As noted by Nigel Frawley there were 32 delegates attending the Judicial Sales ISC meeting and 29 the York Antwerp Rules meeting, considerable progress being made on both of those issues although the Judicial Sales topic was not able to conclude until the next CMI meeting in Hamburg in 2014.

At the opening reception the President paid tribute to three fathers (and good friends over many years) who it had been hoped might have been able to attend the meeting: Niall McGovern, Francesco Berlingieri and Bill Birch Reynardson who had served in various positions from President to Vice President and Executive Councillors over many years but none of whom were able to join the meeting. All 3 of their offspring were however present. Niall McGovern's son, Justice Brian McGovern joined the speakers at the welcome function. The meeting was opened by the Minister of Transport for the Republic of Ireland, Leo Varadkar, later to become Prime Minister of Ireland. A dinner was held at the stunning Mansion House in Dublin featuring Irish dancers and musicians and a closing "Farewell Party" was held at the Gravity Bar in the Guinness Storehouse which was a marvellous way to wind down after what had been a busy few days.

The Work of the Dublin Symposium is in Part II of the CMI Yearbook 2014.<sup>196</sup>

The Opening Day contained Panel sessions in the morning on: *Oil Spillage-the EU Perspective*, at which the speakers were Chris Reynolds from the Irish Coast Guard, Jean-Serge Rohart, Dr Vincent Power, Carlos Llorente, and Olivia Murray; *The need for regulation of the liabilities caused by off-shore exploration* at which the speakers were: Rosalie Balkin, Ben Browne, and Rob Dorey. In the afternoon the Panel sessions tackled *Issues for the Cruise and Ferry Industries in light of recent events* (the "Costa Concordia" casualty had taken place on 13 July 2012) at which the speakers were Michael McCarthy from the Port of Cork, Commander Giuseppe Troina, Ann Waite and Colm O'hOisin SC; and *Passenger Vessels-Rights and Liabilities* at which the speakers were David Baker, Hugh Kennedy, Henrik Ringbom and Tim Reardon.

On the second day the morning session Panels discussed *Cross Border Insolvencies-difficulties with existing legal framework for dealing with Cross Border insolvencies* at which Olaf Hartenstein spoke; Limitation of liability-CMI commentary and list of issues for consideration for future work on which Martin Davies discussed how bankruptcy affects limitation issues; *Implementation of Maritime Conventions-* a review of existing national difficulties of implementation at which Deucalion Rediadis spoke; and *Marine Insurance -Mandatory insurance and other current problems* at which Rhidian Thomas spoke. In the afternoon the *Young Lawyers* discussed Salvor's liability for Professional negligence (Muso Mudric, the winner of the Ravenna Summer School prize); Limitation of Liability of Classification Societies (Denise Micallef (CMI Prize winner at IMLI, Malta); The Maritime Labour Convention 2006 and its implications for modern shipping (Darren Lehane) and In rem liability in Spanish Law and Comparative provisions in Irish Law (Javier Zabala and Edmund Sweetman).

There was also a Judges' session organised on the first day.

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<sup>195</sup> CMI News Letter No. 3 October/December 2013)

<sup>196</sup> CMI Yearbook 2014 Casualties/liabilities in the offshore sector: The Commune de Mesquer Case by Vincent Power (pages 148-173); The "Prestige" in the US Courts by Carlos Llorente (pages 174-178); Is there a place for the regulation of offshore oil platforms within international maritime law? If not, then where? by Rosalie Balkin (pages 179-185); Limitation of liability: CMI commentary on list of issues for consideration of future work by Helen Noble (pages 188- 195); Marine Insurance: The prospective reform of marine insurance law in the UK by D Rhidian Thomas (pages 198-203); Young Lawyers: Limitation of liability Cutting cables and breaking limitation by David Kavanagh (pages 206-210); An overview of the Maritime Labour Convention 2006 and its implications for modern shipping by Darren Lehane (pages 211-222); A legal analysis of the limitation of liability of classification societies by Denise Micallef (pages 223-241); Salvors' liability for professional negligence by Miso Mudric (pages 242-258); Proceedings in rem in Spanish law, searching for your strongest position by F Javier Zabala (pages 259-263).

### **Executive Council Meeting Shelbourne Hotel Dublin, Ireland 29 September 2013.**

Bent Nielsen stood down from being Chair of the Nominating Committee. The Executive Council therefore appointed Johanne Gauthier to take over that role. In addition the Secretary General, Nigel Frawley advised shortly before the meeting in Dublin that he would like to retire from his position as Secretary General as it was time for a younger person to take over. John Hare had indicated that he would be prepared to return to the Executive Council and to take on that role. He was voted as the interim Secretary General to be confirmed in Hamburg next year. It was reported that the work was already proceeding in relation to the 2016 Conference to be held in New York. The long vexed question of the relevance of the CMI and ICC arbitration joint venture was resolved by the Executive Council determining that there was no justification for its continuation and it should be disbanded. It was also decided to set up an ad hoc Committee to investigate whether there was any role for the CMI to play in relation to arbitration and an IWG was set up to consider a response to an approach made by the Secretary General of UNIDROIT on the topic of the Cape Town Convention but this was deferred until the receipt of further correspondence in that regard.

### **CMI Assembly Meeting Shelbourne Hotel Dublin, Ireland 1 October 2013.**

The Assembly meeting was attended by 64 delegates. Two old friends of the CMI had died in the previous 12 months Professor Antony Antipassis and Michael Marks Cohen. The latter and his wife Bette had been regular attendees at CMI Conferences and were extremely generous and hospitable in entertaining delegates and their partners both at Conferences and when visiting New York. A Memorial Service was held in New York in May for Michael Marks Cohen and the CMI President was honoured to be able to attend and speak. (Michael Marks Cohen made an intervention at the Buenos Aires Colloquium in relation to the Charitable Trust and urged that it should seek to spend more money on education.)

The Moroccan and Tunisian Associations were expelled for non payment of subscriptions but two new members, Poland and India, returning to the CMI fold, were welcomed with acclamation by the Assembly. A Provisional member for Sri Lanka was also appointed. Two new Consultative members were appointed: IMLI and the International Association of Classification Societies. (The President noting at the time that it was somewhat surprising that neither of those two auspicious organisations had been Consultative members already).

With Johanne Gauthier stepping down as Vice-President before her terms of office concluded, Chris Davis, whose terms on the Executive Council had come to an end, was appointed as a new Vice-President and Lawrence Teh, Benoit Goemans and Nigel Frawley were appointed as Administrator, Treasurer and Secretary-General respectively. Two vacant positions for Executive Councillors, were filled by Alexander Von Ziegler and Dieter Schwampe. In addition, Dihuang Song was re-elected for a second term as Executive Councillor. In making his remarks the Chairman of the Nominating Committee regretted that the CMI Executive Council would no longer have a female member as a result of the retirement of Johanne Gauthier.

On the recommendation of the Executive Council Rosalie Balkin, Director of Legal Affairs & External Relations Division of the IMO was appointed a Member Honoris Causa. All positions were acclaimed by the Assembly.

The President paid tribute to all the departing Executive Councillors but especially to Johanne Gauthier and Nigel Frawley to whom a presentation was made. He had organised all the meetings of the CMI and worked closely with Presidents Griggs, Jean-Serge Rohart, Karl Gombrii and himself, for ten years. The President said that "if any of those Presidents had looked good to members of the CMI it was largely due to the hard work and organisational skills of Nigel Frawley." Those comments were echoed by Karl Gombrii and Jean-Serge Rohart.

The President inaugurated the presentation of an Annual Report to the Assembly at this meeting, which is annexed to the Minutes of the Assembly Meeting.<sup>197</sup>

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<sup>197</sup> CMI's News Letter No. 3 October/December 2013

## The President's Report

The President's Report noted that the Management Committee (which consisted of the President, two Vice Presidents and the Secretary General) had met in New York at the same time as the MLAUS Spring meeting and met with its Organising Committee for the 2016 CMI Conference.) It also reported on the visit made to Antwerp by the President to meet with Belgian members of the Executive Council, Wim Fransen (Administrator), Benoit Goemans (Treasurer), and Vice President Giorgio Berlingieri and Presidents of the Belgium, French and Swiss MLAs where the discussions centred on arrangements relating to the administration of the CMI, the retirement of Wim Fransen and the appointment of an Administrator from outside Belgium. These had then been agreed to by the Executive Council at its virtual meeting in May so that the registered office of the CMI was moved, the title of the Treasurer was changed and the engagement on a part time basis of a bookkeeper to assist the Treasurer was also put in place.

The Report noted that as well as those meetings the President attended together with Benoit Goemans, Wim Fransen, Karel Stes and Alexander Von Ziegler at the office of Francoise de Kerchove, the Ambassador-Director of the Cabinet of Foreign Affairs, Foreign Trade and European Affairs, within the office of the Deputy Prime Minister, Minister of Foreign Affairs, Foreign Trade and European Affairs of the Kingdom of Belgium where it was indicated that the Belgium government would be prepared to host a diplomatic conference on a topic such as Judicial Sales if the usual organs of the United Nations were unwilling to do so.

That Report also sadly noted the serious illness of Richard Shaw, which had forced him to give up his role as Chair of the Offshore Activities working group and Patrick Griggs kindly agreed to take over that role on a temporary basis.

The Report lists the activities carried out on behalf of the CMI by many during the previous 12 months, including Deucalion Rediadis who had attended a workshop on the HNS Convention at the IMO in London, Vincent De Orchis who attended an UNCITRAL meeting in New York on the proposed Model Laws on Electronic Documents, Karl Gombrii who attended BIMCO's 100th meeting session in Paris, Karl Gombrii who monitored the work by BIMCO on the VOY Rules, Sergej Lebedev who had attended a counter terrorism workshop in Moscow and Tom Birch Reynardson who attended the inaugural meeting of the re-formed Indian MLA, and had been very helpful in assisting in its re-formation.

The Report also mentioned that a French lawyer had been retained for a period of six months to assist in enlarging the database of jurisprudence on international Conventions. It also reported that a Sub-Committee had been formed since the Beijing Conference to continue the work that had been done at that Conference on the topic of "Future of CMI" and Liz Burrell of the MLAUS had agreed to Chair the Committee. The Report also paid tribute to Bent Nielsen who was stepping down as Chair of the Nominating Committee for all the work that he has done for CMI but also the delicacy and tact in performing his role as Chair of the Nominating Committee and his wise counsel over many years. He would be continuing to give CMI lectures at IMLI and Chairing the IWG on YAR.

The Assembly approved the Executive Council recommendation that subscriptions for 2014 replicate the 2009 Rotterdam subscriptions with a 5% early bird discount.

### *Work in progress*

On *Fair Treatment of Seafarers* it was reported that the joint project had been approved by the Executive Council with the Seafarers Rights International which involved drafting and sending a Questionnaire to governments and MLAs with an overall objective of promoting generally the subject of Fair Treatment of Seafarers in the event of a maritime accident.

On *Judicial Sales* it was reported by Andrew Robinson that the work had not been concluded at the Symposium but it was intended that a Final Report be prepared within the month which would contain a final draft instrument, a suitable commentary on the instrument as well as a historical review of the project and feedback from MLAs would be sought so that by early in 2014 a final suite of documentation would be produced in time for the Hamburg Conference in June 2014.

On *Arctic and Antarctic* legal regimes Nigel Frawley reported that an inventory of the legislative material the IMO/ICS and BIMCO are currently studying would be prepared in order to assess their applicability in the Polar regions and to undertake a review of private maritime law Conventions for their applicability and non-applicability in the Arctic and southern oceans as well as considering aspects of pollution liability regimes in those regions.

On *YAR* reform it was reported that an ISC had met and progress had been made in seeking to identify contentious issues and achieving compromises where possible.

On *Rotterdam Rules* some progress was being made within the United States State Department and there was some hope that a package might be concluded to be put before other agencies of US government for signing off by the Secretary of State, and for the President to approve it and send it to the Senate.

In relation to *Offshore Activities, Pollution liability and related issues* Patrick Griggs reported that there was still considerable opposition within industry to any international regime to regulate offshore activities. He suggested that the most useful thing the CMI could do would be to produce Guidelines or draft regional or bilateral agreements which might assist those countries who issue licenses for off-shore exploration and do not have the necessary facilities to prepare such documentation.

On *Jurisprudence on Maritime Conventions and Promoting Ratification of Maritime Conventions* had been discussed at the Symposium and a contemporaneous meeting of Young CMI was taking place whilst the Assembly was taking place.

The President also reported that the Singapore office had been accepted by the Singapore Fair Trade Association/Non-Profit organisation on 15 March 2013 and the likely appointment would be made for the Administrator, Lawrence Teh, to take responsibility for it and he would be seeking to encourage the formation of MLAs in countries such as Malaysia, Thailand, Laos, Vietnam and Cambodia.

#### **Richard Shaw (1940-2013).**

#### **Member Honoris Causa**



Richard Shaw, who had attended the Beijing Conference a year earlier at which he had been appointed Member Honoris Causa, died on 17 October 2013, was fondly remembered by the CMI.<sup>198</sup> The President described Richard Shaw at the time as one of the CMI's "great foot soldiers". The record shows not only did he (with Patrick Griggs) attend IMO Legal Committee and IOPC Fund meetings and report on them

<sup>198</sup> . CMI Yearbook 2014 (pages 3 7) Tribute to Richard Shaw by Patrick Griggs.

assiduously for the CMI News Letter for many years but he had chaired IWGs, particularly in relation to Offshore Activities for a great many years and participated actively as Rapporteur or member of many other IWGs including York Antwerp Rules, Places of Refuge and Salvage Convention. In Patrick Griggs's comments at the Assembly meeting about his old friend he quoted from correspondence sent to Richard's wife during his final illness from a Latvian lawyer who said "when I think of Richard it is always of a smiling sunshine man, never angry or dissatisfied". The word "enthusiastic" is another word that summed him up.

#### **Tulane University, New Orleans, USA William Tetley Lecture**

On the 24 March 2014 the President was asked to give the William Tetley Maritime Law Lecture at Tulane University. His paper was entitled "The CMI and the Panacea of Uniformity-an Elusive Dream".<sup>199</sup> He discussed the many attempts to introduce domestically (in the US and other countries) and internationally agreed regimes for the carriage of goods, as well as the current work of the CMI. He put forward a suggestion that the industry might want to consider incorporating the Rotterdam Rules into their carriage contracts if governments did not take steps to ratify this significant reform. He pointed out that industry could consider this approach, following the attempts made in the late 19th century and follow the example of the York Antwerp Rules whereby shipowners/ carriers and cargo owners and their respective insurers were able to renegotiate the Rules, through the mediation of the CMI, as Custodian of their Rules, without recourse to reforms having to be negotiated by way of diplomatic conferences leading to long delayed ratification and denunciation processes of earlier versions of their treaties.

Prior to his attendance at the Hamburg Conference the President was invited by the Polish MLA to present a paper at the 2nd International Maritime Congress at Szczecin, Poland on 12-14 June 2014 on the topic of "The Role of the CMI in the development of Uniform Law for MultiModal Transport"

#### **41st CMI Conference Atlantic Kempinski Hotel Hamburg, Germany 15-19 June 2014.**

Two hundred and ninety five delegates attended this Conference, with nearly 40 accompanying persons. It was preceded by a weekend of ISC meetings on *Judicial Sale of Ships* and YAR and succeeded by a Berlin add-on meeting where delegates stayed at the historic Kempinski Adlon Hotel. This event (which would not have been a Conference but for the fact that the *Judicial Sales* project was to be completed and its work needed to be finalised in a Plenary session and approved by the Assembly before moving to the next stage of its life) was extremely successful on many levels and, needless to say, well organised by the DVIS under the leadership of Dieter Schwampe and Klaus Ramming and Tilo Wallrabenstein. The Conference was well-supported by the German shipping industry by way of sponsorship and many Hamburg law firms.

On the first evening delegates and their accompanying persons walked from the hotel to the nearby jetty where they caught a ferry to the Anglo-German Club which was on the other side of the Alster for the Welcome function. On arrival guests walked through the Club to a large garden, where the President found himself standing on the terrace behind the Club and addressing the assembled delegates some distance below him to welcome them to this function, which took place on fathers' day in many MLA jurisdictions. The President reminded delegates that the 30th Conference of the CMI had taken place in Hamburg in 1974 at the Atlantic Hotel and the Town Hall. (Black and white photographs of delegates at business and social sessions from that Conference were available for delegates.) Present on this first evening were Doctors Herber and Kroger who had attended the 1974 Conference, also former Executive Councillor Thomas Reme. Other social events were held in glamorous surroundings including the Maritime Museum, where guests could view the exhibits (provided they had not opted to watch a World Cup soccer game that was being played at the same time!), the Town Hall (Rathaus) followed by the Gala dinner in the ballroom of the Atlantic Hotel.

At the Town Hall function, hosted by the Senate of the Free and Hanseatic City of Hamburg the President recalled that at the Centenary CMI Conference in 1997 a visit had been made to the city of Bruges where delegates learnt of the importance of that city in the spread and development of a common understanding of maritime law and in particular the Rolls of Oleron. He referred to the fact that the proposed rules of maritime law and the Hanseatic laws that developed through the Baltic region, particularly in the cities of Lubeck and Hamburg, had converged in 1407 when 22 Hanseatic cities met in Lubeck and produced a codification. The

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<sup>199</sup> Tulane Maritime Law Journal Winter 2014 Number 1 Volume 39

Articles of Lubeck, the Amsterdam Ordinance and the Rolls of Oleron were then taken up into a broader whole into the Laws of Wisby at that time. Senator Schiedek, the Hamburg Justice Senator, warmly welcomed the visitors to the reception.

The President and joint President Dieter Schwampe of Deutscher Verein für Internationales Seerecht (DVIS) welcomed delegates the following morning at the opening of the Conference where the key note address was given by Hubert Weis, Director-General of Commercial and Economic Law in the Federal Ministry of Justice and by Thomas Rehder the President of ECSA.

On Wednesday, 18 June the Conference moved to ITLOS where the delegates were welcomed by President Yanai of ITLOS. (Unfortunately the Court room was being renovated and could not be visited on this occasion although the Executive Council when it held its meeting in Hamburg a few years earlier had been able to see the impressive Court room with its Bench that could accommodate at least 22 Justices). The Registrar of the Court, Philippe Gautier described some of the cases that had come before the Tribunal.<sup>200</sup> The President's vote of thanks to the President and Registrar of the Court for permitting us to spend some time in the Tribunal building pointed out that the first case that was submitted to the Tribunal occurred exactly one hundred years after the formation of the CMI.

The Conference is well described by John Hare in the News Letter.<sup>201</sup> There were sessions running throughout the meeting entitled *Ships in Hot Water* and *Ships in Cold Water* respectively, which saw, firstly, discussions on: Ship Financing and Refinancing (Stefan Rindfleisch), Cross Border Insolvency (Patrick Kirkby), Liability of Classification Societies (John Hare and Henning Jessen), and Wrongful Arrest of Ships A Case for Reform (Aleka Mandaraka Sheppard), Piracy and legal issues arising from the use of armed guards (Kiran Khosla), German legislation regarding private maritime security companies (Dieter Schwampe), Review of the Rules on General Average (Bent Nielsen and Taco van der Valk); and secondly, fascinating addresses on current issues under consideration by the Polar Shipping IWG: The Polar Code Ships in Cold water-Arctic Issues Examined (Tore Hendriksen), Polar Load Lines for Maritime Safety: A neglected issue in the international regulation of navigation and shipping in Arctic waters? (Aldo Chircop, Nicolo Reggio, David Snider, Bert Ray) ), Civil Liability for oil pollution in polar marine environments (Lars Rosenberg-Overby).

As John Hare noted there was also a miscellany of topics that did not quite fit into either theme on Ship emissions- Changes driven by new regulations (Peter Hinchcliffe), the Nairobi Wreck Removal Convention (Klaus Ramming), and the MLC 2006 Issues and Implementation (Cleopatra Doumba-Henry). The *Young CMI* group also presented an afternoon of sessions and discussions around the complex topic of the degree of fault "The loss of the right to limit under Argentine Maritime Law" (Eduardo Adragna), - "Recklessness with knowledge" (Duygu Damar), "Recklessly and with knowledge in Japanese Law" (Gen Goto), and "Recklessly and with knowledge that damage would probably result: the interpretation of the term before the Croation Courts" (Muso Mudric), These sessions were audio-visually recorded so that they could be watched by delegates who had also attended the parallel Assembly meeting.

**Add -on meeting in Berlin.** Nearly 100 delegates travelled on to Berlin from Hamburg and enjoyed a session in one of the Committee meeting rooms at the Bundestag to hear an address by Berlin Parliamentarian, Stefan Evers, and short presentations by MLA members from Germany, Belgium, Brazil, Japan and Spain dealing with recent efforts of reform of those countries' maritime laws. This was an extremely successful session which it was thought should become a regular feature of CMI gatherings. A spectacular dinner was held at the Roof Garden Restaurant of the Bundestag (The Reichstag Building.)

Papers from the Conference are in the CMI Yearbook.<sup>202</sup>

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<sup>200</sup> CMI Yearbook 2014 (pages 400 to 406) The International Tribunal for the Law of the Sea and the Settlement of Disputes Relating to Maritime Matters by Philippe Gautier.

<sup>201</sup> CMI News Letter No 3 September/December 2014

<sup>202</sup> CMI Yearbook 2014 Opening speech by Hubert Weis (pages 267-272); The liability of classification societies Some practical issues by Henning Jessen (pages 275-281); Wrongful arrest of ships: A case for reform by Aleka Mandaraka Sheppard (pages 282-307); Piracy and legal issues arising from the use of armed guards An overview by Kiran Khosla (pages 308-315); German legislation regarding private maritime security companies – A blueprint for other nations? by Dieter Schwampe (pages 316-320); General review of the rules on general average from Beijing to Hamburg: the work done so far by Taco van der Valk (pages 321-322); Liability of Classification Societies Current status and past CMI initiatives by John Hare (pages 323-330).

John Hare, at the conclusion of the Gala dinner in the blue and white decorated Ball Room at the Atlantic Hotel inaugurated, (what only a few years later he was able to call "a long-standing tradition"!), whereby the "host association was invited to surrender the CMI colours (banner) to the Secretary-General with great aplomb" (his words) so that he could "present them to the Turkish delegation entrusted to the next meeting." This innovation was enjoyed by all attendees and has been carried out with great aplomb ever since.

#### **Executive Council Meeting Atlantic Hotel Hamburg, Germany 15 June 2014.**

It was decided that Rosalie Balkin, who had retired from the IMO Legal Committee would represent the CMI as observer at future IOPC funds meetings.

#### **CMI Assembly Meeting Atlantic Hotel Hamburg, Germany 17 June 2014.**

It was with great sadness that amongst those who were remembered at the beginning of the Assembly meeting were Richard Shaw, Niall McGovern (Honorary Vice-President), S. Venkiteswaran (Venki), Hidetaka Moriya and Sergio Turci, all of whom had played significant roles in the life of CMI. Venki had been instrumental in the work done to reignite the Indian MLA to its renewed membership of the CMI.

Senegal, Romania, and East Africa were elected as new Members, but Guatemala having been given due notice was expelled for non-payment of subscriptions. Theis Klauberg of Latvia and Kwabena Asare of Ghana were approved by the Assembly for Provisional membership.

Mans Jacobsson retired from the Executive Council in Hamburg. However he took over the duties of Chair of the Audit Committee and continues in that role to the present time. John Hare was elected as Secretary-General, Jorge Radovich for a second term as Executive Councillor and Ann Fenech as Executive Councillor.

The finances were reported to be in good health by the Treasurer with Income of €212,671 and expenditure of €224,554, reserves being €601,635. Benoît Goemans had advised that he wished to step aside as Treasurer. It had been a difficult year as the assistant to the Treasurer had been absent on sick leave for a large part of the period before Anne Verlinde had been employed to take over. The President noted the huge debt which the CMI owed to Benoît Goemans for his long period of service to the CMI as Treasurer.

Liz Burrell had also performed her duties as Chair of the Audit Committee with great diligence since taking over from David Angus, and the importance of the role is often overlooked. It requires studying the reported financial results, giving time to discussing them if necessary with the Treasurer or other Executive Councillors and particularly the Independent Auditor in Antwerp, and then organising a meeting covering many different time zones for a telephone call or calls (or zoom/teams, today) with the other members of the Audit Committee and producing a Report for the Assembly. In addition she was available to answer questions that might arise, such as the appropriate level of reserve for an organisation such as the CMI when the level of the

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Ships in Cold Water Arctic Issues Examined: The Polar Code Ships in Cold Water Arctic Issues Examined by Tore Henriksen (pages 332-344); "Polar Load Lines: for Maritime Safety: A Neglected Issue in the International Regulation of Navigation and Shipping in Arctic Waters?" by Aldo Chircop, Nicoló Reggio, David (Duke) Snider and Bert Ray (pages 345-356); Civil Liability (for Oil Pollution) in Polar Marine Environments by Lars Rosenberg Overby (pages 357-366).

A Maritime Miscellany: Ship Emissions Changes driven by new regulations by Peter Hinchliffe (pages 368-371); The Wreck Removal Convention Current Status and Issues by Klaus Ramming (pages 372-376); Loss of the right to limit under Argentine maritime law by Eduardo Adragna (pages 377-379); Recklessness with knowledge by Duygu Damar (pages 380-383); "Recklessly and with knowledge" in Japanese law by Gen Goto (pages 384-387); Recklessly and with Knowledge that Damage would Probably Result: The Interpretation of Term before the Croatian Courts by Mišo Mudrić (pages 388-398).

Maintaining Maritime Laws: The new Brazilian Commercial Code by Camila Mendes, Vianna Cardoso (pages 408-412); Maritime Law Reform in Japan by Tomotaka Fujita (pages 413-419); Maintaining Maritime Laws: An Overview of the Recent Law Reform in Spain by Jesús Casas (pages 420-424).

Reports presented to the Assembly: Report of the IWG on Cross Border Insolvency by Chris Davis (pages 426-427); Report of the IWG on the Fair Treatment of Seafarers by Olivia Murray (pages 428-430); Report of the IWG on General Average by Taco van der Valk (pages 431-432); Report of the IWG on Judicial Sale of Ships by Henry Hai Li (page 433); Report of the IWG on Marine Insurance Rules by Dieter Schwampe (pages 434-438); Report of the IWG on Offshore Activities by Patrick Griggs (pages 439-440); Report of the IWG on Polar Shipping Issues by Aldo Chircop (pages 441-446); Piracy update by Andrew Taylor (pages 447-449); Report of the IWG on the Rotterdam Rules by Tomotaka Fujita (pages 450-451); Report on Young CMI by Taco van der Valk (pages 452-453); Report of the Ad Hoc Committee on the role of the CMI by Elizabeth Burrell (pages 454-455)



reserve seemed to be getting too large. She had carried out the research referred to earlier on this issue and supplied copies of articles on financial management in the not for profit sector, to the Executive Council.

Amendments were made to the Constitution so that the Treasurer's title became "Treasurer and Head Office Director" and changes made to the nomination process.

### *Work in Progress*

*Judicial Sales:* Henry Li reported that at the Plenary Session the draft International Convention on Foreign Judicial Sales of Ships and their recognition had been adopted. There were no votes recorded against and 23 acceptances. One of the 2 abstentions, the MLAUS, advised after the meeting that approval had been given for a vote in favour bringing the total acceptances to 24. The President commended Professor Li and his team for the enormous amount of work they had done to arrive at the adoption of the text of the draft Convention and that acclaim was echoed by all present.

