

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

COMITE MARITIME INTERNATIONAL

NO.1 – JANUARY 2018

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## NEWS FROM THE CMI

### MESSAGE FROM THE PRESIDENT

It was good to see so many of you at the Genoa meeting in September, which is reported on by both Rosalie Balkin and former President Patrick Griggs CBE in this News Letter. It was wonderful to have President Ad Honorem Francesco Berlingieri amongst us.



*Picture: Francesco Berlingieri*

It would be remiss of me not to thank Vice President Giorgio Berlingieri for all his organisation in making the meeting such an outstanding success. I would also like to take this opportunity of welcoming Taco van der Valk to his new role as editor in charge of CMI publications. At the same time I would like to thank Giorgio Berlingieri for his devoted service in performing that role over many years.

Whilst we said farewell to John Hare who retired from the role of Secretary-General in Genoa we also welcomed Rosalie Balkin. Rosalie, during her past life at the IMO Legal Committee, was a regular attendee at CMI events. She was made a member Honoris Causa of the CMI at the Assembly meeting in Dublin in 2013. She had served as the Vice Chair of the IMO Legal Committee between 1993 and 1998 and as the Secretary of the IMO Legal Committee

from October 1998 to December 2013, when she retired. She was a Chair of the Drafting Committee of the HNS Convention in 1996 and also in the same year when the protocol to amend the LLMC Convention 1976 was concluded.

I can confirm that the next Assembly meeting will be taking place in London on 9 November 2018 and will be held at the IMO building. I look forward to seeing as many of you there as possible. I take this opportunity to wish a healthy and prosperous new year to all Maritime Law Association members around the world.

Stuart Hetherington, January 2018

## REPORT OF CMI EVENT GENOA SEPTEMBER 2017 BY ROSALIE BALKIN

This year saw the CMI annual Assembly and the Executive Council meetings take place on 7-8 September in the lovely port city of Genoa, Italy. This choice of location was largely a tribute to the Berlingieri family, and in particular, an opportunity for CMI to welcome Francesco Berlingieri, long-serving past President of the CMI and President Ad Honorem, to a CMI meeting in his home city.



Picture: John Hare, Francesco Berlingieri, Stuart Hetherington, Giorgio Berlingieri

Ninety-six years young, Professor Berlingieri attended the Executive Council meeting, the opening session of the half day seminar organised by the Italian MLA, and the closing dinner. As a mark of the esteem in which he is held by the organization, he was presented with a silver salver inscribed as follows:

*“Francesco Berlingieri*

*Member of the Executive Council from 1972,*

*President from 1976 to 1991,*

*President Ad Honorem from 1991*

*In recognition and gratitude for his service and devotion to the CMI.”*

Whether attributable to the balmy Italian climate or the beautiful venues in which the meetings were held or the anticipation of visiting the surrounding

countryside, to say nothing of the intellectual content of the seminar and Young CMI event, the Assembly and seminar attracted a healthy 250 Registrants from all around the world.

The Assembly was preceded by a reception held in the evening of 7 September. It was hosted by the Presidents of the CMI and the Italian MLA for all Delegates and Accompanying Persons at a rather unusual venue—the Genoa Aquarium, the marine inhabitants of which put on a spectacular show by way of welcome and literally whetted the appetite for the cocktails and canapes that followed<sup>1</sup>.

The seminar the following morning was held in the grand surroundings of the Palazzo Ducale. To those of us born and bred in the so-called “new world”, merely being there was a treat in itself. This is not to say, however, that the subject-matter of the seminar was less interesting—far from it. As usual with CMI seminars, a wide range of topical subjects was covered by experts in their respective fields. The opening address on “The significance of the Torrey Canyon—50 years on” was delivered by Måns Jacobsson, past Director of the IOPC Funds. A commentary on this and the other topics is to be found in the report of Patrick Griggs at pages 4-8 of this News Letter.

The afternoon of 8 September was taken up by the formal work of the CMI annual Assembly. This was held in the old Stock Exchange building. Meanwhile, at the Palazzo Ducale, presentations were made by members of the Young CMI and Young AIDIM. One of the highlights of the latter was a paper delivered by Lt.J.G.Otero of the Argentine Coast Guard, entitled “Argentina’s Claim to an Outer Continental Shelf”. This was based on her CMI Prize winning dissertation for her LLM degree from IMLI. Most unfortunately, as this and the two panel discussions which followed were held

<sup>1</sup> Rest assured however that none of the marine inhabitants were on the menu.

in parallel with the Assembly meeting, many of the Delegates were unable to attend<sup>2</sup>.

The main aspects of the Assembly meeting are covered in Patrick Griggs' report, already alluded to above, including summaries of the reports of CMI's International Working Groups. Nonetheless, a few matters bear repeating here. These include the special tribute paid to Bent Nielsen, who was awarded the singular honour of being unanimously elected to Membership *Honoris Causa* in light of his exceptional service to CMI. A special tribute was also paid to the memory of the late William Birch-Reynardson CBE in recognition of his outstanding contribution to the work of CMI. Patrick Griggs' remarks about both Bent Nielsen and William Birch-Reynardson have been reproduced in the News Letter at pages 8-11. Titulary membership of CMI was unanimously conferred on three members of the British MLA, namely, Andrew Taylor, Tom Birch-Reynardson and Richard Cornah, in light of their long and valuable service to CMI.

Another item of interest was the adoption by the Assembly of a number of amendments to the CMI Constitution, many of these being matters of form and reorganisation of the Constitution rather than matters of substance. Amendments were however also adopted in relation to Articles 14 and 25, which did involve matters of substance. Article 14 concerns the procedure to be followed for future amendments to the Constitution, while the purpose behind the amendment to Article 25 was to enable the Assembly to nominate two members of the Nominating Committee. In addition, certain consequential amendments needed to be made to the Rules of Procedure and in particular to Rule 9, brought about by the changes made to Article 25. In accordance with Belgian law, these amendments are required to be published, in Dutch, in the Belgian Official Gazette. The new CMI Constitution and Rules of Procedure are at pages 47-62 of the News Letter and will, as usual, be published in the next issue of the Yearbook and on the website.

On the subject of elections, Ann Fenech was unanimously re-elected for a second term as Executive Councillor, while Aurelio Fernandez-Concheso was elected to replace Jorge Radovich, who was stepping down as Executive Councillor, his mandate having ended. John Hare having indicated his wish to step down as Secretary-General at the Genoa Assembly, yours truly, Rosalie

Balkin, was unanimously elected to replace him. His will be a hard act to follow!

The formal proceedings of the Assembly were brought to a close with the President expressing his thanks to Gorgio Berlingieri and Laura Baldi and her team for their role in organizing the meeting in Genoa, as well as to Jorge Radovich, for his valuable contribution to CMI's work both before and whilst on the Executive Council. He also expressed special thanks to John Hare for his four years of devoted service to the CMI as Secretary-General.



*Picture: John Hare*

As a token of appreciation, and to the enthusiastic acclaim of the Assembly, John was presented with a statuette of the Lanterna of Genoa (John being an aficionado of lighthouses). The inscription reads:

*"John Hare*

*In recognition of and thanks for his role as Secretary-General of the CMI*

*2013-2017"*

The 2017 Assembly proceedings were brought to a successful conclusion with the gala dinner for all Delegates and Accompanying Persons being held at the Villa Lo Zerbino. This was a joyous affair which was held outdoors in the warm glow of an Italian September evening. As per tradition, the CMI banner was ceremonially passed by the Italian MLA to the British MLA, which is to play host to the 2018 Assembly. I am happy to report that the outgoing Secretary-General, John Hare, was at his amiable best as Master of Ceremonies.

I am pleased to announce that the next Assembly meeting will be held in London on Friday 9 November 2018, at IMO Headquarters, 4 Albert Embankment, London SE1 7SR.

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<sup>2</sup> However, the papers and other documentation are available on the CMI event website at the link [www.cmi2017genoa.org/documentation](http://www.cmi2017genoa.org/documentation).



*Picture: IMO HQ, London*

Anyone planning to attend the Assembly meeting may wish to attend an event planned for the previous day, the annual British Maritime Law Association dinner which will take place after the lecture at the Inner Temple. It is hoped that some CMI International Working Groups (IWGs) will use the opportunity of the Assembly being held in London to call an International Sub-Committee (ISC) meeting on either the day preceding the Assembly or, alternatively, on the afternoon of Friday 9 November, once the Assembly meeting has drawn to a close.

**Rosalie Balkin**

## **REPORT OF THE 2017 GENOA ASSEMBLY AND SEMINAR BY PATRICK GRIGGS CBE (BY KIND PERMISSION OF THE JOURNAL OF INTERNATIONAL MARITIME LAW)**

The annual Assembly of the CMI was last held in Genoa in 1925 when the proceedings were chaired by Francesco Berlingieri Snr. Central to the 2017 Assembly was a tribute to his grandson, Francesco Berlingieri Jnr. (now 96 years old), who was, himself, President of the CMI for 16 years. At the start of the Assembly meeting tribute was also paid to Bill Birch Reynardson CBE, (Past Vice- President of CMI and former Chairman of T.R.Miller & Sons) who died in July this year. These two, more than any others, were responsible for the survival of the CMI into the 21<sup>st</sup> Century.

The Assembly Meeting took place on the afternoon of Friday September 8 in the magnificent surroundings of the Old Stock Exchange building.

### **Membership.**

The President, Stuart Hetherington, reported that applications for membership had been received from the maritime law associations of Malaysia, Cameroon and Tanzania. These three new member associations were welcomed by acclamation.

Applications for Consultative Membership had been received from FONASBA and the International Association of Average Adjusters – both applications were welcomed and approved.

### **CMI Officers.**

Prof. John Hare (South Africa) has retired as Secretary - General and the Assembly welcomed the appointment of Dr. Rosalie Balkin (recently retired Director, Legal Affairs and External Relations Division, IMO) to replace him.

### **Future meetings.**

The Assembly meeting in 2018 will be held on November 9 in London. Delegates will be invited to

attend the annual Donald O'May Lecture (Maritime Law Inst., Southampton) to be followed by the Annual Dinner of the British Maritime Law Association on 8 November 2018. The Assembly meeting itself will be held on the following day and it is hoped that it will be possible for this to take place at IMO Headquarters on Albert Embankment.

In 2019 it is hoped to organise a Colloquium in Mexico at the invitation of the Mexican MLA.

In 2020 it is planned to hold a full Conference in Japan in late October (following the Olympic Games).

### **Reports of International Working Groups.**

#### ***Piracy.***

Piracy continues to be an issue both in West Africa and in Asia where there has been a recent incident in the Malacca Straits. Somalia has remained generally quiet except for the seizure by armed pirates of the product carrier “ARIS 13” in March 2017. After a fire-fight the ship was released. There were no injuries to the crew. It may not have been a coincidence that the seizure occurred at a time when the EU commitment to patrolling the waters off Somalia had been reduced. However, there has been no more activity since then and this one may turn out to have been an isolated incident.

#### ***Fair Treatment of Seafarers.***

At the IMO Legal Committee's 104<sup>th</sup> Session delegates were reminded of the 2006 Guidelines on Fair Treatment of Seafarers in the event of a maritime accident and the ITF expressed its concern at the way in which states were choosing to interpret the Guidelines. It urged the Committee to sponsor a one-day workshop to discuss the implementation



of the Rules. This workshop took place at IMO on June 23<sup>rd</sup>.<sup>3</sup>

The CMI continues to work with Seafarers Rights International in preparing regular submissions to IMO to ensure that the issue of seamen's rights continues to be taken seriously.

### ***Recognition of Foreign Judicial Sale of Ships.***

At the IMO Legal Committee's 102<sup>nd</sup> Session the CMI submitted a paper outlining a proposal for an international convention to regulate the judicial sale of ships to ensure that the buyer on a judicial sale obtains a good title which cannot be challenged in other jurisdictions.<sup>4</sup> Despite some support for the project the Legal Committee decided that there was no "compelling need" for such an instrument. However, it did suggest that other UN bodies (such as UNCITRAL or UNCTAD) might be interested in such a project.

CMI is in touch with UNCITRAL which in June this year suggested that CMI might wish to organise an international colloquium to further explore the need for such an instrument. The CMI Executive Council has agreed to explore the possibility of organising such a colloquium in conjunction with the Government of Malta in early 2018.

### ***Cross-border Insolvency.***

In April 2016 the South Korean container company, Hanjin, sought to restructure its debts to avoid formal rehabilitation proceedings. In August of the same year the company filed for receivership in the Seoul Central District Court and invited the Court to freeze its assets. Many creditors, unhappy with this development, sought to exercise their *in rem* and other rights against Hanjin's ships and assets. In February 2017 the Seoul Central District Court finally declared the company bankrupt. A survey of jurisdictions in which creditors had issued proceedings *in rem* or where recognition of the South Korean proceedings for purposes of the UNCITRAL Model Law on Cross Border Insolvency had been sought, revealed 25 instances where Hanjin ships had been targeted by a judicial order or had been the subject of *in rem* proceedings. This survey also revealed that even where states had enacted the Model Law the outcome of proceedings could not be predicted.

This case is a good example of the tensions which exist between the orderly liquidation of a company and creditors' rights to proceed against the company's assets. (The problems identified by the Hanjin case were the subject of analysis by Prof. Sarah Derrington and Maurizio Dardani at the

Seminar held in conjunction with the Genoa Assembly).

In 2010 the CMI formed an International Working Group to study the problem of cross border insolvencies. At a meeting in Genoa which took place prior to the Assembly the IWG considered an

Options Paper designed to address the conflict between remedies in Admiralty Law and cross-border insolvency law. The options were:-

- (a) A Protocol to the UNCITRAL Model Law addressing *in rem* actions.
- (b) Adaptation of or amendments to the already existing Guidelines and/or best practice for handling cross-border insolvencies.
- (c) Continuing to highlight the current difficulties and uncertainties that surround the various legal regimes that govern cross-border maritime insolvencies.

The IWG agreed that the UNCITRAL Model Law does not adequately address the complexities of cross-border maritime insolvencies and this had been highlighted by the Hanjin insolvency. However, members of the IWG concluded that a Protocol to the Model Law dealing with *in rem* claims would be unlikely to attract wide support.

Similarly, the IWG concluded that the adaption or amendment to the already existing Guidelines and/or best practice would be equally difficult to achieve.

The first two options having been rejected in discussion it was recommended that CMI should concern itself primarily with the third option of providing insight into current issues and uncertainties in the field. It was recognised that the ability of CMI to make sufficient impact on development of international jurisprudence was limited.

The IWG will now concentrate on preparing a document for publication which will contain:-

- (1) a statement of the nature, scope and extent of "maritime property" or "marine based assets";
- (2) a statement of CMI's position on the proper treatment of secured maritime assets in the context of both rehabilitation and insolvency proceedings;
- (3) a distillation of the responses to the CMI Questionnaire on Cross-border insolvency in order to provide jurisdiction-specific answers to questions that will routinely be asked by shipowners and their legal advisers, such as:-

<sup>3</sup> See report in JIML Vol. 23 Issue 2 (March – April 2017).

<sup>4</sup> See report in JIML Vol. 22 Issue 3 (May – June 2016).

- (a) What recognition is given to a secured transaction?
- (b) What is the position in relation to the staying of proceedings?
- (c) Does the jurisdiction have a protocol in relation to inter-judicial communications and what is its scope and effect?

Finally the IWG hopes to cooperate with universities and other organisations which are currently working on software for the resolution of legal issues in the hope that the use of artificial intelligence might aid practitioners and judges in working through complex and multi-faceted insolvencies.

#### *Polar.*

This International Working Group (chaired by Prof. Chircop) has been in existence for some years and has recently made available on the CMI website a Report on the *Applicability of the Private Maritime Law Conventions to Polar Shipping*. The main issues being studied by the IWG are civil liability, loadlines for polar regions and collision avoidance rules in the polar regions.

Work continues on these topics and a revised paper on loadline issues should be published in 2018. A draft Working Paper has been prepared on the Legal Framework for Civil Liability for Vessel Sourced Oil Spills in Polar Regions. This was considered by the IWG at its meeting in Genoa and it is hoped to present the Working Paper to the CMI Executive Council at its 2017 Fall Meeting.

A sub-group of the IWG is about to start work on the application of the Collision Regulations (COLREGS) in polar navigation and will consider whether and how the regulations should apply in navigable waters where there is ice and when ships are obliged to travel in convoy. A working Paper from this group should be ready in 2018.

A newly formed sub-group will be looking at the particular problems of the Antarctic and will focus on the Liability Protocol of the Antarctic Treaty System and its relationship with other international liability regimes.

#### *Offshore Activities.*

At its Meeting in April 2017 the IMO Legal Committee gave its approval to a Guidance document designed to assist those states which might wish to negotiate bilateral or regional agreements covering liability and compensation for pollution caused by all forms of offshore exploration and exploitation of resources. Time will tell whether this document serves any useful purpose. At the Seminar associated with the Genoa Assembly Prof. Lorenzo Schiano di Pepe (University of Genoa) delivered a paper entitled

*“Offshore Activities: Mind the Gap between Prevention and Liability”*. During the course of his presentation he indicated that, as an academic exercise, he would be seeking to draft a Regional Agreement covering the countries bordering the Adriatic. The result is awaited with interest.

It was also reported that the United Nations Environmental Programme had expressed an interest in drafting an International Convention to cover liability and compensation and that the International Union of Marine Insurers (IUMI) had discussed the possibility of a voluntary compensation scheme based on the models of TOVALOP and CRISTAL.

Time will tell whether any of these initiatives will produce a solution to what is an undoubted problem with the continuation of the trend towards exploitation of resources located further and further offshore.

#### *Ship Nomenclature.*

When is a “ship” not a “ship”? This is an important question which keeps coming up and seems to defy a simple (or even a complicated) answer.

