



Vigilandum est semper; multae insidiae sunt bonis.

CMI News Letter

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COMITÉ MARITIME INTERNATIONAL
PRESIDENT

9 April 2020

MLA Presidents
Titulary Members
Consultative Members

Re: *Postponement of 2020 Tokyo Conference*

Dear Presidents, Titulary Members and Consultative Members,

I hope this letter finds you, your families and colleagues in good health and spirits, coping reasonably well under the circumstances with the ongoing COVID-19 pandemic, and getting used to the new normal of Government-imposed lockdowns, social distancing and working remotely.

As advised in my correspondence of 18 March 2020, the Japanese Maritime Law Association, Tokyo Conference Organizing Committee and Executive Council have been monitoring closely the COVID-19 pandemic and its potential impact on the 2020 Tokyo Conference.

The International Olympic Committee recently announced its decision to postpone the Tokyo Summer Olympics by one year. While there are encouraging signs the COVID-19 pandemic is being successfully contained in a number of countries (with welcome news of lockdowns being gradually lifted), other countries may have to maintain lockdowns and social distancing in place for some time before they see a reduction in COVID-19 cases. Additionally, some medical experts are predicting subsequent waves of COVID-19 infections later this year in countries where the virus was initially successfully contained.

Accordingly, it is with considerable regret that the Japanese Maritime Law Association, Tokyo Conference Organizing Committee and Executive Council have decided to postpone the 2020 Tokyo Conference until we have more clarity on how long it will take to contain the COVID-19 pandemic.

We are currently exploring various options which may allow us to postpone the Tokyo Conference by up to one year (as the Japanese Government has done with the Tokyo Summer Olympics), and are in discussions with the President and Board of Directors of the Canadian Maritime Law Association on what impact (if any) such a postponement might have on the June 2021 CMI event planned for Montreal. We will keep you closely advised of developments in this regard.

At this juncture, it appears unlikely we will be able to conduct an Assembly in 2020 unless the Belgian Government issues a decree or law waiving the requirement of an annual in-person meeting for Belgian legal entities such as the CMI, and allowing for an electronic or virtual annual meeting. Our thanks and appreciation to Jean-Francois Peters, the Chair of the Constitution Committee, who is looking into this matter and remains optimistic the Belgian Government will pass such a decree or law shortly (as was recently done by the German Government), which may enable us to hold an electronic or virtual Assembly later in the year. In the interim, we are also grateful to Giorgio Berlingieri for providing valuable information from the archives detailing how the CMI has dealt with past crises, including confirmation the CMI's work was suspended for 8 and 10 years, respectively, during World War I and World War II. Fortunately, our ability to communicate electronically and work remotely should ensure the work of the CMI continues during these difficult and trying times.

On behalf of the Executive Council, thank you for your continued participation in the work of the CMI, and we very much look forward to seeing you in Tokyo, hopefully in 2021!

Faithfully yours,

Christopher O. Davis



COVID-19

NEW WEB PAGE - COVID 19 - LATEST UPDATE

As we all cope with the challenges being presented to us on a daily basis on a personal and professional level and in the midst of this new way of working and living, there is still the need to know how courts all over the world are working, whether they are working at all, and how we can pursue our maritime claims.

As a result the Executive Committee agreed that it would be a good idea to quickly put together a committee made up of John Markianos-Daniolos, Lawrence Teh and myself and within a few short days we sent all National Maritime Law Associations a letter containing 6 short pertinent questions relating to whether courts are open, whether you can arrest ships or sell them and whether there are any particular messages coming out of shipping authorities in the jurisdictions.

Many thanks go to Evelien Peeters who within hours put together a new page on our Website. The page contains the letter sent out and the answers. We received answers from a great many number of MLAs in a matter of a couple of days. Thank you very much all the MLAs who have assisted in populating this extremely useful site so quickly and efficiently. To those MLAs who have not responded, we would love to hear from your jurisdiction so please reply.

In addition we have put a list of all the direct links to the most important and relevant maritime organisations so all you have to do to know exactly what the latest updates

and instructions are from the IMO, BIMCO, ICS, etc is to visit our website at www.comitemaritime.org and enter our [COVID 19 page](#).

On this new page you have direct access to all the up to date information as published by all of the maritime organisations listed .

Ann Fenech
Vice President CMI

Young Person's Essay Prize

YOUNG PERSON'S ESSAY PRIZE

Due to the COVID-19 disruptions in so many countries, it has been decided to **extend the deadline** for submission of essays by one month **to 30 May 2020** and it has also been decided to waive the requirement for hard copies. Accordingly entrees are still invited and only need to be submitted online.

Please consult the rules for the competition on the [CMI Website](#).

Mexico Colloquium



Comité Maritime International

Secretary-General

Minutes of meeting of the CMI Assembly on Wednesday 2 October 2019, at 14.30 hours, held at Camino Real Polanco Hotel, Mexico City and chaired by the President, Christopher Davis

1. Report of the Credentials Committee

John O'Connor 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:

- Angelo **Boglione** (Italy);
- Rucemah Leonardo **Gomes Pereira** (Brazil); and
- Domingo Martin **Lopez Saavedra** (Argentina)

and asked all members to spend a moment of silent tribute.

At the request of the President, Francesco Siccardi said a few words about Angelo Boglione and

At the request of the President, Luis Felipe Galante said a few words about Rucemah Leonardo Gomes Pereira.

At the request of the President, Diego Chami said a few words about Domingo Martin Lopez Saavedra and then outlined the life and service of Messrs Boglione, Gomes Pereira and Lopez Saavedra.

3. Approval of the Minutes of the Assembly held in London on 9 November 2018

The President tabled the Minutes of the meeting of the Assembly held in London on 9 November 2018. These were duly approved and adopted by the Assembly subject to a minor correction on page 27, section 16 (Other Business) adding “process” between “Committee” and “as” in the second line of the section.

Resolved: that the minutes of the London Assembly of 9 November 2018 be approved

4. Matters arising from the minutes of the London Assembly of 9 November 2019

There were no matters arising from the Genoa Assembly Minutes that were not covered by the Agenda of this Assembly meeting.

5. Quarterly Letters/Report of the President

The President tabled and delivered his report which was duly adopted. In particular, the President noted his intention to keep all Members of the Assembly informed of any relevant developments and to seek their comments and input on issues that might arise.

Among the developments of note were CMI's representation at the IOPC Funds and IMO, including at LEG 106, where work had begun on the scoping exercise of conventions that will need to be amended to accommodate Maritime Autonomous Surface Ships (MASS); the establishment of correspondent groups to address the issues of fraudulent registries and a unified interpretation of the test for breaking a shipowner's right to limit liability under IMO conventions. He acknowledged in particular the efforts of Patrick Griggs and CMI's IWG on Unmanned Ships, led by Tom Birch Reynardson and Robert Veal.

He noted CMI's strong showing at the 1st session of UNCITRAL Working Group VI on judicial sales of ships, which was instrumental in explaining to the UNCITRAL Secretariat and delegates the importance of an international instrument recognizing the validity of judicial sales of ships and commended in this regard Ann Fenech and Henry Li (Co-Chairs of the CMI IWG on Judicial sales), Alexander von Ziegler, Beiping Chu, Frank Nolan and Tomotaka Fujita. He urged NMLA Presidents to liaise with the appropriate authorities of their respective countries with the objective of moving the project forward at the 2nd session of Working Group VI, scheduled for November 2019 in Vienna.

He congratulated Stephen Girvin, Paul Myburgh and the Centre for Maritime Law (CML) for their work on the Database of Judicial Decisions on Maritime Conventions, which in June 2019 had reached the milestone of publishing 400 case summaries from 45 countries.

He also noted his appreciation to John Hare and the judges of the 2019 yCMI Essay Prize Competition (Bulent Sozer, Henrick Ringbom and Filippo Lorenzon) for their time and effort reviewing the entries submitted.

6. Finances

a. Treasurer's Report

The Treasurer, Peter Verstuyft, submitted his Report on the Accounts for the year ending December 31, 2018 to the Assembly.

The Treasurer presented these accounts 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 over the year 2018 amounted to €189.063. The income from membership subscriptions, after the deduction of the provision for bad debts (€185.463), was slightly less than the previous year which had benefitted from the recovery of some older arrears, but corresponded with the budget.

Income from financial investments was decreasing and, given the actual financial markets, this trend was likely to continue over the coming years

CMI's operational expenditure over the year 2018 amounted to €193.136, resulting in an operational deficit of €4.074, thus reducing the reserves with the same amount.

In this respect the Treasurer noted that the 2017 Yearbook had not been published this financial year.

On the other hand, the full cost for the renewal of the website, including the extra salary cost for data input, had been reported in this year's accounts. He referred also to the item "Project Judicial Sales", covering travel and accommodation costs to promote CMI's proposal at a seminar in Malta and with UNCITRAL in New York.

Finally, the reduction of Assets and Liabilities on the balance Sheet was attributable to the writing off of older arrears and the payment of receivables, reported the previous year.

The Assembly accepted and unanimously approved the Treasurer's report.

Resolved: that the Treasurer's report be accepted.

b. Accounts

The result of the Financial Year 2018 was an overall deficit of €4.074 to be compared with an overall surplus of €51.676 over 2017. He attributed this deficit to the fact that there had been no chargeable event in London. As

a consequence, Reserves had decreased slightly to €659.452.

Resolved: that the 2018 Accounts be approved.

c. Auditor's Report

The Treasurer tabled the External Auditor's Review Report on the 2018 Financial Statements, which had endorsed, without reservation, the Financial Statements presented to the Assembly by the Treasurer.

Resolved: that the Auditor's report be accepted.

d. Budget for 2019 and 2020

The Treasurer then presented the budget for 2019 and an estimate for 2020.

For 2019, the Treasurer noted the proposal of the Executive Council to amend the budget:

- i. With, under the heading "Salaries and ancillary costs", an additional amount of €5.000, to cover the approved salary increase for Evelien Peeters, the Administrative Assistant.
- ii. With, under the heading "CMI representation (non-CMI events)", an additional amount of €2.500 to cover extra costs related to the Judicial Sales project.
- iii. To reduce the expected travel and accommodation costs for the Assembly in Mexico, with €15.000 for the Executive Council and with €2.500 for the International Working Groups.
- iv. To reduce the meeting costs for the Assembly, as per Organiser's budget.
- v. To reduce the expected Colloquium surplus as per Organiser's budget.

Resolved: that the Budget for 2019 be approved.

e. Report of the Audit Committee

In the absence of Mans Jacobsson, Chairman of the Audit Committee, the Treasurer, Peter Verstyuft presented the Committee's report which sets out in some detail the procedure involved in carrying out the audit. The Committee considered that the audit was adequate in view of the nature of CMI as a not for profit organisation and the extent of its operations.

