

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

COMITE MARITIME INTERNATIONAL

NO. 2 - MAY/AUGUST 2003

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## NEWS FROM THE CMI

### THE CMI BORDEAUX COLLOQUIUM 10<sup>TH</sup>-13<sup>TH</sup> JUNE 2003

The CMI Colloquium held in Bordeaux from 10 to 13 June 2003 was a great success. 226 delegates from 30 National Associations and 3 observers attended.

The subjects on the agenda were the following:

- I. Trade and transport law in the electronic age
- II. General average
- III. Transport law: the draft Instrument on transport law
- IV. Marine insurance
- V. Places of refuge
- VI. Developments in international maritime law

Here follow the reports of the work done at Bordeaux on each of the above subjects, prepared by the individual chairmen or rapporteurs.

#### I. Trade and transport law in the electronic age

A full day was devoted to e-commerce issues under the chairmanship of Justice Johanne

GAUTHIER (Canada). The session started in the morning with presentations by Paul MALLON (England) and Georges CHANDLER (United States) on how information technology is currently used in the maritime community.

Paul MALLON explained how one can work with electronic transport documents in the absence of an international convention recognizing specifically the validity of such documents and the rights and obligations arising therefrom. He indicated that, almost inevitably, all the parties involved in a transaction which included the carriage of goods by water, had to enter into a contract which dealt with all the legal consequences that would normally flow from the use of a contract of carriage evidenced by a paper bill of lading or a sea waybill. He explained the pros and cons of such a solution and used the Bolero system as an example to illustrate his points.

George CHANDLER did a demonstration of various systems available on the internet to book and track cargo, to provide shipping instructions and issue transport documents. He reviewed how

international rules dealing with contracts of carriage concluded electronically would enable those systems to evolve into fully paperless systems.

These presentations were followed by a review by Philippe GARO (France) of the impact of recent European Union directives and UNCITRAL model laws dealing with electronic commerce and electronic signatures. Mr. GARO also commented on the validity of electronic bills of lading in France following recent amendments in the French Civil Code. In his view, there are still too many uncertainties in the law to foster the use of the electronic contract of carriage in France. He mentioned that in that respect, the adoption of international rules would be beneficial.

Luis COVA ARRIA (Venezuela) made the last presentation of the morning, reporting on the implementation of the two UNCITRAL model laws mentioned by Philippe GARO, in Ibero-American countries. Mr. COVA ARRIA circulated a useful table summarizing the situation in seventeen countries. He concluded that although many such countries incorporated the model laws into their national laws, only four of them included the specific articles dealing with transport documents. According to Mr. COVA ARRIA, there is still much work to be done and the Instrument on Transport Law currently discussed at UNCITRAL will be very important to ensure practical implementation of the concepts put forth in the two UNCITRAL model laws in the field of carriage of goods by water.

In the afternoon, Gertjan VAN DER ZIEL (Netherlands) presented an in-depth analysis of the two approaches one could take to ensure that the Instrument on Transport Law prepared by CMI and discussed at UNCITRAL, is medium-neutral and enables the parties to conclude their contract of carriage electronically allowing the exchange of what is commonly referred to as electronic bills of lading or sea waybills. He explained how the concept of "functional equivalence" adopted by UNCITRAL in the two previous model laws should be applied to negotiable bills of lading. He also explained some of the choices made by the drafters of the provisions of the Draft Instrument on Transport Law in that respect. The paper of Mr. VAN DER ZIEL will be made available on the CMI website.

The afternoon ended with a lively panel discussion on issues arising from the current provisions of the Draft Instrument on Transport Law identified by UNCITRAL as requiring further work. The suggestions made by the various delegates will be considered in developing further the CMI position on these issues before

the UNCITRAL meeting scheduled in the spring of 2004. A brief guide to the e-commerce features in the Draft Instrument on Transport Law will be made available later this year on the CMI website.

JOHANNE GAUTHIER

## II. General Average

At the finalisation of the meeting, the chairman's summary of the conclusions of the meeting was unanimously approved by the International Sub-Committee (ISC). These conclusions were as follows:

1. The work shall continue with the aim of making final decisions at the CMI conference in Vancouver next year. No final decisions were made with respect to the following subjects referred to in the Working Group's report:

- Common benefit (abolition, incremental changes)
- Redistribution of salvage charges
- Time bar
- Interest
- Commission
- Tidying up of the text of the York-Antwerp Rules (YAR).

It was concluded that the subjects dealt with under the heading of:

- Absorption clauses
- Separate treatment of sacrifices of property shall be considered finalised and therefore not be debated further.

2. The Working Group shall continue its work with the aim of producing a draft working paper for the Vancouver conference. A draft of this working paper will be considered by a second meeting of the ISC to be held in London on 17 November 2003 and on the basis of the discussions at that meeting, the Working Group will finalise the document. To be included in the 2003 CMI Year Book to be published before the Vancouver Conference this paper must be in final form no later than the end of December 2003.

3. Common benefit

Draft wordings shall be made of the following clauses to amend the YAR:

- To exclude from GA allowance for crew wages and maintenance
- To exclude from GA allowance for crew wages, maintenance, fuel and stores
- To limit allowance for temporary repairs so as to avoid any undue advantages for ship owners, particularly in cases where a temporary repair makes it possible for the ship to make final repairs at a place where repairs can be made cheaper than close to the port of refuge (Bailey method).

#### 4. Salvage

Although there was some support of the proposal to exclude allowance for salvage charges from GA, this was not enough to make a final decision at this meeting.

No further drafting would be required.

#### 5. Time limit

There was substantial resistance, in particular by the South American countries and other civil law countries against the proposed draft clause. However, it seemed that a compromise may be reached about an amended wording.

The Working Group is to prepare such a new draft and, in doing so, consult with members (in the Working Group's choice) from the MLA's in South America and other civil law countries.

The ISC approved the Working Group's proposal that CMI shall recommend UNCITRAL that a rule of time barring of general average contribution as proposed should be included in the convention on issues of transport law now under consideration.

The representative of IUMI stressed the importance that the rule of time barring was combined so that it includes a provision under which the time was running from the date of the incident.

#### 6. Interest

The proposal by the Working Group for a formula linking the rate to LIBOR was rejected as being too complicated.

However, there was substantial support of a change whereby the interest is made variable in a more simple way, possibly by providing for the CMI to fix the interest rate at suitable intervals.

The Working Group is to produce a draft clause as well as draft guidelines for the CMI Executive Council and Assembly for the fixing of the rate.

There was no support of abolishing interest altogether.

#### 7. Commission

No final decisions were made; the Working Group shall look into drafting a clause under which the actual costs of administering GA would be allowed.

BENT NIELSEN, Chairman

### **III. Transport law: the draft Instrument on transport law**

Mr. Stuart BEARE, the chairman of the International Sub-Committee on Issues of Transport Law and one of the CMI delegates to UNCITRAL's Working Group III (Transport Law), opened the session with a brief introduction of the history and current status of the project.

Prof. Philippe DELEBECQUE, the French delegate to UNCITRAL's Working Group III, proceeded to give a detailed introduction of the UNCITRAL Draft Instrument (U.N. doc. A/CN.9/WG.III/WP.21 (Jan. 8, 2002)), which is substantially the same as the Final Draft Instrument prepared by the CMI's Transport Law Sub-Committee and approved by the Executive Council (2001 *CMI Yearbook*, 532). In his discussion, Prof. DELEBECQUE focused on seven major topics that have emerged during UNCITRAL's negotiations: (1) the ambitious scope of the Draft Instrument, (2) the possibility of greater contractual freedom for the commercial parties, (3) the transport documents covered by the Draft Instrument, (4) the obligations of carriers and shippers, (5) the new concepts (at least in the maritime context) of "right of control" and "controlling party," (6) the carrier's liability, and (7) the Draft Instrument's procedural rules (such as the time-for-suit provision).

Prof. Michael F. STURLEY, the rapporteur of the Transport Law Sub-Committee and one of the United States' delegates to UNCITRAL's Working Group III, focused on the specific issue of the Draft Instrument's treatment of "performing parties." This has proven to be a key subject, and several delegations have submitted proposals to address how the relevant issues might be resolved. Prof. STURLEY reviewed the principal proposals and illustrated how they would apply in a typical multimodal transaction.

Prof. Francesco BERLINGIERI, the chairman of the earlier International Sub-Committee on Uniformity of the Law of Carriage of Goods by Sea (the Uniformity Sub-Committee) and one of the Italian delegates to UNCITRAL's Working Group III, focused on the specific issue of whether the Draft Instrument would create a conflict of conventions if it were to enter into force in Europe, where existing regional conventions already govern the international carriage of goods by road (CMR) and rail (CIM-COTIF). Prof. BERLINGIERI argued that no conflict would arise if we focus on the contracting carrier that agrees to perform the door-to-door transport of the goods. But he also conceded that if a conflict were to arise, the Draft Instrument's attempted resolution of the problem would be unsatisfactory. He concluded by explaining the Italian proposal to resolve this problem.

Mr. BEARE then opened the floor to general discussion. A representative of the Nigerian Maritime Law Association made a general statement endorsing the comments that UNCTAD has submitted to UNCITRAL and adding fourteen specific comments on the Draft Instrument.

Several delegates raised specific questions about

the Draft Instrument, or made specific observations about it. Mr. José María ALCANTARA, of Spain, for example, suggested that the Draft Instrument's definitions should be reconsidered. He was particularly critical of the "performing party" definition. Mr. Sean HARRINGTON, of Canada, noted that the Canadian delegation had proposed a "port-to-port" option, rather than the "door-to-door" option that the UNCITRAL Working Group had overwhelmingly supported. He wondered whether the door-to-door carrier would take advantage of provisions in the Draft Instrument to avoid liability outside of the port-to-port period.

Mr. Eugenio CORNEJO, of Chile, raised several objections to the Draft Instrument, most of which were based on the view that the new proposal was too generous to carrier interests. In particular, he suggested that the Draft Instrument should impose an "obligation of result" on the carrier, and that a carrier should not be allowed to escape liability on the basis of out-dated rules that were inconsistent with modern trends favoring objective liability in other areas of maritime law. He also argued that the monetary limits of liability should not be left to a diplomatic convention, but should be settled by the representatives of the commercial interests who better understood these issues.

