

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 1 - JANUARY / APRIL 2005

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NEWS FROM THE CMI

**MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL
HELD IN PARIS AT THE OFFICES OF ARMATEURS DE FRANCE,
ON APRIL 15, 2005 AT 9.00 A.M.**

Attending:

<i>President:</i>	Jean-Serge ROHART
<i>Vice-President:</i>	Frank L. WISWALL, Jr.
<i>Councillors:</i>	Jose Maria ALCANTARA
	Johanne GAUTHIER
	José Tomás GUZMAN
	Stuart HETHERINGTON
	Henry H. LI
	Thomas M. REME'
	Gregory TIMAGENIS
<i>Publication Officer:</i>	Francesco BERLINGIERI
<i>Acting Secretary General:</i>	Nigel FRAWLEY
<i>Treasurer</i>	Benoit GOEMANS

The President opened the meeting with apologies from John Hare, Patrick Griggs, Karl-Johan Gombrii and Wim Fransen, all of whom were unable to attend.

The President introduced James MacKenzie of the law firm Shepstone & Wylie of Cape Town, South Africa who is the Chairman of the organizing committee for the Cape Town Colloquium scheduled for February 13 - 15, 2006. Mr. MacKenzie was asked to attend to discuss their draft budget and programme of events. This discussion took about one hour. The President thanked Mr. MacKenzie for his attendance and helpful summary. Mr. MacKenzie thereupon left the meeting.

The President then turned to the Agenda.

1(a) The Minutes of the Executive Council Meeting held in Hamburg on November 6, 2004 were approved. Following discussion about the extent of the minutes, it was decided they should reflect the decisions made only.

(b) The only business arising from the Minutes was under paragraph 13(g) wherein reference was made to "500 cards" being prepared on the York/Antwerp Rules 2004 and sent to IUMI. It was explained by Thomas Remé and Francesco Berlingieri that the cards might better be described as brochures. They said that 200 of them had already been distributed. Mr. Remé said that he had consulted with London Hull underwriters as to the acceptability of the new Rules, but they considered it premature to express a view. He said he would report more on this subject later in the meeting.

1. Work in Progress

(a) Transport Law: UNCITRAL draft Instrument

There was a general discussion about Stuart Beare's forthcoming attendance at the UNCITRAL meetings in New York commencing April 18, 2005. Mr. Beare's recommendation that the CMI continue to participate in UNCITRAL Working Group meetings was discussed and agreed. There was then a general discussion about whether the CMI enjoyed much respect as Observers in that forum. As far as Francesco Berlingieri was concerned, the CMI has much respect as Observers although there has never been a clear role for them. He suggested that there be guidelines for the Observer role in situations where the Observer might wish to take an initiative which conflicts with the draft approved by the CMI. The decision was then made to keep the international sub-committee on Issues of Transport Law alive and that Observers

at UN meetings be instructed to send a report on what transpired to the Executive Council, and that Patrick Griggs and Richard Shaw should continue to send their reports on IMO activities.

(b) Marine Insurance

Thomas Remé reported that there continued to be uncertainty on the need for reform of marine insurance law. The decision was made that the international working group should remain alive and continue to monitor the subject until an issue arises and then deal with it. The President asked Mr. Remé to take over as Acting Chairman of the international working group and agreed that Christian Hubner, Edward Cattell, Jr. and Sarah Derrington should be asked to join the working group. Mr. Hetherington observed that in several countries, including Australia and Germany, much of the marine insurance legislation was being transferred into the general insurance Acts and suggested that John Hare be approached to see if he was prepared to give a paper on this subject at the Cape Town Colloquium.

(c) Criminal Acts Committed onboard Foreign Flag Ships; Piracy; Maritime Violence

Frank Wiswall reported that he had recently been at a meeting in London on maritime security with, amongst others, the IMB, BIMCO, Interpol, the Clubs, IUMI and the International Chamber of Shipping and there were very strong feelings expressed that the Model Law on Piracy should be revisited as everything had changed since 9/11. It was considered that the Model Law should cover terrorism, kidnapping for ransom from ships, SUA and piracy, and any violent act. The Model Law, when completed, should be referred to the Maritime Safety Committee and Legal Committee of IMO, and the UN Informal Consultative Process on the Law of the Sea Working Group on the subject. Non-violent criminal acts should not be covered by such a Model Law.

Mr. Wiswall then advised that he had just completed a report for circulation at the IMO legal committee and copies had been sent to Mr. Berlingieri for the Newsletter and to Pascale Sterckx for general distribution. Their next meeting will be held in early December 2005, immediately after the IMO meeting to amend SUA. Apparently, it is considered vital to complete this project by the end of 2006.

A decision was then made for Mr. Wiswall to remain Chairman of this committee and that the questionnaire on maritime security be adopted by the Executive Council and circulated to national MLA's with two additional questions being added by Mr. Wiswall.

(d)(i) Implementation and Interpretation of International Conventions

Gregory Timagenis, as instructed at the previous Executive Council Meeting, presented his proposal on the subject and suggested that this be a work topic at the Cape Town Colloquium and the Athens Conference. He said that it is an appropriate subject for the CMI as it contributes to uniformity in the implementation of maritime conventions. During the discussion, it was pointed out that implementation and interpretation are distinct matters and that a study should be done on implementation. Francesco Berlingieri said that he had prepared a questionnaire in conjunction with IMO thoughts on the subject and prepared a paper on uniform procedural rules in Limitation of Liability. The President said that we should explore the possibilities in connection with procedural rules relative to the Limitation Conventions, i.e. the LLMC 1976, CLC, Fund Conventions and HNS, and all present agreed that the CMI should continue this initiative. It was also decided to circulate the questionnaire prepared by Francesco Berlingieri to the NMLA's. The responses to it can be used to assist in the preparation of guidelines on Implementation. The President thanked Mr. Timagenis for his work on an Introductory Note for Guidelines and urged him to continue.

