

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

COMITE MARITIME INTERNATIONAL

NO. 3 - SEPTEMBER / DECEMBER 2016

## News from the CMI:

- CMI Assembly Meeting at Genoa - 8 September 2017, by Stuart Hetherington
- Appointment of Prof. Aldo Chircop as Canada Research Chair in Maritime Law and Policy
- Appointment of Alfred Popp Q.C., Member of CMI *honoris causa*, as a Member of the Order of Canada
- Minutes of deliberations of the CMI Executive Council held by email conference during the week commencing 21 November 2016, chaired by the President from his office in Sydney
- Maritime lawyer Dr. Frank Wiswall receives 2015 International Maritime Prize
  - Speech by Kitack Lim, Secretary-General International Maritime Organization
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## News from Intergovernmental and International Organizations

### News from IOPCF

- Report on the October 2016 Sessions of the IOPC Funds Governing Bodies, by Rosalie Balkin

## NEWS FROM THE CMI

### CMI ASSEMBLY MEETING AT GENOA 8 SEPTEMBER 2017

#### CMI Assembly Meeting at Genova – 8 September 2017

The CMI is reverting to its historical and traditional event in 2017 for its Assembly Meeting. It will be taking place in Genova, Italy on Friday, 8 September 2017, in conjunction with a half day seminar organised by the Italian MLA.

Accommodation has been reserved at the Historic Hotel Bristol Palace in the centre of Genova. Other hotels have also been reserved.

The seminar will take place at the Doge's Palace, which is a few minutes from the hotel, during the morning. Lunch will be taken at the Doge's Palace.

The topics to be discussed at the seminar will include Ship Financing, Offshore Activities and the US law on Bunker Supply contracts and its effect on the international arrest of ships.

The Assembly Meeting will take place after lunch in the Old Stock Exchange Building, which is also in close proximity to both the Hotel Bristol and the Doge's Palace. It is also hoped that some meetings of

International Working Groups or International Sub-Committees will take place on the previous day, Thursday 7 September 2017. Further information will be provided on the seminar website: [www.cmi2017genoa.org](http://www.cmi2017genoa.org).

As many of you will know the Italian MLA is one of the most active and responsive MLAs in the world. It is also the home of a long serving President of the CMI and President Ad Honorem: Francesco Berlingieri. We look forward to welcoming Francesco in his home city to a CMI meeting.

The event organisers will be happy to assist you making bookings, both before and after the meeting, in the beautiful regions which are close to Genova, such as the "Riviera di Levante", including Portofino, Cinque Terre and Golfo dei Poeti, and the "Riviera di Ponente".

I look forward to welcoming as many of you as possible to Genova later in the year.

STUART HETHERINGTON

**APPOINTMENT OF PROF. ALDO CHIRCOP AS CANADA RESEARCH CHAIR  
IN MARITIME LAW AND POLICY**



Belated congratulations are due to Professor Aldo Chircop (who chairs the IWG on Polar Shipping for the CMI) for his appointment last year as Canada

Research Chair in Maritime Law and Policy, a most prestigious appointment.

**APPOINTMENT OF ALFRED POPP Q.C., MEMBER OF CMI *HONORIS CAUSA*,  
AS A MEMBER OF THE ORDER OF CANADA**



Congratulations to Alfred Popp QC, an Honorary Member of the Canadian MLA, for his appointment as a Member of the Order of Canada. Alfred Popp, who chaired the Legal Committee of the IMO from

1993 to 2005, was appointed by the Governor General of Canada with the following citation:  
*“For his contributions to Maritime Law as a Lawyer, Policy Expert and Administrator”.*

**MINUTES OF DELIBERATIONS OF THE CMI EXECUTIVE COUNCIL  
HELD BY EMAIL CONFERENCE DURING THE WEEK COMMENCING 21 NOVEMBER 2016,  
CHAired BY THE PRESIDENT FROM HIS OFFICE IN SYDNEY\***

Participating:

<i>President:</i>	STUART HETHERINGTON
<i>Past President:</i>	KARL-JOHAN GOMBRII
<i>Vice-President:</i>	GIORGIO BERLINGIERI
<i>Vice-President:</i>	CHRISTOPHER DAVIS
<i>Secretary-General:</i>	JOHN HARE
<i>Administrator:</i>	LAWRENCE TEH
<i>Treasurer/Head Office Director:</i>	PETER VERSTUYFT
<i>Councillors:</i>	ANN FENECH
	TOMOTAKA FUJITA
	JOHN O'CONNOR
	JORGE RADOVICH
	DIETER SCHWAMPE
	TACO VAN DER VALK
	ALEXANDER VON ZIEGLER
	LUC GRELLET

The President, in preparation for this eMeeting, explained the procedures to be adopted. In essence, EXCO members were enjoined to peruse the documentation and submit first round comments to him and to the Secretary-General by close of business Tuesday 22 November. The responses were then collated and circulated to EXCO members the following day, for further second round comments the day after. Upon close of these second round comments, the President submitted a Final Round Document, with conclusions. It is upon these documents, and particularly the latter, that these minutes are prepared. Paragraph numbers of these minutes correspond to the Agenda which was sent to all EXCO members, with supporting annexures, during the week prior to 21 November.

Apologies were received from Lawrence Teh and Luc Grellet who were prevented from participating.

*1. Opening remarks by the President*

The President welcomed EXCO members to this virtual eMeeting, thanking those who had submitted the reports that were annexed to the Agenda.

A particular welcome was given to John O'Connor for this, his first eMeeting since joining the Executive Council.

The President noted with regret that Vice President Giorgio Berlingieri had confirmed his wish that he step down from his significant roles as Publications Editor and on the IWGs for Liability for Wrongful Arrest, Fair Treatment of Seafarers, and the Database of Judicial Decisions. The President recorded that the

CMI owes to Giorgio Berlingieri a huge debt of gratitude for performing his CMI roles so assiduously – especially that of Publications Editor.

In relation to publications, the President confirmed that he had raised the possibility with Taco van der Valk of his succeeding Giorgio Berlingieri, and he had agreed to put his name forward.

The President also made reference to the unfortunate incident shortly after the New York Conference in which the CMI was the victim of electronic fraud resulting in an irrecoverable loss of US\$17230. Further mention of this fraud and the remedial measures put in place in its wake will follow under the relevant agenda item below.

The President commented in relation to the Management Committee meeting scheduled for March 2017 that he would ask the Management Committee to consider whether there are any ways in which the CMI might be able to reduce its expenditure; the split of functions of the Secretary-General and of the Administrator (this in contemplation of Rosalie Balkin taking over as Secretary-General at Genoa in September 2017); and debate possible changes to the CMI Constitution to put before the Assembly in Genoa.

*Conclusion:*

President's opening remarks noted with thanks.

- 2. Minutes of Executive Council Meetings in New York on Tuesday 3 May 2016 at the Hilton Hotel, New York and Friday, 6 May 2016 at the Hilton Hotel, New York*

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\* Provisional Minutes for adoption at the next EXCO meeting.

*Resolved: to adopt the Minutes of both meetings subject to the amendments proposed by Peter Verstuyft, Ann Fenech and Chris Davis as follows:*

- Christopher Davis - Corrections to 3 May 2016 Minutes:  
Page 3: replace “Columbian” with “Colombian” twice in penultimate paragraph, and add “former” before “President” in bold “Resolved” wording; page 5, paragraph 5(v): correct name to read “Luis Leven Siano;” and page 8, paragraph 7(j): correct “Andrew” to read “Andrea” in two places; and following corrections to 6 May 2016 Minutes: page 1, paragraph 2: add Chris Davis to EXCO members congratulated on re-election; and page 2, paragraph 10(b): replace “Columbian” with “Colombia.”
- Ann Fenech - Correct Minutes of the meeting of the 3rd May, item (j) to read “Andrea” not “Andrew”.
- Peter Verstuyft: Minutes of a meeting of the CMI Executive Council Tuesday, 3 May 2016 – Correct para 4(d) Budgets to read 2016 and 2017; and amend further to read “The Treasurer tabled the updated 2016 budget reflecting a deficit of €23.550. The Treasurer projects a deficit for 2017.”