The Chairman had held extensive consultations with the External Auditor, who had characterised the 2018 financial year as a “normal” year as regards the operating expenses of the CMI and who had confirmed that everything was presented accurately. In comparison with previous years, the CMI’s ordinary operating expenses were stable; its funds were placed in appropriate investments, and its level of reserves was more than adequate.

Given the low limited operating costs and the small structure of the CMI, the External Auditor had been able to carry out a full independent audit and noted that the CMI’s bookkeeping gave all relevant details and was well prepared, the accounts reflected good accounting practice, and the accounts gave a fair view of the CMI’s financial position on 31 December 2018.

In conclusion, the report stated that the Audit Committee had recommended to the Executive Council that the CMI accounts for the financial year 2018, as presented to the Audit Committee, be approved for submission to and adoption by the Assembly, and that the present External Auditor (De Mol, Meuldermans & Partners) be nominated as External Auditor for the financial year 2018.

Resolved: that the CMI accounts for the financial year 2018 be accepted.

f. Report of collection of outstanding subscriptions

John O’Connor reported that, in order to encourage NMLAs to pay their subscriptions Evelien Peeters, the Administrative Assistant at CMI Headquarters in Antwerp, had seen to the early mailing of the 2019 invoices, reminder notices and subsequent follow-up. The subscriptions had also been kept deliberately low. Those NMLAs in arrears for more than three years are subject to expulsion. As at the date of the current Assembly, three NMLAs were in arrears but only one of them was in arrears for more than three years.

g. Approval of the nomination of De Mol, Meuldermans and Partners BVBA as External Auditors for the financial year 2019

Resolved: that, in view of its report and the recommendation of the Audit Committee, De Mol, Meuldermans and Partners BVBA be approved as External Auditors for 2019.

h. Charitable Trust Report

Tom Birch Reynardson delivered a report on the activities and finances of the Charitable Trust for the information of the Assembly.

He noted that, thanks to the trustees' cautious management, the Trust had significantly increased its capital base, with funds under management as at 29 August 2019 being £637,700, which compared favourably with the previous year. The Fund Manager considered the assets of the Fund to be well diversified and sensibly invested, and the Trust was cautiously optimistic that its investments should continue to deliver a decent return over the next few years.

The funds continued to be used primarily to finance IMLI-related activities. This year the Trust had provided sufficient funds to pay for 8 lecturers to give a total of 32 lectures of 90 minutes each at IMLI at a cost of £96 per lecture.

The Trust continues to fund a prize for the best IMLI student in any one year, the prize consisting of the payment of all travel expenses to a CMI event, together with an attendance allowance and a book. By agreement, the CMI absorbs the registration fee and costs of accommodation. The prize winner for 2019 was Maja Radunovic from Montenegro, whose presentation at the Colloquium of her prize-winning dissertation on "Maritime Liens in Bankruptcy Proceedings: A legal analysis of the need to harmonise legislation and amend the Montenegrin legislation" was well received. The Trust had also provided the funding for a CMI research fellow at IMO (2018 IMLI prize winner, Sabina Dolic) to assist the CMI IWG on Unmanned Ships in their research.

The Trust also supported the yCMI Essay Prize, established by EXCO in London in November 2018. Nine entries were received on the topic "Unmanned ships and cybercrime: how will technology and a new crime wave rock the boat of traditional maritime law and marine insurance practice and principle. How can the regulatory framework of the shipping industry adapt to cope with these challenges?" These were judged by a panel of three CMI lawyers (Professors Sozer, Lorenzon and Ringbom) with John Hare as moderator. The winner, Helen Nieman, was unable to attend the Colloquium in Mexico City but had agreed to attend the Conference in Tokyo in 2020. In praising this initiative, Tom urged delegates to encourage their younger (under 35 years) colleagues to enter the competition.

7. Membership:

a. Proposal for Reinstatement: Democratic People's Republic of Korea (DPRK)

The proposal to reinstate the DPRK MLA was unanimously approved by the Assembly.

Resolved: that the DPRK MLA be reinstated.

b. Applications by Paraguay MLA and Sri Lanka MLA

In considering the application for admission by Paraguay MLA, the Assembly noted that Paraguay had a great deal of inland maritime traffic and consequently a number of maritime lawyers. The Paraguay MLA had already planned an event which CMI members were invited to attend. The Vice-President of the Paraguay MLA was present at the Assembly and took the floor to say how honoured it was to be considered for membership of CMI and to participate in its work.

The Assembly agreed to admit the Paraguay MLA.

The Assembly was informed by Dieter Schwampe that in the course of the past year a Maritime Law Association had been founded in Sri Lanka and that, upon invitation of the MLA, he had participated in a seminar in Colombo. It seemed that in the aftermath of a terrorist attack matters had come to a halt in Sri Lanka, so that no application from the Sri Lankan MLA had so far been received by CMI. The Assembly noted this explanation and agreed to defer its consideration of the application to a future Assembly.

Resolved: that the Paraguay MLA be admitted.

c. Proposal for Expulsion

This agenda item was deleted.

d. Applications: Titulary Membership

- i. Victor Carrion (Ecuador)
- ii. Martin Davies (USA)
- iii. David Farrell (USA)
- iv. Enrique Garza (Mexico)
- v. Maria Grazia Blanco (Venezuela)
- vi. Jose Luis Hernandez Abdalah (Mexico)
- vii. Patricia Martinez de Fortoul (Venezuela)
- viii. Bernardo Melo Graf (Mexico)

- ix. Ignacio Luis Melo Graf (Mexico)
- x. Juan Carlos Merodio (Mexico)
- xi. Stephane Miribel (France)
- xii. Gustavo Omaña (Venezuela)
- xiii. Frank Stevens (Belgium)
- xiv. Professor Yuzhuo Si (China)

The President reported that the Executive Council had unanimously recommended the foregoing applications for Titulary Membership, and suggested that the 14 individuals proposed be considered en mass. He noted that the relevant supporting documentation in respect of one of the applications had not been submitted timeously but that the EXCO had waived this requirement on a one-off basis.

The Assembly unanimously approved the applications.

Resolved: that Titulary membership be conferred on Victor Carrion (Ecuador); Martin Davies (USA); David Farrell (USA); Enrique Garza (Mexico); Maria Grazia Blanco (Venezuela); Jose Luis Hernandez Abdalah (Mexico); Patricia Martinez de Fortoul (Venezuela); Bernardo Melo Graf (Mexico); Ignacio Luis Melo Graf (Mexico); Juan Carlos Merodio (Mexico); Stephane Miribel (France); Gustavo Omaña (Venezuela); Frank Stevens (Belgium); and Professor Yuzhuo Si (China).

8. Future meetings

a. Conference: Tokyo 2020

Professor Egashira, President of the Japan MLA, made a short presentation to the Assembly, which included a promotional video. He noted that 2020 would mark the 43rd international conference of CMI and that it was 51 years since Japan had last hosted a CMI meeting. The dates had been set for 20-24 October, which was a very good season for tourists.

Tomotaka Fujita reported that the Japan MLA had also made substantial progress with its preparations for the 2020 Conference and that he and Professor Egashira were already working with the CMI Conference Organising Committee in progressing the programme. They were seeking to accommodate as many requests for sessions as possible. A conference website had already been established and finances were in good shape, with donors having paid more than half of the money pledged. He looked forward to welcoming

delegates to Tokyo.

b. Assembly Meeting: Montreal 2021

John O'Connor and Shelley Chapelski provided the Assembly with a short update on arrangements for a four-day event, which the Assembly had already approved should be held in Montreal from 16-19 June, 2021. The venue for the event would be the downtown Sheraton Hotel. The Montreal Grand Prix was due to be held just days before the event and anyone interested in attending that was invited to contact John, who offered to try and arrange accommodation at the hotel for reduced rates. Shelley added that what Montreal lacked by way of pyramids was compensated for by a variety of excellent attractions.

c. Anniversary Meeting: Antwerp 2022

Peter Verstuyft informed the Assembly of the likely dates for this meeting, namely 19-21 October, 2022, which was timed to coincide with the 125th anniversary of the founding of the CMI. He identified as a possible venue the Queen Elizabeth Conference Centre, which was located in the heart of Antwerp, next to the zoo.

d. Assembly Meeting: Gothenburg 2023

In introducing this agenda item, the President informed the Assembly that EXCO had recommended that the 2023 event be held in Gothenburg and that this would commemorate the centenary of the last CMI event hosted in Gothenburg and would be 60 years since Sweden had last hosted an event (in Stockholm). Paula Backden, President of the Swedish MLA, then said a few words welcoming delegates to attend in Gothenburg.

Resolved: that the 2023 CMI event be held in Gothenburg.

e. Conference: Rio de Janeiro 2024

The President, in introducing Luis Felipe Galante, the President of the Brazilian MLA, noted that Brazil had put in a bid for the 2020 conference in Rio de Janeiro but as a gesture of good will had withdrawn its proposal in favour of that of Japan in Tokyo. The last CMI Conference held in Rio was in 1977, where the late Francesco

Berlingieri had presided. Luis Felipe Galante played a short presentation showing the attractions Rio as a city had to offer to the tourist and delegates.

The Brazilian MLA's bid and offer to host the 2024 Conference in Rio was positively received by the Assembly and EXCO would be soliciting further information from the Brazilian MLA regarding assurances of sponsorship, which would enable approval at the next Assembly.

9. International Working Groups

a. Acts of Piracy and Maritime Violence: Report of Andrew Taylor

Andrew Taylor began his report with some statistics. In the first half of 2019, there were 78 incidents of piracy and armed robbery compared with 107 over the same period in 2018. Of these, 57 involved boarded ships, 9 ships were fired upon and 3 hijacked. However, in contrast with the first half of 2018, during which 23 attempted attacks had taken place, this year only 9 such attacks had been reported.

Incidents of crime against crew members had also declined: 83 reported in the first semester of 2019 in comparison with 136 in 2018. Thirty eight crew members had been taken hostage, 37 crew members had been kidnapped, 2 had been injured and 1 was killed.

Most incidents (28) took place in West Africa, particularly around Nigeria (21). Overall, 73% of global kidnappings and 92% of global hostages could be attributed to the Gulf of Guinea region, which remains the riskiest area for mariners.

In Benin, gas oil tankers were particular targets, the robbers being well armed and violent. Masters had been forced to sail to unknown locations where the ships' properties and cargo were stolen.

In Nigeria, pirates and robbers had targeted ships and crew along and far from the coast, rivers, anchorages, ports and surrounding waters. Incidents, especially kidnapping for ransom, continued to increase, despite the efforts of the Nigerian navy. In March 2019, a Nigerian flagged offshore support vessel was attacked by pirates in two speed boats armed with machine guns. The pirates boarded the ship, broke into and vandalised the accommodation before kidnapping five crew from the engine room and escaping. A Nigerian armed guard was killed in the exchange of gunfire with the pirates. In April 2019, a Palau flagged product tanker had been attacked while anchored at Bonny Outer Anchorage. The vessel was boarded, six crew were kidnapped and taken hostage. The Nigerian navy had been notified and had carried out an investigation, which led to the release of the kidnapped crew.