(e) Places of Refuge

Stuart Hetherington proposed that the CMI continue its work with the IWG drafting the outline of an instrument by September/October 2005 for debate at the Cape Town Colloquium. He said that Patrick Griggs or Richard Shaw would speak to the CMI report on this subject at the IMO legal committee's meeting scheduled to commence on April 18, 2005. Generally, they would say that the CMI intends to do further work on this topic.

(f) Revision of CLC/Fund Conventions. IMO/IOPC Fund Co-operation

The President then spoke about Richard Shaw's report on this subject entitled "Meetings of the IOPC Fund - March 2005". Mr. Shaw attended the meetings on March 14 and 22, 2005 with Observer status on behalf of the CMI. The Supplementary Fund came into force on March 3, 2005 and was the major source of discussion. This new Fund makes compensation available for pollution events up to \$1.1 Billion U.S. A number of administrative decisions were taken to make the new Fund operational. Observer status was granted to the CMI, amongst others. Mr. Shaw also reported on the Intersessional W.G. and, in particular, on the

widely held view that the burden of the compensation regime falls unfairly on the oil cargo industry and that a significant increase in the shipowner's share was called for. The International Group of P & I Clubs have recognized this and have put in place alternative schemes called STOPIA and TOPIA to increase the burden placed upon Shipowners. It was also decided that the Fund Conventions would not be amended at this time.

(g) Bareboat Chartered Vessels

José Maria Alcantara referred to his paper on this subject and gave his view that every ship should carry a certificate of financial security no matter what. He said that he would ask the Assistant Administrator to circulate his report to National MLA's for comment and follow his e-mail of March 14, 2005 and Patrick Griggs' of March 9, 2005.

(h) Arrest Convention

Mr. Berlingieri said that this topic was unnecessary for discussion as all of the work has now been completed.

(i) General Average

Thomas Remé started by saying that the ad hoc committee had determined that 4.5% interest was appropriate for the York/Antwerp Rules 2004. He said that large ship owning countries like Norway have a problem with these Rules. He reiterated that it had been asked at the Hamburg meeting whether the York/Antwerp Rules 2004 had any effect in the London marine insurance market. He said that no information has been received to this effect but that, in any event, the deployment of these Rules would require three matters: (i) they would have to be incorporated in the contracts of carriage; carriers will have to amend their General Average clauses in charterparties and bills of lading; (ii) hull and cargo underwriters will have to amend their policy conditions accordingly; and (iii) casualties must happen to give average adjusters the opportunity to address General Average according to the York/Antwerp Rules 2004. This will take some time. Any comment to be received from the London market will, therefore, be restricted to the amendment of the contracts of carriage and the policy conditions. Since the impact of the amendments adopted in Vancouver was the reduction of port of refuge expenses, cargo underwriters will endeavour to give effect to these new Rules. If they succeed, this will not necessarily entail a heavier burden for hull underwriters. It will have to be seen which part of the relief for cargo underwriters will be taken up by P & I Clubs. Another point is the effect of General Average absorption clauses.

(j) *Wreck Removal*

The President then reported on the work done on this subject by Patrick Griggs and Elizabeth Blackburn and said that at Cape Town this subject could be included on the Agenda. It dovetails well with Places of Refuge. Mr. Hetherington said that Maritime Violence could also be dealt with at Cape Town. For example, short reports on this and Wreck Removal could be given as “information distribution”. It fits into the colloquium title: “Liberty and Safety at Sea”.

(k) *Classification Societies*

Frank Wiswall reported that he had made discreet enquiries and there appears to be a general interest among shipowners and Classification Societies in doing further work on this subject at some time in the future. However, CMI should be patient.

(l) *Fair Treatment of Seafarers in the event of a Maritime Accident*

The President said that Edgar Gold had taken this task on with great vigour and that his international working group had been appointed and was providing abundant information. A Questionnaire has been sent out and there have been many replies. The IMO and ILO have formed a joint working group which has prepared a paper and recommended guidelines on criminal/inadvertent pollution acts. There was then a discussion on this topic which concluded that a full day should be devoted to it at the Cape Town Colloquium.

(m) *Future Topics*

The President said CMI’s future topics may not necessarily be of interest to the IMO but would still, nonetheless, be a service to the shipping industry. He cited examples of the status of ships’ agents, notices of termination of contracts, and maritime liens in their favour. A far-reaching discussion then ensued about future topics which included the Arrest Convention where some countries do not have any arrest rules, stowaways, clarification of terminology in certain conventions (e.g. “performing party”), pilotage (which is very political and demonstrates little unification) and jurisdiction in collision matters. The decision was taken that none of the above-mentioned should be undertaken at this time. Johanne Gauthier suggested that if anyone thinks of a future topic that is worthy of consideration, they should do a memorandum and circulate it.

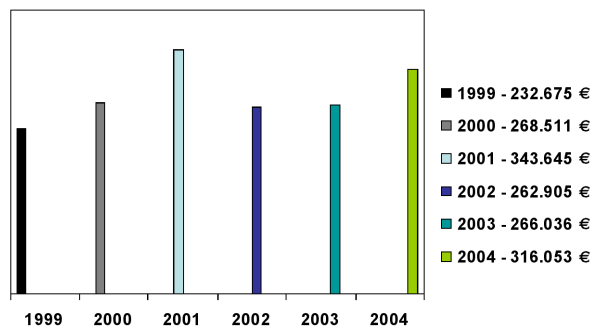
2. **Finances**

The Treasurer, Benoit Goemans, then submitted the accounts, the report of the Audit Committee and the Auditors’ report.