### 3. *Financial and administration reports:*

#### *Conclusions:*

The reports of the Treasurer and materials tabled were noted with thanks. In particular, the Treasurer’s report explaining the unfortunate circumstances in which the CMI had been defrauded in June of USD17,230, whereby that sum had been remitted at the request of a fraudster posing as the President to a bank account in the United States. By the time that the fraud was appreciated funds had been removed from the US bank account. The efforts of John Hare and Chris Davis to energise the US bank were greatly appreciated.

The letter sent by the President to each of the banks holding funds of the CMI notifying them that CMI required them only to transfer funds at the request of the Treasurer, in person and only after verification of his identity until further notice, i.e. no electronic transfer for the time being, was also noted.

The meeting acceded to the suggestion by the Treasurer that the final paragraph in the Protocol prepared by the President and the Secretary-General immediately after the fraud was exposed, which effectively precluded electronic transmission of funds not be pursued, as CMI’s principal banker, J Van Breda requested that the CMI revert to issuing payment instructions through the bank’s secured “Van Breda Online” link. In so recommending the Treasurer noted that there was no link between the fraudulent transaction and the Bank’s electronic banking system.

The meeting also noted that the Payment Requisition Protocol had stipulated that all requests for transmission of funds by CMI should be in writing and accompanied by supporting documentation and should be approved by both the President and the Secretary-General. For amounts in excess of Euro 1,000 the verbal confirmation should be obtained from the President and Secretary-General. The meeting agreed to minor variations to the Protocol in accordance with the suggestions of John Hare.

#### *Resolved:*

That the payment protocol be amended as follows:

- (i) By the deletion of the final paragraph which suspends electronic transfers; and
- (ii) By the amendment of the first paragraph to read: “The Treasurer has sole authority to make payments or effect transfers from CMI bank accounts.  
1. All payments for office supplies, recurring payments such as monthly or quarterly office and archive space rents, and amounts beneath €200 may be paid by the Treasurer without further formality although he/she is required to sight all supporting documentation in relation to such payments before such payments are made.”
- (iii) By the amendment of para 4 to read: “4. Executive Councillors shall submit claims for reimbursement using the CMI Expense Reimbursement Claim Form. When processing such claims, the Administrative Assistant and the Treasurer should verify the signatures held on file for all CMI executive officers.”

The meeting also noted the report of the Treasurer and his recommendations for reinvestment of the sum of Euro 100,000 which had matured in June 2016, as well as the President’s comments concerning the guidelines on CMI investment policy and the advice that he had sought from Smith & Williamson (who manage the funds held by the CMI Charitable Trust) and the further comments made by ex-CMI Executive Councillors Andrew Taylor and Mans Jacobson, the authors of the CMI Investment Protocol.

Executive Councillors had mixed views as to which of the four options considered by the Treasurer should be accepted. In light of the Guidelines on CMI investment policy the appropriate course is to adopt the Treasurer’s first option, that is to invest the funds in the CMI savings account at an interest rate of 0.05% or a Business Investment Plan but having an upfront cost of 3%.

#### *Resolved:*

To authorise the Treasurer to reinvest that sum in accordance with his first recommendation.

Vice President Davis had some support for his suggestion that the CMI Investment Guidelines be revisited. This will be an agenda item in Genoa.

Executive Councillors received the sad news that Anne Verlinde had resigned to take up a job at the University of Antwerp Library and thanked her for her contribution to the CMI in the three years she has been employed and wished her well in her new employment. Steps to find her replacement are under way. Chris Davis queried whether the services of Anne could still be utilised in conjunction with the University of Antwerp Library.

*Resolved: not to acquire a crime policy which had been sought to put in place following the fraud because the wording proposed by the insurers would not have responded to the fraud that took place in June. In addition, the Euro 50,000 excess which was proposed would again have meant no coverage and the premium of Euro 12,500 was thought to be too large. Alexander Von Ziegler queried whether a special procedure for payments over Euro 10,000 should be considered.*

Executive Councillors also noted the correspondence received from Jean-Francois Peters concerning the necessity to update the records of the CMI on the Belgian Official Journal and thanked him for his endeavours.

The current cash position of the CMI as being Euro 589,297.33 was also noted.

#### 4. *New York Conference Financial Results: Report of John Hare dated 7 October 2016*

##### *Conclusion:*

John Hare's report and its attached closing accounts for the New York Conference were tabled and noted by the Executive Council as were the President's congratulations to John Hare and Vince Foley and the MLAUS organising committee, especially John Kimball and the sponsorship committee of the MLAUS which were all echoed and commented upon by Executive Councillors who are deeply appreciative of all the hard work put into the organisation of this Conference.

It was noted that there had been 977 registrants with a total revenue of USD846,121 and sponsorship of USD213,000 giving a total revenue of USD1,059,121 with total expenditure at USD1,051,843.

#### 5. *Collection of financial contributions: Report of Chris Davis*

##### *Conclusion:*

The report of Chris Davis was tabled and noted with thanks to him for his continuing efforts to collect outstanding contributions, noting also that 75% of subscriptions for 2016 had been collected and reminders recently sent to those who are yet to pay for this year.

The Executive Council is mindful of concerns expressed by a couple of Associations at their drop in membership and thus the effect on their ability to

pay their current subscriptions. It was noted that the Management Committee will be meeting in Antwerp in March with a view to considering what further expenditure cuts can be made with a view to seeking to reduce or, at least not increase, some subscriptions. The President's authorisation from the Assembly to negotiate deals regarding outstanding subscriptions was noted by Karl Gombrii who also suggested, as did others, a need to be flexible whilst honouring Article 21 of the Constitution and not creating adverse precedents.

#### 6. *Membership:*

##### *Conclusion:*

- (a) The President's letters to the MLAs of the Democratic People's Republic of Korea, Philippines, Russia, Colombia, Dominican Republic and Portugal, notifying them that at the next Assembly meeting in Genoa in September 2017 the Executive Council will be recommending their expulsion to the Assembly unless they pay their arrears or enter into an arrangement for the payment of their arrears with the CMI for their reduction before then, were tabled and noted with approval. (Considerable regret was expressed in relation to Russia, a long standing member of CMI).
- (b) Resolved: The application for membership by the International Malaysian Society of Maritime Law (IMSML) was approved and will be submitted to the Assembly in Genoa in September 2017.
- (c) Resolved: The applications for Consultative Membership status by AMD and FONASBA were approved and will be submitted to the Assembly in Genoa in September 2017. It was also agreed to seek equivalent status for the CMI with FONASBA, at no cost.
- (d) The current list of membership of IWGs and Standing Committees was tabled and approved, subject to notified corrections.
- (e) The nomination received from the Venezuelan MLA of Professor Aurelio Fernandez-Concheso to the CMI Executive Council was tabled and noted. It will need to be resubmitted to the Nominating Committee at the appropriate time in 2017. Whilst his selection had the support of a large number of South American countries, Karl Gombrii reminded EXCO that as a member of EXCO a person is not a representative of any particular association or geographical region or interest. He/she represents himself or herself.
- (f) The report of Chris Davis concerning developments regarding Cuba's potential application to join CMI was tabled and approved, including the recommendation that the maritime law section of the Cuban National Union of Jurists be encouraged to seek membership with the CMI, provided they can meet the CMI subscription.

(g) The lack of progress in either Ghana or Sri Lanka to form Maritime Law Associations was noted with regret. John Hare is to make further enquiries in Ghana from provisional member Kwabena Asare and the President is to write further to Dan Gunasekera, in relation to Sri Lanka, both of whom have been created Provisional members.

#### 7. *Executive Council elections at Assembly Meeting in Genoa:*

##### *Conclusion:*

The Executive Council noted that John Hare and Jorge Radovich retire from the Executive Council in Genoa next year and that Ann Fenech has the option for a second term commencing next year.

#### 8. *Future Meetings:*

##### *Conclusion:*

It was noted that the President had recently written to Presidents of MLAs seeking expressions of interest to host CMI events during the next four years and that an offer to host the 2020 Conference had been made by Japan, as had Brazil prior to the New York Conference. In addition, Mexico had offered to host an event at Cancun in 2019 or 2020 and the United Kingdom and Malta had also expressed interest in hosting a CMI event after Genoa in 2017. In addition, the Belgian MLA had reminded the Executive Council that in 2022 the CMI will celebrate its 125<sup>th</sup> Anniversary and that Belgium (or Antwerp) might be an appropriate venue for that year.