In Somalia, although the opportunity for incidents had decreased, Somali pirates remained capable of carrying out attacks. They were well armed with automatic weapons and RPGs and often used skiffs launched from mother ships, which might be hijacked fishing vessels or dhows.

b. Fair Treatment of Seafarers (including Pandemic Response and Migration at Sea): Report of Paul Gill

Paul Gill, Chair of the IWG's Epidemics and Pandemics Sub-Committee, advised the Assembly that there had been little further progress in obtaining further replies to Stuart Hetherington's Questionnaire since the Assembly in London in 2018. There had been plenty of correspondence with the defaulting MLAs, but the not unwelcome correspondence back to the IWG had not contained the necessary attachments or enclosures.

At some point soon the CMI would need to come to some decision as to whether further replies to the Questionnaire were worth pursuing, but equally importantly, it would need to decide what could be done with the many replies that had been received to date.

In this regard, Valeria Eboli and Paul were scheduling a meeting with Giorgio Berlingieri in October 2019. The location (either Genoa or Pisa) had yet to be finalised and he thanked Giorgio for his willingness to help with this. He noted that Giorgio had withdrawn from the Fair Treatment IWG a year or so ago, but had agreed to let the IWG have the benefit of his experience and wisdom, particularly in relation to what could usefully be done with the substantial information which had been gathered.

The replies to Stuart's Questionnaire (by those who had responded) totalled at least 50 pages, and he was most grateful to the MLAs which had so far assisted the IWG. He had prepared a database of the summaries of those replies (compressed to two pages), which was attached to the written report.

The following MLAs had responded to the questionnaire:

Australia, Belgium, Canada, China, Denmark, Finland, Germany, Greece, Hong Kong, Italy, Ireland, Korea, Malta, Netherlands, New Zealand, Nigeria, Norway, Panama, Portugal, United Kingdom, Ukraine, United States and Venezuela.

c. Recognition of Foreign Judicial Sales of Ships: Report of Ann Fenech

Ann Fenech reported on how all national maritime law associations had been kept abreast with the work being undertaken through the report in the CMI Newsletter published in summer. She recapped on how the project had developed up to now with the Colloquium organised in Malta at the start of 2018 gathering over 180 delegates from over 50 countries representing a cross section of the maritime industry.

She recalled how the conclusions of the Malta Colloquium constituted the very basis of the proposal of Switzerland to UNCITRAL in July 2018 and how the General Assembly at UNCITRAL in New York had accepted this project as one of the projects that it would allocate to the first working group which finished its

existing workload. She reported on how this project was allocated to Working Group V1 in December 2018.

She further reported on the first meeting of this working group in New York (12th - 17th May 2019) and on how gratifying it was for CMI finally to have its Beijing Draft Convention on the agenda of a UN body.

The invitees to this first meeting of Working Group V1 were the 60 States Members of UNCITRAL, other State Delegations as well as a number of governmental and non- governmental organisations including BIMCO, the IBA, ICS, Law Asia, the Moot Alumni Association, the International Association of Judges, the New York Bar Association, the International Law Institute and the International Union of Marine Insurance.

States were in the main represented by their own diplomats resident in New York. Most of the delegates did not have a shipping background. That said there were a number of important jurisdictions which were accompanied by maritime lawyers who contributed significantly to the debate. The Swiss delegation – the proponent of the Proposal—was headed by Alex von Zeigler, President of the Swiss Maritime Law Association and CMI EXCO Member; the US Delegation was assisted by Frank Nolan, the President of the USMLA; the Japanese delegation was assisted by Japanese MLA Council Member and past CMI EXCO Member Tomotaka Fujita; the Spanish delegation was assisted by Eduardo Albers the President of the Spanish Maritime Law Association; the Chinese Delegation was assisted by Henri Li, President of the Chinese Maritime Law Association and Co-Chair of this IWG on Judicial Sales; and Prof Chu Beiping current CMI EXCO Member.

On the first day the delegation was welcomed by Mr. Jose Angelo Estrella Faria, Principal Legal Officer and Head, Legislative Branch of the UNCITRAL Secretariat who was assisted by Mr. Ryan Harrington and Mr. Alexander Kunzelmann. The Working Group elected Prof. Beate Czerwenka from Germany as its Chair.

Alex von Zeigler introduced and explained the Proposal of the CMI. On Ann's part and as coordinator of this project for CMI at UNCITRAL she explained in detail how CMI operates, how it conducts its research through its extensive network and the work which had been done by the CMI to bring the project to a Draft Convention, the case law which had shown the need for certainty in this important aspect of international trade and how the CMI had reacted.

Much needed focus and attention was paid to the underlying *raison d'être* of the draft convention which remains that international trade demands certainty, buyers need clean title to be able to register their new acquisition and need to have any previous registration and mortgages deleted and to ensure that their ships are not arrested by the vessel's previous creditors.

Following this extensive introduction, the Secretariat expressed the view that given the amount of work conducted and the draft text, it made good sense for the Working Group to use the Draft prepared by CMI as a basic working document from which to develop the international instrument. The four days that followed were dedicated to an explanation of the *raison d'être* behind each and every article with numerous interventions from the floor. The Secretariat took note of the various concerns of those who spoke and prepared a report of the proceedings of the entire week which was read out in draft during the last afternoon.

The report of the week's proceedings is now available on the UNICTRAL website as document A/CN.9/973. She further reported that the Secretariat would be preparing and finalising a first revised draft taking into account those considerations and comments of the delegates with this first revised draft being the subject matter of further discussion at the next working group meeting in Vienna between the 18th and the 22nd of November 2019.

She reported that there was no doubt that by the end of the week, delegates were much better informed on the background and need for such an international instrument. She emphasized however the importance the National Maritime Law Associations to reach out to their respective governments and to offer maximum assistance with the necessary maritime input to enable government representatives to be fully prepared for the further discussions on the subject matter in Vienna.

She thanked all those involved in this project from its inception – the original IWG members who had worked so hard on the creation of the draft and the current IWG members who are now working to see this project through this different stage of its existence and her Co-Chair Prof. Henry Li.

d. Cross-border Insolvency: Report of Sarah Derrington

Martin Davies presented the report on behalf of the Honorable Justice Sarah Derrington, Chair of the IWG, as she was unable to attend the Assembly given her duties as President of the Australian Law Reform Commission.

He noted the email exchange in October and November in 2018 between Sarah, the President and the Secretary-General in which they discussed the winding up (on Sarah's recommendation) of this Working Group given that there appeared to be little of substance that the IWG could achieve under the auspices of the CMI. After discussions between the President and Professor Davies, it was agreed subsequently that the IWG would remain "semi-active" for the purpose of collecting and collating the international jurisprudence on issues relating to maritime cross-border insolvencies. Professor Davies had kindly agreed to coordinate that task.

To date, Professor Davies had received only one case for the nascent data base. The IWG accordingly renewed its call for members to send any relevant cases or legislative developments to Professor Davies.

Justice Derrington concluded her report by saying that, if there remained little interest in the compilation of such a database, she would respectfully suggest that the issue of the continued existence of this IWG be revisited prior to the meeting in Tokyo.

e. Polar Shipping: Report of Aldo Chircop

Professor Chircop, Chair of the IWG Polar Shipping, informed the Assembly that the IWG had provided an annual report to EXCO at the end of August explaining the work conducted through three subgroups on Antarctic shipping, COLREGS in polar environments and cruise passengers' rights. The IWG had uploaded reports and working papers on the CMI website in a timely manner.

In the course of the reporting year the principal output had been a working paper prepared by the subgroup on Antarctic shipping for the International Group and eventual submission as a working paper at the Antarctic Treaty Consultative Meeting in Prague in July 2019. The original paper had been prepared by Young CMIers Dharshini Bandara and Ansam Okbani, was discussed at CMI London and subsequently revised and finalized by David Baker. The working paper had been very well received at the ATCM meeting and served to flag an issue concerning the liability limits in the Liability Annex of the Environmental Protocol to the Antarctic Treaty, which have not remained in step with subsequent amendments to the LLMC limits.

The IWG met at CMI Mexico to review the progress of work and agreed on the following next steps:

Antarctic subgroup:

The subgroup will be exploring a new study of the interface between the IMO liability regimes (including the Wreck Removal Convention) and the Liability Annex of the Environmental Protocol/Antarctic Treaty, under various scenarios, including the applicability of the IMO regimes in Antarctic waters in the event the Annex does not enter into force. The Young CMI will again be approached.

The subgroup will conduct a study of the jurisdiction issues raised by the Liability Annex.

COLREGS subgroup:

The subgroup will continue to assemble casualty investigation data and reports for incidents in polar waters to determine whether there were issues concerning the application of the rules of the road in polar waters.

Cruise passenger' rights subgroup:

The subgroup will be preparing a work plan for a working paper and a timeline.

CMI Tokyo:

The IWG was prepared to help organize two sessions on polar shipping as part of the CMI Tokyo program. It was aware that a proposal needs to be submitted and were working on one for submission in due course.

f. Offshore Activities Pollution Liability and Related Issues: Report of Jorge Radovich

Jorge Radovich began his report to the Assembly by reminding it that, as his report to EXCO and Assembly in Genoa had explained, the way towards an international convention on Transboundary Pollution caused by Offshore Activities through the IMO Legal Committee had been closed. Patrick Griggs had reported that the Legal Committee had adopted a Guidance Document and had expressed the hope that it would prove useful and had agreed that no further work by the Committee would be necessary. Accordingly, as far as the Legal Committee was concerned, there was, at this time, no interest in an international convention on the subject.

The IWG had identified and informed two different options to continue the way ahead, after the IUMI alternative had been discarded:

(i) The Guidance Document is not a draft convention. It does not provide a definition of transboundary pollution, nor of the concerned offshore artifacts, nor on limitation of liability and how it would work. It is rather just a handful of nice principles (like polluter pays, jurisdiction in the country which suffered the pollution, etc.) but it could not even be considered soft law (in comparison for example with the IMO Guidelines on Places of Refuge). Consequently, any bilateral or regional agreement will need to be drafted and the IWG could assist on this work. In this connection, the IWG had held an informal meeting with representatives of the Adriatic Countries and were informed that, once some political issues had been dealt with, they would request the IWG's assistance in drafting an Adriatic Regional Convention on the issue. No news had yet been received from the Adriatic Countries.