The text of the draft Convention was approved at the Assembly and was therefore a culmination of many years of hard work by Professor Henry Li, Jonathan Lux and Andrew Robinson and the members of the IWG. The text of the Draft Convention as finalised by the CMI comprised 10 articles and a Certificate which was annexed to those articles. The essential provisions comprised a series of definitions in Article 1. Article 2 expresses the "scope of application" to the effect that the Convention applies to the conditions in which a Judicial Sale taking place in one State shall be sufficient for the recognition in another State. Article 3 identifies the persons or organisations that need to be given notice of a Judicial Sale, including the Registrar of the ship in the State of registration, the holders of mortgages or charges, the holders of maritime liens, and the owner of the ship, and when it must be given. In addition it lists the minimum information which must be provided and the manner in which it is to be publicised. Article 4 is one of the most significant provisions and sets out what is intended to be the effect of a Judicial Sale, provided the ship was physically within the jurisdiction of the State of Judicial Sale at the time of sale and the sale being conducted in accordance with the law of the State of Judicial Sale, that is all title to and all rights and interests in the ship prior to the sale are extinguished and clean title is given to the purchaser. Article 5 requires the issuance of a Certificate of Judicial Sale at the request of the purchaser and a form of that Certificate is in Annexure A to the draft Instrument. Article 6 provides that on the production of the Certificate to the prior registry it is required to make the deletion. Article 7, equally important, requires that a Court of a State party, on the application of the purchaser, or subsequent purchaser, recognise a Judicial Sale conducted in any other State for which a Certificate has been issued as having the effect that clean title has been acquired by the purchaser and all rights and interests in the ship prior to the Judicial Sale had been extinguished and the ship has been sold free of any mortgage or charge. It also requires that when a ship which has been sold by a Judicial Sale and is sought to be arrested or is arrested in a State party for a claim made prior to the Judicial Sale the Court shall dismiss, set aside or reject the application for arrest or release the ship on the production of a Certificate. There are circumstances in which recognition may be suspended or refused under Article 8. It requires proof that the ship was not in the jurisdiction at the time of the sale or that the competent court has suspended or nullified the sale, or on grounds that recognition of the Judicial Sale would be manifestly contrary to public policy. Article 9 provides that States on signing the draft instrument could restrict application of the Convention to recognition of Judicial Sales conducted in State parties. Article 10 provides that nothing in the Convention derogates from any other Convention, instrument or agreement or principle of comity.

The Report on the *Fair Treatment of Seafarers* included a Report on the 104th session of the Legal Committee of the IMO and the efforts to encourage IMO to promote implementation of the Fair Treatment Guidelines. It also outlined current work including continuing co-operation with Seafarers' Rights International with a joint project to ascertain and encourage more widespread acceptance of the Fair Treatment Guidelines by use of Questionnaires and direct enquiry.

*Marine Insurance:* The IWG tabled and presented a Report which included a recommendation for national governments to require insurers to provide confirmation that cover provided is at least for minimum convention requirements; and the IMO extend the Bunker Convention financial security to other conventions.

The newly appointed Chair of the IWG on *Polar Shipping*, Aldo Chircop paid tribute to Nigel Frawley who had agreed to remain part of the group. The ongoing work of the IWG is outlined in the annexure to Professor Chircop's Report and it included developing an inventory of initiatives of international organisations in relation to the regulatory regime in polar waters; a review of international private and public maritime law conventions to consider their applicability to polar environments and evaluation of pollution liability regimes applicable to polar regions.

Taco Van der Valk reported that further work is being done as to how best to create a workable database for cases on maritime conventions. The Management Committee had also suggested approaching Professor Girvin at Singapore University who had expressed positive indications of developing something.

*Young Lawyers* - Taco Van der Valk reported that Young CMI and the Young Maritime Lawyers Group representing Belgian, UK, Dutch, French and German young maritime lawyers had met during the Hamburg Conference.

*Rotterdam Rules* - Tomotaka Fujita reported that there were three ratifications (Congo, Spain and Togo), and suggestions that some European countries may ratify and also a suggestion that the rules were now "on the USA Secretary of State's desk".

Patrick Griggs reported on Offshore Activities and discussions that had taken place at the IMO Legal Committee concerning trans-boundary pollution from offshore activities. Some had expressed a preference for bilateral and regional agreements rather than international convention regulation. There were also signs that industry may be coming round to the view that a voluntary regime may be necessary.

The Secretary-General reported that at all the business meetings excluding the Plenary and Assembly had been recorded by video and audio that after editing would be made available on the Conference website.

At the conclusion of the Assembly meeting the President thanked DVIS for hosting an enjoyable and successful Conference culminating in the adoption of the text of the *Judicial Sales Instrument*.

### **The President's Report.**

In this Report, mention was made of the Management Committee meeting that had taken place in March in Antwerp which had been attended by the new Secretary-General (John Hare) and Administrator (Lawrence Teh) and Treasurer (Benoît Goemans), which met at the new registered office of the CMI at Ernest Van Dijckkaai. Anne Verlinde as Administrative assistant who had taken up her position on the 3 March joined part of the meeting. Kris Meuldermans, the CMI auditor, also attended to discuss the CMI accounts. During the course of the visit, Eric Van Hooydonk met with some of the Management Committee and suggested a new topic for CMI: "Towards a worldwide restatement of the general principles of maritime law", the general principles constituted by the Lex Maritima. Benoit Goemans informed the meeting that he wished to step down from the Treasurer's role and the Belgium MLA proposed that the director of the Belgian Shipowners' Association, Peter Verstuyft, who was about to retire would be an appropriate replacement. It was also advised that if Anne Verlinde completed her trial period of employment of 26 weeks successfully she could move to the Belgian Shipowners' Association office and carry out her work from that place. The Belgium MLA arranged a convivial social function for the Management Committee with the Board of the Belgium MLA, under its President, Karel Stes.

### **Executive Council Email Meeting from the office of the President Sydney, Australia week commencing 24 November 2014.**

As Peter Verstuyft had informed the President he was not going to be available to commence the role of Treasurer until mid 2015 Benoit Goemans had kindly agreed to stay on as Treasurer until that has occurred. Andrew Taylor and Mans Jacobsson had tabled an "investment policy" which is a useful work for the Executive Council to have recourse, particularly in the periods of low interest rate returns available in the financial market. The Guidelines which they produced supported the maintenance of the current procedure in which the currency in which the CMI holds its funds is the Euro, particularly as the major expenses which are incurred are in relation to the administration of the CMI which is conducted essentially from Belgium. It also supported investments being held but ideally for one or two years at a time to enable flexibility but

should be spread over several institutions, including government bonds (provided the State concerned is highly graded by major international rating agencies). It supported investment with major banks, again, provided they are also highly rated and protected, if possible, by government guarantees within Europe. It recommended against investment in equities or corporate bonds or other similar unit trusts or products. (This policy was reviewed a few years later when returns from the usual investments were so negligible but it was decided not to venture into equities or move funds to other jurisdictions where rates of interest, for example, may have been better).

Discussion centred around the fact that CMI had got itself into a position in which it was holding substantial meetings on an annual basis and that once the New York Conference in 2016 had been held it should return to less frequent annual meetings. Anne Verlinde's employment was approved by Exco.

Another topic discussed was whether fees should be levied on Consultative members attending the CMI events and it was decided that one representative from any Consultative member would be entitled to a 50% rebate of the Conference registration fee but would otherwise pay for their own travel and accommodation.

YAR: Bent Nielsen had reported on meetings held with ICS and others involved in the work of the IWG to understand where all parties stand on some of the key issues, such as Rule XI(b) (Wages and Maintenance of crew at Port of Refuge).

Alexander Von Ziegler noted that he and Tomotaka Fujita would be attending the Rotterdam Rules expert group meeting in December to work on an "accession kit", assisting governments in their implementation work of the Rotterdam Rules.

The President reported that he had asked Ann Fenech to chair a proposed new IWG to gather information in response to a request from UNIDROIT concerning shipping being incorporated in the Cape Town Convention.

A new IWG was also appointed in relation to Practice and Procedure on Arrest of Ships to be chaired by Giorgio Berlingieri and Aleka Mandaraka Sheppard as Rapporteur and a draft Questionnaire would be sent to MLAs.

An IWG was set up to be chaired by Eric Van Hooydonk on the Restatement of the General Principles of the Lex Maritima.

*Jurisprudence on Maritime Conventions* - the Executive Council approved entering into an agreement with the National University of Singapore to contribute €5,000 towards engagement of a publication editor by the Centre for Maritime Law, National University of Singapore and to appoint an editorial board consisting of Stephen Girvin (Chair), Giorgio Berlingieri and Taco Van der Valk.

Taco Van der Valk reported that there were 845 members linked to the CMI LinkedIn group on maritime law.

*Constitution Committee* - Benoit Goemans will be stepping down as Chair and will be replaced by Jean-Francois Peters. Frank Wiswall is also stepping down from this Committee after many years service.

Potential new areas of work for the CMI were discussed in the course of this meeting. They included the topic of an EU representative in respect of which John Hare reported that Vincent Power of Ireland had replied enthusiastically to his enquiry as to whether he would be interested in preparing a Report for the Executive Council meeting. Another new topic proposed by the MLAUS was to study the different uses of the terms "ship", "watercraft", "vessel". It was agreed to set up an ad hoc Committee to consider this topic. A further possible new area of work related to "Unmanned ships". Tom Birch Reynardson had written to the President suggesting it might be a topic worthy of study. It was agreed that Tom Birch Reynardson and Dieter Schwampe would monitor developments and report back to the Executive Council as to whether there was something that the CMI could do in this area.

Executive Councillors had represented CMI at numerous meetings, such as Lawrence Teh at the Japanese MLA, Lawrence Teh and Tomotaka Fujita at the UNCITRAL Conference at the University of Macau, Jorge Radovich, Giorgio Berlingieri and Chris Davis at the XIX Congress of the Iberoamericano de Derecho Maritimo (IIDM), Dieter Schwampe at the Association Internationale de Droit des Assurances (AIDA). Giorgio Berlingieri

at the IMO Meeting in Morocco, Chris Davis at the 21st World Maritime Day Conference in Mexico City and many other MLA and other international organisations' meetings.

### **Colloquium Sheraton Atakoy Hotel Istanbul, Turkey 7-9 June 2015.**

The Colloquium held in Istanbul was a great success, attended by 229 delegates, particularly as it had been preceded by some concern as to the security in Istanbul due to recent acts of violence since it had been decided to hold the meeting there. Thanks to the hard work of Secretary-General, John Hare, and the Turkish MLA and its organising Committee chaired by the President of the Turkish MLA, Samim Unan and Bulent Sozer, the Colloquium passed without incident and great enjoyment was had both in the working sessions and the social sessions of the meeting. The Sheraton Atakoy Hotel located facing the Marmara Sea but not too far from the sights of the Hagia Sophia and Topkapi Palace and markets was ideal, set apart from the centre of Istanbul and thus felt likely to be a safer location was an inspired choice and was surrounded by generous grounds. The highlight of the social activities was the Bosphorus Dinner Cruise where lit up buildings and bridges on the shoreline are magnificent.

During the weekend before the commencement of the Colloquium there were meetings of the IWG on General Average and an ISC meeting on Offshore Activities and their work continued into the Colloquium sessions.<sup>203</sup>

In the President's opening remarks,<sup>204</sup> he took advantage of the opportunity to pass on the substance of a recent article by a former Vice President of the Maritime Law Association of Australia & New Zealand on a visit he had made to Bodrum in Southern Turkey, in particular the description of an archaeological museum where the remains of a ship which had been excavated between 1985 and 1994 were on display having been first discovered in 1982. The wood of the vessel had been dated to 1305 BC but what was highlighted for the benefit of delegates was the cargo which had been found on it and which included: copper and tin ingots, canaanite jars and pistacia resin, glass ingots, logs of blackwood from Africa, ivory, hippopotamus teeth, tortoise carapaces, Cyprian pottery and oil lamps, bronze and copper vessels, beads and other jewellery items, weapons and tools, pan-balance weights and edibles. It had been determined the ship had set sail from either a Cypriot or Syro-Palestinian port and was sailing to the region west of Cyprus, somewhere in the Aegean Sea, Rhodes being a possible destination with a possible final destination being one of the Mycenaean palaces in mainland Greece. Those objects found on board the ship were thought to have ranged geographically from Northern Europe to Africa, as far west as Sicily and as far east as Mesopotamia. They were the products of 9 or 10 cultures suggesting that by the late Bronze Age, the Aegean was the medium of an international trade perhaps based on royal gift-giving in the near east. The vessel was only about 15 metres long.

Quite apart from that trading history dating back to 1305 BC, the President also reminded delegates of the law from Roman times when the Roman Empire was ruled from Constantinople and Petrus Sabbatius became emperor in AD 527, now known as Justinian. He had ordered the compilation of a collection of Imperial enactments in AD 529 in the Codex. There then followed the compilation of a digest comprising the writings of the classical jurists organised under titles. He also ordered the publication of the *Institutiones*, Elementary Principles which were published in Constantinople on 21 November AD 533. Those Institutes had come into force as law together with a Digest of 30 December AD 533, together with further enactments made during his reign until AD 565. The Codex, the Digests and the Institutes constitute the *corpus juris civilis* or the body of the civil law. That was reborn in the 12th Century and spread throughout the whole of Europe in the centuries thereafter. The rediscovery of those works in Bologna coincided with the flourishing of the Italian City States and their vigorous maritime commerce.

The above was also taken from a paper given by an Australian Federal Court judge, Arthur Emmett, on "Roman Traces in Australian Law". Arthur Emmett concluded in his paper "whatever might be the true origin of the Rhodian Sea Law of the 17th Century, there seems to be a valid basis for attributing to it, at least in part, the jurisprudence of Rome", which had derived from Constantinople.

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<sup>203</sup> CMI Yearbook 2015 New York I (pages 148 171) General Average by Taco van der Valk: Report of the meeting held at the 2015 Istanbul Colloquium; Didem Algantürk Light (pages 172-182); How have General Average Concepts developed across Maritime Countries and Jurisdictions

<sup>204</sup> CMI Yearbook 2015 New York I (pages 140-142)

A speech was also given by the Chairman of the Organising Committee, Bulent Sozer.<sup>205</sup> He continued the theme of the early development of maritime law from *corpus juris civilis* with particular reference to one of the major topics being discussed at the Colloquium, General Average. Constantinople, now Istanbul, had been the centre of the Roman Empire, the Byzantium and the Ottoman Empire.

To add to the historical nature of the CMI's visit to Turkey, there was a remarkable collection of bills of lading in place in the Colloquium venue together with a fine booklet. The Turkish Ship Building Association had kindly agreed to sponsor the Colloquium.

Topics discussed at the Colloquium included: *Offshore Activities*,<sup>206</sup> *Turkey as a Coastal State: Straits Law and Port State Control; Competing Limitation Funds - UNCITRAL Model Law and Traditional Admiralty Procedures of Arrest and Attachment; Marine Insurance: Subrogation actions against co-insured and Insurers' subrogation rights in co-insurance - Recent developments in English law and Reform of Maritime Laws in Turkey, USA and the EU; Young CMI presentations: The Fair Treatment of Seafarers in Cases of Abandonment: A Caribbean Perspective; Ship Mortgage v Maritime Lien: What are the changes in favour of the mortgagee in Turkish Law; The Nairobi (Wreck Removal) Convention: Practical implications in the near term and the perspective of the P&I underwriters; Ship arrests and the relevant risk developments in Turkish law.*

#### **CMI Assembly Meeting Sheraton Atakoy Hotel Istanbul, Turkey 9 June 2015.<sup>207</sup>**

Johanne Gauthier paid tribute to the late Professor Bill Tetley a former Honorary Vice-President of the CMI and recorded his enormous contribution to maritime law and the CMI amongst the memorials at the Assembly meeting. Others who were remembered were Hisashi Tanikawa and Jose Luis Goni, former Executive Councillors of the CMI as well as Charles Goldie who had Chaired the Charitable Trust for many years.

Pakistan and Bulgaria were expelled for non-payment of their contributions over many years and a new provisional member was admitted, Ahmed Ruhullah of Bangladesh.

Stuart Hetherington was appointed for a second term as President, Giorgio Berlingieri for the second term as Vice-President, Tomotaka Fujita for a second term as Executive Councillor and Luc Grellet and Taco Van der Valk as first time Executive Councillors. Peter Verstuyft was nominated as Treasurer and all were duly elected.

#### **The President's Report.<sup>208</sup>**

In the Report to the Assembly it was noted that a Management Committee comprising John Hare, Lawrence Teh, Benoît Goemans with Peter Verstuyft in attendance by invitation had met in Antwerp on 23 and 24 February in the CMI office at Ernest Van Dickjail. The Management Committee were entertained by the Belgium Maritime Law Association after their meetings and particular thanks were given at that meeting to Karel Stes whose term of office as President of the Belgium Maritime Law Association was coming to an end, having provided such useful assistance to the President and other members of the Executive Council in rearranging the administration of the CMI, including the location of its registered office, the replacement Treasurer for Benoît Goemans, amendments of the Constitution and other such matters. In this Report special commendation was made to Bent Nielsen, Taco Van der Valk and Richard Cornah on all the work they had been doing on the Review of the YAR during the weekend before the commencement of the Colloquium. In addition reference to the topic of Judicial Sales and the presentation that was made to the IMO Legal Committee in May by Henry Li and Johnathan Lux as well as Andrew Robinson who had been involved in the preparatory work. Particular reference was made to the fact that two sponsors were needed to take that work forward if the IMO Legal Committee was to take it on and persuade members of the IMO Legal Committee to reach a view that there was a "compelling need" for an international convention in this area.

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<sup>205</sup> CMI Yearbook 2015 New York I (pages 144-146)

<sup>206</sup> CMI Yearbook 2015 New York I (pages 184-192)- Position paper of the Iberoamerican Institute of Maritime Law in relation to the need of an international convention on the offshore extractive activity promoted by the IMO.

<sup>207</sup> CMI News Letter No. 1, 3 January/December 2015

<sup>208</sup> CMI News Letter No. 1, 3 January/December 2015

The Report highlighted the huge burden of work taken on by John Hare as Secretary-General. It expressed the CMI's gratitude to Benoit Goemans for staying on as Treasurer to await the availability of Peter Verstuyft to take over as Treasurer. It recorded the thanks of the CMI to Karel Stes for his support and assistance during his Presidency of the Belgium MLA. The accounts for the year showed a modest surplus. The President's Report encouraged MLAs to submit material on the jurisprudence of the nominated conventions to Professor Stephen Girvin at the National University of Singapore for the database.

The Treasurer reported a surplus for the year of €10,000 and Reserves were at €630,626. Accordingly no increase in MLA contributions was required.

The Charitable Trust recorded that it had €509,000 in investment holdings, an increase over the previous year of almost €30,000. The Charitable Trust was continuing to fund the IMLI prize and Ms Vanessa Stewart had attended the Istanbul Conference and presented her paper.

*Conference, New York 2016* A Report was given as to preparations for this meeting by US MLA President, Bob Clyne, and Chair of the Planning Committee, Vincent Foley.

#### *Work in Progress*

*Fair Treatment of Seafarers:* A new Questionnaire had been sent out to MLAs. The IWG had co-sponsored a paper with Seafarers Rights International and the ITF in April 2015 for submission to the IMO Legal Committee.

*Judicial Sales:* A presentation had been made to the IMO Legal Committee as well as a lunch time presentation chaired by Patrick Griggs explaining the importance of the instrument. The CMI was still needing to find two countries to promote the topic at the Legal Committee.

*Marine Insurance :* The IWG was focussing on three areas:-

- That minimum insurance certification be required by governments;
- That the IMO extend the Bunker Convention financial security requirements to other convention security requirements;
- That the IWG put out a Questionnaire to MLAs on practices and procedures in the case of the termination of insurance cover.

The IWG was preparing Guidelines relating to minimum insurance certificates for discussion with the IMO and the industry.

*Polar Shipping:* Nigel Frawley (making a welcome return visit - not as Secretary-General) to the CMI meeting presented the Report on Polar Shipping. Arrangements were being made to put on a joint session or sessions at the New York Conference with the parallel MLAUS Committee chaired by Phillip Buhler.

*YAR:* Taco Van der Valk reported that significant progress had been made during the Istanbul meeting. Broad agreement had been reached in two significant areas of reform: Port of refuge expenses and salvage. He expressed confidence that reforms could be agreed with wide industry acceptance in time for the New York Conference.

*Offshore Activities:* Patrick Griggs reported that Jorge Radovich has presented a paper at the IMO Legal Committee dealing with initiatives and desirability of establishing international agreement on liability issues arising from Offshore Activities. The Danish and Indonesian governments also presented a paper on model bilateral or multilateral agreements for liability and compensation.

*Cape Town Convention (renamed Ship Financing and Security Practices):* the new members of this IWG that had been set up recently had now been confirmed at the Executive Council meeting.

*Arrest of Ships:* A Questionnaire has now been formulated to be sent to MLAs.

*Unmanned Ships:* At the suggestion of Tom Birch Reynardson the Executive Council had approved setting up a new IWG under his Chairmanship with the IMO exploring the issues that arise especially in relation to international conventions and regulatory regimes relating to unmanned craft.

The Secretary-General noted that new work was being undertaken in relation to the following topics: Shipping implications for the Cape Town Convention; ship nomenclature; Cyber Crime in shipping, maritime law and unmanned craft and maritime law and refugee migration at sea.

*Jurisprudence on Maritime Conventions:* Stephen Girvin reported that a full time research associate would be starting work at the university on 1 July 2015.

*Implementation and Promotion of Maritime Conventions:* Deucalion Rediadis reported that responses were still awaited from many MLAs to the Questionnaire that had been sent out during 2013.

*Ad hoc Committee on Arbitration:* A Questionnaire had been circulated to MLAs in February 2005 seeking their opinion as to whether or not the CMI should continue to be involved in matters of maritime arbitration.

*Ship Nomenclature:* Frank Nolan, Chair of the IWG reported that a meeting had been held for IWG members in Istanbul and identified that the purpose of the IWG was to survey what definitions of ships exist in law around the world and the unintended consequences that can arise from differences in definition.

*The Future of the CMI:* Liz Burrell reported on the telephone contact that had been made between members of the group which had identified issues to be dealt with, such as frequency of CMI meetings and the website.

*EU Rapporteur:* Vincent Power presented a summary of a comprehensive Report which he had prepared for the CMI on EU matters.

*Close of Meeting:* The President thanked the Turkish MLA for organising such a successful and enjoyable Colloquium as well as the presenters of papers and the event organisers and the Turkish Shipowners Association as sponsors. Andrew Taylor, Louis Mbanefo were leaving the Executive Council and he thanked them for their many contributions to the work of the CMI as well as Benoit Goemans who was presented with a clock as a gesture of thanks for his long service as Treasurer to much acclaim from the grateful CMI delegates who had seen his presentations over many years of the CMI accounts and his use of pie charts and other aids to embellish his reports and which were placed on screens at Assembly meetings so as to better show the state of CMI finances and assist the innumerate lawyers in the Assembly in understanding the accounts!

#### **Executive Council Meeting Sheraton Atakoy Hotel Istanbul, Turkey 7 June 2015.**

Peter Verstuyft who had not yet been formally elected to the Executive Council joined the meeting by invitation in order to meet the other Executive Councillors. Anne Verlinde joined the meeting and explained her role and how it was working out. She was taking over the management of the CMI website as part of her responsibilities. She also explained the extent of the CMI archive.

John Hare explained the Report which he had prepared and which he informed the meeting provided that speakers at the Colloquium had been required to pay €250, broadly corresponding to the social costs of an event who had their remaining 50% registration fee underwritten by the CMI. It was decided rather than to levy a particular social event fee from Executive Councillors they should be remunerated for 50% of the registration fees only as they receive their travel costs, as had been determined by the Guidelines approved by Exco in 2014.

The *Ship Finance Security Practices* IWG was approved by Exco and a Questionnaire was in the course of being prepared.

A new IWG was set up in respect of *Unmanned Ships* and in discussions on this topic the outstanding paper of Eric Van Hooydonk in the JIML (2014) 20 was referred to.

Frank Wiswall had stepped down from the Constitution Committee in which he had been involved for many years.

*Publications and Website:* consideration was being given to returning the control of the website to a suitable Antwerp IT organisation so that the publications and website co-ordination can be more easily achieved.

*Classification Societies:* the former IWG was reconstituted and Karl Johan Gombrii would Chair it with Alexander Von Ziegler and Tomotaka Fujita.

*General:* Introduced the possibility of creating a working group to deal with the topics of cybercrime in shipping and maritime law and refugee migration at sea.

*Health regulations in shipping and in particular pandemic issues:* the IMO had requested the CMI to liaise with the International Chamber of Shipping to identify the problems faced by industry, particularly in light of the recent Ebola crisis.

#### **Executive Council Meeting Sheraton Atakoy Hotel Istanbul, Turkey June 9 2015.**

The President welcomed new members Luc Grellet and Taco Van der Valk as well as Peter Verstuyft to the meeting. The membership of the Lex Maritima IWG and an IWG was approved on Cybercrime, the Chair to be Sebastian Lootgieter and Robert Hoepel as Rapporteur.

On the topic of *Offshore Activities* the IWG's proposals for the way forward were approved:

- (i) that the IWG continue to work with the IMO intercessional correspondence group to improve the so-called "Zero Draft" of Guidance notes designed to assist States in negotiating bilateral or regional agreements on issues of pollution from offshore activities;
- (ii) the IWG draft a short instrument for potential international agreement which would, in the context of offshore activities, require States issuing licences for offshore drilling to treat all damage caused by the licensee as if it had been suffered within the territory of the State issuing the licence. This would mean that the efforts of the licensing State to establish the financial credentials of the licensee will also benefit potential claimants (but without the State issuing the licence itself being itself at risk). The instrument will also need to deal with issue of jurisdiction and proper law;
- (iii) that some thought may also be given to the drafting of a standard clause to this effect for use in trade treaties.

The Executive Council approved Anne Verlinde taking on additional part time work with the Royal Belgian Shipowners Office.

The President attended the Fall Meeting of the MLAUS between 20 and 24 October 2015, principally with a view to discuss arrangements for the 2016 Conference but particularly to meet with as many Chairs of the MLAUS Committees in order to put them in touch with the nearest counterpart IWG or Standing Committee of the CMI so that they could work out topics and speakers for joint sessions to be held at the Conference the following May and to encourage them to meet in the Conference Venue for those meetings rather than in the offices in wide spread locations in Manhattan that they would traditionally use.

#### **Executive Council Email Meeting from the office of the President Sydney, Australia 23 November 2015.**

After welcoming Executive Council members to the meeting sorrow was expressed to Luc Grellet and all the CMI friends in Paris after the terrible terrorists attacks carried out around Paris during the previous week. The move to the Royal Belgian Shipowners office had been accomplished successfully, with the Secretary-General, John Hare, in attendance. The surplus achieved from the Istanbul Colloquium was €2,000. Likely sponsors for the CMI application to the IMO Legal Committee for Judicial Sales to be put on its work agenda had been identified as, hopefully, China and South Korea. There was to be an ISC meeting on YAR in London in December. It was considered that the topics of migration at sea and pandemic response could be treated



under the umbrella of the Fair Treatment IWG, but kept distinct. It was also decided that the maximum age for Young CMI members should be set at 40.