In relation to 2020 there was considerable support for a Conference in Japan. Reservations were expressed that following the meeting in Genoa in 2017 it may not be appropriate to host both of the 2018 and 2019 meetings in Europe. Further consideration will be given to the proposals which have been made and any other proposals which are forthcoming.

The Executive Council noted the report of Giorgio Berlingieri of arrangements made for the 2017 Assembly and Seminar on 8 September 2017 and expressed their thanks and appreciation for all the work that had been done already. Those arrangements included bookings at the Hotel Bristol for accommodation, the Doge's Palace where the seminar will take place and the old Stock Exchange Building which will host the Assembly, as well as the Villa Lo Zerbino to host the closing dinner. It was also noted that post meeting tours will be proposed and a possible theme for the seminar could be "Enforcement of Maritime Claims and the Works of the CMI".

John Hare noted that a website [www.CMI2017Genoa.org](http://www.CMI2017Genoa.org) has been reserved and there will be a save the date site up at that address by the end of 2016.

#### 9. *International Working Groups:*

##### *(a) Judicial Sales:*

##### *Conclusion:*

The report of Taco van der Valk of his discussions with both Ms Marta Pertegas, the first Secretary of the Hague Conference, and earlier with the past Secretary-General, was noted. Their discussions were encouraging leading to the possibility of integrating the CMI instrument on Judicial Sales with the current Judgments Project of the Hague Conference. The suggestion had been made during those discussions that the CMI should develop contacts with the representatives from Australia, Canada, China, EU and US on the Conference.

As a result of these discussions the IWG have been requested to identify how the 2016 preliminary draft Convention might look if the CMI's Judicial Sales instrument was added to its provisions.

The draft prepared by the IWG was considered by the Executive Council and the IWG was congratulated on the work that it had done in creating a further Chapter (iii) to the Preliminary Draft prepared by the Hague Conference.

*Resolved: that the text prepared by the IWG, together with any further amendments it thought appropriate, be sent together with a letter of explanation to the Hague Conference as soon as possible and Taco van der Valk be authorised to discuss it with the Hague Conference and report back to the President and Secretary-General.*

##### *(b) Review of the Rules on General Average:*

##### *Conclusion:*

The Executive Council considered the email of Richard Cornah dated 10 November reporting on the omission of two lines of text in the final text of the York Antwerp Rules 2016, in Rule XVII(b). It was also noted that those words were not the subject of review or discussion in any of the discussions leading up to or at the 2016 Conference and had been approved in both the 1994 and 2004 YAR Rules. It was also noted that ICS, BIMCO and IUMI representatives understood the position.

The Executive Council approved the correction of the text subject to its ratification at the Assembly Meeting in Genoa and it was also agreed that an error notice in the form drafted by John Hare should be inserted in the CMI website by way of explanation:

"The words previously appearing at the end of this sentence: "or fall upon the ship by virtue of an award for special compensation under Article 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance" were erroneously omitted from the 2016 New York text of the Rules. They were in previous versions of the Rules and were not contested in the New

York discussions. The 2017 CMI Assembly will be asked to approve this correction to the published text of the 2016 Rules”.

It was also determined by the Executive Council that there was no need to retain the Review of the Rules of General Average IWG, but see below under item 11(g) on the Standing Committee of the General Average Guidelines. It was also suggested by Dieter Schwampe that there should be a prominent link to where the YAR 2016 are to be found on the CMI website, on its opening page.

*(c) Cross-Border Insolvency*

*Conclusion and Resolved:*

In the absence of a report from the Chair on this topic, the only discussion was the appointment of Professor Martin Davies as Rapporteur which was approved.

*(d) Polar Shipping*

*Conclusion:*

The Executive Council noted the extensive report of Aldo Chircop and congratulated him and his IWG on their work.

Of particular note from the Chairman’s report are the following matters:

- The review of private maritime law conventions carried out by a subgroup and chaired by Nigel Frawley has been revised since the New York Conference and will be published on the CMI website. The work of the subgroup and its contributors, such as David Baker are congratulated on their work.
- Note that the work is proceeding on Polar Load Lines with a view to concluding this work in time for an IWG meeting in Genoa in 2017.
- Note that the work on the Pollution Liability Regimes in polar regions will consider the IOPC Fund’s draft document on Guidelines for Environmental Damage Assessment in its working paper.
- Note that the work of a further subgroup studying the context, purpose and significance of the COLREGS in the polar environment and their interaction with polar shipping regulation is continuing.

The Executive Council also noted the questions posed by the Chair of this IWG to the President in relation to the existence of any rules, procedures or practices of IWGs concerning length of tenure on an IWG, decision making and whether there were any requirements for unanimity, or consensus; the status of working drafts, the use of corporate logos on IWG work.

John Hare’s standard wording of letters to new IWG members and its possible adaption to address such concerns was discussed. This topic and whether Prof

Chircop’s issues can be dealt with in such a letter will be revisited at the next Executive Council meeting.

*Resolved: to appoint Kim Crosbie (USA) and Stephanie Johnston (UK) to the IWG and to remove Dr Pfirter, unless she advises Aldo Chircop or Jorge Radovich of her wish to remain on the IWG.*

*(e) Marine Insurance*

*Conclusion:*

The report of Joe Grasso was tabled and noted. In particular it was noted that the IWG had completed its draft of Guidelines for governments relating to mandatory insurance coverage under certain international maritime conventions and that feedback had been received from the IMO which is under consideration.

The topics for further possible discussion by the IWG were the subject of pertinent commentary by a number of members of the Executive Council. John Hare, a previous Chair of the Marine Insurance IWG, suggested that the IWG should determine its work programme and supported consideration of the Marine Insurance Act reforms in the UK. He also suggested forming a Standing Committee. The former chair of this IWG and current IWG member, Dieter Schwampe’s comments, were as follows:

“When still under the lead of John Hare the IWG had done extensive work on English marine insurance law (which also, as I understand, had a significant influence on the International Hull Clauses). My recollection is that at that time there was no optimism that a wider harmonization of marine insurance would be possible, but John should comment. As regards common law jurisdiction I believe that the new Act will have its influence anyway. As to civil law jurisdictions, the Act brings English law much closer law to the insurance law in civil law jurisdiction. For example, basically all new features of the new Act can be found, though in slightly different ways, also in German insurance law. If CMI really intends taking harmonization of insurance law up, then we will need to make sure we take other developments into account, like the PEICL project in Europe (Principles of Insurance Law). I am personally sceptical whether this is something we should start with

Being a member of the IWG, my personal views on the subjects addressed in the IWG report are as follows:

- Amendment of existing conventions with rules on mandatory insurance: Given the reluctant reply by IMO to our suggested Guidelines, I seriously doubt that IMO/the member states would see a compelling need for amending any of the conventions.
- Choice of law/jurisdiction for mandatory insurances: This seems a worthwhile subject,

but could at best lead to a model law. In Europe both areas are covered by EU Regulations.

- Conflicts of interest for insurance brokers: This issue is high on the agenda in Germany, where the Federal Court has ruled that for conflict of interest reasons insurance brokers are barred from handling liability claims on behalf of insurers, a widespread practice in Germany.
- “General Average” in case of complex maritime insolvencies: The Hanjin insolvency has triggered ideas, whether a new approach is needed to solve problems of all kinds of parties involved in such insolvency along the principles, of general average, like treating those with cargo on board of ships or under control of the insolvent carrier as a community and distribute costs incurred in order to re-route such cargo to destination on them. This is far reaching, but I believe it is sensible to look at it.”

*Resolved:*

That the existing IWG be re-formed as the Standing Committee on Marine Insurance and that its Chair, Joe Grasso, be requested to approach the existing members of the Marine Insurance IWG to enquire if they wished to continue serving on the Marine Insurance Standing Committee, and to make recommendations to EXCO as to the future composition of the re-formed Marine Insurance Standing Committee.

EXCO noted its approval of the topics proposed for further consideration by the IWG, passing on the reservations held by some members of the Executive Council in relation to their relevance and encourage a study of the reforms to the English Marine Insurance Act and whether or not the IWG can promote uniformity in the satellite jurisdictions which have similar legislative provisions to the Marine Insurance Act 1906.