The IWG looking into this issue has sent out Questionnaires to all the CMI member associations in order to determine what variances there are in terminology and application of definitions from country to country and under international conventions. Responses are coming in but work cannot proceed until more associations have responded. Based on the responses received to date it can be said that in civil law jurisdictions there is a greater inclination to adopt the characterisation of a maritime structure or vessel as expressed under its national law or under the law of the flag. On the other hand, common law jurisdictions adopt the characterisation to be found in the legal regime applicable under local law or *lex fori*. Most jurisdictions tend to determine the character of the ship/vessel by reference to the use to which it is put. Some jurisdictions, however, take a more “objective” view of what is a “ship”. Certain jurisdictions have been identified where there are elaborate definitions designed to cope with all manner of permutations – ship, yacht, boat or marine artefact. Equally other jurisdictions make no effort to adopt definitions and simply leave it to the courts to decide.

The IWG reports that despite discussion within the group the members remain a little unclear where this research may lead – a convention, a report or a paper which might serve as a source of information or reference for governments, courts or practitioners? Time will tell.

### *Unmanned Ships.*

With the growing probability that driverless cars will be on our streets in the near future there is the near certainty that remotely operated ships will soon be found on the oceans of the world. This IWG, chaired by Tom Birch Reynardson, produced a position paper in March 2017<sup>5</sup> which sought to identify the provisions of UNCLOS and the main IMO Regulations which pose particular challenges were this new technology to be developed to the point when ships are remotely operated. The IWG has also produced tables which identify the provisions of the COLREGS, SOLAS Chap. V and Chaps. I-IV. Following the publication of the position paper a further Questionnaire was sent out to member associations to which some responses are still awaited.

Members of the IWG were invited to attend the meeting of the IMO Maritime Safety Committee in June 2017. During the course of that meeting the Committee agreed to add “unmanned ships” to its future work programme. The focus of this work will be on a review of existing regulations and the need for their amendment to deal with the unique challenges presented by ships being remotely controlled.

### *General Average.*

It was reported that when the text of the York Antwerp Rules 2016 were published, part of the original text was inadvertently omitted. In order to regularise the position the Assembly passed the following Resolution:

**“In Rule XVII(b) add to the first 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.”**

### *General Average – interest rate.*

The Assembly accepted the recommendation of the committee set up to determine the rate of interest to be allowed on G.A. expenditure that the rate should remain unchanged at 2.5% for the calendar year January 1<sup>st</sup> 2017 to December 31<sup>st</sup> 2017.

### *Carriage of Goods by Sea – Rotterdam Rules.*

Twenty five states have now signed the Rotterdam Rules but only three have thus far ratified. The USA does not feature in either list.

### *CMI Young Lawyers.*

A meeting of this young and enthusiastic group held a meeting in Genoa at which the main attraction was a presentation by Lt. JG Florencia Otero of the Argentine Coast Guard of a paper entitled “*Argentina’s Claim to an Outer Continental Shelf*”. This paper was based on her dissertation for the LLM degree which she gained from IMLI and which won the CMI annually awarded prize.

### *Implementation and Promotion of Maritime Conventions.*

Members of the IWG held meetings with IMO in June and October 2016 to ascertain which existing conventions had failed to achieve the hoped for level of ratification. The intention is that with these having been identified CMI and the International Chamber of Shipping (ICS) will attempt through their worldwide contacts to offer assistance to states which are having difficulty in deciding to ratify and implement these important international instruments.

It was also reported that ICS plans to re-issue a document (first published in 2013) entitled “*Promoting Maritime Treaty Ratification*”. The document will now appear as a joint publication by ICS, CMI and ISF and a final draft of the document is now available. From the responses received to a Questionnaire sent out by CMI in 2013 it has been possible to understand some of the reasons why the 11 conventions identified as requiring promotion have not been ratified. A report will be submitted to IMO later this year with suggestions of how CMI/ICS might be able to assist states to ratify and implement selected conventions from the list.

### *Database of Judicial Decisions on International Conventions.*

In March 2017 the CMI concluded an agreement with the Centre for Maritime Law at the National University of Singapore to create a database in which will be collected judicial decisions on the interpretation of international maritime law conventions. All CMI’s affiliated national maritime law associations have been invited to submit case reports for inclusion in the database. It is hoped that over the years this database will develop into a useful resource for national courts and will help to ensure that conventions are interpreted harmoniously. Each national maritime law association has been invited to nominate an individual who will be responsible for collating and submitting data to the Centre for Maritime Law.

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<sup>5</sup> Available on the CMI Website and also in the JIML Vol.23 Issue 2 (March-April 2017)

## The Seminar<sup>6</sup>

Session 1: *“The significance of the Torrey Canyon – 50 years on.”*

In this presentation Mans Jacobsson (past Director of the IOPC Funds) traced the history of the development of conventions dealing with liability and compensation for oil pollution.

Session 2: *“The recent OW Bunker cases dealing with whether or not bunker suppliers are necessary suppliers in US law giving rise to a maritime lien, and jurisdiction issues arising from these decisions”.*

Prof. Martin Davies outlined the outfall from the dramatic bankruptcy of O.W. Bunker & Trading A/S which gave rise to litigation all around the world.

Session 3: *“Ship Financing and Security practices”.*

This is a new topic in the CMI work programme (see Assembly Report above) and the Chair of the IWG (Ann Fenech (Malta)) took the opportunity of outlining the purpose of this review to a wider audience.

Session 4: *“Offshore Activities: Mind the gap between prevention and liability!”*

Prof. Lorenzo Schiano di Pepe (University of Genoa) delivered the paper referred to in the above

Assembly report in which he identified the very real gap in the international pollution and compensation

regimes in so far as pollution from offshore exploration and exploitation of resources are concerned.

Session 5: *“The Hanjin Bankruptcy – Cross-border insolvency issues.”*

Reference has already been made in the above Assembly report to the papers delivered by Prof. Derrington and Maurizio Dardani.

Session 6: *“The Italian perspective on refugee migration, rescue and loss at sea.”*

At the end of another Summer during which the influx of illegal migrants from North Africa into Italy and other European countries has continued, this was a useful review of the legal issues from the perspective of a country very much in the frontline.

### Young CMI.

Running in parallel with the Assembly the Young (under 40) CMI held a meeting during the course of which Lt. J.G. Otero of the Argentine Coast Guard delivered her paper, which was followed by a panel discussion on the implication for shipowners of the Ballast Water Management Convention which had just come into force internationally.

### Patrick Griggs

## MEMBERSHIP HONORIS CAUSA: BENT NIELSEN BY PATRICK GRIGGS (GIVEN AT THE ASSEMBLY MEETING IN GENOA).

Art. 3 I (e) allows the Assembly to elect to Membership *honoris causa* any person who has “rendered exceptional service to the CMI”. It is with great pleasure that I propose that this honour be conferred on our old friend and colleague Bent Nielsen.



Picture: Bent Nielsen

At home, in Denmark, he practiced maritime law with the firm Kromann Reumert and was a partner with that firm from 1975. He served for many years on the Board of the Danish Maritime Law Assoc. and was Legal Counsel to the Danish Shippers Council. He has attended CMI meetings since the 1970s. He was Rapporteur to the International Sub – Committee on the Salvage Convention the CMI draft text of which was finalised at the 1981 Conference in Montreal. This text formed the basis of the 1989 Salvage Convention.

He then became a member of the IWG on General Average under the Chairmanship of David Taylor which produced the 1994 York/Antwerp (Sydney) Rules. He chaired a newly appointed IWG to further review the Rules which were approved in Vancouver in 2004. When these were not widely adopted he chaired a further IWG which worked from the time of the Beijing Conference in 2012 and successfully concluded its work at the New York

<sup>6</sup> The Seminar papers, videos of the presentations and other documentation from the Seminar are available on the CMI event website [www.cmi2017genoa.org](http://www.cmi2017genoa.org).



Conference in 2016 when the final text of the current York/Antwerp Rules was agreed. One must admire his determination in achieving this outcome – reconciling the interests of ship, cargo and insurance interests required a huge amount of effort and the exercise of considerable diplomatic skills.

In 1994 Germany, Netherlands and UK submitted to the IMO Legal Committee a paper calling for a convention dealing with the problems created by shipwrecks situated outside territorial waters. Bent was invited to consult CMI member states on their domestic law relating to wreck removal. His report, which was submitted to the Legal Committee in 1996, concluded that national laws relating to wreck removal were already so similar that this was a perfect opportunity to create a convention which would deal with the problems of wrecks situated both outside and inside territorial waters. This report was ignored by the Legal Committee until the eve of the Nairobi Conference 2007 when the wisdom of his report was finally recognised and the WRC was redrafted to allow states to apply the

Convention within territorial waters. (10 years before the wisdom of CMI and its members was recognised!) Between 2004 and 2013 Bent was Chairman of the CMI Nominating Committee a job in which his diplomatic skills again proved important.

Since 2005 Bent has made an annual visit on behalf of CMI to lecture at IMLI in Malta. His main subject is, of course, G. A. about which nobody (including many adjusters) knows more. In recent years our visits to IMLI have coincided and each year I witness a new batch of students split into two groups, confronted with a hypothetical adjustment and deciding whether expenditure or sacrifices are G.A. or not. Lively occasions with much laughter!

I hope that I have said enough to convince the Assembly that Bent has indeed “rendered exceptional service” and deserves to be made a Member *honoris causa*.

**Patrick Griggs**, September 2017.

### **TRIBUTE TO THE MEMORY OF WILLIAM BIRCH REYNARDSON CBE BY PATRICK GRIGGS (GIVEN AT THE ASSEMBLY MEETING IN GENOA)**

It was felt that it would be appropriate to pay a special tribute to the memory of Bill Birch Reynardson in recognition of his great contribution to the work of CMI.

Bill was born in 1923 and was educated at Eton and Christ Church College, Oxford. During the Second World War, as a young soldier in the 9<sup>th</sup> Royal Lancers, he served in North Africa and Italy. He was wounded in November 1944 at the Battle of Coriano Ridge. After the War Bill completed his studies at Oxford and obtained his degree. He was called to the Bar at the Inner Temple in 1952 and practiced for a brief period. In 1954 he became Legal Officer to the UK Chamber of Shipping and he later became Secretary of the British Maritime Law Association. In 1960 he left the Chamber of Shipping and joined T.R. Miller who were the managers of the UK P. & I. Club. Between 1981 and 1988 he was Senior Partner of Millers and retired from the firm in 1992.

As a Club man Bill was involved on a daily basis with maritime casualties of all types. The knowledge which he acquired of the issues of liability and compensation made him a vital member of BMLA delegations to CMI and Diplomatic Conferences and of CMI International Working Groups and Sub-Committees on various work projects.

Bill's first recorded involvement with CMI appears to have been in 1954 as a member of the UK Delegation to a meeting in Brighton of the Bureau

Permanent (now ExCo). (At that stage representing the British Chamber of Shipping). The first full Conference which he attended was Madrid 1955 under the Presidency of Albert Lilar. At that Conference the first draft of the Limitation of Liability Convention of 1957 was considered.



*Picture: William Birch Reynardson and Francesco Berlingieri*

After joining T.R. Miller in 1960 he continued to attend all CMI meetings. We certainly know that he attended the New York Conference in 1965 at which, under the Presidency of Albert Lilar, work was undertaken on revision of the 1926 Maritime Liens and Mortgages Convention. Following the *Torrey Canyon* incident in 1967 the CMI set up an International Sub-Committee to look at the private law aspects of pollution from tankers. Bill played an important part in the preparation of the CMI draft of what was to become, in 1969, the Civil Liability Convention for Oil Pollution Damage. The text of

this draft convention was finalised at the CMI 1969 Tokyo Conference.

For the CMI Centenary Frank Wiswall produced a short, illustrated history of the CMI which contains a fascinating photograph of the UK delegation. (We are not sure whether this was to a Diplomatic Conference (possibly CLC) or a CMI Conference.) It shows Bill (looking very serious) sitting in front of Lord Diplock. Other faces we recognise are my father, John (later Lord) Donaldson. Past President Allan Phillip, Brian Brooke Smith (Bilbroughs), Bill Wilson of Richards Butler, John Honor (West of England Club) and Geoffrey Hudson the Adjuster. (Delegations were pretty high powered in those days.)

To my personal knowledge Bill attended the Montreal Conference in 1981 at which the CMI progressed its work on what was to become the 1989 Salvage Convention and looked at the still unresolved problem of pollution caused by Hazardous Noxious Substances.

Bill became a member of the CMI Bureau Permanent in 1970 and when, under the new Constitution, the Executive Council was created in 1973, he continued to serve on that body. In 1978 he was elected Vice President and in 1996 he was elected the first CMI Member *honoris causa* in recognition of his outstanding service to CMI.

By the time of the Rio Conference in 1997 Bill's very good friend and our revered Past President, Francesco Berlingieri, had become President. If anyone, in future, writes a history of CMI I am sure that the contribution made by these two, both individually and jointly, will be regarded as having been pivotal to the survival of CMI into the 21<sup>st</sup> Century. Bill will also be remembered for creating the CMI Charitable Trust in 1985 at a time when he was still able to go round to his many City contacts and extract contributions from them to the fund which still thrives today.



Picture: Francesco Berlingieri, William Birch Reynardson, Allan Philip

For Bill one of his proudest moments came when, in 1995, he was made a Commander of the British Empire (CBE) for services in the unification of international maritime law. At a later date and in recognition of his great support for IMLI in Malta he was awarded an honorary doctorate.

I should mention that, at all these CMI Conferences, Bill was invariably accompanied by his wife Nik whom he had married in 1950. Her support was enthusiastic and her skill in looking after the wives of other delegates and welcoming them to the CMI international family was a vital contribution. I know that my wife was very appreciative of Nik's friendship. Sadly, Nik died in 1997.

Away from the City Bill was more than fully occupied in running Adwell, the estate in Oxfordshire which he had moved into in 1959 and which had been in his family for seven generations. This responsibility now falls upon Bill's son Tom who is following in his father's footsteps with his involvement with CMI. As a true countryman he was a keen shot and was Chairman of the South Oxfordshire Hunt. On the civic side he was High Sheriff of Oxfordshire in 1974 and, as such, was responsible for the wellbeing of visiting High Court judges on circuit. This is a role which five successive generations of the Birch Reynardson family have fulfilled.

When Bill retired from the City in 1992 and he continued to run the family estate in Oxfordshire and became involved with the highly successful country house opera at Garsington in Hampshire. After the death of its founder Bill became Chairman and was closely involved in the move from Garsington to the Getty estate at Wormsley. Naturally of a sociable disposition he was very active in his local community and was, of course, very much involved with his children and increasing numbers of grandchildren. A fulfilling retirement.

I came across Bill on many occasions during my time in the City. I remember, in particular, an incident in the days immediately following the *Torrey Canyon* incident. I had been sent to the office of the Treasury Solicitor in London to deliver a guarantee to cover the UK Governments oil pollution claims. The guarantee was issued by the UK P. & I. Club (Luxembourg) Ltd. This was rejected by the Treasury Solicitor on behalf of the Government because it was a "foreign" guarantor and the Government wanted one based in the UK. I called Bill's office to seek instructions. Bill was at lunch but the message which I received was to wait outside the Treasury Solicitors Office until he arrived. When he arrived he was clearly not in the best of moods having had his lunch interrupted. He marched into the Treasury Solicitors Office and very firmly but politely pointed out that the UK Treasury had been consulted about the setting up of the Luxembourg office and had given its blessing. Collapse of Treasury Solicitor. Bill was then able to go back to the City and finish his lunch!

On a personal note Bill was instrumental in getting me involved in the work of CMI, initially through the BMLA and then directly as a member of the Executive Council. I detected his hand in my

nomination for Vice President and then President. Nothing direct, you understand, but a few words with a few people behind the scenes! In retrospect (and even though I had many doubts at the time) I shall always be grateful for the opportunity which he gave me to continue the work of CMI and to make so many friends in this great international institution. If Bill had not chosen a career in the City he would have made an outstanding diplomat. He

had the ability to “get things done” – not, perhaps, always in the most conventional manner, but he had a knack of being able to persuade people that what he felt was the way forward was, indeed, the right way!

The CMI owes Bill a great deal.

**Patrick Griggs**, September 2017

## **SUMMARY EXECUTIVE COUNCIL MINUTES GENOA (I AND II) BY STUART HETHERINGTON**

In attendance at the first meeting were all Executive Councillors and, by invitation, Rosalie Balkin, Andrew Taylor and Evelien Peeters. The meeting was greatly honoured by the presence also of President ad honorem and past President of the CMI, Francesco Berlingieri who was warmly welcomed to the meeting in his home city. Evelien Peeters attended her first Executive Council meeting in her role as Administrative Assistant, having started work with the CMI earlier in the year.

Discussion took place around the interest shown and referred to in the virtual meeting which had taken place in November by maritime practitioners in Cuba of joining the CMI. The issue discussed was whether or not the organisation which had been formed in Cuba qualified for consultative or provisional membership. Further enquiries are to be made with the individuals involved in that organisation before any further steps in those regards could be taken.

The Minutes of a Management Committee Meeting which had taken place in Antwerp on 7 March 2017 were noted. Present at that meeting were the Treasurer Peter Verstuyft and the Administrative Assistant, Evelien Peeters, as well as the Secretary-General John Hare, the Administrator Lawrence Teh and the President.

### **Treasurer's Report**

The Executive Council discussed the Treasurer's report and his budgets for the remainder of 2017 and 2018, the latter of which was to be provided to the Assembly the next day.

### **Outstanding Subscriptions**

Chris Davis gave his report on the collection of outstanding subscriptions and noted that Portugal had tendered its resignation from the CMI and Russia and the Dominican Republic who had been put on notice by the President of the motion to expel them at the Assembly meeting had not made

any further payments. Chris Davis also reported that in so far as Portugal was concerned, many attempts had been made to negotiate a resolution of its outstanding arrears but the Association was unable to meet its financial obligations and were now quitting the CMI. The Executive Council agreed to accept Portugal's notice of withdrawal. It was noted that the countries that at the end of this year will exceed three years of overdue payments are the Democratic Peoples Republic of Korea and East Africa. The President is to send a letter informing them of the likelihood of expulsion at the next Assembly meeting unless payments are made so that, at least, they are not over three years overdue.