**42nd CMI Conference Hilton Mid Town New York, USA (Joint Sessions with the Committees of the MLAUS) 3-6 May 2016.**

There are two excellent Reports of this once in a lifetime CMI Conference prepared by John Hare and Patrick Griggs. (The latter concentrating on the work product of the meeting.)<sup>209</sup>

John Hare, rightly, described the Conference as "truly ambitious". Thanks to the enormous time and effort he put into its organisation over the previous years it was also immensely enjoyable and successful. There were 977 delegates who attended and participated. (There were 421 full paying registrants (of which there were 69 from MLAUS) and an additional 379 MLAUS registrants, 66 Accompanying Persons for the full Conference and 85 additional ones who registered for specific events.) Remarkably the accounts resulted in no loss being suffered.

The President of the MLAUS, who had initiated the event was Pat Bonner, who had offered to host a CMI Conference. After its acceptance, the early preparations for the Conference fell to his successor, Bob Parrish, and the Conference took place under the leadership of President Bob Clyne. One constant throughout the organisational process from the host Association's point of view was Vincent Foley who did a magnificent job and was rightly praised for all the work he had done throughout the period. It was ambitious because it sought to marry a typical CMI Conference with the Spring meeting of the MLAUS in New York. From early on it was appreciated that there was considerable subject matter synergy (probably not previously realised by many within either CMI or the MLAUS) between CMI Working Groups and MLAUS Committees. The trick was to ensure that the Chairs of the respective groups and Committees were brought together to organise the business sessions which would be of interest to both of the traditional CMI registrants and MLAUS members attending their annual Spring Meeting. The work of the Conference therefore had to blend that of an International Sub-Committee meeting, as in drafting amendments to YAR, and also MLAUS Spring Meeting Committee meetings with seminar style presentations and panel discussions on a wide variety of other topics.

It was extremely complex also from a financial point of view as MLAUS members who attended their Spring Meeting only ever paid for their dinner at the end of the week. John Hare and Vincent Foley managed this problem extremely well by creating a two tier structure that required those MLAUS Registrants attending who were not full registrants to contribute to the costs by making a "social" contribution.



Lawrence Teh, Stuart Hetherington, Vince Foley and John Hare, the latter two who had particularly worked tirelessly over a long period to make this Conference a success.

<sup>209</sup> CMI News Letter 1, January/August 2016

The Conference venue was the historic Hilton Midtown Hotel. Whilst some delegates were uncomplimentary as to the quality of the accommodation, there was no doubt that the Conference facilities were exceptional for the myriad needs of this enormous event. It is hard to imagine that other Conference facilities in Manhattan would have been as effective. A case in point being the Opening ceremony in the magnificent Trianon Ballroom, designed as a classic 18th century French Ballroom. It was a perfect venue for both the Broadway Revue, which followed the Opening speeches, "A Taste of New York" and then the Welcome reception. It was a wonderful start to a frantic week, and also provided the location for the post Gala dinner entertainment by the Seven Seas Maritime Band (which includes CMI Administrator Lawrence Teh, with guest performance by former Secretary General and Executive Councillor Alexander von Ziegler).

There were a number of highly enjoyable social events during the week for accompanying persons and also delegates including at the Rockefeller Centre on the Wednesday evening and the Gala dinner for 1342 delegates and their guests, culminating in the passing of the CMI colours (orchestrated by John Hare), from Bob Clyne and his Organising Committee to Giorgio Berlingieri on behalf of the Italian MLA which was to host the next CMI meeting in Genoa in September 2017.

On the following Saturday morning there was an optional day trip on New York Harbour to watch vessels who were competing to qualify for the Americas Cup. Unfortunately there was little if any racing as the weather, which had not been particularly welcoming during the week had not improved on the Saturday. It was the first stage of the competition for the 2017 Americas Cup featuring all the America Cup teams who were seeking to qualify. During the week there was the enjoyable annual MLAUS Board lunch at the New York Yacht Club to which the Executive Council of the CMI were invited.

John Hare gave the Conference the subtitle "Building Bridges To Harmonize Maritime Law". At the Opening ceremony speeches were made by the Presidents of MLAUS and the CMI. In addition we were privileged to have the Secretary-General of the IMO, Kitack Lim on the podium.<sup>210</sup> In his speech the Secretary-General highlighted the long association between the IMO and the CMI and how each had strengthened the other over that period. He referred to the origins of that association being traced back to the "*Torrey Canyon*" disaster in 1967, to the CLC Convention and subsequent Conventions such as Carriage of Passengers and their Luggage by Sea in Athens (1974), the Convention on Limitation Liability for Maritime Claims (1976), Salvage Convention (1989) continuing cooperation between the two in relation to the LLMC 1996 Protocol, 2002 Athens Convention, the Bunkers Convention, and the Wreck Removal Convention. He then identified a topic which was close to his heart, namely the implementation of international conventions. He emphasised how "the CMI's contribution to IMO's work is greatly valued and much appreciated. You have helped us frame the rules and regulations that shape the shipping industry, an industry that is essential to sustainable development in the future."

In the CMI President's opening speech reference was made to the attendance of Peggy Healy, the daughter of the late Nick Healy who had been President of the MLAUS when it had its last meeting in New York in 1965. Reference was also made to her nephew, Kevin White, who had been of enormous assistance in the organisation of the meeting. Another welcome guest was Betty Marks-Cohen, the widow of Michael Marks-Cohen who had attended many previous CMI events. Frank Wiswall and Libby Wiswall were of course present. CMI really is a family.

The President noted that the Conference in 1965 was the first which the CMI had held outside Europe, 68 years after its founding. At the 1965 Conference the focus had been a revision of the International Convention on Unification of Certain Laws Relating to Maritime Liens and Mortgages, signed in Brussels on April 10, 1926. The meetings in 1965 had started at 9.30am and there were 2 hour lunch breaks on each of Monday, Tuesday, Thursday and Friday. The CMI Constitution which was incorporated in the Conference book had 8 substantive articles, the 9th was on the officers of the Bureau Permanent, as the Executive Council was then known. At the time of the Conference there were 25 articles in the CMI Constitution. In 1965 there were 28 Member Associations and in 2016 there were 55.

Reference was also made in the President's speech to the extraordinarily successful sponsorship that John Kimball and his colleagues on the sponsorship Committee for the organisation of the Conference had achieved.

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<sup>210</sup> CMI Yearbook 2016, New York II (pages 150-154).

In a Vote of thanks to the Secretary General of the IMO Frank Wiswall referred to a dinner given in New York on November 23 1899 by the Admiralty Bar for leaders of the principal delegations at the world's first international diplomatic Conference held in October 1889 at the invitation of President Benjamin Harrison in Washington at which delegates from 28 nations were in attendance. The participants chose to work in producing international regulations for preventing collisions at sea which were adopted on 31st December 1889. At the dinner held on 23rd November an address was given by Robert Dewy Benedict, the "Dean" of maritime lawyers in New York who would, ten years later, become the first President of the Maritime Law Association of the United States in which he said as follows:

*"One thing more, however, I must speak of. -I think this International Marine Conference, now sitting, is not to be the only such conference. rather do I look on it as the first of a long series of conferences, in which people, jurists and practical men from different nations shall confer upon their various systems of law, with a view giving to all that which is best in each.... we are fortunate, my brethren of the admiralty bar, that we are privileged to honour here to our distinguished guests, members of our own profession, who have come from foreign lands to attend this conference, and are giving their time and labour in the hope of accomplishing something which shall increase harmony among the nations and safety on the sea."*<sup>211</sup>

As Frank Wiswall pointed out therein lie "the seeds of what in time has grown into both the CMI and the IMO".<sup>212</sup> (International Law Association meetings had, of course, taken place in Europe since the 1870s, such as on Bills of Exchange in Bremen in 1876; York Antwerp Rules, Antwerp in 1877; and the Code of Affreightment in Hamburg in 1885.)

The official programme carried photographs of the delegates in 1965 dining at the Waldorf Astoria.

There were ISC and IWG meetings on the Tuesday but the working sessions of the Conference were on Wednesday and Thursday 4 and 5 May 2016-all sessions taking place in the capacious Conference areas of the Midtown Hilton. There were 4 contemporaneous meetings taking place on the Wednesday and on occasions 5 on the Thursday. There was also a Judges session on 4 May, MLA Presidents Breakfast on 5 May, a Young CMI and MLAUS Young Lawyers held a dinner on the 5 May and Committee CLE programme on 6 May.

At the Opening a key note address was given by Admiral Steven Poulin, the outgoing JAG and Chief Counsel for the US Coastguard. The immediately succeeding session, before the Conference broke up into multiple venues within the Conference facilities in the New York Hilton, was inspiring. A large audience heard Captain Nick Sloane give a spell binding history of the "Salvage & Wreck Removal Operation of the *"Costa Concordia"*," arising from the sinking of the cruise ship on 13 January 2012 when she struck a submerged rock resulting in 32 deaths (27 passengers and 5 crew) off Isola del Giglio, Tuscany. The strict environmental protection Guidelines imposed by the Italian authorities, the parbuckle salvage operation commencement in September 2013, and ultimate refloating in July 2014 under floatation tanks welded to its sides, and towage to Genoa for scrapping, made for a fascinating presentation..

Other enthralling presentations which were given were by author Peter Singer and Bloomberg journalist, Michael Riley, in identifying worrying scenarios in Cybersecurity in shipping which was followed by insights into port and onboard cybersecurity.

*General Average* occupied all of the first and second days, *Polar Shipping* also occupied an entire day, the second day. Topics discussed also involved Committees of the MLAUS so that presentations could be made by both MLAUS members and by members of the worldwide CMI community. Topics included *Polar Shipping*, *Unmanned and autonomous ships*, *Cross-border insolvency issues*, *Maritime Arbitration: the New York Convention on Arbitration* and issues relating to *Jurisdiction and arbitration in sea carriage documents*, *Marine insurance*, *Reformulation of the principles of the Lex Maritima*, *Piracy*, reforms of domestic maritime laws, *EU shipping law update*, *Liabilities arising from offshore activities*, *Pandemic response at sea*, *Refugee*

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<sup>211</sup> CMI Yearbook 2016, New York II (pages 144-149)

<sup>212</sup> CMI Yearbook 2016, New York II (pages 155-156)

*migration at sea, and Vessel Nomenclature*. The preparatory documentation for the Conference can be found in the CMI Yearbook 2015 New York I.<sup>213</sup>

The work done in New York can be found in CMI Yearbook 2016 New York II.<sup>214</sup>

It was a programme that CMI's predecessors from 1965 could not have dreamed of.

### *Revision of the York Antwerp Rules*

This was the priority topic on the work programme. It was hoped it would see the completion of the work which had initially commenced at the Beijing Conference in 2012 to try and resolve the impasse created by

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<sup>213</sup> CMI Yearbook 2015 New York I Cross Border Insolvency in Admiralty: A Middle Path of Reciprocal Comity by Martin Davies (pages 196-215); A report of the work of the IWG (pages 216-218); letter from the President of the CMI to CMI members dated 29 March 2016 (page 220); letter from Bent Nielsen to MLAs explaining the proposed amendments (pages 223-225); proposed YAR 2016 (tabular format, comparing the 1994 and 2004 YAR (pages 226- 256)); proposed CMI Guidelines on the York Antwerp Rules (pages 257-274); Proposal for the amendment of Rule XXI(b) of the YAR 2004 relating to the determination of YAR Rate of interest (pages 274-275).

Judicial Sales - CMI President's letter to CMI members enclosing the submission to the IMO Legal Committee (pages 278-286); CMI Draft Convention on Recognition of Foreign Judicial Sales of Ships -The Journey Thus Far by Jonathan Lux (pages 287-292); the CMI Draft Convention and Recognition of Foreign Judicial Sales of Ships Moving Forward with the IMO (pages 293-294). Liability for Wrongful Arrest A report on this study and on the activities of the IWG by Giorgio Berlingieri (pages 296- 299); Summary of MLAs answers to the CMI Questionnaire by Aleka Mandaraka Sheppard (pages 300-352). Marine Insurance Memorandum on Suggested Criteria (Guidelines) for National Governments relating to Mandatory Insurance Requirements under Certain International Treaties by the CMI IWG (pages 354-358). Polar Shipping - Report on the Legal Framework for Civil Liability for Vessels Source Oil Spills in Polar Regions by Lars Rosenberg Overby (pages 360-412); Polarworthiness : A new Standard of Seaworthiness in the Polar Context? by Peter Cullen (page 413); the Load Lines Convention and Arctic Navigation by Aldo Chircop (page 414); the Polar Code by Steven Poulin (page 415); Polar Shipping Regulation by Alexander Skaridov (page 416); Lessons from the Antarctic by David Baker (page 417). Finance & Security Practices - Letter from the President of the CMI enclosing a Questionnaire for MLAs dated 29 March 2016 (pages 420-427); a Round Up on the activity of the IWG by Anne Fenech (pages 428-429). Restatement of the Lex Maritima - Report on scope and activities of the IWG by Eric Van Hooydonk (pages 432-434). The Rotterdam Rules - A report on the activities of the IWG by Tomotaka Fujita (pages 436-438).

<sup>214</sup> CMI Yearbook New York II General Average: York Antwerp Rules 2016 (pages 178-188), CMI Guidelines relating to General Average (pages 189-200), General Average Interest Rate 2016 2017 (page 201), Resolution of the Assembly taken at New York 6 May 2016 CMI Guidelines on General Average (page 202) and Resolution of the Assembly taken at New York 6 May 2016 General Average York Antwerp Rules 2016 (page 203).

A comparative analysis about how courts in different countries deal with jurisdiction and arbitration clauses in bills of lading and other sea carriage documents: Jurisdiction and arbitration clauses in bills of lading and other sea carriage documents in Japan by Tomotaka Fujita (pages 206-211); Claims handling under Rotterdam Rules by Chester Hooper (pages 212-228); Arbitration and jurisdiction clauses in Australia by Sarah Derrington (pages 229-234); United States Position by Susan Dorgan (pages 235-249).

Ship Financing Security Practices: An Introduction to the IWG on Ship Financing Security Practices by Ann Fenech (pages 252-255); Hypotheques/Mortgages, Maritime Liens and Enforced Sale: Attempts at Unification by Giorgio Berlingieri (pages 256-258).

Towards a compilation of Principles of Lex Maritima by the CMI IWG by Eric Van Hooydonk (260-262).

Cross Border Insolvency: Coordination of Jurisdiction of Maritime Cross Border Insolvency in China by Beiping Chu (pages 264-266).

Maritime Arbitration: The New York Convention and Maritime Law by Luc Grellet (pages 268-272); "Public Policy", Natural Justice and the New York Convention in Australia by Matthew Harvey (pages 273-280); New York Convention: the Recognition and Enforcement of Maritime Awards in Civil Law and Common Law Countries by Lindsay East (pages 281-290); the New York Convention of 1952 Arrest Convention by Hiroshi Kimura (pages 291-297); the New York Convention and Maritime Arbitration: a Brazilian and Latin American Perspective by Godofredo Mendes Vianna (pages 298-312).

Polar Shipping: International Organisations Committee and CMI/IWG on Polar Shipping by Phillip Buhler and Aldo Chircop (pages 314-316); The Practical Consequences and Challenges of Oil Spills - Lessons learned by Deepwater Horizon Incident by David Walker (pages 317-323); Declaration concerning the Prevention of unregulated High Seas Fishing in the Central Arctic Ocean (pages 324-326).

Liability for Wrongful Arrest: Introductory Remarks Sir Bernard Eder (pages 328-329); Wrongful Arrest in South Korea by Hyeon Kim (pages 330-335); Brief highlights of US Law re Wrongful Arrest by Hamilton Whitman (pages 336-337); Towards Uniform Rules on Wrongful Arrest or still with the law of jurisdiction where the arrest is made? (pages 338-399).

Offshore activities: Update on Current Situation by Patrick Griggs (pages 342-347); Brief comment on the IIDM Position Paper on Offshore Activities presented in the Legal Committee IMO LEG 102, April 14, 2015 by Jorge Radovich (pages 348-354).

Shipping Law issues relating to Pandemic Response at Sea: Pandemic No Need to Panic! by Natalie Shaw and Charles Darr (pages 356-364))

the rejection by the ship owning fraternity of the previous amendments made to YAR in Vancouver in 2004. CMI is of course the Custodian of those Rules.

The Resolutions made at the Plenary Session in relation to the Rules and the Guidelines, which were adopted at the Assembly, can also be found in the CMI Yearbook 2016 New York II.<sup>215</sup>

At the Assembly meeting on 6 May both the York Antwerp Rules 2016 and Guidelines were approved.

The key points to be made, from a CMI point of view, about the Revision that was accomplished are that:

- (a) They took three years to negotiate;
- (b) They were agreed to unanimously by the representatives of both shipowners and insurers, that is the International Chamber of Shipping, BIMCO, the International Group of P&I Clubs and IUMI.
- (c) They can best be described as being more in line with the 1994 version of those Rules than the 2004 version. Essentially the parties, in their negotiations, went back to the 1994 Rules which had been finalised in Sydney at the CMI Conference that year, and amended them rather than going to the 2004 Vancouver amendments and working backwards.
- (d) BIMCO's Documentary Committee met on 10 May 2016 and announced that all new and revised BIMCO charter parties and bills of lading will refer to York Antwerp 2016.

The York Antwerp Rules 1994 is the version which is incorporated into most contracts of carriage, whether they are by bills of lading or charter party. That is despite the fact that the Rules were last amended, substantially, in 2004 at the CMI Conference in Vancouver. Unfortunately those amendments were not widely supported by the shipping community and as a result they were rarely incorporated by contractual provisions. Karl Gombrii had sought to broker a rapprochement between the shipping and insurance interests in mid 2012 during the lead up to the previous CMI Conference in Beijing in October that year, and the meeting in Beijing would not agree to the proposals that were discussed. An IWG was therefore set up, immediately after the conclusion of the Beijing Conference, under the Chairmanship of Bent Nielsen together with Rapporteurs Richard Cornah (the highly regarded international average adjuster) and Taco van der Valk, the President of the Dutch MLA.



The York Antwerp Rules in Plenary session: Rapporteurs Taco van der Valk and Richard Cornah, Lawrence Teh, Stuart Hetherington, John Hare and the Chair Bent Nielsen.

<sup>215</sup> CMI Yearbook 2016 New York II (pages 202 and 203).

As a result of the considerable work that they had done over the last three years, by the time the matter came on for discussion in the New York Conference most of the major issues and contentions had been resolved between the shipping and the insurance communities. The two most contentious issues related to how salvage is dealt with in the context of General Average and how wages of master and crew at places of refuge are dealt with. The position, in both respects, as it existed prior to 2004 has, essentially, been reinstated.

Lowndes and Rudolf: "The Law of General Average and the York Antwerp Rules" Fifteenth Edition at page 57 identified the main points of agreement which had been reached as including:

- Re-drafting Rule B regarding tug and tow.
- Introducing some robust new measures in Rule E to reduce the delays in the adjustment process.
- Returning to the position where salvage was allowed as general average but limiting the circumstances in which salvages under contracts such as Lloyds Open Form (where each party was liable for and paid part of a salvage award) could be allowed as general average and be re-apportioned.
- Restoring allowances for crew wages whilst detained at a port of refuge.
- Reverting to the 1994 Rules' treatment for temporary repairs.
- Removing any allowance for commission and changing interest to a flexible rate, based on LIBOR plus 4%.
- Retaining the Time Bar provisions of the 2004 Rules.

The significant changes made by the 2016 Rules, compared with the 2004 Rules were as follows:

Rule VI(a) has been amended to read:

"Expenditure incurred by the parties to the common maritime adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in General Average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure and subject to the provisions of paragraphs (b), (c) and (d)."

Rule VI (b) also provides that salvage will only be allowed in general average where one of five factors applies. These are:

- (i) where there has been a subsequent accident or other circumstance which results in loss or damage to property during the voyage and there is a significant difference between the salvaged and contributory values;
- (ii) there are significant general average sacrifices;
- (iii) the salvaged values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses;
- (iv) any of the parties to the salvage has paid a significant proportion of salvage due from another party;
- (v) a significant proportion of the parties have satisfied the salvage claim on substantially different terms, no regard being had to interest, currency correction or legal costs of either the salvor or the contributing interest.

Rule VI (c) also goes on to provide that such salvage expenditure shall include any salvage remuneration which has been allowed under Article 13(1)(b) of the Salvage Convention (preventing or minimising damage to the environment, that is the enhanced salvage award introduced by that provision in the Salvage Convention).

Rule VI(d) also goes on to confirm that special compensation payable under Article 14 and SCOPIC type payments will not be allowed in general average.

Rule XI(a) which was the second area in which shipowners were strongly opposed to the York Antwerp Rules reform made in 2004 has also been changed so that wages and maintenance of master, officer and crew when detained at ports of refuge are now claimable in general average.

Rule XVII(a)(ii) of the York-Antwerp Rules 2016 now contains a provision that:

"Any of the cargo may be excluded from contributing to general average should the average adjuster consider that the cost of including it in the adjustment would be likely to be disproportionate to its eventual contribution."

This is the provision that is referred to as dealing with "low value cargoes" and was regarded as being a necessary reform of the York Antwerp Rules to facilitate the administration of general average adjustments where, particularly in relation to containerised cargo, there may be hundreds if not thousands of potential contributors with very low value cargoes.

Another change which has been welcomed, particularly by the insurance industry, is in relation to interest on losses allowed in general average under Rule XXI. The rate which is now decreed for calculating interest is the 12 month ICE LIBOR rate for the currency in which the adjustment is prepared, increased by 4%.

The further reform welcomed by the insurance industry is the deletion of a commission of 2% on owners disbursements, which had previously been allowed.

A press release issued by IUMI after these reforms had been agreed at the CMI Conference in New York suggested that the "7% interest rate and 2% commission of the past had increased the cost of maritime casualties by 10% to 30%".

The non-binding Guidelines were prepared to assist commercial interests in general average matters.

No greater compliment could be made of the work done by Bent Nielsen, the Chairman, Taco Van der Valk and Richard Cornah, the Rapporteurs, than that which was made a few days after the completion of the Conference, on 12 May 2016, when Andrew Paton, speaking on behalf of the Association of Average Adjusters on the topic "Hull clauses and claims - time for some marriage counselling" in a call for reform in a different area of the London marine insurance market and he said in relation to the York Antwerp Rules that practitioners in the London hull market should "follow the examples set recently in the field of general average....I believe that the comprehensive consultation exercise by the CMI IWG and its extensive round of discussion meetings are the example which needs to be followed for a review of the hull clauses. However, who will provide the necessary leadership for this review?"

The CMI *Young Lawyers* Committee discussed the following topics: Perspectives on the OW Bankruptcy at which speakers were: Darren Azman, Justin Heilig, Marie Larsen, Jason Lattanzio, Brian Maloney, Evangeline Quek, Luis Raven, and Harald Sondergaard; The Procedural differences in obtaining evidence in the United States, the United Kingdom and the Netherlands at which the speakers were Dharshini Bandara, Marissa Henderson, Robert Hoepel, and Kasee Sparks; and the Aegean Sea dispute over the continental shelf and joint development agreements as an avenue towards effective cooperation. Presented by CMI/IMLI prize winner Haris Kazantzis.

Commentary on the New York Meeting would not be complete without mention of the *Nicholas J Healy Lecture* held at the New York University, Vanderbilt Hall on 5 May.<sup>216</sup>

In his Welcome remarks John Kimball informed the audience that this was the 13th lecture in the bi-annual series which had begun in 1992. He gave a brief history of the life and career of Nick Healy, in whose name

<sup>216</sup> CMI Yearbook 2016, New York II (page 157); Welcome remarks by John Kimball New York II, (pages 158-159); "Introduction" by the Honourable Robert Katzmann, (pages 160-162); "Comity and Unity in Maritime Law" by the Honourable James Allsop, Chief Justice of the Federal Court of Australia (pages 163-175; further commentary was made by Justice Johanne Gauthier, of the Federal Court of Canada and former Vice President of the CMI.

the lecture series had been commenced. After the meeting a reception took place for the attendees, and some guests were fortunate to be invited to have dinner in the university with the speakers.

The paper delivered by Chief Justice Allsop is worthy of study. It is a marvellous exercise in seeking to identify the theory of maritime law with particular reference to its development in: the United States, the common law in England, international Conventions, the Anglo-Commonwealth law and by reason of the choices and policy decisions made in the various jurisdictions. He showed how developments must inevitably create differences but "Importantly, the conceptions, terminology and framework of analysis are the same.....Modern maritime law, including the rules of private international law that govern maritime activity, should be grounded in maritime and international sources; the common heritage of maritime principle exists and moulds legal development".

In the morning of the third day the MLAUS annual general meeting was held in its traditional format in the Great Hall of the Bar of the City of New York, 42, West 44th Street between Fifth & Sixth Avenues, while the CMI Assembly took place in the afternoon in conjunction with Young CMI meetings held at the same time.

### **CMI Assembly Meeting Hilton Midtown Hotel New York, USA 6 May 2016.**

The Assembly was attended by 90 delegates.

The meeting noted with sadness the passing of former Executive Councillor Sergei Lebedev and also Anna Berlingieri who had attended as many CMI meetings, if not more, than most of those attending the meeting in New York.

Two new Consultative members were admitted by acclamation of the Assembly, namely the International Salvage Union and the International Transport Federation. The following elections took place: Chris Davis (for a second term as Vice President), Alexander Von Ziegler and Dieter Schwampe (for a second term as Executive Councillors), Lawrence Teh (for a second term as Administrator) and John O'Connor for his first time as an Executive Councillor in place of Song Dihuang who was retiring from the Executive Council at the conclusion of his two terms- the President congratulated him and thanked him for the work that he had done whilst on the Executive Council.

Johanne Gauthier had advised that she would like to step down as Chair of the Nominating Committee and the Executive Council appointed Andrew Taylor to take over that role. John Hare also announced that he would be stepping down as Secretary-General at next year's Assembly meeting in Genoa.

On the financial side it was reported that the Turkish Colloquium had broken even and the annual accounts revealed a surplus had been obtained of €23,580. Once again there was no need to increase subscriptions and it was decided to increase the early bird discount from 1% to 2.5%.

The Assembly was also delighted to approve a proposal that the next Assembly meeting would be held in Genoa where a short seminar would be arranged to honour Francesco Berlingieri (this had been suggested a few years earlier by John Hare and this seemed to be most opportune time to make it happen). It also provided a welcome return, particularly as far as the Secretary-General was concerned, to institute the practice of holding a Conference every four years and in the year between a Colloquium or Symposium but on the other two alternative years holding only the Assembly meeting with perhaps a short seminar attached.

### **The President's Report**

The President's report paid tribute to the host association of the Turkish Colloquium and highlighted all the work that had been done since in preparation of the New York Conference. It also referred to the changing of the guard in relation to CMI finances - Peter Verstuyft having taken over as Treasurer from the long serving Benoit Goemans from 1 September 2015.

The Turkish Colloquium had rendered a surplus and CMI's investments stood at over Euro 600,000. The Report also noted that the President had attended the MLAUS recent meeting in Bermuda for the purpose of promoting the CMI Conference in New York and meeting with Chairs of MLA Committees in order to facilitate



discussions with their counterparts on CMI IWGs and Standing Committees to prepare for joint meetings at the New York Conference. In addition John Hare had met with the President in Sydney enroute to a private visit to New Zealand. He also visited Antwerp earlier in the year to meet with the new Treasurer and Anne Verlinde.

As far as work prospects were concerned the report highlighted the preparatory work that had been done on YAR for the Conference and foreshadowed the Judicial Sales meetings with the IMO later in the year.

