



COMITE MARITIME INTERNATIONAL

PRESIDENT

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The role of the CMI in the drafting of International Maritime Conventions and its relationship with UN institutions in the quest for the Unification of International Maritime Law.

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President Comite Maritime International

Thank you Professor Martinez for your kind invitation on the occasion of this very important milestone in the life of the International Maritime law Institute.

This milestone would not have been achieved if it were not for people with great foresight. The very idea of having IMLI in Malta was one of the brainwaves of the late Dr. Joseph Fenech. Joe Fenech is not my blood relation but my husband's uncle who was one of Malta's most prominent lawyers and who in 1987 was Parliamentary Secretary for Maritime Affairs. He was a man of great vision and in his few years as Parliamentary Secretary for Maritime Affairs managed to change Malta's maritime landscape by developing the cruise line terminal, yacht Marinas, our flag and yes was even one of the founding fathers of this magnificent institute who together with Prof. David Attard and others pushed boundaries.

Maritime education goes to the very heart of the advancement of maritime law and its very unification by providing the opportunities which IMLI provides to so many promising maritime lawyers from all over the globe. IMLI's ability to attract persons from across the planet and different jurisdictions who have in turn found themselves in some of the most important

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international positions really able to contribute to the development of international maritime law, has been one of IMLI's greatest achievements which has, I say, directly influenced the unification of international maritime law.

I have had the great privilege and honour of lecturing at IMLI since 1993 and to be here today is really special.

Today I am here as the President of the Comité Maritime International. The CMI has supported IMLI from inception in a number of ways including the provision of leading authorities on various aspects of international maritime law, and by providing the CMI Prize for the most outstanding student.

Today it is my privilege to share with you some thoughts on how the Comité Maritime International has interacted and worked with the international legislative organisations including the IMO which ultimately provide us with international maritime conventions and treaties enabling the unification of international maritime law.

Notwithstanding the fact that the CMI came to be in 1897, very different times indeed to those in which we live today, the CMI today, remains one of the major catalysts on the stage of international maritime law working hand in glove with the UN Institutions including the IMO to reach the objective of unification which was is and will remain the very *raison d'être* of the Comité.

Unification of maritime laws is crucial. Shipping of its very nature is probably the most international of all activities and thus in any maritime circumstance be it in the realm of carriage of goods and passengers, collisions, salvage, pilotage, maritime claims generally the probability of dozens of possible applicable different laws of different countries is highly likely.

Thus in my humble opinion in no other sector more than the maritime sector is there the need to have as many of these national laws converge, the need for all these laws of different jurisdictions to be singing from the same hymn sheet, the need for "UNIFICATION" as we call it, so that there is certainty and stability for the entire international trading community.

The success behind the drafting initiatives of the CMI stems from the modus operandi of the CMI, through its international working groups made up of representatives from its member maritime law associations from all over the world. This ensures that we get the input of as many jurisdictions as possible seeking what unites and what can unite in the interest of stability and certainty in the maritime world.

CMI drafted conventions have included - the Collision Conventions, the Salvage Conventions, the Hague Rules, Hague Visby Rules and Rotterdam Rules, the Limitation of Liability Conventions, the Oil pollution conventions, Arrest of Ships Conventions and a host of others - all geared towards unifying the laws of state parties.

When the CMI was created in 1897 it would draft conventions and present them to the Belgian Government. The Belgian Government would hold diplomatic conferences and they would deliberate the drafts and eventually adopt the conventions. This went on for a number of years.

However in 1948 the Intergovernmental Maritime Consultative Organisation (IMCO) as the IMO was called when it was established, was formed. In 1968 following the major oil spill from the Torrey Canyon of 1967 IMCO formed the Legal Committee of the IMO. Its task was to produce a convention which would deal with liability for damages caused by oil pollution caused by tankers. The CMI played a key role in the drafting of this first convention the International Convention on Civil Liability for oil pollution damage ("The CLC Convention") until its adoption on the 29th of November 1969.¹

In the meantime in 1964 the General Assembly of the United Nations approved the creation of the United Nations Conference on Trade and Development -UNCTAD, and in 1966, the General Assembly again approved the creation of the United Nations Commission on International Trade Law - UNCITRAL.

The CMI has since these dates enjoyed an excellent working relationship with all three organisations and others during which period to date it has continued to produce drafts of conventions

¹ A brief History - the CMI and its relationship with the IMO, the IOPC funds and other UN Organizations by Nigel H. Frawley [A-brief-History-FrawIye.pdf \(comitemaritime.org\)](https://www.comitemaritime.org/A-brief-History-FrawIye.pdf)

which have then been taken up either by the IMO, UNCTAD and UNCITRAL.

