

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

COMITE MARITIME INTERNATIONAL

NO. 1-2 - JANUARY / AUGUST 2014

## News from the CMI:

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- Minutes of the Executive Council meeting held on 15 June 2014 from 09h00 to 16h30 at the Atlantic Hotel, Hamburg, Germany
- President's report to the CMI Assembly
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- Minutes of the Executive Council meeting held on 17 June from 17h00 to 17h45 at the Atlantic Hotel, Hamburg, Germany

## News from Intergovernmental and International Organizations:

- **News from IMO**  
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## NEWS FROM THE CMI

### THE 2014 HAMBURG CONFERENCE, WITH BERLIN ADD-ON REPORT OF THE SECRETARY-GENERAL

The beautiful and historic Hanseatic port city of Hamburg and the warmth of its welcome, combined with an interesting and varied work and social programme, drew 292 delegates and close on 40 accompanying persons to the 2014 CMI Conference, co-hosted by the German Maritime Law Association (the DVIS).

After a busy working weekend for our ISCs and EXCO, a boat trip across the Alster Lake took delegates to the Anglo-German Club for a garden welcome reception under clear summer skies. CMI President Stuart Hetherington and DVIS joint President Klaus Ramming recalled that we were meeting 40 years after the last CMI conference was held in Hamburg in 1974 – then also at the Atlantic Kempinski Hotel, a maritime museum in its own

right. Present at the reception were Drs Herber and Kröger, who attended the 1974 conference. We were honoured to have CMI retired EXCO Hamburg stalwart Dr Thomas Remé with us also. And we enjoyed an interesting welcome address from Mr Ralf Nagel, the CEO of the German Shipowners' Association.

When the conference opened the next morning, the CMI President and DVIS joint president Dieter Schwampe's welcomes were followed by keynote speeches by Hubert Weis, Director General for Commercial and Economic Law, Federal Ministry of Justice and Consumer Protection, and by Thomas Rehder, President of ECSA.

The main focus of CMI 2014 Hamburg was the

CMI's Draft International Convention on Foreign Judicial Sales of Ships and their Recognition which had eluded finalisation at both Beijing and Dublin. The need for a CMI conference hot on the heels of the Dublin symposium of 2013 was vindicated by the adoption of the draft convention's text at the Assembly of the Comité in Hamburg on June 17<sup>th</sup> 2014. The Assembly was the culmination of many years of hard work by Prof Henry Li, Rapporteurs Jonathan Lux and Andrew Robinson, and the members of their IWG. In Hamburg there were energetic ISC sessions over the preceding weekend, followed by an all day conference session and a Plenary to settle the text. The Instrument was carried by 24 ayes and two abstentions. The President was fulsome in his thanks and praise for those who had brought this important instrument into being. The CMI will now embark upon a process to promote the draft's acceptance and adoption through appropriate international channels.

Outside the judicial sales debates, there were two main themes. The first theme (of which judicial sales took the lead) was *Ships in Hot Water* which saw discussions on debt, ship financing and refinancing, cross-border insolvency, and the need for harmonisation and reform of the laws relating to wrongful arrest of ships. The second, *Ships in Cold Water*, produced fascinating addresses on current issues under consideration by our Polar Shipping IWG – including a review of the application of UNCLOS in polar waters; the Northern Sea Route; the Polar Code now being developed by the IMO; and aspects of loadlines and civil liability in polar waters.

There was also an interesting miscellany of topics that did not quite fit into either theme: the liability of classification societies was revisited; there were presentations on legal issues and new German legislation dealing with the use of armed guards and private security on board ships as an anti-piracy measure; on ship emissions and the law; and there was an update on the Nairobi Wreck Removal Convention and the MLC, 2006. Issues of General Average law were debated over the weekend at ISC and during an update seminar session from Taco van der Valk. All in preparation for more work being done on GA reforms in the lead-up to next year's Colloquium and the CMI 2016 New York Conference.

The Young CMI group presented an afternoon of sessions and discussions around the complex topic of *The Degree of Fault – "Recklessly and with knowledge that damage would probably result"*. Unfortunately this again paralleled the Assembly, but an innovation of this year's conference was that all the 'interest' sessions were audiovisually recorded. The files are to be uploaded to the Hamburg conference website, and will in time be transferred to the CMI's home site.

This is being done as an experiment to try to address the almost insurmountable problem of overlapping presentations with other sessions at our CMI gatherings. We hope that being able to watch CMI presentations online will bring our work to a much broader CMI audience. (I would in due course appreciate feedback on this idea and I will let NMLAs know when the material has been uploaded.)

Let me make mention also of a most successful Berlin add-on which was attended by close on 100 delegates. The highlight was undoubtedly a session in one of the committee rooms of the Bundestag to which we were generously allowed access and given an address by Berlin Parliamentarian Stefan Evers. Here we also heard short presentations from Germany, Belgium, Brazil, Japan and Spain dealing with recent efforts to reform those countries' maritime laws. It was unanimously agreed that a similar session on Maintaining Maritime Laws should be a regular feature at CMI gatherings.

No commentary on the Hamburg conference would be complete without recognising the Comité's appreciation of the great efforts of the DVIS, its conference organisers, Brands Alive, The Atlantic Kempinski Hotel, and indeed their whole team. We also much appreciate the generous sponsorship of the German shipping industry and many Hamburg lawfirms. And, though I declared at the opening of the sessions that my main task was to ensure that there were demanding working sessions so that delegates did not have too much fun, I am pleased to say my enjoinder was not entirely successful. A reception at the magnificent Rathaus with interesting addresses Senator Schiedek, the Hamburg Justice Senator; a call at the International Tribunal of the Law of the Sea hosted by the President of the Tribunal; a dinner (with a World Cup opening game) at the Maritime Museum, and many other special features of Hamburg combined to make CMI2014Hamburg a memory that will live long in the hearts of those privileged to have been there.

At the splendid gala dinner in the magnificent blue-and-white Großer Festsaal of the Atlantic Hotel (in which, in much more sombre guise, we had held our working sessions) the DVIS Presidents, hosts Klaus Ramming and Dieter Schwampe, were invited to 'surrender the CMI colours' to the Comité. This they duly did with great aplomb – so that the Secretary-General could present the CMI banner to the Turkish delegation into whose care we have entrusted the 2015 Colloquium and Assembly. You may want to save the dates: CMI2015Istanbul: Welcome on Sunday evening 7th June, with working sessions 8th and 9th June and an add-on excursion on Wednesday 10th June. We at the CMI, and the Turkish Maritime Law Association hope to see you there.

JOHN HARE  
*Secretary-General*

**MINUTES OF THE EXECUTIVE COUNCIL MEETING  
HELD ON 15 JUNE 2014 FROM 09H00 TO 16H30 AT THE ATLANTIC HOTEL,  
HAMBURG, GERMANY**

Participating:

<i>President:</i>	STUART HETHERINGTON
<i>Past-President:</i>	KARL-JOHAN GOMBRII
<i>Vice-Presidents:</i>	GIORGIO BERLINGIERI CHRISTOPHER DAVIS
<i>Secretary-General:</i>	John HARE
<i>Administrator:</i>	Lawrence TEH *
<i>Treasurer/Head Office Director:</i>	Benoit GOEMANS
<i>Councillors:</i>	Tomotaka FUJITA Måns JACOBSSON Louis MBANEFO Jorge RADOVICH Andrew TAYLOR Dihuang SONG Dieter SCHWAMPE Alexander VON ZIEGLER

\* Absent from the meeting as he was involved in the ISC meetings taking place on Judicial Sales.  
In attendance: Anne Verlinde (by invitation).

*Welcome*

The President welcomed Councillors to the meeting, recording greetings to and reporting news of Nigel Frawley and his ongoing medical treatment. CMI's best wishes are with him.

1. *Approval of Minutes*

(a) *Dublin meetings on 29 September and 1 October 2013*

The Minutes of those meetings were duly approved and were signed by the President and the Secretary-General.

(b) *Confirmation of Resolutions passed on 27-29 November (re New York 2016) and November/December 2013 (CMI Officers/Committees).*

These Resolutions were duly confirmed and were signed by the President and the Secretary-General.

2. *Matters arising from Minutes and Resolutions referred to in paragraphs 1(a) and 1(b)*

Capt Kim of the Planning Committee has submitted a draft memo on the collision issues which he would like examined. The Planning Committee will report further on this issue during the ensuing year.

Kiran Khosla has been invited to prepare a memo outlining the concerns she has about increasing claims against shipowners for the debts of their charterers. Informal discussions were held between John Hare and Ms Khosla, and the matter will be

followed up post-Hamburg for reporting to next meetings.

The liability of classification societies was reopened for discussions at the Hamburg conference. See further comment in the minutes of EXCO meeting #2. The Secretary-General reported that Rosalie Balkin had accepted appointment as the CMI observer to the IOPC Funds, and that this appointment had been cleared with Jose Maura, Director of the IOPC Funds.

On the issue of criminality and of the protection of human rights on board ship (brought to the attention of EXCO by David Hebden) it was decided to refer the matter to Olivia Murray on the Fair Treatment IWG.

3.

(a) *Minutes of a meeting of Management Committee in Antwerp 16 and 17 March 2014*

The President reported on the useful meeting of the President himself, the Secretary-General, the Administrator, the Treasurer and Anne Verlinde, the newly appointed CMI Administrative Assistant, at the new offices of the CMI in Antwerp. The Minutes of that meeting were duly tabled and noted.

(b) *Matters arising from Minutes of Management Meeting (not on the Agenda for this EXCO meeting)*

(i) The Secretary-General reported that the

signed originals of all Resolutions of EXCO and of the Assembly would from now on be filed in a master file at the Antwerp office. Copies are then to be made available to EXCO and on the CMI website.

(ii) The Dublin database and the Hamburg database have been captured by Ms Verlinde and will be used for future CMI events. The Secretariat will look into constructing and maintaining a searchable database of NMLAs, Titulary and Consultative members to be available at least to EXCO members. The format of this database (Excel or Access) should allow easy bulk mailing to all classes of members by the Secretariat, and easy maintenance of changes.

(iii) The Secretary-General has been in touch with Prof Sturley on the possibility of a Travaux Préparatoire of the Rotterdam Rules. He has been informed by Prof Sturley and Prof Fujita that they are co-authoring a publication on the Travaux of the Rules. The CMI will maintain contact with them to assess if there is any possibility of joint publication so that the CMI can co-publish a volume as part of its series of Travaux.

#### 4. Finances

##### (a) *Treasurer's report including accounts / Audit Committee report / Budget for 2015*

EXCO considered two alternative budgets which had been prepared for discussion by the Treasurer – one with an increase in subscriptions in 2015, the other without. An increase of 10% for 2015 subscriptions would achieve a surplus of €1194. No increase would produce a deficit of approximately €18500. After considerable discussion it was decided that the Treasurer should recommend to the Assembly that the CMI should operate one more year on a deficit budget but that he should alert the Assembly that there will need to be an increase in subscriptions for 2016 in order to keep the CMI reserves to approximately €500000. Thereafter the CMI should aim to break even or make a modest surplus.

The Treasurer explained that we have over the last 15 years in fact achieved significant savings. If you apply an inflation factor over that period, the CMI has in fact this past year spent about half of the money spent per annum 15 years ago. The CMI built up reserves approaching €1m which was considered by the Audit Committee and EXCO to be too high. In a conscious step to reduce the reserves which had been built at the expense of NMLAs, the decision was taken to have a subscription 'holiday' and thereafter to reduce subscriptions. These were recognised at the time as temporary measures. In addition subscriptions for Titulary Members were done away with. With reserves now at an acceptable level, the CMI should be reverting to a policy where budgets should be estimating a small surplus

rather than a deficit. It was however thought that because of significant efforts to reduce expenses, there could be one last year with no subscription increases.

The Treasurer explained that these savings are to a large extent due to more efficient management of CMI and taking advantage of developments which have enabled more efficient management – digitising etc. Another saving comes from the reduction of EXCO actual meetings. Travelling is a large part of costs of CMI. One electronic meeting a year is efficient. Revenues have been much improved from a significant effort through Karl Gombrii and Chris Davis to recover bad debts.

The surplus reserve of €600K is invested in terms of the post 2008 policy that the CMI spread the investments over investment houses and across several industries. Most are with BNP Paribas, but the actual investments are spread across various countries.

The President has investigated the possibility of investing in, for example, Australia or other economies where a better rate of interest can be gained. However money laundering legislation would require CMI to be incorporated in other jurisdictions. The Treasurer also confirmed that the CMI could get better rates for longer term investments – like six years. But we would then be tied into a long term rate and could lose rather than gain. Higher rates of interest were usually tied to foreign exchange rate risks in the currencies that gave such higher rates. CMI policy has usually been to maintain finances in a single currency. Higher rates in other currencies presume increased currency risks. Presently all CMI funds are held in Euros except reimbursement funds in relatively small amounts in currencies where reimbursement is common.

The President enquired whether maybe half of the reserves should go into longer term investments. The Treasurer confirmed that the return remains 2 - 3 % even for three year terms, and considered it too limiting to invest longer term and that at these current low rates, the CMI is probably losing value from inflation.