Prof. DELEBEQUE responded to several of the points that delegates had raised. He particularly stressed the need for a compromise solution that would be broadly acceptable to all commercial interests. Although Mr. CORNEJO might find the Hamburg Rules more satisfactory than the Draft Instrument, this convention has been unsuccessful in the international arena precisely because it does not provide a fair balance that most of the major trading nations are willing to ratify.

After a short break for consultation, Mr. BEARE reopened the session by introducing the issue of jurisdiction and arbitration. He noted that the Transport Law Sub-Committee had not discussed this issue, but that it had forwarded to UNCITRAL the conclusions of the Uniformity Sub-Committee. This earlier Sub-Committee had generally endorsed the approach to jurisdiction clauses taken under article 21 of the Hamburg Rules, with a significant caveat to remain consistent with the Arrest Convention. There had been less support for article 22's approach to arbitration. It was generally recognized that jurisdiction and arbitration would be important issues for UNCITRAL, but it remained to be seen how the UNCITRAL Working Group would address these issues.

Prof. Ralph DE WIT, of Belgium, who represents the International Federation of Freight Forwarders Associations (FIATA) in

UNCITRAL's Working Group III, discussed jurisdiction clauses from a European perspective. He examined both the lessons that might be learned from the European experience with jurisdiction clauses in the regional transport conventions (such as CMR article 31, which formed the basis for article 21 of the Hamburg Rules) and also the problems that might arise from the interaction of the existing European regulation on jurisdiction clauses with potential new provisions in the Draft Instrument (which might be inconsistent). Prof. DE WIT raised the possibility that European nations may lack the competence to negotiate this issue at UNCITRAL if the European Commission asserts its authority based on the European regulation.

Mr. Stuart HETHERINGTON, of Australia, discussed the issue of jurisdiction clauses from the perspective of a country that has long had national legislation in force specifically governing the rights of parties under bill of lading jurisdiction clauses. He summarized the Hamburg Rules provisions on jurisdiction and arbitration (articles 21 and 22), explained the Australian legislation currently in force, and discussed the current status of jurisdiction and arbitration in the Transport Law project.

Mr. BEARE again opened the floor to general discussion. Several delegates raised additional issues involving jurisdiction and arbitration, such as the possible impact of the new convention being negotiated in The Hague; the recognition and enforcement of foreign judgments; possible distinctions based on when the parties agreed to the jurisdiction or arbitration clause (e.g., before or after the dispute arose); and whether a potential defendant in a liability action would be free to bring a declaratory action (in the forum of its choice) seeking a declaration of non-liability.

Prof. Allan PHILIP, of Denmark, cautioned against using the existing European regulation as a model for an international agreement. Prof. DE WIT agreed that the European regulation should not be a model. It is simply a useful illustration of a possible approach.

Mr. Jean-Serge ROHART, of France, asked about the degree of interaction between the Transport Law Sub-Committee and the E-Commerce Working Group. He wondered, for example, whether there should be greater coordination of terminology. Mr. BEARE explained the large role that the CMI's E-Commerce Working Group had played in the drafting of the electronic commerce provisions of the Draft Instrument. He added that UNCITRAL also had an E-Commerce Working Group, but noted that it currently has a full agenda. Mr. Renaud SORIEUL, of the UNCITRAL Secretariat and the Secretary of UNCITRAL's

Working Group III, confirmed that UNCITRAL's E-Commerce Working Group is now working on electronic contracts. This Working Group previously addressed electronic documents, which are included in the UNCITRAL Model Law.

Prof. STURLEY, as the rapporteur for the session, concluded with a summary of the morning's discussion.

MICHAEL F. STURLEY

#### IV. Marine Insurance

The Marine Insurance International Working Group reported to the Bordeaux Colloquium on progress with the CMI's review of the marine insurance laws of member jurisdictions.

The session was chaired jointly by Prof Malcolm CLARKE, who has led the working group for the past year, and Prof John HARE, who has resumed his role as Chair of the Working Group after a year's leave of absence.

The Chairs outlined the CMI Marine Insurance Review Initiative's route to Bordeaux and reported that members of the Working Group had prepared four studies since the last report of the Group which was at the Singapore Conference in 2001. The topics covered in the studies prepared were *Misconduct of the Assured and Identification* (by Prof Trine-Lise WILHELMSEN of the Norwegian MLA); *Harmonisation of Warranties and Conditions* (by Graydon STARING of the USA MLA); *Utmost Good Faith* (by Andrew TULLOCH of the Australian MLA); and *Alteration of Risk* (prepared by Prof Malcolm CLARKE of the BMLA). These studies were a continuation of the research undertaken by members of the Working Group focusing on four main issues of marine insurance identified as most in need of examination and possible harmonization: good faith, alteration of risk, warranties and disclosure. The Working Group's previous papers on the topics under investigation may be found in the *CMI Yearbook 2000, Singapore I*, and on the CMI website at [www.comitemaritime.org](http://www.comitemaritime.org).

Unfortunately, the papers had not been copied by the conference organizers, and were not available for distribution. They have since been posted onto the CMI website. The Marine Insurance Working Group would welcome comment on all aspects of its work to date.

Prof CLARKE outlined briefly (there being very tight time constraints on the marine insurance session) the contents of the papers before the Working Group, as follows.

##### *(Utmost) Good Faith*

Mr TULLOCH's paper points out that in the

English/American model, the obligation to exercise utmost good faith is mutual to assured and insurer alike. He deals with disclosure as an element of good faith, and the test of materiality. Some attention is given to the duration of the duty, particularly during the course of the contract, and in the submission of claims. He concludes by suggesting that the South African court's view of 'utmost' adding little or no content to the notion of good faith should be preferred to the English court's admittedly ill-defined notion of 'utmost' good faith. He points to the lack of any satisfactory legal remedy to the aggrieved party where good faith is wanting; and, controversially, argues that there should be a remedy in damages – a suggestion that challenges the ruling in the United Kingdom in the *Gemstones case*.

##### *Misconduct of the assured and identification*

Prof Trine-Lise WILHELMSEN's paper on misconduct and identification provides a detailed comparative study of the subject, in respect of which justice cannot be done by a short summary. Her paper is a continuation of the work she submitted to the Singapore Conference and has important bearing on many of the current crucial issues facing shipping: whether the assured may retain cover where his/her own actions have bearing on the loss. Such actions may relate to many aspects of safety at sea – seaworthiness, change of flag and management *et al.* An analysis is provided of how participating states deal with the assured's conduct and misconduct, extending as it may, from innocent misconduct to fraud. The concept of negligence and gross negligence are also analysed. The primarily Scandinavian concept of 'identification' of the assured with the actions of its master, crew and shore operators is dealt with and contrasted with the less sophisticated common law principles of vicarious liability for the acts or omissions of servants or agents. Her paper suggests that, although it may be less well fitted to legal systems with different frameworks, the Norwegian system of identification may serve as a useful model internationally. From the chair delegates were asked to consider whether the problems of identification should be the subject of special rules for insurance cases or left to the general rules of the legal system in question.

##### *Warranties & Conditions*

Graydon STARING's paper provides a US and international analysis of the use of the common law 'warranty' as what in European civilian practice is referred to as a material term or a condition precedent. His paper stresses the difficulties that arise from differing terminology, (non-marine insurance English contractual immaterial warranties, marine insurance English 'warranties',

conditions precedent and terms). He analyses the effect of the breach of a non-causative warranty, and points to reform efforts in regard to the English/US warranty generally, often achieved through policy wordings. He acknowledges that contractual freedom should give the insurer the right to determine the precise parameters of cover, in terms. But he offers the suggestion that the word 'warranty' should be abandoned in favour of a condition precedent. He suggests that policies should be required to spell out precisely the consequences of a breach of a condition precedent (known in some systems as a material term, going to the root of the contract). Alternatively he suggests that a general statement of interpretation for underwriters may be useful to provide for situations where consequences of breach are not adequately spelled out.

#### *Alteration of Risk*

Malcolm CLARKE's study of the Alteration of Risk focused on the use of policy terms in marine insurance to stipulate the parties obligations where there is an alteration of risk during the currency of a policy. He began with the caution that any proposal of new marine insurance law should be evaluated with the following factors firmly in mind: certainty, effective compensation and loss spreading, risk management and loss prevention, the human fallibility and the merits of 'virtuous inactivity'. The Working Group had already identified that an over-riding factor should be that marine insurance and its law should fully embrace issues of safety at sea and environmental protection.

Prof CLARKE indicated that in common law countries, once the insurer has given cover, it is generally bound to that cover notwithstanding alteration of risk. Some such occurrences may be held covered specifically, subject to an 'AP'. This tolerance of alteration of risk is not, however countenanced by the civilian insurer. In European systems, either specific laws govern alteration of risk, or consequences can be inferred from the general law of obligations, employing legal precepts such as frustration or a material change of circumstance which could vitiate consensus. However, the European position might be explained by the practice in the past of granting periods of cover longer than the 12 months or less found in common law countries. Moreover, general requirements of good faith, found in civil law countries but not to the same degree in common law countries, may also require disclosure of the alteration by the assured.

Prof CLARKE then outlined practices in a variety of countries, appending common terms dealing with the alteration of risk. As to the advisability of any

form of international rule, Prof CLARKE pointed out that more than one of the papers presented, notably that of Graydon STARING, indicated that rather than the formulation of model rules or restatements, the questions before the IWG should be left to the market for gradual development in standard policy terms. Thus, his provisional conclusion was that the use of policy terms and warranties (adverting to English law) 'work well enough and should be left alone'.

Prof. CLARKE concluded by asking delegates to consider the so-called 'duty' of mitigation and this question: if, as is clear from Prof. WILHELMSSEN's paper, the negligence of the policyholder 'in the face of the storm is covered by the insurance, why should it not also cover any negligence of the policyholder in 'clearing-up' after the storm is over?

The provisional conclusion, that the law should be left alone, was challenged by an intervention from the Belgian delegation who indicated that there was widespread continental belief that the English system does not 'work well enough' and that reform was long overdue. Assurance was given from the Chair that the Working Group had not in any way closed its mind to the civilian views (especially in relation to the English warranty) and that it would in due course make recommendations for tabling at the Vancouver Conference.