### *Work in Progress*

The Reports of the Chairs of the IWGs were largely concerned with the presentations which had been made at the Conference, including in relation to *Fair Treatment of Seafarers* on the topic of *Refugee Migration* by Fred Kenney of the IMO and Professor Allen of Washington State University, Seattle and Dr Valerie Eboli on the EU Sofia Operations. There were also presentations organised in relation to the *Pandemic Response* Questionnaire and the work that was being done by this IWG. Unfortunately it was timed late in the afternoon when many delegates were arranging to travel down to the other end of Manhattan to attend the Nick Healy Memorial lecture so it was not as well attended as might have been wished.

On *Judicial Sales* Henry Li advised that he and Jonathan Lux would be seeking to persuade the IMO to take on this project at its meeting on 9 June 2016 and the difficulty was going to be persuading the delegates that there was a "compelling need" for this work to be done.

In relation to *Cross-Border Insolvency* there was a joint session held with the MLAUS on bankruptcy and insolvency (panellists including Justices Steven Rares and Robert Gerber, and Martin Davies) and the IWG advised that it was considering drafting a protocol to the UNCITRAL Model Law to address the problems which arise when in rem arrests take place and also looking at the implications of a new EU regulation in this area. Chris Davis announced that he was going to step down from this IWG and proposed Sarah Derrington to take over.<sup>217</sup>

The *Polar Shipping* IWG had had an extremely successful meeting session and was going to consider the topic of "Polar worthiness" in the context of the Carriage of Goods Regimes, it was also undertaking study of the Limitation of Liability regime in the Wreck Removal Convention in the context of polar shipping. It was also pursuing its work in relation to load lines, collision avoidance regulations in Polar regions and pollution liabilities in the context of polar shipping. This was a combined meeting of the international organisations Committee of the MLAUS and CMI's IWG on Polar Shipping with panel discussions succeeding introductions from the Chairs Phillip Buhler and Aldo Chircop. A paper by David Walker looked at lessons to be learned from the Deepwater Horizon incident that might apply in the arctic regions.

The *General Average* IWG reported a satisfactory conclusion to the work which it had done, and the resolutions proposed at the Plenary were approved by the Assembly and in addition the Executive Council approved setting up a Standing Committee to monitor, review and recommend any changes that needed to be made to the Guidelines.

At the meeting of the *Carriage of Goods Standing Committee* a representative from the State Department had confirmed that the United States was still supportive and working towards ratification of the Rotterdam Rules.<sup>218</sup>

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<sup>217</sup> CMI Yearbook 2016 New York II Coordination of Jurisdiction of Maritime Cross Border Insolvency in China paper by Beiping Chu (pages 264-266 )

<sup>218</sup> CMI Yearbook 2016 New York II (pages 206 to 249) Presentations were made on specific aspects of Carriage of Goods matters particularly by former President of the USMLA Chester Hooper in relation to the Rotterdam Rules (Chester Hooper has spent hours if not weeks or months of his life since he was President of the MLAUS in the 1990s when it had drafted amended legislation to take over from COGSA and had deferred prosecuting that work once the CMI work preparing the instrument that ultimately was transformed into the Rotterdam Rules had been taken on by UNCITRAL. He has been liaising with the US State Department and consistently advocating for ratification of by the United States ever since). Susan Dorgan of the USMLA and Sarah Derrington spoke on jurisdiction and arbitration clauses in bills of lading and sea carriage documents in their respected countries (USA/Australia)).

On the topic of *Offshore Activities* Patrick Griggs reported that there was still reluctance by the IMO in relation to this topic and the CMI work was going to continue. Patrick Griggs was going to step down from his temporary position as Chair in favour of Jorge Radovich which the Executive Council had approved. Patrick Griggs gave an overview on the history of this topic and Jorge Radovich presented an overview of a paper presented by the Iberoamericano de Derecho Marítimo to the IMO Legal Committee in April 2015.

*Pandemic Response* - papers were given by the Chair, Paul Gill, looking at the scientific issues and by Natalie Shaw and Charles Dar on the practical issues facing seafarers and the difficulties in making States comply with their responsibilities.

The *Ship Finance Security* Group had met with the US Marine Finance Security Committee and a successful meeting had taken place.

On *Wrongful Arrest* considerable progress had been made at the meeting and consideration was being given to drafting a protocol or model law on this topic. Some introductory remarks were made by Sir Bernard Eder whose original presentation at Tulane University a few years previously had given rise to the setting up of the IWG and presentations were given on wrongful arrest in South Korea and the US together with some comments by Giorgio Berlingieri.

On the topic of the *Lex Maritima*, Eric Van Hooydonk explained the methodology and themes for taking on this work.

*Classification Societies* - Karl Gombrii reported that there had been discussions with stakeholders but shipowners had balked at the initiatives suggested by the Classification Society and further discussions will need to take place.

Tom Birch Reynardson reported that the *Unmanned Ships* sessions had garnered considerable attention. The Executive Council had agreed to the appointment of a large number of members of this IWG showing the amount of interest that is being given to the topic around the world.

#### *Maritime Arbitration: the New York Convention and Maritime Law*

Papers were given from a perspective of four different jurisdictions, being Australia, the United Kingdom, Japan and Brazil on aspects of the New York Convention, including "Public policy, natural justice and the New York Convention in Australia" by Matthew Harvey, the Recognition and Enforcement of Maritime Awards in civil law and common law countries by Lindsay East, the relationship between the New York Convention and the 1952 Arrest Convention by Hiroshi Kimura.

Liz Burrell reported that a very successful working breakfast had taken place on the *Future of the CMI* topic at the Conference and the Committee would consider its next steps.

In relation to the *Database for Jurisprudence on International Conventions* discussions were continuing with Singapore who are investigating a template for gathering information and an IT system appropriate to their task.

At the conclusion of the Assembly meeting the President gave sincere congratulations to Vince Foley, John Kimball, Bob Clyne and John Hare for all the work they had done to make the Conference such a success.

#### **Executive Council Meeting Hilton Hotel Midtown New York, USA 3 May 2016.**

Guidelines on CMI Investment Policy, prepared by Mans Jacobsson and Andrew Taylor, were well received and provided a lively discussion, and on the Jurisprudence database - the Executive Council had agreed to contribute Euro 5000.

#### **Executive Council Meeting Hilton Hotel Midtown New York, USA 6 May 2016.**

Francesco Berlingieri had advised that he wished to step down from the Nominating Committee.

Later in the year the President attended the 40th anniversary of the New Zealand branch of the MLANZ as well as the 8th Asian Maritime Law Conference in Singapore in September 2016, where he urged Asian

countries to ratify some of the major Conventions, particularly on oil pollution, such as the OPRC Convention, the Intervention Convention, the Bunker Convention, CLC, Fund and Ballast Conventions as well as the Salvage, Wreck Removal, Hong Kong Ship Recycling and Rotterdam Rules Conventions, many of these were significant in the aftermath of the *Deepwater Horizon* and *Montana Offshore* incidents. He referred to the fact that the offshore mobile craft work which the CMI had been undertaking for many years was being revisited.

#### **Frank Wiswall (Vice President Honoris Causa).**

In early 2016 the CMI had put forward the nomination of Frank Wiswall for the IMO's International Maritime Prize 2015. It was with great delight that the CMI News Letter<sup>219</sup> made the announcement that on the 8 July 2016 the IMO Council advised that Frank Wiswall had been declared the winner of the IMO Prize for 2015. The speech given by Rosalie Balkin at that meeting, the Speech made by the Secretary-General of the IMO Kitack Lim at the later presentation of the Award on 5 December 2016, and the speeches made by Patrick Griggs and Frank Wiswall on that occasion are in the News Letter. In his remarks Patrick Griggs drew attention to the extraordinary curriculum vitae which Frank Wiswall had. Apart from his role as Chairman of the Legal Committee for 12 years and his many activities for the CMI, (including, in the words of Patrick Griggs, his "guardianship of the CMI Constitution", chairmanship of IWGs and ISCs and Vice Presidency and Executive Councillor) Patrick Griggs referred to his role as Admiralty Counsel, Bureau of Maritime Affairs, Republic of Liberia, which took its responsibilities in relation to high profile Enquiries extremely seriously. Frank Wiswall was Counsel to the Tribunal, described by Patrick Griggs as "a sort of prosecutor". He described the Enquiries as "thorough and well conducted due, in large part, to Frank's careful preparation and presentation". Frank Wiswall paid tribute to his wife Libby, and referred to his early career at Burlingham Underwood in New York, then with the International Bank in Washington and a long association with the IMO. He also referred to his teaching at the World Maritime University for 19 years as well as IMLI. His comments at that time are well worth reading. This was an extremely well deserved honour for Frank Wiswall and a recognition of the enormous contribution he has made to maritime law, and in particular its uniformity.



Birthe Philip, Frank Wiswall and Allan Philip  
Sydney Conference 1994.

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<sup>219</sup> CMI News Letter No 3, September/December 2016

## Judicial Sales: Steps to Convention.

By the time the Judicial Sales Instrument was concluded in Hamburg in 2014 there was very little prospect of a national government calling a diplomatic conference to give effect to a maritime Convention, although a meeting took place in 2013 attended by members of the Executive Council with members of the Belgium Maritime Law Association and a senior bureaucrat in the Belgian government with whom discussions took place about a possible revival of the past practice whereby Belgium could convene a diplomatic conference when the Judicial Sales project concluded. A change of government took place before the Beijing Draft was completed and that was not an option.

The obvious home was initially considered to be the IMO Legal Committee, in view of its earlier involvement in relation to the Maritime Liens and Mortgages Convention and Arrest Conventions and because of the very close working relationship between the CMI and the IMO Legal Committee. CMI therefore approached the IMO Legal Committee and in fact made two presentations to them at two consecutive meetings in 2015 and 2016. The proposal that IMO take on this work was co-sponsored by China and the Republic of Korea. CMI was represented at the meetings at the IMO by Jonathan Lux, who had been the Rapporteur in the IWG and Henry Li (who had been the Chair) on both occasions. The first presentation was simply by way of an introduction to the topic and the second was to seek approval for the work being taken into the work programme of the Legal Committee. On the second occasion CMI was unsuccessful when on 10 June 2016 it was decided that there was "no compelling need" for such an instrument.

When CMI's approach in June 2016 was rebuffed by IMO Legal Committee an alternative home needed to be found. There was a project which was well advanced within the Hague Conference (HCCH) in relation to the reciprocity of judgments<sup>1</sup> which was not too different from CMI's. With the assistance of the Secretariat of the Hague Conference CMI was invited to make a presentation to the scheduled meeting in February 2017 of the "Special Commission on the Recognition and Enforcement of Foreign Judgments" and prepared a draft of the document that the Special Commission had produced at that time by which the CMI draft Instrument could be annexed to it. Jonathan Lux again addressed that meeting. He was accompanied by the President of the Dutch MLA Taco van der Valk, who had been liaising with the Secretariat of the HCCH.

The Special Commission decided that the work it had done was too far advanced to have the CMI Instrument added to it. The Secretariat suggested that CMI should make a submission to the HCCH Council which was meeting on the 15 March 2017 to have the CMI Instrument added to the HCCH work programme. As the CMI President was due to be in London anyway it was decided that he would make the presentation and went to the Hague with Taco van der Valk. It was decided beforehand that, similar to the IMO, this should be an explanatory presentation with a view to returning 12 months later when a decision would be made. Whilst there were supportive voices in the discussions after the presentation there were some that did not consider the HCCH was the appropriate forum and some (particularly the Canadian delegate) suggested UNCITRAL might be preferable.

CMI had had close relationships at UNCITRAL during and subsequent to the Rotterdam Rules project. Alexander von Ziegler had had a prominent role in that regard and he and other members of the Executive Council considered that feelers could usefully be put out towards UNCITRAL. Enquiries via John O'Connor, the former President of the Canadian MLA (and member of the CMI Executive Council) were also made through the Canadian delegate who had spoken at the HCCH meeting. The President then contacted Kate Lannan at UNCITRAL, who had attended CMI meetings, most recently in Dublin, and was generally well known within CMI through her long involvement with the Rotterdam Rules project. She and the Secretary General of UNCITRAL Renaud Sorieul were both supportive. A spot was secured by the Secretariat at the UNCITRAL 50th session of the Commission meeting in Vienna (3-21 July 2017). A paper was prepared with the assistance of Kate Lannan making a "proposal for possible future work on cross-border issues related to the Judicial Sale of ships", based on the materials that had been utilised for the IMO and HCCH approaches.

Alexander von Ziegler and Jonathan Lux attended the Commission meeting. The Commission thanked CMI for its proposal and decided not to refer the proposal to a Working Group at this time but agreed that "UNCITRAL, through its Secretariat would support and participate in a Colloquium to be initiated by CMI to discuss and advance the proposal, and the matter would be revisited at a future session"

## **8th Asian Maritime Law Conference 29 and 30 September 2016.**

The President attended the 8th Asian Maritime Law Conference on 29 and 30 September 2016 and spoke about the history of CMI, the Judicial Sales Draft Instrument, the Liability for Wrongful Arrest IWG's work, the New York Conference 2016 which had taken place a few months earlier, especially the outcome in relation to YAR, and the work being done on Unmanned Ships and Cybercrime.

## **Executive Council Email Meeting from the office of the President Sydney, Australia week commencing 21 November 2016.**

Giorgio Berlingieri had informed the President prior to this meeting that he wished to stand down from his role as publications editor. The Minutes noted that the President referred to the fact that CMI owes to Giorgio Berlingieri a huge debt of gratitude for performing his many CMI roles so assiduously - especially that of publications editor. The President informed the meeting that he had raised the possibility with Taco van der Valk of his succeeding Giorgio Berlingieri and he had agreed to put his name forward. Reference was also made to the unfortunate incident of electronic fraud by which USD17,230 was paid out of CMI funds, and all the efforts by the authorities in the US, where the fraud seems to have been perpetrated from, recovery seemed unlikely to be made.

John Hare reported on the final results of the New York Conference to the effect that there had been a total revenue of US\$846,121, sponsorship of US\$213,000 providing a total revenue of US\$1,059,121 and total expenditure of \$1,051,843. Malaysia was accepted by the Executive Council as being a suitable member of the CMI which would be submitted to the Assembly in Genoa and Consultative Member status by AMD and FONASBA will similarly be submitted to the next Assembly meeting in Genoa. Chris Davis reported on developments regarding a potential application to join the CMI by Cuba and attempts to progress membership by Ghana and Sri Lanka had not taken place.

It was noted that John Hare and Jorge Radovich would be retiring from the Executive Council in Genoa. The Payment Protocol which had been drafted by John Hare was, subject to minor amendments, approved by the Executive Council.

Anne Verlinde had resigned, after three years employment, and was thanked for her contribution and best wishes went to her in her new employment in which she was returning to work as a librarian.

### *Work in Progress*

The IWG on *Judicial Sales* was congratulated on the work that had been done to seek to commend the CMI draft instrument in order to make it complementary to the work being carried out by the Hague Conference Judgments Project.

The IWG on *Polar Shipping*, through its chair Aldo Chircop had submitted a detailed report on its activities, including that work was proceedings on polar load lines, that the work on the provision of liability regimes in polar regions would consider the IOPC Fund's draft document on Guidelines of Environmental Damage Assessment in its working paper and the work of a further subgroup studying the context, purpose and significance of the COLLREGS in the polar environment and their interaction with polar shipping regulations was continuing.

The IWG on *Marine Insurance* was re-constituted as a Standing Committee on Insurance. It had completed its draft Guidelines for governments relating to mandatory insurance coverage under certain international maritime conventions. The new standing committee was requested to make recommendations as to its future composition and the Executive Council encouraged the study of the reforms to the English Marine Insurance Act by the IWG.

On *Offshore Activities* it was noted that the IMO Legal Committee at its 103rd session had said there was no compelling need for an International Convention on Transboundary Pollution from offshore craft. It was decided that the IWG would continue to work on a Guidance document.

Regarding the *Rotterdam Rules* IWG it was also converted to a Standing Committee and requested to confirm its future composition and having considered it appropriate to submit a paper to UNCITRAL on the draft Model Law on Electronic Transfer of Records 10th Session in November 2016 and it should also determine how it wished to respond to the Polish MLA's suggestion that there be a study of jurisdictional clauses on bills of lading and other sea carriage documents, the Executive Council noting that such matters were dealt with within the Rotterdam Rules and there was no likelihood that the issue would be readmitted in an international forum in the foreseeable future.

*Study relating to Liability for Wrongful Arrest* - Giorgio Berlingieri wished to stand down from his role as Chair, his obvious replacement being Aleka Sheppard and she was being invited to take over as Chair.

*The Unmanned Ships* IWG report of Tom Birch Reynardson was commended. It reported on a meeting of the IWG in conjunction with the Marine Autonomous Systems Regulatory Working Group conference in Southampton at which IWG members Henrik Ringbom, Erik van Hooydonk and Andrew Higgs had spoken. A paper produced by Henrik Ringbom identified the areas where the IWG's opinion and consideration will need to be given to reviewing or amending existing conventions to accommodate unmanned ships was extremely impressive. The Executive Council suggested that it might be appropriate to send a questionnaire to MLAs at this stage.

*The Liability of Classification Societies* The IWG was encouraged to continue discussions with industry stakeholders (IACS) although the ICS had indicated it was not interested in continuing discussions on this topic.

In relation to the *Jurisprudence on Maritime Conventions Standing Committee*, the Executive Council noted correspondence between Lawrence Teh and Stephen Girling of Singapore University in which it had been suggested that a draft agreement be entered into with the CMI for a period of five years commencing on 1 January 2017. Lawrence Teh was appointed to the Standing Committee, that the material produced by and under the supervision of Francesco Berlingieri be preserved and adapted and migrated to the Singapore University site, that a link to the new Singapore website should be placed on the CMI website, that steps be taken to provide contact persons in each MLA responsible for the judicial decisions to the database and that the Standing Committee approach NMLAs explaining the importance of their sending decisions in the English language and that the CMI contribute Euro 5,000 for each year for five years to this project.

The President reported that he had attended the 40th anniversary of the New Zealand branch of the MLAANZ and the 8th Asian Maritime Law Conference in Singapore.

John Hare was appointed to Chair the *Cybercrime in Shipping* IWG.

On the *Implementation and Promoting the Ratification of Maritime Conventions Group* IWG the President enquired whether it would be appropriate for the Standing Committee to have two streams, one being a promotion team and the other an implementation team, the latter of which would be greatly assisted by people like Nick Gaskell and Rosalie Balkin.

In relation to *Young CMI* it was suggested that Taco Van der Valk be appointed as the liaison Executive Council member to the Young CMI Standing Committee and that the age of members of Young CMI be limited to 40. It was suggested that a request be made to Blythe Daly to ascertain whether she would be prepared to Chair the Young CMI Committee. It was also decided that at CMI events it be attempted to try and hold the Young CMI sessions at times that do not clash with the Assembly Meeting. In addition attempts should be made to appoint as many members of Young CMI to Standing Committees and IWGs in the future.

The Constitution Committee was asked to finalise a Report as early as possible in 2017 in order to meet the requirements of Belgian law.

A new Standing Committee on General Average was to be commenced.

## **Management Committee Meeting Antwerp Belgium 7 March 2017**

The President, Secretary-General, Administrator and Treasurer together with Evelien Peeters met, essentially to make preparations for the meeting in Genoa. In relation to finances Peter Verstuyft referred to the deficit for 2016 being in the region of Euro 23,000. However salary savings had resulted from the previous administrative assistant, Anne Verlinde, being on sick leave for a large part of the year. Concerns which had been raised by three members concerning their subscription contributions were discussed together with possible reductions that could be put to the next Executive Council meeting. Three MLAs, Russia, Portugal and Dominican Republic were well behind with unpaid subscriptions. CMI investments as at 31 December 2016 were Euro 596,905.33.

Discussion took place concerning the steps taken since the cyber attack in June 2016, which had robbed the CMI of US\$17,230, and a Payments Requisition Protocol drafted by the Secretary-General was tabled and discussed and some minor changes suggested in order to seek to prevent any future successful cyber attack made on the CMI. Evelien reported that she had undergone training and is updating the website on a regular basis and inquiries will be made as to whether the location for the website hosting could be moved from New Zealand to an organisation in Antwerp. Similarly enquiries as to potential local publishers for CMI publications were being undertaken as they are now to be centred in Antwerp rather than Genoa. John Hare spent some time on this visit inspecting the boxes containing some archived materials in the basement. Potential new members in Africa (Tanzania, Cameroon and Congo) were discussed. Arrangements for India to be brought back into the CMI fold were nearing conclusion.

On the 8 March a meeting of the Constitutional Committee consisting of the President, the Secretary-General, Jean Francois Peters, Benoit Goemans, Patrice Rembauville-Nicolle, took place (in the absence of John O'Connor).

## **Seminar Bristol Palace Hotel Genoa, Italy 7-8 September 2017.**

An event in Genoa had originated at the suggestion of John Hare. It was a wonderful opportunity to honour Francesco Berlingieri in his home City.

As noted by John Hare and Giorgio Berlingieri in the Programme notes: it was the third time an Assembly meeting had taken place in this marvellous City, the first being in 1925 and the second in 1992; the first was chaired by another Francesco Berlingieri, the grandfather of the man who was being honoured on this occasion; also present at that first Assembly meeting in Genoa was another Giorgio Berlingieri, the grandfather of the President of the Italian MLA who were hosting this event! The choice of Genoa, at this time was inspired. Francesco Berlingieri was in good health and at age 96 spoke at the commencement of the meeting.<sup>220</sup>

Delegates mostly stayed at the elegant Bristol Palace Hotel. There were 227 delegates and 38 accompanying persons. As might be expected from the Italian MLA it was a superbly organised seminar and despite it only taking place over a couple of days delegates were treated to meetings and social events within the most splendid buildings and venues.

The Seminar took place in the magnificent Palazzo Ducale-Sala del Maggior Consiglio, an inspiring location for such an event, and the Assembly in the Palazzo della Borsa (the Old Stock Exchange Building). The social events included a Welcome function for delegates and their accompanying persons at the Genoa Aquarium and the Gala dinner for all delegates at the Villa Lo Zerbino held outdoors in the grounds of that magnificently preserved Genoese mansion, built at the end of the 16th Century, in the warm glow of an Italian September evening.

There was also a breakfast for 33 MLA Presidents or their representatives who were present. Prior to the Seminar and Assembly a number of IWGs had met.

In his opening speech Giorgio Berlingieri, President of the Italian MLA, a position to which he had been appointed in 2005, reminded delegates that there had been an event in Genoa in 2010 for a seminar on the

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<sup>220</sup> CMI News Letter No 2, 2018, which also includes a Tribute by Luis Cova Arria

occasion of the presentation of the Essays in honour of Francesco Berlingieri, the President ad Honorem, attended by Patrick Griggs, Jean Serge and Jan Ramberg amongst many others, which had also been held in the magnificent medieval Old Stock Exchange Building, where the CMI Assembly Meeting would be taking place that afternoon.

The President, in his opening remarks, paid tribute to Francesco, describing some of his many accomplishments and characteristics and presented him with a silver salver inscribed to: "Francesco Berlingieri. Member of the Executive Council from 1972, President from 1976 to 1991, President Ad Honorem from 1991. In recognition and gratitude for his service and devotion to the CMI". The President's remarks are published in the form of a memorial in the CMI Yearbook.<sup>221</sup> Essentially they referred to his naval career, his involvement in the collision between the "*Andrea Doria*" and the "*Stockholm*" off Nantucket in July 1956, his Presidency of the Italian MLA, his Presidency of the CMI from 1976 to 1991, the honours bestowed on him by the CMI as President ad honorem and by the British Empire (OBE), as well as numerous degrees from academic institutions in Italy and around the world. He was of course not the first Berlingieri to involve himself in the affairs of the CMI, that had first commenced as early as 1900 as there was a young maritime lawyer called Francesco Berlingieri from Genoa at the CMI Conference in Paris in 1900. Francesco's involvement continued long after his role as President had come to an end and he was extremely active in the negotiations that led to the conclusion of the Rotterdam Rules.

Francesco Berlingieri then addressed the delegates and reminisced on how he came to be President of the CMI in succession to Albert Lilar. During the course of the meeting in Genoa Francesco attended the Executive Council and Assembly meetings, as well as the Gala dinner.

The meeting in Genoa saw Giorgio Berlingieri pass over the role which the Berlingieri family had conducted for a great many years as Chief Publications Editor to Taco Van der Valk and John Hare handed over the reins as Secretary-General, as foreshadowed by him in New York, to Rosalie Balkin. A presentation was made to John Hare at the conclusion of the Assembly meeting of a statute of the Lanterna of Genoa, John being an aficionado of lighthouses. The meeting at Genoa accomplished much and was enjoyed by all who attended but for some it was very much a bitter sweet meeting, highlighted by Francesco's passing in 2018.

Seminar sessions were held in the magnificent Palazzo Ducale, in which no less than Ann Fenech was almost speechless when standing to give a presentation on *Ship Security Finances*, so much in awe of her surroundings did she express herself to be. A presentation was given by Mans Jacobsson on "The Significance of the Torrey Canyon - 50 Years On"<sup>222</sup>, no one better able to identify that significance than the former director of the IOPC Funds and a member of the CMI Executive Council for two terms. The second session entitled "OW Bunker National Solutions to Global Collapse" included a paper, given with his usual panache and intellectual quality, by Professor Martin Davies of Tulane University: "A comparative analysis and national responses to the OW Bunker Collapse".<sup>223</sup> That session was followed by the session on *Ship Finance Security Practices* and a presentation by Ann Fenech "Update on the work of the IWG on Ship Finance Security Practices"<sup>224</sup>; the issue of *Offshore Activities* was addressed in the next session of the Colloquium in a paper by Lorenzo Schiano di Pepe to address the issue of Offshore Installations and Liability Arising Therefrom, with particular reference to the position under European law and the role of direction 2013/30/EU on Safety of Offshore Oil and Gas Operations. On the topic of *The Hanjin Bankruptcy Cross Border Insolvency Issues*, papers were presented by Sarah Derrington and Maurizio Dardani presented papers.<sup>225</sup>

In the final session, a topic very relevant to the waters around Italy both then and now was addressed by Valeria Ebole, who presented an update on the Italian perspective on *Legal Issues Arising From Refugee Immigration, Rescue and Loss at Sea*.<sup>226</sup>

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<sup>221</sup> CMI Yearbook 2017-2018 (opening pages)

<sup>222</sup> CMI Yearbook 2017-2018 (pages 188-196)

<sup>223</sup> CMI Yearbook 2017-2018 (pages 198-207)

<sup>224</sup> CMI Yearbook 2017-2018 (pages 208-219)

<sup>225</sup> CMI Yearbook 2017-2018 (pages 220-231) Maurizio Dardani "Recent developments of European Law on the matter of Insolvency Law, The Treatment of Rights in Rem: a Difficult Marriage."

<sup>226</sup> CMI Yearbook 2017-2018 (pages 232-256)



A surplus of approximately €19,000 was obtained on this meeting, thanks to considerable contributions from sponsors amounting to €30,000.

**CMI Assembly Meeting Old Stock Exchange Building Genoa, Italy 8 September 2017.**

**Bill Birch Reynardson (1923-2017).**



Bill Birch Reynardson was remembered at the commencement of the Assembly meeting.

