

# COMITÉ MARITIME INTERNATIONAL

## MINUTES OF THE CMI ASSEMBLY HELD AT THE VAN NELLE DESIGN FACTORY, ROTTERDAM, THE NETHERLANDS WEDNESDAY, 23 SEPTEMBER 2009 AT 3:00 PM

### Participating

President:	Karl-Johan Gombrii
Immediate Past President:	Jean-Serge Rohart
Vice Presidents:	Stuart Hetherington Joanne Gauthier
Councillors:	Christopher Davis José Tomás Guzman Måns Jacobsson Sergej Lebedev Henry Li Louis Mbanefo Andrew Taylor
Secretary General:	Nigel Frawley
Treasurer:	Benoit Goemans
Assistant Administrator:	Pascale Sterckx
Publication Editor:	Francesco Berlingieri

### MEMBER ASSOCIATIONS

The delegates present at the Assembly are set out at Annex A to these minutes. President Karl-Johan Gombrii opened the meeting and welcomed all of the delegates present. A quorum was declared and the meeting held to be properly constituted.

#### 1. ADOPTION OF AGENDA

- a. The tabled agenda was adopted.
- b. On behalf of the Credentials Committee, Joanne Gauthier reported that she and Benoit Goemans had reviewed the list of delegates present, reminded them that

there was only one vote per delegation, and declared that there was only one delegation present that was not entitled to vote under Article 21 of the Constitution owing to their delinquency in payment of the annual subscriptions. She said that she had already been in discussion with that delegation and was hopeful that they would make good on their outstanding subscriptions soon.

## **2. MEMORIALS**

Francesco Berlingieri paid tribute to his old friend, Nicolas Healy of the US MLA who died on 20 May 2009 at the age of 99 years. Mr. Healy was well known to the CMI family, having been an Executive Councillor and a Vice President for many years, as well as being President of the US MLA. He was the author of *The Law of Marine Collisions* and many other books.

Chet Hooper paid tribute to his old friend, Gordon Paulsen, a Past President of the US MLA and a Titulary Member of the CMI, who died in December 2008.

The President paid tribute to his old friend, Professor Sjur Brækhus, founder of the Scandinavian Institute of Maritime Law, an outstanding legal scholar and a Titulary Member of the CMI, who died in May 2009.

## **3. APPROVAL OF MINUTES AND STEERING COMMITTEE REPORT**

- a. The Secretary General moved, seconded by Stuart Hetherington, for approval of the Minutes of the Assembly held in Athens on 17 October 2008. There was unanimous approval and no business arising therefrom.
- b. Stuart Hetherington presented the Steering Committee Report on reforms, a copy of which is attached hereto as Annex B. In brief, the Steering Committee recommended to the Executive Council the abolition of fees for Titulary Members (at the same time cautioning the Executive Council to be more rigorous in considering nominations for titulary membership in case nominations should increase considerably as a result); an adjustment of the scheme for annual subscriptions, resulting in a reduction for the most part of annual subscriptions; a reduction in the length of service of members of the Executive Council from 4 years to 3 years; an improvement in the level of communications between the CMI and the NMLAs, including an improved website with the assistance of Ms. Jo Bartlett of the University of Southampton; that the Yearbook should generally be the only hard copy publication to be distributed, with the Newsletter and all other CMI documents being distributed on the internet; and finally, more encouragements to Young Lawyers.

Mr. Hetherington said that the Executive Council had discussed these recommendations the previous day at their meeting and that implementation would be forthcoming and reported to the next Assembly.

#### **4. MEMBERS**

##### **a. Titulary Members**

The Secretary General advised the Assembly that the Japanese MLA had nominated Toshiaki Iguchi; that the Italian MLA had nominated Massimo Mordiglia, Professor Giorgio Reghetti and Stefano Zunarelli; and that the MLA of the United States of America had nominated Alan van Praag. The President then called on Professor Tomotake Fujita, Giorgio Berlingieri and Warren Marwedel to speak to these nominations. All five nominees were then duly declared to be elected as Titulary Members with thanks and congratulations for their significant contributions to the work of the CMI.

##### **b. Consultative Members**

The Secretary General advised the Assembly that the Executive Council had suggested to make the Dutch Inland Waters Organisation, IVR, a Consultative Member of the CMI, which was unanimously approved.

##### **c. Regular Members**

The President advised the Assembly that discussions were well under way with MLAs established or being established in Indonesia, Portugal, Poland, Estonia, Malaysia and India for eventual admission as member associations of the CMI.

#### **5. FINANCES**

##### **a. Treasurer's Report**

The Treasurer gave his report on the CMI's finances for the 2008 fiscal year and referred, in particular, to the global financial crisis and the spreading of the CMI's cash on hand amongst several Belgian banks, rather than almost exclusively with the Fortis Bank, to reduce the risk of loss. He also referred to the EUR 104,726 surplus for the year. There was unanimous approval of his report, which is attached hereto as Annex C.

In the absence of the Chairperson of the Audit Committee, Ms. Liz Burrell of the MLA of the United States, the Committee's Report, which is attached hereto as Annex D, was summarized by one of the members of the Committee, Mr. Mans Jacobsson. The Report was approved and the President praised the efforts of the Audit Committee.