He pointed to the excellent financial results for 2004 showing a surplus of € 122,675 thanks to a very significant increase of the income, from € 266,036 in 2003 to 316,053 in 2004.



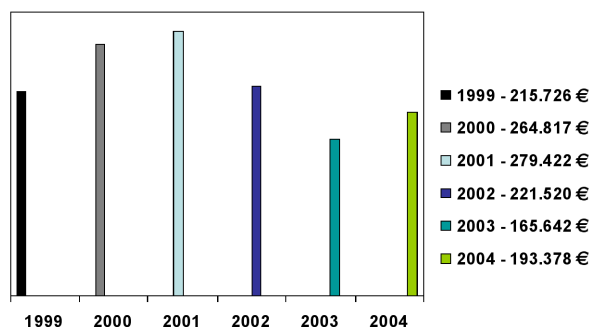
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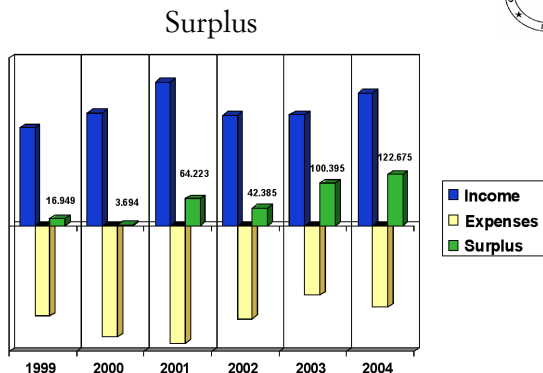
This increase mainly arises out of an improved recovery of claims and, more significantly, by the Canadian MLA contribution of surplus funds from the successful Vancouver Conference. This sum amounted to CAD. 96,403.50, i.e. € 58,419.28. Out of this amount, the CMI donated US \$ 25,000 to the CMI Charitable Trust as decided by the Executive Council at Hamburg. While the income increased significantly, the expenses increased only to a lower extent. The expenses were higher than in 2002 (€ 221,520) and 2003 (€165,642) but lower than 2001 (€ 279,422). The main increase arose from the travel expenses, rising from € 22,241 in 2003 to 50,489 in 2004. The Treasurer had anticipated higher travel expenses at the Vancouver Assembly. Postage also increased (resulting from the sending of two volumes of the Yearbook). Postage is expected to decrease in the future as a result of the fact that many Newsletters will be sent by electronic means rather than by post.



Expenses



The high increase of the income and the comparatively low increase of the expenses result in a surplus of € 122,675, likely to be the highest surplus ever recorded.



The Treasurer said that there continued to exist a problem of unpaid subscriptions, although there were signs of improvement. He saw no reason to either reduce or increase national association's subscriptions in nominal terms, which means a decrease in real terms (i.e. accounting for the inflation). He pointed out there has been no increase of the subscriptions in nominal terms (i.e. yearly decrease in real terms) during more than 6 years.

The Treasurer went on to say that he was very satisfied with Mr. Kris Meuldermans, CMI's external auditor. He then said that Mr. Meuldermans advised that the CMI may not be investing its large cash balances efficiently and suggested that term deposits be considered of up to six months or some other conservative interest bearing instrument. But, the consensus seemed to be that as we are receiving 2% interest now, we should continue to adopt a conservative approach and not change our present investment policy. The Treasurer should look at the money market and other instruments as long as they are fully guaranteed or insured and report back to the Audit Committee.

The Treasurer submitted draft budgets for 2005 and 2006 which took into account the maintaining of the subscription at present level. He pointed out that the 2005 budget was to a large extent inspired from the one approved at Vancouver. As far as the 2006 budget was concerned, the Treasurer pointed out that he did not account for any surplus from the Cape Town Colloquium, for it is always unsafe to anticipate surpluses from conferences and colloquia. He also said that there was no reason for him to anticipate a colloquium loss in the budget.

The Treasurer then moved that his financial

report and budgets be put forward to the Assembly the following day. This was seconded by Mr. Frawley and unanimously approved.

3. Unpaid Contributions

The President reported that he would be recommending to the Assembly as follows:

- (i) the Senegal and Mauritania MLAs should be expelled as no replies have been received to letters requesting outstanding contributions;
- (ii) the Moroccan MLA is dissolving shortly and a new association would be formed in the near future. The "old" Association recently paid 3,000 Euros on account indicating their good faith and the arrangement is that the "new" Association will get the credit and will assume the "old" MLA's obligations of unpaid contributions. Therefore no expulsion is recommended;
- (iii) the MLA of the Philippines has paid 500 Euros on account and because of this good faith payment there will be no recommendation for expulsion;
- (iv) the Polish, Netherlands Antilles, Nigerian and Russian MLAs have been replying to letters and have undertaken to pay something toward their unpaid contributions. As a result, there will be no expulsion recommendations in respect of these Associations;
- (v) the Indonesian MLA has asked that their arrears be forgiven. The decision was taken not to forgive the arrears, but to waive 2005 dues as a CMI Tsunami donation. Thomas Remé pointed out that they did reply to Questionnaires on Marine Insurance and Fair Treatment of Seafarers and gave every indication of being an active association. When Henry Li is in Indonesia in May, he is authorized by the Executive Council to investigate the Indonesian MLA's request further;

The Israeli MLA has written to request a reduction of their annual contribution from 1602 Euros to 500 Euros. While President Patrick Griggs told that Association it was essential that they expand from a one person operation so they can afford their dues, Executive Council decided not to accept the Israeli request.

José Tomás Guzman, who had been asked to approach the MLAs of South America with respect to unpaid contributions, produced a document in which he explains what has been done in each one of the cases, replies from the MLAs and amounts collected. He also said that some MLAs had requested if part of their debt

could be waived, alleging serious economical difficulties. The associations had presented written requests and, in some cases, made payments on account.