There followed further discussion concerning the advantages and disadvantages of various investments including industry bonds, and the retention of investment advisers.

It was determined that further consideration needed to be given to this issue and Andrew Taylor and Måns Jacobsson undertook to look into investment policy further, and to report to EXCO.

The Treasurer reported cash at bank of €607000.

The Secretary-General then explained the Conference item figures in the budget against the actual Hamburg expenses for which he was maintaining a spreadsheet to enable him to keep track of concessions and costs falling to the CMI account. He explained the way in which the Hamburg PCO had been instructed to maintain three journals of the Conference costs: detailing the CMI expenses,

the Conference expenses and the DVIS expenses separately. He indicated that the exposure of the CMI for the Conference was in the region of €65000. This figure was likely to reduce because of the good attendance at Hamburg which should boost revenues. The figure includes the cost of EXCO members and the CMI business of the Conference.

*(b) Report of collection of outstanding subscriptions.*

Chris Davis tabled a report. He reported that the President has corresponded with the Russian MLA, and he is in correspondence with the Korean MLA. He was authorised to seek to enter into a deferred payment agreement for arrears. Spain has made proposals for a deferred payment of arrears which was tabled. This was agreed for sign-off by the President.

South Africa – John Hare was tasked to chase South Africa's arrears for previous years (their current subscriptions having been paid on time).

The arrears of other countries were reported and a further contact with those MLAs is to take place. It was agreed that EXCO recommend to the Assembly that expulsion process should commence for Pakistan and Bulgaria.

Costa Rica and Netherlands Antilles had both ceased to operate, and it was resolved to remove both from the CMI list of members.

*(c) Approval of nomination of Mal Meuldermans & Partners BVBA as auditor of the 2015 accounts.*

Approved.

*[The meeting was at this stage joined by members of the Turkish MLA – Prof Didem Light, Mr Surtaç Sayhan, and his daughter Babar Sayhan. EXCO was given a short presentation to confirm the offer of the Turkish MLA to host the CMI 2015 Assembly and Colloquium in Istanbul. The delegation was invited to make a presentation to the Assembly which would be asked to confirm the arrangements for Istanbul 2015 (see 10(a) below).]*

*(d) CMI officers' stipends*

*Secretary General*

The Secretary-General excused himself from discussions.

After discussion, approval was given for the Secretary-General's stipend for 2014 to remain at €12000 pa, increasing to €15000 pa for 2015.

*(e) The Treasurer's retirement.*

Benoit Goemans confirmed to the meeting that he had told the Management Committee meeting in March that he wished to retire with effect from the end of 2014. He confirmed that he (and the Belgium MLA) recommended to the CMI that Peter Verstuyft be appointed as Treasurer of the CMI. Mr Verstuyft is currently the CEO of the Belgian Shipowners Association. He has already reached

retirement age but has been asked by the Association to carry on initially to Dec 2014 and now until May 2015.

He confirmed that Peter Verstuyft remained willing to take the position. The President was mandated to continue discussions with Peter Verstuyft with a view to his taking over as Treasurer from early 2015. This will have financial implications for the CMI, and will involve moving the CMI administration from the Goemans office to the registered premises of the CMI which is already at the Belgian Shipowners. Anne Verlinde would then work with Peter Verstuyft at the new office.

Benoit Goemans undertook to prepare the 2014 accounts for presentation to the 2015 Assembly and that he (Benoit) would oversee the transition.

It was recorded that if Benoit Goemans indeed steps down at the end of December (in mid term) EXCO has the power to appoint a new Treasurer as an interim, to be confirmed at the Istanbul Assembly. Benoit Goemans will discuss with Peter Verstuyft and the President, and report further to EXCO at the virtual meeting in November.

*(f) Bookkeeper*

The Treasurer informed the meeting that the CMI employs the services of a bookkeeper @ €1500 pa and that this would continue into the appointment of his successor to assist with continuity and transition. These fees are recorded in the accounts as being part of the audit fees.

*(g) Archive*

Anne Verlinde reported that the archive has been removed from Wim Fransen's office. She has done a stocktake and inventory and is in the process of working out the costs of storage for the future.

A selection of CMI publications and products had been brought to Hamburg for sale.

*(h) CMI Charitable Trust*

*(i) Valuation of securities 12 May 2007*

*(ii) Retirement of Charles Goldie as Trustee.*

These items from the Charitable Trust were tabled for noting only. The approval of EXCO for the resignation of Charles Goldie was given, and it was reported that the approval of the appointment by the Trustees of Anne Fenech and Stuart Hetherington as Trustees was recorded as part of the Resolution for appointment of IWG and ISCs. EXCO noted thanks to Charles Goldie for his long service to the Trust.

*(i) Employment of Anne Verlinde*

Anne Verlinde excused herself from the meeting. The Treasurer reported that Ms Verlinde had been hired on a part-time basis for approx. 8 hours per week, and that we were tied to the agency until the end of August. There was consensus that she is doing an excellent job, and that in principle we would like to employ her once our contract with the

agency comes to an end. Terms are to be negotiated with Ms Verlinde by the Treasurer and Secretary-General and submitted to EXCO for approval. We should ensure that her contract accords with Belgian employment law.

(j) *Registration of seat of CMI*

This is now complete, and the CMI is officially located at its registered office.

5. *Members and appointments*

(a) *New member applications:*

(i) *Senegal*

The President reported that there was CMI history in relation to Senegal, which had fallen into arrears with subscriptions and been expelled in 2005. Their representative, Abubacar Fall, was in Hamburg for the Conference and has reported that their MLA has revived. Jean-Serge Rohart, Patrick Griggs and Karl Gombrii who had all been involved with the Senegal membership in the past have all agreed that it would be appropriate to recommend its readmission.

Agreed to recommend readmission of Senegal to the Assembly, at an annual subscription of €500. Louis Mbanefo to include Senegal in his portfolio.

(ii) *Romania*

The President reported that some of the members attended at Dublin and were registered for Hamburg, and that in the lead up to Dublin they were encouraged to increase the breadth of their membership and delay seeking membership of CMI. They had since increased their membership and activities.

Agreed to recommend admission of Romania to the Assembly at a subscription of €500. Alex von Ziegler to include Romania in his portfolio.

(iii) *East Africa Regional MLA*

The President, Secretary-General and Louis Mbanefo reported their dealings with the EARMLA. Their application for membership was considered excellent and there was consensus that the Regional MLA was a good development for the CMI.

It was agreed to recommend admission of EARMLA to the Assembly for membership at an initial subscription of €500.

Louis Mbanefo to include the EARMLA in his portfolio.

(b) *Provisional membership*

(i) *Theis Klauberg (Latvia)*

Dieter Schwampe reported meeting with Theis Klauberg, the applicant, in Dublin and offering him help from the German association. Both the President and Karl Gombrii had encouraged him to form an MLA. The application was approved for recommendation to the Assembly.

(ii) *Kwabena Asare (Ghana)*

The Secretary-General tabled a letter of application received from Kwabena Asare with whom he

and Louis Mbanefo had been corresponding and both considered the application to be in order. It was supported by Kofi Mbiah and resulted from contact made by the Secretary-General last year during his participation in a maritime seminar for judges. Mr Asare will be attending the Assembly. The application was approved for recommendation to the Assembly.

(c) *Consultative Member: Nautical Institute*

The Secretary-General reported on his dealings with the Nautical Institute and that we are already cooperating with their expert on Polar Shipping. Agreed that the Nautical Institute be recommended to the Assembly as a Consultative Member.

(d) *Titulary Members*

The following nominations have been timeously and properly received:

- (i) Francis Nolan
- (ii) Hal Watson
- (iii) Gregory O'Neill
- (iv) Benoit Goemans
- (v) Måns Jacobsson
- (vi) Gregory Timagenis

It was unanimously agreed that all the nominees be recommended to the Assembly for election as Titulary Members.

(e) *Expulsion of MLAs*

(i) *Guatemala*

The President reported that Guatemala had been sent a notice, in accordance with the Constitution, concerning possible expulsion for continued non-payment of subscription arrears. There having been no response, it was agreed that the Assembly be asked to expel Guatemala.

(ii) *Costa Rica*

Costa Rica – The President reported on an email received from Tomas Nassar confirming that the Costa Rica MLA no longer exists. It was agreed that Costa Rica will therefore be removed from list of members. The President has invited Mr Nassar to ascertain interest in setting up a regional MLA in Central America. Mr Nassar has now notified Jorge Radovich that he is willing to proceed. The Secretary-General will send Mr Nassar a copy of the application of East Africa as pro forma after clearing with them.

(f) *Resignation of Netherlands Antilles*

The President and Taco van der Valk have made efforts to obtain confirmation that the Netherlands Antilles MLA is no longer in existence. The former treasurer has confirmed that the Association is no longer a member of the CMI.

It was agreed to remove the Netherland Antilles from the list of members and to write off arrears.

(g) *Spanish MLA proposal*

As reported above, the President was authorised to sign the tabled agreement for a phased settlement of arrears.

(b) *Review of Norman Martinez (Honduras) provisional membership*

The President has been in touch with Norman Martinez who has relocated to Malta and has also had correspondence with Mr Cesar Garcia about the development of a Honduran or regional MLA. It was agreed that in the circumstances there was little point in the retention of his provisional membership. The President will communicate further with Mr Martinez.

(i) *Report on potential new members and current members*

The President's report was tabled. Alex von Ziegler reported on the position of the Swiss MLA. The MLA was part of the Swiss Shipping Association. That relationship has now ended. This involves no real change for the CMI. The new Swiss MLA has full autonomy. As the Swiss MLA is the successor to the old, the CMI is not required to do anything, other than to note this development.

6. *Work in Progress*

(a) *Acts of Piracy and Maritime Violence*

Andrew Taylor tabled an Update which will be put before the Assembly. There was nothing further to report.

(b) *Fair Treatment of Seafarers*

Olivia Murray's report was tabled for presentation to the Assembly by Kiran Khosla.

(c) *Recognition of Foreign Judicial Sales of Ships*

Henry Li's report was tabled for presentation to the Assembly, in concert with the outcome of the Plenary to be held at Hamburg to finalise the text of the instrument.

The appreciation and commendation of EXCO for Henry Li and his team were recorded.

(d) *Marine Insurance*

Dieter Schwampe's report on Marine Insurance for presentation to the Assembly was tabled. Prof Schwampe reported that the scope of the remit of the IWG is continually narrowing and that it now focuses on those aspects which are summarised on the last page of the report as:

- The recommendation that national governments require insurers to provide confirmation that cover provided is at least for minimum convention requirements,
- That the IMO be encouraged to extend the Bunker Convention financial security requirements to other convention security requirements;
- That the IWG does not proceed with attempts to harmonise time limits for direct actions against insurers at this stage;
- That the IWG be authorised by EXCO to put out a questionnaire to NMLAs on practices and procedures in the case of termination of insurance cover. Not all countries have systems in

place as to what to do with the notification of termination of cover, and ships continue to trade without cover although in most cases the insurer remains on risk for 3 months after termination. That consideration be given as to whether amendments to current PSC/MoU systems are in need of amendment in relation to this issue.

- It was agreed that the IWG prepare a short questionnaire to go out via the Secretary-General, but only after the text has been approved by EXCO.

Dieter Schwampe has submitted his resignation as Chair but confirmed that he will stay on the IWG. He proposed Joseph Grasso (USA) as his successor. Mr Grasso until recently chaired the MLAUS Marine Insurance Committee. The President suggested that the IWG be asked to discuss the proposed questionnaire with the new IMO Legal Committee Director, Fred Kenney. Especially as to where a questionnaire would lead if done.

The Secretary-General remarked that the appointment of Mr Grasso and the proposed contact between Mr Grasso and Mr Kenney would be good for cooperation with the USA in the lead-up to New York 2016. The issues could well be included in the programme for 2016, and replies to a questionnaire would inform those discussions.

The President was tasked to discuss the proposal that Mr Grasso take over the chairmanship of the IWG with the US MLA and if approved to invite Joseph Grasso to take the chair of the Marine Insurance IWG, to brief him on important issues about the content of CMI questionnaires, and invite him to contact Fred Kenny to assess IMO interest on these issues. The IWG is asked to report to the November EXCO virtual meeting, maybe with a memo and draft questionnaire. Dieter Schwampe offered to assist this process.

(e) *Cross-border Insolvency*

Chris Davis tabled the report on Cross-Border Insolvency for presentation to the Assembly.

(f) *Arctic/Antarctic Legal Regimes (now Polar Shipping)*

The Secretary-General reported that Nigel Frawley had tendered his resignation as Chair of the IWG, though he would like to remain on it. Prof. Aldo Chircop was recommended as his successor by Mr Frawley, and was running the IWG for the Hamburg conference.

Prof. Chircop's appointment was agreed and the composition of the IWG would be further discussed within the IWG and referred to EXCO for approval. It was suggested that the IWG should be expanded to include representation from the East and the deep South.

The Secretary-General proposed that the name of the IWG be changed to "Polar Shipping" to reflect its remit and scope better. This had the approval of the IWG. The name change was agreed.