It was a great sadness to many members of the CMI family that Bill Birch Reynardson had passed away on 4 July 2017 shortly prior to the meeting in Genoa.<sup>227</sup> His influence on the CMI over many years since at least the 1960s had been profound. He had encouraged Patrick Griggs in his upward path towards the Presidency of the CMI and was a significant participant in the preparation and drafting of important CMI works during that time, none less than what ultimately became the 1969 Civil Liability Convention following the "*Torrey Canyon*" disaster of 1967. He travelled to Australia and gave an excellent presentation at the Maritime Law of Australia and New Zealand's annual Conference in 1983 in Sydney about the CMI. The paper which he gave is published on the CMI website. Like his friend, Francesco Berlingieri, he was a great ambassador for the CMI.

Bill had worked at the Chamber of Shipping for a few years and came into contact with the Miller Brothers – Cyril and Dawson Miller, who managed the UK P and I Club. Cyril, who was Secretary of the British Maritime Law Association asked him whether he would be willing to be assistant secretary. It was this appointment which first got him involved with the CMI. His first involvement was as a member of the BMLA delegation to the Brighton Conference in 1954, then representing the Chamber of Shipping where the first draft of the Limitation of Liability Convention 1957 was considered. In 1960 he joined the Thos. R. Miller partnership and he continued to attend all CMI meetings thereafter. He attended the New York Conference in 1965 at which, under the Presidency of Albert Lilar, work was undertaken on revision of the 1926 Maritime Liens and Mortgages Convention. Following the Torrey Canyon incident in 1967 the CMI set up an International Sub-Committee to look at the private law aspects of pollution from tankers, and Bill played an important role with Lord Devlin in preparation of the CMI draft of what was to become, in 1969, the Civil Liability Convention for

Oil Pollution Damage. It is said that Bill and Lord Devlin developed the first draft of the convention on his kitchen table. The text of this convention was finalised at the 1969 Tokyo Conference.

Bill and his wife Nik, who invariably accompanied him on CMI business, had the greatest fun in making friends in the CMI family, both young and old, and his support to his great friend, Francesco Berlingieri when he was President was a formidable double act which contributed greatly to the survival of the CMI into the 21st Century.

As Patrick Griggs reminded delegates in his tribute at the Assembly meeting, he had been appointed to the CMI Bureau Permanent in 1970 and continued to serve on the Executive Council when it was created. He was elected a Vice-President in 1978 and in 1996 he was elected the first CMI member *Honoris Causa* in recognition of his outstanding service to CMI. He had attended CMI meetings since 1954, was the senior partner at Thomas R Miller from 1991 to 1998, as well as Secretary/Treasurer of the BMLA for a number of years. Patrick Griggs in his comments said: "If anyone, in future, writes a history of the CMI, I am sure that the contribution made by these two (Francesco Berlingieri and Bill Birch Reynardson) both individually and jointly, will be regarded as being pivotal to the survival of the CMI into the 21st Century. Bill will also be remembered for creating the CMI Charitable Trust in 1985 at a time when he was able to go around to his many city contacts and extract contributions from them to the fund that still thrives today." (The Trust awards a prize to the best IMLI student and thereby secures the close relationship between the CMI and the Institute of Maritime Law in Malta.) Bill was made an honorary Doctor of Law by IMLI in 1995. He was made a Commander of the British Empire (CBE) for services to the unification of international maritime law. He was appointed the High Sheriff of Oxfordshire in 1974, a role which five successive generations of Birch Reynardson family helped fulfill. Patrick Griggs concluded "he had an ability to "get things done" - not, perhaps, always in the most conventional manner, but he had an art of being able to persuade people that what he felt was the way forward was, indeed the right way! The CMI owes Bill a great deal."<sup>228</sup>

Ninety delegates attended the Assembly meeting. Tanzania, Cameroon and Malaysia were welcomed as new members of the CMI. Russia which had fallen many years behind over payment of subscriptions, and the Dominican Republic were expelled for their longstanding arrears of subscriptions. Also Portugal sought to withdraw its membership from the CMI, it too having fallen behind its membership subscriptions and, it appears, lack of membership support within its MLA. This was despite valiant attempts by Giorgio Berlingieri and members of the Spanish MLA to try and bolster the Portuguese MLA. FONASBA and Association Mondiale de Dispatcheurs (International Association of Average Adjusters) were appointed new Consultative members.

Ann Fenech was re-elected for a second term as Executive Councillor, Aurelio Fernandez Concheso was elected to replace Jorge Radovich whose terms of office had concluded and Rosalie Balkin was elected to replace him.

A large part of the Assembly meeting was taken up with the Special General Assembly meeting to deal with amendments to the Constitution but also compliance with the Belgium Regulations relating to the notification of appointments and cessation of holding office by officers of the CMI.

It came as some surprise to the Executive Council that CMI had been non-compliant under Belgian law for many years with its responsibilities, particularly in notifying all changes of personnel on the Executive Council, whether retirements or appointments. In addition as a result of new corporate requirements the Constitution was itself deficient in many respects. An important Management Committee meeting consisting of John Hare, Lawrence Teh, Peter Verstuyft and Evelien Peeters and the President took place in Antwerp in the glorious surroundings of the Belgian Shipowners Association on March 6 and 7 2017. Patrice Rembauville-Nicolle a member of the Constitution Committee met with the President and Secretary-General to discuss the changes that needed to be made to the Constitution with Jean Pierre Francois after the Management Committee meeting. Many of the changes which were made to the Constitution were tidying up exercises in order to comply with Belgian law and also reorganising the material which was presently

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<sup>228</sup> Patrick Griggs examined these and other aspects of Bill Birch Reynardson's involvement with the CMI in CMI News Letter No. 1 January 2018 and also, his son Tom, produced a marvellous account of his father's life which is contained in CMI Yearbook 2017-2018

within the Constitution but some were more substantive, including altering the make-up of the Nominating Committee so that the Assembly should select two persons to that Committee.

The work that was done by the Constitution Committee in Antwerp in March and considerable correspondence in relation to the recommendations that that Committee put forward with all members of the Executive Council seeking their feedback on proposals and thereafter explanatory correspondence to all Presidents of MLAs so that they were completely informed of the recommendations prior to the meeting in Genoa made what might have been an extremely complex series of resolutions to be put before the Assembly much less complex than had been envisaged.

The Special meeting held soon after the commencement of the Assembly meeting endorsed all the reforms to the Constitution that had been put forward and complied with all the administrative matters required of it in relation to the reporting of changes in the personnel on the Executive Council to the authorities in Belgium. The new Constitution agreed at Genoa was attached to the Assembly Minutes.<sup>229</sup>

This also provided an opportunity for the newly recruited Evelien Peeters (who had taken over from Anne Verlinde as the CMI's Administrative Secretary in Antwerp shortly prior to the Genoa meeting) to meet delegates. Evelien had been recommended to CMI as a result of Peter Verstuyft's contacts at the Royal Belgian Shipowners Association (she was a friend of one of the employees there) and was familiar with the working environment in she would be situated and seemed ideally suited to the culture of the CMI. This has proved to be the case over a number of years since and in 2021 the birth of her child was a matter of great joy to all CMI members.

The Treasurer reported a cybercrime incident in which the CMI had been defrauded of a sum of money, not too different from the deficit which was recorded in the 2016 year of €20,000. As a result of a cybercrime committed against the CMI, a Payment Requisition Protocol had been put in place to try and prevent any such recurrence. Attempts had been made without success in the US to recover the funds which had been inadvertently transmitted.

In 2016 the CMI's investments totalled €594,252.77, investment yields were practically non-existent in the current economic climate in Europe, not too different from the rest of the world. Subscription changes for Spain, Croatia and South Korea were accepted by the Assembly. The Guidelines on the CMI Investment Policy were placed before the Assembly and the Charitable Trust had funds under management as at March 2017 of £587,717 and the portfolio had risen by 16.58%. The funds under management at 9 August 2017 were £611,218.

### **The President's Report.**

In his report the President paid tribute to John Hare and his opposite number on the organising committee of the MLAUS, Vince Foley, for the success of the previous year's Conference in New York, as well as highlighting the sponsorship which had been achieved by John Kimball and his team. Reference was also made to the award of the IMO International Maritime Prize to Frank Wiswall and the appointment of Alfred Popp QC as a Member of the Order of Canada. The report mentioned the reasons for having to amend the CMI Constitution once again to comply with Belgian law and in the matter of finances referred to the operational deficit of just over Euro 20,000 for the financial year 2016, which was largely attributable to the cyber crime incident in which the CMI had been defrauded of US\$17,230. The report also noted that the Management Committee Meeting, which had taken place in Antwerp in March 2017, had provided Evelien Peeters with an opportunity to meet John Hare and Lawrence Teh in particular. The report also noted that a meeting of the Standing Committee on the Constitution had also taken place in Antwerp at that time, which was extremely productive. The President recounted some of the history behind the work done in order to find a home for the instrument that had been drafted by the International Working Group on Judicial Sales and the preparations for a Colloquium to be held on that topic early in 2018 as a result of the approaches made to UNCITRAL during 2017. In his concluding remarks the President took the opportunity to thank both Giorgio and Francesco Berlingieri for their long association with the publications of the CMI News Letter and Yearbook.

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<sup>229</sup> CMI Yearbook 2017-2018 and CMI News Letter No 1, January 2018 and on the CMI website

## **Bent Nielsen - Member Honoris Causa.**

A delightful aspect of the Assembly Meeting was to be able to pay special tribute to Bent Nielsen who was elected to membership Honoris Causa for his services to CMI over so many years, particularly in the area of the York Antwerp Rules reform but also as Chairman of the Nominating Committee from 2004 to 2013. He had attended CMI meetings since the 1970s and was Rapporteur to the International Sub-Committee on the Salvage Convention which was finished at the 1981 CMI Conference in Montreal. He then, under the Chairmanship of David Taylor, was a member of the IWG which produced the 1994 York Antwerp (Sydney) Rules, then chaired the IWG which formulated the Vancouver Rules in 2004 before taking on the task of Chairing the YAR IWG at the Beijing Conference in 2012 and to further work on the York Antwerp Rules, which resulted in the YAR in 2016. He had been also the Rapporteur on behalf of the CMI to the IMO Legal Committee on the topic of Wreck Removal, having consulted CMI members on their domestic law relating to that topic. Since 2005 he had been a lecturer at IMLI in Malta, his main subject being General Average. As Patrick Griggs told the Assembly in Genoa he has indeed "rendered exceptional service" and deserved to be made a member Honoris Causa. This was warmly approved by the Assembly.

Contemporaneously with the Assembly meeting taking place was a meeting of the Young CMI and the Young Italian MLA which was opened by Florencia Ottero, the winner of the CMI Young Persons Essay Prize, her lecture dealing with Argentina's Claim to an Outer Continental Shelf : An Analysis of its Entitlement and the Relevant Legal Regime.<sup>230</sup> Her presentation was followed by panellists Carlo Corchione "Managing ballast water management collection" - a Shipowner's Perspective",<sup>231</sup> Lawrence Dardani "Ballast Water Management Convention 2004 and Bareboat Charters: Who Bears the Weight of Technological Improvement"<sup>232</sup> and other panellists Kasper Kielland and Andrea Marchese, moderated by Lorenzo Fabro.

The next session consisted of Robert Hoepel as moderator with panellists Blythe Daly: US Law Update: Enforcement of Domestic and Foreign Arbitral Awards,<sup>233</sup> Marco Mastropasqua (Italian/EU perspective), Evangeline Quek (Hong Kong/Singapore perspective) , Miso Mudric (Arbitrator/non EU perspective) and Javier Franco (IberoAmerican perspective) who considered the issue of recognition of enforcement of foreign judgments and arbitration awards.

### *Work in Progress*

*Fair Treatment of Seafarers:* The Assembly was informed that the IMO Legal Committee's 104th session, delegates had been reminded of the 2006 Guidelines on Fair Treatment of Seafarers in the event of a maritime accident and the ITF had expressed its concerns at the way in which States were choosing to interpret the Guidelines. The CMI continues to work with Seafarers Rights International in preparing regular submissions to IMO to ensure the issue of seamen's rights continue to be taken seriously.

*Cross-border Insolvency:* Martin Davis in his paper identified various options to resolve the difficulties, clearly identified by the failure of Hanjin Shipping in 2016 and the collision between the UNCITRAL Model Law and rights in rem. He described the options as being:-

- (a) a protocol to the UNCITRAL Model Law addressing any in rem actions;
- (b) adaptation of or amendments to the already existing Guidelines and/ or best practices for handling cross border insolvencies and
- (c) continuing to highlight the current difficulties or uncertainties that surround the various legal regimes that govern cross border maritime insolvencies.

Arising from the discussion in Genoa it was agreed that the UNCITRAL Model Law does not address the complexities of these problems highlighted by the Hanjin insolvency; however a protocol to the Model Law would be unlikely to attract wide support. Similarly it was concluded that the adaption or amendment to the already existing Guidelines and/or best practice would be difficult to achieve. Accordingly, CMI's role in this

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<sup>230</sup> CMI Yearbook 2017-2018 (pages 257-302)

<sup>231</sup> CMI Yearbook 2017-2018 (page 303)

<sup>232</sup> CMI Yearbook 2017-2018 (pages 309-323)

<sup>233</sup> CMI Yearbook 2017-2018 (pages 324-328)

area would be limited to the third option but it was decided to concentrate on preparing for the publication of:-

- (i) a statement of the nature, scope and extent of "maritime property" or "marine based assets"
- (ii) a statement of CMI's position on the proper treatment of secured maritime assets in the context of both rehabilitation and insolvency proceedings;
- (iii) a distillation of the responses to the CMI Questionnaire on cross-border insolvency in order to provide jurisdiction - specific answers to questions that will routinely be asked by shipowners and their legal advisers, such as -
  - (a) what recognition is given to a secured transaction?
  - (b) what is the position in relation to the staying of proceedings?
  - (c) does the jurisdiction have a protocol in relation to inter-judicial communications and what is its scope and effect?"

On *Polar Shipping* the IWG had recently published on the CMI website a Report on the "Applicability of a private maritime law Convention to polar shipping". The main issues being studied by the IWG being civil liability, load lines for polar regions and collision avoidance rules in the polar region.

A draft working paper for a legal framework for civil liability for vessels sourced oil spills in polar regions has been prepared. A new sub-group will also be considering application of the collision regulations in polar navigation and particular problems of the Antarctic which will focus on the liability protocol in the Antarctic treaty system and its relationship with other international liability regimes.

*Offshore Activities:* It was reported that at the IMO Legal Committee meeting in April 2017 approval was given to a guidance document designed to assist those States which might wish to negotiate bilateral or regional agreements covering liability and compensation for pollution caused by all corners of offshore exploration and exploitation of resources. A paper was delivered by Lorenzo Schiano de Pepe of the University of Genoa "Offshore Activities: Mind the gap between prevention and liability". During the course of his presentation he indicated that as an academic exercise he will be seeking to draft a regional agreement covering the countries bordering the Adriatic.

It was also reported at the Assembly meeting that the United Nations Environmental Program had expressed an interest in drafting an international Convention to cover liability and compensation and that Karl Gombrii was seeking to contact the Secretary-General that the new body with a view to take the matter further. Although plans were on foot to have a speaker from that organisation for the Mexico Colloquium in 2019 that did not eventuate and there has been no further progress in that regard.

*Ship Nomenclature* - the important question posed by this working group is when is a "ship" not a "ship"? From responses received to date (which were not extensive) in civil law jurisdictions there is a greater inclination to adopt characterisation of a maritime structure or vessel as expressed under its national law or under the law of the flag. On the other hand, common law jurisdictions adopt the characterisation to be found in the legal regime applicable under local law or the *lex fori*. Most jurisdictions tend to determine the character of the ship/vessel by reference to the use to which it is put. Some jurisdictions however take a more "objective" view of what is a "ship". Certain jurisdictions have been identified where there is an elaborate legal structure designed to cope with all manner of permutations, ship, yacht, boat or marine artefact. Equally other jurisdictions make no effort to adopt definitions and simply leave it to the courts to decide.

*Unmanned Ships:* In March 2017 the IWG had produced a Position Paper which sought to identify the provisions of UNCLOS and the main IMO regulations which pose particular challenges with the emergence of remotely operated vessels on the oceans of the world. The IWG has also produced tables identifying the provisions of the COLREGS, SOLAS chapter V and chapters I-IV. A further Questionnaire has been sent out to MLAs.

*Promotion of Maritime Conventions:* it was reported that members of the IWG had held meetings with IMO in June and October 2016 to ascertain why the wish list of Conventions had failed to achieve the hoped for level of ratifications. With those identified the CMI and the International Chamber of Shipping will attempt to

add worldwide contacts to offer assistance to States which are having difficulty in deciding to ratify and implement these important international instruments. A publication will also be prepared between the ICS and the CMI entitled "Promoting Maritime Treaty Ratification" as a joint publication. As a result of the Questionnaire sent out by the CMI in 2013 it has been possible to understand some reasons why the Conventions identified as requiring promotion have not been ratified.

*Database of Judicial decisions on international Conventions:* In March 2017 the CMI concluded an agreement with the Centre for Maritime Law at the National University of Singapore to create a database in which will be collected judicial decisions on the interpretation of international maritime law Conventions. MLAs have been invited to submit case reports for inclusion in the database. If MLAs undertake the tasks requested of them it will be the performance of a long time dream of the late Francesco Berlingieri that the availability and ease of accessibility of international decisions interpreting maritime Conventions will assist in the unification of maritime law.

The President before closing the meeting paid tribute to the Italian MLA for the organisation of the Seminar which had been superb and also to Jorge Radovich, thanking him for his many contributions to the work of the CMI and the Executive Council, and made a presentation to John Hare, thanking him for taking on the mantle of Nigel Frawley and for the hard work and devotion he had given to the CMI for a great many years. The Assembly responded warmly with its appreciation.

At the conclusion of the Genoa Seminar and social functions John Hare presided over the now well established CMI tradition of the handover of the CMI flag from the Italian MLA to the British MLA, who will host the Assembly meeting in November 2018.

#### **Executive Council Meeting Bristol Palace Hotel Genoa, Italy September 7 2017.**

It was a great honour for all present to have President Ad Honorem of the CMI, Francesco Berlingieri in attendance.

Evelien Peeters was also welcomed and attended her first Executive Council meeting in her role as an Administrative Assistant having started work with the CMI earlier in the year.

In view of representations made by the MLAs of Spain, South Korea and Croatia, the Executive Council proposed to the Assembly that their subscriptions be reduced by modest amounts to enable them to get back on their feet.

The Executive Council decided to resume the earlier practice which had not been very successful of awarding an annual prize to a young CMI person as a result of an essay competition.

As far as future meetings were concerned, Mexico had offered to host a Colloquium in 2019 and the Japanese MLA would like to host a Conference in 2020, not having hosted the event since 1969. The likely timing would be after the Olympics and therefore in late October 2020. Brazil had also offered to host a meeting. Malta and Canada indicated interest in holding a future CMI meeting.

In relation to *Judicial Sales*, following on from the decision taken by UNCITRAL in July 2017 that the CMI should organise a meeting the Executive Council agreed to take up the challenge of hosting an event in Malta in early 2018.

Taco van der Valk was appointed to take over responsibility for publications, including the website and had obtained quotations for work to be done in upgrading the CMI website and was interviewing potential IT service providers in that regard. The Executive Council authorised him to proceed to modernise the website.

*The Ad Hoc Committee on Arbitration* was disbanded following discussions in the Executive Council arising from the materials received from Luc Grellet and his colleagues. The contributions made by Jorge Radovich and John Hare to the Executive Council were enthusiastically acknowledged by their colleagues on the Executive Council and the President thanked them for their contributions.

## **Executive Council Meeting Bristol Palace Hotel Genoa, Italy September 8 2017.**

The President welcomed the two new members to the Executive Council, Rosalie Balkin and Aurelio Fernandez-Concheso (in absentia)

The plans for a Colloquium in Malta were further discussed and Ann Fenech and Alexander von Ziegler agreed to take care of making enquiries and arrangements as to suitable dates and venue, likely in Malta.

In relation to the *Future of the CMI* Committee the President advised that he has spoken to Stephen Knudtzon, Jesus Casas and Edmund Sweetman and had asked them to take over the work that had been done to date under the leadership of Liz Burrell with a view to having a Report finalised for the 2018 Assembly meeting.

*Wrongful Arrest* Report. This was given by Ed Sweetman in the absence of Aleka Mandaraka Sheppard who had taken over the role as Chair when Giorgio Berlingieri had stepped down. Ed Sweetman had taken on the role as Rapporteur. There were 38 responses to the Questionnaire which had been sent out and a considerable amount of work had been done by Aleka Mandaraka Sheppard in assimilating all the information received and placed on the CMI website. Hopefully that document would be of use to practitioners who were analysing options in relation to different arrest jurisdictions.

At the conclusion of the Assembly meeting, the President thanked Jorge Radovich for all his many contributions to the CMI during his period on the Executive Council including on the IWGs in relation to the Review of the Salvage Convention and his continuing involvement in relation to Offshore Activities.

## **Colloquium Valletta, Malta Judicial Sales 27 February 2018.**

A Colloquium was organised at great speed by the MLA of Malta under its indefatigable President Ann Fenech to take place in Valetta in February 2018. It was extremely successful and well attended, particularly by students from around the world who were attending IMLI as well as representatives from many organisations involved in the maritime community, both internationally and from Malta who had not previously participated in the CMI Judicial Sales project, including BIMCO, ITF, FONASBA and financiers who were unanimous in their support of the project.

At this somewhat hastily arranged but superbly organised and well attended Colloquium, which took place over half a day, the following presentations were made:- A Welcome Address (pages 330-331) by the President of the Malta MLA, Ann Fenech, in which she welcomed the Chief Justice of Malta and the Minister of Transport. She noted that this Seminar had attracted 180 participants. They represented ship owners, financiers, crew, harbour authorities, service providers and delegates from 50 countries, including students from IMLI and Ryan Harrington from UNCITRAL who had been of great assistance in organising the Colloquium.

An opening speech was made by the President of the CMI<sup>234</sup>, who gave a brief history of the work of the CMI and referred to the decision taken at the General Assembly meeting of UNCITRAL in July 2017. He referred to the written paper which had been provided to delegates which included a CMI Brochure (first suggested at the 1997 Future of the CMI meeting). The essential prerequisites of a Judicial Sale and how they had come to be a problem in the international shipping community were explained. The second document that had been available to delegates was a series of excerpts from leading Judicial pronouncements from around the world indicating concerns about lack of comity in Judicial Sales conducted internationally. A third document provided to delegates was a summary of 12 cases exemplifying those difficulties. The President stressed the identity of the principal stakeholders in Judicial Sales, the main object of a Judicial Sale to obtain the best possible sale price and the contents of CMI's Draft Instrument, such as the need to notify the relevant persons of a Judicial Sale, that the sale accomplishes the extinguishment of all prior encumbrances on the ship, the issue of a Certificate by the State selling the vessel confirming that it had been carried out in accordance with its procedures, and that on production of a Certificate of the sale, the Flag State will delete the prior registration. The final attachment was an article by a New Zealand academic asking his readers to imagine the scenario in which they purchased a vessel following a Judicial Sale and the Flag State refuses to

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<sup>234</sup> CMI Yearbook 2017-2018 (pages 332-337)

transfer the ship off its books, or alternatively to imagine that if they were the mortgagee of the vessel and found out quite by chance that a court in some foreign jurisdiction had sold the vessel without giving any notice how concerned you would naturally be.

The opening speeches, the programme for the meeting, and the documents prepared for it as well as the CMI Draft Instrument, are in the CMI Yearbook.<sup>235</sup> CMI then prepared a Report of the Colloquium, with the assistance of UNCITRAL (Ryan Harrington) for the 51 Session of the Commission in New York 25 June - 13 July 2018. The President, Ann Fenech and Alexander Von Ziegler attended that meeting, and thanks to the preparatory work done by a number of MLAs with their government representatives CMI was supported by many delegations and UNCITRAL duly added the project to its work programme.

The Report is also in the CMI Yearbook.<sup>236</sup> There is also a Report of the Colloquium and the meeting at UNCITRAL in New York in the CMI News Letter.<sup>237</sup>

#### **Visit to IMLI.**

On the occasion of the Colloquium in Valletta a number of CMI Executive Councillors including the President, Ann Fenech, Alexander Von Ziegler, Luc Grellet, and Giorgio Berlingieri had visited IMLI and met with the students and Professor David Attard where the strong bond between the CMI and IMLI was evident throughout the meeting, nurtured by the many members of the CMI family who are regular lecturers there such as Patrick Griggs, Bent Nielsen, Professor Francis Reynolds, Frank Wiswall and, more recently, Andrew Taylor and in the past, Bill Birch Reynardson, and Francesco Berlingieri, amongst others. There is a Report of this meeting in the News Letter.<sup>238</sup>

#### **Website.**

The new CMI website went live in early 2018 which was announced in CMI News Letter No 2, 2018 by the Publications Editor, Taco van der Valk, in which he explained the circumstances leading up to the decision to adopt the new software and to change the wireframe of the website.

#### **Queen Elizabeth II's Visit to the IMO Building, London, UK 70th Anniversary; 6 March 2018.**

Patrick Griggs and the President attended the IMO when a ceremony attended by Her Majesty, Queen Elizabeth II, took place at which a commemorative plaque was unveiled celebrating the 70th anniversary of the IMO.<sup>239</sup>

On the same day news arrived from Giorgio Berlingieri that Francesco had died. It was indeed a sad day but there was much solace in the fact that so many of the CMI family had seen him hale and hearty, had spoken to him and listened to him speaking to us only a few months earlier in Genoa. A floral tribute was sent to his funeral on behalf of the CMI.

#### **Executive Council Email Meeting from the office of the President Sydney, Australia, week commencing 16 April 2018.**

The passing of Francesco Berlingieri, Jan Ramberg and Jose Ray was noted with great sadness. The President reported that a floral tribute had been sent on behalf of the CMI to Francesco's funeral and that the CMI would inaugurate an occasional memorial lecture to take place at CMI events in his honour.

The *Unmanned Craft* IWG had made a submission to the IMO's Maritime Safety Committee in February and would be attending both the forthcoming Legal Committee and Maritime Safety Committee meetings in April and May 2018.

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<sup>235</sup> CMI Yearbook 2017-2018 (pages 329-358)

<sup>236</sup> CMI Yearbook 2017-2018 (pages 359 -364)

<sup>237</sup> CMI News Letter No 2 2018

<sup>238</sup> CMI News Letter No 2, 2018

<sup>239</sup> CMI News Letter No 2, 2018



The Executive Council congratulated Taco van der Valk and Evelien Peeters on the production of their first News Letter since taking over the role from Giorgio Berlingieri.

The President said it was necessary for Executive Councillors to encourage all MLAs to persuade as many governments as possible to support the Judicial Sales project before UNCITRAL in June.

A short paper addressing the important benefits of ratification of the Rotterdam Rules which provides for Ecommerce had been prepared by the President and Tomotaka Fujita, which was sent to MLAs and other relevant organisations.

#### *MLAUS Spring Meeting May 1-4 2018.*

This meeting was held contemporaneously with meetings of BIMCO in New York at which the CMI President was invited to make a presentation to the Documentary Committee at the Yale Club concerning the CMI's instrument on Judicial Sales and the benefits that such an international convention provide to its members and explained the nature of the problem that suggested that it was appropriate for the CMI to embark on the drafting of an international instrument back in 2007. He stressed the benefits of uniformity which is something shared with BIMCO and comity which underpins the current Judicial Sale regime around the world. He explained the content of the draft instrument and the difficulties that had been encountered in finding a home for the draft instrument at the IMO and the HCCH. He then referred to the Ccolloquium in Malta in February 2018 and the forthcoming meeting at UNCITRAL at the end of June, at which BIMCO support would be invaluable.