The Executive Council also noted that the Korean MLA had attended to reduce its indebtedness.

The President proposed that the Assembly be asked to agree modest reductions in subscriptions for the MLAs of Spain, Korea and Croatia, each of those countries had over the last few years indicated that they were struggling to meet their subscriptions. Korea was presently the only country in a particular band and it was thought appropriate that it be moved to the next lowest band in order to achieve a slight reduction in its subscription.

Another MLA that has been paying its subscription regularly in recent years but still owed longstanding arrears from a previous administration in its MLA is the Philippines and Lawrence Teh was authorised by the Executive Council to take this matter up with the Philippines MLA.

### **Young CMI**

Discussion took place as to whether the CMI should revisit a decision which had been made many years ago to commence awarding an annual prize to a young person but which was not pursued at the time. This was supported by the Executive Council and the President was requested to raise it the next day at the meeting of the Charitable Trust in order to obtain some financial assistance in that regard.

## **Membership**

The Executive Council, having considered their applications, was delighted to approve the application for membership of the CMI by the Malaysian, Cameroon and the Tanzania Maritime Law Associations to the Assembly meeting.

Similarly, the Executive Council was delighted to recommend to the Assembly that Titulary membership be conferred on Andrew Taylor, Tom Birch-Reynardson and Richard Cornah for their long service to the CMI and the British Maritime Law Association. In addition, the Executive Council agreed to propose to the Assembly that Bent Nielsen be awarded membership of the CMI *Honoris Causa*.

## **Future meetings**

Andrew Taylor reported that the BMLA would be delighted to host the Assembly meeting in London next year during early November in order to coincide with the holding of Southampton University's Donald O'May lecture and the BMLA annual dinner. Those events are to be held on Thursday evening to be followed by the Assembly meeting on the Friday. [The dates have since been fixed for 8 and 9 November 2018].

In so far as future meetings are concerned, the Executive Council was given a presentation by Mr Melo of the Mexican MLA to host a Colloquium in 2019. After discussion the Executive Council agreed to invite Mr Melo to make a presentation to the Assembly on the basis that the venue would be Mexico City. The President of the Japanese MLA and Tomotaka Fujita then made a presentation to the Executive Council proposing that Tokyo would host the CMI Conference in 2020, it not having hosted an event since 1969. The scheduled timing for such an event would be after the Olympics and is therefore likely to be held in late October 2020. The Executive Council also requested the Japanese MLA to make a presentation to that effect to the Assembly.

It was also noted that the Belgian MLA had drawn attention to the fact that CMI's 125th Anniversary would take place in 2022 and it would like to host an event in Antwerp at that time. Brazil had also offered to host a conference in the future and the Executive Council considered this may be appropriate for the 2024 Conference but there was no need to make a decision on that at this stage. Both Malta and Canada had also indicated interest in hosting a future CMI event.

## **International Working Groups**

### **Judicial Sales**

The President reported on developments over the last few months in seeking to have this topic taken up by UNCITRAL where it had been discussed at its Council meeting a few months earlier. It was decided to proceed to organise a keenly focussed Colloquium as suggested by UNCITRAL, possibly, in Malta early in 2018.

Reports had been received from the Chairs of a number of the working groups, which reports would be identified in further detail in the Assembly Minutes. A number of the reports noted that answers to Questionnaires were still awaited and they included topics such as Pandemic Response (which is part of the Fair Treatment of Seafarers IWG), Ship Financing Security Practices, Unmanned Ships and Vessel Nomenclature.

### **Standing Committees**

Reports were also received from the Chairs of the Standing Committees, the details of which will also be referred to in the Minutes of the Assembly.

### **Constitution Committee**

The President reported that the Constitution Committee had taken the opportunity of the meeting of the Management Committee in Antwerp earlier in the year to meet in order to make a number of substantial changes to the CMI Constitution. It was felt by the Constitution Committee that there were a number of areas in which the present Constitution could be improved and reorganisation of its provisions might make it more accessible. The amendments had been approved by the Executive Council before submission to MLAs with the agenda materials in July.

### **Publications and Website**

Taco van der Valk who has taken over responsibility for these areas of CMI activities has suggested that the website could now be usefully updated and he and Evelien Peeters had obtained quotations for such work and were interviewing those that they had identified as having the capability and expertise to carry out the necessary work. After discussion the Executive Council authorised Taco van der Valk to spend up to €10,000 in modernising the website.

### **Ad hoc committees**

A report from Luc Grellet, who had chaired an ad hoc committee on arbitration in order to assess whether there is any area within the field of arbitration that the CMI could usefully contribute,

was considered and discussed. The Executive Council decided that at the present time there is no obvious area in which the CMI's expertise could be utilised in furtherance of uniformity concerning arbitration and thanked Luc Grellet and his colleagues for their work.

### **Regional Office**

Lawrence Teh reported that the Singapore authorities had approved the extension of the CMI's permit to operate in Singapore for a further year, thanked him for the considerable work he had done to introduce Malaysia as a new member of the CMI and for encouraging links between the Indian MLA and the Singapore MLA to the extent that a joint meeting is to be held in February 2018. He had also had discussions with the South Korean and Indonesian MLAs to encourage their development.

### **Conclusion**

At the conclusion of the meeting the President noted the significant contributions made to the CMI by Jorge Radovich during his period of office as an Executive Councillor which was coming to an end at the meeting and John Hare, who had opted to retire as Secretary-General in Genoa. The President

thanked both of them for their significant contributions to the work of the Executive Council and the CMI generally. The Executive Council showed their appreciation to them both in the usual way.

At the second meeting of the Executive Council in Genoa, after the Assembly meeting, the President welcomed the new members Rosalie Balkin and Aurelio Fernandez Concheso (in absentia). New appointments were made to some of the IWGs and discussion took place in relation to the ongoing work of the Ship Financing Security Practices IWG and the plans for a Colloquium in Malta for the Judicial Sales project with UNCITRAL. The President also reported on developments with the proposed Young CMI Prize, which the Charitable Trust had agreed to fund and John Hare will assist to set up. In relation to the Future of CMI Committee, the President reported that he had spoken to Stephen Knudtzon, Jesus Casas and Edmund Sweetman and they had agreed to work together to endeavour to have a report available for the 2018 Assembly meeting.

**Stuart Hetherington**



# DRAFT ASSEMBLY MINUTES GENOA, INCLUDING LIST OF DELEGATES AND PRESIDENT'S REPORT



## Minutes of meeting of CMI Assembly on Friday, 8 September 2017 at 1430 hours at the Old Stock Exchange Building, Genoa, Italy

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### 1. Report of the Credentials Committee

Chris Davis 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. At the request of the President Patrick Griggs said a few words about Bill Birch Reynardson who was a Member Honoris Causa, a Vice-President of the CMI from 1978 to 1995 and had been senior partner of Thomas R Miller from 1991 to 1998. In addition he had been the Secretary/Treasurer of the BMLA for a number of years and had attended CMI meetings from the 1950s until the centenary Conference of the CMI in 1997. In 1995 he had been awarded a CBE for services in the Unification of International Maritime Law. He will be missed by all who knew him.

The President then outlined the life and service of the following:

- Roger Gifford (South Africa) who had been one of the founders of the South African MLA and its President from 1990 to 1996;
- Ian MacKay (Australia and New Zealand), who was both a master mariner and a maritime lawyer and one of the co-sponsors of the New Zealand Maritime Law Association combining with the Australian Maritime Law Association in 1977 to form the first CMI Regional Association;
- Manuel Albar Gonzalez (Spain) who was a Titulary member of the CMI and had been involved in the foundation of many of the most important maritime law firms in Spain;
- Professor Enzo Volli (Italy) who was a close and dear friend of Francesco Berlingieri, a Titulary member of CMI and honorary member of the Italian MLA and a Vice-President of the Italian MLA, who had attended many CMI events between 1959 and 2008;
- Professor Georgije Ivkovic (Croatia/Slovenia) who had contacted the President a year ago when a friend and colleague, Professor Vinko Haca, who the CMI had memorialised in New York had passed away. They had studied together at the University of Zagreb. Professor Ivkovic was a Titulary member of the CMI, a practitioner, teacher and author; and
- Colin Sheppard, who had passed away the previous weekend. He was a leading admiralty practitioner in the United Kingdom and had attended a number of CMI events and contributed to the work of the CMI over many years. He was married to Aleka Sheppard who chairs the International Working Group on Wrongful Arrest and our sympathies and condolences go to Aleka over this loss.

*The meeting stood for a moment of silence.*

The main agenda for this Assembly meeting was at this point adjourned to deal with the agenda on the Special General Assembly meeting, notice of which had been provided to MLAs by letter dated 28 Jul 2017. This Special General Assembly was constituted and Jean Francois-Peters gave the background and explanation as to why it was necessary for the resolutions which were proposed to be made in order to make the CMI compliant with the Belgium regulations. It was constituted to rectify the many oversights which had taken place since 2004 in notifying the regulator in Belgium of changes which had been made to the Constitution and the appointment of officers of the CMI and their ceasing to hold office. Separate minutes have been prepared in relation to the Special General Assembly and at which all the Resolutions proposed were unanimously approved by those attending. A list of those who attended that part of the meeting is appended to the Minutes of the Special General Assembly. The matters to be dealt with at the Special General Assembly having been concluded, the Assembly Meeting proceeded.

**3. Approval of the Minutes of the Assembly held in New York on 6 May 2016**

The Secretary-General tabled the minutes of the meeting of the Assembly held in New York on 6 May 2016, which were duly adopted without change, and signed by the President and Secretary-General. (The Secretary-General had received notice of a change concerning paragraph 6(d) dealing with the Audit Committee Report, at the suggestion of Mans Jacobsson, since they had been forwarded to MLAs on 28 July 2017). The minutes including that change were then proposed by Belgium and seconded by Canada for approval by the meeting and they were unanimously approved.

**Resolution: Approve the minutes of the New York Assembly of 6 May 2016**

**4. Matters arising from Minutes of the Assembly held in New York on 6 May 2016**

There were no matters arising from the New York Assembly Minutes that were not to be covered by the Agenda of this Assembly meeting.

**5. Report of the President**

The President tabled and delivered his report which was duly adopted. In particular, the President identified some of the key matters dealt with in his report which had been forwarded to MLAs on 28 July 2017. He referred to the award made to Frank Wiswall when he was presented with the IMO International Maritime Prize 2015 and which was reported in the News Letter earlier in the year. The President also referred to the fact that Frank Wiswall is currently undergoing unpleasant surgery and the CMI wished him well and a speedy recovery. He also referred to Alfred Popp QC's appointment as member of the Order of Canada and Aldo Chircop's appointment as the Canada Research Chair in Maritime Law and Policy, all of which awards were richly deserved and reflected well on the CMI. The President also referred to the amendments to the Constitution which would be dealt with on the next item of the Agenda, many of which were simply tidying up and drafting changes which had been made with a view to reorganising the material that is presently in the Constitution but with one substantive change, being to the makeup of the Nominating Committee.

The President also referred to the Cybercrime incident by which the CMI had been defrauded of USD17,230 to which the Treasurer refers in his report and explained how that fraud had been perpetrated and the steps taken by the introduction of a protocol to prevent it happening again.

The President referred to the Management Committee Meeting which Evelien Peeters had attended for the first time having taken over from Anne Verlinde a few weeks before.

The President also referred to the steps taken in relation to Judicial Sales to seek to have that instrument converted into an International Convention and to which reference would be made later in the Agenda.

The President then stressed the need for Maritime Law Associations to respond to the request for jurisprudence data to be supplied to the University of Singapore and to respond to Lawrence Teh's letter in that regard. The President also referred to a number of Questionnaires such as those relating to Pandemic Response, Ship Financing Security Practices, Wrongful Arrest, Ship Nomenclature, Promoting Ratification of Maritime Conventions and Cross-Border Insolvency and urged MLAs if they had not already responded to do so as soon as possible. In conclusion the President urged MLAs to make themselves known to Evelien and to use her as their conduit to the CMI so that information as to their MLA's activities could be publicised either on the website or in the News Letter.

The President's report for 2016 is available on the Genoa website  
[www.cmi2017genoa.org](http://www.cmi2017genoa.org)

**6. Constitutional Amendments (in accordance with President's letters dated 7 and 28 July 2017)**

The President indicated by way of summary of the proposals for amendment to the Constitution that many of them were matters of form and reorganisation of the Constitution rather than substance. He recognised, however, that Articles 14 and 25 were matters upon which there might be differing views but unless there were other provisions within the proposed amendments that delegates wished to discuss he would propose that all amendments which had been notified, except Articles 14 and 25, would be dealt with in one resolution. There was no dissent from this suggestion and therefore on the proposal of Canada, seconded by the Netherlands, all the Constitutional amendments with the exception of Articles 14 and 25 were approved unanimously.

In relation to Article 14 the President explained that the German MLA had drawn attention to inconsistencies in what was proposed and as a result the Executive Council had proposed an amendment to this provision so that Article 14 would now read:

\*Amendments to the Constitution should be made in writing and shall be transmitted to all National Associations at least six weeks prior to the annual meeting of the Assembly at which the proposed amendments will be considered.

Amendments to the Constitution shall require the affirmative vote of the two-thirds majority of all Member Associations present, entitled to vote and voting. Their effectiveness and entry into force shall be subject to Belgian law".

This amendment was proposed by Germany and seconded by Canada and unanimously approved.

The President explained that the purpose behind Article 25 was to enable the Assembly to nominate two members of the Nominating Committee. If approved, that amendment could not be given effect to until 2018 when the Chair of the Nominating Committee would seek nominations for such members. The proposed amendment to Article 25 was made by Canada and seconded by the Netherlands and unanimously approved.

The President then explained that there were consequential amendments which needed to be made to the Rules of Procedure and in particular to Rule 9 brought about by the change which had just been approved to Article 25 so that the present Nomination Committee remain in place up to such time as the new members of the Nominating Committee can be formalised at the next Assembly meeting.

On the proposal of Germany, seconded by Belgium, the proposed changes to the Rules of Procedure were unanimously approved.

**Resolution: Amendments to the Constitution. The Assembly unanimously approves the Resolutions to amend the Constitution attached to the letter of the President dated 7 July 2017 and to adopt the text of the Constitution attached to that letter and gives a Power of Attorney to Mr Jean-Francois Peters domiciled at Cederlaan**

15, 2610 Wilrijk to appear before Notary Public Pieter Herman in Antwerp (Belgium) to represent the (General) Assembly of the Comité Maritime International in order to authenticate aforesaid amendments and adoption of the coordinated Constitution, in Dutch, in order to publish these amendments and coordination in the Belgian Official Gazette according to Belgian law, and for the above purposes, execute and sign any deeds and documents, give an address for service, substitute and generally do whatever may be necessary.

## **7. Finances**

### **(a) Treasurer's Report**

The Treasurer presented the annual accounts (that were contained in his report) by means of a slide presentation which illustrated both the income and expenditure of the CMI and the state of its financial holdings.

The operational income was identified as Euro 199,172 compared with Euro 190,198 in 2015. The expenses were respectively Euro 193,976 and Euro 164,715. He identified the principal reason for the increase in expenses as being related to the cyber crime that was perpetrated on the CMI which he had described in some detail in his report in which he had also referred to (and attached) the Payment Requisition Protocol, which had been put in place to try and prevent a recurrence. The Treasurer referred to attempts made by Chris Davis in the United States, which was where the fraudster had directed the payment of funds to be made, and the Swedish Maritime Law Association who had made enquiries with the Swiss police having identified Sweden as the possible location of the fraudster. Enquiries had also been made, to no avail, with the Belgian and Australian police, given that it was the President's email address which had been cloned in order to cause the funds to be remitted by the CMI. He made reference to the fact that almost fortnightly he receives similar requests for the transfer of funds, which he now ignores.

The Treasurer also referred to the fact that there were higher than budgeted travel expenses for the Executive Council as it involved earlier visits to New York by the Secretary-General, in preparation of the Assembly and the Conference, in 2015, as well as the higher expenses for accommodation in New York.

The result of the year, as the Treasurer reported, was a loss of Euros 23,595 compared with a surplus of Euro 23,580 in 2015, a large part of that deficit is taken up by the cybercrime incident in which USD17,230 had been lost.

There being no questions raised with the Treasurer, the Belgian MLA proposed, seconded by the German MLA, the acceptance of the Treasurer's report and this was unanimously approved.

### **Resolutions: The Treasurer's report was accepted**

(b) The Treasurer then presented his budget for 2018 which proposed an early bird reduction in subscriptions of 2.5% and a total income of Euro 191,750 together with total expenses of Euro 203,650 leading to an operating result of a loss of Euro 11,900 and a possible Euro 5,000 event surplus for next year's Assembly meeting leading to a net operating loss of Euro 6,900.

In relation to the current budget for 2017 the Treasurer advised that he had incorporated an unusual item of Euro 6,000 for legal assistance, being the fees incurred by Jean Francois-Peters' firm in regularising the position of the CMI with the Belgian regulatory authorities for which the CMI was extremely grateful. The net loss on the 2017 year therefore he predicted to be in the region of Euro 14,400.

The Treasurer also noted that investments at the end of 2016 totalled Euro 594,252.77, and he referred to the difficulty of finding an adequate rate of return on a bond of Euro 100,000 which came to maturity in June 2016 in light of the present economic situation in Europe.

(c) Auditor's Report

The Treasurer tabled the auditor's report for the year ended 31 December 2016, which endorsed the financial statements presented to the Assembly by the Treasurer without reservation.

(d) Report of Audit Committee

Mans Jacobsson delivered the Audit Committee's report in which the Committee proposed that the CMI accounts for the financial year 2016 be adopted by the Assembly. He referred to the telephone conference of the Audit Committee on 22 May and his interview with the external auditor by telephone on the 6th June 2017. The external auditor had confirmed that the CMI funds were placed in investments which were appropriate to an organisation such as the CMI and noted that the prevailing low interest rates resulted on the yield on the CMI investments being substantially lower than in earlier years. He had also discussed the cybercrime incident with the external auditor who considered that adequate measures had been taken after the incident to minimise the risk of further losses being suffered as a result of such frauds in the future. The External Auditor had also considered that the level of reserves of the CMI were appropriate for an organisation such as the CMI. Mans Jacobsson also commented favourably on the structure of the accounts which showed the Event result of the New York Conference leading to a more transparent reporting of the costs of such an event.