Prof. Chircop's report for presentation to the Assembly was in preparation.

(g) *Review of the Rules on General Average*

The IWG report on General Average was not yet available for the EXCO meeting. Taco van der Valk would be presenting the report to the Assembly, and at a session of the seminar in Hamburg.

The appointment of Richard Cornah as Joint Rapporteur was agreed.

The President advised that Bent Nielsen had raised informally with him an issue that has arisen concerning cash deposits in GA where adjusters take cash deposits, and that in consequence there are security issues. The question has been asked whether there is any role the CMI can take in rationalising the way in which these GA security deposits are held – often in very large amounts. And often also in many security deposits. Discussion pointed out that the CMI would have to employ someone from the industry and it would involve risks/insurance. It was mentioned that the German inland waterways take security deposit, but for smaller amounts. Andrew Taylor expressed the opinion that this is a problem for the industry to solve, notwithstanding that we are keepers of the YAR. Adjusters need to solve this issue and perhaps insure as part of the costs of adjustment.

The issue was noted, and reservations expressed, but no decision was required of EXCO at this stage.

[Lunch adjournment 13h00 to 14h00]

(b) *Rotterdam Rules*

Tomotaka Fujita tabled the report of the Rotterdam Rules IWG for presentation to the Assembly.

The President reported on his meeting with IMO Legal Committee Director Fred Kenney. It appeared to the President after that meeting that the Rules are still far off from ratification in the USA and thus the President's campaign in the shipping press to promote the incorporation of the Rules by a Clause Paramount in contracts of carriage. (Subsequent information from the USA indicates that the Transmittal Package is now with the Secretary of State and ready to be sent to the White House.)

Tomotaka Fujita reported on the deliberations of the UNCITRAL working group on electronic commerce. This is mentioned also in the IWG report.

Karl Gombrii expressed the view that incorporation by Clause Paramount will require the support of the International Group and that to that end, the IWG needs to cooperate with the IG and the ICS to gather support for the Clause Paramount route. The President advised that he was in communication with individual Clubs and the International Group, but there is a lack of urgency in the Clubs to see the Rotterdam Rules comes into effect.

(i) *Offshore Activities*

The report of the Patrick Griggs as chair of the IWG on Offshore Activities was tabled for presentation to the Assembly.

*Offshore Activities - Pollution Liability and related issues*

A supplementary report was also received from Patrick Griggs dealing with the issue of liability and compensation for transboundary pollution from offshore exploration and exploitation activities. The report recorded the participation of the CMI observers at the IMO Legal Committee meeting in London in April 2014 and that the IMO had recommended bi-lateral and regional agreements be considered rather than international convention regulation. It recorded that all present at the Legal Committee had been of the view that further work needs to be undertaken. The CMI observers reported to the Legal Committee that the CMI had sent out a questionnaire, but that to date there has been limited reply. The IWG is to debate the issue further in Hamburg and to report further to EXCO.

(j) *Arbitration (Ad hoc IWG)*

No formal report of this IWG was tabled. An exchange of informative and helpful emails between Luc Grellet, David Martowski, Vincent de Orchis, Leo Kailas and Liz Burrell however was put before EXCO. The essence of this exchange was that "the CMI is uniquely suited to promote uniform international maritime arbitral practice and procedure, and that an important first step would be an impartial and expert review/comparison of the various fora". The President was asked to request Luc Grellet, Chair of the IWG, to let EXCO have a further report for November meeting to decide on the way forward.

(k) *Cape Town Convention*

The President tabled correspondence from ICS suggesting that it was indicated that the proposed protocol to extend the reach of the Convention to ships was not likely to proceed, at least at this stage. This confirms correspondence received by the President from Jose Faria, UNIDROIT Secretary-General on 25 February 2014 when he advised that UNIDROIT is gathering information on financing practices and advised that UNIDROIT would welcome any information that CMI could provide concerning financing practices in the maritime sector.

The Secretary-General reported on contact with Prof Roy Goode of Oxford who Chairs the Convention committee, confirming the CMI's interest in the Convention, yet making it clear that the CMI sees problems in extending the Convention to ship finance agreements. He hopes to meet with Prof Goode during future visits to Oxford.

In the circumstances, no decision was necessary to form a new IWG dealing with the Cape Town Convention, but EXCO will monitor future developments.

## 7. *Standing Committees*

(a) *Jurisprudence on Maritime Conventions*

The Treasurer reported on this project and especially on the involvement of Audile Plegat. EXCO was referred to the minutes of the March 2014



Management Committee meeting for further details. In essence, Ms Plegat had organised the distribution of a questionnaire, and had made a start with gathering submissions. She had worked with Admission (the CMI's web managers, now renamed Vanilla Brief) and website has been built though it is not accessible nor searchable at this stage. Ms Plegat's contract had not been renewed when it came to an end in March.

The Management Committee had discussed ways forward for this initiative and had resolved to approach Prof Stephen Girvin of the National University of Singapore to ascertain his willingness to drive the project from a Singapore base. Prof Girvin has expressed positive indications, but acceptable details now need to be discussed between Prof Girvin, the Singapore Port Authority who have offered to meet some administrative costs of the CMI Singapore regional office. The Administrator was tasked with taking this further, in consultation with Taco van der Valk who has provided valuable input to the initiative.

The Treasurer questioned whether the CMI D&O covers any errors that may arise in the database or its use. If not we should make provision for waiver of liability, perhaps by means of a login or tick box on the database site.

#### *(b) Implementing and Promoting the Ratification of Maritime Conventions*

Louis Mbanefo as Chair of this Committee, reported not much development since Dublin, though he introduced Patrick Griggs's email report on the resolution of the IMO to adopt its theme for 2014 as the ratification of existing conventions.

#### *(c) Young CMI*

The report of Taco van der Valk was tabled for presentation to the Assembly. It confirms the work of the Committee, culminating in the cooperation of Young CMI with the Young Maritime Lawyers Group (Belgian, British, Dutch, French and German young maritime lawyers) during the Hamburg Conference, when each were to attend the deliberations of the other. This was considered to be a valuable exchange.

Taco van der Valk was commended for his driving of Young CMI and its related projects such as the convening speakers at CMI events and CMI on LinkedIn.

#### *(d) Constitution Committee*

The President (at the suggestion of the Chair of the Nominating Committee) proposed an amendment to Article 15 aiming to tidy up the nomination process to be put before the Assembly.

The Treasurer as Chair of the Constitution Committee confirmed that the Committee is considering other more general amendments to the constitution which will be put before EXCO in time to promote at the 2015 Assembly. Some of these amendments seek to remedy the differences in the two language versions - French and English.

Amendments to Part 3 are also under consideration. The Secretary-General has suggested to EXCO that a more general and wider amendment of Article 15 may be appropriate for consideration by the Constitution Committee and referral in due course to EXCO and the Assembly.

The Secretary-General asked leave to join the Constitution Committee, which was agreed. It was suggested also that the Committee should invite Philippe Boisson to serve on the Committee or to nominate a substitute.

#### *(e) General Average Interest Rates*

A draft resolution for the Assembly was tabled as supplied by Chair Bent Nielsen.

It was agreed that Andrew Taylor and Taco van der Valk join Bent Nielsen on this Committee.

### *8. Monitoring MLAs by Executive Council*

The Secretary-General expressed the concern that perhaps there had not been as much contact between EXCO members and their NMLA charges as the guidelines in his document envisages. He will be encouraging EXCO members in the future to engage more actively with their NMLAs.

### *9. Publications*

Discussions ensued on the Yearbook and Newsletter; LinkedIn; the CMI website and the Handbook on Maritime Conventions.

Giorgio Berlingieri reported that the first thing to be done is the Newsletter. Mr Berlingieri confirmed that the Newsletters are not mailed any more.

He is busy on the 2014 Yearbook – and will update entries after Hamburg. These will then be sent to the CMI website. He will aim to have it published by the end of 2014 and for it to include papers from Dublin and Hamburg.

No progress was reported on the CMI Handbook on Maritime Conventions, and the Secretary-General was tasked with checking with Frank Wiswall, with whom he has recently been in contact. The issue of putting the full text of conventions on the CMI site was raised. The IMO has been opposed to this because it generates revenue, although the conventions are available on many websites.

### *10. Colloquium and Conferences*

#### *(a) Colloquium in 2015*

Chris Davis reported on his recent visit to Istanbul and gave a favourable opinion on the suitability and capability of the Turkish MLA to host the 2015 Colloquium. He recorded that the political situation in Turkey, though still volatile, was reportedly more stable. The President reported that Prof Kerim Atamer had pledged his support for Istanbul 2015, notwithstanding his previous expressed reservations. In the light of Chris Davis' observations, and in consequence of the excellent Turkish presentation given

earlier in the meeting, it was decided to proceed with the Istanbul Colloquium in 2015, and to ask the Assembly to confirm its decision in Dublin to convene the 2015 Assembly in Istanbul. The Turkish delegation was also invited to make a short presentation to the Assembly.

The Secretary-General was mandated to recommence discussions for Istanbul 2015 with the reformed Turkish organising committee.

#### *(b) Conference (2016) - New York*

The President reported ongoing discussions with the MLAUS organising committee, headed up by Vincent Foley. He reported that the New York Hilton is the hotel of choice at a probable rate of \$279. The President tabled the Hilton Confirmation Agreement setting out the basics of the CMI/ MLAUS agreement with the Hilton.

It had been decided to try to overlap MLAUS and CMI committee meetings during the Conference week and Chris Davis was tasked with putting the two working groups/committees together by inviting their chairs to make contact with a view to suggesting matters of mutual interest that may be put on the work programme.

The Secretary-General reported that the MLAUS had suggested that he attend the 2015 Spring meeting to help prepare the work programme and that he will make every effort to do so, enabling him to report fully to EXCO at its Istanbul meeting.

#### *11. IMO Legal Committee (Report by Patrick Griggs)*

The report of Patrick Griggs on his attendance at the 101<sup>st</sup> Session of the IMO Legal Committee was tabled and noted.

The report is detailed, and deals with the implementation of the HNS Convention; Fair Treatment; Piracy; Technical cooperation; the MLC; Places of Refuge; IMLI and the status of conventions.

#### *12. CMI Regional Office in Singapore*

The Administrator reported that the registration of the representative office of the CMI in Singapore had been renewed for a further year to 25 April 2015.

The President reported that there had been an approach from the UNCITRAL Regional Centre for Asia and the Pacific who wish to increase levels of coordination and cooperation with the CMI in Asia. It has singled out in particular the Rotterdam Rules as something on which it is keen to set-up a regional expert group. It has suggested that a meeting of the regional expert group could take place around the time of the Singapore MLA's yearly Asian Maritime Law Conference next spring. The Administrator outlined the content of a letter to this effect which he had received from UNCITRAL-RCAP and indicated that such an initiative would be in accord with and serve the continuation of the defined 'Activities' of the CMI Regional Office registration as defined by

the office of International Enterprise in Singapore in Attachment 30.

EXCO agreed that the Administrator may go ahead and open discussions with UNCITRAL-RCAP with a view to cooperating with UNCITRAL as envisaged, and to report further to EXCO.

#### *13. EU representation*

The Secretary-General reported that Vincent Power had agreed to act as CMI Rapporteur of EU Shipping Law. This was a very positive step towards the CMI keeping up with EU shipping law developments. The intention is that Mr Power will submit regular EU Shipping Bulletins to EXCO and that he would be asked each year to prepare a short summary report for the Assembly.

The Secretary-General was tasked with follow-up.

#### *14. CMI - The Future*

The report of Liz Burrell as chair of the Ad hoc Committee on the Future Role of the CMI was tabled in which it was reported that there had been seven telephone conferences between members of the committee. The committee is still deliberating the issues it has identified and is examining ways of collecting input from CMI members. It has no recommendations to proffer at this stage.

#### *15. Planning Committee*

The Secretary-General as chair of the Planning Committee reported contact between members since Dublin, resulting in Prof Michael Sturley joining the Committee. This was considered by the Committee to be a useful step in working with the MLAUS towards 2016 New York.

Only four members of the Committee are attending Hamburg, and thus a full meeting will not be possible during the Hamburg week.

The Committee has been in discussions with Prof Eric van Hooydonk in connection with his proposed project for the CMI to attempt a Restatement of the General Principles of Maritime Law. A copy of his proposal was tabled. It was agreed that the project could proceed, and that an IWG or an Ad hoc Committee should be established. The Secretary-General, Alex von Ziegler, Andrew Taylor and Tomotaka Fujita indicated willingness to serve. The view was expressed that there should be South American representation and that Prof Martin Davies should be approached to join the group.

The Secretary-General and Alex von Ziegler were tasked with setting up an initial committee, under the chairmanship of Prof van Hooydonk.

#### *16. D&O Insurance Summary of Policy*

The President tabled a summary of €1m cover negotiated from AIG for the CMI's Directors and Officers' Liability Insurance.

### 17. *IMLI and Ravenna Prizes*

There has as yet been no award of these prizes.

### 18. *IMO Prize*

There has been no award as yet.