To that end Prof HARE invited all interested parties to participate in an open meeting of the Marine Insurance Working Group to be held in London on Monday 17 November. It was hoped that position papers on certain of the issues explored by the Group would be made available before that meeting, which would take the form of informal and open discussions. Armed with guidance from those discussions, and with input gleaned from approaches to interested persons and organizations in as many jurisdictions as possible, the Working Group would then formulate a set of recommendations to be put to the full conference of the CMI at Vancouver in May 2004. Those recommendations could take any form, from the extremes of 'let well alone' to suggestions on model terms for insertion into policies. Though at this stage considered an unlikely solution, CMI Rules on limited issues to give guidance to the formulation of national legislation, remain a possibility for discussion.

MALCOLM CLARKE - JOHN HARE

#### **V. Places of Refuge**

Written papers were prepared by Richard SHAW, Senior Research Fellow, Institute of Maritime Law,

University of Southampton, member of the International Working Group on Places of Refuge, and Stuart HETHERINGTON, Joint Chairman of the International Working Group on Places of Refuge. Both spoke to their papers. Richard SHAW's paper referred to the incidents involving the vessels "Castor" and "Prestige" which had given rise to considerable international concern. His paper identified some of the provisions in the International Conventions which impact on the topic, including Article 11 of the 1989 Salvage Convention, provisions of the Law of the Sea Convention and the International Convention on Oil Pollution Preparedness, Response and Cooperation, which had been the subject of the first Questionnaire sent by CMI to National Maritime Law Associations. Richard SHAW also referred to the IMO initiatives since the "Castor" and "Prestige" incidents. He referred to the Guidelines for the Evaluation of Risks Associated with the Provision of Places of Refuge, which had recently been prepared by the IMO Sub-Committee on Safety of Navigation, and approved by the IMO Legal Committee.

Stuart HETHERINGTON, in his paper, referred to the work done by CMI, at the request of the IMO Legal Committee, and considered the liability under international law of National Governments where places of refuge are either granted or refused and pollution damage then ensues. He posed the question as to whether a new International Convention needs to be developed which spells out the liabilities which occur when a Place of Refuge is granted or refused and damage ensues, and a fund established to compensate Governments in such situations. He suggested that further investigation needs to be undertaken as to whether such a Convention is necessary, but if it is, he pointed out that it will need to take account of, and be consistent with, current Conventions, as well as having to balance the interests which States have to protect their property and that of their citizens, as well as the environment, and seek to comply with their humanitarian duties to crews on damaged ships and their general responsibilities under international law to provide Places of Refuge to damaged vessels.

Alfred POPP Q.C., the Chairman of the Legal Committee of the IMO, in his remarks, queried whether a new Convention would be appropriate. He referred to the fact that there are currently a number of provisions which are seen to impose obligations on States which are either not known, or little understood, and are lost in the larger Conventions. He wondered whether it was only necessary to re-emphasize some of the existing provisions which are already binding on States who have ratified those Conventions. He recalled

the debates which took place concerning Article 11 of the Salvage Convention and the attempts made by some to make that provision more robust. He recalled one commentator describing Article 11 as "an empty provision".

Gregory TIMAGENIS in his comments, referred to contingency planning which tends to focus on operational matters and described Places of Refuge as a more permanent and more effective way of seeking to confine pollution and avoid its spread. He also referred to actions taken by IMCO in the early 1970s to require the establishment of storage and reception facilities for residues and suggested that it may be appropriate to draw on that as an analogy and have docks (or floating docks) available for distressed ships. He distinguished between operational pollution and accidental pollution. Places of Refuge can be seen as the logical equivalent response to accidental pollution as reception facilities are to operational pollution. He suggested that Guidelines which deal with decision making and on operational steps are not appropriate for an International Convention but the obligation to provide information, establish Places of Refuge, size limitation for tankers, funding arrangements for the creation and maintenance of Places of Refuge may be appropriate for a Convention or Protocol to an existing Convention.

From the audience, Ben BROWNE, referred to the submissions made by IUMI to the IMO which called for a Convention. Such a Convention would establish regional supervisory bodies with power to designate places of refuge. Such bodies would be manned by independent technically qualified people, and compensation should be made available for States affected by such requirements. There should be compulsory insurance.

Francesco BERLINGIERI, in his comments from the floor, referred to the need for the coordination of activities and to Article 17 of the European Port State Control Directive.

José Maria ALCANTARA, from the floor, disassociated the Spanish Maritime Law Association from the Government representative at the IMO, whose remarks had been referred to by Richard SHAW in his presentation. He referred to the fact that the Spanish Maritime Law Association had written to the Spanish Government informing them of the actions taken by CMI and of Richard SHAW's paper.

STUART HETHERINGTON

## **VI. Developments in international maritime law**

A review of recent and current work aiming at harmonizing international maritime law has been made by a number of speakers during the Bordeaux Colloquium. A list of the topics covered

follows, with the name of the speaker who reported on each of them:

PATRICK J.S. GRIGGS

- Introduction
- Registration of bareboat charterers
- LLMC 1976 and 1996 Protocol
- Athens Convention relating to the carriage of passengers and their luggage by sea 2002

ALFRED H.E. POPP

- HNS Convention
- Bunkers Convention
- IOPC Fund Working Group on revision of CLC and FC
- Amendments of the SUA Instruments
- Wreck removal

### *Introduction*

For lawyers of my generation there is a defining moment in the history of Maritime Law.

On Saturday, 18 March 1967, the tanker *Torrey Canyon* ran aground on the Seven Stones between the Isles of Scilly and Lands End off the south-west tip of England. She was carrying 117,000 tons of crude oil and over the course of the next few days most of this cargo escaped into the sea causing substantial pollution in the United Kingdom and in France. We have, regrettably, become used to this sort of event.

The scale of this disaster prompted the UK government to refer the matter to the Inter-Governmental Maritime Consultative Organisation (IMCO). In response the IMCO Council created the Legal Committee with a specific mission to consider questions of liability and compensation for pollution caused by tankers. The Legal Committee sought the assistance of the CMI which, even before the *Torrey Canyon* incident, had started work on a convention to regulate issues of liability and compensation for oil pollution.

My father acted for the liability insurers of the Owners of the *Torrey Canyon* and in an opinion dated 5 April 1967 he wrote:

“Gruff noises made by the Prime Minister since the occurrence, insofar as they are meaningful, indicate an intention on the part of HM Government to seek redress in respect of the expenses which it has incurred in its attempt to defeat the spread of oil from the *Torrey Canyon* to the shores of this country...”

As the law stood in 1967, those with claims arising out of the *Torrey Canyon* incident were faced with huge legal problems in seeking compensation. The deliberations of the Legal Committee and the 1969 CLC which it subsequently produced were

designed to ensure that when future oil pollution incidents occurred there would be a clear liability regime backed by adequate compensation.

This was, I believe, the first private international law convention ever produced by a United Nations body and since that first convention the IMO Legal Committee has gone on to produce any number of such conventions – the most recent being the Supplementary Fund Convention agreed at the Diplomatic Conference in London last month.

Prior to the *Torrey Canyon* incident, private international maritime law conventions had been the sole responsibility of CMI going back to our first two Conventions – those relating to Salvage and Collision in 1910.

Whilst the CMI continues to work on its own projects (and I have in mind in particular the current work to revise the York-Antwerp Rules of 1994), we see our role more and more as a consultant to inter-governmental organisations on international maritime law topics. I like to think we are playing an useful role here particularly through our co-operation with the IMO Legal Committee. Most of you in the audience today are busy on a day-to-day basis with shipping related matters. Many of you are lawyers but a substantial number are not, but whatever we do for a living we need to know what the law is in our particular field. We are, I think, all at fault, in failing to lift our eyes from the papers on our desks in order to see what changes in maritime law we are likely to encounter. It would be nice if we all had time to get involved at an earlier stage in the process of developing international maritime law conventions but very few of us have the time or inclination. The best that the three of us on this panel today can do is to alert you to what is coming your way.

To help me in this task, we are lucky to have Alfred POPP Q.C. from Canada who is the current Chairman of the IMO Legal Committee who, in that capacity, has acted as midwife to numerous recent conventions and protocols.

We also have Dr Frank WISWALL who is currently Vice-President of the CMI and, in an earlier incarnation, was also Chairman of the IMO Legal Committee.

So here we go. My original list of topics scribbled, over lunch at IMO, on the back of an envelope consisted of no less than 15 different topics. There have, earlier in the Colloquium, been specific sessions dealing with transport law, places of refuge and marine insurance. This reduces our task to some extent but we have, nonetheless, to cover 12 topics.

### *Registration of bareboat charterers*

Article 2(1)(a) of the Athens Convention 1974 provides that the convention shall apply to any

“international carriage” if “...the ship is flying the flag of or is registered in a State Party to this Convention...”.

Article 5 of the 2002 Protocol to the Athens Convention adds a new article to the Convention which requires that where a vessel is licensed to carry more than 12 passengers, the carrier who actually performs the carriage is required to maintain insurance to cover liability for loss of life and personal injury to passengers.

A ship covered by the Convention is required to carry a certificate proving the existence of insurance cover. The obligation to issue such a certificate rests with States Parties to the Convention. Article 5 also provides that States Parties are not to permit vessels flying their flag to operate without a proper certificate of insurance.

It has become quite common in recent years for States to allow ships to fly their flag under the terms of a bareboat charter under which the bareboat charterer assumes all the duties and responsibilities of the Owner for the operation of the ship. The ownership and any encumbrances on the ship will remain registered in the state of the beneficial ownership and that State will suspend the right of the ship to fly its flag.

By a Resolution passed at the Diplomatic Conference, IMO is requested to carry out a study of this practice of issuing certificates to a registered bareboat charterer in the context of the Athens Convention and Protocol. It was suggested at the Diplomatic Conference that guidelines might usefully be drafted to cover the situation.

Presumably a problem might arise if the state of the registered owner is a State Party to the Convention but the state of the bareboat charterers' register is not. Indeed, bareboating the vessel and re-registering it in the bareboat charterer's state, where that state is not a party to the Convention, could be a convenient way round the liability and insurance obligations arising under the Convention and its Protocol.

This is a complex issue and the CMI has volunteered to carry out a study into the problems arising from bareboat chartering of passenger carrying vessels. An International Working Group is in the process of being set up and a report will be prepared for submission to the IMO Legal Committee.