The Executive Council then authorized Mr. Guzman, Mr. Gombrii and the rest of the Unpaid Contributions Committee to continue handling and make decisions on these matters. Letters should be addressed to the debtor Associations advising them of the sanctions considered in the Constitution but, at the same time, giving them an opportunity to explain why the situation had developed and what hope there was in the future for payment.

4. New Constitution, Legal Status of CMI. Comparison of French and English versions for accuracy

Frank Wiswall reported that work on the Constitution is substantially complete. He has the text but there are still a few very small items which have to be put to the Assembly in 2006 for approval.

5. Next Meetings of Executive Council

The President said that in order to save travel expenses the next meeting of the Executive Council will take place by e-mail conference starting on November 28, 2005, and continuing throughout that week. He then advised that the next meeting after that will be held in Cape Town on Sunday, February 12, 2006 in the late forenoon in the Convention Centre.

6. Next Meeting of Assembly

The President said that the next Assembly would be held at the Cape Town Convention Centre on Wednesday, February 15, 2006 in the afternoon.

7. Members

(a) Nominating Committee: Election at the Assembly on April 16, 2005

Mr. Frawley presented the Nominating Committee report on behalf of Bent Nielsen. The nominee from the US MLA, Christopher Davis, is well known to members of the Executive Council arising from his practice and attendance at CMI functions. As to the nominee from the Russian MLA, Sergej Lebedev, Frank Wiswall pointed out that he is a well-known arbitrator, who is an

expert in international law and an outstanding lawyer.

(b) Starter Kit for new Members

Johanne Gauthier said that she would prepare one when told to do so. When it was pointed out that an Association in Kenya had applied for membership, she said that she would write them to advise about the requirements for and responsibilities of membership.

(c) Monitoring of National Associations

Gregory Timagenis said that there was little to report other than that during a recent visit to Cyprus he realized that there is no Maritime Law Association there even though there are several maritime lawyers in that country. He said that he plans to give them some information on the CMI and would try to motivate them to form a Maritime Law Association. The President then said that Algeria may start an Association next year. Mr. Guzman undertook to contact John Hare for a copy of the guidelines for monitoring of national MLAs and will liaise with Mr. Timagenis in carrying out the monitoring duties.

8. Conference Programmes

(a) Guidelines for future Colloquia

Mr. Frawley reported that he was working on draft guidelines and using the Cape Town preparations as a guide. As soon as he prepares a draft he said that he would circulate it for comment.

(b) Colloquium - February 2006 in Cape Town, South Africa

The President decided that after the opening ceremony in Cape Town, Fair Treatment of Seafarers would be on the Agenda for the balance of the forenoon and for the whole of the afternoon. Places of Refuge would then be dealt with on the Tuesday forenoon and on the Wednesday forenoon there would be a "pot pourri" of subjects. No decision was made on the subjects but the following were discussed:

- Wreck Removal
- Issues of Transport Law
- Sistership Arrest
- Marine Insurance
- Procedural Rules Relative to Limitation of Liability Conventions.

(c) 39th Conference - 2008 in Athens, Greece

Gregory Timagenis reported that taking into account the hotel availability and the hotel and airlines prices, the Organizing Committee for the

Athens 2008 CMI Conference proposes as the final date for the Conference, the week starting October 13, 2008. They have narrowed the search for professional conference organizers to two contenders. At the request of the President and of the Organizing Committee, Gregory Timagenis circulated the two offers, the criteria for the selection and the two proposed preliminary Budgets to the members of the Conferences and Seminars Committee. It was agreed that if the Executive Council has no objection, the Organizing Committee would proceed to the final selection of the organizers immediately after the present Executive Council Meeting. There was no objection and the Organizing Committee will proceed accordingly.

The President thanked Mr. Timagenis and his organizing committee for their good efforts in this respect and the Executive Committee endorsed what they have done to date.

(d) Possible next Colloquium/Conference

The Hong Kong MLA has shown an interest in hosting a Colloquium in 2010 and correspondence has been exchanged. Mr. Guzman has previously said that Chile might be interested to host a Colloquium in that year, either in Santiago or Vina del Mar. The President asked Mr. Guzman to request the Chilean MLA to make a proposal.

9. Database e-mail addresses for future CMI Conferences

There was no report delivered.

10. CMI Charitable Trust

The President reported that the equivalent of \$25,000 U.S. (14,000 Pounds Sterling) had been donated to the Charitable Trust from the CMI's share of surplus arising from the CMI Conference at Vancouver. In addition, the formalities are now being done with respect to making Karl-Johan Gombrii an additional trustee.

11. Publications

Francesco Berlingieri will postpone publication of the next Newsletter until the Executive Council Minutes are prepared.

12. Cmi Archives

Frank Wiswall reported that an inventory is still being worked on. He and Mr. Berlingieri will then decide how to deal with it. As to a CD-ROM, the report on past Conferences is not fully completed but it can be done now with what is currently available. He was authorized to proceed.

At this point, Francoise Collet, Assistant Administrator of the French MLA, joined the meeting and advised that she is trying to collect French versions of a number of missing CMI documents. She handed out a list of missing records and asked if the CMI could help in locating them. Francesco Berlingieri and Frank Wiswall undertook to locate as many as they could and send copies to her.

13. International Organizations

(a) Representation of CMI at Meetings of IMO and Fund Meetings

The President reported that Patrick Griggs and Richard Shaw will continue to attend all meetings of the IMO and IOPC Funds.

(b) Co-Operation with IMLI and other Academic Institutions

Frank Wiswall said that he is on the Board of Governors of IMLI and plans to continue giving lectures there.