*(f) Offshore Activities*

*Conclusion:*

The report of Jorge Radovich was noted as were the views expressed at the IMO Legal Committee 103rd Session to the effect that there was no compelling need for an international Convention on Transboundary Pollution from Offshore Craft. The IWG continues to work on a Guidance document (which it is noted is not to be an IMO document) and EXCO congratulates the IWG on its persistence.

*(g) Rotterdam Rules*

*Conclusion:*

The report of Tomotaka Fujita was noted and that the Rules have been signed by 25 States but only

ratified by three. It was also noted that the New York Conference session which considered a topic raised by the Polish MLA: a comparative analysis of how courts in different countries deal with jurisdiction and arbitration clauses in bills of lading and other sea carriage documents, was a great success. Noted also that UNCITRAL Working Group IV has adopted a “Draft Model Law on Electronic Transferrable Records” at its 54th Session (31st October to 5th November 2016), and that there is one provision which may cause inconsistency with the E-commerce provisions in the Rotterdam Rules, relating to multiple original transferrable records. Once the draft is published and available for comment, the IWG will, if it considers it necessary and appropriate, express the CMI’s views on that aspect.

There was considerable discussion concerning the Polish MLA’s suggestion that there be a study of jurisdictional clauses in bills of lading and other sea carriage documents by the IWG. The view was expressed that if this is taken up by the IWG it will need to be handled carefully as it is covered by the Rotterdam Rules, noting that there is no likelihood that the issue will be revisited in an International forum. A study of how the problem is presently dealt with and compares with Rotterdam Rules may be of utility.

*Resolved:*

- (i) That the existing Rotterdam Rules IWG be re-formed as the CMI Standing Committee on the Carriage of Goods (including Rotterdam Rules), and that Tomotaka Fujita be requested to approach the existing members of the Rotterdam Rules IWG to enquire if they wish to continue serving on the Carriage of Goods Standing Committee, and to make recommendations to EXCO as to the future composition of the re-formed Carriage of Goods Standing Committee.
- (ii) IWG to submit a paper, if it considers it appropriate to UNICTRAL on the draft Model Law on Electronic Transferrable Records.
- (iii) That it be left to the Standing Committee to determine how the work proposed by the Polish MLA could be progressed and to involve members of the Polish MLA on the topic who it considers is appropriate.

*(h) Fair Treatment of Seafarers (including Pandemic Response and Migration at Sea)*

*Conclusion:*

The report of Olivia Hamer (nee Murray) was noted and in particular that the IWG continues to liaise with and support as appropriate Seafarers’ Rights International (SRI) and that the issue of Pandemic Response is being further investigated by way of a questionnaire and the IWG will prepare a paper reminding States of their responsibilities for the IMO Legal Committee in order to gain a wider



appreciation for appropriate action to be taken when faced with these recurring pandemic problems.

*Resolved: to appoint Edmund Sweetman (Ireland) to the IWG, noting that Paul Gill is already a member having been appointed Chair of a Pandemic Response subgroup.*

*(i) Acts of Piracy and Maritime Violence*

*Conclusion:*

In the absence of any report from this IWG there was no Executive Council discussion.

*(j) Ship Finance, Security Practices*

*Conclusion:*

The report of Ann Fenech was noted, including the facts that both the Marshall Islands and Liberia are being encouraged to respond to the Questionnaire which has been sent to MLAs; that David Osborne had attended an annual conference in Oxford of the Cape Town Convention Academic project, where he noted that the “Cape Town Camp” realised that shipping is totally different and he raised the suggestion that consideration be given to a Protocol on containers. The Executive Council also noted the paper given by Dr Vincent Power in Oxford entitled “Assessing the Legal and Economic case for a shipping protocol to the Cape Town Convention” which was attached to the Chair’s report; that the Malta Maritime Summit in October 2016, at which Ann Fenech participated on a panel where the Cape Town Convention was discussed, and others drew attention to the significant differences between aviation and shipping.

The Executive Council noted that the Chair of the IWG had invited them to encourage their own MLAs to respond to the Questionnaire, which is to have a further deadline extension to the end of March 2017.

*(k) Ship Nomenclature*

*Conclusion:*

EXCO noted the report of Frank Nolan and the receipt of five responses to the Questionnaire and for the possibility that the IWG will meet in Genoa, although this may not eventuate as Frank Nolan will be prevented by family commitments from attending the Genoa meeting. Executive Councillors were again urged to encourage their MLAs to respond to the Questionnaire.

*(l) Restatement of the General Principles of Lex Maritima*

*Conclusion:*

In the absence of any report from this IWG there was no Executive Council discussion.

*(m) Study relating to Liability for Wrongful Arrest*

*Conclusion:*

The Executive Council noted with sadness, but understanding, that Giorgio Berlingieri wished to stand down from his role of Chair. EXCO expressed its gratitude and thanks to Giorgio for all his work in starting this IWG and achieving 36 responses from MLAs to the Questionnaire. Consideration was given by the Executive Council to an appropriate replacement for Giorgio. The obvious replacement would be Aleka Sheppard who has done a tremendous job as Rapporteur. Enquiries suggested that Sir Bernard Eder would not have time to take the role.

*Resolved: to invite Aleka Sheppard to take over as Chair and request the Secretary-General to discuss with her the potential Rapporteurs who were mentioned during the course of the meeting.*

The Executive Council also noted the two cases referred to by Vice-President Berlingieri involving Wrongful Arrest in both Italy and Singapore and the suggestion that an International Sub-committee meeting might be a possible way forward for this IWG.

*(n) Unmanned Ships*

*Conclusion:*

The Executive Council noted the report of Tom Birch-Reynardson which commented on the meeting of the IWG which had taken place in conjunction with the Marine Autonomous Systems Regulatory Working Group Conference in Southampton, at which IWG members Henrik Ringbom, Eric Van Hooydonk and Andrew Higgs each spoke, and he had made a short presentation on the role of the CMI.

The excellent paper produced by Henrik Ringbom and Robert Veal identifying the areas where in the IWG’s opinion, consideration will need to be given to reviewing or amending existing Conventions to accommodate Unmanned Ships was highly commended by the Executive Council, as was the work which is being done. The comments made included that this is an area where the CMI can really offer value to the debate as to how the Regulatory regimes that apply to shipping will have to be amended to keep track with the new technology.

It was noted that the ongoing work of the IWG is to identify any bodies or national governments which are carrying out legal or regulatory work in respect of unmanned ships to ascertain what they are doing and what conclusions they have reached.

Once the IWG has finalised the report which has thus far been prepared by Henrik Ringbom and Robert Veal it is proposed, with EXCO approval, to send it to MLAs for comment and request MLAs to advise what work is being done in their jurisdictions on this topic. (It is known that China and Korea are both engaged in work in this area). It is then proposed to submit the paper to the IMO.

*Resolved: to agree to the paper being submitted to MLAs for comment but to suggest that it could be accompanied by a Questionnaire, which would include the questions concerning work being done within their own jurisdictions.*

*Resolved further to appoint Lena Wiedenbach (Germany) to the IWG as Rapporteur.*

*(o) Cybercrime in Shipping*

*Conclusion:*

It was noted with regret that Taco van der Valk would like to be replaced as Chair of the group to enable him to take on other roles within the CMI (see Publications below). It was agreed to appoint John Hare as Chair of this IWG which he had himself inaugurated.

*Resolved that:*

- John Hare be appointed Chair
- John Hare should ascertain whether Kate Belmont (USA) and Remy Carreira (Panama) are prepared to join the IWG.
- Assuming they are all willing, appoint them to the IWG.

*(p) Liability of Classification Societies*

*Conclusion:*

EXCO noted the report of Karl Gombrii which advised that the ICS had said that it is not interested in further work on this topic although IACS is cautiously interested in the CMI assisting to find a way of limiting class liability for claims by third parties.

*Resolved: that this IWG continue its consultations with industry stakeholders with a view to reinstating the CMI's previous work to promote an international regime to regulate the liability of classification societies, and its limitation.*

*10. Ad hoc Committees*

*Arbitration*

*Conclusion:*

In the absence of any report from this IWG there was no Executive Council discussion.