#### *LLMC 1976 and 1996 Protocol*

My starting point for the 1996 Protocol to the LLMC 1976 is, curiously, the HNS Convention 1996. Article 9 of the HNS Convention provides that the Owner of a ship faced with a claim for the consequences of an HNS spill may limit liability to SDR10 million (about \$14m) for a ship not exceeding 2,000 tons. There are, of course, per ton

increments above this minimum tonnage but it does mean that (subject to the small ship reservation in Article 5) the minimum exposure in relation to HNS claims is SDR10 million (US\$14 million/£8.6m).

At the same Diplomatic Conference which gave birth to the HNS Convention, delegates also finalised the text of a Protocol to the LLMC 1976 and it is no coincidence that, when looking at minimum tonnage for limitation purposes under the LLMC, delegates to the Diplomatic Conference decided that the same minimum tonnage figure should be adopted. This 2,000 gross ton minimum tonnage figure will replace the 500 ton minimum tonnage figure which applies under the LLMC 1976. As mentioned above, the minimum exposure for vessels of 2,000 tons (and less) for an HNS spill will be SDR10 million (US\$14m/£8.6m). In respect of non-HNS claims, the personal injury limit for a vessel of similar size will be SDR2 million (US\$2.8m/£1.7m) with a further SDR1 million (US\$1.4m/£860,000) for property damage claims.

It is interesting to compare the position before and after the 1996 Protocol. Applying the new minimum tonnage figure and increased limits means that the Owner of a 500 ton vessel will see his total liability for loss of life, personal injury and property claims increase by a factor of 6. Above the 2,000 ton minimum tonnage, both the loss of life/personal injury funds and the property damage funds increase on a per ton incremental basis. At limitation figures above the 2,000 ton minimum tonnage figure it will be found that, on average, limitation amounts under the 1996 Protocol have only gone up by a factor of 2.3.

Figures produced at the Diplomatic Conference, based on the basket of currencies used in the valuation of the SDR, reveal that it would have been necessary to apply a factor of 3 in order to restore the purchasing power of the amounts fixed in the '76 Convention. On the face of it, therefore, the increases are less than were necessary to restore the value of the funds. However, it was argued, vigorously, on behalf of shipowner and insurance interests that in deciding on the amount of the increase, some account should be taken of the fact that a separate, free-standing, HNS fund was being established which would take HNS type claims out of the normal limitation regime. It was argued that it was therefore appropriate not to adjust the 1976 figures to the extent required to restore the value of the funds. That argument appears to have succeeded.

It will be recalled that by Article 15 of the LLMC 1976 there is a reservation enabling states to make special rules for inland waterway vessels and vessels of less than 300 tons. The UK exercised

those options when implementing the LLMC 1976 and this right is not affected by the 1996 Protocol. It is, therefore, likely that in the UK, as and when the 1996 Protocol comes into force, the exception for inland waterway vessels and vessels under 300 tons will be exercised.

One curious omission is already apparent. Article 6(4) of the 1976 Convention provides that the limit of liability for a salvor not operating from his salvage vessel shall be calculated according to a deemed tonnage of 1,500 tons. Does this mean that it will in future, be necessary to apply the 2,000 ton minimum tonnage to salvors as well as to other shipowners or does the 1,500 ton figure survive? The position is not clear.

Those familiar with the LLMC 1976 will know that Article 7 contains a limitation provision relating to passenger claims. Article 7 produces a global limitation fund calculated by multiplying 46,666 SDR by the number of passengers which the ship is certified to carry (up to a maximum of 25m SDR). The 1996 Protocol to LLMC 1976 increases the multiplicand to 175,000 SDR and removes the 25m SDR ceiling.

By Article 6 of the 1996 Protocol a further subparagraph is added to Article 15 of the LLMC 1976 (Reservations) which enables State Parties to regulate by national law the system of liability to be applied to claims for loss of life or personal injury to passengers provided that the limit is no lower than that prescribed in Article 7 of the LLMC 1976 – as amended. This is all to do with the then current concern at the low limits applied to passenger claims under the Athens Convention 1974 – and the prospect of the Athens limits being increased.

A final amendment to be noted relates to special compensation payable under Article 14 of the Salvage Convention 1989. Article 3 of the LLMC 1976 is amended by the 1996 Protocol to exclude from the right of limitation any claim for such special compensation.

As regards entry into force of the 1996 Protocol at the last count 8 countries had ratified the 1996 Protocol as against the 10 States required for entry into force.

#### *Athens Convention relating to the carriage of passengers and their luggage by sea 2002*

This is the name given to the consolidated text of 1974 Athens Convention as amended by the 2002 Protocol.

This is, in many respects, a revolutionary document. Amended Article 3 of the Athens Convention deals with the question of liability. In relation to loss of life and personal injury claims it is provided that where this occurs as a result of a “shipping incident” (see below for definition) the

carrier will be strictly liable up to a limit of SDR250,000 (US\$350m/£215m). The carrier may escape liability only when the incident resulted from war etc or from a deliberate act or omission done with intent, by a third party.

Where the loss exceeds the strict liability limit of SDR250,000 (US\$350,000/£215,000), the carrier will be further liable (up to the new limit of SDR400,000 (US\$565,000/£345,000) stated in a revised Article 7) unless the carrier can prove the loss occurred without his fault or neglect. The burden of proof in this respect is on the carrier.

Where the loss is caused by a non-shipping incident, the carrier will be liable if the claimant can prove the fault or neglect of the carrier.

Very little change has been made in relation to luggage though the limits have been up-lifted.

As indicated above, strict liability attaches where the loss occurs as the result of a “shipping incident”. Shipping incident is defined as meaning “shipwreck, collision or stranding of a ship, explosion or fire in the ship, or defect in the ship”. This is a definition with which we lived quite happily under the 1974 Athens Convention. However, it has been thought necessary in the 2002 Protocol to seek to define “defect in the ship”. This is intended to make it clear that the strict liability up to SDR250,000 only applies if the defect which gives rise to the claim is in the parts of the ship which are dedicated to navigation, propulsion, steering, handling and in the parts dedicated to passenger safety and evacuation. The new definition does not embrace those parts of the ship which are associated with the “hotel functions” of the ship. The definition, as drafted, is pretty complex and may not, in the event be particularly helpful.

Whether a claim arises out of a shipping incident or a non-shipping incident under the Athens Convention merely determined whether there was a presumption of fault or not. Under the Protocol wording the determination of the issue will have far more significance for claimants. If it falls within the definition of a shipping incident, the carrier will be strictly liable up to SDR250,000 and this will also open a direct right of action against the liability insurer.

There is no doubt that Article 3 in its revised form, is markedly more complex than Article 3 of the Athens Convention which it is designed to replace. There has, throughout, been a clear political will amongst delegations to the IMO Legal Committee to impose a degree of strict liability up to a certain limit as a means of offering protection to innocent passengers. It is questionable whether it would not have been sufficient to maintain the presumption of fault (which has seemed to work well in practice up to now) rather than introduce concepts of strict liability.

Allied to the new regime on liability and limitation is an obligation on the Owners of vessels licensed to carry more than 12 passengers to maintain insurance or other financial security to cover liability for loss of life and personal injury to passengers. This insurance is to be for no less than SDR250,000 per passenger on each distinct occasion. Article 4 bis which contains these provisions, sets out in considerable detail how these certificates are to be worded and issued.

Tucked away in sub-paragraph 10 of Article 4 bis is a provision entitling claimants to pursue their claims direct against the insurers or other providers of financial security. The insurers will have the same defences as would have been available to the carrier and may also escape liability if they can establish that the accident occurred as a result of the wilful misconduct of the carrier.

I have already mentioned that the Protocol amends the limitation provisions contained in Article 7 of the Athens Convention by increasing the limit to SDR400,000 per capita on each distinct occasion. It must be understood that this limit is, in effect, a second tier over and above the strict liability tier which is contained in revised Article 3. The limit in Article 7 will only apply where claims exceed the first tier limit stated in Article 3. In relation to claims in excess of the Article 3 limit, the carrier will be liable unless he can prove that the incident causing the loss occurred without his fault or neglect.

It is worth noting that Article 7, in its amended form, will enable a State Party to provide a higher national limit if it so wishes. It appears that this higher national limit could be applied not only to national flag carriers but also to foreign flag vessels visiting the ports of a State Party.

One other feature of the Protocol which is worth mentioning is Article 10 which amends Article 17 of the Athens Convention on issues of competent jurisdiction.

I need not go through the jurisdictions which are competent under Article 17. These are the obvious ones such as the defendant's place of business and of course the places where the voyage starts or finishes.

Indirectly, however, there has been an increase in the number of competent jurisdictions, bearing in mind that under Article 4 bis the insurer or other provider of financial security may be a defendant as well as the carrier. Thus, the Courts of the State where the contract of carriage was made may be competent even if the carrier has no place of business there (and is therefore not subject to the jurisdiction of that Court) if the insurer or other provider of financial security himself has a place of business there and is subject to the jurisdiction of the Courts of that State.

A further additional jurisdiction imposed by Article 17 appears at (2) which provides that the claimant may, if he wishes, bring an action against the insurer or other provider of financial security before one of the Courts where an action could have been brought against the carrier or performing carrier. In other words, the insurer or other provider of financial security may find himself defending an action in the Courts of a country in which he does not have a place of business and is otherwise not subject to the jurisdiction.

The Convention, in its amended form, will come into force 12 months following the date on which 10 States have acceded to the Protocol.

One new Article which does require comment is Article 19 which was proposed by the European Union. The need for this article arises out of the fact that in December 2000 States of the European Union adopted a regulation on the Recognition and Enforcement of Judgments in Civil and Commercial Matters. This Regulation has effectively transferred national competence in the area of recognition of judgments to the Community. My fear is that this may be the first step towards a takeover by the Commission of Member States negotiating rights on international conventions. Time will tell.

PATRICK J. S. GRIGGS

#### *HNS Convention*

On May 3, 1996, a diplomatic conference under the auspices of the International Maritime Organization (IMO) adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS Convention). According to Article 46, two conditions are mandatory for entry into force of the convention, namely,

1. twelve states, including four states with no less than 2 million units of gross tonnage, must consent to be bound; and
2. the Secretary General of IMO must have received information that within those states there are persons who in the preceding year have received a total quantity of at least 40 million tons of contributing cargo.

The regime set out in the convention is closely modeled on the regime in the Civil Liability Convention and the Fund Convention relating to compensation for oil pollution damage caused by tankers. One notable distinction, however, is that the HNS Convention covers both damage caused by pollution and damage caused by fire and explosion. Loss of life and personal injury, therefore, will be an important factor in this regime.