##### **b. Budget**

The Treasurer then reported on the budget for the forthcoming year which was unanimously approved. A copy of the budget is attached hereto as Annex E.

c. Subscriptions

The President informed that on the basis of the Steering Committee report and considering the current global financial crisis and the very significant reserves, in excess of EUR 900,000, the Executive Council had decided to recommend to the Assembly to adjust and, in most instances reduce the annual subscriptions for member associations as set out in Annex C, including, as an extraordinary measure, a 20% early bird discount for 2010. He also advised that the Executive Council had decided, as a further extraordinary measure to recommend to the Assembly to apply the 2010 recommendations for subscriptions retroactively to the 2009 year to the extent the result would be a reduction for a given member association, together with an extension of the possibility to obtain the 10 % “early bird” discount , which discount the Assembly had decided on already in 2008.

He finally said that the Executive Council had decided to recommend that the 2010 subscription for Titulary Members be reduced to zero.

In view of that, the Assembly unanimously approved

- the subscriptions for 2010, including a 20% early bird discount, as set out in Annex C;
- the retroactive application of the said 2010 figures for member associations also for 2009 to the extent that reductions would result;
- the extension of the time limit for the 10% early bird discount for 2009; and
- the reduction to zero of Titulary Member fees for 2010.

The President then expressed his gratitude for the Treasurer’s work throughout the year.

The Secretary General then moved, seconded by the Treasurer, for the re-appointment of Messrs de Mol, Meuldermans and Partners BV of Antwerp as external auditors for the 2009 fiscal year. This was unanimously approved.

d. Unpaid Subscriptions

The Chairman of the Committee on collection of outstanding annual subscriptions, Chris Davis, reported on this subject and said that the outstanding amount for 2008 from 18 member associations stands at EUR 31,010.23 compared to EUR 36,848.79 for 2007. He was pleased to report on successful negotiations with three South American countries to settle their outstanding subscriptions and that José Tomás Guzman had continued a dialogue with other countries in South America who are behind in their subscriptions.

Mr. Davis said he was chasing other delinquent members in the usual manner and was optimistic that continued negotiations will result in successful outcomes. The President thanked Mr. Davis and Mr. Guzman for their efforts and successes.

e. **Charitable Trust**

Patrick Griggs reported that owing to the global financial crisis and the London stock market's overall decline, the net value of the Trust's securities and cash on hand had fallen considerably in 2008. However, he said that there was some modest improvement in the value of their stock portfolio in 2009. He reminded delegates that the Trust contributed to expenses of speakers for IMLA and WMO, and to the website and certain publications. At this juncture, the Secretary General intervened to say that the Executive Council had at its meeting the previous day voted to donate EUR 40,000 out of the CMI's share of the profit from the Athens Conference to the Charitable Trust in consideration of its underwriting certain conference expenses. This ex gratia payment was unanimously approved and Mr. Griggs expressed his gratitude on behalf of the Charitable Trust.

**6. CONSTITUTIONAL CHANGES**

The Chairman of the Constitutional Committee, Benoit Goemans, moved that the Constitution of the CMI be amended to provide terms of three years, rather than four years, for members of the Executive Council. This was seconded by Joanne Gauthier and unanimously approved, the amendments being reflected in Annex D.

**7. ELECTIONS**

In the absence of Bent Nielsen, the Chairman of the Nominating Committee, Jean-Serge Rohart, gave their report which nominated for a second term Stuart Hetherington as Vice President, and Chris Davis and Sergej Lebedev as Executive Councillors. They also nominated for a further term Nigel Frawley as Secretary General and Benoit Goemans as Treasurer. Mr. Rohart on behalf of the Committee then nominated Giorgio Berlingieri as Executive Councillor for a first term. All of these nominations were unanimously approved.

**8. PUBLICATIONS**

- a. Francesco Berlingieri reported that there were no problems with CMI archives in storage and that putting all back issues of the Yearbooks on to CD-ROMs had been finished. He then referred to the need for NMLAs to comment on how to improve the CMI website and how they should contribute notices, articles, papers for the website.
- b. Mr. Berlingieri then turned to International Conventions and invited comments on how they are interpreted in various jurisdictions.

**9. WORK IN PROGRESS**

- a. General Average Interest Rate Committee

In the absence of Bent Nielsen, Patrick Griggs gave the Committee's report which, in essence, was to recommend that the rate of interest to be applied under Rule XXI of the YAR 2004 should be 4 % per annum. The Committee also recommended that 4 % per annum should be applied to expenditures, sacrifices and allowances in General Average during the period from 1 January 2010 to 31 December 2010. This recommendation was unanimously approved.

b. Salvage Convention, 1989

Mr. Hetherington reported that the ISU had asked the CMI to consider reviewing the Convention as they have a number of concerns including with respect to environmental salvage. The CMI has taken up this challenge and issued a questionnaire to all MLAs. The IWG on this project met in London the previous week to review several answers to the questionnaire. They plan another meeting in London in May 2010 to review further answers to the questionnaire. This subject will be on the substantive programme for the colloquium in Buenos Aires in October 2010.