(c) Monitoring of EU Shipping Measures (Penal Sanctions against Seafarers)

According to the President, Wim Fransen says that he often hears people in Brussels saying that the EU is getting aggressive on penal sanctions against seafarers. Mr. Fransen is invited to approach Professor Hooydonk to see if he and Mr. Fransen can continue to monitor EU legislative intentions so that the Executive Council can remain properly advised.

14. Various

(a) List of those performing CMI management functions, members of IWG's and ISC's

Mr. Frawley and the President reviewed the list and with the assistance of the Executive Council made a number of changes thereto. Mr. Frawley undertook to distribute revised lists as soon as possible.

(b) Young members and CMI prize competition

Mr. Alcantara advised that he had undertaken to

arrange for the prize notice to be made ready and distributed by the Secretariat to the National MLAs. The President thanked Mr. Alcantara for his good efforts in this respect.

(c) Planning Committee: to revive before the Athens Conference

Mr. Alcantara stated that the Committee should also look at Future Topics as well as the CMI Conference in Athens. However the President preferred that the Planning Committee hold itself in reserve for the CMI Conference in Athens only. He said that he would revive that Committee next year so that they can start their work liaising with the Athens organizing committee in good time.

15. Tributes

The President then paid tribute to Frank Wiswall who was retiring as Vice-President. He was first

elected to the Executive Council in 1989 and became a Vice-President eight years later. The President extolled his contributions which were far-reaching, important and many. He also paid tribute to Frank's wife, Libby, who assisted him a great deal and was a great contributor to CMI projects. He then paid tribute to Thomas Remé who was retiring after eight years as an Executive Councillor and extolled his contributions as well. The President said that he hoped very much that they would both continue to work on CMI work in various management functions, IWG's and ISC's. The President then said that he would recommend to the Assembly that Mr. Wiswall be made an Honorary Vice-President. This was unanimously endorsed and a round of applause was given to both gentlemen.

There being no further business, the meeting adjourned at 6:00 p.m. with the President thanking everybody for their assistance and contributions to a successful meeting.

PATRICK GRIGGS (PAST PRESIDENT) COMMANDER OF THE BRITISH EMPIRE

On 11 November 2004, much to my surprise, I received a letter from the Secretary for Appointments at 10 Downing Street indicating that the Prime Minister had it in mind to submit my name to Her Majesty the Queen with a recommendation that I should be appointed a Commander of the Order of the British Empire (CBE) "for services to the Maritime Industry". I am grateful to all my many friends in the maritime field around the world who supported this nomination. This public recognition of my contribution to the work of the CMI is also recognition of the fact that the CMI continues to play an important part in the maritime sector.

The investiture took place at Buckingham Palace on Wednesday, 9 March. My wife Marian, our eldest son Simon and his eldest daughter also attended. The event was organised with military precision (by a mix of army, navy and air force officers) and the investiture itself took place in the Palace Ballroom.

The star of the proceedings on 9 March was undoubtedly our lady double Olympic Champion, Kelly Holmes, who became a Dame of the British

Empire. Immediately ahead of me in the procession was Dr Michael Foale, who has spent longer in space than any other astronaut. A diverse group. There were 120 individuals who received Honours on that day.

My conversation with Her Majesty was, inevitably, brief. Having explained in a sentence what my work at CMI had entailed, she commented on the tendency of ships to sink. With that my investiture was over.

We were joined by the rest of our family for a lunch at the Ritz following the investiture. As we sat eating our lunch we agreed that it had been a truly remarkable day.

My thanks to all my colleagues on the CMI Executive Council as well as to my many friends and acquaintances around the world without whom the CMI would be unable to continue to play such an important part in the creating of the international maritime law.

PATRICK GRIGGS, CBE
Past President, CMI

PROFESSOR EDGAR GOLD AWARDED ORDER OF AUSTRALIA

In the Queen's Birthday Honours published on 13 June 2005, Professor Edgar Gold, CM, QC, of Brisbane, has been awarded the Order of Australia (AM) for "*services to maritime law and protection of the environment as a policy developer and adviser, and through academic roles and involvement in international maritime organisations.*"

Professor Gold holds appointments as Adjunct Professor at the University of Queensland, Faculty of Law, as well as at Dalhousie University, Halifax, Canada and the World Maritime University, Malmö, Sweden, and is also a member of the Governing Board of the IMO-International

Maritime Law Institute, Malta. He also chairs the Queensland Branch of the Nautical Institute and is involved in a number of other maritime-related activities. He was recently appointed to chair the Comité Maritime International's Working Group on the Fair Treatment of Seafarers. He is the author of over 250 books, monographs, articles and papers.

Professor Gold holds dual Australian-Canadian citizenship and was awarded the Order of Canada (CM) in 1997 for his contributions in the maritime field. As a result, he is in the unique position of having been honoured by both Canada as well as Australia.

CMI YOUNG LAWYER PRIZE

1. The Prize shall be funded by the CMI. The Prize shall consist in the personal invitation made to the winner to attend, free of registration fee and with refund of the airfare (economy class), the next CMI International Colloquium to be held in Cape Town (S.A.) in February 2006.
2. Candidates shall be eligible among young lawyers of below 35 years who are members of a National MLA.
3. The Prize shall be awarded to the best essay written in relation to the subject: "*The Fair Treatment of Seafarers following a Maritime Incident. The Legal Issues*". Every essay should not exceed 6,000 words (format details).
4. The works must be submitted in English or French language only. One original and five copies.
5. The essays are to be received by the CMI's Secretariat not later than 31 October 2005.
6. The CMI will appoint a panel of judges to assess papers submitted and award the Prize.
7. The winner will be announced not later than 31 December 2005
8. The winner will be invited to present on the same subject a paper to the Colloquium.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

IMO LEGAL COMMITTEE

Report of Meetings 18th to 29th April 2005

The Legal Committee of the International Maritime Organisation held its spring meeting between 18th and 29th April 2005. The CMI was as usual represented as an observer delegation.