Compensation is based on a two-tier system. The first tier of compensation will be paid by the shipowner, on the basis of strict liability, on a progressive tonnage basis, up to a maximum of 100 million SDR. Moreover the shipowner's liability will be backed by compulsory insurance on terms already familiar from other IMO liability conventions. The second tier of compensation will come from a fund – the HNS Fund – and will pay, including any amount paid by the shipowner, up to 250 million SDR.

The administrative aspects of the regime – Assembly, budgets and the levying of contributions – are closely modeled on the familiar IOPC Fund scheme. So far only three states have ratified the convention – Angola, the Russian Federation and Morocco. The lack of adherence to date is probably dictated by the extraordinary complexity of the new scheme due to the fact that, unlike the oil pollution schemes, a large number of industries and contributing cargoes are involved in this scheme. The greatest challenge in implementing this convention, therefore, is to find an accurate and reliable reporting system for contributing cargoes, since this is crucial for the calculation and collection of the contributions for the payment of compensation.

A working group under the auspices of the Legal Committee has been in operation for some time. Under the leadership of the UK delegation, this WG aims at studying and resolving the various technical issues associated with the implementation of this new regime. The indications according to the latest report of that WG suggests that a number of states, particularly in Europe, are actively considering implementation of this convention. If this happens we may be quite close to the entry into force of this new regime.

#### *Bunkers Convention*

On March 23, 2001, a diplomatic conference under the auspices of the IMO, adopted the *International Convention on Civil Liability for Bunker Oil Pollution (Bunkers Convention)*. Initially, this project did not enjoy much support in the Legal Committee. Many thought that such a regime was not necessary, since in many jurisdictions domestic regimes already covered spills caused by ship bunkers. A small minority of states, however, led by Australia, persisted and succeeded in convincing the international community of the need for such an international instrument.

The scheme in the new convention, once again, is closely modeled on the 1992 Civil Liability Convention related to tanker spills, but with some noteworthy differences. Liability is channelled to

the shipowner but, in contrast to the CLC, this term is defined to include, in addition to the registered owner, the bareboat charterer, manager and operator of the ship. Liability is strict and is backed by compulsory insurance. To avoid a proliferation of insurance certificates, the “registered owner” is required to furnish it. Moreover, this requirement only applies in respect of ships having a gross tonnage greater than 1000 tons.

The *Bunkers Convention* maintains the right of the shipowner to limit liability but it does not prescribe its own limit. Rather, it adopts the limit of liability “under any applicable national or international regime, such as the *Convention on Limitation of Liability for Maritime Claims*” (Article 6).

The convention was open for signature from October 1, 2001 to September 30, 2002. Since then, it remains open for accession. Entry into force includes 18 states including 5 states with a combined tonnage of not less than 1 million tons (Article 14).

#### *IOPC Fund Working Group on Revision of CLC and FC*

In recent years there have been a number of large tanker incidents that have given rise to the concern that claims for oil pollution damage resulting from these incidents could not be paid in full. While the record of the IOPC Fund regime remains very good – in most incidents, claims are paid in full without the need to litigate them – in major cases it has become necessary to resort to prorating payment of claims prescribed under the conventions to ensure that all claimants are treated on an equal footing. Further, there have also been long delays because of apprehension that the compensation available would not be sufficient to pay all claims in full.

This has become particularly evident in two very recent cases – the *Erika* in 1999 off the coast of France and the *Prestige* in 2002, off the coast of Spain. The cry has gone up, particularly in Europe, that the existing regime is inadequate. Some, especially in the European Union (EU) have even cast their eyes over the Atlantic suggesting that Europe should have at least as good protection as their American counterparts under the *Oil Pollution Act of 1990 (OPA 1990)*.

Within the EU plans have been made for the creation of a European fund, the so-called COPE Fund that, in the minds of some, might eventually lead to the replacement of the global regime with a “made in Europe” regime. To respond to this challenge, the IOPC Fund Assembly established a working group to review the Civil Liability Convention and the Fund Convention with the object of identifying improvements to the international regime. Since the *Erika* incident,

there have been the following developments.

- (a) Increase in limit under the tacit amendment procedure included in the 1992 protocols to the Civil Liability Convention and the Fund Convention, which will enter into force this November (the combined amount of compensation under the two conventions will rise to 203 million SDR).
- (b) Last month, a diplomatic conference, under the auspices of the IMO, adopted a protocol to establish a supplementary fund, developed by the WG, to be available to states parties to the 1992 Fund Convention on an optional basis for the payment of compensation to the extent that compensation under the 1992 instruments is insufficient. The supplementary fund, including amounts payable under the 1992 instruments, would make up to 750 million SDR available.
- (c) The WG also developed amendments to the IOPC Fund Claims Manual aimed at introducing more flexibility in the treatment of claims based on environmental damage while, at the same time, maintaining the vital link with the definition of pollution damage in the conventions, which has not been changed.

In the case of (b), above, the entry into force conditions include 8 states and within those states there must be contributors who receive a total of at least 450 million tons of contributing oil. Based on statements made at the conclusion of the conference, it would seem that EU countries and Japan are looking into early implementation of this new instrument. It should be noted, also, that Japanese adherence has been secured by conceding the right to cap contributions from a single contracting state at 20 % for ten years or when the amount of contributing oil within contracting states has reached 1,000 million tons, whichever occurs the earliest.

With the above changes, the WG has completed the first phase of its work. In passing it should be noted that the Group also developed a draft resolution aimed at achieving greater uniformity in the application of the two conventions by enjoining states to bring to the attention of their courts the decisions of the governing bodies of the Fund relating to the interpretations and application of the conventions.

The remaining issues facing the WG relate to whether changes should be made to the Civil Liability Convention to redress the perceived imbalance in responsibility for the payment of compensation brought about by the prospect of a supplementary fund financed exclusively by cargo owners (oil interests). It is recognized that any rewrite of the Civil Liability Convention, for example, by a substantial increase in shipowner

liability, would require fairly complex transitional provisions along the lines of what was included in the 1992 protocols to regulate passage from the old system to the new one.

Aside from increase in compensation amounts, other aspects of the current regime have been called into question, notably, the system of channelling liability to the registered owner for the benefit of the charterer, managers and operators which it has been suggested might unduly protect operators of substandard ships. The ironclad language of the provision relating to conduct barring limitation has also been questioned.

So far few concrete proposals have been tabled, merely the principles of these notions have been discussed. Insurance interests (P&I) have countered with an offer to increase compensation, on a voluntary basis, for smaller ships, which, they argue, would redress any perceived imbalances.

The WG is scheduled to meet early next year, at which time, hopefully, it will become clear whether the arduous task of amending the existing treaties, including appropriate transitional provisions, will be undertaken.

#### *Amendments of the SUA Instruments*

After the tragic events of 9/11/01 marine security became a top priority for the IMO. At its 22<sup>nd</sup> session in November 2001, the Assembly adopted a resolution (A.924.22) to review measures and procedures to prevent acts of terrorism which threaten the security of passengers and crew and the safety of ships. In the case of the Legal Committee this translated into a request to review the *International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988*, and its protocol relating to fixed platforms (SUA Convention and Protocol) on a priority basis.

The United States delegation responded by submitting to the Legal Committee, at its 85<sup>th</sup> session in October 2002, draft protocols to these two instruments, expanding the offences outlined in Article 3 of the original convention and protocol. The submission by the United States contained other interesting modifications, notably a new article aimed at allowing the boarding of ships on the high seas for the purposes of search and, where justified, detention of the ship, her cargo and persons on board. Further, provisions were included for the transfer of prisoners for the purposes of investigation and prosecution of offences in other jurisdictions. Moreover, the "political offence" exception is to be tightened.

The discussion, naturally, at the October session was preliminary in nature, given the late distribution of the documents, their volume and the fact the subject matter really concerns criminal

law and mutual legal assistance, subjects not normally dealt with by the Legal Committee. Intensive intersessional work followed the 85<sup>th</sup> session resulting in a fresh redraft for the 86<sup>th</sup> session of the Committee at the end of April.

The aim of the expanded offences contained in the draft protocols is to bring under the scope of the SUA instruments all terrorist acts that might be committed on board or by means of ships, drawing heavily on other terrorist conventions that have been adopted over the years, notably, the *Convention for the Suppression of Terrorist Bombings* and the *Convention on Suppression of the Financing of Terrorism*. Indeed, one offence relates to the use of a ship in connection with terrorist activities already dealt with in a whole list of other conventions.

Broadly speaking, so far, a number of concerns have been expressed with respect to the new redraft proposed in the American paper, notably that the new offences are too broad and may unduly overlap with offences dealt with in other conventions. Further, that the new offences may create problems with respect to the existing offences dealt with in the current instruments. On the margins of the Legal Committee meeting a group of volunteers refined the offence provisions and according to informal reports progress was made which, no doubt, will continue in the intersessional period before the next session of the Committee in October.

The other subject that has retained a lot of attention in the Committee is the boarding provisions that have been included in the draft protocols. While there is recognition that there may be some justification for boarding foreign flag vessels on the high seas, it is equally clear that further work will be needed to clarify the objectives, to ensure that proper safeguards are included and to make sure that such powers would not be abused. The line to be drawn between legitimate boarding, in some very limited circumstances without permission of the flag state, and piracy has also been noted. Finally, it has been suggested that there is a close link between the nature of the new offences and the boarding offences to be included in the draft instruments.

Although much work remains to be done, because of the high priority that this subject enjoys, the Legal Committee will be asking the governing bodies of the Organization later this year to make provision for a diplomatic conference in the next biennium (2004/5).

#### *Wreck Removal*

This subject has been on the work program of the Legal Committee for a long time. For many years it was more or less dormant. Lately, however, the

subject has revived initially at the instance of a small group of states (Netherlands, Germany, United Kingdom). At recent sessions of the Committee it seems that, after initial reluctance to endorse this project, support is growing.

The object of the new convention is to draw up rules for the identification, marking and removal of wrecks located outside territorial waters where national laws would not apply save to the extent that such wrecks pose a threat or danger to the environment. In the crowded waters of Europe this problem may be more obvious than elsewhere in the world, hence the somewhat lukewarm reception that this matter has received in the Legal Committee.