He also reported that the reserves are an appropriate level in view of the cost structure and operations of the CMI.

At the conclusion of Mans Jacobsson's report there were no questions addressed to him and the Maritime Law Association of Australia and New Zealand proposed, seconded by France, that, as proposed by the Audit Committee, the accounts and the budget be accepted. This was accepted unanimously. The Argentina MLA proposed and the Maritime Law Association of Australia and New Zealand seconded the appointment of De Mol, Meuldermans and Partners BVBA as External Auditors for the financial year 2018, as had been proposed by the Audit Committee in its report.

**Resolutions:**

**(1) The accounts and the budget were accepted**

**(2) De Mol, Meuldermans and Partners BVBA appointed as External Auditors for 2018**

(e) Report of collection of outstanding subscriptions

Chris Davis reported that with the help of the slightly increased early bird discount and Evellien Peeters reminding MLAs of their subscription responsibilities on a regular basis, there had been an earlier receipt of many subscriptions in the course of 2017. In the event that the Assembly approves the expulsion of Russia, the Dominican Republic and the termination of Portugal's membership the position in relation to outstanding subscriptions is likely to be greatly improved over the next few years.

The President identified Spain, Croatia and South Korea as three countries that had for the last few years been expressing some concern at their growing difficulties in meeting their subscription responsibilities, although Spain was not only meeting its current responsibilities but also repaying past debts from earlier regimes in its country. The Executive Council therefore recommended reductions for Spain (Euro 6,500 to Euro 6,000), Croatia (Euro 1,000 to Euro 750) and South



Korea (Euro 3,000 to Euro 2,500). The latter being justified on the basis that it was the only country at the Euro 3,000 band.

There being no questions of Chris Davis at the conclusion of his report the Irish MLA proposed and Belgian seconded, the adoption of Chris Davis's report and the subscription changes for Spain, Croatia and South Korea.

**Resolutions:**

**(1) The report of Chris Davis was accepted**

**(2) Subscription changes for Spain, Croatia and South Korea accepted**

(f) Guidelines on CMI Investment Policy

The President brought this document to the attention of MLAs and noted that when one of the CMI's investments came up for renewal earlier in the year he approached the firm of Smith Williamson in London who manage the Charitable Trusts investments with a view to ascertaining whether they could recommend investments which might secure a greater return, at no greater risk, than those presently utilised in Belgium, bearing in the mind the terms of the Guidelines on CMI Investment Policy. If they could not, they were asked whether they considered it appropriate to widen the Guidelines in order to encompass investments which might have a better return. The Executive Council had considered their response and in light of the fact that a large part of the CMI's expenditure emanates from Belgium, and in particular involves payment of Euros there is much to recommend retaining the funds in Europe and in Belgium in particular so that the present Guidelines are considered appropriate.

(g) Charitable Trust Report

Tom Birch Reynardson gave a report on the activities and financials of the Charitable Trust for the information of the Assembly. He reported that funds under management as at 31 March 2017 were £587,717. For the year ending 31 March 2017 the portfolio had risen by 16.58% and funds under management at 9 August 2017 were £611,218. Travel expenses for CMI lecturers to attend IMLI amounted to £3,410.44 and IMLI had continued to fund a prize for the best IMLI student in any one year. The winner this year has been Florencia Ortero from Argentina and her dissertation was "Argentina's Claim to an Outer Continental Shelf - An Analysis of its Entitlement and the Relevant Legal Regime". The Trust had paid for her air trip to Genoa, for her hotel expenses and for some spending money while she was in Genoa, as well as a book prize to be presented to her at the Conference in Genoa. The CMI had agreed to absorb the Conference fee.

**8. Membership**

(a) Applications: Malaysia; Cameroon, Tanzania

On the recommendation of the Executive Council, having considered the applications received from Malaysia, Cameroon and Tanzania, these were approved by acclamation. The Presidents of the Malaysian and Cameroon MLAs, being present at the Assembly meeting, were congratulated by the President.

**Resolution: Membership of Malaysia, Cameroon and Tanzania approved**

(b) Proposal for Expulsion: Russia; Democratic People's Republic of Korea; Dominican Republic; [Portugal];

The President reported that letters informing these MLAs of the motions for expulsion which would be made at the Assembly meeting had been sent to the MLAs of Russia and the Dominican Republic. They had not responded in any

meaningful way and had not sought to address their longstanding arrears of subscriptions and accordingly the Executive Council had no alternative but to recommend their expulsion. The Resolution to expel Russia and the Dominican Republic was proposed by the USA and seconded by Belgium, and unanimously approved.

**Resolution: Motions for Expulsion of Russia and Dominican Republic accepted**

The President reported that after the DPRK had been put on notice of their possible expulsion they had made a payment, which meant that they were not yet three years in arrears and under the Constitution could not be expelled.

The President also reported that Portugal who had been put on notice had informed the CMI that it was quitting the CMI. The Executive Council had resolved to accept that withdrawal, and accordingly there was no need to expel the Portugal MLA.

(c) Termination of Provisional membership:

(i) Mr Kwabena Asare (Ghana).

The President reported that nothing had been heard from Mr Asare for some years and the Executive Council considered it was appropriate to withdraw his provisional membership. This was proposed by Canada and seconded by Germany and unanimously approved.

**Resolution: Termination of Provisional membership of Kwabena Asare approved**

(d) Applications: Consultative members:

(i) FONASBA;

(ii) Association Mondiale de Disputeurs (International Association of Average Adjusters).

The President reported that the Executive Council had recommended acceptance of applications for Consultative Membership status by both FONASBA and Association Mondiale de Disputeurs (International Association of Average Adjusters). This was proposed by the Netherlands and seconded by Australian and New Zealand and unanimously approved.

**Resolution: FONASBA and Association Mondiale de Disputeurs admitted as Consultative members**

(e) Applications: Titulary Membership

Andrew Taylor, Tom Birch Reynardson, Richard Cornah

The President reported that on the proposal of the British Maritime Law Association, and supported by the Executive Council, Richard Cornah, who had contributed so significantly to the reform of the York Antwerp Rules should be made a Titulary member of the CMI. The Executive Council also proposed that Andrew Taylor and Tom Birch-Reynardson (two further members of the British Maritime Law Association) should also be recognised as Titulary members for their long service to the CMI; Andrew Taylor as the Chair of the International Working Group on Piracy and a member of the Executive Council, as well as presently serving as the Chair of the Nominating Committee, as well as his contribution to the BMLA; and Tom Birch-Reynardson for his work on the Charitable Trust and the Chair of the Unmanned Ships International Working

Group, as well as long term contribution to the work of CMI over many years be made Titulary members also. These proposals were made by the Netherlands and seconded by Greece and were approved by the acclamation of the Assembly.

**Resolution: Titulary membership conferred on Andrew Taylor, Tom Birch-Reynardson and Richard Cornah**

**9. Future meetings**

**(a) Assembly meeting in 2018**

The President reported that Andrew Taylor, who was unable to attend the meetings in Genoa on Friday, but had attended the Executive Council meeting the previous day had outlined preliminary plans for the Assembly Meeting to take place in London next year. He had suggested a format whereby delegates are invited to attend the annual Southampton University Donald O'May Lecture on the Wednesday night followed by the annual British Maritime Law Association Dinner. The Executive Council would be able to hold its meeting during the day on Thursday and, he suggested, a half day seminar could be organised similar to the Genoa experience on the Friday morning prior to the Assembly Meeting on Friday afternoon. The Executive Council had decided, subject to the wishes of the Assembly Meeting, that there was no necessity to have a half day seminar on the Friday and the Assembly Meeting could take place on the Friday morning followed by a lunch for those who attend.

**(b) Colloquium in 2019**

The President reported that the Mexican MLA had presented a proposal for a Colloquium in Mexico and invited Mr Melo to make a presentation. Mr Melo indicated that the Executive Council had approved a meeting to be held in Mexico City and that if this was approved by the Assembly potential venues would be identified and advised to the Executive Council in the near future.

**(c) Conference: 2020**

The President advised that the President of the Japanese MLA Professor Egashira and Tomotaka Fujita had made a presentation to the Executive Council on the previous day and invited them to make a presentation to the Assembly. Their initial plans had suggested a traditional five day conference but the Executive Council suggested that a shorter meeting would be appropriate.

In their presentation, they suggested that the 2020 Conference be held in Tokyo in late October 2020, after the conclusion of the Olympic Games and the Para Olympics and that there are three hotels currently under consideration.

**(d) Assembly meeting: 2022**

The President reported that the Belgium MLA had reminded CMI that its 125th Anniversary will be taking place in 2022 and it offered to host an event in that year.

**Resolutions:**

**The suggestions made by the Executive Council for:**

**(1) an Assembly meeting to take place in the first week of November 2018 in London at venues to be determined; (2) Colloquium in Mexico City in 2019; (3) Conference in Japan in 2020; and (4) Assembly in Antwerp in 2022**

were unanimously approved on the proposal of the Netherlands MLA and seconded by the MLA of Australia and New Zealand.

Malta and Canada had expressed interest in hosting an event and the President reported that the Executive Council had decided that it would explore the possibility of a Colloquium event in Malta, possibly in 2021.

#### 10. International Workings Groups

(a) Acts of Piracy and Maritime Violence;

Patrick Griggs gave the report which had been prepared by Andrew Taylor who had been unable to stay in Genoa for the meetings. Andrew reported that piracy continues to be an issue both in West Africa and Asia where there was a recent incident in the Malacca straits. The only really significant development in the last year was the re-emergence of Somali piracy on the seizure of the "Aris 13" in March 2017. The product tanker was taken by armed pirates but after a fire fight the ship was released without injury to the crew. The fact that this event coincided with a reduction in the EU commitment to patrolling the waters off Somalia seemed to be more than a coincidence. It remains unclear whether this was an isolated event or whether Somali pirates may be reasserting themselves.

(b) Fair Treatment of Seafarers (including Pandemic Response and Migration at Sea);

Paul Gill gave this report. He indicated that Olivia Murray (chair) would be returning from her sabbatical soon. She had since married and is now Olivia Hamer. The group is continuing with its support to Seafarers Rights International in promoting the Fair Treatment of Seafarers in the event of a maritime accident, and in co-sponsoring submissions to the IMO Legal Committee. He advised that replies to the President's questionnaire on Epidemic and Pandemic Response had been somewhat sluggish despite constant reminders to the defaulting national associations. The responders (to date) had been the USA, Denmark, Finland, Ireland, the United Kingdom, Poland, Norway, the Netherlands, Germany, Italy, Australia, New Zealand, Greece, South Korea, Nigeria, Venezuela, Hong Kong and Canada. He said that he was raising this at Assembly, as there were a large number of Presidents and officers of national associations present, and he urged those of defaulting associations to take some action in relation to replying. He highlighted the work the group was doing on Refugee Migration, but left John Hare to report on that. He commended Dr. Valeria Eboli on her presentation to the seminar earlier - this being an update and Italian perspective on legal issues arising from refugee migration.

(c) Recognition of Foreign Judicial Sale of Ships;

The President referred to his annual report in which he had referred to the approaches which had been made to the IMO Legal Committee in 2016, the Hague Conference in early 2017 and, more recently, UNCITRAL in June 2017. As a result of the latter's suggestion that it would be advantageous to CMI's proposal that it organize a Colloquium the Executive Council has authorised that consideration be given to, and if thought appropriate, arrangements made for a small Colloquium to take place under the auspices of the Maltese government early next year. Ann Fenech and Alexander Von Ziegler are to confer with a view to arranging for this to occur and to report back to the Executive Council.

(d) Cross-border Insolvency;

Professor Derrington gave a report noting the formation of the IWG in 2010 and that it had met on Thursday to consider an Options Paper that had been circulated in advance of the meeting. It had noted the three options that had been identified

in New York in 2016 to address the conflict between remedies in Admiralty Law and cross-border insolvency law. They had been identified as follows:

- (a) a Protocol to the UNCITRAL Model Law addressing in rem actions;
- (b) adaptation or amendment to the already existing Guidelines and/or best practices for handling cross-border insolvencies; and
- (c) continuing to highlight the current difficulties and uncertainties that surround the various legal regimes that govern cross-border maritime insolvencies.

Having identified failings in the first two options, the Report concluded that the CMI should be concerned primarily with providing insight into current issues and uncertainties in the field.

The IWG had agreed that the UNCITRAL Model Law does not adequately address the complexities of a cross-border maritime insolvency and these have been highlighted by anomalies that have emerged from the Hanjin Insolvency. It was however recognised that a Protocol to the Model Law dealing with in rem claims is unlikely to meet with broad international support. Similarly the IWG thought that the adaptation or amendment to the already existing Guidelines and/or best practices for handling cross-border insolvencies would be equally insurmountable. Although it agreed that the third option previously discussed, to highlight the current difficulties and uncertainties that surround the various legal regimes that govern cross border maritime insolvencies is an important role for CMI, it was considered that it might not make a sufficient impact on the development of the international jurisprudence of maritime insolvencies in an informed and cohesive manner.

It is therefore proposed to continue to work towards that goal by preparing a text for publication by CMI that contains the following matters:

- 1. a statement of the nature, scope and extent of "maritime property" or "marine based assets";
- 2. a statement of CMI's position on the proper treatment of secured maritime assets in the context of both rehabilitation and insolvency proceedings;
- 3. a distillation of the responses to the Questionnaire on Cross-border Insolvency so as to provide jurisdiction-specific answers to questions that will routinely be asked by shipowners and their legal advisors, such as:
  - what recognition is given to a secured transaction?
  - what is the position in relation to stays of proceedings?
  - does the jurisdiction have a protocol in relation to inter-judicial communications and what is its scope and effect?

Finally the IWG was keen to explore the idea of working with universities and other organisations who are currently engaged in incubating software for the resolution of legal issues, so as to consider the possibility of the use of artificial intelligence to aid practitioners and judges in working through complex, multi-faceted insolvencies. It was considered that such a project would be a major contribution by CMI to the future of this area of maritime law.

- (e) Polar;

Professor Chircop (Chair, IWG Polar Shipping) informed the Assembly of the status of work of the IWG. Professor Chircop described briefly key aspects of the



annual report and reported on progress since then. IWG continued its work through subgroups on civil liability, polar load lines, collision avoidance rules in the Arctic, and Antarctic issues.

The IWG completed the Report on the Applicability of the Private Maritime Law Conventions to Polar Shipping (led by Nigel Frawley) and uploaded it on the website.

Work on a working paper on polar load lines has continued along three lines of inquiry:

- (a) How, if at all, do Arctic States and other key States address load lines requirements for Arctic shipping?
- (b) How, if at all, do IACS safety requirements address load lines for polar shipping?
- (c) What does the latest science indicate as possible concerns for load lines in Arctic shipping? In Genoa the IWG discussed progress and ways of filling gaps in the current draft. Subgroup work will continue in view of producing a revised working paper in 2018.

A Draft Working Paper on the Legal Framework for Civil Liability for Vessel Source Oil Spills in Polar Regions (led by Lars Rosenberg Overby) has been revised by the IWG Chair with inputs from members to reflect corrections and updates. Completion of changes is expected in the Fall of 2017 and in time for inclusion in the semi-annual report to the Executive Council in November.

The subgroup on COLREGS in Polar Navigation (led by Stefanie Johnston) is about to commence work. Its remit includes consideration of the assumptions behind the rules and how they are expected to apply in navigable waters where there is ice and when navigation proceeds in convoy. In Genoa the IWG discussed particular issues for further study. The expectation is to produce a first draft of a working paper in 2018.

The newly formed subgroup on Antarctic Shipping (led by David Baker) is at a scope stage and in the process of identifying issues for study. Suggestions made at the Genoa meeting include potential focus on the Liability protocol of the Antarctic Treaty System, which is not yet in force, and whose relationship with other international liability regimes is unclear. The expectation is that a report will be prepared in 2018.

- (f) Offshore Activities - Pollution Liability and related issues;

Jorge Radovich noted from his written report that the Guidance document approved by the IMO Legal Committee was in reality merely a declaration of principles and that what was now needed was a model regional Convention that might be used by States. He also reported that the United Nations Environmental Program (UNEP) had expressed interest in drafting an International Convention on Pollution generated by off-shore activities, the European Commission had previously been active in this area and that IUMI had discussed a voluntary financial security regime as being the most effective way forward (following the TOVALOP and CRISTAL models).

- (g) Ship Finance Security Practices;

Ann Fenech highlighted from her written report that more replies from MLAs to the Questionnaire were needed. Ann Fenech commended members of the IWG for the sterling work, including David Osborne as Rapporteur, Camilla Mendez Vianna Cardoso, Andrew Tetley, Souichirou Kozuka, Sheng Chen, Stefan Rindfleisch, Allen Black and Andrea Berlingieri.

(h) Study relating to Liability for Wrongful Arrest;

Ed Sweetman gave the report in the absence of Aleka Sheppard: He explained that he had only recently been appointed Rapporteur to this working group, and was stepping into the shoes of giants in circumstances where the previous Rapporteur was Dr Aleka Mandaraka-Sheppard, and the Chair of the Working Group Giorgio Berlingieri. Giorgio has since stepped down as Chair, and his place has been taken by Aleka.

He reported that there had been, overall, a very comprehensive response to the questionnaire circulated by the IWG. As of the time of this report, 38 responses had been received and analysed. Special mention must be made of the tremendous work done by Aleka in analysing, collating and digesting the huge amount of information received in the responses, an analysis which is available, in its current form, on the website by way of an interim report. A special mention and reminder must be made at this stage to any NMLA's who have not yet returned their responses to the Questionnaire. In order to perform its full functions, the IWG needs as broad a picture, and as many responses as possible.