The first week of the session was devoted entirely to the consideration of the draft amendments to the 1988 Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("the SUA Convention") and the 1988 Protocol to this convention dealing with the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. The revision of this convention and protocol is one of the most important responses

delegated to the IMO by the UN Security Council as a result of the terrorist acts of September 11th 2001. The lead delegation is that of the United States, and it has proposed that a number of important clauses will be added to the original convention and protocol dealing with additional offences. These include clauses creating additional offences in the light of the war on terror, conferring the right on a State to board vessels on the High Seas when they are suspected on reasonable grounds of carrying terrorist personnel or materials, and the alignment of the SUA Convention with other conventions on terrorist activity.

The second week was primarily concerned with the proposed International Convention on Wreck Removal (“DWRC”). This convention has been in a draft form for some time, with considerable work being done by a correspondence group led by the delegation of the Netherlands. However it would be fair to say that it has not excited the attention of delegates, and was displaced in the order of priority in the work programme by the need to bring on the revisions to the SUA Convention and Protocol. It was noticeable that the delegates to the April meeting seemed to grasp that the subject of wreck removal is an important one, and good progress was made.

The primary aim of the proposed convention is to extend rights of the affected coastal State to take measures in its Exclusive Economic Zone (“EEZ”)¹ when a wreck in that zone poses a hazard, either to marine navigation, or which may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of States.² The right of the coastal State to intervene on the high seas to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests³ from pollution or threat of pollution of the sea by oil following upon a marine casualty, is recognised by the 1969 Intervention Convention. However the rights conferred by that convention arise only in the case of “grave and imminent danger” and it provides no mechanism for the recovery by the coastal State of the costs involved from the owner of the ship in question. The number of cases where hazardous wrecks are located in the EEZ is relatively few, since by definition that zone lies beyond the limits of the territorial sea and is therefore at least 12 miles from the nearest land. Every State can of course legislate for the removal of hazardous wrecks from its internal waters and territorial sea, but the draftsmen of the DWRC included an “opt-in clause” enabling a State to declare that the provisions of the convention should apply to wrecks located within its territorial sea.⁴ In this way it was hoped to promote harmonization of

the principles of national law governing wreck removal. The “carrot” for such an opt-in provision by a coastal State was the existence in the DWRC of provisions, modelled on the equivalent clauses in the CLC Convention, imposing strict liability for marking and removing a hazardous wreck on the owners of the ship, and providing direct action against the ship’s insurers of the costs of wreck removal, in most cases the P and I Club.

The logic for the inclusion of such provisions is powerful. When a ship becomes a wreck it has, by definition, insufficient residual value to justify the cost of salvaging it. Thus a coastal State which undertakes the removal of such a wreck, whether inside its territorial sea or in the EEZ, has little prospect of recovering the costs involved by legal proceedings if the ship is owned by a one-ship company with no other assets.

The practice of a coastal State detaining the crew of such a ship, allegedly in connection with legal proceedings arising out of the casualty,⁵ has been deplored internationally.⁶ To detain innocent seafarers is bad enough, but to do so as a means of putting pressure on the owners and insurers of the ship to provide security for the costs of wreck removal is beneath contempt.

It is to be hoped that the DWRC will go some way to avoiding such action, at least in the case of wrecks in the EEZ. If the DWRC is extended to its internal waters, the affected State can have no such concerns. One of the most bizarre moments in the debates in the Legal Committee was therefore the decision to delete the paragraphs of the draft providing for the “opt in”. The UK delegate later pointed out that this may not have been a wise move, and it seems quite possible that measures will be instituted to reinstate the paragraphs in question.

The CMI has formed an informal working group consisting of Patrick Griggs, Elizabeth Blackburn QC, and the writer to assist the Netherlands delegation in the development of the final text of the Wreck Removal Convention for presentation to a Diplomatic Conference at the IMO in the 2006-7 biennium, and initial contacts have been very fruitful. However a good deal of further work remains to be done.

¹ As defined by articles 55 to 75 of the UN Convention on the Law of the Sea 1982.

² Article 1(4).

³ Defined by Article 1(6) in terms very similar to the Intervention Convention 1969.

⁴ Article 3(2) and (3).

⁵ Such as the “*Prestige*” in Spain and the “*Tasman Spirit*” in Pakistan.

⁶ For a discussion of the criminalisation of seafarers see the report by the author on the 2004 CMI Conference in Vancouver in JIML [2004]. The Secretary-General of the IMO repeated the concerns of the organisation at developments in this area in his speech at the opening ceremony of the Legal Committee.

Places of Refuge

A short debate on this subject took place on the 26th and 27th April. The CMI delegation presented its paper LEG 90/8 which summarised the current position concerning liability and compensation arising out of the admission of a distressed vessel into a place of refuge. While the CLC and Fund conventions provide a substantial resource for oil pollution claims of the coastal State, the HNS and Bunkers pollution conventions have not yet entered into force, and even when they do, there will still be significant gaps in the compensation regime. Not the least of these gaps is that in respect of wreck removal costs. The CMI therefore recommended further work on this subject with a view to developing a convention giving greater muscle to the IMO Guidelines on Places of Refuge and dealing with compensation issues. This was strenuously supported by the International Association of Ports and Harbours (IAPH) and also by the delegations of Korea and Spain, but the overwhelming majority did not favour further work by the IMO Legal Committee at this stage. However the Chairman confirmed that this was a very important subject, and that there was need to keep it under review. It was noted that the CMI International Sub-Committee will continue its work in this field, and it was agreed that this subject should be kept on the work programme of the Legal Committee in the long term.