(ii) The United Nations Environmental Program (UNEP) might be interested in the drafting of an International Convention on Pollution generated by Offshore Activities. The IWG had identified the Norwegian Environmentalist Erik Solheim, who was currently UNEP's Executive Director, as the most appropriate Officer with whom to discuss this matter. He had been contacted with the kind assistance of CMI's Past President Karl- Gombrii. A full briefing had been prepared and sent by CMI's immediate Past President Stuart Hetherington and Jorge. UNEP had nominated Ms Lara Ognibene as speaker in the IWG's Offshore Panel in

the Mexican Colloquium. Unfortunately, she had since been relocated to Europe and was unable to attend the Colloquium. However, she had informed the IWG that UNEP is focused in other areas such as microplastics at sea.

After discussing the situation with CMI's President, and in view of the fact that no UN bodies would work on a convention unless it was sponsored by several member states, it was decided not to further pursue the matter with UNEP.

Taking into account the possibility that the issue could be discussed again in IMO if MODUs were finally to be considered as vessels, the matter of the applicable international conventions might again be raised, at which point in time the opportunity might arise to propose an international convention governing pollution originating in offshore artefacts.

g. Ship Finance Security Practices: Report of Ann Fenech

Ann Fenech as Chair of this group explained how the IWG had completed its brief given to it in 2015 which was to "to gather as much information as possible from our national maritime law associations on the regimes prevalent in each country on ship finance security practices and the ease or otherwise of the enforcement of Maritime Securities."

In the execution of its task over the past four years, the IWG had drafted an extensive questionnaire to which a total of 24 countries replied; it had organised a very informative joint meeting with the USMLA Marine Financing Committee in New York in 2016; and it had presented the responses to the questionnaire at the CMI Assembly meeting in Genoa in 2017. At the end of 2018, it had organised an international sub-committee meeting during the CMI Colloquium in London to which over 50 participants from 20 countries attended. In order to assist with the discussion, David Osborne, the group rapporteur, and Ann Fenech had prepared a detailed discussion paper giving a substantial introduction into the subject matter; dealing with industry insights; the work being done in connection with the international effect of judicial sales as well as an insight into the views of a number of academic authorities on the subject matter and had provided a summary and commentary on the responses to the questionnaire. A copy of this discussion paper is available on the CMI Website.

The conclusions drawn from this extensive information gathering exercise was that:

1. There is no appetite for a protocol on shipping to the Cape Town Convention.
2. The questionnaires which were filled in contain excellent research material and should therefore be available on line.

3. Therefore the brief of this IWG should be terminated and considered as having been exhausted.
4. The same group should be converted into an IWG on security interests over shipping containers.

Furthermore and in view of the extensive workload which the Chair of this IWG currently has in connection with her role as CMI co-ordinator at UNICTRAL on the project related to the International Effect of Judicial Sales, she proposed that she be replaced as chair of this IWG by two co-chairs, David Osborne and Benoit Goemans - two very experienced persons in the world of maritime law and containerisation. These proposals had been accepted by EXCO and both David Osborne and Benoit Goemans had very kindly accepted to co-chair this IWG on Security Interests over Shipping Containers.

She concluded her report by noting how David and Benoit had already hit the ground running and had already prepared a draft questionnaire for circulation.

h. Study relating to Liability for Wrongful Arrest: Report of Aleka Sheppard

In the absence of Aleka Sheppard, the Chair of the IWG for Wrongful Arrest of Ships, the report was delivered by Edmund Sweetman. He recalled that the results of the answers to the first questionnaire concerning liability for wrongful arrest (38 replies received from various NMLAs) had been analysed, published on the CMI website and presented at the New York CMI Conference in 2016. Subsequently, a Discussion Paper with specific questions had been prepared for the London CMI meeting in November 2018 seeking feedback and views from representatives of NMLAs and the industry (particularly P&I Clubs) by way of debate.

Following the lively debate at the open working group session on 9th November, 2018, it was determined, at the request of the participants in that debate (and the approval of EXCO) that the IWG should circulate a specific questionnaire to the individual lawyers who attended the open session and also ask the Presidents of the NMLA's to circulate the same questionnaire to the maritime lawyers within its membership. The purpose of this was to explore certain issues relating to wrongful arrest based on the experience of those lawyers in their jurisdictions. Although this was an unusual step, it was regarded as a very significant pilot study which would enable the IWG to make any recommendations to EXCO about taking any future steps on this project.

The further Questionnaire explores a variety of issues which arose in the course of the open session and were addressed in greater detail in the Chairman's report, which had been circulated to NMLAs with the latest Questionnaire.

The IWG had received very interesting responses thus far, from both individual lawyers and industry (but only just 15). However, there was a feeling that given the season when the questionnaire was circulated, and the time allowed for the same, the IWG recommended extending the deadline for responses up to 30 November

2019 and, perhaps, re-circulating the questionnaire prior to analysing and collating all answers and producing a further report.

i. **Restatement of *Lex Maritima*: Report of Eric Van Hooydonk**

Eric Van Hooydonk, the Chair of the International Working Group, reported on the activities of the Group. The IWG had held a meeting of the IWG held at the Camino Real Polanco Hotel on the 1st October 2019, where two new members, Prof. Javier Franco, presented by the Colombian MLA and Prof. Olivier Cachard were welcomed to the IWG (subject to the approval of EXCO). Profs. Adragna and Rizk who had joined the meeting were also welcomed. Among the issues discussed were:

- New Draft of Principles prepared by the Chairman
- Discussion about the format to be followed
- Additional principles
- Set up of a digital format to collect work
- Research and reporting formats and use of languages
- Time schedule in view of CMI events

In relation to the last issue, it was agreed that the IWG should submit an initial draft list of Principles to Tokyo 2020, a more detailed one to Montreal 2021 and a complete set of Principles to CMI's Anniversary in Antwerp 2022.

j. **Ship Nomenclature: Report of Frank Nolan**

Frank Nolan presented the report. He advised the Assembly that the IWG had sent its first questionnaire to members on 16 March 2016, seeking preliminary information on the existence and context of definitions of the terms “vessel” and “ships” under the internal laws of the member states. To date, the following members had responded:

Brazil; China; Croatia; Denmark; Hong Kong; Ireland; Italy; Malta; Poland; Romania; The Kingdom of the Netherlands (the Netherlands, Aruba, Curacao and St Maarten); The Republic of the Marshall Islands; Turkey (but not the answer to the questionnaire); and the USA.

Despite repeated cajolements no additional responses had been received. The responses to date have

revealed a number of significant variations and anomalies in defining these terms from jurisdiction to jurisdiction and widely different results in the exercise of jurisdiction over the same property from one jurisdiction to the next, particularly with respect to property on the fringes of traditional “ships” or “vessels”, such as off- shore oil and gas- related floating equipment.

While the IWG wished to encourage additional responses from those NMLAs which had not yet replied, the IWG had begun to consider what was likely to be the best use of the information so far collected. To this end it had proposed to convene a meeting on the fringes of the Colloquium, following which it hoped to be in a better position to recommend to the CMI how to proceed with its mandate

k. Classification Societies: Report of Luc Grellet

Luc Grellet, in providing a report on the status of the IWG on Classification Societies in London in 2018, reminded the Assembly of its decision to change the mandate of the IWG and its request to continue the work on two different areas of work, namely, (1) the liability of classification societies to third parties; and (2) the lack of legal protection of classification societies by International Conventions, in particular the LLMC and the CLC, although modifications of these conventions are not on the foreseeable agenda of any International organizations.

The IWG had not done any work after London but its members (now 7 in number) had met in Mexico on 30 September, where the following was agreed:

- (i) to limit the mandate to the first issue and to consider, when the works had progressed, whether the IWG should propose an extension of the mandate to other issues or not,
- (ii) to concentrate first on the classification works of the societies and to decide at a later stage if the works of the IWG should be extended to the statutory works of the societies,
- iii) to finalize the preparation of a questionnaire (presently in the form of a working paper) be sent to NMLAs, hopefully, in the course of November 2019 so that the answers from NMLAs might be received in the first quarter of 2020 and the IWG could work on the answers and report in Tokyo in 2020.

I. Cybercrime

No written or oral report was presented.

m. Unmanned Ships; Report of Tom Birch-Reynardson

Tom Birch Reynardson reported that the IWG had changed its name to the IWG on MASS (Maritime Autonomous Surface Ships), in line with developments at IMO.

He thanked his colleagues on the IWG for all the work they had done this year. This included attendance at the LEG and MSC meetings in the earlier part of the year and conducting a review of many of the Conventions under the purview of MSC.

He noted that, thanks to the generosity of the CMI Charitable Trust, CMI now had a Research Fellow who was working from IMO, underlining the close relationship CMI has with IMO.

At the Working Group's meeting during the Colloquium the IWG had agreed a work programme.

In Phase 1 the IWG would review all the 23 instruments under the purview of the Legal Committee by mid-November and would make a submission to the Legal Committee for its meeting in March 2020 summarising its findings and suggesting a way forward in relation to the regulation of unmanned ships.

In Phase 2 the IWG would continue its review of the 26 Conventions under the purview of IMOs' MSC.

In Phase 3 the IWG would review what they called the CMI Conventions such as the Carriage Conventions and the York Antwerp Rules.

Phase 4 would be to provide a Summary and Working Paper for the Tokyo Conference.

He noted in conclusion that the IWG had a total of 31 members as at the date of the Assembly. This was a very large number and unusual for an IWG. This had been discussed by EXCO which agreed that, due to the amount of work the IWG would be undertaking, it should not be concerned about the large membership of the IWG.

9. Standing Committees:

a. Marine Insurance: Report of Joe Grasso

Joe Grasso referred the Assembly to the written report of the Standing Committee on Marine Insurance. He noted that the Committee had added three new members – Charles Fernandez (Canopus Syndicate, London), Hernan Lopez Saavedra (Argentina) and Jonathan Spencer (independent average adjuster in the

U.S.). Regrettably, the Committee had very recently accepted the resignation of one of our longstanding members, Marc Huybrechts of Belgium. He thanked Marc for his many contributions over the years and wished him the best going forward.

In March 2019, Committee member Rhidian Thomas had completed the final version of his paper, "The Impact of the UK Insurance Act 2015 on English Marine Insurance Law as Contained in the Marine Insurance Act 1906 and Common Law, and its potential Influence on Other Common Law Jurisdictions" (delivered at the Committee's meeting in London in November 2018).

The Committee had also continued to discuss its next project, and had narrowed the scope to the following potential subjects:

1. The impact of sanctions on insurance cover. This was a contemporary and topical subject and more often than not the law was unclear and confused. The sanctions might emerge from international organisations such as the UN or regional organisations such as the EU or from nation states, and might have a significant impact on international trade and other areas of commerce and finance. The questions very often related to the impact of this disruption on existing insurance covers and to what extent special covers existed to protect against these risks.
2. Direct rights of action against insurers. The Committee had previously considered an aspect of this topic relating to the soundness of the compulsory insurance cover, but were considering a broader enquiry into the underpinning principles and practices. In light of the increasing number of liability maritime conventions and associated compulsory insurance, this might be a very relevant topic. It would involve an examination of the maritime convention regimes and a comparison with the different national philosophies that might be identified with regard to direct rights of action. What emerges could be helpful in the drafting of future liability maritime conventions.