The project started from a feeling that the liability for the wrongful arrest regime under the common law was too lax and favourable to arrestors, and that a reform of the law was necessary, but there was also a view that there was nothing wrong with the common law model and it may be left well enough alone. There was an appreciation by some that the considerable variations between the different national arrest regimes presented a real possibility of confusion and monetary loss and others felt that an analysis of the differences between the existing national wrongful arrest regimes might highlight, and provoke the necessary interest for a revisit of the 1999 Arrest Convention.

The Working Group is not in a position to offer a view or propose any "solution" at this stage, most particularly in the absence of its chair. What can be indicated however, is that from the indexing and collation of the various responses, what could be a very useful document for practitioners in the future who are analysing their options as regards different arrest jurisdictions has started to emerge. This preliminary conclusion only serves to emphasise the importance of ensuring that the IWG's work product includes as many national regimes as possible, for which reason those NMLA's who have not yet delivered their replies are urged to do so.

(i) Restatement of *Lex Maritima*;

The President reported that Eric Van Hooydonk had advised that he had been unable to devote any time to this work as he was getting close to finalising work on the Belgium Shipping Code. He plans to reactivate work on this topic before the end of the year.

(j) Ship Nomenclature;

Ed Sweetman gave the report on behalf of Frank Nolan who was unable to attend the meeting in Genoa. The first stage of work undertaken by the IWG has been to gauge the scope and dimension of the variances in terminology and application of definitions from country to country and under international conventions. To this end a questionnaire has been prepared and circulated and eleven replies have been received to the same from the Maritime Law Association of the USMLA, the Romanian MLA, the Chinese MLA, the Danish MLA, the Croatian MLA, the Hong Kong MLA, the Irish MLA, the Italian MLA, the Netherlands MLA, the Polish MLA and the Brazilian MLA.

The replies to date reveal very interesting trends. It would appear that the "civil law jurisdictions" are far more inclined to adopt the characterisation of a maritime structure or vessel under its national law or the law of the flag whereas the "common law jurisdictions" lean towards regarding the characterisation of a

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vessel, and the legal regime applicable to it as being a matter for local law or the *lex fori*. It appears that certain jurisdictions (in particular those closer to the "civil law/Code jurisdictions") are far more inclined to characterise whether a maritime structure is a ship/vessel by the use to which it is dedicated, whilst other jurisdictions prefer to regard certain external, or "objective" characteristics of the vessel/structure. Certain jurisdictions have an elaborate legal structure defining and providing for all the different permutations of vessel to which their law may be applicable, whether it be a ship, yacht, boat or maritime artefact, whereas other jurisdictions lack such precision, the matter of whether the marine object is entitled to be regarded as ship/vessel or not being seemingly left to the courts to decide.

It is not clear to the Working Group at this early stage where this enquiry will lead us and whether the recommendation will be for a draft convention, a report, or a paper which might serve as a source of information and reference for future maritime law practitioners. Further replies to the preliminary questionnaire are required and it seems quite possible that a subsequent and more focussed questionnaire may be required.

We would entreat all those MLAs who have not yet delivered their replies to do so as soon as possible in order to allow the work of the Group continue to the next stage with as complete a picture of the regimes around the world as is possible.

(k) Classification Societies;

Karl Gombrii reported that some interest was now being shown by IACS in reactivating the IWG. He is to explore this further with Bob Clyne.

(l) Cybercrime;

John Hare reported regrettably little activity during the preceding year, but that he had been approached by Giovanni Marchiafava [avv.giovannimarchiafava@gmail.com](mailto:avv.giovannimarchiafava@gmail.com) to join the group. Giovanni is an Italian who has a particular interest in Cybercrime, and his appointment to the IWG was duly approved by the Executive Council. John asked that he continue as Chair of the IWG to which he hoped to be able to devote time and enthusiasm after stepping down as Secretary-General. This had been agreed to by EXCO.

(m) Unmanned Ships

Tom Birch-Reynardson gave his report noting that the IWG had had a productive year including the production of a position paper in March 2017 which has identified those provisions of the Law of the Sea as codified in UNCLOS and the main IMO Regulations which pose particular challenges for the introduction of the new technology. In addition a Questionnaire had been sent out to MLAs and responses have thus far been received from nine countries. He urged MLAs to respond to the questionnaire as soon as possible. Both the position paper and the questionnaire have been published in the *Journal of International Maritime Law* (2017) 23 JIML. I IWG has produced tables covering COLREGS, SOLAS, Chapter V and SOLAS, Chapters I-IV.

Tom Birch-Reynardson also noted that members of the IWG attended the 98th Meeting of the IMO Maritime Safety Committee in June 2017 when, at the request of certain states, the MSC agreed to add the issue of the regulation of unmanned ships to its work agenda which will be in the form of a regulatory scoping exercise to consider the extent to which the existing corpus of IMO regulations is suitable for the introduction of unmanned ships. The IWG made a short presentation at the meeting explaining the work which it had already been doing on this subject which will be of considerable assistance to the MSC, which was acknowledged at the meeting. Tom Birch-Reynardson particularly commended Henrik Ringbom, Robert Veal and Lena Wiedenbach for their work in the IWG on the Conventions, and in particular to Lena for her excellent support as Rapporteur.

The President of the Ecuadorian MLA made an intervention at the conclusion of this section of the reports to the effect that Questionnaires presented by IWGs were becoming too long and gave rise to difficulty in devoting time and energy to respond.

## 11. Standing Committees

### (a) Marine Insurance;

Joe Grasso presented the report of this Committee, which had considered a study of three subjects, including the impact of changes to the Marine Insurance Act in the United Kingdom as a result of its Insurance Act of 2015; the impact of bankruptcy such as Hanjin and the impact on marine insurance of development of unmanned vessels. In the latter context the IWG plans to engage with the unmanned vessels IWG whilst in Genoa.

### (b) General Average;

#### (i) Correction to York Antwerp Rules 2016

Taco van der Valk gave his report and noted that Ben Browne had stood down from the General Average Committee when he retired from legal practice earlier in the year and that Daniella Delint would replace him. He then requested that the Assembly approve the correction to Rule XVII(b) of the York Antwerp Rules 2016 which had been approved in New York and explained that part of the original text had been inadvertently omitted from the final text. The Netherlands proposed, seconded by Brazil that the omitted text be included in Rule XVII(b) and the following resolution was passed unanimously:

**Resolution: In Rule XVII(b) add to the first 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."**

He also reported that work is still progressing on the production of Guidelines for general average.

### (c) General Average Interest Rates;

Taco van der Valk gave his report and advised that the Committee comprising himself, Bent Nielsen and Andrew Taylor had determined that the interest rate for the York Antwerp Rules 2004 would be continued at the rate of 2.5% for the calendar year 1 January 2017 to 31 December 2018. The Netherlands proposed, seconded by Brazil that that recommendation be approved by the Assembly and it was unanimously adopted.

### (d) Carriage of Goods by Sea (including Rotterdam Rules);

Tomotaka Fujita gave the report of this Standing Committee and noted that although 25 States have signed the Rotterdam Rules only three have thus far ratified. He also reported on his attendance at UNCITRAL Working Group IV (Electronic Transferable Records) in relation to which the CMI had submitted a submission paper at the UNCITRAL Commission session in Vienna in July this year. CMI had proposed two possible solutions to problems which it believed were created by the draft Model Law in connection with the Rotterdam Rules. The first of the two solutions contained in the CMI proposal were adopted by the Commission.

(e) CMI Young Lawyers;

Taco van der Valk gave the report and noted that the newly constituted Young Lawyers Committee under the Chair of Blyth Daly whose Rapporteur Robert Hoepel had put together the session for young lawyers that was taking place at the same time as the Assembly Meeting.

(f) Planning Committee;

John Hare noted that the new Secretary-General would reactivate this Committee.

(g) Implementation and Promotion of Maritime Conventions;

Deucalion Rediadis reported that meetings were held with IMO in June and October 2016 to obtain details about its areas of interest in relation to implementation of conventions so that CMI and ICS could consider where they could assist. In 2017, Nick Gaskell and Rosalie Balkin contributed greatly to an e-mail exchange about organising the committee's future work. Dr Balkin is expected to continue her involvement with the committee under her new role as Secretary-General and Prof Gaskell expects to be in a position to devote more time to it in the second half of 2018. An enquiry received from Myanmar regarding the adoption of a liability regime for the carriage of goods by sea has been duly referred by the President of CMI to UNCITRAL as the entity responsible for the Rotterdam Rules. The International Chamber of Shipping proposes to issue a new edition of the brochure about Promoting Maritime Treaty Ratification last published in 2013 under the joint colors of ICS/ISF and CMI. A draft was received in late August and is currently being reviewed. Two further replies to the questionnaire about the reasons for not promoting the 11 maritime conventions prioritised in 2013 have been received, from India and Poland respectively, bringing the total number to 20. Deucalion Rediadis has proposed that Maria Borg Barthet and Peter Laurijssen be appointed as Rapporteurs on implementation and promotion of conventions respectively and kindly asked ExCo to make such appointments. He further reported that meetings took place between the six members of the Committee who were present in Genoa. In relation to implementation of conventions, it is felt that CMI and ICS are now in a position to revert to IMO to advise what they can (and cannot) do to assist. He will write to IMO and seek a meeting in the course of the autumn, possibly around 24-26 Sep 2017. As regards promoting ratification, the Committee will wrap up its work on the questionnaire so that CMI reports to IMO and ICS on the findings, and all three get on with the further steps of the blueprint that has been in place since 2012.

(h) Publications: Yearbook, Newsletter, LinkedIn, Website and CMI Handbook;

Taco van der Valk reported that work was progressing on the next issues of the News Letter and the Yearbook which would be produced from Antwerp, now that Giorgio Berlingieri has stood down from his role as Chair of the publications' responsibility for CMI. In relation to the website he confirmed that the Executive Council had authorised the expenditure of funds to update the website and this also would be undertaken from Antwerp and with the assistance of Evelien Peeters. He confirmed that consideration was being given to what material can best be published in each of the organs available to the CMI, namely the News Letter, the Yearbook and the website in order to avoid duplication.

Evelien Peeters was then introduced by Taco van der Valk, who would be assisting him in the publication of the News Letter and the Yearbook as well as making changes to the website on a regular basis. She urged MLAs to provide her with contact information for their MLA whenever it changed so that the information can be updated in all the CMI publications in which such information is held. She also urged them to inform her of activities of their MLA which can be incorporated in the News Letter and publicised on the website.

The President reported that there were no developments in relation to the publication of the CMI Handbook due to the fact that this was within the control of Frank Wiswall who was currently undergoing surgery.



(i) Database of Judicial Decisions on International Conventions;

Lawrence Teh gave a report in the following terms: On 1<sup>st</sup> March 2017, after terms had been finalised with Centre for Maritime Law of the National University of Singapore, he wrote to all national MLAs to inform them of a new database called Judicial Decisions on International Conventions that the CMI and CML had decided to create. This database was created for easier reference to judicial decisions around the world on international conventions so that international maritime conventions could be interpreted harmoniously throughout the world. An invitation was made to all NMLAs to make submissions to the database. Details were given in the letter on how NMLAs could make an electronic submission of cases from their country or jurisdiction. NMLAs were invited to nominate a person from their organisation who would represent the NMLA on all matters to do with the database. So far the CMI had heard from the following NMLAs - Ireland, Romania, Italy, France, Uruguay, China, Ecuador, Croatia, Poland, Ukraine, the Netherlands, Malta, Germany and Singapore. He encouraged NMLAs who had yet to respond to do so as soon as possible.

**12. Ad hoc Committees:**

(a) Arbitration;

Luc Grellet gave this report and advised that the Ad Hoc Committee had considered whether there was a role to play for the CMI in relation to the topic of arbitration. It has considered the responses to the Questionnaire which had been sent out to MLAs, the overall view of those responses being that there was a limited role in the area of maritime arbitration for the CMI to play particularly given the number of other organisations that are already involved in many of these activities. Luc Grellet reported that the Executive Council had decided at its meeting yesterday that the work of the Ad Hoc Committee had been completed and it agreed that there was nothing, at this stage, which the CMI could literally do in this area of maritime law in relation to uniformity.

(b) The Future of CMI;

The President advised that little progress had been made with this Committee since the MLA Presidents' Breakfast in New York. As a result the Executive Council was considering reconstituting the Committee with a view to it finalising its report before next year's Assembly Meeting.

**13. EU representative**

As Vincent Power was not in Genoa there was no report from this committee.

**14. Singapore Regional office**

Lawrence Teh gave a report in the following terms: Singapore authorities had approved the extension of CMI's RO for a further year (26 April 2017 – 25 April 2018). One of the main purposes of the RO, which was the idea of past president Karl Gombrii was to encourage Asian nations to form MLAs and join the CMI and to also encourage existing Asian MLAs to maintain or increase their activities. A good example of this may be seen by the entry or re-entry of Malaysia today as a member of the CMI. He reported on his numerous visits to KL over past 3 years to broker the entry of IMSML as new Malaysian member of CMI, after the old Malaysian MLA was expelled for arrears in subscriptions. He spoke about his visit to the Hong Kong MLA in November 2016, to the Indian MLA in March 2017, to working on a Indian-Singapore MLA event originally scheduled for mid-February 2018 with Stuart Hetherington and Tom Birch Reynardson in attendance, his visit to the Korean MLA in July 2017 and assistance in helping to resolve the issue of their subscriptions, his determination that there were not enough lawyers and interest in Thailand for an MLA, his talks with lawyers in Dubai regarding the formation of an Emirates MLA, his visit to the Indonesian MLA in August 2017 to encourage them to be

more open and more active and to pay their subscriptions and his intended visit in November 2017 to the Japanese MLA to discuss Tokyo conference and general matters

#### 15. Elections - Report of the Nominating Committee

- (ii) Secretary-General; Rosalie Balkin
- (iii) Two Executive Councillors. Ann Fenech, Aurelio Fernandez-Concheso

In the absence of Andrew Taylor who had to return to London before today's meetings the President presented his report which had received nominations for three candidates to fill the Executive Council vacancy caused by the departure of Jorge Radovich whose second term of office was concluding. The report noted that there was unanimous support for the election of Rosalie Balkin as Secretary-General and the re-election of Ann Fenech for a second term as Executive Councillor. For the position on the Executive Council there was overwhelming support for Dr Aurelio Fernandez-Concheso. There being no other nominees the President declared them duly elected, to the acclamation of the Assembly. It was noted that the mandate of Jorge Radovich has ended and that John Hare had indicated that he wished to retire as Secretary-General at the Genoa Assembly and his mandate was therefore ending.

#### **Resolution:**

**Secretary-General: the Mandate of John Hare ended. Rosalie Balkin elected for a term of 3 years.**

**Executive Councillors: The mandate of Jorge Radovich ended. Ann Fenech re-elected for a second term of 3 years. Aurelio Fernandez-Concheso elected for a first term of 3 years.**

The President informed the Assembly that the Executive Council had recommended the conferral of the membership status of *Honoris Causa* on Bent Nielsen and asked Patrick Griggs to say a few words. Patrick Griggs then recalled the long service that Bent Nielsen had provided to the CMI, including serving on the International Working Group and the International Sub-Committee as Rapporteur when the Salvage Convention was drafted by the CMI, and had then served on the revisions of the York Antwerp Rules leading up to the 1994 Conference in Sydney and had chaired the subsequent International Working Group and International Sub-Committees that had led to the revision of the York Antwerp Rules in 2004 in Vancouver and 2016 in New York. Apart from all those responsibilities he had also chaired the Nominating Committee for a number of years (from 2004-2013) and lectured on General Average and the York Antwerp Rules at IMLI for many years.

The President then invited the Assembly to show their support for this recommendation in the usual way, which then provided Bent Nielsen with a standing ovation by way of acclamation.

#### 16. Any other business

The President expressed his thanks to Jorge Radovich for his valuable contributions to the work of the CMI both before and whilst he was on the Executive Council. He recalled his assistance in relation to the topics of Places of Refuge and the Salvage Convention as well as his involvement on the Offshore Activities International Working Group which he now Chairs. The President expressed his wish that Jorge Radovich would continue his involvement with the CMI for many years to come.

The President also expressed his thanks to Gorgio Berlingieri and Laura Baldi and her team for organising the meeting in Genoa.

Finally the President expressed his thanks to John Hare for his four years of devoted service to the CMI. The President noted that when John Hare took over he was replacing Nigel Frawley who had single-handedly taken on the roles of Secretary-General and Administrator for many years and organised all the CMI meetings that had taken place together with the Presidents that he had served under. John Hare had taken on the

mantel of Nigel Frawley and no one who had attended a CMI event over the last four years would doubt the hard work and devotion that he had given to the tasks that he undertook. The President presented him with a small statue of the Lanterna of Genoa, he being an aficionado of lighthouses. Considerable acclamation was then given by the Assembly. John Hare then expressed his thanks to the CMI and said how much he had enjoyed the role of Secretary-General.

The meeting closed at 6pm.

**Signed:**

.....  
**President**

November 2017

.....  
**Secretary-General**

November 2017



## COMITÉ MARITIME INTERNATIONAL

### PRESIDENT

#### President's Report

My last report was written prior to the New York Conference in 2016. A detailed report of that Conference by the Secretary-General can be found in the Newsletter No. 1-2 of January/August 2016. As John Hare noted in that report 1,342 people sat down to the Gala Dinner and nearly 1,000 people registered as delegates or attendees during the week. The recently appointed Secretary-General of the IMO, Kitack Lim, opened the Conference and his remarks are published in the latest issue of the Yearbook 2016 New York II. The presentation by Captain Nick Sloane of the Salvage & Wreck Removal operation of the "Costa Concordia" will long be remembered by those who were fortunate enough to witness it. Like the Beijing Conference of 2012 there was almost too much on offer and delegates had to decide between attending competing events on most days of the Conference.

John Hare and his opposite number on the organising committee of the USMLA, Vince Foley, as well as John Kimball and those who were involved in his team in gathering sponsorship, made the Conference the success that it was. The small surplus that was raised was, as the Treasurer points out in his report "an excellent result for this big event", particularly bearing in mind the challenges of accommodating all the members of the USMLA who usually attend the Spring meeting at no cost, apart from the dinner at the conclusion of the meeting.