*11. Standing Committees*

*(a) Jurisprudence on Maritime Conventions*

*Conclusion:*

The Executive Council noted the correspondence between Lawrence Teh and Stephen Girvin, of Singapore University, that it has been suggested that a draft form of agreement to be entered into with CMI for a period of five years commencing on 1st January 2017 be prepared and the judgments and summaries are to be submitted to Singapore University in English in accordance with the template which has been prepared. The President noted that the role of the Standing Committee is to monitor the

website, to liaise with Stephen Girvin (principally through Lawrence Teh) and encourage and assist MLAs to appoint representatives of their Associations to provide materials to the website.

*Resolved:*

- (i) That the appointment of Lawrence Teh to the Standing Committee on the Database of Judicial Decisions on International Conventions is ratified;
- (ii) That the Standing Committee preserve the material which has been produced by and under the supervision of Francesco Berlingieri over many years until such time as it can be adapted and migrated to the Singapore University site.
- (iii) That a link to the new Singapore website should be placed on the CMI website with a suitable explanation of what the Singapore site contains (Lawrence Teh to brief the CMI Administrative Assistant on suitable wording).
- (iv) That steps be taken to identify contact persons in each NMLA to be responsible for feeding judicial decisions to the Database, and that the Standing Committee approach NMLAs explaining the importance of their sending decisions to us in the English language.
- (v) That the CMI contribute Euro 5,000 for each year for 5 years to this project.

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

*Conclusion:*

The report of Deucalion Rediadis was received too late to be considered by the Executive Council.

*Resolved: to appoint Nick Gaskell to the Standing Committee.*

It was noted by the President that he had suggested, soon after the New York Conference, that one consideration for the Standing Committee might be to divide its membership into two streams, one being a promotion team and the other an implementation team and that Nick Gaskell and Rosalie Balkin could contribute significantly to the latter, particularly concerning methods of acceding to or ratifying conventions.

The President also noted that in his report Deucalion Rediadis had commented on a meeting at the IMO in May and June which raised a number of issues that the Standing Committee needs to consider. The President will write to Mr Rediadis suggesting he forward his report to his Committee and at the same time suggest roles for them and seek their comments on the issues raised. Consideration might be given to arranging a meeting of this Standing Committee, at least those members of it who attend in Genoa, if enough are present.

(c) *Young CMI*

*Conclusion:*

The extremely helpful memorandum of Taco van der Valk was noted. It identified the strengths of Young CMI and the regional meetings that it was the catalyst for, suggested that an age limit of 40 be placed on this group, and that it be organised by Young Lawyers with a CMI Executive Council liaison person or persons. It also suggested that an attempt be made to ensure that young CMI events which occur simultaneously with a CMI event do not take place at the same time as the Assembly. The memorandum also suggested that more young people be appointed to IWGs and Standing Committees, especially as Rapporteurs or Assistant Rapporteurs, perhaps with a responsibility to place all relevant documents on the CMI website and messages be placed on the CMI LinkedIn page.

*Resolved to:*

- (i) Appoint Taco van der Valk to be the CMI Executive Council liaison to the Young CMI Standing Committee.
- (ii) Limit the age of members of the Young CMI Standing Committee to 40.
- (iii) Request the Secretary-General to approach Blythe Daly (USA) to ascertain whether she would be prepared to be the Chair of this Young CMI Committee, and approach others named in the first round responses such as Massimiliano Musi, Miso Mudrich, Ioannis Timagenis, Franco Zarate and Violeta Radovich to confirm that they would like to remain on this reconstituted Young CMI Committee. The Secretary-General should then approach those who are already presently on the Young CMI Standing Committee and advise them of the new Constitution of this body.
- (iv) Request the young CMI Standing Committee to set up an essay prize on an annual basis to be awarded to a Young CMI person.
- (v) Note for future CMI events that it would be ideally preferable to try and hold the Young CMI sessions at times that do not clash with the Assembly Meeting.
- (vi) Seek to appoint as many members of Young CMI to International Standing Committees or International Working Groups in the future, especially as Rapporteurs.

(d) *Constitution Committee*

*Resolved:*

- (i) That the Constitution Committee continue its brief to address language anomalies in the present Constitution, and inter alia to examine the composition and terms of the Nominations Committee, and the nomination and election process generally, and Article 21 expulsion

procedures and that it prepare proposals for EXCO to consider by the end of April 2017. Changes endorsed by EXCO should then be circulated no later than 1 June 2017 by the President to NMLAs, with an explanatory memorandum from the Constitution Committee and Secretary-General. NMLAs should be given until 30 June 2017 to respond, allowing the Committee and EXCO to process the responses with a view to including proposed amendments in the agenda for the Genoa Assembly – which is required to be circulated no later than 27 July 2017 – being the required 6 weeks' notice of the Assembly.

- (ii) To appoint John O'Connor to the Constitution Committee.

(e) *General Average Interest Rates*

*Conclusion:*

The report of Taco van der Valk and its recommendations were noted, in particular that no increase be made to the rate of interest approved at the Assembly Meeting in New York and the difficulty of setting interest rates under the Guidelines to the 2004 York Antwerp Rules. It was also noted that Bent Nielsen had suggested a mechanism for reform of the Guidelines. As the Guidelines are required to be amended by a Conference of the CMI it is not possible for EXCO to approve the suggested amendments.

The President has noted, in correspondence with Taco van der Valk, that the Guidelines are themselves somewhat contradictory in that they seem to provide an unfettered discretion to the Assembly “based upon any information or consideration which in the discretion of the Assembly are considered relevant, but may take the following materials into account...” when setting the interest rate. It then later provides that “due regard shall be had...” which is somewhat contradictory to the general discretion. Pending possible reform in 2020 it would seem that the Assembly, on the recommendation of the Standing Committee, should proceed as best it can; despite the difficulty of ascertaining the top up rate which first rate banks charge the first rate shipowner on top of LIBOR, as first rate shipowners do not seem to get much capital by old fashioned borrowing and there is little data available, and banks not surprisingly, would not wish to disclose such confidential information. The President's suggestion is that the Standing Committee do its best in the next few years to obtain whatever information it can and if thought necessary propose an amendment to the Guidelines for the 2020 Conference.

(f) *Planning Committee*

In the absence of any report from this IWG there was no Executive Council discussion.

(g) *General Average Guidelines*

*Conclusion:*

The report of Taco van der Valk was noted confirming the membership of this Standing Committee and its intentions to consider some topics which were not considered at the New York Conference due to time constraints.

The suggestion was made by John Hare that in view of the closing down of the Review of the Rules on General Average IWG a new Standing Committee be created.

The Executive Council also agreed with the recommendation of the German MLA that Jörn Groninger (Germany) be appointed to the Standing Committee.

The President in his summing up made reference to the process to be followed in amending the General Average Guidelines, in CMI Conference and/or in an Assembly. Any suggestion that the present Guidelines require amendment should thus carry forward to Genoa.

*Resolved:/overleaf*

*Resolved that:*

- (1) There be a new Standing Committee on General Average and that the General Average Guidelines Committee be reconstituted within that new Committee as the Standing Committee on General Average (including Guidelines to the York Antwerp Rules 2016).
- (2) Jörn Groninger be appointed to the new Committee.

12. *The CMI and the IMO*

(a) *The IMO Legal Committee*

The Executive Council noted with pleasure that shortly after the New York Conference, which he had attended, Frank Wiswall was announced as the winner of the IMO Prize, for which he had been nominated by the CMI. The Executive Council, through the President, has extended its congratulations to Frank Wiswall, and is grateful to Patrick Griggs for agreeing to say a few words when the Prize is awarded on 5 December at the IMO.

(b) *The IMO Maritime Safety Committee meetings in November 2016*

The Executive Council noted the report of Patrick Griggs dated 24 November 2016 on his attendance at the MSC meeting at the IMO which took place during the Executive Council meeting and at which the MSC had considered the problem of safety standards for personnel (where more than 12 were involved) when being transferred to work on offshore installations and the trip goes beyond the Territorial Seas. Patrick Griggs noted that discussion had centred around a new Chapter 6 to SOLAS although

consideration is being given to an interim solution, which is to create a definition of “industrial personnel” by means of an MSC resolution so as to define such persons as not being passengers within the meaning of SOLAS regulations. Patrick Griggs noted that he had drawn the attention of the United Kingdom delegate to the existence of the Athens Convention and its definition of passenger and his recommendation to the CMI to the effect that there is little the CMI can do unless and until this problem is referred to the IMO Legal Committee. The Executive Council expressed its appreciation to Patrick Griggs for monitoring this meeting which has been conveyed by the President.