Aside from some concern about possible overlap between the new convention and other established conventions, such as the 1969 Intervention Convention, the 1989 Salvage Convention and the 1992 Civil Liability Convention, there are two very specific concerns with this project. First, there has been some concern as to what extent such a convention could be made to apply with respect to wrecks that did not actually pose a pollution threat. While general principles in the 1982 *Convention on the Law of the Sea* and the *Intervention Convention* clearly address the issue of pollution threats, there was some doubt in the Committee about the competence of the IMO to address the question of wrecks not posing such a threat located in international waters.

At the last session of the Committee the Secretariat submitted a paper which argues very convincingly that the Organization is the competent international body to address this problem. Nevertheless, that is not the end of the matter. The question remains as to how such a convention could be made to apply in respect of ships flying the flag of a state that is not party to the convention, bearing in mind that the new convention seeks to impose obligations on states in respect of ships registered in their jurisdiction, as well as on registered owners themselves. The intention is to impose the obligation for wreck removal activities on the shipowner on a strict liability basis.

The second issue to be resolved relates to the compulsory insurance requirements to be included in the new instrument. These requirements, broadly speaking, as presently drafted follow the tried and tested models included in other IMO liability instruments. But shipping interests, as well as insurance interests (P&I), have voiced doubts about the need for such requirements, arguing that at the most certificates of entry would be sufficient, since costs for wreck removal are a standard condition for P&I cover. What is perhaps conveniently overlooked is that

certificates of entry do not address one of the key objectives of compulsory insurance provisions in international treaties, namely to overcome the “pay to be paid” principle which is also a standard condition of P&I policies.

Aside from the above two issues a lot of work remains to be done on the drafting of the new

instrument. Nevertheless, as in the case of the SUA draft protocols, dealt with above, the Committee will be asking the governing bodies to make provision for a diplomatic conference in the next biennium to adopt this instrument.

ALFRED H.E. POPP, Q.C.

## MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL HELD IN BORDEAUX ON 10<sup>TH</sup> JUNE 2003

Attending:

<i>President:</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Frank L. WISWALL, Jr.
<i>Councillors:</i>	Jose Maria ALCANTARA Luis COVA ARRIA John HARE Stuart HETHERINGTON Thomas REME Gregory TIMAGENIS
<i>Treasurer:</i>	Benoît GOEMANS
<i>Administrator:</i>	Wim FRANSEN
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Past President:</i>	Allan PHILIP
<i>Publication Officer:</i>	Francesco BERLINGIERI
<i>Others:</i>	Jean-Serge ROHART Marko PAVLIHA

Patrick Griggs opened the Meeting by welcoming the attendants.

### 1. Apologies for absence

(a) Patrick Griggs informed the members of the Executive Council attending the meeting that Johanne Gauthier, Henry Li, David Angus and Alexander von Ziegler could not come to the meeting because of various justified reasons.

(b) *Approval of the Minutes of the Executive Council Meeting held in Antwerp on December 6/7, 2002*  
The Minutes of the Executive Council Meeting in Antwerp on December 6/7, 2002 were approved.

(c) *Matters arising. Action list “Things to do” prepared following December 6/7, 2002 meeting in Antwerp*

Patrick Griggs went through the list “Things to do”. Most of the items were part of the Agenda and would be considered there. The following items of the list were discussed:

(3.) The outstanding issues regarding the details of CMI products on the website with possibility to purchase by Visa will be dealt with by Pascale Sterckx and Benoît Goemans.

(9.) Francesco Berlingieri has collected membership data directly from NMLAs, however, he did not receive replies from all of them. It was agreed that a note would be put on the website and in the Yearbook, urging the NMLAs to send changes of their data in a special format to Francesco Berlingieri, copy to Pascale Sterckx.

(20.) If the NMLAs wish to obtain credits for continuing legal education, they should contact the organisers of the Vancouver Conference. Patrick Griggs will also speak with the organisers in this respect.

(22.) The IMO/CMI website links have been established.

(31.) The question of costs of publications (per volume) if published by Lexis Nexis will be discussed under item 10 of the Agenda.

## 2. Attendance of Prof. Marko Pavliha

Patrick Griggs introduced Marko Pavliha as the nominated candidate for the post of Secretary General of CMI and asked him to take the Minutes of the Executive Council Meeting. He will discuss with him the role of Secretary General in more details in the near future.

## 3. Finances

### *(a) Final Accounts for 2002 and Financial Report for 2003*

Benoît Goemans reported extensively on expenses in 2002 with special emphasis on publications, salaries and postage. He compared the income and expenses in 2000, 2001 and 2002, as well as the income and expenditure for previous years and the budget for 2002, 2003 and 2004. The split of income and expenses in 2002, as well as the liquidity plan were presented. Surplus for 2002 amounts to 41.385 euro. It was agreed that no special investment is needed for the liquidity fund and that it should not be increased. Furthermore, he explained briefly the "Report and Financial Statements" as per December 31, 2002, including the auditor's report, the income and expenditure account, the balance sheet and the cash flow statement. The accounts were adopted and will be distributed to all NMLAs and presented by Benoît Goemans at the CMI Assembly.

Jose Maria Alcantara raised the VAT problem regarding the Toledo conference organised by the Spanish MLA. He distributed a paper entitled "Organisation of Seminars (Finances)", dated June 2, 2003. It was agreed that the documents would be sent to the auditors. Jean-Serge Rohart suggested that no VAT should be charged for conferences because most NMLAs were not registered for VAT. Patrick Griggs drew attention to the "Guidelines for Organising the Conferences" where there is a new special provision with respect to this problem. Frank Wiswall proposed an increase of the liquidity fund up to 75.000 euro in order to solve such financial difficulties, but the proposal was not adopted.

Patrick Griggs read the "Report of the CMI Audit Committee" dated June 6, 2003 and signed by David Angus, in which adoption of the following resolutions were recommended:

1. That the resignation of Moore Stephens as external auditors of CMI for 2002 be and is hereby accepted.

2. That Messrs. De Mol, Meuldermans & Partners, with Mr. Kris Meuldermans as partner-in-charge of the CMI audit, be and are hereby appointed as CMI external auditors for 2002 and 2003.

3. That the CMI's audited financial statements for 2002 prepared by Kris Meuldermans of De Mol &

Meuldermans, together with the Auditors' Report thereon dated April 29, 2003, be and are hereby adopted.

4. That the proposed CMI Budget for 2003, as prepared by the Treasurer, be and is hereby adopted."

The above resolutions were adopted and will be recommended to the Assembly.

### *(b) Subscriptions for 2004*

As some profit is expected from the Bordeaux and Vancouver Conferences, Patrick Griggs suggested to maintain subscriptions for 2004 at the current level. His proposal was adopted.

### *(c) Unpaid Contributions*

Karl-Johan Gombrii presented the "List of Unpaid Subscriptions for 2002 and Previous Years" which is part of the Assembly file. Benoît Goemans explained that there are no outstanding amounts anymore regarding Slovenia and Venezuela.

As Russia owes the largest amount, the total debt should be broken down by years in order to make it clearer. Allan Philip will talk to Prof. Lebedev about this problem.

Israel requested a reduction of subscription which is not possible and has been refused.

It was also agreed that all members of the Executive Council would receive a document explaining the categorisation of national subscriptions.

### *(d) Legal status of CMI*

Benoît Goemans reported that the French version of the Constitution was informally approved by the Belgian Administration and will be signed by the King sometime in the future. The French text can still be amended.

## 4. Next meeting of Executive Council

There will be a short meeting of the new Executive Council after the CMI Assembly on Friday, June 13, 2003.

In order to save costs and in light of the approaching Vancouver Conference, Patrick Griggs suggested that there was really no need to meet in Autumn 2003. A number of Councillors were of different opinion, so it was decided that the next meeting would be on Tuesday, November 18, 2003 in London, preceded by meetings of IWGs and ISCs on November 17 and followed by the BMLA dinner on November 19.

Executive Council will also meet during the conference in Vancouver, i.e. on Sunday, May 30, 2004 at 9:30 p.m. and after the Assembly on Friday, June 4, 2004.

## 5. Assembly

### *(a) Assembly 2003*

The 2003 CMI Assembly will be held after the

Bordeaux CMI Colloquium on Friday, June 13, 2003 at 2 p.m. in Hangar 14, Quai des Chartrons, Bordeaux, France.

*(b) Assembly 2004: Vancouver – Friday, June 4, 2004.*

The 2004 CMI Assembly will be held after the Vancouver CMI Conference at 2:00 p.m. on Friday, June 4, 2004.

## **6. Nominating Committee**

The Report of the Nominating Committee was presented by Allan Philip.

The Nominating Committee gave full considerations to the views of those NMLAs which replied to its invitation to propose candidates for three vacant posts, and decided to make the following nominations for election at the Bordeaux Assembly:

Executive Councillor: John Hare (South Africa) for a second term.

Executive Councillor: Jose Tomas Guzman (Chile) for a first term.

Secretary General: Marko Pavliha (Slovenia) for a first term.

Patrick Griggs expressed his thanks and best wishes to Luis Cova Arria (Venezuela) whose second term as a Councillor is expiring. The latter thanked the Executive Council for enabling him to participate in the important projects of CMI aimed towards the unification of maritime law.

Patrick Griggs will resign as President of CMI in June 2004 and Jean-Serge Rohart (France) has indicated his willingness to be a candidate for this post.

Following the resignation on Nigel Frawley as Chairman of the Nominating Committee the temporary Chairman of the Nominating Committee until the Vancouver Conference will be David Angus and Bent Nielsen (Denmark) has indicated his willingness to take over this responsibility after the Vancouver Conference. Allan Philip, Francesco Berlingieri and Jan Ramberg stated they will resign with effect from the date of the Assembly following the Vancouver Conference.

## **7. Conference Programmes**

*(a) Bordeaux Colloquium*

Jean-Serge Rohart reported that there were around 260 registrants anticipated to actually participate at the Bordeaux Colloquium. There were some delays due to the strikes and some cancellations because of the SARS and visa problems.

*(b) CMI 38<sup>th</sup> International Conference – Vancouver, May 31 – June 4, 2004*

Patrick Griggs reported on the proposed program of the Conference. The topics will be transport law, revision of the York-Antwerp Rules 1994, places of refuge, marine insurance and criminal acts on foreign flag ships. It is also intended to organise a session on the revision of the CLC/Fund Conventions.

It was agreed that Patrick Griggs would contact the CMLA in order to discuss an appropriate opening speaker, who could be Alfred Popp, Chairman of the IMO Legal Committee.