In the meantime the committee noted the standard form of letter of guarantee tabled by the International Group of P and I Clubs to be given to a port or proper authority in relation to a ship seeking entry to a place of refuge.⁷ The draft contains a figure of US\$ 10 million as its limit, but the P and I delegate assured the Legal Committee that this figure was for illustration purposes only, and could go up or down.

Passenger Risks

The subject of terrorism also came up in the discussions of the Athens Protocol 2002. Although certain risks, such as war, are excluded from the strict liability provisions of this protocol, an attempt by the insurance industry at the 2002 diplomatic conference to convince the delegates that it was impossible to insure against such risks fell on deaf ears. Subsequent research, led by the delegation of Norway, has revealed that such

cover is not presently available, and that States would not therefore be able to issue the certificates of financial responsibility as envisaged by the Protocol. A resolution was therefore adopted recording that as long as insurance against terrorist risks is not obtainable States are allowed to issue certificates under the Athens Protocol, with the terrorist risk excluded.

Provision of Financial Security. Bareboat Chartered Vessels

Concern was expressed, following the acceptance of the Athens Protocol 2002, that the bareboat chartering of a passenger vessel (a common enough practice) might prejudice the financial security offered to passengers under the Protocol. The CMI submitted a paper which explored the complexities of this issue and identified a theoretical problem. However the paper concluded that in practice, provided that all flag and port States check the existence for each ship of "insurance or other financial security", claimants' rights will be protected. This assumes that all proceedings commenced by or on behalf of passengers will be against the company which issued the ticket and/or the actual carrier (if that is someone else) and will include, as a primary or secondary defendant, the insurer or other provider of financial security.

In those circumstances the CMI concluded that bareboat chartering of passenger vessels will not, in practice, prejudice the financial protection given to passengers by the 2002 Athens Protocol. Delegates to the Legal Committee took note of this report and thanks were expressed for the research work carried out by CMI.

Limitation of Liability – Uniform Rules of Procedure?

The CMI also presented to the Legal Committee a paper developed by Professor Francesco Berlingieri of Genoa on this topic. The paper notes that since the Limitation conventions leave the procedural aspects of limitation cases to national law, the different rules of procedure may significantly affect the substantive rules and thus adversely affect uniformity. Prof. Berlingieri's paper therefore indicated that the CMI proposed to conduct an investigation into (a) how the procedural rules contained in the Limitation

⁷ Available on the IMO website under Legal Committee document LEG 90/8/2.

Conventions have been implemented by States Parties; and (b) which national rules for the conduct of limitation proceedings exist in the laws of the States Parties. This investigation would be conducted by means of a questionnaire distributed to all its member National Maritime Law Associations. The Legal Committee noted the CMI's intentions in this regard and stated its readiness to examine the results of this investigation in due course.

The meeting ended on a slightly sentimental note. Mr Alfred Popp QC of Canada, who has chaired

more than 30 meetings of the IMO Legal Committee out of a total number of 90 such meetings, will be retiring at the end of December 2005, and since there will be no meeting of the Legal Committee in October due to the holding of the Diplomatic Conference to adopt the new SUA Convention and Protocol, this was his last session in the chair. The Legal Committee will certainly miss his patient guidance and wise chairmanship. Professor Lee-Sik Chai of Korea was elected the new chairman and all present wished him well for the future. Alfred Popp will be a very hard act to follow.

RICHARD SHAW

NEWS FROM THE IOPC FUND

MEETINGS OF THE IOPC FUNDS – MARCH 2005

Meetings of the governing bodies of the 1971, 1992, and Supplementary Funds took place in London between 14th and 22nd March 2005. The CMI was, as usual, in attendance as an Observer Delegation.

The most significant event was the formal entry into force on 3rd March 2005 of the Supplementary Fund. This fund was created by the Protocol of 2003 in response to the need, demonstrated by the “*Erika*” and “*Prestige*” cases, to increase compensation available for major pollution incidents up to a maximum level, from all sources, of 750,000,000 SDR, equivalent to approximately US\$1.1 billion. As at the date of the meetings eight States had ratified the Supplementary Fund Protocol.⁸ The Protocol will enter into force for Portugal in May 2005 and the delegates of Sweden, Italy, and Greece reported that the legislation necessary to ratify the Protocol is on its way through their parliaments. The delegates of Oman and the UK advised that they were hoping that their governments would be ratifying in the near future.

The first Assembly of the Supplementary Fund adopted a number of administrative measures to enable the new body to become operational, the most important of which was the appointment of the Director and Secretariat of the 1992 Fund to be, ex officio, Director and Secretariat of the Supplementary Fund. Since the fundamental

principle of the Supplementary Fund is that it will follow in all respects the decisions of the 1992 Fund with regard to all established claims recognised by the 1992 Fund or accepted as admissible by a competent court and not subject to the ordinary forms of review, the two funds will, in cases where the 1992 Fund is unlikely to be sufficient to cover all claims, work very closely in parallel. The common Director and Secretariat is an eminently sensible arrangement. No separate Claims Manual or Claims Settlement Procedure will therefore be required by the Supplementary Fund.

Among the more formal administrative decisions taken by the meetings was a resolution to accord Observer Status at meetings of the Supplementary Fund to all non-governmental organisations who already have Observer Status to the 1992 Fund. Among those organisations was the CMI.

The Intersessional Working Group Review

The most interesting sessions in the last week were those of this Working Group, tasked with a review of the international compensation regime, under the patient Chairmanship of Alfred Popp QC of Canada. This Working Group has been meeting regularly over the past 5 years: nine sessions in all. It was indeed in this Working Group that the

⁸ Denmark, Finland, France, Germany, Ireland, Japan, Norway and Spain.

genesis of the Supplementary Fund took place, and it was recognised that having brought this new fund into existence, the remaining adjustments were minor in comparison. There was however a widely held view that the burden of the compensation regime fell unfairly on the oil cargo industry, and that a significant increase in the ship owner's share was called for. This view was articulated in papers put in by OCIMF, representing the major oil companies, and by certain governments, notably those of members of the EU and Australia, Canada and Japan.