The President in addition to addressing the annual general meeting of the MLAUS also attended the MLAUS Committee on International Organisations, Conventions and Standards and spoke on the topic of Judicial sales, as well as other work projects being undertaken by the CMI. The President also attended the MLAUS Board of Directors luncheon at the New York Yacht Club.

#### *9th International Conference on Maritime Law in Shanghai 29 October 2018*

The President accepted an invitation to speak at the 9th International Conference on Maritime Law in Shanghai on 29 October 2018 on the topic "Prospects of the Rotterdam Rules at its 10th anniversary" in the context of a seminar entitled "The Development, Reform and Innovation of Ideas, Systems and Regimes of Maritime Law in the new era." In his principal paper he referred to the lecture he had given at Tulane University in 2014 in which he had raised the possibility of carriers taking into their own hands the solution to the problems created by a multiplicity of liability regimes and incorporating the Rotterdam Rules into their bills of lading, and had subsequently made these suggestions to P&I Clubs whose general response was that although they supported the Rules they were not going to promote ratification. He referred in his paper at the Shanghai Conference to costs incurred in contested cargo claims where the issue has been the interpretation to be given to the paramount clause in bills of lading as to which of the many alternative regimes were intended to apply, the case of the "*Superior Pescadores*" being a classic example. He discussed the benefits to carriers in the increased package limitations and the global limitations available to carriers, the benefits of the Ecommerce provisions and the other beneficial provisions in articles such as 13, 27 to 34, 36, 43 to 46, 49, 55, 60 and 80 and urged China to take the lead and promote ratification. He was also invited to make a Welcome Speech at the Conference in which he outlined some of the work being done by the CMI which was particularly relevant to the Title given to the Conference, including on Judicial Sales, Implementation and Promotion of Maritime Conventions,, the Database of Judicial Decisions, and Unmanned Ships.

#### **CMI Assembly Meeting IMO Building, 4 Albert Embankment, London, UK 9 November 2018.**

On the previous day the Executive Council and a large number of IWGs and Standing Committees had met, and had held a number of International Sub-Committee meetings.

The preparatory papers and Reports of those meetings are contained in the CMI Yearbook 2017-2018.<sup>240</sup>

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<sup>240</sup> CMI Yearbook 2017-2018: Ship Financing Security Practices: Discussion Paper for International Sub Committee Meeting by Ann Fenech and David Osborne and Minutes of ISC meeting 8 November 2018 (pages 382 419); Standing Committee Marine

The contents of those meetings are also reported on in the Minutes of the Assembly meeting that took place subsequently to some of them but before others, but it was a tribute to all Chairs and Rapporteurs that they were able to find time and obtain the presence in London of a number of the members of their groups to take their work forward. Some such meetings also took place in the afternoon after the Assembly meeting including a meeting that was estimated to have been attended by about 200 persons on the subject of Unmanned Craft.



At the IMO (2018) at the conclusion of the Assembly meeting: Ann Fenech, Christopher Davis, Rosalie Balkin, Dieter Schwampe, Stuart Hetherington, John Hare and Lawrence Teh.

### **Executive Council Meeting Caledonian Club London, UK 8 November 2018.**

On the previous evening a dinner had been hosted by the CMI at the Caledonian Club for the Executive Council, representatives of the host Association the BMLA and MLAUS Board, and spouses. The menu for the dinner used as its front page a copy of a menu that Peter Verstuyft had discovered in Antwerp of a similar function in that City on the occasion of a Maritime Law Conference on October 1 1898. (It had also been included in materials at the Centenary Conference) It was a joyous occasion at which a bag piper welcomed guests to this very Scottish venue.

On the 8 November, those attending the meetings in London had been able to apply to attend the Donald O'May lecture to be given by Sir Nicholas Hamblen at the Law Society. That was followed that evening, by the British MLA dinner which took place in the dining room of the Inner Temple. Lord Phillips and Sir Nicholas Hamblen were in attendance as well as Lord Clarke.

The next day the Assembly meeting took place in the morning in the IMO Building. After Welcome speeches by the President and by Lord Phillips<sup>241</sup>, a Memorial Lecture was given, to inaugurate the Francesco Berlingieri occasional lecture to be given at CMI meetings, by Sir Bernard Eder QC on the topic "Unmanned Vessels: Challenges Ahead".<sup>242</sup>

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insurance: Draft Report on the impact of the UK Insurance Act 2015 on English Marine Insurance Law as contained in the Marine Insurance Act 1906 and common law, and its potential influence on other common law jurisdictions by D. Rhidian Thomas 8 November 2018(pages 420 444); Ship Nomenclature Notes of meeting 8 November 2018 (pages 445 448); Wrongful Arrest: Transcript of the debate 9 November where 88 delegates were in attendance (pages 449 478); Joint ISC of IWGs on Maritime Law for Unmanned Ships and Cyber Crime and the ISC on Marine Insurance: Hypothetical case for Workshop: The Challenging Convergence of Modern Technology, Cybercrime and Marine Insurance (pages 479 482; Young CMI Seminar MS Amlin at the Cutting edge of the blockchain insurance revolution by Madeline Bailey.(pages 483 485)

<sup>241</sup> CMI Yearbook 2017-2018 (pages 366-369)

<sup>242</sup> CMI Yearbook 2017-2018 (pages 370-381)

### **CMI Assembly Meeting IMO Building London, UK 9 November 2018.**

When the Assembly meeting convened after those introductory events the memorials of those who had died in the previous year took place. Apart from Francesco Berlingieri amongst the many who were remembered were two long serving members of the Executive Council: Jan Ramberg and Jose Domingo Ray. Patrick Griggs, Paula Backden, and Carlos Lesmi reminded those present of the contributions they had each made to their own MLAs and the CMI over many years.

#### **Francesco Berlingieri (1922-2018).**



In paying tribute to Francesco Berlingieri Patrick Griggs traced the extraordinary history of the Berlingieri family's involvement with CMI spanning four generations and paying tribute to Francesco's ground breaking work, inter alia, on the 1989 Salvage Convention, the 1996 HNS Convention, the 1993 Maritime Liens & Mortgages Convention, the Revision of the York-Antwerp Rules, the 1999 Convention on the Arrest of Ships and the development of the Rotterdam Rules, as well as his Presidency from 1976 to 1991, in which the CMI developed closer ties with the increasingly active and relatively new UN bodies and sought to assuage the thirst for knowledge about international maritime law in China. The Travaux Préparatoires that he produced and all his writings will endure for generations. His memory will be revered by all who knew him for years to come. A special tribute was paid to him in his presence at the opening of the Genoa Seminar which is reproduced in the CMI Yearbook 2017-2018.

Another Executive Councillor who had passed away and was remembered as a gentle, courteous and softly spoken person was Jose Tomas Guzman.

The Congo MLA was admitted to membership, but the DPRK MLA was expelled for non-payment of subscriptions. The International Association of Average Adjusters was elected to consultative member status. The Assembly warmly applauded the conferral of membership status President Honoris Causa to Karl Gombrii who, unfortunately, was unable to be present. The President, Stuart Hetherington, Vice President, Giorgio Berlingieri, and Executive Councillor, Tomotaka Fujita, were all retiring having completed their terms of office. First term councillors, Taco van der Valk and Peter Verstuyft had all indicated their willingness to serve a second term and were duly elected to do so. The elections then followed and Chris Davis was elected as the first President from the United States, Ann Fenech and Dieter Schwampe were elected as Vice Presidents and Beiping Chu, John Markianos-Daniolos and Tom Birch Reynardson were elected to the Executive Council. Giorgio Berlingieri and Henry Li were elected to the Nominating Committee. At the conclusion of the meeting Chris Davis thanked Stuart Hetherington for his work as President and presented to him a nautical clock and some maritime books. He also welcomed the new members the Executive Council. Stuart Hetherington

thanked the Assembly for the honour it had bestowed on him to serve as its President and wished it well in all its endeavours in the coming years. At the conclusion of the meeting, Rosalie Balkin took possession of the CMI flag from the BMLA and presented it to Mexico, who would be hosting the next meeting in 2019.

### **The President's Report.**

In his annual Report to the Assembly, the President noted that subscriptions had not changed since 2009 and no registration fees had been called for in order to attend the meeting in London. He noted that, since 2012, ten associations had been expelled but eight new ones had joined the CMI, so there were then 51 members. Several new Consultative members of high quality had been elected : IMLI, ISU, ITF, The Nautical Institute, FONASBA and the International Association of Average Adjusters. He referred to the extremely successful Colloquium which had taken place in Malta and thanked Ann Fenech and her colleagues together with Alexander von Ziegler for organising it at such short notice. He also referred to the growing success of the database established in Singapore and the activities of the Singapore regional office and also commended the authors of the Future of the CMI Report and urged all MLAs to consider how to take its recommendations forward.

In his Report the President referred to the new website (its predecessor had been in existence since 2013 when it had been previously renewed). Taco Van der Valk and Evelien Peeters had run the renewal extremely successfully from Antwerp. They had also done great work taking over from Francesco and Giorgio Berlingieri the responsibility for the News Letter and Yearbook. He referred to the new IWG projects including *Ship Finance Security Practices*, *Restatement of the Lex Maritima*, *Ship Nomenclature*, *Liability for Wrongful Arrest*, *Cybercrime in Shipping*, *Unmanned Ships (now MASS)*, *Pandemic Response*, *Refugee Migration at Sea*. Considerable work had been done with the IMO and International Chamber of Shipping trying to promote the ratification of Conventions but little progress had been made in that regard, particularly with what has been at the heart of CMI work, the Liability Conventions. He also referred to the work which was being done with the assistance of BIMCO and the ICS on Judicial Sales and his attendance at the same time as the MLAUS meeting in New York in 2018, at the Documentary Committee meeting of BIMCO, which was holding its meeting in New York at the same time, had helped to enhance that relationship. (He addressed BIMCO in relation to the Judicial Sales topic and was successful in obtaining its support). The BIMCO Deputy Secretary-General, Soren Larsen, had attended the Malta Colloquium earlier in the year and recognised how important the topic was for shipowners generally.

The President urged greater use of LinkedIn, Facebook and other social media avenues to improve communications between the CMI and MLAs. He referred to the work done in relation to the reorganisation of the administration of the CMI and in particular its move to new headquarters early on in his Presidency and an excellent relationship has now been established with the Royal Belgian Shipowners Association.

He mentioned with appreciation John Hare, Patrice Rembauville-Nicolle, John O'Connor, Benoît Goemans and Jean Francois Peters, and the work that had been done in order to improve the Constitution which was approved at the Assembly meeting in Genoa in order to meet the requirements of Belgian legislation and also tidy up the provisions.

He expressed his thanks to both Nigel Frawley and John Hare who between them had organised the substantial meetings that had been held in Dublin, Hamburg (and Berlin), Istanbul, New York and Genoa in 2013, 2014, 2015, 2016 and 2017 and the huge pressures that placed on both of them but not withstanding that the huge success both in terms of not losing money, having entertaining social occasions and the work product of those meetings was outstanding. He recalled the people with whom he had worked closely and admired enormously but who had passed away the last few years including Richard Shaw, Bill Birch Reynardson and Francesco Berlingieri in particular, and also made mention of those who would be retiring in London, Giorgio Berlingieri and Tomotaka Fujita who had contributed enormously to the work of CMI, and would no doubt continue to do so, as well as the Chairs and Rapporteurs of the International Working Groups and of Standing Committees of the CMI and members of the Executive Council who had served on it over the last six years and had made the task of the President so much easier.

At the Assembly meeting, the Treasurer advised that income for the previous year, 2017, had been €198,907 (subscriptions contributing €194,504) and expenditure as being €163,930 giving a surplus of €34,977. CMI held Reserves of €663,526 (As the President noted in his Report to the Assembly CMI's income in 2014 was

€83,000 less than it had been in 1998. In fact the Treasurer had expressed concerns that it may be necessary to raise subscriptions at that time.

The Report on the *Charitable Trust* to the Assembly was that its finances were in good shape, as it held a capital sum of £585,842.

### *Work in Progress*

The *Migration Sub-Committee* was now going to be chaired by Valeria Eboli.

The *Offshore Activities* IWG was awaiting the result of the application made through the President to UNEP as to whether it would be interested in taking on the project as the IMO had replied that it was not interested in doing further work on it.

Ann Fenech advised that at the *Ship Finance* ISC meeting which had been held the previous day it had been agreed that there was no need for a Protocol for the Cape Town Convention to deal with ships but containers might be an appropriate subject.

*Classification Societies*: it was suggested that work the CMI could do would be to study why the approach in common law countries was much more favourable to classification societies than civil law countries, and relating to that the question as to why there was a lack of legal protection for classification societies generally.

In relation to *Cybercrime*, John Hare reported that John Clark would be taking over as its Chair and that he had been working with Tom Birch Reynardson on producing a hypothetical for the afternoon's joint session of the Marine Insurance, Offshore Craft, and Cybercrime IWGs.

*Unmanned Ships*: Tom Birch Reynardson reported that there had been 23 responses to the Questionnaire. The group was reviewing eight conventions: SOLAS, MARPOL, COLREGS, STCW, FAL, SAR and SUA and Salvage, which was being conducted by Henrik Ringbom, Lina Wiedenback and Robert Veal together with students from Hamburg, Miso Mudric, Beatriz Huarte Melgar, under the supervision of Professor Marian Paschke and also some students under the supervision of Tomotaka Fujita. The group was also participating in the scoping exercises being carried out by the Legal Committee and MSC at the IMO.

In relation to *Young CMI*, Blythe Daly reported that Ansam Okbari and Dharshini Bandara had volunteered to assist David Baker and the Antarctic Subgroup of the Polar IWG who were looking at the proposed Liability VI: Financial Security, to the Protocol on the Environmental Protection to the Antarctic Treaty. She mentioned that 75 attendees had met on the previous day when papers were presented on the following topics: Blockchain and Bills of Lading by Ansam Okbari, Erik Moller of Stena Bulk on the new technology that organisation was introducing, Madeline Bailey MS Amlin at the Cutting Edge of the Blockchain Insurance Revolution,<sup>243</sup> Matthew Freeman of DNVGL on the platform for blockchain in their business, Javier Franco discussing blockchain projects, Sabrina Dollic spoke about her dissertation on UNCLOS and marine scientific research, Yiannis Timagenis on recent trends in ship finance, a topic also discussed by Katriona Henderson, George Macheras on the fact that traditional players were leaving the ship finance industry, Evangeline Quek highlighted the move from west to east in ship finance. Blythe Daly also reported that 30 members attended a dinner organised by Robert Hoepel on 8 November.

In something of a break from tradition, the Secretary-General of IUMI made a short presentation about IUMI and highlighted some issues which it had with the Rotterdam Rules—they being the contradictory views of the membership with some supporting and some opposing the Rules and the problems that IUMI sees with the CMR provisions. He mentioned that on Places of Refuge IUMI was working with the EU.

Fred Kenny also spoke on behalf of the IMO in which he praised the long working relationship between CMI, the IMO and, in more recent times, particularly the work that was being done with both MSC and the Legal Committee on MASS. He also referred to the work on cybersecurity and migrants that the CMI had been doing but highlighted the need for the CMI and the IMO to assist States in becoming more effective in

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<sup>243</sup> CMI Yearbook 2017-2018 (pages 483-485)

ratifying maritime conventions. He referred to a lack of effective processes within States for amending National laws to take account of IMO amendments. He mentioned the IMO was in the course conducting audits of States in that regard.

### **Task Force Report.**

As a result of a suggestion made at the Beijing Conference by the President of the USMLA an ad hoc Committee to consider and canvass the views of MLAs on all issues relating to the management and operations of the CMI was convened by the new President Stuart Hetherington, to be chaired by Liz Burrell who had previously performed a similar role for the MLAUS. Unfortunately it was not until 2018, that a Task Force, a reconstituted group under the Chairmanship of Stephen Knudtzon of the Norwegian MLA, concluded that Committee's work. He was joined by Jesus Casas and Edmund Sweetman. The three of them working tirelessly to produce their report in a short space of time, and are to be congratulated by the CMI.

The following is a Summary of the excellent report dated 23 October 2018 of the Task Force which was presented at the Assembly meeting in London on 9 November 2018, which remains under consideration by the Executive Council at the present time.

### **Summary of the Report on the Future of the CMI.**

The Report on the Future of CMI (the Report) was the subject of a presentation by the Chair of the Task Force, Stephen Knudtzon, on 9 November 2018 at the meeting.

The Task Force addressed the following broad topics: CMI: Governance issues; the CMI's relationship with MLAs; the Organisation of CMI activities such as conferences and meetings; the Work product of the CMI; the Relationship of CMI with other organisations; the Website and Publications of the CMI; Young CMI and Financial matters.

#### **1. Governance.**

The Task Force posed the question as to whether EXCO had too many members and might be more productive if it was smaller in size. It also reinforced the need for geographical spread of its membership. The Report noted that CMI remains Euro centric and lacks diversity within EXCO despite attempts to counteract those aspects. It queried whether Sub-Committees within EXCO could be set up and whether terms for any member on EXCO should be limited to two and individual terms should be limited to three years. (The latter have already been reduced from 4 to 3 years) It also queried whether the Nominating Committee should not make a decision where there is more than one candidate put forward for a single position.

The Task Force made a suggestion that a small payment could be made to a retired MLA person to assist with the management of the CMI.

In relation to the composition of IWGs it suggested that there could be more consultation with MLAs in relation to their composition.

The Task Force questioned whether Titulary members should pay a nominal fee to maintain their membership once they have retired so that individuals, who are no longer interested in the work of the CMI, cease to be Titulary members. It supported the continuing close relationship between the CMI and IMLI.

In relation to financial matters the Task Force Report contains a lot of information in relation to the income and expenses of the CMI. It refers to the Charitable Trust and the Albert Lilar Foundation and suggested that the Charitable Trust be devoted more to research, teaching, and to publishing and the assets of the CMI be utilised for the administration of the day to day and yearly work of the CMI itself. The recommendation in this topic of the Task Force related to the possible employment of an employee or a subcontractor to deal with administrative matters but also that all necessary digital tools should be supplied by the CMI to any such persons.

## **2. The CMI's relationship with National Maritime Law Associations (MLAs).**

The Report notes that there are a wide variety of possible occupations that could be attracted to join MLAs. They are listed as follows: Academics, Judges, Practising maritime lawyers, lawyers in national or international industry associations, lawyers working in: shipping companies, financial institutions, classification societies and insurance companies; Maritime arbitrators and lawyers in government and international governmental organisations (IMO, UNCITRAL, EU etc, DNVGL, Lloyds, Bureau Veritas; ABS etc), lawyers in government offices and intergovernmental organisations IMO, IOPC Funds and the EU, lawyers in non-governmental organisations like *BIMCO*, *Intertanko*, *Intercargo*, *IG (P&I)*, *IACS*, *ICS*, *IUMI*, *OCIMF* and *ECSA*.

The Task Force under the heading "Communication and Transparency", noted that social media offers further opportunities to communicate but it was beyond the expertise of the Task Force to consider that aspect in detail. In relation to transparency, it was really in relation to the appointments of IWGs that the Task Force felt there could be a greater transparency and a more structured approach involving MLAs.

In relation to assisting to build an understanding and relationships between the CMI and individual members of MLAs it is suggested that the CMI establish a protocol for MLAs to distribute CMI publications to their members and identify someone within the MLA to be the principal point of contact with the CMI in order that there is a greater sharing of the CMI information amongst individual members.

The protocol should also reinforce the necessity for MLAs to advise changes in their officers as soon as they take place in order for the CMI website to be updated.

## **3. The Organisation of CMI activities such as Conferences and meetings.**

In this section of the Report a number of suggestions are made including:

1. The CMI meetings do not have a duration of more than 2 to 3 days (excluding the Exco and Assembly days.)
2. The formal dinner is held on the second last day of the substantive programme, to allow delegates to return home once that ends.
3. The programme should be as flexible as possible to cater for these conflicting priorities. The social programme could therefore, for example, be at the start or end of the Conference. There is no scope for holding more than one "big" meeting per year (the annual meeting) except when a designated single subject is identified, and an ad hoc meeting can be organised (eg the Malta meeting for Judicial Sales").
4. The Task Force recognises the need for a substantive local content in the programme but there should be a balance for the subjects of international interest and speakers from other parts of the world.
5. Seek to identify "hot" international issues to be discussed, seek to identify new or relevant topics.
6. Give more attendees the opportunity to speak, with shorter presentations and panel discussions.
7. Improve participation from younger people.
8. Regional meetings should be encouraged such as the Iberian Peninsular (Spain and Portugal), Mediterranean (Italian and Croatia) and Northern Europe (the Netherlands, Germany and Scandinavia). This should be encouraged elsewhere.

9. Other organisations could be invited to present matters of general interest, eg BIMCO or EU representatives.
10. Ensure that credits for education time are provided, as required by the Bar Associations of different countries.
11. The Assembly meeting should not take place contemporaneously with the sessions for Young Lawyers.
12. The use of interactive presentations, quiz shows, Kahoot.it, and Conference Apps.

#### **4. The Work Product of the CMI.**

The Task Force has suggested that CMI could prepare Guidelines on the methodology for the working methods of IWGs, the selection of the membership and the projects to be undertaken. Suggestions were made in relation to the composition of Committees and the preparation of a "format guide" so that newcomers understand better how they work. It suggested that it might be appropriate to produce an animated video, PowerPoint or pamphlet for publication on the website about the foundational aims of the CMI and how it works towards them. In relation to CMI work product the Report suggests that the CMI should exercise caution in drafting new Conventions but continue to work on soft law topics which the Task Force considers to be more effective. It highlighted as a good example the work of the IWG grappling with the "definition of 'ship'".

The CMI, the Report also suggests, should continue to encourage MLAs to lobby government for ratification of Conventions.

On the topic of CMI Questionnaires which are submitted to MLAs, it is suggested by the Report that:

- The CMI should prepare a protocol for MLAs to assist in preparing for answering Questionnaires.
- Questionnaires should not be too comprehensive or dense.
- MLAs should be encouraged to set up Committees (including representatives from the Young Lawyers-see below section 7) to prepare replies.

#### **5. The Relationship of CMI with other organisations.**

The Report also notes the variety of international governmental organisations that CMI should be engaged with:

- IMO - all regulatory requirements for vessels such as SOLAS and MARPOL
- UN - for example in respect of UNCLOS, IOPC Fund - produces Guidelines for compensation following oil spills from tanker vessels
- UNCITRAL - for example in respect of the "Rotterdam Rules"
- UNIDROIT
- WTO
- ILO - producing work environment and employment conditions for seafarers
- EU-DG Transport - shipping and environmental, EMSA, DG Mare
- Ministries and shipping directories in various countries - for example, MSA (Maritime Shipping Authority) in Singapore and the FMC (Federal Maritime Commission) in the US



- UNCTAD
- HCCH - the Hague Conference

It also lists a variety of international organisations the CMI should be engaged with:

- IACS - International Association of Classification Societies
- ICS - International Chamber of Shipping (the forum for the Shipowners Association)
- Intertanko - representing tanker vessel owners
- Intercargo - representing dry cargo vessel owners
- International Group of P&I Clubs
- IUMI - International Union of Marine Insurance
- FONASBA - representing the shipbrokers
- BIMCO - the world's largest international shipping association, with around 2,000 members in more than 120 countries which includes shipowners, operators, managers, brokers and agents
- NSA - Norwegian Shipbrokers Association
- ISU - the International Salvage Union
- ITF - International Transport Federation and other seaman organisations
- CEFOR - representing Nordic marine insurers.

## **6. The Website and Publications of the CMI.**

The Task Force noted the prevalence of cybercrime issues and data protection laws but makes suggestions for possible additional uses of the website including the publication of the status of Conventions. (It is noted that this has already taken place and is now on the website.)

It also suggested in relation to the website improving links to other organisations through the website by way of hyperlinks, such as universities and publications such as Lloyds List, Tradewinds, BIMCO, IMO Legal Committee, Universities etc if that can be achieved. The Task Force also suggested investigating the interactive use of the website and also greater use of LinkedIn.

The Task Force made reference to the publication/ Brochure which was produced for "selling" the CMI to the broader audience, which was prepared for the one-off Judicial Sale meeting in Malta and the UNCITRAL meeting where it was persuaded to take on the topic of Judicial Sales.

Reference was not made to the republication of the CMI Handbook but the Task Force encouraged the promotion of the official texts on the Maritime Conventions.

## **7 Young CMI.**

The Report produced examples of work done in countries that the Task Force members were involved with, Norway, Spain and Ireland to reach out to younger lawyers and obtain their involvement.

The young Norwegian members, for example, are organised with a separate board and they organise at least one out of the four meetings in the MLA per year and have one representative on the board of the MLA.

In Spain, young lawyers are involved in:

- answering CMI Questionnaires, scholarships are available
- since 2017 a mock arbitration of university students is included in the Annual Congress
- they are offered lower membership fees
- students of Shipping Law Masters may attend the congresses at very low fees
- LinkedIn news, so that young non-members can follow up the activities of the SMLA
- currently the Spanish MLA is analysing how to encourage liaising with other Mediterranean MLAs and Portuguese young lawyers

In Ireland young lawyers have been increasingly active in organising evening lectures and a News Letter

The Task Force listed the following steps the CMI could take towards young lawyers:

- encourage them to attend meetings,
- encourage them to give presentations and participate in IWGs,
- involvement in answering Questionnaires in the MLAs,
- ensure young members in the MLAs are aware of CMI activities,
- understand how millennials and other young generations use social networking and update the CMI website to use social networking tools to be more visible to younger generations, including understanding if developing an App is feasible and useful,
- the CMI could consider supporting limited regional meetings of the younger members of the CMI to allow the younger lawyers to develop their own momentum,
- through MLAs, the CMI should consider liaising with universities that have well respected Master programmes in shipping and maritime law so that students and researchers have knowledge of the CMI activities.

The Task Force also queried whether the age of Young CMI should be increased from 30 to 35 or 40 years. It did not reach any conclusion on that issue. (It is noted that the age has been 40 for some years).

## **8. Financial matters.**

It might seem odd that this topic concludes this Summary although it is the basis on which the CMI can operate and the Task Force has produced a lot of useful information on the Income and Expenditure, Reserves, Investment Policy and remuneration of certain officers. It does however make recommendations that consideration be given to paying a retired maritime lawyer a modest sum to be responsible for preparing materials to be sent to MLAs (for distribution to their members), IWGs, Committees, dealing with Agenda items, reminders, Questionnaires, website, publications, social networking rather than leaving it to volunteers and ensuring any such person and Secretary-General and Administrator are supplied with all necessary technological/ digital equipment to enhance CMI's ability to communicate.

## **Chapter 5: The Presidency of Chris Davis November 2018-October 2022.**

Foreword: The Presidency of Chris Davis. This chapter recounts a Colloquium in Mexico, and the trials and tribulations of the COVID Pandemic that started to be felt world wide in the early months of 2020 causing the postponement of the planned Conference in Tokyo in 2020, a proposed Colloquium in Montreal in 2021, and a meeting in Gothenburg, Sweden, and how CMI survived mostly by Virtual zoom meetings but culminating in a Conference to celebrate the 125th Anniversary of CMI : "Celebrating 125 years of Promoting Uniformity of Maritime Law" in October 2022.

### **Executive Council meeting IMO Building London, UK 9 November 2018.**

The President welcomed the new members of the Executive Council: Tom Birch Reynardson, Beiping Chu and John Markianos Daniolos. The President advised his intention to expand the informal Management Committee to include the Vice Presidents. It was decided that Ann Fenech and Henry Li would be Co-Chairs of the Judicial Sales IWG with Benoit Goemans, Luc Grellet, Frank Nolan Jan Erik Poetschke, Andrew Robinson and Alexander von Ziegler as its members.