*(c) Conference in Greece*

Gregory Timagenis informed the Executive Council that the official offer to host the 2007 Conference in Greece (most likely in September) will be sent this summer.

Although this item does not appear in the Agenda, John Hare made an official invitation to organise a Colloquium in Cape Town (South Africa) in February 2006.

## **8. Periods of Office**

Work of the Committee on this subject and the Resolution – CMI Terms of Office, Executive Council, 7 December 2002 will be reported at the Assembly.

## **9. CMI Charitable Trust**

Allan Philip reported that most of the Trust expenditure for 2002 was spent on lecturers and students of IMO IMLI. Patrick Griggs read a letter of appreciation from the former IMLI student Mrs Enemo Amaechi, whose half tuition fees were paid by CMI.

John Hare suggested that CMI should offer a special prize for the best paper written by a young lawyer, in the form of a free attendance of a CMI Conference and an opportunity to present the prize paper.

## **10. Publications**

*(a) Yearbooks, Newsletters and Website*

After the extensive report from Francesco Berlingieri it was decided that the Newsletters will be sent to NMLAs and other organisations (e.g. IMO, IMLI) via e-mail in PDF format and they will be also put on the CMI website.

With respect to the Yearbooks, Frank Wiswall and Francesco Berlingieri will prepare a questionnaire for the NMLAs in order to decide at the Assembly to what extent they would wish to receive printed copies and how much information they would like to have on the website (e.g. Part I and III could be available electronically and Part II could be printed).

*(b) CMI archives, other CMI publication projects and links to CMI website.*

Frank Wiswall commented that people are not yet “ready” for the CD ROMs – very few sales have been achieved.

It should be also considered which international instruments shall be added to the Handbook. A revised Handbook should be available at each future CMI Conference.

## **11. National Associations**

The application from Bulgaria complies with the CMI Constitution and will be recommended to the Assembly.

Mr. M. Neffous from Algeria may become a provisional member in accordance with Art 3 (c) of the Constitution.

Insofar as Egypt is concerned, Frank Wiswall will explore with the Egyptian lawyers what are the prospects of establishing a new MLA.

## **12. Work in progress**

*(a) Transport Law: CMI/UNCITRAL draft Instrument*

It was decided with respect to the letter from Stuart Beare dated April 14, 2003, that the renewed mandate of the IWG shall be as follows:

“To continue to monitor the work of the UNCITRAL Working Group on Transport Law and to arrange CMI representation at such meetings;

to prepare and submit, at the request of UNCITRAL, papers on technical matters and generally to support the work of the UNCITRAL Secretariat (allowing at all times for the sensitivities of this relationship); and

to convene meetings of the ISC as may seem appropriate.”

*(b) UNESCO: Convention on Underwater Cultural Heritage*

A report will be made at the Assembly.

*(c) International Interests in Mobile Equipment*

A report will be made at the Assembly.

*(d) Arrest Convention 1999*

A report will be made at the Assembly.

*(e) Issues of Marine Insurance*

A report will be made at the Assembly.

*(f) Criminal Acts Committed on Foreign Flag Ships*

Frank Wiswall reported that a reminder will be sent to NMLAs to fill in the questionnaires and send them back by no later than mid-July 2003. Francesco Berlingieri, Gregory Timagenis and Frank Wiswall have undertaken to ask a few lawyers specialising in criminal law to participate in this project.

*(g) Implementation and Interpretation of International Conventions*

It will be reported at the Assembly.

*(h) General Average*

The following Resolution was adopted, creating a new ISC:

“It is resolved that an International Sub-Committee of the CMI be created under the Chairmanship of Bent Nielsen to pursue the revision of the York-Antwerp Rules 1994 based on the work of the IWG.”

*(i) Places of Refuge*

A report will be made at the Assembly.

*(j) Revision of CLC/Fund Conventions, IMO / IOPC co-operation*

A report will be made at the Assembly.

*(k) Athens Protocol 2002*

A report will be made at the Assembly.

## **13. Management Reports**

*(a) Young CMI*

A report will be made at the Assembly.

*(b) Regional membership*

A report will be made at the Assembly.

## **14. Various**

*(a) Planning Committee: Report for Vancouver Conference*

A report will be made at the Assembly.

*(b) List of those performing CMI management functions, members of International Working Groups, International Sub-Committees*

A report will be made at the Assembly.

The meeting was closed at 5:40 p.m.

**MINUTES OF THE MEETING OF THE ASSEMBLY  
HELD IN BORDEAUX ON 13<sup>TH</sup> JUNE 2003**

Attending:

<i>President:</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Frank L. WISWALL. Jr.
<i>Councillors:</i>	Johanne GAUTHIER Jose Tomas GUZMAN John HARE Stuart HETHERINGTON Thomas REME Gregory TIMAGENIS Jose Maria ALCANTARA
<i>Secretary General:</i>	Marko PAVLIHA
<i>Treasurer:</i>	Benoît GOEMANS
<i>Administrator:</i>	Wim FRANSEN
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Past President:</i>	Allan PHILIP
<i>Publication Officer:</i>	Francesco BERLINGIERI

**Member Associations:**

The following Delegates have registered for this Assembly:

ARGENTINA:	Alberto C. Cappagli Fernando L. Porcelli José D. Ray	FINLAND:	Henrik Gahmberg
AUSTRALIA & NEW ZEALAND:	Stuart Hetherington Andrew Tulloch	FRANCE:	Stéphane Miribel Françoise Odier Jean-Serge Rohart Patrick Simon Antoine Vialard
BELGIUM:	Wim Fransen Benoît Goemans Roger Roland Pascale Sterckx	GERMANY:	Jonathan Lux Thomas Remé
BRAZIL:	Rucemah L. Gomes Pereira Ferdinand V. Miranda Filho	GREECE:	Deucalion Rediadis Lily Timagenis Gregory Timagenis
CANADA:	Johanne Gauthier Sean Harrington A.Popp Q.C.	IRELAND:	Eamonn Magee Dermot McNulty
CHILE:	Claudio Barroilhet Eugenio Cornejo Fuller Eugenio Cornejo Lacroix José T. Guzman Ricardo San Martin	ITALY:	Francesco Berlingieri Giorgio Berlingieri Mario Riccomagno
CHINA:	Li Liming	JAPAN:	Kenjiro Egashira Tomonobu Yamashita
CROATIA:	Hrvoje Kacic Petar Kragic Igor Vio	KOREA:	In Hyeon Kim Juchan Sonn
DENMARK:	Bent Nielsen Allan Philip	MALTA:	Nadia Scerri Ivan Vella
ECUADOR:	José Modesto Apolo	MEXICO:	Enrique Garza Ignacio Melo
		NETHERLANDS:	Vincent de Brauw Frank Smeele Taco Van der Valk Gertjan van der Ziel
		NIGERIA:	Funke Agbor Okhai M. Akhigbe Mfon Usord

NORWAY:	Karl-Johan Gombrii	U.S.A.:	Lizabeth Burrell Christopher Davis Raymond P. Hayden Howard McCormack Thomas Rue Michael Ryan Frank L. Wiswall, Jr.
SLOVENIA:	Marko Pavliha Tristan Sker Patrick Vlacic		
SOUTH AFRICA:	John Hare		
SPAIN:	Ignacio Arroyo Martinez Francisco Goni Jiménez	VENEZUELA:	Francisco Villarroel Julio Sanchez-Vegas
SWEDEN:	Lars Boman		
UNITED KINGDOM:	Stuart Beare Elizabeth Blackburn Lesley Cannings Patrick Griggs Chris Moore Richard Shaw Rhidian Thomas		

**Observers:**

ALGERIA:	Fatima Boukhatmi
CAMEROON:	Gaston Ngamkan

The CMI Assembly met on June 13, 2003 at 3:00 p.m. in Bordeaux after the Bordeaux CMI Colloquium organised by the French Maritime law Association. Patrick Griggs opened the Assembly Meeting.

**1. Adoption of Agenda.**

The Agenda was approved.

**2. Memorials**

Patrick Griggs reported to the Assembly that  
 John R. Cunningham, Canada  
 Walter Hasche, Germany,  
 Norihiko Nagai, Japan and  
 Peter Schöeder, Venezuela  
 passed away since the last Assembly. He asked the present Delegates to rise in the honour of the deceased.  
 The Assembly was also informed about the resignation from Titulary Members of Geoffrey Fletcher and Jorgen Bredholt.

**3. Approval of the Minutes of the Assembly held in London on Friday, May 10, 2002**

The Assembly approved the Minutes of the Assembly held in London on May 10, 2002.

**4. Members**

*(a) Titulary members*

The following proposed Titulary members were elected:  
 Michael J. BIRD, Canada,  
 John D. KIMBALL, USA and  
 Angelo BOGLIONE, Italy

*(b) Honorary Vice-Presidents*

There were no proposals.

*(c) Consultative members*

There were no proposals.

*(d) Associations of Maritime Law*

Further to the recommendation from the CMI Executive Council, the Assembly has readmitted the Bulgarian Maritime Law Association as a member of CMI. On behalf of the President Prof. Ivan Vladimirov, the delegate of the Bulgarian MLA, Diana Marinova, was greeted by the Assembly.

The Assembly has also admitted M. Neffous from Algeria as a provisional member in accordance with Art 3 (c) of the CMI Constitution.

Insofar as Egypt is concerned, the Executive Council will continue motivating the interested national lawyers to establish a new MLA. There has been no final decision yet with respect to India.

Finally, Patrick Griggs greeted the delegate from Cameroon who also briefly addressed the Assembly.

*(e) Young Lawyers*

John Hare reported to the Assembly the efforts of CMI to encourage younger lawyers to become more interested in the work of CMI. A special questionnaire had been sent to the NMLAs and 13 replies were received, all supporting the active engagement of young members.

It has been agreed that CMI will invite young lawyers under the age of 35 from all over the world to compete for a special prize, that will be defrayed by the CMI Charitable Trust, for the best paper written by a young lawyer. "The CMI Young Authors' Essay Prize" will be in the form of a free attendance at a CMI Conference and an opportunity to present the prize paper.