### 19. *Richard Shaw Memorial*

The President tabled an email from the Institute of Maritime Law requesting a contribution towards an endowment in memory of Richard Shaw. After discussion in which it was reiterated that the loss of Richard was keenly felt by all in the CMI, it was considered not appropriate for EXCO to vote funds in this way.

EXCO wishes however to acknowledge the enormous contribution of Richard Shaw to the CMI, and it was agreed that the 2014 Yearbook should open with a photo and tribute to Richard. This was considered particularly appropriate because of Richard's almost invariable contribution to successive Yearbooks over many decades.

The CMI would then present Avril Shaw with a specially bound copy.

### 20. *Places of Refuge*

The President reported on exchanges he had had with the Secretary-General of the IMO arising from The *Maritime Maisie* incident in which the vessel was repeatedly denied a place of refuge. The President repeated the CMI's call for a convention, based upon the work of the IWG some years ago. As aide memoire, the President tabled the report of the CMI to the IMO Legal Committee in January 2009 with which the CMI draft instrument was submitted to the IMO.

Also tabled was the IMO's reply in which the Secretary-General of the IMO invited the CMI to bring the matter before the Legal Committee. This was duly done by Patrick Griggs as reported in his report (see para 11). It would appear that there was no resolve within the IMO Legal Committee to take the matter further.

### 21. *Elections*

#### (a) *Election of officers*

The report of the Chairman of the Nominating Committee was tabled. EXCO noted the recommendation of the Committee that the Assembly

- (i) Elect John Hare as Secretary-General
- (ii) Re-elect of Jorge Radovich as Executive Councillor
- (iii) Elect Ann Fenech as Executive Councillor.

#### (b) *Retirement of Måns Jacobsson*

The President thanked and commended Måns Jacobsson for his many years of dedicated service to the CMI, stating that it had been an honour and a privilege to serve with him. His service, drawing on

his background and history, has enhanced the CMI greatly. His efforts on the Audit Committee were particularly valued.

An acclaim and vote of thanks to Måns Jacobsson was unanimously adopted.

### 22. *Other business*

(1) The following correspondence was tabled and noted.

#### (a) *Francesco Berlingieri*

A letter from Prof Berlingieri thanking the CMI for the gift of a Waterford crystal lighthouse received in Dublin.

#### (b) *Dan Gunasekera*

A letter from Dan Gunasekera giving an update on the formation of an MLA for Sri Lanka and its proposed constitution.

(c) *Professor David Attard (IMLI) and IMLI E-News*  
Correspondence with IMLI relating to its election as a Consultative Member of the CMI.

#### (d) *Letter to IACS*

Correspondence with IACS relating to its election as Consultative Member.

#### (e) *Email from Patrick Griggs to Rosalie Balkin*

Correspondence between Patrick Griggs and Rosalie Balkin re IOPC Funds and IMO Legal Committee representation.

#### (f) *Black Sea Freight Forum 8-9 September 2014*

Invitation to attend the above forum.

(2) Indian MLA Change of Name

It was noted that the Indian Maritime Law Association was changing its name to avoid its name being too close to CMI.

(3) Review of the 50% discount of the registration costs of Consultative Members for CMI Conferences

The Secretary-General pointed out that the CMI Guidelines for Conferences para 5(e) suggests a 50% discount on the registration fee of representatives of Consultative members. However the guidelines do not specify what is to happen where more than one member of a particular organisation wishes to attend. There is at present no limit as to how many delegates from one Consultative member should be given this discount. While the Secretary-General realises that the CMI wants Consultative members to send delegates to CMI Conferences, he doubts that there is economic justification for the discount because Consultative members are corporate. He reminded the meeting that Consultative members pay no subscription fee. He suggests that the Guidelines be amended either to remove the discount, or to limit it to the first delegate should there be more than one. There is no discount provided for in the Colloquium or Symposium Guidelines.

It was decided that the Guidelines for Conferences be amended to limit the discount for Consultative members to one person.

- (4) Guidelines for the reimbursement of air travel costs of EXCO members

The Secretary-General tabled a set of Guidelines for EXCO air travel, which were approved with the addition proposed by Chris Davis that EXCO members be invited to give due credit towards air travel costs where their flights are used also for business travel.

- (5) Report of CMI Observer to IOPC Funds

A draft report from Rosalie Balkin had been submitted to the Secretary-General but was not ready for release. The Secretary-General will approach Ms

Balkin for a finalised version for publication in the Newsletter.

### *23. Next meeting of the Executive Council*

The Executive Council will meet for its second Hamburg meeting on 17 June 2014 and thereafter would convene a Virtual meeting in the week commencing 24 November 2014.

Meeting ended 16h20

STUART HETHERINGTON  
*President*

JOHN HARE  
*Secretary-General*

## **PRESIDENT'S REPORT TO THE CMI ASSEMBLY**

Although only 9 months has elapsed since we met in Dublin a lot seems to have happened in the intervening period.

### *Administrative Arrangements*

The retirement of our long serving Secretary-General, Nigel Frawley from that role at the Dublin Symposium added to the challenges which we were faced with since then. Happily John Hare, who was appointed on an interim basis at the Executive Council meeting immediately following the Assembly meeting in Dublin, has stepped into the role as if he had been born to it. Lawrence Teh has also risen to the challenge of the role as Administrator.

### *The Management Committee*

In order to expose the new team to all of the various issues that come before the Executive Council I decided to meet with the new Secretary-General and Administrator as well as the Treasurer, Benoit Goemans on 17 March. We met in the new registered office of the CMI at Ernest Van Dijckkaai, on the River Scheldt, in Antwerp. We met in a room in which a large cabinet has been situated to house the historical publications of the CMI. I urge anyone making a visit to that part of Europe to try and include a stopover in Antwerp, which has much to offer tourists, quite apart from the CMI connection. The matters which were discussed at the Management Committee Meeting will also be the subject of discussion at the Executive Council Meeting on 15 June 2014, immediately before the Conference and Seminar in Hamburg on the following days 16 and 17 June 2014. Some of them will be discussed further on in this report and also at the Assembly Meeting.

We were joined for a part of our meeting by Ann Verlinde, who had shortly before, on 3 March, been appointed as the head office secretarial assistant of CMI. Her appointment is on an interim basis while we satisfy ourselves that she has the right skills for the role and she satisfies herself that she is happy with the

role. We also met with Kris Meuldeimans, who has been the CMI auditor for the last few years and we all considered that it was extremely useful to meet each other and to exchange views on the manner in which the CMI accounts are prepared.

An added bonus from our time in Antwerp was social interaction with Professor Dr Erik Van Hooydonk who would be well known to many delegates. He has proposed a new working topic for the CMI which he has described in a paper as "Towards a worldwide restatement of the general principals of maritime law". That is an ambitious attempt to try and identify in modern times what are the universally accepted maritime customs and general principles constituted by the Lex Maritima.

The Management Committee Meeting concluded in a somewhat surprising manner, for all of us except Benoit, who announced that he would like to retire at the end of this year from the role of Treasurer. His period in office in that role has spanned four Presidents and four Secretaries-General. The Belgium MLA has proposed that the Director of the Royal Belgium Ship Owners Association, Peter Verstuyft, would be an appropriate replacement for Benoit. It is Peter who has permitted the CMI to use the Royal Belgium Shipowners Association as its registered office and to hold meetings in those premises. He is currently negotiating to retire from that role at the end of this year. He would be in a position to fulfil the role of Treasurer from that building and (assuming that Anne Verlinde continues to be employed by the CMI after her trial period of 26 weeks) work with her in that building. Unless MLAs have a different view which can be expressed at the Assembly, my proposal is that the Executive Council, if they are so inclined, appoint Peter, once he confirms that he is available for the role, pursuant to its power under Article 18g) of the Constitution, to make him interim Administrator at the beginning of next year.

Finally in relation to the Management Committee Meeting we were all entertained by the board of the Belgium Maritime Law Association, after the meeting,

which was a most convivial occasion and our thanks go to Karel Stes and his colleagues for making our visit so enjoyable.

#### *Finances*

The accounts were not available at the time of writing this report and will be sent separately.

#### *Work projects of the CMI*

There will be reports at the Assembly Meeting of the activities of the IWGs since Dublin. I am aware that considerable work was carried out by the IWG dealing with the Review of the Rules on General Average and I would like to thank Bent Neilsen and Taco Van der Valk for all the time they have devoted to this project since we last met. As you know we are working towards finalisation of this project at the New York conference in 2016.

Henry Li and his team on the IWG dealing with Recognition of Foreign Judicial Sales of Ships have also put together a considerable volume of materials to assist delegates at the meeting in Hamburg where there will be a meeting of the International Sub-Committee over the weekend prior to the Conference and business sessions and a plenary session, at which it is hoped that the Instrument they have been working on will be completed.

Work has also continued in many of the other IWGs and as usual we all owe a great debt or gratitude to the chairs and rapporteurs of those working groups.

#### *Jurisprudence Database*

Ms Audile Plegat was employed by the CMI for six months in order to commence work on gathering together a team of people from around the world and with them to identify relevant maritime cases in the jurisdictions to be summarised and placed on the database on the CMI website, as well as working with website consultants to produce a structure for that database. We will be discussing at the Executive Council Meeting how we can build on the work that she commenced and may possibly be able to inform you further about this in Hamburg. The work, as ever, will rely primarily on volunteers in the jurisdictions of the National Maritime Law Associations and if you have not already done so I would be grateful if you would notify me, the Secretary-General and/or the Administrator of the person or persons in your jurisdiction that you want to involve in this process.

#### *D&O Insurance*

In my report to you at Dublin I was unable to confirm that we now had in place D&O Insurance. I am happy to say that is now in place. I have prepared a summary of its principal provisions for the Executive Council which I would be happy to provide to anyone interested in its contents. Similarly I would be happy to provide a copy of the policy wording to anyone who is interested. I can confirm that the annual premium is Euro 1584.13, The policy is underwritten by AIG.

#### *Communication with NMLAS*

In my report last year I identified NMLAS who have provided the CMI with email addresses for their membership or with a single point of reference for sending correspondence and the like directly to members of NMLAs (they were Argentina, Australia and New Zealand, Belgium, Brazil, Bulgaria, Canada, Denmark, Dominican Republic, Germany, Italy, Norway, Panama, Switzerland, Turkey and the USA). Since then I think I am right in saying no further NMLAS have provided us with the email addresses of their members. Could I urge you to do so as it does provide your members with a very real point of contact with the CMI, which might otherwise be lacking in respect of those members who do not attend CMI meetings. It may also be appropriate for those NMLAS who have previously provided us with the contact details of their members to resend the details in case (as would seem be likely to be) there have been changes in the membership or the membership's contact details.

#### *Nominating Committee*

As you know from last year's Assembly meeting Bent Nielsen stood down from chairing the Nominating Committee which he had been doing since 2004. Johanne Gauthier has taken over that role and I am very grateful to her to for doing so. There is a proposal at the Assembly meeting to amend the Constitution which Johanne and I both feel will improve the process. Essentially it is intended that Johanne will invite NMLAs to inform her of any candidates that they wish to put forward for a position on the Executive Council or as an officer of the CMI before she seeks the comments of the NMLAs on the candidates who have been proposed. This is a simple amendment which we consider will benefit the election process.

#### *Retirements*

As previously mentioned Benoit Germans has informed us that he would like to retire from his role as Treasurer at the end of the year. Benoit, (and his father before him) has served the CMI extremely well for a very long time. There are not many lawyers who are sufficiently numerate to take on the role as Treasurer of such a significant organisation. Benoit, with his pie charts and other aids to understanding the status of our accounts, has entertained us and informed us annually at Assembly meetings and has served on the Executive Council where the same degree of good sense has informed and benefited that body also. We owe him a huge debt of gratitude. We often underestimate the amount of voluntary time officers of the CMI who are also busy practitioners (often in small legal practices) devote to the CMI. Another member of the Executive Council retires at the Assembly meeting in Hamburg. After he had ceased his onerous duties running the IOPC Funds, Mans Jacobsson was elected to the Executive Council. His advice and interventions at Executive Council

and Assembly meetings (not forgetting his invaluable work on the Audit Committee) has been considerable to both me and my predecessors that he has served under on the Executive Council. His familiarity with the world of shipping and also the international bureaucracies and industry representatives that are involved in our industry has been invaluable to the Executive Council. He continues to write elegant and informative papers on a range of topics, particularly

oil pollution, in which his expertise is unparalleled. We will miss his sunny disposition and intelligence on the Executive Council but I trust he will continue to be involved with the CMI for many years to come.

STUART HETHERINGTON  
*President*

5 May 2014

**MINUTES OF THE ASSEMBLY MEETING  
HELD ON 17 JUNE 2014 AT 14H30 AT THE ATLANTIC HOTEL,  
HAMBURG, GERMANY**

– *Welcome*

President Stuart Hetherington welcomed all delegates present.