### **UNCITRAL 35th Session of UNCITRAL Working Group VI 12-17 May 2019 New York, USA (First Session Judicial Sales)**

Reports of this meeting and subsequent meetings are in the CMI News Letters and documentation is on the UNCITRAL and CMI websites. As Ann Fenech has reported the first meeting of the UNCITRAL Working Group VI on Judicial Sales was exciting but challenging.<sup>244</sup> Many of the State delegates had no maritime legal background and the concepts that underpin Judicial Sales of ships were quite new to them and had to be explained. Alexander von Ziegler explained the Draft Instrument to them at this first meeting. Even the role of CMI and its history had to be explained by Ann Fenech.

Ann Fenech displayed her people skills early on by getting to know the Chair of Working Group VI Beate Czerwenka and Jose Angelo Estrella Faria, the Principal Legal Officer and Head of the Legal Branch of the UNCITRAL Secretariat, assisted by legal officers Ryan Harrington and Alexander Kunzelmann. She also liaised with and built up a good relationship with the EU delegate, who was not the same person who had attended the meeting in June 2018 and who had expressed the opinion that this work was not worthy of a Convention and should be considered to be Guidelines at best. Fortunately many of those who had been on the CMI IWG were spokespersons or representatives of national delegations. Of the former, Alexander Von Ziegler (Switzerland), Henry Li (China) and Tomotaka Fujita (Japan) were the principal delegates for their countries and Frank Nolan (USA) and John O'Connor (Canada) were frequently to be heard speaking on behalf of their delegations; and Eduardo Albors (Spain); Petar Kragic (Croatia) and Jan Erik Poetschke (Germany) were also on their national delegations. In addition Peter Laurijssen (Belgium) represented the ICS and BIMCO. Justice McKerracher, of the Federal Court of Australia, attended the first meeting in New York as a representative for the International Association of Judges and Judge Brian McGovern of Ireland attended another. Justice McKerracher then participated in other virtual meetings. Their contributions were invaluable. When COVID struck and the meetings became virtual meetings it was important for the CMI and its leader Ann Fenech to be in electronic contact with the IWG and those delegations that were seen as being helpful to the cause and a large WhatsApp group was started. In addition, prior to every meeting, Ann Fenech circulated discussion points to the group and then a document described as "Meeting notes" which set out the position that the CMI would be advocating for at the forthcoming meetings.

At this first meeting it was decided to work from the CMI Draft Instrument which provided an opportunity to the CMI "team" to explain the significance of each provision and how it related to the concepts of maritime law, from financing arrangements, including mortgages and their registration, to liens and arrest of ships, the different types of charters that exist and the rights they give, and most importantly the practical problems that exist and the essential feature of a Judicial Sale to provide a clean title to the vessel without any prior encumbrances.

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<sup>244</sup> CMI News Letter No 1, August 2019

## **IMLI 30th Anniversary at IMO Building, London, UK 25 June 2019.**

A celebration in London of the 30th anniversary of IMLI's foundation is reported on in the CMI News Letter.<sup>245</sup> Patrick Griggs explained the rationale behind the setting up of IMLI in the 1980s as being the difficulties which the IMO had in getting Conventions which it had drafted ratified by its member States and identified an area of concern as being the absence of personnel in member States with the drafting skills needed to undertake the requisite tasks. It resulted in an offer by the Maltese Government to provide premises in Malta at which lawyers would be trained in international maritime law and taught the art of legislative drafting. So began IMLI. The meeting was addressed by the Secretary-General and Professor David Attard, Director of IMLI.

## **Developments in MASS at the IMO.**

The CMI News Letter carries Reports on both the IMO Legal Committee and MSC meetings in the first part of 2019. At the Legal Committee of the IMO (LEG 106-March 2019) Canada submitted a framework document and a work plan for a scoping exercise for MASS which followed that of MSC and that an Intersessional Correspondence Group should be set up to work on the scoping exercise between meetings of the Legal Committee. China also suggested that the study should recognise that a distinction needed to be drawn between manned (partially) and (totally) unmanned ships. The Secretariat also submitted a list of Conventions which might need to be examined as part of the scoping exercise. Robert Veal reported on the MSC 101 (5-14 June 2019) meeting where the first part of the task it had previously set itself, namely a Regulatory Scoping exercise (RSE) was partially completed in that a Review had been undertaken which was now open for comment by IMO members and NGOs. The second part of the task was the preparation of interim Guidelines for MASS trials, which had been completed.

## **Colloquium Camino Real Polanco Hotel Mexico City, Mexico 30 September to 2 October 2019.**

The venue was situated in reasonable proximity to the heart of Mexico City. The Welcome reception was held on the terrace of the hotel. Socially, the Colloquium provided delegates with an opportunity to visit the UNESCO-listed Teotihuacan Pyramids, and experience an ancient Aztec ceremony, and to travel into the City and surrounding tourist destinations with little trouble. The Gala dinner was held at the Hacienda de Los Morales, a sumptuous and delightful venue for such an occasion with an out-door setting. Over 230 delegates and accompanying persons attended this successful event. Little did delegates realise that there would not be another for three years due to the COVID Pandemic which was about to appear later in the year.

Speeches were made at the opening by the CMI President the President of the Mexican Maritime Law Association, Ignacio Melo, and Hector Lopez Gutierrez, the General Co-ordinator of Ports and Merchant Marine on behalf of the Secretary of the Communications and Transport Ministry.<sup>246</sup> They were succeeded by Luis Cova Arria who made a moving tribute to Francesco Berlingieri.<sup>247</sup> Topics discussed during the Colloquium included "*The Offshore Energy Industry 40 years Post-IXTOC I*". Speakers included Frank Goynor of Gard, New York; Justice Steven Rares of the Federal Court of Australia: "*Charting a New Course-Promoting the Development of an International Convention on Liability and Compensation relating to Transboundary Damage from Offshore Oil and Gas Activities*";<sup>248</sup> Camila Mendes Vianna Cardoso of Brazil: "*Brazilian Offshore Sector*";<sup>249</sup> Captain Francis Javier Fernandez Perroni, the General Director of Merchant Marine and Rafael Murillo, discussing how technological and regulatory changes had affected the shipping industry and environment over the previous 40 years, as well as governmental and the insurers' responses to the ever increasing risks associated with the offshore energy sector.

A further session was entitled "*Proposals for Future Unification of Maritime Law*" which consisted of a series of short presentations on the subject by Ignacio Melo: "Uniformity of Maritime Law from the Latin American

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<sup>245</sup> CMI News Letter No 1, 1 August 2019

<sup>246</sup> CMI Yearbook 2019 (pages 174-176)

<sup>247</sup> CMI Yearbook 2019 (pages 177-184)

<sup>248</sup> CMI Yearbook 2019 (pages 185-200)

<sup>249</sup> CMI Yearbook 2019( pages 201-215)

Perspective";<sup>250</sup> Eric van Hooydonk made a presentation on the "Restatement of the Principles of the Lex Maritima"; and Jose Vicente Guzman: "A Latin American Perspective".<sup>251</sup>

Another session was "*Cybercrime and Insurance Coverage Issues*". This included 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. This was chaired by Joe Grasso and Juan Carlos Merodio. Speakers were Shelley Chapelski, Borianna Farrar and Hernan Lopez Saavedra.

Other contemporary topics covered included: "Women in Today's Shipping World" which explored women as catalysts for positive change and the influence they can bring to the shipping industry. The Chairs were Ann Fenech and Liliana Monsalve. Speakers were Pamela Tansey, Katerina Perez, Despina Theodosiou and Elizabeth Jimenez; "The Future of Shipping Lawyers" in which Young CMI explored the challenges in the future practice of maritime law and the trends that were developing. The Chairs were Lawrence Teh and Robert Hoepel and speakers: Massimiliano Musi: "The impact of Ross and its brothers on the Profession of shipping lawyers" (where "Ross" is the software Ross Intelligence);<sup>252</sup> Bernardo Melo: "Artificial Intelligence tools for maritime casualties investigations";<sup>253</sup> Javier Cardoso: "Smart Contracts";<sup>254</sup> and Morgane Roussel: "The Impact of Autonomous Ships on the Profession of Shipping Lawyers".<sup>255</sup>

Ms Maja Radunović, who was the winner of the CMI prize awarded by IMLI presented a paper on her thesis: "Maritime Liens in Bankruptcy Proceedings: A Legal Analysis of the Need to Harmonize and Amend the Montenegrin Legislation".<sup>256</sup>

Two further sessions discussed the topic "Civil Liability, IOPC Fund and HNS Conventions - Is it time for Latin American governments to ratify these Conventions?" in which the speakers included Jose Maura, the Director of the IOPC Funds, Jan Der Boer: "IMO Civil Liability and Compensation: Why More Latin American Countries should join and implement";<sup>257</sup> David Baker and Kiran Khosla: "Why the Shipping Industry believes more Latin American Countries should join the liability and compensation regime"<sup>258</sup> in the first session; and in the second: Luiz Siano, Jose Manuel Zapico Mackay: "Liability for Marine Oil Pollution in Chile";<sup>259</sup> Javier Franco: "Is it time for Latin American Governments to Ratify International Conventions (CLC/Fund/HNS)?";<sup>260</sup> Jose Modesto Apolo: "Is it time for Latin American Governments to Ratify International Conventions (CLC/Fund/HNS)?";<sup>261</sup> Francisco Linares, Aurelio Fernandez Concheso, Capt Jose Luis Hernandez Abdalah: "Is it time for Latin American Governments to Ratify these International Conventions? Mexican Perspective";<sup>262</sup> Diego Chami: "Civil Liability, IOPC Fund and HNS Conventions Is it time for Latin American Governments to Ratify these International Conventions? Argentina Perspective."<sup>263</sup>

#### **CMI Assembly Meeting Camino Real Polanco Hotel Mexico City, Mexico 2 October 2019.**

Paraguay was admitted as a new member.

John O'Connor was elected for a second term and Eduardo Albors was elected for a first term as Executive Councillor in place of Alexander von Ziegler whose terms of office had concluded and Lawrence Teh was appointed for a further term as Administrator. The Assembly expressed its usual approbation for Alexander von Ziegler on being reminded by the President of the enormous contributions he had made to the CMI as

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<sup>250</sup> CMI Yearbook 2019 (pages 243-250)

<sup>251</sup> CMI Yearbook 2019 (pages 251-263)

<sup>252</sup> CMI Yearbook 2019 (pages 224-228)

<sup>253</sup> CMI Yearbook 2019 (pages 229-234)

<sup>254</sup> CMI Yearbook 2019 (pages 235-238)

<sup>255</sup> CMI Yearbook 2019 (pages 239-242)

<sup>256</sup> CMI Yearbook 2019 (pages 216-223)

<sup>257</sup> CMI Yearbook 2019 (pages 265-275)

<sup>258</sup> CMI Yearbook 2019 (pages 276-278)

<sup>259</sup> CMI Yearbook 2019 (pages 279-282)

<sup>260</sup> " CMI Yearbook 2019 (pages 283-284)

<sup>261</sup> CMI Yearbook 2019 (pages 285-291)

<sup>262</sup> CMI Yearbook 2019 (pages 294-296)

<sup>263</sup> CMI Yearbook 2019 (pages 297-300)

Secretary-General previously and then Executive Councillor, as well as to the Rotterdam Rules in various roles and now, continuing, in Judicial Sales.

An operational deficit of €4,074 was recorded for 2018, and reserves were €659,452. The *Charitable Trust* had increased its capital base to Pounds 637,700. It had generated sufficient funds to pay for 8 lecturers to give 32 lectures at 90 minutes each. The prize winner at IMLI was Maja Radunovic from Montenegro who attended and made a presentation at the Colloquium. The Trust had also supported the yCMI prize and the winner was Helen Nieman who was unable to attend the Colloquium.

The President in his (quarterly) Report had commended those who had attended the meetings of the IOPC Funds and LEG 106 where the scoping exercises on MASS were taking place, and correspondent groups were being established to address issues of fraudulent registries and a unified interpretation of the test for breaking limitation under IMO Conventions. The President had also congratulated Stephen Girvin and his team at the Centre for Maritime Law, Singapore University, where the Data Base for *Jurisprudence on Maritime Conventions* is operated, in reaching 400 cases.

#### *Work in Progress*

The *Polar Shipping* IWG Working Group had finalised a paper on Polar shipping for the International Group of P&I Clubs for eventual submission as a working paper at the Antarctic Treaty Consultative meeting in Prague in July 2019. It had been well received at the meeting and had served to flag an issue concerning the liability limits in the liability annex of the environmental protocol to the Antarctic Treaty which had not remained in step with subsequent amendments to the LLMC limits. The Working Group had met in Mexico to explore new study on the interface between the IMO Liability regimes (including the Wreck Removal Convention) and the liability annex of the environmental protocol/Antarctic treaty, under various scenarios.

On *Offshore Activities* events previously referred to had come to pass and pursuing UNEP any further was decided at the Mexico meeting not to be of any value.

*Finance Security* As a result of the work done over the previous four years the IWG had concluded that there is no appetite for a Protocol for shipping to the Cape Town Convention. The work of the IWG was therefore concluded. Although the same group could be converted into an IWG on security interests over shipping containers. Two co-Chairs David Osborne and Benoit Goemans could be appointed to carry on that work.

*Wrongful Arrest* - the IWG was still awaiting responses to Questionnaires and was giving consideration to sending a further Questionnaire to individual maritime lawyers who had attended the session in London in November 2018 and for it to be circulated within the maritime legal profession in MLAs to obtain particular information in relation to their experience of arrest in their jurisdictions.

*Lex Maritima* - the IWG had met in Mexico and discussed the following:

- new draft principles prepared by the Chairman
- the format to be followed
- further additional principles
- set up a digital format to collect work
- research and reporting formats and use of languages
- time schedule in view of CMI events

*Unmanned Ships*: It was reported that it had changed its name to MASS (Maritime Autonomous Surface Ships), in line with developments at IMO. A research fellow sponsored by the Charitable Trust had commenced work from the IMO underlining the relationship between the CMI and the IMO. The IWG's task is to review all 23 of the identified Instruments under the aegis of the Legal Committee. Then it would continue its review of the Conventions under the purview of the IMO's MSC and next review what they call the CMI Conventions, such as the Carriage Conventions and the York Antwerp Rules to finally provide a summary and working paper for the Tokyo Conference. The IWG comprises 31 members.

The *Marine Insurance* Standing Committee had continued to discuss its next project and narrowed the scope to:

1. The impact of sanctions on insurance cover
2. Direct rights of action against insurers (this had previously been considered in the context of the soundness of the compulsory insurance cover but are now considering a broader enquiry into the underpinning principles and practices in light of the increasing number of liability Conventions. At the Colloquium, the Committee was involved in looking at "cyber crime on marine insurance coverage issues".

The *Carriage of Goods Standing Committee* was paying attention to recent attempts to digitalise trade documents, including bills of lading, such as Blockchain technology

The CMI would not be specifying any particular topic for the *Young Persons Essay Prize* for 2020.

#### **Executive Council Meeting Camino Real Polanco Hotel Mexico City, Mexico 29 September 2019.**

It was decided to form an IWG to follow the work being done at IMO Legal Committee, to be co-chaired by John Markianos and Dieter Schwampe on *Unified Interpretation of the test for breaking the owner's right to limit liability under the IMO Liability and Compensation Conventions*.

It was noted that the IMO was also forming a correspondents group to examine the problem of fraudulent registries.

#### **UNCITRAL 36th Session Working Group VI Vienna, Austria 18-22 November 2019 (Second Session Judicial Sales).**

This was another productive meeting but unbeknownst to anyone it was to be the last for another year and the last for more than two years before delegates could meet in person, thanks to COVID's appearance in early 2020.

In her update published in the CMI Yearbook 2020 Ann Fenech referred to the Colloquium in Malta and the subsequent attendance at UNCITRAL in mid 2018 and then the first session on Judicial Sales, the 35th Session of Working Group VI which had taken place from 13 to 17 May 2019, the 36th Session which had taken place between 18 and 22 November 2019, the postponement due to Covid of the 37th Session that had been due to take place in April 2020 in New York, which then took place virtually between 14 and 18 December 2020 and the 38th Session which took place between 19 and 23 April 2021 in New York, virtually. The outcome of those first three sessions being three annotated revisions of the CMI draft.<sup>264</sup>

At the Second Session delegates discussed the first draft which had been produced in New York at the first meeting in May 2019. The Reports of this meeting referred to the expansion of a number of State delegations to include representatives from Ship Registries and Justice Departments which informed debate. There were extensive contributions from delegates from CMI, IMO, IPA and Law Asia as well as IAJ. There was overwhelming support for the Instrument to take the form of a Convention rather than Guidelines or a Model law. The definition of "ship" generated considerable debate and the suggestion that it should be limited to commercial ships, which was not accepted. Similarly there was debate about the Notices of Judicial Sale and the effect of any failure to comply, and allowing qualified sales to be acceptable for recognition purposes where there was permissible survival of charges "assumed by the purchaser", which was not accepted. There

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<sup>264</sup> CMI News Letter No 1 August 2019; CMI Yearbook 2020 Judicial Sale of Ships Update by Ann Fenech (pages 176-180); UN General Assembly documents Proposals of the CMI and of Switzerland for possible future work on cross border issues related to the Judicial Sale of ships (pages 181-191); Proposed draft instrument prepared by the CMI (pages 192-202); Report of Working Group VI on the work of its thirty fifth session (New York, 13 17 May 2019) (pages 203-217); Annotated first revision of the Beijing Draft (pages 218-238); Interaction between a future instrument on the Judicial Sale of ships and selected HCCH Conventions (pages 239-247); Report of Working Group VI on the work of its 36th Session (Vienna, 18 22 November 2019) (pages 248-262); Annotated second revision of the Beijing draft (pages 263-282); Note accompanying the second revision of the Beijing draft (pages 283-290); Synthesis of comments submitted on the second revision of the Beijing draft (pages 291-305); Intervention of CMI at 107th Session (LEG107) 1 December 2020 by Ann Fenech (pages 306-307); Report of Working Group VI on the work of its 37th Session (Vienna, 14 18 December 2020) (pages 308-326)

was extensive discussion as to the circumstances in which a Judicial Sale could be set aside and which jurisdiction had any role to play, if at all. There was general acceptance that the ship had to be physically within the State of Judicial Sale at the time of sale and permitting a ground of refusal to be based on public policy. Considerable work was done in preparation for the anticipated meeting in New York in April 2020, which was cancelled due to COVID.

**Nigel Frawley (7 June 1936- 22 January 2020).**



The year 2020 started sadly for CMI members who had known Nigel Frawley during his long period of involvement with the CMI. He had served as a Secretary-General of the CMI from 2004 to 2013 having previously served as Chair of the Nominating Committee and been President of the Canadian MLA between 1996 and 1998. He therefore served as Secretary-General under Patrick Griggs, John Serge Rohart, Karl Gombrii and Stuart Hetherington. As was said at the time of his retirement from the role of Secretary-General in Dublin in 2013 he made all of those Presidents look extremely good because of the diligence and hard work that he had put into organising Conferences, Colloquia, Symposiums, Seminars, Assembly and Executive Council meetings. The discipline and focus that had obviously been instilled in him in his days in the Royal Canadian Navy lasted all his life.<sup>265</sup> He will long be remembered by the CMI as someone who was a joy to work with and spend time with. He was unflappable, and blessed with not only legal acumen, integrity, common sense but also great affability and sense of humour. This is exemplified by the story, which he recounted to his family and which sums up the man who was so well known to, and liked by, the members of the CMI family,<sup>266</sup> concerning when he was serving in the Canadian navy and his encounter with the former Prime Minister of Canada, Pierre Trudeau, who visited his submarine and, exhibiting boyish excitement, the Prime Minister said to Nigel: "When I grow up, I want to be a submarine commander", to which Nigel responded: "Gee when I grow up, I want to be a Prime Minister".

Tributes are contained in the CMI News Letter to both :Tom Mensah, CMI Member Honoris Causa who died in April 2020, and was remembered as a stalwart of the IMO Legal Committee but also a Judicial officer who had been the first President of the Tribunal of the Law of the Sea from 1996 to 2005; and William "Bill"

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<sup>265</sup> CMI Yearbook 2019 (pages 3 13) :Memorial to Nigel Frawley.

<sup>266</sup> CMI News Letter No. 1 2020 and CMI Yearbook 2019 (pages 3-13)



O'Neill, CMI Member Honoris Causa and former Secretary-General of the IMO, 1990-2004, died on 29 October 2020 aged 93. He will be remembered as a strong supporter and friend of the CMI.<sup>267</sup> Professor Rolf Herber also died during this period.<sup>268</sup>

The *Jurisprudence Database on Maritime Conventions* reached 1000 cases by 1 October 2020.<sup>269</sup>

**Executive Council Email Meeting from the office of the President New Orleans, USA week commencing 4 May 2020.**

The Japan Conference had been agreed to be postponed by the Executive Council before the deadline for cancellation in April 2019 due to the Pandemic.

It was agreed to subsidise the loss on the Mexico Colloquium by contributing Euro 20,000 plus the costs of 4 guest speakers invited by CMI.

A new Russian Association's application for membership of CMI was discussed. It was reassuring that it seemed to be capable of meeting the outstanding sums owed by the predecessor organisation.

**CMI Assembly Meeting held remotely in compliance with Royal Decree 30 June 2020.**

The essential business conducted was to renew terms of Executive Council members: Rosalie Balkin as Secretary-General for a second term, and Aurelio Fernandez-Concheso for a second term were reappointed to the Executive Council.<sup>270</sup>

**CMI Executive Council Email Meeting from the office of the President New Orleans, USA week commencing 9 November 2020.<sup>271</sup>**

The President reported that he, Kate Lannan, (formerly of UNCITRAL but now WHO) , Alexander von Ziegler and others participated in a Webinar in November sponsored by the IIDM and Peruvian MLA following the denunciation earlier in the year by Peru of the Hague Rules, and advocated for the Ratification of the Rotterdam Rules. It is also reported by Tomotaka Fujita in the News Letter that Peru has decided to ratify the Hamburg Rules.

It was noted that a decision would need to be taken on whether to proceed with the already once postponed Tokyo Conference scheduled for later in 2021 by the end of March, but Antwerp 2022, Montreal in 2023 and Gothenburg in 2024 would still proceed.

A decision was deferred as to whether the *Offshore Activities* IWG should proceed to draft a Convention.

The Cross Border Insolvency IWG was dissolved.

The IWG chaired by John Markianos and Dieter Schwampe working with Kiran Khosla (ICS) and David Baker (IGP&I) on *Interpretation on the test for breaking the owner's right to limit liability under the IMO Liability and Compensation Conventions* had prepared a submission to IMO and a Questionnaire to MLAs.

The work done by the Croatian MLA on *Carriage of Goods* was noted but the meeting declined to support a revisit of the Rotterdam Rules.

It was decided that Frank Stevens would be nominated to replace Peter Verstuyft as Treasurer when he retires later in the year.

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<sup>267</sup> CMI News Letter No 1 April 2020 and CMI News Letter No 2 October 2020

<sup>268</sup> CMI News Letter No. 2, October 2020

<sup>269</sup> CMI News Letter No. 2, October 2020

<sup>270</sup> CMI News Letter No. 1 April 2021

<sup>271</sup> CMI News Letter No. 1 April 2021

*Constitution:* A new Belgian Code on Companies and Associations 2019 which applies to non-profit organisations required amendments to be made to the accounting year of the CMI and will need to be put before the Assembly in 2022. There is a note on this topic in the CMI News Letter by Jean-Francois Peters.

It was decided that further consideration needed to be given to strengthening the provisions relating to Titulary membership.

There is also a note in the CMI News Letter from the Standing Committee on *General Average*: by Jorn Groninger who reported that the Standing Committee was working on a standard wording for general average securities and in particular new forms of G/A Bond and guarantee for cargo which had been agreed in the group but now need to be approved by industry bodies namely IUMI and ICS. Further security forms to be used for ship, bunkers and freight as well as a review of the CMI Guidelines on General Average need to be undertaken.

Another Report in the CMI News Letter is from the IWG on *Fair Treatment of Seafarers* by Valeria Eboli which is preparing a Questionnaire to collect data on national practices of States concerning refugee migration at sea to ascertain the conduct of rescue activities and their impact on merchant vessels from MLAs. It will look at compensation issues for Merchant vessels conducting government -directed rescues.

The Croatian MLA and Ministry of Justice held a Colloquium on the topic of *Judicial Sales*, moderated by Igor Vio and Miso Mudric, at which the President and Past Presidents of its MLA spoke, Peter Krajic and Gordon Stankovic, and which Ann Fenech and Peter Laurijssen attended, as well as Jose Angelo Faria of UNCITRAL.<sup>272</sup>

#### **UNCITRAL 37th Session Working Group VI Vienna, Austria (Third Session Judicial Sales) 14-18-December 2020.**

This meeting, which is reported on by Ann Fenech in the CMI New Letter<sup>273</sup> is described as "very fruitful", "most constructive", "decisive", and with substantial progress having been made, notwithstanding that all delegates attended virtually. There was no possibility of physical meetings and discussions taking place with delegates in between sessions, and some delegates were required to start very early in the morning and others to work extremely late at night. There had been an IMO Legal Committee meeting the week before at which the proposal that its Global Integrated Shipping Information System (GISIS) be utilised as the digital Repository system for both Notices and Certificates of Judicial Sales as contemplated by Article 12 of the Draft Instrument. This was approved by IMO and CMI led the call for approval for this at UNCITRAL where it garnered widespread support. In fact each of the matters identified by the CMI prior to the meeting were accepted. These included, in addition to the Repository issue, the fact that what was needed was a Convention, that its scope should be limited to State parties, limiting the rights to challenge a Judicial Sale internationally once the proceedings have been concluded in the State of Judicial, and only that Court can hear challenges, except, in relation to public policy grounds elsewhere.

#### **UNCITRAL 38th Session Working Group VI New York, USA (Fourth Session Judicial Sales) 19-23 April 2021.**

Prior to this meeting the Secretariat of UNCITRAL, as before, had prepared an Agenda, an Annotated 3rd Revision of the Draft Instrument and a comprehensive Report of the 37th Session of the Working Group which had been discussed between the CMI IWG members and resulted in an agreed set of Meeting Notes. Unfortunately only one session was possible each day in the afternoon from 2pm to 5pm due to logistics issues at the Vienna Convention Centre, despite this much was again accomplished, including a fourth revision of the CMI Draft Instrument, in which many CMI suggestions were adopted. The relationship with the EU delegation had improved greatly over time. The nature of the Certificate and the exclusive jurisdiction of the Court of Judicial Sale were important matters of discussion at this meeting. Communications were taking place between the IMO and UNCITRAL as to the use of the IMO GISIS platform for the Repository for the Certificate and Notices.<sup>274</sup>

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<sup>272</sup> CMI News Letter No. 2 October 2020

<sup>273</sup> CMI News Letter No 1 April 2021

<sup>274</sup> CMI News Letter No. 2 October 2021

#### **Executive Council Virtual Meeting from the office of the President New Orleans, USA 26 and 27 May 2021.**

Peter Verstuyft had indicated that he would be prepared to remain as Treasurer for a further year.

Cyber risk insurance cover was discussed and further information sought as to the cover that was available.

It was decided to continue planning for the postponed Japanese Conference in April 2022 and maintaining a short meeting in Antwerp later in the year for the 125 anniversary of the CMI.