Finally, the Committee had sponsored a panel at the 2019 Colloquium on "Cybercrime and Marine Insurance Coverage Issues" which was co-moderated by Joe Grasso and Juan Carlos Merodio; the panellists being Borianna Farrar, Shelley Chapelski (Canada), Julian Clark (London) and Committee member Hernan Lopez Saavedra (Argentina).

Following the Assembly, the following supplementary information was provided:

- The SC is seeking to add two new members
- The SC has agreed to coordinate/liaise with the IUMI Legal & Liability Committee
- The SC has decided to move forward with potential project No. 2 above, with the hope of presenting work product at the 2020 Assembly in Tokyo

b. General Average (including Guidelines to the York Antwerp Rules 2016)

Dieter Schwampe, member of the Standing Committee on General Average and speaking in lieu of its Chairman Joern Groninger, reported that the SC hoped to be able to circulate a first draft of general wordings for GA securities in the coming weeks. The SC was optimistic that it would have an agreed wording ready early enough to allow the industry associations as well as the National Maritime Law Associations its consideration well before the 2020 Conference in Tokyo.

c. General Average Interest Rates: Report of Taco van der Valk

Taco van der Valk provided the Assembly with an update on General Average Interest Rates. He noted that, following the adoption of the York-Antwerp Rules 2004 by the CMI Conference at Vancouver in June 2004, including the provision in Rule XXI whereby the rate of interest should be fixed by the Assembly of the CMI from year to year, a small Standing Committee on General Average Interest Rates had been appointed to investigate the rates of interest applicable to monies lent by a first class commercial bank to a ship owner of good credit rating.

In September 2019, under the chairmanship of Mr Bent Nielsen (Denmark), the Standing Committee had carried out an email review of this. The following took part:

Mr Bent Nielsen – in the chair

Mr Andrew Taylor

Mr Taco van der Valk– Rapporteur

As in previous years, the investigations by the Standing Committee proved again that, in current conditions of the banking market, a reasonable interest rate for a loan by a first class commercial bank to a ship owner of good credit rating was very difficult to ascertain as to day such ship owners mainly used other sorts of financing. The interest rate to be charged for providing working capital for one year may be very different to an interest rate used for long term asset finance. Working capital in shipping is often provided on the basis of Libor or Euribor (interbank) rates with an add-on to arrive at the bank's own lending rate. In practice, the percentage of the add-on will depend on the bank and the ship owner. The Guidelines given to the CMI Assembly by the CMI Plenary in Vancouver 2004, however, limit the scope to the relationship between first class commercial banks and ship owners of good credit rating.

The information collected showed there have been relevant changes in interest rates since 2018. Furthermore

the rates of 12 months Libor USD, EURO, GBP, and the 12 months Euribor were quite divergent. Having regard to the Vancouver Guidelines that the level of interest for one-year USD loans shall be given particular consideration, the Standing Committee recommended that the rate of interest for the period 1 January 2020 – 31st December 2020 should be 2.75 %.

Resolved: That the General Average interest rate of 2.75% for the period 1 January 2020 to 31 December 2021 be approved

d. Carriage of Good by Sea (including Rotterdam Rules): Report of Tomotaka Fujita

The report was presented by Tomotaka Fujita, who reminded the Assembly that the Standing Committee on Carriage of Goods had originally been established as the International Working Group (IWG) on the Rotterdam Rules. It was reformed as a Standing Committee in 2017 to expand the scope of its work to cover all issues relating to the carriage of goods by sea. But the Committee continues to monitor the promotion of the Rotterdam Rules.

He noted the latest status of the Rotterdam Rules. The number of ratifications remains almost the same since last Assembly: Twenty-five States had signed and four had ratified. There was however some good news. Among others, the Netherlands had passed the legislation needed for domestic implementation which authorizes the government to ratify the Convention although it would require more time to actually ratify.

The Committee had paid much attention to recent attempts to digitalize trade documents including bills of lading. The “distributed ledger technology”, popularly known as “blockchain” technology, was the main driving force for this purpose.

The Standing Committee was carefully examining what the CMI could and should do in connexion with such developments. Apparently, the promotion of the Rotterdam Rules would be the most fundamental solution. But it would take some time.

In April, members of the Standing Committee including himself were invited to a roundtable meeting which was organized by ICC. During the meeting, several legal uncertainties which could become an obstacle for the digitalization process had been identified. The Standing Committee had held a meeting two days prior to the Assembly where these problems had been confirmed. A possible solution outside of the Rotterdam Rules had been discussed and the Committee, possibly in cooperation with ICC, would start further research for this purpose. The Committee might circulate a questionnaire on this issue to all MLAs.

The Standing Committee met on 1 October 2019 during the Mexico Colloquium (some members joined via Skype). It was again confirmed that there is legal uncertainty for the use of blockchain bills of lading, but there was no consensus on how to proceed. Some supported a solution outside of the Rotterdam Rules while others were cautious about such an approach. The Standing Committee would continue to investigate the issue

further.

e. CMI Young Lawyers: CMI Young Person's Essay Prize

In the absence of John Hare, the organiser of the CMI Young Person's Essay Prize, the Secretary-General informed the Assembly that Ms Helen Nieman (USA) had been chosen as the 2019 prize-winner. Although invited to present her paper at the Mexico City Colloquium, she had been unable to take leave from her military service and would instead be making a presentation at the 2020 Tokyo Conference. The essay would nonetheless be published on the CMI website.

John Hare had conferred with the Panel of Judges (no change from last year), who had now chosen a topic for the 2020 CMI Young Person's essay. It had been decided not to nominate a specific topic for the 2020 yCMI Essay Prize but rather to "invite essays on any current issue of maritime law. The essay may cover either (or both) private and public law". The idea was to have a more open-ended subject, designed to attract more participants but at the same time, the focus was on CMI-related issues. Potential candidates would be reminded of Rule 6(d) of the yCMI Essay Prize Rules which states that "(W)here no specific topic is nominated by EXCO for any year, preference may be given in the adjudication process to essays covering topics currently under review by CMI as evidenced on its website".

The deadline for submission was 1st May 2020. The Rules relating to the Prize were to be found on the CMI website.

f. Planning Committee: Report of Rosalie Balkin

Rosalie Balkin referred the Assembly to her written report. She noted that the Committee had held a productive meeting at the Camino Real Polanco Hotel on Monday 30th September, where Committee members had considered, inter alia, the scope of its mandate as clarified by EXCO at its meeting the previous day, which was to plan/consider the future direction of CMI's work programme. The Committee saw as its task in large part as keeping the CMI focussed on issues properly within the organization's remit. In this connection, she invited all NMLAs and other organizations in consultative status with CMI to notify the Committee, through her or any other of the Committee members, of any suggestions they might like to see added to CMI's work programme. She explained that what the Committee required, in addition to naming particular topics, was some explanation of the legal problem sought to be rectified; how serious it was to the maritime sector; and how CMI might set about assisting in

g. Implementation and Promotion of Maritime Conventions: Report of Deucalion Rediadis

In the absence of the Chair of the IWG, Deucalion Rediadis, Peter Laurijssen delivered his report to the Assembly on developments since its last meeting held in London on 9 November 2018.

The Committee was awaiting feedback from IMO on a number of things (as listed in the report to the London Assembly) and was looking forward to receiving their input in order to take this initiative forward.

For the second year running, CMI had been represented by members of the Committee in the annual meeting of IMO's Technical Cooperation Committee (TC69, 25-27 June 2019). A statement had been made on behalf of CMI in support of the Legal Committee's invitation to the IMO Council to consider initiating a programme to produce consolidated texts of all IMO conventions to assist in their implementation into domestic legislation. The opportunity had been taken to remind the audience (which was different from that of the Legal Committee historically attended by CMI) of the CMI/ICS initiative of promoting ratification of conventions, and to reiterate CMI's willingness to offer to IMO the expertise available within our organisations which could potentially be utilized through the TCC and other Committees towards effective implementation of the conventions in Member States. Thanks were expressed on behalf of CMI to the Acting Director of IMO's Technical Cooperation Division, Juvenal Shiundu, who was due to retire in December 2019 –for his cooperation over the past several years.

The Committee had represented CMI at IMLI's 30th anniversary event (attended also by the Prime Minister of Malta) and the launch of the WMU–Koji Sekimizu Doctoral Fellowship on Maritime Governance endowed by the Maritime and Port Authority of Singapore, both held at IMO Headquarters during TC69.

The Assembly was reminded that IMO had created an E-Roster of experts to support delivery of the activities of its Integrated Technical Cooperation Programme. Experts from the CMI member associations were invited (indeed encouraged) to express their interest by registering through the IMO website. Although remuneration falls short of market rates for legal services, travel and accommodation is covered.

EXCO's meetings of April and September 2019 saw the appointment of Luiz Leven Siano of Brazil and Elizabeth Salas of Colombia as members of the Committee. He welcomed them on board also on this occasion

h. Publications: Yearbook, Newsletter, LinkedIn, Website, CMI Handbook: Report of Taco van der Valk

CMI Yearbook

Taco reported that there had been delays in publishing the Yearbook due to some technical issues with CMI's new printer but a working relationship had since been established with the printer and these problems had now been resolved. The PDF version should be ready shortly but the printed version would take a while longer to appear. He would be holding discussions with the Secretary-General as to what should be included in the next Yearbook.

News Letter

The News Letter would be out as soon as possible after the Colloquium and the plan was to have three News Letters come out annually.

LinkedIn

Taco noted his plan to work with the rapporteurs of each IWG and ISC to publicise on LinkedIn the fact that a report has been published. The actual publication of any such reports would be on the CMI Website.

Website

The Website was up and running and looking good; however, it would require constant updating to remain relevant.

CMI Handbook

The CMI Handbook had last been published in 2004. There had been difficulties finding a publisher but enquiries in this regard were on going. He had obtained from Frank Wiswall for inclusion in the Handbook a draft Table of Contents and instruments not formerly published.

i. Database of Judicial Decisions on International Conventions: Report of Stephen Girvan

The report, prepared by Stephen Girvin, was delivered by the President. He reminded the Assembly that, soon after the Centre for Maritime Law (CML) of the National University of Singapore (NUS) and the CMI had signed an Agreement to create a database of Judicial decisions on International Conventions on 2 January 2017, the database had gone live. The relevant website links are via the CML website at <https://law.nus.edu.sg/cmlcmidatabase/> and via the link in the re-launched CMI website at <https://comitemaritime.org/publications-documents/database-judgments/>.