As you will have seen from the most recent News Letter we have had some personal successes to be proud of in the last 12 months. Frank Wiswall received the IMO International Maritime Prize 2015. Alfred Popp QC was appointed a member of the Order of Canada. As I noted in my letter to you earlier in the year the citation to his award read "For his contributions to maritime law as a lawyer, policy expert and administrator". He was of course Chairman of the Legal Committee of the IMO from 1993 to 2005. Aldo Chircop was appointed as Canada Research Chair in Maritime Law and Policy.

We have a much shorter gathering in Genoa where we will experience a half day seminar and the Assembly meeting on the 8 September 2017 and where we will be honouring the contribution made to the CMI by our former President Francesco Berlingieri.

#### Constitution

It has come to light since the New York Conference that the CMI has been remiss, since the CMI last amended its Constitution and was incorporated under Belgian law as an international non-profit association, in not complying with the filing and publication requirements for such organisations in

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REGISTERED OFFICE CMI, AISBL: Ernest Van Dijkkaai 8, B-2000 Antwerp, Belgium  
Enterprise n° 0867 385 381  
[www.comitemaritime.org](http://www.comitemaritime.org)

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Belgium. Accordingly as well as attaching the usual Agenda, also attached is an Agenda for a Special General Assembly meeting and the proposed draft Minutes for that meeting which have been prepared to identify what is required of us in order to rectify these oversights at the Assembly Meeting in Genoa. I would be grateful if you would read these Minutes and be in a position to agree to the resolutions which are identified in it, so that we can put our house in order.

In addition to rectifying our past oversights we will be asking you to approve suggested amendments to the Constitution. We have been talking for some years about making changes to the Constitution, some of which are intended to make it easier to understand it but others brought about by changes in the way we do things. I would be grateful if you would also be in a position to respond to all the resolutions which will need to be taken in order to make those amendments. I thank the Constitution Committee (Jean-Francois Peters, John Hare, Patrice Rembauville-Nicolas, John O'Connor and Benoit Goemans) for all their hard work in recent months. By way of background to the proposed changes, the Constitution Committee met in Antwerp in March and proposed a large number of changes to the Executive Council which have been considered by the Executive Council and approved for consideration by the Assembly. Many of the changes are simply tidying up and drafting changes which have been made with a view to re-organising the material that is presently in the Constitution. However, there are some significant changes which are proposed, including in particular the make-up of the Nominating Committee. It is suggested that the Assembly should elect two persons to that Committee. If that suggestion is approved by the Assembly that process cannot occur until the next Assembly meeting in 2018 and it is therefore necessary to retain the present Nominating Committee in order to enable that process to be carried forward next year.

#### **Finances**

As you will see from the Treasurer's report there was an operational deficit of just over Euro 20,000 in 2016, which was largely attributable to a cybercrime incident in which the CMI was defrauded of USD17,230. Once again the Treasurer's report refers to this and you will also see a more detailed account in the Minutes of the Email meeting held by the Executive Council during the week commencing 21 November 2016 in CMI News Letter No. 3 (September/December 2016), on pages 4 and 5.

Briefly what occurred is that my email address was used to send a message to the Treasurer requesting him to forward the sum of USD17,230 to an account in the United States. There were a number of emails exchanged between the fraudster and the Treasurer before the Treasurer made the payment. He had also tried to communicate with me by phone, unsuccessfully, before so doing. As a result of that we took steps to stop the CMI's bankers making any payments pursuant to electronic requests for a period of time thereafter and have also introduced a Protocol whereby the Treasurer will make verbal contact with the President or the Secretary-General before authorising significant payments on behalf of the CMI. The lesson from this sad event is that we must all be eternally vigilant when responding to requests for funds and the need to verify that the request comes from a legitimate source.

#### **The Management Committee**

In view of the fact that some 16 months will have elapsed between the New York Conference and the Assembly meeting in Genoa and the fact that Evelien Peters had not met any of us and had recently taken over from Anne Verlinde in the CMI offices in Antwerp it was thought appropriate to have a meeting of the Management Committee in March, comprising: John Hare, Lawrence Teh, Peter Verstuyft, Evelien Peters and myself. We had a most productive meeting. As mentioned earlier the opportunity was taken also to hold a meeting of the Standing Committee on the Constitution at the same time.



## **Work Products of the CMI**

### *Judicial Sales*

Shortly after we met in New York there was a meeting of the IMO Legal Committee in early June 2016 at which the CMI Instrument on Judicial Sale of Ships was placed on the agenda in the hope that the IMO Legal Committee would agree to take on this project. Unfortunately there was a lack of support for that, despite the fact that two States, China and the Republic of Korea, co-sponsored the project. Since then we have reached out to the Hague Conference (the HCCH) in the hope that it might add this work to its Judgments project. To that end Jonathan Lux, together with Taco van der Valk, attended the Peace Palace in the Hague and explained the project to the Committee that is working on its Judgments project when it met in February this year. At the conclusion of its meeting it was decided by that Committee that it would not be appropriate to include the Judicial Sales work in that project as it was already too far advanced. As a result, the Secretariat of the HCCH invited the CMI to make a submission to its Council meeting in March to the effect that it take on the Judicial Sales instrument work as an independent project. As the Council meeting was taking place the week after I was to be in Antwerp for the Management Committee meeting I arranged to be in the Hague, together with Taco Van der Valk, on the due date and made a submission to that effect. It was agreed with the Secretariat and the Chairman of the Council beforehand that as the delegates would not be very well informed about the project, except on listening to my submission, which was limited to about 7 minutes, they should not be asked to vote on it but simply treat it as information to be considered over the next 12 months until the next Council meeting when a vote would be taken. Delegates were, however, invited to indicate their views. Whilst a number of delegates were supportive of the importance of that project (including China and the Republic of Korea) others were concerned not to take on new work until the HCCH's current projects had been completed.

As a result of the suggestion subsequently made by one of the delegates who was at the Hague I then approached UNCITRAL to ascertain its interest in taking on this project. As a result of those contacts, Jonathan Lux made a further attempt to persuade a UN body to take on this work when he attended the meeting of UNCITRAL in Vienna on 14 July 2017. He was joined by Henry Li, Alexander Von Ziegler and Tomotaka Fujita. The result of that meeting is that we are presently working towards participating in a Colloquium at which the project can be further explained and discussed at an UNCITRAL event before the next UNCITRAL meeting in the middle of next year. It will be appreciated from the above that a number of people have given a lot of their time in trying to have this project adopted by an international organisation capable of convening a diplomatic conference. They deserve our profound thanks.

### **Maritime Law and Unmanned Ships**

There is no doubt, as we heard in New York last year, that the technological developments are gathering pace and it is the regulatory regimes which will need to catch up to enable unmanned ships to operate. Tom Birch Reynardson and his working group took part in meetings at the IMO in June, which he has reported to you, and there is considerable scope for CMI and MLAs to assist in reforming the international and national regulatory environment. I urge you to become involved.

### **Jurisprudence Data Base**

It is timely to be mentioning this topic when we are in Francesco's home port. The Jurisprudence data base was his baby for many years. He had the task of cajoling MLAs to send him judgments from their jurisdictions. We have now, through the University of Singapore, set up a receptacle for all the jurisprudence from around the world on the designated conventions. Only six MLAs have nominated someone to be the primary point of contact and supplier of cases. So far a very few cases have been supplied. In the first instance it is only cases since January 2013 that have been sought. Please assist

in providing the cases to build up this resource which will make a considerable contribution to uniformity of maritime law.

### **Questionnaires**

Could I take this opportunity to ask those MLAs who have not as yet responded to some outstanding questionnaires to do so as soon as possible? The most recent questionnaires have dealt with the following topics:

1. Pandemic Response
2. Ship Financing Security Practices
3. Wrongful Arrests
4. Ship Nomenclature
5. Promoting Ratification of Maritime Conventions
6. Cross-Border Insolvency

### **Evelien Peeters (Administrative Assistant in Antwerp)**

I hope that all of you who attend the Assembly meeting in Genoa will take the opportunity to meet Evelien. Evelien came to us through the Treasurer, Peter Verstuyft's, contacts at the Belgium Shipowners Association. She has academic qualifications by way of a Bachelor of Business Management and a Master of Business Science and had undertaken a course in maritime law. She had worked in the logistics industry in both a claims and operational role. I am going to ask her to introduce herself at the Assembly meeting and indicate to you some of the work that she has been and will continue to be involved with. I am hoping that through her efforts and yours, you will be able to have much more direct communication with the CMI office in Antwerp. That would be by reason of the improved website that we hope to have available to you over the next few months and by your communicating more information to her as to the work and activities of your Association, and linking the members of your Association to the website. If you have not already provided the names and email contact details of your membership please do so. That membership will benefit from being able to receive directly from the CMI all communications that we send out to you. If, as is the case with many MLAs, the information was provided some years ago concerning your members, it may be time to update it.

Finally I want to take this opportunity to thank Giorgio Berlingieri (and Francesco) for their long association with the publication of the News Letter and Yearbook. They are our two texts that contain the most significant materials that we produce. Giorgio has produced his last editions of both publications and has handed over the reins to Taco Van der Valk. We owe the Berlingieri family a huge debt of gratitude for many years of service to the CMI.

**Stuart Hetherington**

28 July 2017

# MINUTE OF ASSEMBLY MEETING HELD IN GENOA TO AMEND CONSTITUTION AND THE AMENDED CONSTITUTION



## COMITÉ MARITIME INTERNATIONAL

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Minutes of a meeting of the  
CMI Assembly on Friday, 8 September 2017  
at 1430 hours at the Old Stock Exchange Building, Genoa, Italy

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### 1. Agenda

- 1) To approve the amendments to the Constitution in accordance with the Resolutions and texts circulated to members by the President's letter dated 7 July 2017, which are **attached**.
- 2) To implement the aforesaid amendments and to adopt the subsequently coordinated Constitution with the **attached** text.
- 3) The clean text of the Constitution, with the amendments shown is also **attached**.
- 4) To give Power of Attorney to Mr Jean-Francois Peters, domiciled Cederlaan 15, 2610 Wilrijk, to appear before Notary Public Pieter Herman in Antwerp (Belgium) to:

Represent the (General) Assembly of the Comité Maritime International in order to authenticate aforesaid amendments and adoption of the coordinated Constitution, in Dutch, in order to publish these amendments and coordination in the Belgian Official Gazette according to Belgian law. For the above purposes execute and sign any deeds and documents, give an address for service, substitute and generally do whatever may be necessary.

### 2. Convocation of the General Assembly

The Assembly recognises that the convocation of the meeting has been issued on 28 July 2017 according to the forms that are prescribed by the Constitution, and that the Agenda for this meeting has been timely communicated to the members.

### 3. Presence Quorum

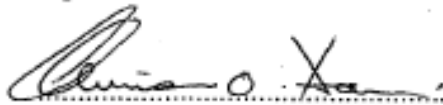
The Assembly recognises that more than five Member Associations entitled to vote are hereby present, so that a quorum as prescribed by Article 5 was constituted to discuss its agenda. The attendance sheet is **attached**.

#### 4. Decisions

The Assembly unanimously decides:

- 1) To approve all the amendments to the Constitution as proposed above in paragraph 1) of the Agenda.
- 2) To approve the implementation of all aforesaid amendments and to adopt the subsequently coordinated Constitution with the text as proposed above in paragraph 3) of the Agenda.
- 3) To give the Power of Attorney to Mr Jean-Francois Peters as proposed above in paragraph 4) of the Agenda.

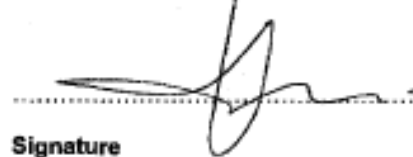
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CHRISTOPHER O. DAVIS

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Paul Makissee

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MONICA MBANCEFO

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MICHAEL /GROKWE, SAN

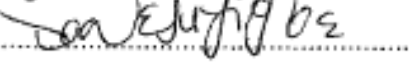
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OLUSEYI ADEJUYIGBE

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Martin Davies

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MARTIN DAVIES

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Signature *Enrique*

Signature *ENRIQUE PIONGINO*

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Signature *MIJIA GARCIA*

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Signature *JANA RODICA*

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Signature *J. Rodica*

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Signature *ROBERT CLYNE*

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Signature *NARROW K WATSON*

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Signature *Enrique Piongino*

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Signature *EDUARDO ALBORS*

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Signature *MERCEDES DUCH*

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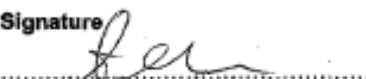
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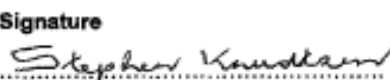
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ANDREAS WEIDELL

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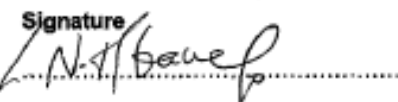
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LOUIS MBANERO

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LUKE C. ILOGU

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Reinier van Campen

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Jaco van der Valk

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WILLEM SPRENGER

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IGNACIO MELO


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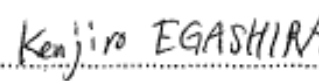
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FRANCESCO SICCARDI

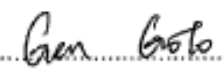
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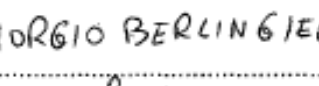
  
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Kenjiro Egashira  
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Tuplan


  
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Gen Goto  
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Tomotaka FUJITA  
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GIORGIO BERLINGIERI  
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ADARSH MATHAW  
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V.J. MATHAW  
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Signature  
Gregorios  
Timagenis  
President HMLA (Greece)  
Name  
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Signature  
Demetrios REDIADIS  
Secretary-General, HMLA (Greece)  
Name  
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GERMAN MIA (DVIS) : PRESIDENT  
Name Prof. Dr. Dieter Schwampe

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German HLA (CVIS),  
Secretary  
Tilo Waldenfeldt  
Name

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German HLA  
Thomas Waucluf  
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Vassilios Vernicos  
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Vassilios Vernicos

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Friedrich M. A.  
in a letter  
via e-mail

Signature

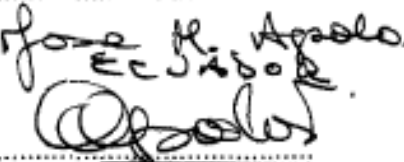
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Philippe Gobin  
M. A. H.  
President

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Jose H. Agudo  
Ec. J. J. J.

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Daniel A. L.  
T. H. H.

Name

Elizabeth Salas Jimenez  
Alcalde - Colombia

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Elizabeth Salas Jimenez

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Beiping CHU

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CANADA:

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M. D. Isaacs

Name CMAA, President.

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CANADA: Elizabeth Henegha

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E. Henegha, J.F.C.

Name Judge, Federal Court  
of Canada

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CANADA: John G. O'Connor

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J. G. O'Connor

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BRAZIL - PEDRO CALMON FILHO

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BELGIUM - FRANK STEVENS

Name

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Name

BELGIUM - JERN-FRANCOIS PETERS

Signature

AUSTRALIA

NEW ZEALAND

Name SARAH DERINGTON

Signature

R. P. Balkin

Name Rosalie Pam Balkin



Signature

DIEGO E. CHAMI

Name

PAWEŁ MICKIEWICZ  
SECRETARY OF THE  
POLISH MCA

Signature

L. Wiedensach

Name

LINA WIEDENSACH

Signature

Tom Risch-Sumardow

Name

Nadine NJIKI EPARA

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Nadine

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TOUKEWI MARCOTTA RAP  
(AISH) HAMBURG

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Michael Kalosub

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Michael

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JOSEPH M. LORAWICK

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Nicholas Martin Plawia

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Madeline Jayne Rodgers

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NGUENE NTEPPE Joseph

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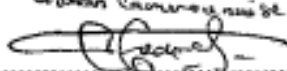
ACDM (CAMEROON)

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MBAPPE PENBA  
Auguste  
(ACDM)-CAMEROON  
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Name NGAMKAM Gaston  
Président de l'ACDM (Association Camerounaise des Droits de l'Homme)  


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Name JOSEPH G. GRASSO

JIRO Kubo (Japan)

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Name CHIARA FAZASCO  
(GABRIANO VERGANI LAW FIRM)

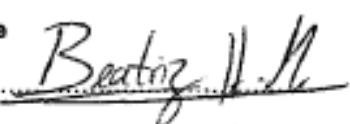
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BEATRIZ HUARTE MELGAR

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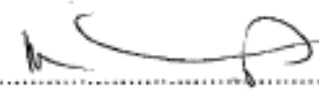
JANIS HAN S. PAVAN

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ALDO CHIRCOPO  


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KIRAN KHOSLA

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**Signature** *Jonhane South Africa*  
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*Nina Ester*  
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**COMITÉ MARITIME INTERNATIONAL**  
**CONSTITUTION**  
**2017**

**PART I - GENERAL**

**Article 1**

**Name and Object**

The name of this organisation is "Comité Maritime International", which may be abbreviated to "CMI". The name of the organisation may be used in full or in its abbreviated form. It is a non-governmental not-for-profit international organisation established in Antwerp in 1897, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects. To this end it shall promote the establishment of national associations of maritime law and shall co-operate with other international organisations.

**Article 2**

**Existence and Statutory Seat**

The Comité Maritime International is incorporated in Belgium as an *Association internationale sans but lucratif* (AISBL) / *Internationale Vereniging zonder Winstoogmerk* (IVZW) under the Belgian Act of 27 June 1921 as later amended. It has been granted juridical personality by Royal Decree of 9 November 2003. Its statutory seat is at Ernest Van Dijckkaai 8, 2000 Antwerpen. Its statutory seat may be changed within Belgium by decision of the Executive Council.