(c) *The IMO Legal Committee 2013rd Session 8 – 10 June 2016*

The Executive Council noted, with thanks, the report which had been received from Patrick Griggs on the June meeting of the IMO Legal Committee. John Hare drew attention to the last paragraph of Patrick Griggs’ report which is reproduced below:

“This was a short meeting (effectively 2 days) and the only possible new projects of any substance (Transboundary Pollution and Judicial Sales) were both rejected. This leaves the Legal Committee with only one meeting per year and a very insubstantial future work programme. There must be some doubt about the long term future of the Committee.”

13. *IOPC Fund Meeting*

The Fund’s own report of this meeting which was attached to the papers was noted by the Executive Council.

14. *Publications*

The retirement of Giorgio Berlingieri from his role as Publications Editor for the Yearbook and Newsletter was accepted with sadness and reluctance by the Executive Council. EXCO expressed its grateful thanks to him for having taken on this role on the retirement of his father in 2013 and in particular, that since then his firm had borne the secretarial costs and disbursements for these publications. The grateful thanks of EXCO and the CMI have been extended to Giorgio and his family on their devoted service to the CMI and in particular its publications over many years.

*Resolved that Taco van der Valk’s offer to take on this role will be accepted but he will require such assistance as the CMI secretariat is able to supply. It is hoped that Anne Verlinde’s replacement will have the time and ability to assist in that regard.*

Further issues which were discussed and supported concerning publications were:

- Work will be done to prepare an index for the Yearbooks, that is, initially, all the indexes of the

Yearbooks currently on the website will be published together on the website.

- That further investigation into an online search facility be explored and developed if economically feasible.
- That for the foreseeable future CMI continue to publish hard copies of the Yearbook.
- Vice President Davis suggested exploring developing a relationship with Antwerp Library.

#### 15. *CMI Regional office in Singapore*

The report of Lawrence Teh was noted and considerable thanks and commendations conveyed to him for his efforts in reaching out to MLAs and jurisdictions where there is no MLA in the region around Singapore, which in recent times have included the UAE (Dubai), Thailand (where there seems little prospect of an MLA being developed in the foreseeable future), and Malaysia (see earlier membership application agenda item) where Lawrence Teh had met both Arun Krishnalingam and Sitpah Selvaretnam. He had also participated in the 8th Asian Maritime Law Conference in Singapore at which the President had given the keynote address.

#### 16. *EU representation*

In the absence of any report there was no Executive Council discussion, but the Executive Council noted that the report presented by Vincent Power at the New York Conference is being published on the CMI site.

#### 17. *CMI - The Future*

In the absence of any report there was no Executive Council discussion.

#### 18. *Reports to NMLAs by Executive Councillors*

The report by Giorgio Berlingieri and his visits and/or correspondence to MLAs of Croatia, Greece, Portugal, Slovenia and Spain and the yearly conference organised by the MLAs of Italy, Croatia and Slovenia on a rotating location basis was noted, as was the memorandum of understanding entered into between those MLAs. Vice President Berlingieri and the Italian MLA are to be congratulated for their work in assisting those other MLAs and participating in such regional activities.

Executive Councillors were urged by John Hare to liaise with their identified MLAs for whom they have responsibility as well as lending support to those who are known to them and participate in IWGs and Standing Committees and encourage them with their work.

#### 19. *Correspondence*

Correspondence between the President and the Croatian MLA concerning its declining membership and difficulty meeting subscriptions was noted. The President's correspondence to MLAs on the conclusion of the New York Conference was noted.

#### 20. *Future Executive Council Meetings*

Future EXCO meetings were noted as follows:

1. Management Committee Meeting - March 7th and 8th, 2017 in Antwerp;
2. A possible virtual meeting in April/May 2017; and
3. An EXCO meeting on 7 September 2017 in Genoa.

#### 21. *General business*

The Executive Council noted:

- The President's attendance at the 40th Anniversary of the New Zealand Branch of MLAANZ and the 8th Asian Maritime Law Conference in Singapore in September 2016.
- Vice President Chris Davis's attendance at the joint meeting of the MLAUS and Tulane Admiralty Law Institute between 26 and 28 October 2016 (which was also attended by John O'Connor and Dieter Schwampe).
- The article in ICS on "Ocean Governance" and the work being done at the United Nations with which ICS is involved on a new legally binding instrument on the Conservation of Marine Life in areas beyond national jurisdictions which is likely to have an impact on shipowners work.

#### *Closing remarks by President.*

The President thanked EXCO members for their participation and for all the work they do for the CMI, and recorded special thanks to his assistant, Melissa Matheson, for her hard work in preparing and processing papers for this meeting.

STUART HETHERINGTON  
*President*

JOHN HARE  
*Secretary-General*

## THE IMO INTERNATIONAL MARITIME PRIZE 2015



Dr. Frank Lawrence Wiswall Junior, former Chair of the IMO Legal Committee and Vice President (Honoris Causa) of the Comité Maritime International (CMI), has received the prestigious International Maritime Prize for 2015 for his contribution to the work of IMO over many years. Presenting the Prize, during a ceremony at IMO Headquarters on Monday (5 December), IMO Secretary-General Kitack Lim highlighted Dr. Wiswall's dedication and leadership in the field of international maritime law over several decades, making an invaluable contribution to the goals and purpose of IMO.

“Dr. Wiswall's contribution to IMO's goals has been vast. In helping to provide the legal backbone for a regulatory regime that covers just about every aspect of ship design, construction and operation, and related issues like liability and compensation, wreck removal and ship recycling – he has played his part in our common goal of making shipping safe, secure, efficient and clean,” Mr. Lim said. The Prize ceremony was held at the close of the first day of the IMO Council's 117th session.

Dr. Wiswall acted as Vice Chair and Chair of IMO's Legal Committee in the 1970s and 1980s; worked as a lecturer and Governing Board Member of the IMO International Maritime Law Institute, IMLI, and served as Vice-President of the Comité Maritime International.

The IMO Council decided to award the Prize to Dr. Wiswall at its June session, noting Dr. Wiswall's personal contribution to the work of IMO, leading IMO's Legal Committee as it developed a number of key international treaties and holding important roles at various international IMO legal and diplomatic conferences.

As a lecturer at IMLI in Malta and as a Member of its Governing Board from 1992 to the present, Dr. Wiswall has also made a significant contribution to the training of lawyers from around the world.

In nominating his candidature for the International Maritime Prize, the CMI said Dr. Wiswall had contributed greatly to the establishment of the uniformity of maritime law during his long and distinguished career as a practising maritime lawyer, academic and Vice-President of the CMI.

## SPEECH BY KITACK LIM, SECRETARY-GENERAL INTERNATIONAL MARITIME ORGANIZATION

Excellencies, distinguished delegates, ladies and gentlemen, good evening.

It gives me great pleasure to introduce the recipient of the International Maritime Prize for 2015, Dr. Frank Wiswall.

Frank Wiswall's dedication and leadership in the field of international maritime law has, for decades, made an invaluable contribution to the goals and purpose of IMO – through his role as Vice-Chairman and Chairman of IMO's Legal Committee in the nineteen-seventies and eighties; to his work as a lecturer and governing board member of the IMO International Maritime Law Institute, IMLI, and as Vice-President of the Comité Maritime International.

His time on the IMO's Legal Committee coincided with an extremely busy 10-year period in which there were more than 30 sessions, which saw important developments in many IMO treaties.

Draft articles were produced for vital conventions relating to liability and compensation – covering wreck removal, carriage of passengers and their luggage on ships, and limitation of liability for maritime claims. Important legal groundwork was laid for the adoption of both the Search and Rescue Convention, and the convention dealing with the carriage of hazardous and noxious substances by sea – the “HNS” Convention.

Beyond his work leading the Legal Committee, Dr. Wiswall also played a proactive role at several international conferences convened by IMO during this time.

I would also like to highlight Dr. Wiswall's valuable contribution to academia, and in particular to IMLI. He contributed to the establishment of IMLI by reviewing a draft syllabus and became both a professor and member of the Institute's Governing Board just a few years after IMLI came into being in 1988. For over 20 years, he lectured on diverse topics, covering everything from maritime legal history, to maritime legislation drafting, law of maritime safety and law of marine collisions.