## 5. Finances

Benoît Goemans reported on the 2002 Accounts, firstly explaining the expenses with special emphasis on publications, salaries and postage which represented the largest portion of the expenses. Travel expenses were lower than in 2001. He compared the income and expenses in 2000, 2001 and 2002, as well as the income and expenditure for previous years and the budget for 2002, 2003 and 2004. Subscriptions are still the main income of CMI, together with profit from conferences and bank interests. The budget was prepared on a cautious basis. The lower income in 2002 comparing to the budget of 2002 was due to the increased provisions for unpaid subscriptions. The split of income and expenses in 2002, as well as the liquidity plan were presented. Surplus for 2002 amounts to 41.385 euro which is a quite satisfactory result. Furthermore, Benoît Goemans explained briefly the "Report and Financial Statements" as per December 31, 2002, including the auditor's report, the income and expenditure account, the balance sheet and the cash flow statement.

With respect to the unpaid subscriptions it was explained that Slovenia paid all fees, as well as some other NMLAs, although they still appeared on the list. Answering the question from one delegate, Patrick Griggs referred to Article 21 in conjunction with Article 7 of the CMI Constitution, dealing with member associations in arrears of payment.

Patrick Griggs expressed thanks to Benoît Goemans stating that he did an excellent job, especially if one keeps in mind that he is not an accountant but a lawyer.

Allan Philip then read the "Report of the CMI Audit Committee" dated June 6, 2003 and signed by David Angus, in which adoption of the following resolutions was recommended:

"1. That the resignation of Moore Stephens as external auditors of CMI for 2002 be and is hereby accepted.

2. That Messrs. De Mol, Meuldermans & Partners, with Mr. Kris Meuldermans as partner-in-charge of the CMI audit, be and are hereby appointed as CMI external auditors for 2002 and 2003.

3. That the CMI's audited financial statements for 2002 prepared by Kris Meuldermans of De Mol & Meuldermans, together with the Auditors' Report thereon dated April 29, 2003, be and are hereby adopted.

4. That the proposed CMI Budget for 2003, as prepared by the Treasurer, be and is hereby adopted."

Patrick Griggs read a letter from Moore Stephens

and expressed the CMI appreciation of their work. The Assembly adopted the above resolutions, as well as the budget and the accounts. It was also agreed that the level of subscriptions for 2003 would not be increased. A new CMI Audit Committee was appointed, composed of David Angus (Chair), Patrick Griggs, Marko Pavliha, Benoît Goemans and Allan Philip.

## 6. Revision of CMI Constitution / New legal status for CMI

Benoît Goemans reported that the French version of the new CMI Constitution, adopted at the 2000 Singapore Assembly, was informally approved by the Belgian Administration and will be signed by the King sometime in the future. It has been agreed that the Executive Council of CMI will continue dealing with this matter.

## 7. Elections

The report of the Nominating Committee was presented by Allan Philip.

The Nominating Committee gave full considerations to the views of those NMLAs which replied to its invitation to propose candidates for three vacant posts, and decided to make the following nominations for election at the Bordeaux Assembly:

Executive Councillors: John HARE (South Africa) for a second term, Jose Tomas GUZMAN (Chile) for a first term.

Secretary General: Marko PAVLIHA (Slovenia) for a first term.

All of the aforementioned candidates were elected by the Assembly.

Patrick Griggs expressed his warmest thanks and best wishes to Luis Cova Arria and Alexander von Ziegler, who had both tremendously contributed to the work of CMI and will continue working on various CMI projects. Marko Pavliha thanked the NMLAs for their generous support regarding his candidacy and promised to do his best in order to serve them in achieving the CMI goals.

With respect to the terms of office issue, John Hare informed the Assembly that the Executive Councillors should not be automatically nominated for a second term of office, but rather their contribution and commitment will be taken into account.

## 8. Publications

After the report from Francesco Berlingieri, Patrick Griggs requested the NMLAs to inform the Executive Council as soon as possible about their views of the following three alternatives with respect to the CMI Yearbook:

#### *Alternative I:*

Production of printed copies and distribution to subscribers plus one copy free to each Association as at present.

#### *Alternative II:*

- a) Printing of only Part II and distribution to subscribers plus one copy free to each Association;
- b) Production of Parts I and III in PDF format for electronic distribution to subscribers;
- c) Printing of about 200 copies of Parts I and III, with distribution of one copy to each Association plus additional copies to individual subscribers.

#### *Alternative III:*

- a) Production of the whole Yearbook in PDF format for electronic distribution to all subscribers;
- b) Printing of about 200 copies and distribution of one copy to each Association plus additional (hardbound) copies to individual subscribers.

Printed copy costs \* (in Euros)

	<i>Alternative I</i>	<i>Alternative II</i>	<i>Alternative III</i>
Production:	17,000	8,000	9,500
Distribution:	4,000	3,000	800

\* Based on a Yearbook of about 400 pages of which:

- 105 pages for Part I
- 190 pages for Part II
- 105 pages for Part III

One Delegate suggested that the above decision would have to be made before the approval of the budget. He was also of the opinion that this was not the matter for the Assembly.

As to the CMI Newsletters, it was decided that they would be sent to the NMLAs and other organisations (e.g. IMO, IMLI) via e-mail in PDF format and they would be also put on the CMI website.

## **9. Work in Progress**

### *(a) Issues of Transport Law*

Karl-Johan Gombrii reported on the work on the draft UNCITRAL/CMI Transport Law Instrument, which had been also presented during the Bordeaux Colloquium. Further to the recommendation from the Executive Council, the Assembly approved the following resolution:

“The mandate of the IWG shall be renewed as follows:

To continue to monitor the work of the UNCITRAL Working Group on Transport Law and to arrange CMI representation at the sessions of the Working Group;

to prepare and submit, at the request of

UNCITRAL, papers on technical matters and generally to support the work of the UNCITRAL Secretariat (allowing at all times for the sensitivities of this relationship); and

to convene meetings of the ISC as may seem appropriate.”

The ISC will meet on November 17, 2003 in London and during the 2004 Vancouver Conference. The CMI representatives will also attend at future UNCITRAL sessions (October 6-17, 2003 in Vienna; May 3-14, 2004 in New York).

### *(b) Issues of Marine Insurance*

John Hare briefly reported on the issues of marine insurance which were discussed at the Bordeaux Colloquium, inviting the Delegates of NMLAs to submit their comments, ideas, etc. The next IWG meeting will take place on November 17, 2003 in London in respect of which notices will be sent out. The project should reach finality at the Vancouver Conference.

### *(c) General Average*

Bent Nielsen reported on the work of IWG at the meeting of the International Sub-Committee. No final decisions were made with respect to the following subjects referred to in the Working Group's report:

- Common benefit (abolition, incremental changes)
- Redistribution of salvage charges
- Time bar
- Interest
- Commission
- Tidying up of the text of the York-Antwerp Rules (YAR).

The IWG will continue to work on the revision of the York-Antwerp Rules and some compromises will have to be made. The ISC will meet on November 17, 2003 in London. The project should reach finality at the Vancouver Conference.

### *(d) Criminal Acts Committed on Foreign Flag Ships*

The topic was presented and discussed at the Bordeaux Colloquium. Patrick Griggs urged the Delegates to send their replies to the CMI/IMO Questionnaire by no later than mid July 2003.

### *(e) Implementation and Interpretation of International Conventions/co-operation with IMO – Salvage Convention 1989*

Patrick Griggs urged the Delegates to send the relevant information on receipt of the Questionnaire.

### *(f) Places of Refuge*

The topic was presented and discussed at the Bordeaux Colloquium this morning. Patrick Griggs asked the Delegates to send their replies to the CMI/IMO Questionnaire.

*(g) UNESCO: Convention on Underwater Cultural Heritage*

Patrick Griggs made reference to the report of the IWG which is published on pages 154-157 of the CMI Yearbook 2002. The topic was also presented and discussed at the Bordeaux Colloquium

*(h) International Interests in Mobile Equipment*

There was nothing to report.

*(i) Arrest Convention*

There was nothing to report.

*(j) Revision of CLC and Fund Conventions. CMI/IMO co-operation*

The most recent developments in this area were presented during the Bordeaux Colloquium.

Patrick Griggs reported on the critical letter of June 3, 2003 with respect to the "Proposal for a Directive of the European Parliament and of the Council on Ship-source Pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences", which was sent by the British Maritime Law Association to the European Commission. As the proposed Directive is not in accordance with the existing international oil pollution compensation and liability regime, he invited the NMLAs to send a similar letter to the Commission,

## **11. Various**

*(a) CMI Planning Committee*

Patrick Griggs invited the Delegates to suggest participants for the CMI Planning Committee, the role of which is to operate throughout the year until the Vancouver Conference, exploring and considering the areas of future work of CMI.

*(b) New MLAS*

Patrick Griggs asked the Delegates to encourage the establishment of new NMLAs.

*(c) CMI 38<sup>th</sup> International Conference, Vancouver*

Patrick Griggs reported on the proposed program of the CMI 38<sup>th</sup> International Conference, which will be hosted by the Canadian Maritime Law Associations (CMLA) and will take place in Vancouver from May 31 – June 4, 2004. The topics will include transport law, revision of the York-Antwerp Rules 1994, places of refuge, marine insurance and criminal acts on foreign flag ships. It is also intended to organise a session on the revision of the CLC/Fund Conventions.

If the NMLAs wish to obtain credits for continuing legal education, they should contact the organisers of the Vancouver Conference.

Finally, Sean Harrington, President of the CMLA, was invited to say a few words about the Conference. The Assembly meeting was closed at 5:15 p.m.

### **MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL HELD IN BORDEAUX ON 13<sup>TH</sup> JUNE 2003 AT 5:15 P.M.**

Attending:

<i>President:</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Frank L. WISWALL. Jr.
<i>Councillors:</i>	Jose Maria ALCANTARA Johanne GAUTHIER John HARE Stuart HETHERINGTON Thomas REME Gregory TIMAGENIS
<i>Secretary General:</i>	Marko PAVLIHA
<i>Treasurer:</i>	Benoît GOEMANS
<i>Administrator:</i>	Wim FRANSEN
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Past President:</i>	Allan PHILIP
<i>Publication Officer:</i>	Francesco BERLINGIERI

The new Executive Council met briefly on Friday, June 13 at 5:15 p.m. after the CMI Assembly. It was agreed that the Planning Committee should consist of the following persons: Patrick Griggs, Marko Pavliha, Johanne Gauthier, Henry Li, Jose Maria Alcantara, Alfred Popp, Sean Harrington and Petar Kragic.

The meeting of the Executive Council was closed at 5:35 p.m.