Attending:

*Officers of the Comité Maritime International*

Participating:

<i>President:</i>	STUART HETHERINGTON
<i>Past President:</i>	KARL-JOHAN GOMBRII
<i>Vice-President:</i>	GIORGIO BERLINGIERI
	CHRISTOPHER DAVIS
<i>Secretary-General:</i>	JOHN HARE (taking minutes)
<i>Administrator:</i>	LAWRENCE TEH
<i>Treasurer/(Head Office Director):</i>	BENOIT GOEMANS
<i>Councillors:</i>	TOMOTAKA FUJITA
	MÅNS JACOBSSON
	LOUIS MBANEFO
	JORGE RADOVICH
	ANDREW TAYLOR
	DIHUANG SONG
	DIETER SCHWAMPE
	ALEXANDER VON ZIEGLER

*Member Associations*

Member associations were duly represented by delegates listed in the Attendance Register attached to these minutes (Annex A).

1. *Report of the Credentials Committee*

Chris Davis and Benoit Goemans reported that the Assembly had been properly convened with notice of the Agenda as tabled, that a quorum of member associations was present, and that, in terms of the Constitution, all member associations represented were entitled to vote.

2. *Memorials*

The President advised the Assembly of the passing of the following distinguished members of the CMI

family, and asked all to stand in a moment of silent tribute.

- (a) Richard Shaw (Member *Honoris Causa*)
- (b) Niall McGovern (Honorary Vice-President)
- (c) S Venkiteswaran (Venki) (India MLA)
- (d) Hidetaka Moriya (Japan MLA)
- (e) Sergio Turci (Italy MLA)

The President read a note prepared by Francesco Berlingieri concerning Niall McGovern and his service to the CMI and Patrick Griggs shared his memories of Richard Shaw and reminded delegates of his significant contribution to the work of the CMI.

3. *Approval of the Minutes of the Assembly held in Dublin on 1 October 2013*

The Secretary-General tabled the minutes of the meeting of the Assembly held in Dublin on Ireland on 1 October 2013 which were duly adopted, and signed by the President and Secretary-General.

4. *Matters arising from Minutes of the Assembly held in Dublin on 1 October 2013*

There were no matters arising other than those to be dealt with in the Agenda.

5. *Report of the President*

The President tabled and delivered his Report which was duly adopted.

In his verbal report, the President made mention of the Management Committee meeting held in Antwerp in March and the wish of Benoit Goemans to retire as Treasurer of the CMI during the ensuing year. The President recalled the enormous contribution made to the CMI by Benoit Goemans (and his father before him) over decades, and that the CMI owed Benoit a "huge debt of gratitude".

He also confirmed the retirement of Måns Jacobsson from the Executive Council, remarking that the Executive Council "will miss his sunny disposition and intelligence", and thanked him for his considerable contributions to the work of the CMI. The President also reported on the engagement of Anne Verlinde to work in the Antwerp office and her attendance in Hamburg. The President also referred to the need for MLAs to provide contact details of their membership (or identify a single recipient) for direct mailings by the CMI from its website.

6. *Finances*

(a) *The Treasurer's report for accounts year ended 31 December 2013*

The Treasurer presented his report of the accounts of the CMI for 2013.

Income for 2013 was €212 671 against expenditure of €224 554 giving a deficit of €11 883 for the year, in line with the then financial policy of reducing reserves considered to be greater than required. The Treasurer recorded a significant drop in expenditure for the year, due in part to the absence of secretarial assistance during the year under review and also attributable to digital era savings - and the generous waiver by then Secretary-General Nigel Frawley of his stipend for 2013.

He reported further that 2013 reserves closed at €601635.

Adoption of the Treasurer's report was proposed by Australia/New Zealand, seconded by Ecuador, and approved by show of hands.

(b) *Report of the Chair of the Audit Committee*

Måns Jacobsson tabled and presented the report of

the Audit Committee, in the absence of the Chair Liz Burrell.

He explained that the Audit Committee examines the audit conducted by the CMI's appointed auditors and conducts, between its members, in depth discussion of the auditor's report. Owing to geographic separation, these discussions are done by telephone.

Mr Jacobsson commended the Treasurer for his handling of CMI investments in the turbulent market of the past few years. He has played safe, without risk to the CMI.

He confirmed that the CMI has reduced reserves as decided, gradually. Last year (2013) it was said we should aim again for a modest deficit budget. It was however decided that the CMI could operate on a modest deficit for a further year (2014). The Audit Committee now feels that reserves have been brought down to a reasonable level, and that the CMI should thus aim for future years (2016 and beyond) for a balanced budget.

The Audit Committee recorded its full confidence in the Treasurer, and noted the fact that he has decided to retire, with acclaim for his considerable efforts for the CMI over many years.

The Report of the Auditors was adopted with no dissent, by show of hands.

(c) *Budget update for 2014 and Budget for 2015*

The Treasurer pointed out to the Assembly that the Constitution requires the Treasurer to prepare budgets for the current year (2014) and a budget projection for the next year (2015). As Assemblies are often conducted in the middle of the CMI financial year, it is appropriate in mid-year to review the estimated budget for the current year against the actual figures of the first half of that budget year.

The Treasurer tabled and presented an updated 2014 budget reflecting a projected deficit of €46 478, and a projected budget deficit for 2015 (without increase of subscriptions) of €18 453.

The Secretary-General informed the Assembly that he had submitted to EXCO a detailed accounting of the actual exposure of the CMI for concessions and costs of the Hamburg Conference. The total exposure, including EXCO and CMI speakers' registration, travel and accommodation costs, was €66 896. This figure was then used by the Treasurer to adjust the 2014 budget estimates for the above line items. The Secretary-General expressed the hope, without guarantee, that the excellent attendance at and the most generous sponsorship of the Hamburg Conference may result in a reduction of the CMI Hamburg expenses, it having been agreed with the DVIS organising committee that the total revenues of the Conference will be examined post-Conference in the hope that the Conference budget may be able to absorb a greater share of the CMI expenses. Nevertheless it was considered proper to update the 2014 budget in respect of Conference-related expenses from estimates made in Dublin to actual exposure now known.

*(d) Subscriptions for 2015*

The Treasurer expressed the clear view of EXCO and the Audit Committee that the CMI should, for the 2015 year, be aiming for a balanced budget, and that this could only be achieved (given the significant reduction of costs of administration already achieved) by an increase in subscriptions from 2016. Notice was therefore duly given to the Assembly that there would be an increase in subscriptions proposed for approval by the 2015 Assembly.

EXCO will need to decide the level of subscriptions to recommend to the Assembly, in the light of the above projected deficit of €18453 if subscriptions are not increased. EXCO had discussed at its Hamburg meeting whether it should propose a subscription increase to this meeting of the Assembly. It was decided that the present level of reserves allow a continuing (and increased) deficit for the 2014 year, and that the 2015 Assembly needs to receive proper notice of proposed increases.

The Treasurer confirmed that the Early bird subscription payment discount for 2015 would be 2,5%. In response to a query from the MLAUS, he confirmed that this discount had been reduced from 5% to 2,5% which will result in a small increase in subscription revenue during 2015.

Adoption of the Treasurer's report was proposed by Ireland, seconded by Australia/New Zealand, and adopted by a show of hands.

The President thanked the Treasurer for his considerable efforts in relation to the budget.

*(e) Report on collection of outstanding subscriptions*

Chris Davis reported progress in the collections of arrears, and that older outstanding subscriptions have continued to decline as a result of negotiating settlements with NMLAs and writing off unpaid contributions from expelled NMLAs. About a dozen defaulters remain however from 2012 and earlier, and will continue to be followed up.

The President commended Chris Davis and Jorge Radovich for their continuing efforts.

*(f) Approval of the Nomination of Der Mol Meuldermans & Partners BVBA as auditors for the 2015 accounts*

Proposed by Greece, seconded by Switzerland and carried by show of hands.

*(g) CMI Charitable Trust*

Patrick Griggs tabled the report of the CMI Charitable Trust on behalf of Tom Birch Reynardson, who was unable to attend the Conference, for noting by the Assembly.

Mr Griggs notified the Assembly that the Trust had €457187 in investment which for the past year has produced a return of 6,86%.

Mr Griggs confirmed the resignation and acknowledged the contribution of Charles Goldie as Trustee over many years, and announced that Stuart Hetherington and Ann Fenech had been appointed Trustees.

*7. Members:*

*(a) New NMLA Members*

Three new members were introduced by the President for election as members of the CMI. The President confirmed that the Executive Council had found that the applications were in order, properly supported in each case by documentation demonstrating them to be in accord with the pre-script of the Constitution:

*(i) Senegal*

Accepted by acclamation

*(ii) Romania*

Accepted by acclamation

*(iii) East Africa*

Accepted by acclamation

*(b) New Consultative Member*

The Secretary-General proposed the application for Consultative Status of the Nautical Institute, which was recommended by the Executive Council, be accepted. He indicated the mutual benefit that such membership should inure for both the CMI and the Institute. He confirmed that following contact between him and the Director of the Nautical Institute earlier in the year, cooperation between the CMI and the Institute was already in place.

Accepted by acclamation.

*(c) Titulary Members/Nominations*

The President reported the receipt of applications by MLAs for Titulary Membership which had been considered and approved by the Executive Council. The following distinguished persons were elected by acclamation as Titulary Members

*(i) Francis Nolan (USA)*

*(ii) Hal Watson (USA)*

*(iii) Gregory O'Neill (USA)*

*(iv) Benoit Goemans (Belgium)*

*(v) Måns Jacobsson (Sweden)*

*(vi) Gregory Timagenis (Greece)*

*(d) Expulsion of MLAs*

The President confirmed that in pursuance of a decision taken by the Assembly at Dublin, Guatemala had been given due notice that continued non-payment of subscriptions due would result in its expulsion from the CMI at this Assembly. No payment or contact having been received, the President, with regret, moved for the expulsion of Guatemala.

The proposal was then carried by show of hands.

*(e) Provisional membership*

The President reported that two applications for Provisional Membership had been received and considered by the Executive Council, who recommended that approval be given by the Assembly.

*(i) Theis Klauberg (Latvia)*

Carried by a show of hands, and congratulations offered to Mr Klauberg who was attending the Conference.



(ii) Kwabena Asare (Ghana)

Carried by show of hands, and congratulations offered to Mr Asare who was attending the Conference.

(f) *Proposed expulsions*

The President informed the Assembly that two NMLAs were in long term and continuing default and invited the Assembly to resolve to place them in line for expulsion at the 2015 Assembly, neither of them having responded to correspondence in the past or participated in the CMI for some years.

Dr José Modesto Apolo Teràn (Ecuador) asked for an explanation of the process of expulsion. He enquired whether if the default is perhaps evidenced by unanswered letters, could there be valid reasons such as misdirection of mails? The President explained that the consequence of the resolution to place an NMLA in line for expulsion is that a final demand letter is sent to the defaulter, notifying them of the motion to expel for continuing non-payment. But before this step, numerous attempts would have been made by the subscription collection committee of Chris Davis and Jorge Radovich (and Karl-Johan Gombrii in the past), to make contact and ascertain if the defaulting NMLA has payment problems or are perhaps defunct. Those who answer the CMI's final demands are at liberty to negotiate a settlement of their outstanding account for good reasons given. The CMI is always open to reasonable discussion, and the process to expel is the end of the line where no other alternatives present themselves.

The President then moved for expulsion proceedings be commenced against

- (i) Pakistan; and
- (ii) Bulgaria

for resolution by the 2015 Assembly in the absence of their debts being paid.

Carried by a show of hands.

## 8. *Amendments to the Constitution*

The President tabled and proposed an amendment to Article, 8(d) and 15 of the Constitution.

The import of the amendments were, in relation to Art 8, to make reference to the changed description of the Treasurer to "Treasurer and Head Office Director"; and in relation to Art 15 to tidy up the nomination process to require the Chair of the Nominating Committee first to ascertain whether Councillors eligible for re-election are available, and whether NMLAs wish to propose any candidate for possible nomination by the Nominating Committee before the Nominating Committee seeks the views of NMLAs on candidates. The time limits for responses are also changed.

Dr José Modesto Apolo Teràn (Ecuador) questioned the process adopted by the Nominations Committee in naming only one name per vacancy, because this makes it appear there can be no vote in the Assembly.

The Secretary-General responded by confirming that nomination from the floor was always possible, upon due notice given in terms of the Constitution, and that in such event the Assembly would be invited to vote upon competing candidates. However he acknowledged that the nomination and election process needs in present times to be (and be perceived to be) fully transparent and that, in an attempt to address undoubted concerns and perceptions, he has submitted to EXCO a more general and wider amendment of Article 15 for consideration by the Constitution Committee and referral in due course to EXCO and the Assembly.

The Secretary-General had asked leave to join the Constitution Committee, which was agreed by EXCO at its Hamburg meeting.

The amendment as tabled was proposed by Argentina, seconded by Belgium and carried by show of hands.

## 9. *Work in Progress*

The President invited reports from the Chairs of CMI International Working Groups and Standing Committees. Reports were duly tabled and presented thus:

(a) *Acts of Piracy and Maritime Violence*

Andrew Taylor tabled and presented a piracy update, reporting a continuing drop in Somali piracy, but a worrying increase in piracy of a more violent nature in the Gulf of Guinea. He reported the increasing use of GUARDCON as the industry standard for on board security, which has had 100% effectiveness in warding off attacks. But Mr Taylor echoed the caution of the IMB that there can be no room for complacency.