**PART II –MEMBERSHIP AND LIABILITY OF MEMBERS**

**Article 3**

**Voting Members**

- (a) Subject to Article 28, the voting Members of the Comité Maritime International are national (or multinational) Associations of Maritime Law elected to membership by the Assembly, the object of which Associations must conform to that of the CMI and the membership of which must be fully open to persons (individuals or bodies having juridical personality in accordance with their national law and custom) who either are involved in maritime activities or are specialists in maritime law. Member Associations must be democratically constituted and governed, and must endeavour to present a balanced view of the interests represented in their Association.
- (b) Where in a State there is no national Association of Maritime Law in existence, and an organisation in that State applies for membership of the CMI, the Assembly may accept such organisation as a Member of the CMI if it is satisfied that the object of such organisation, or one of its objects, is the unification of maritime law in all its aspects. Whenever reference is made in this Constitution to Member Associations, it will be deemed to include any organisation admitted as a Member pursuant to this Article.
- (c) Only one organisation in each State shall be eligible for membership, unless the Assembly otherwise decides. A multinational Association is eligible for membership only if there is no Member Association in any of its constituent States.

(d) Where a national (or multinational) Member Association does not possess juridical personality according to the law of the country where it is established, the members of such Member Association who are individuals or bodies having juridical personality in accordance with their national law and custom, acting together in accordance with their national law, shall be deemed to constitute that Member Association for purposes of its membership of the CMI.

(e) National (or multinational) Member Associations of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

#### **Article 4**

##### **Titulary Members**

Individual members of Member Associations may be elected by the Assembly as Titulary Members of the Comité Maritime International upon the proposal of the Association concerned, endorsed by the Executive Council. Individual persons may also be elected by the Assembly as Titulary Members upon the proposal of the Executive Council. Titulary Membership is of an honorary nature and shall be decided having regard to the contributions of the candidates to the work of the CMI and/or to their services rendered in legal or maritime affairs in furtherance of international uniformity of maritime law or related commercial practice. Titulary Members presently or formerly belonging to an Association which is no longer a member of the CMI may remain individual Titulary Members at large pending the formation of a new Member Association in their State.

Titulary Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

#### **Article 5**

##### **Provisional Members**

Nationals of States where there is no Member Association in existence and who have demonstrated an interest in the object of the Comité Maritime International may upon the proposal of the Executive Council be elected as Provisional Members by the Assembly. A primary objective of Provisional Membership is to facilitate the organisation and establishment of new Member national or regional Associations of Maritime Law. Provisional Membership is not normally intended to be permanent, and the status of each Provisional Member will be reviewed at three-year intervals. However, individuals who have been Provisional Members for not less than five years may upon the proposal of the Executive Council be elected by the Assembly as Titulary Members, to the maximum number of three such Titulary Members from any one State. Provisional Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

#### **Article 6**

##### **Members *Honoris Causa***

The Assembly may elect to Membership *honoris causa* any individual person who has rendered exceptional service to the Comité Maritime International or in the attainment of its object, with all of the rights and privileges of a Titulary Member. Members *honoris causa* may be designated as honorary officers of the CMI if so proposed by the Executive Council. Members *honoris causa* shall not be attributed to any Member Association or State, but shall be individual members of the CMI as a whole.

Members *honoris causa* of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

#### **Article 7**

##### **Consultative Members**

International organisations which are interested in the object of the Comité Maritime International may be elected by the Assembly as Consultative Members.

Consultative Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

#### **Article 8**

##### **Expulsion of Members**

- (a) Members may be expelled from the Comité Maritime International by reason of:
  - (i) default in payment of subscriptions;
  - (ii) conduct obstructive to the object of the CMI; or
  - (iii) conduct likely to bring the CMI or its work into disrepute.
- (b) (i) A motion to expel a Member may be made by:
  - (a) any Member Association or Titulary Member of the CMI; or
  - (b) the Executive Council.
  - (ii) Such motion shall be made in writing and shall set forth the reason(s) for the motion.
  - (iii) Such motion must be filed with the Secretary-General or Administrator, and shall be copied to the Member in question.
- (c) A motion to expel made under Article 8(b)(i)(a) shall be forwarded to the Executive Council for first consideration.
  - (i) If such motion is approved by the Executive Council, it shall be forwarded to the Assembly for consideration pursuant to Article 11(b).
  - (ii) If such motion is not approved by the Executive Council, the motion may nevertheless be laid before the Assembly by the Member Association or Titulary Member at its meeting next following the meeting of the Executive Council at which the motion was considered.
- (d) A motion to expel shall not be debated in or acted upon by the Assembly until at least ninety (90) days have elapsed since the original motion was copied to the Member in question. If less than ninety (90) days have elapsed, consideration of the motion shall be deferred to the next succeeding Assembly.
- (e) (i) The Member in question may offer a written response to the motion to expel, and/or may address the Assembly for a reasonable period in debate upon the motion.
  - (ii) In the case of a motion to expel which is based upon default in payment under Article 8(a)(i), actual payment in full of all arrears currently owed by the Member in question shall constitute a complete defence to the motion, and upon acknowledgment of payment by the Treasurer the motion shall be deemed withdrawn.



- (f) (i) In the case of a motion to expel which is based upon default in payment under Article 8(a)(i), expulsion shall require the affirmative vote of a simple majority of the Member Associations present, entitled to vote, and voting.
- (ii) In the case of a motion to expel which is based upon Article 8(a)(ii) and (iii), expulsion shall require the affirmative vote of a two-thirds majority of the Member Associations present, entitled to vote, and voting.

#### **Article 9**

##### **Limitation of Liability of Members**

The liability of Members for obligations of the Comité Maritime International shall be limited to the amounts of their subscriptions paid or currently due and payable to the CMI.

#### **PART III - ASSEMBLY**

##### **Article 10**

##### **Composition of the Assembly**

The Assembly shall consist of all Members of the Comité Maritime International, the members of the Executive Council and the Immediate Past President.

As approved by the Executive Council, the President may invite Observers to attend all or parts of the meetings of the Assembly.

##### **Article 11**

##### **Functions of the Assembly**

The functions of the Assembly are:

- (a) To elect the Officers of the Comité Maritime International;
- (b) To elect Members of and to suspend or expel Members from the CMI;
- (c) To fix the amounts of subscriptions payable by Members to the CMI;
- (d) To elect auditors;
- (e) To consider and, if thought fit, approve the accounts and the budget;
- (f) To consider reports of the Executive Council and to take decisions on the activities of the CMI, including the location for the holding of meetings, and in particular, meetings of the Assembly;
- (g) To approve the convening of, and ultimately approve resolutions adopted by, International Conferences;
- (h) To adopt Rules of Procedure not inconsistent with the provisions of this Constitution and make such additional Rules of Procedure as may be necessary when so doing to take account of any transitional issues that arise; and
- (i) To amend this Constitution pursuant to Article 14.

## **Article 12**

### **Meetings and Quorum of the Assembly**

The Assembly shall meet annually on a date and at a place decided by the Executive Council. The Assembly shall also meet at any other time, for a specified purpose, if requested by the President, by ten of its Member Associations or by the Vice-Presidents. At least six weeks' notice shall be given of such meetings.

At any meeting of the Assembly, the presence of not less than five Member Associations entitled to vote shall constitute a lawful quorum.

## **Article 13**

### **Agenda and Voting of the Assembly**

Matters to be dealt with by the Assembly, including election to vacant offices, shall be set out in the agenda accompanying the notice of the meeting. Decisions may be taken on matters not set out in the agenda, other than amendments to this Constitution, provided no Member Association represented in the Assembly objects to such procedure.

Members *honoris causa* and Titulary, Provisional and Consultative Members shall enjoy the rights of presence and voice, but only Member Associations in good standing shall have the right to vote.

Each Member Association present in the Assembly and entitled to vote shall have one vote. The right to vote cannot be delegated or exercised by proxy. The vote of a Member Association shall be cast by its president, or by another of its members duly authorised by that Member Association.

Unless otherwise provided in this Constitution and subject to Article 8(f)(ii) and Article 14, all decisions of the Assembly shall be taken by a simple majority of Member Associations present, entitled to vote, and voting. However, amendments to any Rules of Procedure adopted pursuant to Article 11(h) shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting.

## **Article 14**

### **Amendments to the Constitution**

Amendments to the Constitution shall be made in writing and shall be transmitted to all National Associations at least six weeks prior to the annual meeting of the Assembly at which the proposed amendments will be considered.

Amendments to the Constitution shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting. Their effectiveness and entry into force shall be subject to Belgian law.

## **PART IV - OFFICERS**

### **Article 15**

#### **Designation**

The Officers of the Comité Maritime International shall be the governing body of the CMI within the meaning of the Belgian Act of 27 June 1921 as later amended and shall consist of the following members who are the directors of the CMI within the meaning of the Act:

- (a) The President,
- (b) Two Vice-Presidents,
- (c) The Secretary-General,
- (d) The Treasurer (and Head Office Director) (hereafter "The Treasurer"),
- (e) The Administrator (if an individual), and
- (f) Up to eight Executive Councillors.

## **Article 16**

### **President**

The President of the Comité Maritime International shall preside over the Assembly, the Executive Council, and the International Conferences convened by the CMI. He or she shall be an *ex-officio* member of any Committee, International Sub-Committee or Working Group appointed by the Executive Council.

With the assistance of the Secretary-General and the Administrator he or she shall carry out the decisions of the Assembly and of the Executive Council, supervise the work of the International Sub-Committees and Working Groups, and represent the CMI externally.

The President shall have authority to conclude and execute agreements on behalf of the CMI, and to delegate this authority to other officers of the CMI.

The President shall have authority to institute legal action in the name and on behalf of the CMI, and to delegate such authority to other officers of the CMI. In case of the impeachment of the President or other circumstances in which the President is prevented from acting and urgent measures are required, five officers together may decide to institute such legal action provided notice is given to the other members of the Executive Council. The five officers taking such decision shall not take any further measures by themselves unless required by the urgency of the situation.

In general, the duty of the President shall be to ensure the continuity and the development of the work of the CMI.

The President shall be elected for a term of three years and shall be eligible for re-election for one additional term.

## **Article 17**

### **Vice-Presidents**

There shall be two Vice-Presidents of the Comité Maritime International, whose principal duty shall be to advise the President and the Executive Council, and whose other duties shall be assigned by the Executive Council.

The Vice-Presidents, in order of their seniority as officers of the CMI, shall substitute for the President when the President is absent or is unable to act.

Each Vice-President shall be elected for a term of three years and shall be eligible for re-election for one additional term.

## **Article 18**

### **Secretary-General**

The Secretary-General shall undertake and be responsible for the tasks and duties assigned to him or her from time to time by the President or the Executive Council.

The Secretary-General shall have particular responsibility for organisation of the intellectual and social content, and all non-administrative preparations for International Conferences, Colloquia, Symposia and Seminars convened by the Comité Maritime International.

The Secretary-General shall liaise with appropriate international bodies, especially Consultative Members of the CMI and may represent the CMI at any forum when so requested by the President or the Executive Council.

The Secretary-General shall be elected for a term of three years and shall be eligible for re-election without limitation upon the number of terms.

## **Article 19**

### **Treasurer**

The Treasurer shall undertake and be responsible for the tasks and duties assigned to him/her from time to time by the President or the Executive Council.

In particular, the Treasurer shall:-

- (a) be responsible for the funds of the Comité Maritime International, and shall collect and disburse, or authorise disbursement of, funds as directed by the Executive Council, in accordance with protocols prescribed from time to time by the Executive Council;
- (b) maintain adequate accounting records for the CMI;
- (c) prepare financial statements for the preceding calendar year in accordance with current International Accounting Standards, and shall prepare proposed budgets for the current and next succeeding calendar years;
- (d) submit financial statements and the proposed budgets for review by the auditors and the Audit Committee appointed by the Executive Council, and following any revisions, present them for review by the Executive Council and approval by the Assembly not later than the first meeting of the Executive Council in the calendar year next following the year to which the financial statements relate.
- (e) at the request of the Executive Council, open such bank accounts and other financial facilities, such as credit cards, as are necessary to facilitate the financial operations of the CMI, and take all steps necessary to manage the finances of the CMI including arranging the deposit of funds and payment of accounts.

In his/her capacity as Head Office Director, the Treasurer shall be:

- (f) the line manager of the Administrative Assistant in Antwerp in relation to his/her office duties and in general to oversee the day by day business of the Secretariat of the CMI.
- (g) authorised to give, and be responsible for, all formal and informal notifications of amendments to the Constitution of the CMI; official notifications of the appointment and termination of officers of the Executive Council; and all other notifications required by the laws of Belgium from time to time. And in this regard, the Treasurer shall appoint and liaise with a practising Belgian lawyer to ensure compliance with all formal and legislative prerequisites in relation to the Executive Council, the Assembly, and the CMI in general.

The Treasurer shall be elected for a term of three years, and shall be eligible for re-election without limitation upon the number of terms.

## **Article 20**

### **Administrator**

The Administrator shall undertake and be responsible for the tasks and duties assigned to him or her from time to time by the President or the Executive Council.

The Administrator shall have particular responsibility for the formal administrative preparations for meetings of the Comité Maritime International, and to that end, shall:

- (a) give official notice of all meetings of the Assembly and the Executive Council, of International Conferences, Symposia, Colloquia and Seminars, and of all meetings of Committees, International Sub-Committees and Working Groups;
- (b) circulate the agendas, minutes and reports of such meetings;
- (c) make all necessary administrative arrangements for such meetings (such as the liaison with the host Maritime Law Association for the booking of venues and associated social activities);
- (d) take such actions, either directly or by appropriate delegation, as are necessary to give effect to administrative decisions of the Assembly, the Executive Council, and the President;
- (e) circulate such reports and/or documents as may be requested by the President, the Secretary-General or the Treasurer, or as may be approved by the Executive Council; and
- (f) keep current and ensure publication of the lists of Members pursuant to Articles 3, 4, 5, 6 and 7.

The Administrator may represent the CMI at any forum when so requested by the President or the Executive Council.

The Administrator may be an individual or a body having juridical personality. If a body having juridical personality, the Administrator shall be represented on the Executive Council by one natural individual person. If an individual, the Administrator may also serve, if elected to that office, as Treasurer of the CMI.

The Administrator, if an individual, shall be elected for a term of three years and shall be eligible for re-election without limitation upon the number of terms. If a body having juridical personality, the Administrator shall be appointed by the Assembly upon the recommendation of the Executive Council, and shall serve until a successor is appointed.

## **PART V - EXECUTIVE COUNCIL**

### **Article 21**

#### **Composition, criteria for election and terms of office of the Executive Council**

The Executive Council shall comprise the Officers of the Comité Maritime International as described in Article 15.

Executive Councillors shall be elected by the Assembly upon individual merit, also having due regard to balanced representation of the legal systems and geographical areas of the world characterised by the Member Associations.

Each elected Executive Councillor shall be elected to his or her specific office in the Executive Council for a term of three years and shall be eligible for re-election for one additional term to

each such office, except that (as provided in Articles 18, 19 and 20) there shall be no such limit on the number of re-elections of the Secretary-General, Administrator or Treasurer.

## **Article 22**

### **Functions of the Executive Council**

The functions of the Executive Council are:

- (a) To receive and review reports concerning contact with:
  - (i) The Member Associations,
  - (ii) The CMI Charitable Trust, and
  - (iii) International organisations;
- (b) To review documents and/or studies intended for:
  - (i) The Assembly,
  - (ii) The Member Associations, relating to the work of the Comité Maritime International or otherwise advising them of developments, and
  - (iii) International organisations, informing them of the views of the CMI on relevant subjects;
- (c) To initiate new work within the object of the CMI, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, to appoint Chairs, Deputy Chairs and Rapporteurs for such bodies, and to supervise their work; reports of such Committees, Sub-Committees and Working Groups shall be submitted to the Executive Council and/or the Assembly as requested by the President;
- (d) To initiate and to appoint persons to carry out by other methods any particular work appropriate to further the object of the CMI; reports of such persons shall be submitted to the Executive Council and/or the Assembly as requested by the President;
- (e) To encourage and facilitate the recruitment of new members of the CMI;
- (f) To oversee the finances of the CMI and to appoint an Audit Committee;
- (g) To make interim appointments, if necessary, to the offices of Secretary-General, Treasurer and Administrator;
- (h) To nominate, for election by the Assembly, independent auditors of the annual financial statements prepared by the Treasurer and/or the accounts of the CMI, and to make interim appointments of such auditors if necessary;
- (i) To review and approve proposals for publications of the CMI;
- (j) To set the dates and places of its own meetings and, subject to Article 11, of the meetings of the Assembly, and of Seminars, Symposia and Colloquia convened by the CMI;
- (k) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars, Symposia and Colloquia convened by the CMI;
- (l) To carry into effect the decisions of the Assembly;
- (m) To report to the Assembly on the work done and on the initiatives adopted.
- (n) To pay an honorarium to the Secretary-General, Administrator and Treasurer if it considers it appropriate to do so.



## **Article 23**

### **Meetings and Quorum of the Executive Council**

The Executive Council shall meet at least twice annually; it may when necessary meet by electronic means, but shall meet in person at least once annually unless prevented by circumstances beyond its control.

The Executive Council may, however, take decisions when circumstances so require without a meeting having been convened, provided that all its members are fully informed and a majority respond affirmatively in writing.

Any actions taken without a meeting shall be ratified when the Executive Council next meets. At any meeting of the Executive Council seven members, including the President or a Vice-President and at least three Executive Councillors, shall constitute a lawful quorum. All decisions shall be taken by a simple majority vote. The President or, in his absence, the senior Vice-President in attendance shall have a casting vote where the votes are otherwise equally divided.

## **Article 24**

### **Immediate Past President**

The Immediate Past President of the Comité Maritime International shall have the option to attend all meetings of the Executive Council, and at his or her discretion shall advise the President and the Executive Council. His or her expenses in so attending shall be met in the same way as those of Executive Councillors.

## **PART VI - NOMINATING PROCEDURES**

## **Article 25**

### **Nominating Committee**

A Nominating Committee shall be established for the purpose of nominating individuals for election to any office of the Comité Maritime International.