#### *Work in Progress*

MASS Tom Birch Reynardson reported that the research fellow Sabena Dolic (a former yCMI Prize winner) had been doing sterling work despite the Pandemic difficulties. The research work was being carried out at the IMO Maritime Research Centre.

Offshore Activities generated lively discussion as to whether a Convention should be drafted, and whether windfarms and other renewable energy sources should be involved. Consideration could be given to inviting Alexander Severance to be involved, as he had written extensively on the subject.

It was agreed to defer the yCMI prize in 2021 as there was a backlog due to the postponement of meetings in 2020 and 2021.

#### **CMI Assembly Meeting held by correspondence without physical presence (pursuant to Royal Decree of 9 April 2020) 30 June 2021.**

Vandelanotte appointed as Auditors, the new firm that long-standing CMI auditor Kris Meuldermans had moved to.

#### **Executive Council Virtual Meeting from the office of the President New Orleans, USA 14 September 2021.**

Arrangements were made for a Virtual Assembly meeting to be held by Teams where memorials for Nigel Frawley, Tom Mensah and Bill O'Neil would be given.

Dieter was in discussion with the new proposed Russian MLA (RUMLA) to pay subscriptions for 2021 and 2022 and reimburse CMI for outstandings from its predecessor.

It was resolved to postpone the Tokyo Conference until 2025.

On *Offshore Activities* it was suggested and approved that a new Group examine mobile offshore renewable energy units and Alexander Severance be invited to Co-Chair the Group.

There were discussions concerning the renewal of the agreement between CMI and NUS, Singapore on the *Jurisprudence Data Base* and the sum that CMI was prepared to pay for its upkeep by NUS.

The yCMI Prize Essay winner had been declared as Dr Eva Litina.

#### **CMI Virtual Assembly Meeting from the CMI Offices in Antwerp, Belgium 30 September 2021.**

Amongst those remembered were Nigel Frawley, Tom Mensah, Bill O'Neil and Rolf Herber. Stuart Hetherington reminded those present of the many roles Nigel Frawley had performed over many years for the CMI, and Rosalie Balkin described the contributions made to the IMO and maritime law by Tom Mensah and Bill O'Neil.

Chris Davis was appointed for a further term as President; Ann Fenech and Dieter Schwampe for further terms as Vice Presidents; Tom Birch Reynardson, John Markianos Daniolos and Beiping Chu for further terms as Executive Councillors; Paula Backden and Petar Kragic as first term Executive Councillors and Peter Verstuyft a further term as Treasurer.

RUMLA. The new Russian MLA was welcomed back into CMI Membership, the new entity agreeing to meet the debt burden, in four instalments, of the previous organisation which had been expelled.

The operations for the year had left a surplus of Euro 61,902. The cash position as at August 2021 was Euro 738,676. The Charitable Trust's investments had fallen 34% as a result of the market fall brought about by COVID but as at the Assembly meeting stood at Pounds 700,000. Part of the expenses had gone to a Research fellow provided to the IMO on MASS.

It was agreed to postpone the Tokyo Conference to 2025, to have the next event after the 125th anniversary Assembly meeting in Antwerp in 2022, in Montreal, Canada in 2023 and Gothenburg in 2024.

Peter Verstuyft was re-elected as Treasurer for an additional term.

### *Work in Progress*

*Fair Treatment of Seafarers:* Valeria Eboli reported that the Sub-Committee on Refugee Migration at Sea was refining the text to the Questionnaire.

*On Polar Shipping,* David Baker in the absence of Aldo Chircop reported that the group continued to work on a draft study prepared by a Young CMI lawyer on the interface between the IMO Liability and Compensation Regimes (including the Wreck Removal Convention) and the Liability Annex to the Environment Protocol to the Antarctic Treaty, under various scenarios, including the applicability of the IMO regimes in Antarctic waters in the event the Annex does not enter into force. The Crews, Passengers, Rights sub-group had produced a substantial draft of the Working paper on Arctic Passenger Shipping and the application of the different legal regimes of the five Arctic States.

Ann Fenech reported on *Judicial Sales* in respect of the Third Revision of the Draft Instrument that had been produced by the Secretariat arising from the Virtual meetings of Working Group VI up to April 2021 (which had to take place in that format due to the continuing Pandemic) and which surprisingly had gained considerable momentum to the extent that the Working Group was hopeful of supplying a final draft Convention to the Commission during 2022. She referred to the CMI Meeting Notes that were prepared before each meeting as a result of IWG (Teams/Zoom) meetings which had been circulated to MLAs for their comments but also so that they could inform their State representatives and seek their support. She made particular reference to the NGOs such as BIMCO, ICS, IMO, IUMI, Law Asia, IAJ, and IBA who had all been supportive of the CMI positions.

*On Offshore Activities,* Jorge Radovich reported that the IWG had decided to work on an international Convention that would regulate the liability of MODUs for pollution damage, tentatively entitled the "International Convention on Liability and Compensation for Transboundary Pollution Damage in connection with Offshore Oil and Gas Activities". It was to be based largely on the 1992 Civil Liability and Fund Conventions. The draft was the result of intensive work, especially on the part of Dr Aldo Brandani.

*Security Interests over Shipping Containers:* Benoit Goemans reported a Questionnaire had been circulated to MLAs. Responses had been received from eight MLAs and the IWG intended to ask related industry groups whether there was any need to extend the Cape Town Convention to shipping containers.

*Wrongful Arrest:* Aleka Mandaraka Sheppard reported that 21 answers to the IWG's second Questionnaire had been received.

*Restatement of the Lex Maritima:* Eric Van Hooydonk reported that a partial draft of the restatement of the Lex Maritima is ready.

*Cybercrime:* John Clark, the Chair, identified the many cyber risks in the maritime sector and the IWG had discussed arranging a session for the Antwerp Conference to develop ideas to enhance cyber-security Guidelines and to consider what, if any, changes might be needed to exist in International Conventions and how to address the impact of cyber incidents on the application of existing international Conventions. It had identified a number of areas where a casualty, or maritime incident, which takes place as a result of a

malicious cyber event may not be adequately covered by existing wording of the various Conventions. A Questionnaire would be formulated raising various questions for consideration by MLAs.

*MASS:* Tom Birch Reynardson informed the Assembly about the work undertaken by Ms Sabina Dolic, the Research Fellow financed by the Charitable Trust, in preparing a Report on the introduction of MASS on existing IMO and non-IMO instruments which had been submitted to the IMO Legal Committee in December 2019 and to the MSC. Another of her tasks was the analysis of seven non-IMO Conventions including the Hague, Hague-Visby, Hamburg and Rotterdam Rules. Work had commenced on drafting a document which would summarise all the findings.

*Unified interpretation on the test of breaking the owner's right to limit liability under the IMO Liability and Compensation Conventions.* The IWG had liaised with ISC and IGP&I in producing a Position Paper submitted to the Legal Committee. The IWG had also prepared a Questionnaire and had received 40 replies.<sup>275</sup>

Joe Grasso reported that the *Standing Committee on Marine Insurance* was awaiting responses on the Questionnaire on Direct Actions by Third Party Claimants against Liability Insurers. So far 12 responses had been received.

*General Average:* Jorn Groninger reported on the proposed wordings of an amended version of the 2016 Guidelines on General Average, standard forms of General Average security, and a short version of the Guidelines. In addition work was being done to Rule XXI of York-Antwerp Rules 2016 in view of the plans to discontinue LIBOR.

*Carriage of Goods by Sea:* Tomotaka Fujita reported concerns that countries, such as Singapore, had made amendments to the Electronic Transactions Act, based essentially on the UNCITRAL model law of electronic transferable records and the United Kingdom Law Commission had recently published a consultation paper on "Digital Assets: Electronic Trade Documents" and the Japanese Government had set up a study group to examine possible legislation enabling the use of electronic bills of lading. The Standing Committee intended to draft a Questionnaire to ascertain the situation in other jurisdictions.

*CMI Young Persons' Essay Prize:* the 2020 winner was Dr Eva Latina entitled "Maritime Arbitration: Dilemmas, Prospects and Challenges: Lessons from Contracts of the Carriage of Goods by Sea". Owing to problems caused by the Pandemic it was decided not to hold the prize in 2021 but to recommence in 2022 with no prescribed topic but entrants would be encouraged to consult the current work of the CMI to assist in choosing a topic that is current.

#### **Executive Council Virtual Meeting from the office of the President New Orleans, USA 13 October 2021.**

It was decided to agree to contribute \$10,000 annually for the Database of Jurisprudence on Maritime Conventions.

#### **UNCITRAL 39th Session Working Group VI Vienna, Austria (Fifth Session Judicial Sales) 18-22 October 2021.**

Prior to this meeting the CMI IWG had again considered the Fourth Revision of the Draft Instrument that had been produced by the Secretariat and prepared agreed Meeting notes for this meeting. They included commentary on the matters still left undecided and especially square bracketed provisions. It should also be mentioned that other delegations such as the EU circulated commentary before meetings which needed to be absorbed and a position agreed on by the IWG as to its response.

#### **UNCITRAL 40th Session Working Group VI New York, USA (Sixth Session Judicial Sales) 7-11 February 2022.**

For the first time since the end of 2019 delegates were able to attend in person, or virtually, at this meeting. The Fifth (and what was to turn out to be the last) Revision of what has been called the Draft Instrument was circulated prior to this meeting. Not many attended in person but there were over 130 virtual participants.

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<sup>275</sup> CMI News Letter No. 2 October 2021: Article by Rosalie Balkin on IMO LEG 108, including developments in the consideration of this topic and a report by Dieter Schwampe on the IWG that was involved in this issue which attaches the Draft Resolution of the IMO.

and the document to be produced from the meeting is now to be called The Draft Convention. It took considerable efforts by the Chair and Secretariat to keep the meeting focused and reminded about what decisions and debates had previously taken place when old matters were sought to be rehashed. Contentious issues that arose centred around references to "subsequent purchaser"; the bases on which a Judicial Sale could be avoided or suspended; operational arrangements concerning the Repository; and the final clauses concerning the location of a signing ceremony and regional group ratification and relationships with Member States (EU). A Draft Summary of the meeting was prepared by the Secretariat which was revised in light of comments received. The agreed Draft Convention will now be submitted to the Commission meeting scheduled for New York from 27 June to 29 June 2022 and thereafter to the UN General Assembly in October 2022.

#### **UNCITRAL 41st Session Working Group VI New York, USA (Seventh Session Judicial Sales) 27 June to July 2022.**

The final meeting, which was well attended, produced a final text of the Convention. CMI representatives were again in attendance; representing CMI were Ann Fenech and Stuart Hetherington and attached to their countries' delegations: Frank Nolan (US); Alexander von Ziegler (Switzerland); Tomotaka Fujita (Japan); John O'Connor (Canada); Jan-Erick Potschke (Germany) and Peter Laurijssen (ICS and BIMCO). Sadly Henry Li was unable to be present in person.

The Commission adopted by consensus the text which had been finalised during the week, and has recommended to the General Assembly: that the draft Convention be adopted at its 77th session and it authorises a signing ceremony to be held as soon as possible in 2023 in Beijing, and that the Convention be known as the "Beijing Convention on the Judicial Sale of Ships".

During the course of the week discussion took place concerning the later provisions of the draft Convention some of which had been drafted by the Secretariat at the request of the Working Group. One such provision dealing with the Apostille Convention was not agreed to. Further provisions dealing with: the procedure and effects of Declarations; specifying that the Convention would enter into force after receipt of a third instrument of ratification; provisions dealing with Amendment procedures; and provisions dealing with "Denunciation" were all approved after amendments had been agreed.

The Preamble contained in the draft was the subject of considerable further discussion, particularly in relation to the second paragraph in which the expression "function of judicial sales as a means to enforce claims" was approved, without further elucidation as to whether: such claims were against ships or shipowners, or maritime claims, or were for the purpose of securing claims; and in relation to the fourth paragraph to limit its content to expressions used in the Convention itself, such as "sold free and clear of any mortgage or hypothec and of any charge, including for ship registration purposes."

The work done by the Chair of the meetings Beate Czerwenka, Jose Angelo Estrella-Faria, the Principal Legal Officer of UNCITRAL and his colleagues, was exemplary throughout, particularly considering the difficulties created by the COVID Pandemic.

Everyone who has participated in drafting this Convention amongst the CMI team from Henry Li, Jonathan Lux and Andrew Robinson who led the IWG and all its members who worked tirelessly from 2008 to 2014 to produce the CMI Draft Instrument and those under the leadership of Ann Fenech (including Henry Li and other members of the IWG who represented their country's delegations at UNCITRAL) deserve the highest praise for staying with this project through to the present time and no doubt beyond. Too much praise cannot be heaped upon Ann Fenech whose steadfast leadership has been superb and inclusive of all.

All that remained to be done was for the General Assembly of the UN to approve it.<sup>276</sup>

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<sup>276</sup> Postscript - On 7 December 2022 the General Assembly adopted the United Nations Convention on the International Effects of Judicial Sales of Ships. A signing ceremony was also authorised to be held as soon as practicable in 2023 in Beijing and a recommendation was made that it be known as the "Beijing Convention on the Judicial Sales of Ships".



Delegates at the UN on completion of the work done in UNCITRAL Working Group VI.



The CMI UNCITRAL team: Alexander Von Ziegler, Jan-Erik Poetschke, Frank Nolan, Ann Fenech, Peter Laurijssen, Tomotaka Fujita, John O'Connor, Stuart Hetherington.





Chair of the Working Group and Principal Legal Officer of UNCITRAL: Beate Czerwenka and Jose Angelo Estrella-Faria.

### **Summary of major differences between the CMI Draft Instrument and the Draft Convention.**

The Preamble is somewhat different from the CMI draft. It does however retain some of its wording to the effect that it is a function of judicial sales to be a means to enforce claims, that adequate legal protection for purchasers can positively impact on price of vessels and the importance of having uniform rules for dissemination of notices and the like. Importantly, and differently from the CMI instrument, the Preamble of the Draft Convention refers to and therefore emphasises the important and basal element of a judicial sale of ships on the international stage of the vessel having been sold free and unencumbered of pre-existing charges for ship registration purposes.

Also significantly, and different from the CMI instrument, Article 1 of the Draft Convention asserts that the Convention "governs the effects of a judicial sale of a ship that confers clean title on the purchaser."

Article 2 is the Definitions provision which corresponds with Article 1 in the CMI Draft Instrument but a number of the CMI definitions have been omitted including: "competent authority", "court", "day", "interested person", "person", "recognition", "registrar", "State of registration", "bareboat charter", "registration" and "unsatisfied personal obligation". The definition of "Charge" is slightly enlarged from the CMI definition; the definition of "clean title" has deleted from the CMI definition the words "unless assumed by the purchaser", and reads: "'Clean title' means title free and clear of any mortgage or hypothec and of any charge". The definition of "maritime lien" introduces the word "charge" rather than "claim" and reads: "Means any charge that is recognised as a maritime lien or privilege maritime on a ship under applicable law". The definition for "ship" has been changed from meaning "any ship or other vessel capable of being an object of a Judicial Sale under the law of the State of Judicial Sale" to meaning: "any ship or other vessel registered in a registry that is open to public inspection that may be the subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale".

Article 3 sets out the "Scope of application" in a more rigorous way than was done in Article 2 of the CMI Draft Instrument. The CMI provision reads "This Convention shall apply to the conditions in which a Judicial Sale taking place in one State shall be sufficient for recognition in another State", whereas the Convention says that it will only apply if two conditions are satisfied, firstly, if the sale was conducted in a State Party and, secondly, if the ship was physically within the territory of the State of judicial sale at the time of sale. Both of those conditions were however within the CMI instrument but were contained in Article 4 "Effect of Judicial Sale".

Article 4 sets out the notice requirements for a judicial sale. It provides that the judicial sale shall be conducted in accordance with the law of the State of judicial sale but then goes on to say that a certificate of



a judicial sale having taken place (and which is dealt with in Article 5) shall only be given if notice of the sale is given in accordance with paragraphs 3 to 7 of Article 4. The general provisions within Article 4 are very similar to those within Article 3 of the CMI Draft Instrument. The one difference is that Notices are required to be both published and transmitted pursuant to Article 4.5 to the Repository which is referred to in Article 11 of the Convention; and where the working language of the State conducting the judicial sale is not a working language of the Repository then translations will be required. Unlike the CMI Draft Instrument there is no time provision specified as to the length of notice that must be given. The minimum contents for the notice are contained in Annex 1 to the Convention.

Article 5 of the Convention identifies what is required to be contained in the Certificate of judicial sale and it is very similar to the equivalent provisions in Article 5 of the CMI Draft Instrument, but whereas in the CMI version this was only required when requested by the purchaser it is a standard requirement under the Convention. Once again it is required to be transferred to the Repository and cannot be rejected on the sole ground that it was in electronic form. A model form of the Certificate is contained in Annex II to the Convention.

Article 6, "International effects of a judicial sale", in the Convention is to similar effect as Article 7.1(a) of the CMI Draft Instrument, namely that clean title to the ship is conferred on the purchaser of a sale for which a certificate of judicial sale has been issued. The CMI draft instrument also provided in Article 7.1(b) that the ship had been sold free of any mortgage/hypothèque or charge, except as assumed by the purchaser.

Article 7 of the Convention: "Action by the registry" is very similar to Article 6 of the CMI Draft Instrument ("Deregistration and Registration of the Ship"). A significant difference is that Article 7.5 expressly provides that the actions required to be taken by a registrar in another State Party on the production of the Certificate do not apply "if a court in the State of the registry or of the other competent authority determines under article 10 that the effect of the judicial sale under article 6 would be manifestly contrary to the public policy of that State". That provision replicates what was in Article 8.3 of the CMI Draft Instrument.

Article 8 of the Convention: "No arrest of the ship" largely reproduces Article 7.2 of the CMI Draft Instrument and requires a Court, before whom an application is brought to arrest a ship for a claim arising before a judicial sale, to dismiss the application on production of the certificate of judicial sale.

Article 9 of the Convention: "Jurisdiction to avoid and suspend judicial sale" makes it abundantly clear that it is only the courts of the State of Judicial Sale that have jurisdiction to hear any such claims. Any other State must decline jurisdiction. This is to the same effect as Article 7.3 in the CMI Draft Instrument.

Article 10: "Circumstances in which judicial sale has no international effect" provides that the only circumstance in which a judicial sale has no international effect in a State Party other than the State of judicial sale is "if a Court in the other State party determines that the effect would be manifestly contrary to the public policy of that other State Party." This is equivalent to Article 8.3 in the CMI Draft Instrument.

Article 11 identifies that the Repository is to be the Secretary-General of the IMO, which is a new provision.

Article 12: "Communication between authorities of State Parties" authorises authorities of State Parties to correspond directly with the authorities of any other State Party for the purposes of this Convention and nothing in the article is intended to affect any international agreement on judicial assistance in respect of civil and commercial matters that may exist between States Parties.

Article 13: "Relationship with other international conventions" is different from the equivalent provision in Article 10 of the CMI Draft Instrument. The CMI version merely sought to provide that the Convention would not "derogate from any other basis for the Recognition of Judicial Sales under any other bilateral or multilateral Convention, Instrument or agreement or principle of comity". Under the Convention it provides that "Nothing in this Convention shall affect the application of the Convention on the Registration of Inland Navigation Vessels (1965) and its Protocol No.2 Concerning Attachment and Forced Sale of Inland Navigation Vessels, including any future amendment to that convention or protocol, and furthermore it provides that "Without prejudice to article 4, paragraph 4, as between States Parties to this Convention that are also parties to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or

Commercial Matters (1965), the notice of judicial sale may be transmitted abroad using channels other than those provided for in that convention".

Article 14: "Other bases for giving international effect" replicates what CMI had sought to achieve in Article 10 of the Draft Instrument, quoted above, (however the Convention does not refer to "comity"), and provides that "nothing in this Convention shall preclude a State from giving effect to a judicial sale of a ship conducted in another State under any other international agreement or under applicable law".

Article 15: "Matters not governed by this Convention" is a new provision which provides that: "Nothing in the Convention shall affect: (a) The procedure for or priority in the distribution of proceeds of the judicial sale; or (b) Any personal claim against a person who owned or had proprietary rights in the ship prior to the judicial sale." It also provides in Article 15.2: "Moreover, this Convention shall not govern the effects, under applicable law, of a decision by a court exercising jurisdiction under Article 9, paragraph 1".

Article 16 "Depositary" provides that: "The Secretary-General of the United Nations is designated as the depositary of this Convention."

Article 17 deals with "Signature, ratification, acceptance, approval, accession".

Article 18 provides for: "Participation by regional economic integration organisations" and makes provision for signature, ratification, acceptance, approval or accession by such organisations.

Article 19 deals with "Non-unified legal systems", that is where a State has two or more territorial units in which different systems of law are applicable.

Article 20 deals with the "Procedure and effects of declarations" made pursuant to articles 18 and 19.

Article 21 provides that the Convention will enter into force 180 days after the third instrument of ratification, acceptance, approval or accession has been deposited.

Article 22 deals with "Amendment" processes.

Article 23 deals with "Denunciation".

Annex 1 identifies the "Minimum information to be contained in a Notice of judicial sales" (in accordance with article 4) and Annex II is the "Model Certificate of judicial sale" (referred to in article 5).

#### **Executive Council Virtual Meeting from the office of the President New Orleans, USA 29-30 March 2022.**

There were discussions on the redraft of the *Constitution*, made necessary by the changes in Belgium law, especially around the issue of proxy voting, which the CMI has never favoured, and the possibility of holding hybrid meetings (in person and virtually). Lawrence Teh was authorised to complete negotiations over the renewal of the Agreement with NUS on the *Jurisprudence of Maritime Conventions on the Data Base*, and there was considerable debate on the proposed format and programme for the Antwerp Conference. It was agreed that CMI would contribute financially to any loss made by the Conference. There was discussion on *Offshore Activities* and the time to be allotted in Antwerp for this topic, being dependent on the feasibility of a Draft Convention being produced.

Decisions were taken as to the membership of the new IWG (as proposed by the Italian MLA) on the *Revision of 1910 Collision Convention*, and the responses to this proposal from the IMO and the shipping and insurance industries.

It was decided that yCMI Prize would not be offered in 2022.

There was also considerable debate as to how to respond to the 2018 Task Force Report on the Future of CMI. Two Executive Councillors were volunteered to prepare a document for the next virtual Executive Council meeting.

Discussions took place on ramifications on membership of CMI in light of the war in Ukraine and the new Russian MLA in light of the world wide sanctions being imposed on Russia. It was agreed to waive subscriptions for the Ukraine MLA for 3 years. Considerable sympathy was expressed for the Ukraine people and the members of its MLA, as well as one of the founders of the new Russian MLA who, it was reported, had criticised the war and fled to Europe.

### **Conclusion: The Presidency of Chris Davis.**

The President, on taking office, made it clear from early on that he only intended to serve for one term. What no one expected was a two year hiatus during the COVID Pandemic when no face to face meetings took place with the exception of the Management Committee in the first year of his Presidency and the Colloquium in Mexico. In light of this he elected to commence a second term but noting he intended only to serve the first year.

The Mexico Colloquium took place on the eve of the Pandemic without any warning that a few months later the world would close down. It was a highly successful and enjoyable meeting, well organised by the Mexican MLA and was strongly supported by the South and Central American MLAs. That was a constituency with which the President was well familiar, being a Spanish speaker and regular attendee and speaker at IIDM meetings. The CMI connection with those MLAs has been considerably enhanced through his Presidency, though perhaps not as much as it might have been had travel been easier during the two years of the Pandemic. The challenge for his successor, once his term as an Immediate Past President comes to an end, will be to seek to maintain that level of contact with South American and Central American MLAs.

The Executive Council had continued to hold what had been called its Virtual or E meetings in 2019 and 2020 but in May 2021 ventured into what had become common place territory for business organisations (and individuals around the world), the Virtual Zoom or Teams meetings whereby both sound and vision enabled participants to see and hear each other as if in the same room. This was succeeded by the first such Virtual Assembly meeting in September 2021. These were much enjoyed and welcomed by participants even if they had to start very early in the morning on one side of the world and late at night, finishing in the early hours, on the other side of the world. They proved that Jean Serge Rohart was correct when introducing the Email meetings for the Executive Council when he said: "nothing can replace the immediacy of a physical meeting where the members of the Executive Council can openly discuss all the topics", but when needs must the technological meeting certainly beats no meeting.

On the administrative front, during the four years of this Presidency the Management Committee was enlarged to include the two Vice-Presidents and the finances remained strong, particularly once the Pandemic set in, as the expenses diminished significantly whilst the reserves increased. Discounts to subscriptions are likely to be necessary to reduce the substantial reserves that have accumulated.

The 125th Anniversary of the CMI Conference in Antwerp took place in October 2022, as the world started to emerge from the three years of shutdowns due to the COVID Pandemic. It is reported on in the CMI News Letter<sup>277</sup> and later historians will no doubt cover its contents. It was well attended with Patrick Griggs delivering the second Francesco Berlingieri Memorial Address: "The CMI-yesterday, today and tomorrow".<sup>278</sup> The conclusion of the work done in Working Group VI at UNCITRAL was celebrated. Below are photographs of some of the attendees.

The CMI is in capable hands to face its next 125 years, after the Assembly elected Ann Fenech as CMI's first female President in Antwerp. This was a welcome and much anticipated development. She is to be warmly congratulated. Ann established her credentials as an Executive Councillor and, particularly, in chairing the Cape Town Convention related International Working Group, and then the successful carriage of the Judicial Sales Instrument through to a Convention at UNCITRAL where she made many friends both within CMI, UNCITRAL and the delegates from many nations who attended the UNCITRAL meetings in person and virtually during the Pandemic.

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<sup>277</sup> CMI News Letter No 2 2022

<sup>278</sup> May-June 2022 Volume 28 Journal of International Maritime Law pages 159-165



Patrick Griggs, Christopher Davis and Giorgio Berlingieri.



Frank Smeele, Martin Davies, John Hare and Marc Huybrechts.



Beate Czerwenka, Stuart Beare, Tom Birch Reynardson, Cheryl Beare.

## Finis

In another context Lord Wilberforce, in *Photo Production v Securicor Ltd* (1980) 2 W.L.R. 283 at 290 said "To plead for complete uniformity may be to cry for the moon". In the lecture I gave at Tulane University in honour of Bill Tetley in 2014 I posed the question in the title of my paper: "The CMI and the Panacea of Uniformity-an Elusive Dream?" (Tulane Maritime Law Journal Volume 39 Number 1, pages 159-182.) Certainly in the area of Carriage of Goods, as I showed in that paper, since the late nineteenth century uniformity has indeed been elusive. Maritime lawyers, national governments and international regulators have sought to bring fairness and modernity to an international regime with mixed success, but like Patrick Griggs, quoted earlier in this history, I share his belief strongly "that the CMI has an important role both as an initiator of projects of unification and, increasingly importantly, as a consultant to other international organisations who have the power to create new international instruments but may not have the knowledge to make them workable." This has been borne out in the last twenty five years in which the Rotterdam Rules Convention was concluded in 2008, a new version was agreed for the York Antwerp Rules, despite the conflicting interests of ship and property insurers, in 2016, and the Judicial Sales project has created a new international Convention.

In preparation for the CMI Centenary Conference in Antwerp in 1997 and writing about the Future of the CMI Niall McGovern quoted Irish poet William Butler Yeats, (changing the personal pronoun "my" to "our"):

"Think where man's glory most begins and ends and say our glory was we had such friends".

**Stuart Hetherington**

**March 2023**