(b) *Fair Treatment of Seafarers*

Kiran Khosla tabled and presented Olivia Murray's report on the Fair Treatment of Seafarers, recording that Kate Lewins had joined the IWG. Ms Khosla reported observer attendance at the 101<sup>st</sup> Session of the Legal Committee of the IMO and efforts there to encourage the IMO to promote implementation of the Fair Treatment Guidelines. The report outlined current work, including continuing cooperation with Seafarers' Rights International in which the CMI is involved with a joint project to ascertain and encourage more widespread acceptance of the Fair Treatment Guidelines by the use of questionnaires and direct enquiry.

(c) *Recognition of Foreign Judicial Sales of Ships*

Chair Prof Henry Li reported the outcome of the CMI Plenary session held before the Hamburg Assembly. He recorded that after debate, the Plenary had adopted the text of the Draft International Convention on Foreign Judicial Sales of Ships and their Recognition. Prof Li was invited by the President to propose the text of the instrument for adoption by the Assembly.

The proposal was thus made by China and seconded by Australia/New Zealand. Put to the vote, there were 23 acceptances - from the NMLAs of Argentina, Australia/New Zealand, Belgium, Canada, China, Democratic Republic of Korea, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Malta, Netherlands, Nigeria, Norway, Spain, Sweden, Switzerland, Turkey, United Kingdom and abstentions from the United States (who indicated that their delegation declined to vote because they had no mandate from their MLA board to vote, but that they would recommend acceptance to their board, the USA delegates present indicating that they were personally in favour of the instrument), Brazil and Poland. There were no votes against.

*[Subsequent to the Assembly meeting, the President of the MLAUS has confirmed to the Secretary-General that the board of the MLAUS, at its August 2014 Seattle meeting, resolved to support the adoption of the instrument. This vote in favour, brings the total acceptances of the draft to 24, with two abstentions.]*

The President commended Prof Li and his team for the enormous amount of work done to arrive at the adoption of the text of the draft convention, and this acclaim was echoed by all present.

#### *(d) Marine Insurance*

Dieter Schwampe tabled and presented the report of the Marine Insurance IWG. He reported that the scope of the remit of the IWG is continually narrowing and that it now focuses on only four aspects – summarised on the last page of the report as including:

- The recommendation that national governments require insurers to provide confirmation that cover provided is at least for minimum convention requirements;
- That the IMO extend the Bunker Convention financial security requirements to other convention security requirements.
- That the IWG does not proceed with attempts to harmonize time limits for direct actions against insurers at this stage.
- That the IWG be authorised by EXCO to put out a questionnaire to NMLAs on practices and procedures in the case of termination of insurance cover. He reported that EXCO had agreed that the IWG proceed with such questionnaire, and that consideration be given as to whether amendments to current PSC/MoU systems are in need of amendment.

#### *(e) Cross-border Insolvency*

Chris Davis tabled and presented the report of the Cross Border Insolvency IWG and reported that the IWG had held discussions in Hamburg. Work on the topic, which remained relevant in international shipping circles, has continued. There has been an evaluation of the 15 replies received on the May 2012 Questionnaire, and the IWG is now reviewing

the best way forward to promote reform and harmonisation of law and international practices, and will report further to EXCO.

#### *(f) Polar Shipping (formerly Arctic/Antarctic Legal Regimes)*

Aldo Chircop, newly appointed Chair of the IWG, presented his report, paying tribute to Nigel Frawley, his predecessor, who has fortunately agreed to remain on the Group. The IWG held meetings in Hamburg, and members of the group presented sessions on certain aspects of Polar Shipping. The ongoing work of the IWG is outlined on the annexure to Prof Chircop's report. Its focus includes 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 applicability to polar environments; and an evaluation of pollution liability regimes applicable to polar regions.

The President thanked Prof Chircop for having taken over the Chair of the IWG, and for the most interesting and informed presentations on polar shipping at the Hamburg Conference.

#### *(g) Review of the Rules on General Average*

Taco van der Valk presented the report of the IWG on General Average, which had been the subject of a more detailed report at a session during the seminar in Hamburg.

#### *(b) Rotterdam Rules*

Tomotaka Fujita as Chair, tabled and presented the report of the IWG on the Rotterdam Rules. He reported that there have been three ratifications – Congo, Spain and Togo. He reported that there are moves afoot in other countries to ratify, including some European countries.

Prof Fujita reported further that the African regional economic community (CEMAC) has used the Rules as a model law and incorporated the terms of the Rules into the CEMAC Merchant Marine Code. Prof Fujita had heard also that the Rules were now “on the USA Secretary of State's desk” which was perhaps an indication of some movement of the Rules in the USA.

The report of the IWG makes reference also to the UNCITRAL Working Group IV on Electronic Commerce on which the CMI has been represented by observers Alexander von Ziegler in Zurich and Messrs Foley and Nolan in New York.

#### *(i) Offshore Activities - Pollution Liability and related issues*

Patrick Griggs, Chair, tabled and presented the report of the IWG on Offshore Activities. The activities of the IWG have focussed mainly on the questionnaire sent out to NMLAs in July 2013 to which there have to date been 17 replies. Mention was made of the precedent of the bilateral agreement

between Mexico and the USA which may serve as a useful precedent for the CMI. Mr Griggs referred the Assembly to the publication of an IDDRI study entitled “Seeing beyond the horizon of deepwater oil and gas: strengthening the international regulation of offshore exploration and exploitation” which will be of great use to the CMI. Reference was also made to the CMI observations at the 101<sup>st</sup> Session of the Legal Committee of the IMO at which issues relating to transboundary pollution from offshore activities was raised.

A supplementary memo was also tabled by Chair Patrick Griggs. The report recorded the participation of the CMI observers at the IMO Legal Committee meeting in London in April 2014 and that the IMO had expressed a preference for bi-lateral and regional agreements rather than international convention regulation. It recorded that all present at the Legal Committee had been of the view that further work needs to be undertaken. The CMI observers reported to the Legal Committee that the CMI had sent out a questionnaire, but that to date there has been limited reply. In his report to the Assembly Patrick Griggs also referred to his perception that industry may be coming round to the view that a voluntary regime (similar to TOVALOP and others) may be necessary.

#### *(j) Arbitration*

Luc Grellet as Chair of the ad hoc Working Group on Arbitration delivered a report from the floor. He referred to exchanges between himself, Vincent de Orchis, Leo Kailas, Liz Burrell and David Martowski which had been put before EXCO. The essence of this exchange was the conclusion that “the CMI is uniquely suited to promote uniform international maritime arbitral practice and procedure, and that an important first step would be an impartial and expert review/comparison of the various fora”. Luc Grellet confirmed that his Committee would be working further considering the matter, and would report to the November meeting of the Executive Council.

### *10. Standing Committees*

#### *(a) Jurisprudence on Maritime Conventions*

Taco van der Valk reported that this project has been on hold since March but that discussions were under way to determine the best way forward. EXCO had resolved not to renew the contract of Ms Audile Plegat when it expired in March 2014. Ms Plegat had developed good contacts with a number of MLAs, assembled some cases, and carried out an investigation as to the most appropriate means to reconstruct the data base on the website, including the significant collection of judgments prepared by Prof Francesco Berlingieri which had been handed over to CMI and is now on the website. Issues under debate concern whether the database is formatted so that it becomes fully searchable, and whether English casenotes should be added.

Original texts are in their language of source.

The Secretary-General reported that the Management Committee had discussed ways forward for this initiative and had resolved to approach Prof Stephen Girvin of the National University of Singapore to ascertain his willingness to drive the project from a Singapore base. Prof Girvin (who was attending the Hamburg proceedings) has expressed positive indications, but acceptable details now need to be discussed between him and the CMI. The Administrator has been asked by EXCO to take this further, in consultation with Taco van der Valk.

#### *(b) Promoting Ratification of Maritime Conventions*

Deucalion Rediadis as Rapporteur of this Committee reported that the CMI awaits responses to the questionnaire sent out during the past year and that once responses are received, an analysis will be done and presented to the 2015 Assembly. This project ties in well with the IMO’s theme for 2014 which was declared to be the promotion of the implementation of existing conventions.

Mr Rediadis confirmed that this Standing Committee would now combine with the other conventions Working Group formerly led by Prof Francesco Berlingieri.

#### *(c) Young CMI*

Taco van der Valk as Chair of the Standing Committee on Young CMI tabled and presented his report of the Committee’s considerable efforts during the past year, culminating in the cooperation of Young CMI with the Young Maritime Lawyers Group (Belgian, British, Dutch, French and German young maritime lawyers) during and before the Hamburg Conference, when each were to attend the deliberations of the other. This was considered to be a valuable exchange.

Taco van der Valk was commended for his driving of Young CMI and its related projects such as the convening speakers at CMI events and CMI on LinkedIn.

#### *(d) Constitution Committee*

The Treasurer as Chair of the Standing Committee on the Constitution, confirmed the deliberations of the Committee over the past year, and to the amendments referred to in para 8 of these Minutes. He reported that the last revision of the constitution dates back to Singapore and that the Committee had begun the process of reviewing the text and clearing any anomalies. Part of this would involve checking the English text against the French and the renumbering of articles, possibly making Art 3 a separate part of the Constitution. The nomination and election process will also be reviewed, and the Committee will report further to EXCO and to the next Assembly.

#### *(e) General Average Interest rates*

Taco van der Valk, on behalf of Bent Nielsen, Chair of this Standing Committee explained that the York

Antwerp Rules require the Assembly to fix the GA interest rate for the ensuing year. The Committee recommended a continuation of the present rate of 2.75% for 2015 but as it is early in the year to anticipate a fair and reasonable rate for 2015 adjustments, he asked the Assembly to delegate to EXCO the power to vary the GA rate for 2015, upon any later recommendation of the Standing Committee.

A proposal was tabled to this effect, which was proposed by Germany, seconded by Ireland, and carried by a show of hands.

#### 11. *Publications: Yearbook and Newsletter; LinkedIn, website and Handbook on Maritime Conventions*

Vice-President Giorgio Berlingieri reported that work was already in hand for the next CMI Newsletter which will be on the CMI site soon. Proceedings of the Dublin Symposium and preparatory documentation for the Hamburg proceedings will be included in the 2014 Yearbook. The remainder of the Hamburg proceedings will be in the 2015 Yearbook.

The President reported that there had been limited progress on the CMI Handbook on Maritime Conventions, and that EXCO had tasked the Secretary-General with following up this project with Frank Wiswall, with whom he has recently been in contact.

The Secretary-General reported that as an experiment, all the presentations in Hamburg (excluding the Conference, Plenary and Assembly) had been recorded by video and audio, and that after editing, all would be made available initially on the Conference website and then transferred to the CMI site. If considered useful by NMLAs, this could become a regular feature of CMI events, making the product of its research and the collective expertise of delegates available to the broader CMI membership. Similarly, all speakers' papers and presentations would be uploaded to the Conference site as soon as possible.

#### 12. *2015 Colloquium and 2016 Conference*

##### (a) *Colloquium in 2015 – Istanbul*

The President reported the set-back of arrangements which had recently taken place owing to concerns expressed by the then President of the Turkish MLA on the security and political stability of Turkey. There has since been a change in leadership of that association. The new leadership had expressed confidence in the suitability and ability of Turkey to host the 2015 Assembly and Symposium.

Vice-President Chris Davis had recently visited Istanbul and had conferred with the Turkish MLA. He had presented favourable reports to EXCO which now sought confirmation of the decision to hold the 2015 event in Istanbul. The former President has now expressed his full support for the holding of the 2015 Symposium in Istanbul.

The President invited the Turkish delegation, comprising Prof Didem Light, Mr Sertaç Sayhan and Ms Bahar Sayhan to make a short presentation, at the end of which the Assembly affirmed the decision taken at Dublin to hold the 2015 Colloquium in Istanbul.

##### (b) *Conference 2016 - New York*

MLA US President Bob Clyne reported to the Assembly that arrangements were proceeding apace for the holding of the CMI 2016 Conference concurrently with the MLAUS Spring meeting in the first week of May 2016. Vincent Foley is chairing CMI 2016 New York organising Committee which has already engaged extensively with the President and the Secretary-General and Vice-President Chris Davis. A meeting of the MLAUS and the CMI team had been held in Hamburg prior to the Assembly.

The President confirmed that the Hilton Hotel in New York has been chosen as the Conference venue, and the organising committee has commenced discussions on the likely work programme with the Secretary-General. This will hopefully include the culmination of the Review of the York Antwerp Rules, which the Secretary-General suggested may well lead to the New York Antwerp Rules, 2016.