The Nominating Committee shall consist of:

- (a) A Chair, who shall have a casting vote where the votes are otherwise equally divided, and who shall be appointed by the Executive Council;
- (b) The President and Immediate Past President of the CMI (provided that a Past President may resign from the Nominating Committee at any time upon giving written notice to the President);
- (c) Two members proposed by Member Associations through the procedures of the Nominating Committee, *mutatis mutandis*, and thereafter nominated by the Nominating Committee for election by the Assembly;
- (d) One further member appointed by the Executive Council.

Notwithstanding the foregoing paragraph, no person who is a candidate for office may serve as a member of the Nominating Committee during consideration of nominations to the office for which he or she is a candidate.

All members of the Nominating Committee other than the President and Immediate Past President (who respectively shall hold office *ex officio*) shall hold office for a term of three years and shall be eligible for re-appointment or re-election for one additional term.

## **Article 26**

### **Nomination Procedures**

On behalf of the Nominating Committee, the Chair shall determine first:

- (a) whether any officers eligible for re-election are available to serve for an additional term in which event he or she shall obtain a statement from such officers as to the contributions they have made to the Executive Council or the Nominating Committee during their term(s);
- (b) whether Member Associations wish to propose candidates for possible nomination by the Nominating Committee as an Executive Councillor, or other Officer or, where applicable, to serve on the Nominating Committee.

The Chair shall then notify the Member Associations and seek their views concerning the candidates for nomination. The Nominating Committee shall then make nominations taking such views into account.

Following the decisions of the Nominating Committee, the Chair shall forward its nominations to the Administrator in ample time for distribution not less than six weeks before the annual meeting of the Assembly at which nominees are to be elected.

Member Associations may make nominations for election to any office independently of the Nominating Committee, provided such nominations are forwarded to the Administrator in writing not less than 15 working days before the annual meeting of the Assembly at which nominees are to be elected. In the absence of any such nominations from Member Associations, the only nominations for election by the Assembly shall be the nominations of the Nominating Committee.

The Executive Council may make nominations to the Nominating Committee for election by the Assembly to the offices of Secretary-General, Treasurer and/or Administrator. Such nominations shall be forwarded to the Chair of the Nominating Committee at least fourteen weeks before the annual meeting of the Assembly at which nominees are to be elected.

## **PART VII - INTERNATIONAL CONFERENCES**

### **Article 27**

#### **Composition and Voting**

The Comité Maritime International shall meet in International Conference at places approved by the Assembly, for the purpose of discussing and adopting resolutions upon subjects on an agenda approved by the Executive Council.

The International Conference shall be composed of all Members of the CMI and such Observers as are approved by the Executive Council.

Each Member Association which has the right to vote may be represented by its delegates present and by Titulary Members present who are members of that Association. Each Consultative Member may be represented by three delegates. Each Observer may be represented by one delegate only.

Each Member Association present and entitled to vote shall have one vote in an International Conference; no other Member and no Officer of the CMI shall have the right to vote in such capacity.

The right to vote cannot be delegated or exercised by proxy.

The resolutions of International Conferences shall be adopted by a simple majority of the Member Associations present, entitled to vote, and voting.

Clerical mistakes, or errors arising from an accidental mistake, omission or oversight, or an amendment to provide for any matter which should have been but was not dealt with at an International Conference can be corrected by a resolution at a subsequent Assembly meeting.

## **PART VIII - FINANCE**

### **Article 28**

#### **Arrears of Subscriptions**

A Member Association remaining in arrears of payment of its subscription for more than one year from the end of the calendar year for which the subscription is due shall be in default and shall not be entitled to vote until such default is cured.

Members liable to pay subscriptions and who remain in arrears of payment for two or more years from the end of the calendar year for which the subscription is due shall, unless the Executive Council decides otherwise, receive no publications or other rights and benefits of membership until such default is cured.

Failure to make full payment of subscriptions owed for three or more calendar years shall be sufficient cause for expulsion of the Member in default. A Member expelled by the Assembly solely for failure to make payment of subscriptions may be reinstated by vote of the Executive Council following payment of arrears, subject to ratification by the Assembly. The Assembly may authorise the President and/or Treasurer to negotiate the amount and payment of arrears with Members in default, subject to approval of any such agreement by the Executive Council.

Subscriptions received from a Member in default shall, unless otherwise provided in a negotiated and approved agreement, be applied to reduce arrears in chronological order, beginning with the earliest calendar year of default.

### **Article 29**

#### **Fees and Expenses**

The Secretary-General, Administrator and Treasurer shall receive such *honoraria* as may be determined by the Executive Council and the auditors shall receive such fee as may be approved by the Executive Council.

Members of the Executive Council, the Immediate Past President, and Chairs of Standing Committees, Chairs and Rapporteurs of International Sub-Committees and Working Groups, when travelling on behalf of the Comité Maritime International, shall be entitled to reimbursement of travelling expenses, as directed by the President or the Executive Council.

The President or the Executive Council may also authorise the reimbursement of other expenses incurred on behalf of the Comité Maritime International.

## **PART IX – FINAL PROVISIONS**

### **Article 30**

#### **Liability**

The Comité Maritime International shall not be liable for the acts or omissions of its Members. The liability of the CMI shall be limited to its assets.

#### **Article 31**

##### **Dissolution and Procedure for Liquidation**

The Assembly may, upon written motion received by the Administrator not less than six months prior to a regular or extraordinary meeting, vote to dissolve the Comité Maritime International. At such meeting a quorum of not less than one-half of the Member Associations entitled to vote shall be required in order to take a vote on the proposed dissolution. Dissolution shall require the affirmative vote of a three-fourths majority of all Member Associations present, entitled to vote, and voting. Upon a vote in favour of dissolution, liquidation shall take place in accordance with the laws of Belgium. Following the discharge of all outstanding liabilities and the payment of all reasonable expenses of liquidation, the net assets of the CMI, if any, shall devolve to the CMI Charitable Trust, a registered charity established under the laws of the United Kingdom.

#### **Article 32**

##### **Governing Law**

Any issue not resolved by reference to this Constitution shall be resolved by reference to Belgian law. .

#### **Article 33**

##### **Entry into Force**

This Constitution shall enter into force on the tenth day following its publication in the *Annexes du Moniteur belge*.

**COMITÉ MARITIME INTERNATIONAL**  
**RULES OF PROCEDURE**  
1996, as amended 2017

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**Rule 1**  
**Right of Presence**

In the Assembly, only Members of the Comité Maritime International as defined in Article 3(a) of the Constitution, members of the Executive Council as provided in Article 10, the Immediate Past President and Observers invited pursuant to Article 10 may be present as of right.

At International Conferences, only Members of the CMI as defined in Article 3 of the Constitution (including non-delegate members of national Member Associations), Officers of the CMI as defined in Article 15, the Immediate Past President and Observers invited pursuant to Article 27 may be present as of right.

Observers may, however, be excluded during consideration of certain items of the agenda if the President so determines.

All other persons must seek the leave of the President in order to attend any part of the proceedings.

**Rule 2**  
**Right of Voice**

Only Members of the Comité Maritime International as defined in Article 3 of the Constitution, members of the Executive Council and the Immediate Past President may speak as of right; all others must seek the leave of the President before speaking. In the case of a Member Association, only a listed delegate may speak for that Member; with the leave of the President such delegate may yield the floor to another member of that Member Association for the purpose of addressing a particular and specified matter.

**Rule 3**  
**Points of Order**

During the debate of any proposal or motion any Member or Officer of the Comité Maritime International having the right of voice under Rule 2 may rise to a point of order and the point of order shall immediately be ruled upon by the President. No one rising to a point of order shall speak on the substance of the matter under discussion.

All rulings of the President on matters of procedure shall be final unless immediately appealed and overruled by motion duly made, seconded and carried.

**Rule 4**  
**Voting**

For the purpose of application of Article 13 of the Constitution, the phrase "Member Association present, entitled to vote, and voting" shall mean Member Associations whose right to vote has not been suspended pursuant to Articles 14 or 28, whose voting delegate is present at the time the vote is taken, and whose delegate casts an affirmative or negative vote. Member Associations abstaining from voting or casting an invalid vote shall be considered as not voting.

Voting shall normally be by show of hands. However, the President may order or any Member Association present and entitled to vote may request a roll-call vote, which shall be taken in the alphabetical order of the names of the Member Associations as listed in the current CMI Yearbook.

If a vote is equally divided, the proposal or motion shall be deemed rejected.

Notwithstanding the foregoing, all contested elections of Officers shall be decided by a secret written ballot in each category. Four ballots shall be taken if necessary. If the vote is equally divided on the fourth ballot, the election shall be decided by drawing lots.

If no nominations for an office are made in addition to the nomination(s) of the Nominating Committee pursuant to Article 26, then the candidate(s) nominated by the Nominating Committee may be declared by the President to be elected to that office by acclamation. If the Nominating Committee nominates more candidates than there are vacancies for any office, then the Assembly shall conduct an election in accordance with the procedures of this Rule.

#### **Rule 5** **Amendments to Proposals**

An amendment shall be voted upon before the proposal to which it relates is put to the vote, and if the amendment is carried the proposal shall then be voted upon in its amended form.

If two or more amendments are moved to a proposal, the first vote shall be taken on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote.

#### **Rule 6** **Secretary and Minutes**

The Secretary-General or, in his absence, an Officer of the Comité Maritime International appointed by the President, shall act as secretary and shall take note of the proceedings and prepare minutes of Assembly meetings. Minutes of the Assembly shall be published on the CMI website (where practical) in the two official languages of the CMI, English and French, and in the CMI News Letter and/or otherwise distributed in writing to Member Associations.

#### **Rule 7** **Amendment of these Rules**

Amendments to these Rules of Procedure may be adopted by the Assembly. Proposed amendments must be in writing and circulated to all Member Associations at least six weeks before the annual meeting of the Assembly at which the proposed amendments will be considered.

**Rule 8**  
**Application and Prevailing Authority**

These Rules shall apply not only to meetings of the Assembly and International Conferences, but shall also constitute, *mutatis mutandis*, the Rules of Procedure for meetings of the Executive Council, International Sub-Committees, or any other group convened by the Comité Maritime International.

In the event of an apparent conflict between any of these Rules and any provision of the Constitution, the Constitutional provision shall prevail. Any amendment to the Constitution having an effect upon the matters covered by these Rules shall be deemed as necessary to have amended these Rules *mutatis mutandis*, pending formal amendment of the Rules of Procedure in accordance with Rule 7.

**Rule 9**  
**Carry-over of terms when electoral process is changed**

Where the Assembly amends the Constitution by changing the manner in which the members of a Committee or body of the Comité Maritime International are to be elected, the Assembly may by resolution agree to permit the terms of office of members of such Committee or body, who were elected under the previous process specified under this Constitution, to be extended until the next Assembly meeting, and for such persons to carry out their functions on that Committee or body until their terms expire at the subsequent Assembly meeting.

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## CONGRATULATIONS TO ROSALIE BALKIN (AO) AND JUSTICE SARAH DERRINGTON

Congratulations to Rosalie Balkin on being made an Officer in the General Division of the Order of Australia in this years Australia Day Honours. The award was granted for "distinguished service to maritime law through roles with a range of organisations to the improvement of global shipping transport safety and standards and to education as an academic and author."

This is a richly deserved honour for Rosalie not only for the work she did at IMO but as a member of the Board of WMU at Malmö and the co-author of a leading legal text on Torts. She has continued to work in our industry since her retirement from the IMO, most recently in her role as a Conciliator in the territorial dispute between East Timor and Australia.

**Stuart Hetherington**

Congratulations to Justice Sarah Derrington on her recent dual appointments as President of the Australian Law Reform Commission and Judge of the Federal Court of Australia.

Sarah, who is currently the Academic Dean and Head of school at the University of Queensland, may be better known to CMI members as Chair of the Cross Border Insolvency IWG and past President of the Maritime Law Association of Australia and New Zealand. We wish her well in discharging her new responsibilities.

**Rosalie Balkin**



Picture: Rosalie Balkin and Sarah Derrington

## LIST OF INTERNATIONAL WORKING GROUPS

[As constituted during Genoa EXCO Meeting September 2017]

Note: In terms of Art 16 of the CMI Constitution, the President is *ex officio* a member of all Committees and Working Groups.

### Acts of Piracy and Maritime Violence

Andrew TAYLOR [UK] *Chair*  
Rodolfo GONZALEZ-LEBRERO [Spain]  
Patrick GRIGGS [UK]  
John KIMBALL [USA]  
Louis MBANEFO [Nigeria]  
Lars ROSENBERG OVERBY [Denmark]  
Frank L. WISWALL Jr [USA]

### Liability for Wrongful Arrest

Aleka MANDARAKA-SHEPPARD [UK] *Chair*  
Edmund SWEETMAN [Ireland/Spain] *Rapporteur*  
Giorgio BERLINGIERI [Italy]  
Christopher DAVIS [USA]  
Sir Bernard EDER [UK]  
Ann FENECH [Malta]  
Karl GOMBRII [Norway]  
Reinier VAN CAMPEN [Netherlands]

### Liability of Classification Societies

Karl-Johan GOMBRII [Norway] *Chair*  
Alexander VON ZIEGLER [Switzerland] *Rapporteur*

Luc GRELLET [France]  
Tomotaka FUJITA [Japan]

### Maritime Law for Unmanned Craft

Tom BIRCH REYNARDSON [UK] *Chair*  
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[As constituted during Genoa EXCO Meeting September 2017]

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## NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

### REPORT ON THE OCTOBER 2017 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES BY ROSALIE BALKIN

The October 2017 session of the IOPC Funds was held at IMO headquarters in London, the first meeting attended by me for CMI in my new role as Secretary-General. The following are the highlights of the meeting.

#### **Update on Incidents involving the 1992 Fund**

The Fund is currently dealing with 14 incidents, including a new incident in Greece, the *Agia Zoni II*. A claims handling office is to be opened in Piraeus to assist claimants.

Another incident of note is that of the *Redfferm*, which is currently before the Nigerian courts (document IOPC/OCT17/3/6). Claims arising from this incident are likely to be rejected by the Fund on the basis that the *Redfferm*, which is a barge, does not qualify as a ship and so is not covered by the 1992 Fund Convention.

#### **Criteria for Admission of Claims by Employees (document IOPC/OCT17/4/2)**

The Fund reviewed its previous policy, as noted in the IOPC Funds Claim Manual, that claims by employees who have suffered a reduction in wages, been placed on part-time work or made redundant as a consequence of an incident, did not qualify for compensation, even though the laying off of employees or the corresponding savings made by employers in reducing wages or placing employees in part-time work were taken into account in assessing claims by employers for compensation.

The Fund agreed that, in future, employee claims for such economic loss should be compensated, subject to certain criteria discussed but still to be agreed by the governing bodies.

#### **Guidelines for Presenting Claims for Environmental Damage (document IOPC/OCT17/4/3)**

The Fund approved Guidelines developed by the Secretariat with the assistance of eight Member States and three observer delegations, aimed at assisting claimants with the submission of claims for compensation. These will be published shortly. In addition, a shorter, simplified version (the Guidelines are 27 pages long) summarising the key points is currently under consideration by the Secretariat.

#### **Consistent Application of the 1992 Fund Convention and Promotion of the Ratification of the Supplementary Fund Protocol (document IOPC/OCT17/4/4)**

Concerns that courts in Member States were taking decisions that were not consistent with the intended application of the 1992 CLC and Fund Conventions were first debated at the April 2017 session of the governing bodies. At the October session, a paper containing six options to try and remedy this situation was presented by the Secretariat.

There was clearly no appetite for the option of formal amendment of the Conventions. On the other hand, the options of further outreach activities and measures to assist with implementation were supported, as was the option of a non-binding Guidance Document on interpretation.

The options most hotly debated were those of obtaining a unified interpretation of the Conventions in the form of resolutions adopted either by the IMO Legal Committee or the IMO Assembly; alternatively an interpretive decision taken by the IOPC Funds' governing bodies. Most delegations that spoke favoured taking the matter to the IMO (although I made the point that these two options were not necessarily mutually exclusive)

Given the political sensitivities of some delegations, this issue has effectively been put on hold, albeit with an invitation to delegations to submit further papers at future meetings.

#### **Spill Response Contracts (document IOPC/OCT17/4/7)**

This was an initiative of BIMCO and ISCO. The document provides a detailed summary of the background to, purpose of and issues covered by the new Spill Response Contracts developed by them with assistance from the P&I Clubs, ISU and ITOPF.

In particular, it contains standard contractual provisions for use in the activities of contractors undertaking spill response and clean-up operations. Contracts, with explanatory notes, can be downloaded free of charge from the BIMCO and ISCO websites and BIMCO can be contacted to answer any questions at [contracts@bimco.org](mailto:contracts@bimco.org).

**Information Services (document  
IOPC/OCT17/7/3)**

Fourteen States have to date responded to the Funds' invitation to submit detailed country profiles, which can be found on the Funds' website.

The text of the Conventions and the sixth edition of the Claims Manual have now been made available on the website, including the Arabic translations and work is underway to publish the Chinese version of the Claims Manual.

**Status of the 1992 Fund Convention and the  
Supplementary Fund Protocol (document  
IOPC/OCT17/8/1)**

On 7<sup>th</sup> July 2018, Thailand will become a Member State, bringing the number of 1992 Fund Member States to 115. There are currently 35 member States of the Supplementary Fund.

**2010 HNS Convention and Protocol (document  
IOPC/OCT17/8/2)**

Norway has become the first State to ratify the 2010 HNS Protocol. Seven more States have signed it, subject to ratification.

**Observer Status (document  
IOPC/OCT17/1/3)**

The IOPC Funds governing bodies granted observer status to two NGOs (the Iberoamerican Maritime Law Institute ((which already enjoys such status with CMI)) and the Sea Alarm Foundation). The item is of interest because, like IMO practice, these applications were considered not only in accordance with the relevant article in the 1992 Fund Convention, but also pursuant to detailed criteria set out in guidelines previously adopted by the 1992 Fund Assembly. CMI, by comparison, has no such guidelines, which begs the question as to whether, in the interests of transparency and good procedure, we should consider adopting guidelines of our own.

**Rosalie Balkin**