Earlier this year I told IMLI graduates that there were now “oceans of opportunities before them to make their own unique waves in the maritime world as they move onto new and exciting challenges”.

Ladies and gentlemen, it is thanks, in no small part, to Dr. Wiswall that these opportunities exist.

The comprehensive array of IMO instruments defines the rights and privileges and, at the same time, the duties, obligations and responsibilities of nations participating in international shipping. But, to be effective, these international standards need to be enshrined in law at the national level.

By training lawyers from around the world to draft international instruments and incorporate them into national legislation, Dr. Wiswall has supported the maritime sectors of countries across the globe.

This is an immensely valuable contribution – because a proper, effective national framework of shipping laws, together with the capability to enforce them, enables a country to participate fully in a broad range of maritime activities. And, for developing countries in particular, maritime activity can both provide a source of income in its own right and support growth and development across an entire national economy.

Finally, this award also recognizes Dr. Wiswall's work as part of the Comité Maritime International, or CMI, which, as you will know, is an important non-governmental organization working towards the unification of maritime law. In his various roles, including Executive Councillor and the CMI's main representative to the United Nations, Dr. Wiswall has played his part in the long and fruitful cooperation between IMO and the CMI.

His work includes the CMI Handbook of Maritime Conventions, first produced in 1992, which includes important texts on piracy and maritime crime, and on classification societies. It is still an incredibly useful tool for anyone considering or writing about significant IMO Conventions.

Ladies and gentlemen, Dr. Wiswall's contribution to IMO's goals has been vast.

In helping to provide the legal backbone for a regulatory regime that covers just about every aspect of ship design, construction and operation, and related issues like liability and compensation, wreck removal and ship recycling – he has played his part in our common goal of making shipping safe, secure, efficient and clean.

His has been a distinguished career and, I am sure you will agree, Dr. Frank Wiswall is, indeed, a very worthy recipient of the International Maritime Prize for 2015. Thank you.

KITACK LIM  
*Secretary-General International Maritime Organization*

## SPEECH OF PATRICK GRIGGS

I am sure that many of us here today have a CV which would fit onto the back of a medium sized envelope if not the back of the proverbial postage stamp! Not so in Frank's case. As we have heard he has enjoyed a long, varied and distinguished career – and it's not over yet. It occurs to me that there cannot be very many US Coastguard Auxiliaries with a Doctorate of Philosophy from Cambridge University. At heart, of course, he is a lawyer. A career in the law can be dull but not when you can manage to balance the academic with the practical – as Frank has done. In the late seventies and early eighties there was a series of major maritime disasters involving ships flying the Liberian flag. These coincided with Frank's service as Admiralty Counsel, Bureau of Maritime Affairs, Republic of Liberia. The Liberian authorities took their responsibilities seriously and held a number of high profile inquiries. Frank will, I'm sure, remember the inquiry which followed the collision between the Aegean Captain and the Atlantic Empress in 1979 in the Caribbean which still remains, I think, the single biggest insurance claim on the London market. You, Frank, will also remember the inquiry which followed the collision of the south coast of England between the Allegro and the Pacific Glory. (I see Lord and Lady Phillips in the audience tonight. Nicholas will certainly remember the Allegro inquiry at which he represented the owners of Pacific Glory as junior counsel.) I think that one of these inquiries was held in New York but one was certainly held at the Liberian Embassy in Princes Gate in Kensington, London. At all, these inquiries Frank was counsel to the Tribunal – a sort of prosecutor. We learned the hard way that it was as well to have your witnesses well prepared before Frank had a chance to examine them. Frank, it was a matter for discussion and wonder amongst those attending these inquiries that you always sported a pair of bright red socks for these hearings. I have never liked to ask but was there any significance to this? You might let us into this secret! These were thorough and well conducted inquiries due, in large part, to Frank's careful preparation and presentation. The chairmen for the inquiries held in London were generally retired High Court Judges and

the quality of the subsequent reports was high and played a major part in improving safety at sea and in helping to determine liability. Frank was not often lost for words but I do remember a moment of some confusion for all of those attending the inquiry into the collision between the Aegean Captain and the Atlantic Empress when a member of the Tribunal asked counsel appearing for one of the parties whether he thought that the collision might, in some way, have been connected with the notorious reputation of the famous Bermuda Triangle – this did not make it into the final report!

My time attending IMO Legal Committee meetings did not coincide with Frank's chairmanship but we have heard how many IMO Int. Maritime Law Conventions took shape under his chairmanship.

In more recent times Frank and I have both held office at the CMI. For some years as members of the Executive Council and when I was elected President in 1997 Frank served as a loyal Vice - President. With his vast experience his contributions at Council meetings were always very much to the point and listened to with great respect. For many years he has acted as the guardian of the CMI Constitution which he extensively revised – and it has stood the test of time.

Finally I must mention our common interest in the well-being of the Int. Mar. Law Inst. in Malta. Since 1992 Frank has visited the Inst. at least once each year to deliver a series of lectures to the students. I am sure that there are some in this room who will have been taught by Frank either at IMLI or at the WMU. Certainly the Legal Committee is full of IMLI graduates (and therefore Frank's ex-students) – including the present Chairman – Kofi Mbiah. Frank and I both still serve as Governors of IMLI.

Frank, we don't know what plans you have for the future but I'm sure that retirement is far from your thoughts. I note that we were both born in 1939 – I promise not to retire as long as you don't. I hope that our paths will continue to cross – it's been an honour and a pleasure knowing you and my congratulations on the award of the IMO Prize.

PATRICK GRIGGS CBE  
*Past President, CMI*



## REMARKS BY DR. FRANK WISWALL AT PRESENTATION OF THE INTERNATIONAL MARITIME PRIZE, 2015

To mis-state a common phrase, at the shoulder of every man who has achieved something great, there stands an astounded woman.

Nothing I have done would be possible without Libby (Elizabeth), and both of us were astounded upon learning of the award of the International Maritime Prize. Among others who led me toward this spot were teachers and colleagues in the academic world, partners and colleagues in maritime law practice, and colleagues in the CMI and IMO.

It is difficult now to find a beginning, but in fact I went to sea in Maine before I went to law. I earned my first mariner's license in 1960, and that same year joined the United States Coast Guard Auxiliary, a uniformed branch of the service but made up of volunteers who wish to assist the Regular and Reserve branches in the saving of lives and property at sea. Fifty-seven years later I am a member and officer of the Coast Guard Auxiliary, as is Libby. This was an obviously right thing to do, and to some extent owes to my religious belief.

After a rather long haul as a student of international and maritime law – and I am still a student of both – I was taken aboard as a member of the collision department in the New York firm of Burlingham Underwood, and was lucky to be caught up in litigating several major cases. Thereafter I went to work as maritime counsel for International Bank in Washington, which was involved with the government of Liberia in management of its maritime programme. During that time I began my association with IMO.

I have written before about the Legal Committee in connexion with its 100th Meeting celebration, and will add to that only the view that 12 years in the Committee and also in diplomatic conferences as a participant and officer was the equivalent of study for a doctorate in law.

However, what is more important at this distance was the relationship with delegates and many wonderful people in the Secretariat.

IMO led me to a new experience in teaching, as a lecturer at the World Maritime University (WMU) for nineteen years, and later to appointment as a visiting Fellow and then Professor and Governor of the International Maritime Law Institute (IMLI). Many in the maritime world are still unaware of IMLI and if aware of its existence do not understand it or its importance. Most people do not realize that maritime law is a vital component of international law – as one noted academic has held, maritime law is the “*oldest and most effective implement of international law.*” The great mission of IMLI is the unification of

national interpretation and application of both customary and conventional international law, as well as the promotion of scholarship and academic training in the field. I suspect that some of you may have suffered under my lectures – at least the agony seems to have kept (most of) you from falling asleep! One thing Libby and I miss most at present is not seeing our “IMLI family” – both former students the world over and especially the people in Malta we care much about and try to keep in touch with.

While still a student here in England over fifty years ago I joined the Maritime Law Association of the United States. My own emphasis at the MLA was on the international side rather than on domestic matters, and this led to an involvement with the Comité Maritime International (CMI). The CMI is the oldest international organization in the maritime world, it has consultative status with both IMO and the United Nations, and its object is “*unification of maritime law in all its aspects.*” This is not the occasion to review the accomplishments of CMI over 120 years, but it has to be noted that until the late 1960s it was CMI who prepared for and arranged all maritime diplomatic conferences; since then it has drafted many instruments for the IMO Legal Committee and other international organizations, and has helped to shepherd several of these through to conventions.