#### 13. *CMI Regional Office in Singapore*

The Administrator reported that the registration of the representative office of the CMI in Singapore had been renewed for a further year to 25 April 2015. He reported that the CMI had received an approach from the UNCITRAL Regional Centre for Asia and the Pacific (RCAP) who wish to increase levels of coordination and cooperation with the CMI in Asia. It has singled out in particular the Rotterdam Rules as something on which it is keen to set-up a regional expert group. It has suggested that a meeting of the regional expert group could take place around the time of the Singapore MLA's yearly Asian Maritime Law Conference next spring. The Administrator confirmed that EXCO had given him the go-ahead to cooperate with RCAP and indicated that such an initiative would be in accord with and serve the continuation of the defined 'Activities' of the CMI Regional Office registration as defined by the office of International Enterprise in Singapore. The Administrator also confirmed that he will take the opportunity of visits to countries in South East Asia, where there is no MLA, to meet with practitioners and encourage them to form MLAs.

#### 14. *CMI – The Future*

The President tabled Liz Burrell's preliminary report as chair of the Ad hoc Committee on the Future Role of the CMI in which Ms Burrell reported that there had been a number of contacts

between members of the committee which has identified a number of issues (listed in the report). The committee is still deliberating these issues and is examining ways of collecting input from CMI members. It has no recommendations to proffer at this stage.

#### *15. Planning Committee*

The Secretary-General as chair of the Planning Committee reported limited contact between members of the Committee since Dublin, but was pleased to report that Prof Michael Sturley had joined the Committee. This was considered by the Committee to be a useful step in working with the MLAUS towards 2016 New York. Only four members of the Committee are attending Hamburg, and thus a full meeting had not been possible during the Hamburg week.

Regarding matters on the CMI future work programme, the Planning Committee has been in discussions with Prof Eric van Hooydonk in connection with his proposed project for the CMI to attempt a Restatement of the General Principles of Maritime Law. EXCO had agreed that the project could proceed, and that an Ad hoc IWG will be established. The Secretary-General and Alex von Ziegler were tasked with setting up an initial IWG with Prof van Hooydonk to decide the way forward, and especially to advise EXCO on the broader composition of the group.

Other matters brought to the attention of the committee concern aspects of collision law, a possible revival of CMI efforts in relation to ship breaking, and the increase in actions against shipowners and their vessels in claims against charterers. The Planning Committee took note of the decision taken at Beijing that it should make full reports to Conferences of the CMI every three to four years, and it aims to deliberate before, during and after Istanbul, and then to present a full report to the New York Assembly.

#### *16. D&O Insurance*

The President reported that the CMI had obtained

€1m cover from AIG for the CMI's Directors' and Officers' Liability Insurance and a summary of the cover had been prepared by him. If anyone wished to see the extent of the cover they should apply to him or the Treasurer.

#### *17. Elections*

The President tabled the report of the Chairman of the Nominating Committee. That report recommended the election of officers as follows:

- (i)* John Hare as Secretary-General
- (ii)* Jorge Radovich for a second term as Executive Councillor
- (iii)* Ann Fenech as Executive Councillor.

The Secretary-General confirmed that there had been no other nominations received for any of the above offices, and the President therefore declared all three nominees duly elected to office.

The Assembly congratulated those elected by acclamation.

#### *18. Any other business*

The delegates from the IIDM as Consultative members of the CMI extended an invitation to members of the CMI to their forthcoming Conference in Lisbon from 18 to 22 November 2014.

#### *Closing remarks*

The President thanked the Deutscher Verein für Internationales Seerecht (DVIS) and its organising committee for hosting an enjoyable and successful Conference, culminating in the adoption of the text of the Judicial Sales instrument. In addition he thanked all presenters of papers, Brands Alive and their team of Professional Conference Organisers, the audio visual teams and others who had contributed to the success of Hamburg 2014.

There being no other business the meeting closed at 16h35.

STUART HETHERINGTON  
*President*

JOHN HARE  
*Secretary-General*

**ANNEX A**  
**List of attendees**

<i>Country</i>	<i>Name</i>	<i>Country</i>	<i>Name</i>
ARGENTINA	Jorge Radovich Elias Bestani	JAPAN	Tomotaka Fujita Tetsuro Nakamura Jiro Kubo
AUSTRALIA & NEWZEALAND	Matthew Harvey Neil Beadle Frazer Hunt	KOREA	Byung Suk Chung Jong Hyeon Choi Dong Hee Suh
BELGIUM	Marc A. Huybrechts Frank Stevens	MALTA	Ann Fenech Nicholas Valenzia
BRAZIL	Pedro Calmon Filho Camilla Mendes Vianna Cardoso	NETHERLANDS	Taco Van Der Valk Reiner Van Campen Harmen Hoek
CANADA	John G. O'connor William Sharpe Peter J. Cullen	NIGERIA	Louis Mbanefo Chidi Ilogu
CHINA	Chen Min Xing Naiqun Henry Hai Li	NORWAY	Erik Røsæg Andrew Meidell
CROATIA	Igor Vio	PERU	Katerina Vuskovic
DENMARK	Alex Laudrup	POLAND	Pawel Michiewicz Darius Szymankiewicz
ECUADOR	Javier Cardoso Jose M. Apolo	SPAIN	Eduardo Albors Tomas Fernandez-Quiros
FRANCE	Luc Grellet Cécile Bellord Patrice Rembauville-Nicolle	SWEDEN	Måns Jacobsson
GERMANY	Klaus Ramming Dieter Schwampe Jan-Erik Pötschke	SWITZERLAND	Alexander Von Ziegler Raphaelle Favre
GREECE	Grigorios Timagenis Ioannis Markianos-Daniolos Deucalion Rediadis	TURKEY	Didem Light Sertaç Sayhan Z. Bahar Sayhan
INDIA	V. J. Mathew	UNITED KINGDOM	Andrew Taylor Patrick Griggs
IRELAND	Paul Gill Edmund Sweetman Eamonn Magee	UNITED STATES	Bob Clyne Hal Watson Frank Nolan John Kimball Vincent Foley Howard McCormack
ISRAEL	Peter Gad Naschitz		
ITALY	Giorgio Berlingieri Paolo Turci Antonella Turci		

**MINUTES OF THE MINUTES OF THE EXECUTIVE COUNCIL MEETING  
HELD ON 17 JUNE 2014 FROM 17H00 TO 17H45  
AT THE ATLANTIC HOTEL, HAMBURG, GERMANY**

*Welcome*

The President welcomed Councillors to the meeting, especially the newest member and congratulated Ann Fenech on her election, and Jorge Radovich on his re-election, as Councillors; and John Hare on his election as Secretary-General.

*Present*

<i>President:</i>	STUART HETHERINGTON
<i>Vice-Presidents:</i>	GIORGIO BERLINGIERI CHRISTOPHER DAVIS
<i>Secretary-General:</i>	JOHN HARE
<i>Administrator:</i>	LAWRENCE TEH
<i>Treasurer/(Head Office Director):</i>	BENOIT GOEMANS
<i>Councillors:</i>	ANN FENECH TOMOTAKA FUJITA LOUIS MBANEFO JORGE RADOVICH ANDREW TAYLOR DIHUANG SONG DIETER SCHWAMPE ALEXANDER VON ZIEGLER

*Apologies*

<i>Past-President:</i>	KARL-JOHAN GOMBRII
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1. *Composition of the Audit Committee*

Liz Burrell's resignation from the Audit Committee was noted, with appreciation for her considerable efforts in the past. It was proposed and agreed that Måns Jacobsson be appointed to Chair the Audit Committee.

The President raised the question of whether the composition of the Audit Committee should be changed so that no serving Councillors serve on the Audit Committee. This proposal was supported by Karl-Johan Gombrii, though Alex von Ziegler expressed the view that the President should serve on the Audit Committee, (which he is entitled to under the Constitution as an *ex officio* member). It was decided to defer the decision and its effect to the November EXCO meeting to enable the President to discuss the composition of the Audit Committee further with Mans Jacobsson.

2. *CMI Charitable Trust*

The appointment of Stuart Hetherington and Ann Fenech as trustees was noted, as was the resignation of Charles Goldie.

3. *Other Business*

(a) *Judicial Sales Instrument*

There was discussion on how the Judicial Sales Instrument, approved by the Assembly, should proceed. The Treasurer reported that one possibility was for submission to the EU, as there is a jurisdiction provision, and member states of the EU have effectively signed over their jurisdiction to the EU in relation to matters raised in the Instrument. It could also be submitted, inter alia, to the Legal Committee of the IMO and to UNCITRAL. Benoit Goemans, Alex von Ziegler and Dihuang Song volunteered to form a committee to plan and recommend the way forward for the Virtual Committee Meeting in November 2014.

(b) *Ratification of Conventions*

Tomotaka Fujita reported that he was in touch with UNCITRAL who have a ratification kit for developing countries. He could make approaches to UNCITRAL in this regard.

It was agreed that Prof Fujita proceed with making contact with UNCITRAL, but that he do so with the involvement of Louis Mbanefo and Deucalion REDIADIS from the CMI Implementation Committee.

(c) *Classification Societies*

The Secretary-General reported on the considerable positive response that had come in after the Hamburg presentations on Classification Society liability, and that all the responses seemed to support a revival of the CMI initiative for the international regulation of the liability of classification societies and its limitation. It was decided that an Ad hoc Committee be established to examine the extent to such support and to assess whether a CMI initiative was warranted. The Secretary-General was tasked with convening this committee.

*Next Meeting:*

The Virtual meeting to be conducted during the week commencing 24 November 2014 was confirmed.

There being no further business, the meeting ended at 1745.

STUART HETHERINGTON  
*President*

JOHN HARE  
*Secretary-General*

## NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

### NEWS FROM IMO

#### REPORT ON THE IMO LEGAL COMMITTEE, 101<sup>ST</sup> SESSION, APRIL 28<sup>TH</sup> TO MAY 2<sup>ND</sup>, 2014

In opening the session the Secretary-General made specific reference to the recent tragic accident involving the ferry *Sewol* in the Republic of Korea. A one minute silence was observed in honour of the victims.

#### *The HNS Convention 2010 – implementation*

Delegates were reminded of the *Guidelines on reporting of HNS contributing cargo* which had been produced by a Workshop held in November 2012. These had been designed to help member states draw up their own regulations.

The Committee urged Member States, once again, to ratify this convention as soon as possible. The Canadian delegation introduced document LEG 101/3 which referred to an informal meeting of 26 states in London in October 2013, the constitution of an informal correspondence group and the creation by the IOPC Funds of its HNS Blog. The Canadian delegate proposed that the HNS Correspondence Group should be reconstituted.

After some discussion it was agreed that the Correspondence Group would be reconstituted under the chairmanship of Francois Marier (Canada). Use of the HNS Protocol Blog as a means of communication was encouraged.

The Canadian delegation then introduced document LEG 101/3/1 which gave details of the steps taken by the Canadian Government to implement the HNS Convention. They anticipate that the regulations for implementation will shortly be in place and the calendar year for collecting data on contributing cargo will commence.

The German delegation then introduced document LEG 101/3/2 in which they questioned whether States Parties to the Convention can provide in their

domestic law that shipowners from States not party to the Convention should have unlimited liability.

Following discussion the Committee agreed that States party to the HNS Convention could not in their domestic law distinguish between ships from state parties and from no-state parties to the Convention. Therefore, shipowners from States that are not a party to the Convention will be able to limit their liability in States which are a party to it.

#### *Fair Treatment of Seafarers in the event of a maritime accident*

The Secretariat introduced document LEG 101/4 which provided an update on reported incidents since the previous meeting.

A representative of Seafarers' Rights International (SRI) on behalf of International Workers Federation (ITF), the International Federation of Shipmasters' Assocs. (IFSMA) and Comité Maritime International (CMI) introduced document LEG 101/4/1 which summarised the responses to a questionnaire concerning the implementation of the 2006 *Guidelines on the fair treatment of seafarers in the event of a maritime accident*.

The representative of the Islamic Republic of Iran once more raised the vexed question of the right of seafarers to enjoy shore leave and he reminded the Committee of Assembly resolution A.1090(28) under which shore leave was recognised as a right and not just a privilege. He expressed the hope that this resolution would be incorporated in the FAL Convention.

#### *Piracy*

The Secretariat introduced documents LEG 101/5 and 101/INF.2 reporting on the activities of the



Contact Group on Piracy off the coast of Somalia (CGPCS). Attention was drawn to the Kampala Process and the development of a three-year training plan to assist Somalia to develop legal capacity to deal with maritime crime and to establish a coastguard/maritime police force. Reference was also made to the regular use of Privately Contracted Armed Security Personnel (PCASP) and delegates were reminded of the Guidelines which apply to their operations.

It was noted that CGPCS will, in future, only meet on an ad hoc basis, as and when required.

Generally, it was agreed that piracy, wherever it occurs, is a matter to be dealt with by IMO which would continue to support efforts to combat piracy.

#### *Technical cooperation related to maritime legislation*

The Secretariat is implementing the Integrated Technical Cooperation Programme (ITCP) which aims to assist Member states in drafting, updating and bringing into force primary and secondary maritime legislation in relation to IMO instruments. Finding experts to assist with this work is not easy but the Secretariat has been exploring ways in which the knowledge of IMLI (Malta) –graduates might be harnessed. A short guide has been prepared by the Secretariat highlighting the common elements of a typical national maritime policy.