c. Judicial Sales of Ships

Benoit Goemans gave Henry Li's report and said that the IWG's plan is to distribute a questionnaire in February 2010. The answers will be considered in Buenos Aires on the occasion of the colloquium in that city 24 – 27 October 2010 when this subject will also be on the agenda.

d. Procedural Rules on the Limitation of Liability in Maritime Law

Gregory Timagenis, Chairman of the ISC, said that he would prepare a list of issues and hold a meeting of the ISC in London before the next meeting of the Executive Council. He hopes that they will finish their work in time for the Conference in Beijing in 2012.

e. Piracy

Patrick Griggs reported that the IMO was very involved with the practical issues of piracy and that, apart from Frank Wiswall's model law of a few years ago, piracy had not yet become the subject of work on legal issues.

f. Fair Treatment of Seafarers

The President reported on a conference on this subject in Croatia recently and said that he had received the conference report from Igor Vio, Secretary of the Croatian MLA. He said further that he hoped to be able to announce whether the CMI had any recommendations to make on this subject at the Buenos Aires Colloquium.

g. Ship Recycling Convention

The Secretary General reported that the Ship Recycling Convention had been signed. The major issue now is whether India and Bangladesh will ratify and comply with its provisions.

h. Report on Meetings of the IMO and IOPC Funds

Patrick Griggs reported that the CMI had an Observer at the meeting of the IOPC Funds 15 – 18 June 2009. He said that there will be a Diplomatic Conference convened in London the week commencing 26 April 2010 to sign the Protocol to the HNS Convention. He said that the next IOPC Funds meeting will be held in London during the week commencing 18 October 2010 and that Richard Shaw would be the CMI's observer. He went on to say that he will attend the meeting of the IMO Legal Committee meeting to be held in London during the week of 15 November 2010.

i. Places of Refuge

In the absence of Stuart Hetherington, the Secretary General said that the instrument which had been approved at the Plenary Session at the Athens Conference had been posted on the website and published in the Yearbook-Athens II. He encouraged MLAs to distribute it amongst their membership. Mr. Frawley thanked the members of the Working Group for their hard work throughout the process.

j. Future Work

i. Preparation of a Manual on the practical handling of Bills of Lading and Letters of Indemnity etc.

The President pointed out that the Rotterdam Rules have many substantive provisions regarding Bills of Lading, and that there is a need for practical guidance. He said that he will consult those involved at BIMCO and other interested parties.

ii. Cross-Border Insolvencies

Chris Davis said that he would advance the subject with the Secretary General's help. Apparently, UNCITRAL has a model law on this subject. He suggested that the CMI work together with them. The Secretary General said that he would make further enquiries of UNCITRAL.

iii. EDI

Nothing to report. One Councillor said that he had heard that UNCITRAL will be publishing a report on this subject.

iv. Arctic/Antarctic

Nothing to report. The Secretary General undertook to prepare a report on this subject for the next meeting.

v. Liability of Pilots

Nothing to report. The mood of the meeting appeared to be to drop it as a subject for future work.

vi. Admiralty Rules

There was discussion about the International Working Groups on Judicial Sales of Ships, and the Arrest Convention. As to the latter, some members discussed whether the CMI should draft Model Rules after the work of the International Working Group on Judicial Sales.

vii. Arrest Convention and the Limitation of Liability of Maritime Claims Convention

Francesco Berlingieri said that it would be important to find out why some recent conventions originating from drafts adopted by the CMI 1985 Lisbon Conference – the 1993 Maritime Liens and Mortgages Convention and the 1999 Arrest Convention – have so far received so limited a number of ratifications and suggested that the CMI ought to carry out an enquiry in this respect.

## **10. COLLOQUIUM AND ASSEMBLY–BUENOS AIRES 24–27 OCTOBER 2010**

The Secretary General advised the Assembly on the preliminary arrangements for the Colloquium in Buenos Aires and said that he was working closely with Alberto Cappagli, President of the MLA of the Argentine and Jorge Radovich, Secretary of that association. He said that a notice will be distributed to all NMLAs in the near future.

## **11. OTHER BUSINESS**

Henry Li reported on the next conference which will be held in Beijing most likely in October 2012. Although the CMI had suggested Shanghai as the venue, this would not be practical as another international conference is being planned for that city in early November 2012, and because many of the likely sponsors for the Conference (as well as attending dignitaries) are based in Beijing.

Sarah Derrington of the Australian MLA spoke from the floor and advised the Assembly that on 27 – 29 November 2009 there will be a Seminar of the Federal Court of Australia

in Sydney on the subject of cross-border insolvencies which would include her as a speaker, along with an admiralty judge from Shanghai. The proceedings will be published in the Australian and New Zealand Maritime Law Journal.

## **12. TERMINATION**

The President thanked Gertjan van der Ziel and the Organising Committee of the Netherlands MLA for the arrangements for the Assembly and thereupon terminated the meeting.

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Nigel H. Frawley  
Secretary General

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Karl-Johan Gombrii  
President