As to both the IMO and the CMI, my feeling is just as it was with the Coast Guard Auxiliary. IMO has as its basic purpose formulation of law, regulation and guidelines intended to save of life and property at sea; CMI wishes to unify the application of maritime law in all aspects, both to uphold maritime commerce and – yes – to contribute to the saving of life and property at sea. It is elementary that these are noble aims – it is my nature to be attracted to both organizations. As to persons present here, I must call attention to Dr. Thomas Mensah. Most know that he was the first President of the International Tribunal for the Law of the Sea (ITLOS), but previously he was for years Director of the IMO Legal and External Relations Division, and Assistant Secretary-General. Many times Tom went out of his way to help me, and has been a dear friend for more than fifty years. Incidentally, Dr. Mensah did at one time literally change my view of the world – as he will remember we were both in attendance at the first substantive session of the Third Conference on the Law of the Sea in Caracas in 1974, when he and Tom Busha (his Deputy Director and IMO's *Chef de Protocol*) put on a gala feast in his apartment. The chairs were constructed on steel tubing in an “S” shape, and I was as overweight then as I am now; at the appetizers the view began to

change, and soon I was looking at the ceiling. Yes – the chair sagged and then indeed collapsed! I want also to recognize Lord Phillips of Worth Matravers; he is of course best known as a former Lord Chief Justice and the first President of the Supreme Court of the United Kingdom. But more importantly he is a maritime lawyer and President of the British Maritime Law Association. Those of us within the common law tradition inherit the application of admiralty and maritime law from the English system, so for that I am especially glad to have him with us. Nicholas was an early supporter of and guest lecturer at IMLI, who appropriately made him an honorary Doctor of International Maritime Law. I first met him forty-six years ago in the legal aftermath of a very bad collision between two oil tankers off the Isle of Wight – the *Allegro* and the *Pacific Glory*, with some pollution, fires and unhappily many deaths. That turns me to eventual consideration of another and earlier casualty. What has driven me for over fifty years is the increasing growth in my love for the subject of maritime law and its history. The person most responsible for this is the late Professor Gustavus Hill Robinson, author of the textbook *Robinson on Admiralty* and William Nelson Cromwell Professor of International Law at Cornell. We called Dr. Robinson “Robie”, and I had the honour and privilege of being his research assistant for two years; it was Robie who pushed me into the academic side of maritime law. Robinson graduated from Harvard Law School in 1910, and joined Burlingham, Montgomery and Beecher in New York. The firm represented the White Star Line, and Robie had interviewed the bridge crew of the *OLYMPIC* after the damage done by her on initial departure from Southampton Harbour drawing out all the water. He remembered the morning of April 12, 1912, when Norman Beecher came ‘rolling’ down the hall, exclaiming “*Business, business, business, boys – the TITANIC has hit an iceberg and is putting in to St. John’s, Newfoundland. Robinson you know some of the officers, so get on a train and get up there.*” In Boston, a telegram was brought on board for him: “*TITANIC has sunk. Come back. Beecher.*” Robie was

deeply involved in what litigation took place; so I have had a real personal contact with the *TITANIC* case.

There has been a widespread feeling that the *TITANIC* incident was the progenitor of IMO, but in my view that is utterly false. If there is a casualty that gave rise to IMO it was the collision between the tourist vessel *PRINCESS ALICE* and the collier *BYWELL CASTLE* here in the Thames in 1878. The cause was failure to conform to the Thames Conservancy rule promulgated in 1872 that vessels must pass port-to-port; the *PRINCESS ALICE* was cut in half, with a loss of over 650 lives. The Thames was then an open sewer, and for weeks corpses floated up and down and washed up on the shores, many outside the Houses of Parliament. The resulting publicity both in the U.K. and the U.S.A. led directly to the first diplomatic conference ever held on maritime affairs. That Marine Conference in Washington D.C. in 1889, adopted the initial international collision regulations – the Rules of the Road at Sea. The Rules were amended by the CMI’s Brussels Conference in 1910, two years before the loss of the *TITANIC*. The cause of the 1878 *Bywell Castle* collision was a violation of law that led to new *preventive* international law for the saving of life; the *TITANIC* tragedy was the result of insane speeding in the dark of night in waters known to contain icebergs, and the ultimate international law produced was to mandate carrying of more life-saving appliances. Is it more appropriate for the origin of IMO to be related to an act of navigational madness on the other side of the Atlantic, or to a violation of regulation that led to international law for the *prevention* of casualties? The collision of the *Bywell Castle* and *Princess Alice* occurred nearby in a river that flows a few feet from the door of this very building. Is that coincidence, or does Heaven send messages that sometime confuse us in their obviousness!

This, my friends is all I can say; except no honour that I could imagine would mean more to me than the International Maritime Prize.

Finally may God Bless the IMO, and may God Bless the CMI, and may God Bless every one of you.

Thank You, Thank You, Thank You.

FRANK WISWALL

## INTERNATIONAL WORKING GROUPS

[As constituted during EXCO eMeeting Nov 2016]

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[As constituted during EXCO eMeeting Nov 2016]

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# NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

## NEWS FROM IOPC FUNDS

### REPORT ON THE OCTOBER 2016 SESSIONS OF THE IOPC FUNDS GOVERNING BODIES

The governing bodies of the IOPC Funds held meetings from 17-20 October 2016 at IMO headquarters. In attendance were 70 States representing 63 Member States of the 1992 Fund, 25 Member States of the Supplementary Fund and 7 observer States, as well as 13 observer delegations. Rosalie Balkin attended for CMI.

Among the highlights of these meetings were:

- The reappointment by acclamation of the Director, Mr Jose Maura Barandiaran, for a second term of office, from 1 November 2016 to 31 December 2021;
- The announcement that the Funds had relocated in July 2016 to the IMO building at 4 Albert Embankment. They now occupy a newly refurbished wing of the building on the first floor; and
- The presentation by the External Auditor (the Comptroller and Auditor-General of the United Kingdom) of its last (37<sup>th</sup>) report to the governing bodies before the new auditor (BDO International) takes on the role.

Among the issues discussed by the governing bodies were:

- The annual reports of the joint Audit Body and Joint Investment Advisory Body;
- The continued importance of timely submission of oil reports and prompt payment of contributions;
- A draft text of Guidelines for presenting claims for environmental damage;
- The continued work of the IOPC Funds' Secretariat, the IMO Legal Affairs and External Relations Division Secretariat and the HNS Correspondence Group to bring about the entry into force of the 2010 HNS Convention;
- The newly refreshed format of the Funds' website and a number of recent Funds' publications, including the availability of the Text of the IOPC Funds' Conventions in Arabic;

- The announcement of a new website by the International Spill Control Organization (ISCO) containing a repository for incident response; and
- Information on the Chinese Ship-source Oil Pollution Compensation Fund.

As usual, the Director presented his report concerning recent developments in respect of the 12 incidents involving the 1992 Fund in 2016. Among these incidents were:

- The **Prestige (Spain, Nov 2012)**. The main issue discussed here was the decision of the Spanish Supreme Court in Jan 2016 to hold the master to be criminally liable for damages to the environment, with civil liability;
- The **Hebei Spirit (Republic of Korea, Dec 2007)**. 130,000 claims have been registered and the 1992 Fund Executive Committee decided to continue the level of payments at 60% of the amount of the established losses; and
- The **MT Pavit (India, Aug 2011)**. An analysis from samples from the cargo tanks have revealed that these were all persistent mineral oil. The 1992 Fund Executive Committee inferred from that the vessel was carrying persistent mineral oil on the voyage involving the incident and so, in principle, the 1992 CLC would apply.

One possible new case was also mentioned, namely the **Trident Star (Malaysia, Aug 2016)** in which the spill of oil appeared to have resulted from the overfilling of one of the vessel's cargo tanks. Reports to date indicate that this might result in a claim under the 1992 Fund.

A comprehensive Record of Decisions may be obtained via the document services of the IOPC Funds' website at [www.iopcfunds.org](http://www.iopcfunds.org).

ROSALIE BALKIN