Mrs. Gabriele Goettsche-Wanli from the Division for Ocean Affairs on the Law of the Sea (DOALOS) spoke about the role of her organisation in the development of national maritime legislation.

#### *IMO International Maritime Law Institute (IMLI)*

LEG 101/7/1 provides a report on the Institute's activities in 2013. Reference was made to the IMLI Manual on International Maritime Law which it hopes to publish before the end of 2014 covering all aspects of international maritime law and written by international experts in each field.

In April 2013, 34 students graduated and by the end of the current academic year a total of 638 students from 130 States and territories will have attended IMLI courses.

The delegate from the CMI congratulated Professor Attard and the Institute on its 25th birthday and expressed his belief that the Institute was doing an excellent job and should be supported and encouraged in its work.

(On the afternoon of Monday April 28th an event was held at IMO Headquarters to celebrate the 25th anniversary of the founding of IMLI. Speakers included the Secretary-General of IMO and Dr. Frank Wiswall (IMLI Governing Board and Vice-President Honoris Causa, CMI).

#### *Status of Conventions*

The Secretariat introduced documents LEG 101/3 and 101WP.2 containing the latest information

regarding entry into force of conventions and other instruments emanating from the Legal Committee.

Document LEG 101/8/1 was then introduced in which the Secretariat invited the Committee to consider a number of IMO conventions which have yet to come into force and delegates were asked to look carefully at the situation in their own state.

The Committee noted that the Athens Protocol 2002 entered into force on April 23rd 2014 and that the WRC (Nairobi) 2007 has met its entry into force requirements and will enter into force internationally on April 14th 2015. Delegates were reminded that when ratifying the Athens Protocol 2002 states must denounce the 1974 Athens Convention.

Several delegations took the opportunity of advising the Committee of the progress which their governments were making in implementing the WRC 2007, SUA 2005, Athens 2002, Ballast Water Management 2004, Hong Kong Ship Recycling, Bunkers Convention 2001, Limitation Convention 1996 and HNS 2010.

The International Group of P.& I. Clubs introduced document LEG 101/8/3 in which it urged member states to the Athens Convention 2002 to accept the 2006 Resolution addressing the problem of insurance cover for acts of terrorism. Without the adoption of this Resolution member states risked the unintended consequence of preventing passenger ship operators from obtaining the necessary certification to enable them to trade.

The International Group also introduced document LEG 101/8/4 in which it reminded member states that if they do not exercise the option contained in Article 3.2 to extend the scope of the Convention to their territory including their territorial sea they will be unable to rely on the insurance certificates for incidents occurring within the territory and their territorial sea. Since most troublesome wrecks are likely to be located within the territory or territorial sea, failure to "opt-in" will largely negate the purpose of the Convention.

The representative of the CMI introduced document LEG 101 8/5 on the joint initiative by CMI and ICS to persuade governments to ratify a list of important conventions. The Committee welcomed this initiative.

#### *Any other business*

The Indonesian Government again raised the issue of liability and compensation for transboundary pollution from offshore exploration and exploitation activities.

The Committee was reminded of its decision to tackle this problem by developing guidance to assist States interested in pursuing bi-lateral or regional agreements rather than by developing an international convention. A call had been made by the Secretariat for details of existing bi-lateral and regional agreements but there had been very little response.

All delegations who spoke expressed their concern over this problem and recognised that further work needed to be undertaken.

The observer delegation of CMI informed the Committee that it had sent out a questionnaire to its affiliated national maritime law associations to ascertain which states were parties to international, regional or bi-lateral agreements on pollution from offshore activities. Responses had been received from 20 states. The matter is to be discussed further at the CMI Conference in Hamburg in June 2014 when a decision will be made as to how this matter can be taken forward. The Committee's attention was also drawn to a report, published in February 2014 by the Institute for Sustainable Development and International Relations (IDDRI) entitled "Seeing beyond the horizon for deepwater oil and gas: strengthening the international regulation of offshore exploration and exploitation". Reference was also made to the Maastricht University Study (funded by the European Commission) and recently published which looks at the whole subject of offshore activities and the possibility of creating a liability and compensation regime for the EU.

Indonesia was encouraged to continue its intersessional work on the subject and the Committee welcomed the proposal to create a website which could act as a clearing house for any data collected.

By Circular Letter No. 3145 notice was given of the adoption of *Guidelines for accepting documentation from insurance companies, financial security providers and P&I Clubs* in relation to CLC and HNS Convention certificates. In LEG 101/11/2 it was proposed that the Guidelines should be extended to cover WRC 2007 certificates. Whilst this proposal was generally welcomed and will be implemented by means of a further Circular Letter, one delegation suggested that the *Guidelines* were unclear in certain respects and needed to be reviewed in light of experience to date. This was agreed and a review will be included in the Committee's future work programme. The observer delegation of the International Chamber of Shipping introduced document LEG101/11/4 which was a joint submission with the International Group of P&I Clubs, the

International Union of Marine Insurance and the International Salvage Union. These organisations drew delegates' attention to the fact that the *Guidelines on maritime assistance service (MAS)* were not working as ships in distress were continuing to be refused access to a place of refuge. Reference was made to the problems recently encountered by the owners of the *Maritime Maisie*. It was recognised that there was no obligation on a state to grant access to a place of refuge but more needed to be done to improve the present situation. One delegation pointed out that it would make life easier for shipowners and states if the various conventions on liability and compensation which had been agreed in recent years had achieved wider ratification.

The CMI observer delegation stated that it had become apparent that the *Guidelines* were not working as intended. He reminded delegates that at LEG 92 CMI had submitted a draft Convention on Places of Refuge. He suggested that if the *Guidelines* continued to be ignored in practice the Committee might need to consider, again, whether there was a need to impose an obligation on states (with reservations) to grant refuge.

The Committee concluded that the ratification and effective implementation of the various liability and compensation conventions already in existence would make it much easier for states faced with a request for access to a place of refuge to a ship in distress to accept that request.

*ILO's Maritime Labour Convention, 2006 (MLC 2006)*

The delegate from ILO introduced document LEG 101/11/3 which reports on the entry into force of this Convention on August 20th 2013. The practical aspects of application of this convention will be monitored by the Special Tripartite Committee.

The meeting was concluded.

PATRICK GRIGGS

*CMI delegate to IMO Legal Committee meetings*

May 20<sup>th</sup> 2014

## NEWS FROM IOPC FUNDS

### REPORT ON THE MAY 2014 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

The Governing Bodies of the 1971 and 1992 Funds were held at IMO from 6-9 May 2104.

Rosalie Balkin attended on behalf of the CMI. The following is a summary of the most interesting agenda items. A full report may be found at document IOPC/May 14/10/1, dated 9 May 2014.

#### *Quorum*

As has been the position for many sessions, too few states attended to achieve the necessary quorum for the 1992 Fund Assembly and, accordingly, in line with Resolution No 7, the 1992 Fund Administrative Council conducted the proceedings on behalf of the Fund Assembly.

#### *Winding up of the 1971 Fund*

Undoubtedly, the most interesting agenda item was the winding up of the 1971 Fund. In this connection, while the 1971 Fund Convention had ceased to be in force since 24 May 2002, and did not apply to incidents occurring after that date, nevertheless, this did not result in the winding-up of the 1971 Fund which, pursuant to article 44 of the Convention, still continued to meet its obligations in relation to pre-existing incidents.

At the previous (October 2013) session, an in principle decision had been taken to wind the 1971 Fund up at the October 2014 session, and to this end the Director had been instructed to study the legal implications and to resolve as many of the five outstanding incidents as possible.

The Director reported that, with regard to the *Vistabella* incident, following an out-of-court settlement with the insurer to contribute towards payment of the latter's costs, the Fund had withdrawn its appeal to the Privy Council, and the matter was now resolved.

The *Aegean Sea* incident had also been resolved following payment to the claimants by the Spanish Government of the damages awarded by the court, in line with that Government's previous undertaking.

However, the Director has thus far failed to reach a settlement with the shipowner's insurer (the North of England's P&I Club) regarding the incident involving the *Iliad* and was instructed by the Administrative Council to continue his efforts to do so before October 2014, at which date negotiations should be terminated.

There is scant likelihood of settling the two remain-

ing outstanding incidents. The first of these, the *Plate Princess*, involves claims initially lodged in the Venezuelan courts by two fishermen's trade unions against the shipowner and Master but extended (eight years later, after they were time-barred) to the 1971 Fund as an interested party. Contributions owed by Venezuela's State-owned oil company to the 1992 Fund were subsequently embargoed by the court, even though the 1992 Fund is legally independent of the 1971 Fund.

Following the decision of the Administrative Council in October 2013 to discontinue all legal representation in the Venezuelan courts, the latter had issued a request to the courts in the UK for assistance in serving the judgments against the Funds in the UK, including with regard to the embargo of assets. As at the time of the May 2014 meeting, the order had not actually been served on the Funds, but the Director has requested the assistance of the UK Foreign and Commonwealth Office in dealing with it.

An equally intractable situation is that involving the *Nissos Amorgos*, in which the Venezuelan Supreme Court has upheld a judgment for compensation against the master, the shipowner and the Gard Club. The 1971 Fund was not a party to the action but a request for reimbursement has since been made by the Gard Club. This has been denied for a variety of reasons, including that those individuals and organisations who had suffered a loss as a result of the pollution had already been compensated by the Gard Club and the 1971 Fund, that the claim by the Bolivarian Republic of Venezuela had been calculated by the use of theoretical models and was, accordingly, not admissible, and that the claims were time-barred.

The situation has been complicated by the fact that, just prior to the May meeting, the Gard Club had applied to the UK High Court for a "freezing injunction", which was granted, preventing the 1971 Fund from removing from the jurisdiction any of its assets up to US\$ 58 million to ensure that funds remained within the jurisdiction to satisfy the Gard's Club claim in case it proves successful.

The legal basis on which the High Court had allowed the injunction derived from its reading of section 6 of the International Oil Pollution Compensation Fund (Immunities and Privileges) Order 1979 which gave effect to the Headquarters Agreement between the 1971 Fund and the UK Government. Although the Headquarters Agreement (a treaty instrument) may have intended the property and assets of the 1971 Fund to be immune from such an injunction, the wording used

in section 6 of the Order did not have such an effect and the Court was bound by the clear wording of the Order. That is to say, the immunity granted by the Order was less extensive than under the Headquarters Agreement but section 6 of the Order should nevertheless be applied without regard to the differing text.

The High Court found that, while the real issues were likely to arise on the facts, Gard had satisfied the “good arguable case” threshold in respect of its English claim based on an alleged claims-handling agreement with the 1971 Fund.

The granting of the freezing injunction will not prevent the 1971 Fund from its day to day running of the 1971 Fund as it will allow the Fund to pay claims, negotiate settlements and pay reasonable legal expenses but, pending its discharge, the injunction will prevent the reimbursement of any surplus monies to contributors.

In light (or in spite) of the above issues, the Administrative Council decided to continue the process of winding up the 1971 Fund rather than to delay the winding up until the legal proceedings were finalized or an agreement with the Clubs reached.

One issue was that there was only some 4.6 million UK pounds remaining in the General Fund and the two Major Claims Funds and if litigation were to continue beyond the end of 2014, it was likely that the 1971 Fund would have to levy contributions to continue to operate. In this regard, whatever the decision in the High Court on the substantive issues, it was likely to be appealed either by the 1971 Fund or by Gard, in either event an expensive process. It was clear from previous debates that few delegations were in favour of any new levies for both legal and practical reasons.

The 1971 Fund administrative Council accordingly decided to confirm its decision to dissolve the 1971 Fund at its October 2014 session and to this effect adopted the May 2014 Resolution on the Preparation for the Dissolution of the International Oil Pollution Compensation Fund (text full text of

which is set out at Annex II of the official report (document IOPC May 14/10/1)).

At a closed session, the second draft resolution, on the Dissolution of the International Oil Pollution Compensation Fund, to be adopted in October 2014, was discussed and amended, in line with discussions in the open session and to take account of the High Court freezing injunction. The amended draft resolution can be found at Annex III of the official report (document IOPC/ May 14/10/1).

### *HNS Convention*

The Administrative Council noted on-going work in connection with the establishment by the secretariat of the HNS Fund and the establishment of an informal correspondence group, co-ordinated by Canada, to maintain the momentum for the entry into force of the HNS Protocol. It also noted a decision of LEG 101 to formally reinstate the HNS Correspondence Group in order to provide a more formal forum for discussion and information sharing. Hopes, although not immediate expectations, are high for the eventual entry into force of this liability and compensation regime, which will, once in force, complete the cycle of liability and compensation regimes adopted by IMO to regulate pollution damage at sea.

### *Guidelines for clean-up claims*

Among the issues noted by the 1992 Fund Administrative Council were a new Claims Information Pack that had been made available in March 2014 and a set of guidelines to assist states with the submission of claims for clean-up and preventive measures (document IOPC/May 14/4/1). The guidelines are compatible with the Claims Manual and are aimed specifically at governments as well as clean-up operators.

ROSALIE BALKIN

*CMI Observer Delegate to the IOPC Funds*