The editor of the database was Associate Prof. Paul Myburgh, Deputy Director, working with Ms Lucy Carey,

Research associate and in-house editor of the database.

The CML had been notified of rapporteurs from 27 NMLAs and, in 2019, had received case submissions from Australia (1), Denmark (3), France (8), Germany (2), Italy (1), Malta (2) and Singapore (3). All CMLs full-time and adjunct research staff were engaged in digesting cases for the database, with 90% of the cases from CML. Since the launch date, over 491 decisions had been digested and uploaded on to the database. The database averages 700-800 visitors per month.

The report concluded by urging CMI to promote the database among NMLAs and to encourage greater buy-in from those NMLAs who had nominated rapporteurs.

j. Constitution Committee

The President informed the Assembly that there was nothing new to report on this subject since the previous Assembly.

11 Ad Hoc Committee: The Future of the CMI

No written paper was submitted nor any oral presentation made by the Chair of the Ad Hoc Committee. No further work had been done since the Committee had submitted its report to the previous Assembly. The President noted that EXCO had decided to form a small committee to study the Committee's report submitted to the previous Assembly and identify areas that might be pursued and, once that had been done, to have an open discussion at the Assembly. It was also noted that, once the small committee had been formed, input might also be requested from MLAs, some of which had formed committees to comment on the Future of the CMI report.

12. Singapore Regional Office: Report of Lawrence Teh

In the absence of Lawrence Teh who had to leave the Colloquium early, the President delivered the following report.

The CMI's office in Asia was set up in Singapore in April 2013 in the form of a representative office registered in Singapore. Since then, its representative office status has been renewed by the Singapore authorities. It is run on a very low-cost basis.

The Singapore office serves the purpose of keeping the CMI in close contact with Asian MLAs and with Asian

shipping. Part of the work assigned to the Administrator by past-President Hetherington and continued by current-President Davis is Asian outreach. Over the last 6½ years, the Singapore office has maintained ties with all Asian MLAs, including the MLAs of China, Japan, South Korea, Hong Kong, Malaysia, Singapore, Indonesia, the Philippines and India and the benefits of doing so are outlined below. The Singapore office is also actively working with the organizing committee on the Tokyo conference in 2020.

The Singapore office represents the CMI in its joint venture with the Centre for Maritime Law of the National University of Singapore to build an electronic database of judicial decisions on international maritime conventions.

It also played a part in getting the draft Convention for the Recognition and Enforcement of Judicial Sales, adopted by the Assembly in Hamburg 2014, on the UNCITRAL work programme, after CMI was unsuccessful in persuading the IMO to work on it. Part of the reason why CMI was able to do so was due to the Singapore office persuading the Singapore delegation to UNCITRAL to speak up on support and also due to its efforts to persuade India to speak in support. This is the next international maritime instrument that the CMI hopes will evolve into a convention and is a major item of CMI business. In the run up to the first UNCITRAL working session in New York 2019 on the draft Convention, the Singapore office was able to assist the CMI to co-ordinate streamlined positive representations from China, South Korea, Japan, India and Singapore.

13. Elections :

a. Report of the Nominating Committee dated 7 August 2019

Andrew Taylor, the Chair of the Nominating Committee presented its report. The following Executive Committee member had to be replaced since his second term of office would expire at the end of this Assembly: Alexander von Ziegler as Executive Councillor. The first term in office of John O'Connor as Executive Councillor would also expire, as would the term of office of Lawrence Teh as Administrator but both had declared their willingness to stand for re-election.

In accordance with the procedure set out in the Constitution, all NMLAs had been invited to express their views on the re-election of Lawrence Teh and John O'Connor as well as to propose candidates for the position of Executive Councillor currently held by Alexander von Ziegler.

In light of the unanimous support expressed by those NMLAs which responded for the re-election of Lawrence Teh and John O'Connor as Administrator and Executive Councillor respectively, these two individuals had

been duly nominated by the Committee for these positions.

The following two candidates had been nominated by the NMLAs for the one vacant position on the Executive Council: Paula Backden (Swedish MLA) and Eduardo Albors (Spanish MLA). The latter had received majority support and, taking into account that factor; the relative the experience and contributions of the two highly qualified candidates; as well as Article 21 of the Constitution which provides that: "Executive Councillors must be elected upon individual merit, also giving due regard to balanced representation of the legal systems and the geographical areas of the world characterised by the Member Associations", the Committee had decided to nominate Eduardo Albors for the vacant position of Executive Councillor.

Andrew in closing urged all NMLAs to exercise their democratic rights and to nominate people to be considered for office.

b. Elections of:

(i) One current Executive Councillor;

(ii) One Executive Councillor;

(iii) Administrator

Stephen Knudtzon (Norway) expressed the view that the Assembly should not simply accept the nominations of the Committee but should have been given the opportunity to vote on either Eduardo Albors or Paula Backden, to which the President responded that, to enable that to happen, Ms Backden's name should have been put forward at least 15 days before the Assembly in accordance with the procedure set out in the CMI's Constitution. The relevant Article 26 (Nominating Procedures) reads as follows: "Member Associations may make nominations for election to any office independently of the Nominating Committee, provided that such nominations are forwarded to the Administrator 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".

Mr Knudtzon requested that his protest on behalf of the Norwegian delegation against the nomination of Paula Backden not being voted on be recorded, as follows:

"When a NMLA is requested to respond to several candidates and states it supports a named candidate, it cannot be correct that it has to re-nominate that person because the Nomination Committee nominates someone else. As long as the name of the alternative candidates are mentioned in the Nomination Committee report, there is no surprise and the original support to the candidate in my view amounts to a nomination by those NMLAs that have supported the candidate in accordance with the constitution article 26, 4th. This was done long time ago and certainly before the 14 day time limit mentioned therein."

As there had been no other nominations by MLAs, the President declared the following to be duly elected:

One current Executive Councillor:

John O'Connor re-elected;

One new Executive Councillor:

Eduardo Albers;

Administrator:

Lawrence Teh re-elected.

The Assembly showed its approval of those appointments in the usual way.

The Assembly was also advised by the President that during EXCO's 29 September 2019 meeting Jorge Radovich was appointed by the Nominating Committee and Andrew Taylor was re-appointed as Chair of the Nominating Committee for an additional three year term.

(c)Power of Attorney and Special Mandate to Jean-Francois Peters to fulfil all required formalities and to sign all necessary documents recording these appointments and decisions taken at the Assembly.

Resolved: that Jean-Francois Peters be given a Power of Attorney and Special Mandate to fulfil all formalities on behalf of CMI with the Belgian authorities and to sign all necessary documents recording these appointments and decisions taken at the Assembly.

(14) Any Other Business

The President informed the Assembly that Alexander von Ziegler, who had just stepped down following two terms as Executive Councillor, had served the CMI in the capacity of Secretary-General for 7 years and as Executive Councillor for 6 years and, on behalf on the Assembly (and himself) expressed his thanks to Alexander for his sterling service to the Comite. The Assembly expressed their appreciation in the usual way. The meeting closed at 2pm.

[Note: The 2019 Mexico City Assembly Minutes have yet to be formally approved by the Executive Council and are being included in the News Letter for informational purposes.]



Tribute to Tom Mensah

CMI Member Honoris Causa

It is with deep sadness that I advise the CMI readership of the death of Judge Thomas Mensah, who passed away peacefully in his home on Tuesday 7th April 2020 after a period of illness.

Judge Mensah, or Tom as he was affectionately called, was a giant in the Maritime Law field, holding many different positions during the course of a long and distinguished career. He held degrees from

the University of Ghana, the University of London, and in 1964 was awarded the SJD by Yale University Law School.

Early on in his prestigious career, in 1968 he joined the International Maritime Organization (IMO) and, from 1988 until his departure in 1990, served as its Assistant Secretary-General and Director, Legal Affairs and External Relations Division. During his time at IMO he, along with Professor Francesco Berlingieri, Dr Louis Mbanefo and Professor David Attard, were members of an international Committee formed by IMO to draft the first syllabus for the newly established International Maritime Law Institute (IMLI) in Malta. Judge Mensah was awarded the prestigious International Maritime Prize 2012 for his significant contribution to the work of IMO.

After leaving IMO, Judge Mensah held a variety of prestigious positions. These included his appointment as Special Advisor on Environmental Law and Institutions for the United Nations Environmental Programme in Nairobi; Professor of Law and Director of the Law of the Sea Institute at the University of Hawaii; holder of the Cleveringa Chair at the University of Leiden in the Netherlands; High Commissioner of Ghana to the Republic of South Africa from 1995 to 1996; and Member of the International Tribunal for the Law of the Sea from 1996 to 2005. As the inaugural President of the Tribunal, he helped to guide the Tribunal in its early years.

Following his departure from the Tribunal Judge Mensah served as Judge *ad hoc* before the Tribunal in the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, *The ARA Libertad Case (Argentina v Ghana)*, *Provisional Measures* and the *Dispute concerning delimitation of the maritime boundary between Ghana and Cote d'Ivoire in the Atlantic Ocean (Ghana/Cote d'Ivoire)*.

Apart from his links to CMI, Judge Mensah was a Member of the Institut de Droit International, a Member of the Standing Committee on Maritime Arbitration at the International Chamber of Commerce in Paris, a Member of the Advisory Council of the British Institute of International and Comparative law and a Member of the

Seafarers' Rights International, a centre established on World Maritime Day (23 September 2010) dedicated to the advancement of seafarers' rights and interests worldwide.

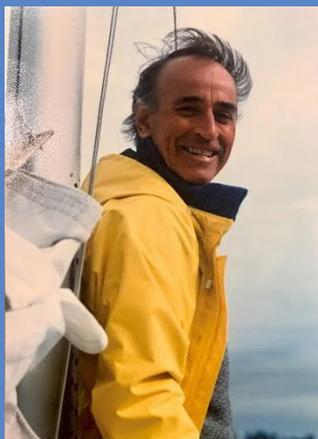
Tom Mensah was also the most warm hearted, gentle and kind of individuals, as well as a loyal and dear friend and mentor to so many. He was always ready with a smile and assistance whenever this was asked of him. A devoted family man, he and his lovely wife Akosua played host to visitors from all over the world and especially to extended family members from Ghana.

The maritime world will most surely miss him. I know that I will.

Rosalie Balkin
Secretary General CMI

Tribute to Nigel Frawley

Former Secretary General of the CMI



Nigel Frawley, who passed away earlier this year, was the quintessential CMI person. He epitomised for many the reason why those who have attended CMI meetings and been involved in the CMI for many years keep on giving their time, working for and enjoying the CMI. He will be remembered by the CMI family for his

great good humour, dedication and diligence to the CMI but also for his legal acumen, integrity, common sense and affability. He was unflappable and a joy to work with and spend time with.