The relationship between the CMI and the IMO has always been and remains special. It was one of the first NGO's to be granted consultative Status by the IMO. This means that quite apart from the deliberation of conventions drafted by the CMI and taken up by the CMI, the CMI attends and takes part in the legal committee meetings at the IMO and contributes to the discussion and the work done by various working groups and committees.

However today I would like to share with you a real time example of UNIFICATION - one of the CMI's latest efforts in the unification of international maritime law which is none other than the very new Convention on the International Effects of judicial sales of ships.

This Convention on the International Effects of Judicial Sales of ships is hot off the press and was adopted by a Resolution of the General Assembly of the United Nations on the 7th of December of 2022, signed in Beijing in September 2023 and we are about to have a further secondary signing ceremony in Malta this very Wednesday at Verdala Castle under the Auspices of the President of Malta.

This Convention seeks to bring stability and certainty in international maritime trade so that when purchasers and their financiers purchase vessels free and unencumbered in judicial sales in country A the owner can trade his vessel and carry cargoes without fear of illegal arrests in Country B by the vessels previous creditors.; owners and financiers have the peace of mind that registrars of ships will delete the old owners and mortgages and register the new owners and new mortgagees. This is a perfect example of the unification of international maritime law.

Following finalisation of the Draft the CMI approached UNCITRAL with this project in 2017.

In 2018 Switzerland presented to the fifty first Commission Session at UNCITRAL the findings of a significant group of international maritime service providers who had gathered in Malta for a colloquium which culminated in overwhelming support for the Convention. The Commission accepted to add the project to its work programme, eventually assigning it to working group VI under the expert chairmanship of Prof. Beate Czerwenka.

Meetings were held between June 2019 and February 2022 and in June 2022 the Commission approved the Draft Convention. In December 2022 the General Assembly of the United Nations adopted the Convention and authorized a signing ceremony in Beijing.

The remarkable short period of time from the first meeting of the Working Group to the Convention's adoption - just over 3 years - was the result of a great deal of hard work on the part of many. As CMI our main task was to explain the *raison d'être* behind each and every article in the draft; however there were several issues raised by numerous delegations which had to be addressed. The process of debate and compromise characterised the discussions leading to consensus on the final text which is crucial if one is to achieve uniformity. Uniformity can never be achieved if the text of a Convention presents challenging legal hurdles to states in their own countries. That would be totally counter productive and would certainly not assist in the unification of international maritime law. Thus the *modus operandi* of UNCITRAL which is adoption by consensus is to be praised as playing a very important role in the unification of international maritime law.

During the deliberations there was one area which gave rise to significant concern by a number of delegations and which could have threatened the successful conclusion and adoption of the Convention. This regarded the notification of the judicial sale itself. A number of delegations felt that the list of notified parties was too restrictive. As a result a solution was devised in the form of a new article- article 11 - which provides for the "**Repository**". This article provides that both the notices of judicial sale as well as the certificates of Judicial sale must be sent to the Repository. During our deliberations, we thought that the best Repository would be the IMO who may be persuaded to provide an additional module to its already existing GISIS platform. This would mean that any person from any smart phone could at the push of a button on a 24/7 basis see whether or not a vessel was about to be sold in a judicial sale.

This idea was presented to legal committee 107 in December 2020 during which session we expressed our unconditional support to this idea stating that *this would be a perfect opportunity for two UN organs such as the International Maritime Organization and the United Nations Commission for International Trade Law to provide a solution to a matter*

*which has such important ramifications and effects on international shipping and international trade.*²

This is what unification of international maritime law is all about.

The legal committee 107 agreed to this and work on the creation of an additional GISIS module to host the notices of judicial sale and the certificates of judicial sale was started.

As a result of this, Article 11 now provides that the repository to whom all notices of judicial sales and certificates of judicial sales are to be presented is the IMO.

We have throughout this period had the full support of the past Director of Legal affairs Commander Fred Kenney, and its current legal Director Dr. Lost Simienska.

Secretary General Arsenio Dominguez himself dedicated a significant part of his speech at the opening of the CMI Gothenburg Colloquium only 2 weeks ago on the importance of the Convention on the International effects of judicial sales of ships and what an important role this plays for the international order of UNIFICATION and spoke with great enthusiasm on the role of the IMO as repository of the notices of judicial sales and certificates of judicial sales.

This entire judicial sales project is a perfect example of how the unification of international maritime law is achieved through maritime conventions

I will conclude by congratulating IMLI on how for 35 years it has been at the forefront in conveying the importance of unification to so many people all over the world.

Congratulations to you Prof. Martinez for having taken IMLI from strength to strength. I can see that under your energetic stewardship we can look forward with great confidence to the next 35 years.

Thank you very much indeed.

² EGG 107/18/2 Annex 3 page 21