Nigel was a Titulary member of the CMI, a former President of the Canadian MLA (1996- 1998) and Secretary -General of the CMI (2004 to 2013). He served four Presidents of the CMI and, as I said when he retired, he made us all look better than we were, and we all owed him an enormous debt of gratitude. John Hare, who had previously served on the Executive Council of the CMI and succeeded Nigel as Secretary-General has rightly said of him that he was the "master of the equitable resolution of disputes and arguments, who guided, encouraged and taught me how to perform the role from a distance". I like to think that Nigel joined us in Istanbul in 2015 despite his health to check on his protégé and make sure the CMI was in good hands.

As Secretary-General Nigel played the most important role in ensuring that all aspects of the annual meetings functioned successfully, from the booking of hotels, to arranging the programme for the business sessions, the social aspects and the minute taking of Assembly and Executive Council meetings. All of these responsibilities Nigel took on and performed with aplomb. He worked incredibly hard to achieve the successes that were achieved at all the meetings he was responsible for. The pinnacle of his achievements was the Beijing Conference in 2012, where on occasions there were at least three and sometimes four contemporaneous sessions taking place in different venues in the Conference hotel. It was a tour de force.

The other important role of the Secretary-General was encouraging the International Working Groups and Committees to perform their work. One such Committee which was started at his recommendation was that on Arctic Activities. Realising that the

warming climate was changing maritime activity in the northern polar region he deemed it essential that CMI assist in making the international maritime legal framework fit for purpose in this newly opening up region. He was passionate about the work that this new Group could contribute and as its first Chair he charted the course that he was so pleased to see another Canadian, Aldo Chircop, continue.

During the Presidency of Jean Serge Rohart a new ad hoc Committee, the Steering Committee, was formed which comprised the two Vice Presidents and Secretary-General. It was charged with looking towards the future with a view to reforming the management, membership and operation of the CMI. One of the major topics which the Committee considered needed review was the membership fees paid by MLAs and Titulary members. The gap between the highest and lowest subscribing MLAs needed to be lessened, but with a diminished income pool expenses needed to be reduced as well. The suggestions made by this Committee introduced a simplified subscription regime and made recommendations that have influenced how CMI meetings and activities have been performed in subsequent years, as a result of the suggestions made by MLAs in response to Questionnaires sent out by the Committee. In all the deliberations of the Committee Nigel's opinions were sensible and always in the best interests of the CMI.

Nigel wrote a memoir about his life for the benefit of his two sons, Douglas and Jamie, entitled "On a life well spent". I am indebted to them for sharing this with me and the Obituary prepared for the memorial service held in February in Toronto for Nigel. What follows is largely taken from those materials. Nigel concluded the memoir by saying:

"As I look back on my life I like to think that it was meaningful as well as fun. I certainly had my share of fun, exciting and dangerous at times in the navy during the

Suez crisis and "Cold War". I practised law with enthusiasm and enjoyed the cut and thrust of litigation. I like to think I played a small part in the development of Canadian and international maritime law".

To my observation he was entitled to think he had led a meaningful life and had contributed greatly to the development of maritime law.

Nigel was born in London, UK in 1936. He recalled conditions in London during the blitz of the Second World War. He made his first sea voyage from Greenock, Scotland with his Mother to New York and then by train travelled to New Brunswick in Canada in 1942 to await his step father (from whom he took his surname) who was serving in the Canadian military. Nigel was the only child on board the S.S. Argentina. Over the next few years he grew up in Quebec City, Montreal and Hudson (30 miles west of Montreal) and attended Hudson High School and then his final two years at Ridley College, St Catherine's, Ontario. In the summers of 1951 and 1952 he worked on Canadian Pacific ships as "brass" boy (the work required can be imagined from the job title) as well as scrubbing decks and assisting loading and discharging cars and cargoes.

On leaving school in 1954, he joined the Royal Military College and a year later had to choose which arm of the services to join. Not surprisingly he joined the navy. In 1956 he found himself in Egypt during the Suez crisis as part of the first UN Peace Keeping force and a few years later was also serving during the Cuban missile crisis in 1962. In between times he joined his first submarine in Malta from whence he voyaged to Singapore and Australia via the Great Barrier Reef as navigating officer, which he found challenging, remarking in his memoir that the Charts in use derived from Captain Cook's voyages in the late 18th century. In 1966 he was appointed First Lieutenant to HMS Opportune and in 1968 he was appointed Lieutenant Commander

and oversaw the commissioning of a new submarine for the Canadian navy, the HMCS Okanagan at Chatham, England.

After serving for 15 years Nigel left the navy to become a lawyer. He graduated from the University of Toronto Law School in 1972. He joined McMillan Binch initially and then in 1979 joined a specialist maritime and aviation practice at Paterson MacDougall. In 1986 he moved to McMaster Meighen which then became Meighen Demers. He argued maritime (and aviation) cases before all levels of the Canadian Maritime Courts , including the Supreme Court in the case of *Ordon v Grail* where his client prevailed. Nigel then joined Borden and Elliott in 1999, (which became Borden, Ladner, Gervais) for 3 years before retiring for the first time. He then set up a consultancy in 2002 during which he was appointed by the Minister of Transport to enquire into the regulation of pilotage off the East Coast of Canada. He then returned to private practice in 2008 when he joined William Sharpe's office.

Justice Sean Harrington has recalled a case in which Nigel had cross examined a witness who had been a Master mariner who had commented afterwards: "with all due respect to Sean and all other maritime lawyers I have met, Nigel was the only one who actually knew what he was talking about."

Nigel Frawley has left an indelible mark on the CMI which will be long remembered. The CMI has conveyed its condolences to his wife Lynn, Douglas and Jamie and his extended family. They were fortunate indeed to have had such an outstanding person as their husband, father and family member respectively. The CMI was equally fortunate to have had his good counsel, organisational skills, efficiency, dedication as Secretary - General and friendship to so many for so long.

Stuart Hetherington. March 2020.

SVENSKA SJÖRÄTTSFÖRENINGEN The Swedish Maritime Law Association

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JAN SANDSTRÖM

CMI Titulary Member

Professor Emeritus and Titulary Member of the CMI Jan Sandström passed away on the 25th of March 2020.

Sandström is particularly remembered for his ability to mix practical law with theory. He studied law at the University of Uppsala in 1955. In 1958 he became a foreign lawyer trainee at Haight, Gardner, Poor & Havens (now Holland & Knight) in New York.

In 1959 Sandström returned to his home town, Göteborg, and began his career at the University there which led to his obtaining a doctoral degree in 1969. In 1973 he became a Professor of Law. For a period, he was also a Visiting Professor at Stanford Law School, California.

Sandström's literary legacy primarily concerns Transport and Company Law. He was regularly appointed secretary in international treaty disputes and chairman in commercial arbitrations. He was the Swedish Dispascheur, appointed by the Swedish Government, from 1980 to 1998.

Sandström was President of the Swedish MLA for ten years, from 1972-1982. He was engaged in the CMI and treasurer of the International Average Adjusters' Association in the early 1990s.

Sandström will be remembered for his personality; whilst being boyfully charming and curious about life, he was jovial and amicable in his relations with other persons. He leaves a wife, two daughters and grandchildren and will be truly missed by his colleagues.

On behalf of the Swedish MLA
Paula Bäckdén (President)

Fernando Meana Green

CMI Titulary Member

Dear all

It is with great sadness that on behalf the Spanish Maritime Law Association I hereby report that Mr. Fernando Meana Green, Titulary Member of the CMI, passed away on the 9th April. Fernando was born in Bilbao, Northern Spain, on the 12th May 1934, and studied Law at the Universities of Deusto and Valladolid. He was a leading practitioner in shipping law in Spain for decades and handled some outstanding cases such as the salvage of a Harrier aircraft grounded on a container vessel (the "Alraigo"), the Aegean Son, the Prestige, among others.

Fernando was an art and music lover and with his wife owned an extensive collection of modern art paintings and sculptures. Most of all, he was a gentleman, a good friend, and he will be missed and remembered.

*Eduardo Albors
Madrid, Spain 10th April 2020
President Spanish MLA*

May we also invite you to read more on MR Fernando Meana Green in the [CMI President's letter](#).

CMI International Working Groups and Standing Committees

Update: IWG on Judicial Sales

It is quite amazing how the entire world has changed since my last report which was circulated to all MLA's dated 1st March. Whilst of course our dear friends and colleagues in China were still then battling with COVID-19, the rest of the world had not yet realised what lay ahead.

In that report which you can all see on the CMI website, I sought to bring you up to date with the latest draft expertly produced by the UNCITRAL Secretariat after the extensive deliberations we had at the 36th meeting of Working Group V1 in Vienna in November 2019.

In that report we had asked you all to consider the draft as well as the accompanying notes

also prepared by the Secretariat and to let us have your comments in order to help us prepare the CMI “New York” Notes to assist in the discussion during the 37th meeting of Working Group V1 at UNCITRAL, scheduled to be held between 20th to 24th April in New York.

Needless to say the New York meeting was cancelled as New York currently grapples with a debilitating tragedy of unprecedented proportions. Our thoughts are with our many friends and colleagues.

When I sent the 1st March report we were also getting ready to attend what had promised to be a very interesting workshop on Judicial Sales organised by Croatia which held the Presidency of the EU Council. The workshop would have been open to representatives of all member states with the participation of a number of industry players including also the CMI and the UNICTRAL Secretariat. This was scheduled for 16th March, also in preparation for the April meeting in New York. Naturally this meeting too was cancelled.

So where does this leave our project? Our project has just been delayed. The tremendous amount of work that has been done and the latest draft now on the table will simply wait for the next meeting as and when this is held. We have no idea at this juncture whether New York will be postponed and held later in the year or whether we will go straight into the next Vienna meeting scheduled for the week starting 14th December 2020.

In the meantime, this gives us more time to consider the latest draft and more time to prepare the next set of CMI Notes on the draft which are geared to assist in focusing on the remaining issues. When all of this is over, I hope we can hit the ground running and therefore I urge you to maintain the contacts you have with your governmental authorities on this subject because we will of course be needing their support as and when the 37th session is indeed held.

Finally keep well and keep safe.

Ann Fenech

Co-chair IWG on Judicial Sales

Co-Ordinator for CMI for the project at UNCITRAL

CMI Standing Committee on General Average: Questionnaire

Jörn Groninger has advised in his e-mail of 9th March that, in relation to the questionnaire sent by the Standing Committee on General Average to all NMLAs, we have received responses from Argentina, Belgium, Chile, China, Italy, Japan, Mexico, The Netherlands, Norway, Peru, Singapore, Sweden, Uruguay and Venezuela. Those NMLAs that have not yet submitted a reply are kindly reminded to respond to the Questionnaire as soon as possible, if it all possible by the end of April.

IWG Unified Interpretation: Questionnaire

The Co-Chairs of the IWG on Unified Interpretation for the Standard To Break Limitation Under IMO Conventions, John Markianos-Daniolos and Dieter Schwampe, kindly remind the national MLAs of the dead line for answers to the IWG's Questionnaire (sent out with the President's letter of 19 February 2020). The dead line is due to expire only end of May, but the IWG has so far received only one reply. Support by the MLAs would be much appreciated.

Dieter Schampe

NMLA Bulletin Board

MARITIME LAW & POLICY DEVELOPMENTS IN WEST AFRICA: AN UPDATE

Owing to the COVID-19 pandemic and its devastating sanitary consequences, the Senegal MLA has decided to postpone all its scientific activities including a Regional Colloquium it was preparing to organize in September/October 2020 on the topic of Maritime Law & Policy Developments in West Africa.

Indeed, over the last four to five years, the African continent, in general, and the West Africa region, in particular, have witnessed important developments in the governance and regulation of the maritime sector. Below is a snapshot of some of the most significant developments in that regard.

The African Charter on Maritime Security and Safety and Development (The Lomé Charter)

The Charter was adopted on 15 October 2016 in Lomé (Republic of TOGO) by the Extraordinary Session of the African Union Conference. The Lomé Charter (as it was named) draws the new African architecture of maritime security and the modalities to develop the Blue Economy of the continent. It is the new pan-African legal instrument that represents the latest stage in the progressive engagement of the African Union in the governance of the seas and oceans. **(1)**

The Lomé Charter builds on (i) the Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships and Illicit Maritime Activity adopted in 2013 in Yaoundé (Cameroon) **(2)** as well as (ii) the African Union 2050 Integrated Maritime & Ocean Strategy (AIM 2050).**(3)**

Among its overarching objectives, the Charter aims at:

- i. Preventing and suppressing national and transnational crime including terrorism, piracy, armed robbery against ships, drug trafficking, smuggling of migrants, trafficking in persons as well as illegal, unreported and unregulated (IUU) fishing,
- ii. Protecting the marine environment and promoting a sustainable Blue Economy.

Further, the Charter calls on each African State (where appropriate) to (i) harmonize its national laws to conform with the relevant international legal instruments including UNCLOS, SOLAS and the Protocol of the November 2005 Convention for the

Suppression of Unlawful Acts Against the safety of Maritime Navigation and (ii) train the staff responsible for their implementation, in particular, the personnel with the justice system.(4)

However, despite its ambitious objectives, it is important to underline that the Lomé Charter is not legally binding and therefore runs the risk of becoming a simple wishing list. Indeed, it asks member countries to just” *do their best*“to implement its provisions. This soft law will, obviously, not have the catalytic effect to move forward the African maritime agenda. In addition, not all the 38 coastal States were represented at the Extraordinary Session of the African Union Conference in Lomé.

The Republic of Guinea New Maritime Code

On 26 October, 2018, the Parliament of the Republic of GUINEA passed the Bill introducing the new Merchant Marine Act which replaces that of 1995. In passing this new Act, the government of Guinea (GoG) has confirmed its determination to modernize the country’s maritime laws and implemented the recommendations of the IMO Audit Report. Indeed, the new Act incorporates the major international maritime conventions including, the Rotterdam Rules (to which the country is a Party), the IMO International Ship and Port Facility Security (ISPS) Code and the Port State control and Flag State legal obligations, among others. (5)

This reform of the Merchant Marine Code is expected to be completed by the adoption of several regulatory instruments (decrees, ministerial orders etc.) as well as the setting up of the new institutional framework designed to facilitate its implementation. Other West African countries including Senegal are in the process of revising their maritime legislation.

The Convention on Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern African Region: New Protocols

(The Abidjan Convention)

The Abidjan Convention was adopted on 23 March 1981 and entered into force in 1984. It covers a marine area from Mauritania to South Africa which has a coastline of over 14.000 km. It provides an overarching legal framework for all marine related programs in West, Central and Southern Africa. Africa's Atlantic coast is rich in natural resources, biodiversity, and marine eco-systems. However, many natural and human factors, such as pollution, climate change or population growth, threaten an important number of these fragile ecosystems.

The Convention's main objective is to *protect, conserve and develop* this marine area and its resources for the benefit and well-being of its people.

On July 2nd and 3rd, 2019, in Abidjan (Ivory Coast), the Plenipotentiaries of the three sub-regions of West, Central and Southern Africa got together and agreed on collective instruments to lay down the foundations for the sustainable management of marine and coastal resources to improve the livelihood of coastal populations.

As stated by Mr Abou Bamba, Executive Secretary of the Abidjan Convention "the much needed economic transformation of African countries will be achieved by considering the Blue Economy principles which shall unlock the economic potential of African coastal nations. The long-term economic benefits of the sustainable management of marine resources have been proved all over the world. It is time now that we make it happen in Africa." **(6)**

The four (4) Protocols relate to the following:

- **Pollution from land-based sources and activities**
- **Environmental norms and standards related to offshore oil & gas activities**
- **Integrated coastal zone management**
- **Sustainable mangrove management**

The Integrated Coastal Zone Management Protocol will promote the integrated planning and coordinated development of the coastal zone for the benefit of present and future generations.

The Mangrove Protocol will harmonize principles and set modalities for managing mangrove ecosystems and establish rules for environmental protection and conservation of mangroves within the geographic scope of the Abidjan Convention.

The Oil & Gas and Land Based Sources and Activities (LBSA) Protocols will also play an equally important role in the implementation of the Sustainable Development Goal (SDG 14) in the area of the Abidjan Convention. (7) Many of the coastal States in West Africa, including Senegal, have made huge offshore hydrocarbon discoveries the exploitation of which could pose a significant threat to the marine ecosystems.

As above mentioned, the objective of these Protocols is to provide Member States with regional cooperation instruments aimed at improving the management of coastal zones and the marine environment.

This new Abidjan Convention is considered as an unprecedented contribution to the Regional High Seas Conventions.

End Notes

1. [Prof. Andrea Caligiuri in *Paix et Sécurité Européenne et Internationale* No 6-2017](#)

<https://revel.unice.fr/psei/index.html?d=1454>

See also <https://au.int/en/treaties/african-charter-maritime-security-and-safety-and-development-africa-lome>

2. www.imo.org/en/OurWork/Security/West

3. https://au.int/sites/default/files/newsevents/workingdocuments/33832-wd-africa_union_3-1-pdf
4. [Article 8 of the Lomé Charter. cf note \(1\) above](#)
5. [Dr Aboubacar FALL was the leader of the Legal Team which drafted the 2018 Maritime Code of the Republic of Guinea. See www.atooc.ci/2018/10/26/adoption-d'un-nouveau-code-de-la-marine-marchande/](#)
6. [Mr Abou Bamba, Executive Secretary of the Abidjan Convention in “The New Abidjan Convention Protocols To Transform The Continent’s Ocean Governance”12 July 2019 https://abidjanconvention.org/new-abidjan--convention-protocols-transform-continents-ocean-governance](#)
7. [Dr Habib El Habr, UNEP Coordinator of the Global Programme of Action for the Protection of the Marine Environment from Land Based Activities \(GPA\) https://abidjanconvention.org/new-abidjan--convention-protocols-transform-continents-ocean-governance](#)

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Panama Maritime Law Association



APADEMAR Celebrates Robert Force's Fifty Year Teaching Legacy

This past 27 February 2020, the Panama Maritime Law Association (APADEMAR) was honored to host an event celebrating the fifty year teaching anniversary of Prof. Robert Force, Niels F. Johnsen Professor of Maritime Law at Tulane University Law School and Director Emeritus of the prestigious Tulane Maritime Law Center. The event – labeled *TOUR DE FORCE– Celebrating 50 years of teaching at Tulane Law School* – took place at the main offices of the Morgan & Morgan law firm, in downtown Panama City, and it was attended by members of APADEMAR, authorities, Tulane alumni and friends.

Picture: Professor Force in the middle with the red tie.

The key note speech was delivered by Francisco Linares, a Tulane alumni, partner at Morgan & Morgan and former President of APADEMAR. While at Tulane Law School, Mr. Linares was a student of Prof. Force, having attended his Maritime Law and Criminal Law courses. Prof. Force's legacy in Panama is extremely significant. As Mr. Linares put it:

Oliver Wendell Holmes once famously said that “the law embodies the story of a nation’s development through many centuries”. Ours is a young nation, barely a century old. It is a nation still evolving, and its legal institutions are also, still in the process of being perfected. In that regard, Prof. Force has played a tall role in the relatively short story of the law in Panama. Prof. Force’s direct involvement has been fundamental for the modernization and streamlining of Panamanian maritime law. He has been, for years, a prized member of the

advisory board of the Panama Maritime Conference – the country’s oldest and most prestigious international maritime event, sponsored by our Maritime Bar. His contribution to the improvement of our juridical institutions and our legal culture have earned Prof. Force the recognition of the Panamanian Maritime Bar and of the Panamanian Government. Indeed, Prof. Force has been the recipient of the Woodrow De Castro Award – the highest honor bestowed by the Panama Maritime Law Association – and the Order of Vasco Nuñez de Balboa – the highest decoration granted by the Panamanian Government, for excellence and achievement in various fields. Without question, Prof. Robert Force’s place in the history of Panamanian Maritime Law is firmly secured.

Beyond his accomplishments as a teacher and expert in Admiralty and Maritime Law, Prof. Force’s legacy stems from his human qualities. Quoting from Mr. Linares’ words:

Thus, Prof. Force has been a consequential, certainly the most consequential, foreign legal educator in Panama’s history. In a certain sense, this may come as no surprise. One only has to glance at his CV to realize that Prof. Robert Force is the leading and most recognized American legal scholar in the field of Maritime Law. He has lectured on the subject extensively at home and abroad, written profusely (and, may I say, brilliantly), and has acted innumerable times as an expert in and out of courts, whenever sure guidance was required on the complexities of the Law of Admiralty. This, not to mention his very significant contributions in Criminal Law and the Law of Evidence.

Yet, that is not all there is to it. Robert Force is a consequential figure – in Panama, in the US and I am sure in many other places – because of his character as a man. There is ample evidence of this – as we all can attest. A conscientious, devoted teacher, Prof. Force always had the time outside of the classroom to share with students his remarkable erudition about the Law and his profound wisdom about life. He was always eager and willing to offer guidance to the perplexed – especially if that perplexed disciple was not a native English speaker.

APADEMAR is proud to celebrate the career and accomplishments of one of the world’s most distinguished and beloved maritime legal scholars. Taking a cue from a preferred line his, we extend a heartfelt “*may the Force be with you!*”, now and for the next 50 years, to Prof. Robert Force.

General editors:

Dr Rosalie Balkin - AO - Secretary General CMI

Evelien Peeters - Administrative Assistant CMI