The International Group of P and I Clubs had taken on board this concern well before the 2005 meeting, and has already put in place a scheme called STOPIA (Small Tanker Oil Pollution Indemnification Agreement) under which the owner of a tanker entered in a Club which is a member of The International Group will, in the event of a casualty in a Supplementary Fund member State, raise the minimum threshold of the Owner's liability (where the Fund comes in) from SDR 4.51 million for ships of 5,000 or less to SDR 20 million, equivalent to the CLC 1992 limit of a ship of 29,548 tons. This scheme is intended to relieve the IOPC Funds of the burden of claims handling in all cases where the claims do not exceed this level. It is hoped that this will result in the IOPC Funds again becoming concerned only in major cases, except for those cases where the ship owner's liability insurance cover is inadequate or non-existent.⁹

The STOPIA scheme was welcomed by the delegates in the Working Group, but the majority considered that while this was a welcome move, it was not enough. In anticipation of this the International Group tabled an alternative scheme called TOPIA, which would make the owner of a polluting ship in a major casualty contribute 50% of the Supplementary Fund's share. The two schemes were offered as alternative, not cumulative solutions. In the discussions in the Working Group, several delegates made clear that if the two schemes were both put into effect, this would be much more acceptable, and would indeed persuade many of them to defer pressure to amend the Fund Regime generally.

In the debate in the Working Group there was small majority in favour of further, limited amendments to the Fund Conventions to give the authority of an International Convention to a scheme (such as those proposed by the International Group of P and I Clubs) for revising the sharing of the financial burden, and other amendments to the tacit amendment procedure, compulsory insurance, non-submission of oil reports, quorum for meetings, and clarification of certain ambiguities in the definition of "ship" in the CLC and Fund Conventions. However at the conclusion of the debate the Chairman's summary indicated that in his view there was not sufficient support for these amendments to justify the work of reopening the existing conventions, creating a new Fund, and persuading member States of the 1992 Fund to transfer their membership to the new fund so created.¹⁰ The Chairman will report accordingly to the next meeting of the 1992 Fund Assembly, scheduled for October 2005.

Some EU States (including UK, France and Germany, all substantial contributors) indicated that the clubs' proposals were unlikely to satisfy the European Commission, who might well be tempted to reactivate their projected 1,000 million Euro COPE Fund, modelled on the US OPA90 legislation. It is to be hoped that the European Commission can be persuaded to wait at least until the Clubs' proposals have been refined and considered at the next Fund Assembly in October 2005.

Shipping is a world-wide business, and it would be a great shame if Europe were tempted to "go it alone" in the field of pollution compensation. The US OPA has been held up as the model for the European Commission's approach, but the US has a negligible foreign-going fleet, and so has little fear of tit-for-tat response from States overseas against ships flying their flag. That cannot be said for UK, France, Germany and Netherlands. If CMI member MLA's can get the message across to their governments, and their friends in Brussels, that the search by IMO and CMI for global solutions is worth the effort, that would be no bad thing.

RICHARD SHAW

⁹ Those cases, such as those involving uninsured ships smuggling oil out of Iraq, will always be paid by the Funds, since the victims would otherwise be left uncompensated.

¹⁰ In this respect it is worth noting that although the "old" 1971 Fund has ceased to exist, there are still 10 states formerly members of the 1971 Fund which have not yet ratified the 1992 Fund Convention, namely Albania, Benin, Côte-d'Ivoire, Gambia, Guyana, Kuwait, Maldives, Mauritania, Saint Kitts and Nevis, and Syrian Arab Republic.

U.K. MERCHANT SHIPPING (POLLUTION) BILL 2005

A new Merchant Shipping Bill was presented to the UK Parliament on 25th May 2005 which will, if adopted, grant the necessary powers to the UK Government to ratify the 2003 Protocol to the International Oil Pollution Compensation Fund Convention 1992 which creates the Supplementary Fund. This fund will increase pollution compensation available through the CLC and Fund schemes to 750 million Special Drawing Rights, equivalent to approximately US\$ 1.1 billion.

The Supplementary Fund Protocol entered into force on the 3rd March 2005 with the ratifications of Denmark, Finland, France, Germany, Ireland,

Japan, Norway and Spain. The European Union has recommended all its member States to ratify the Protocol and, according to statements made by delegates at the last IOPC Fund meetings in March 2005, ratification by Portugal, Sweden, Italy and Greece may be expected in the near future.

In addition to the provisions relating to compensation for oil pollution, the draft bill provides for the amendment of section 128 of the Merchant Shipping Act 1995 to give effect to the addition of Annex VI to the MARPOL Convention, containing regulations for the prevention of air pollution from ships.

NEWS FROM UNCITRAL

THE XVI SESSION OF THE WORKING GROUP ON TRANSPORT LAW HELD IN NEW YORK FROM 18 TO 28 APRIL 2005

I attended the above session on behalf of CMI at which the following topics were discussed. All the documents to which I refer are available either on the UNCITRAL or the correspondence group website.

1. Scope of Application and Freedom of Contract.
At the end of the 14th session in Vienna a drafting suggestion was tabled which is set out in the formal report (A/CN.9/572) at para 105. Prof. Honka then circulated a second questionnaire to the informal correspondence group and a second report in the week before the New York session began. This report proposed that OLSAs should be subsumed into the existing approach to volume contracts in the scope of application of the Draft Instrument and put forward redrafts of the relevant provisions. General support was expressed for this approach and an informal drafting group was set up under Prof. Honka's chairmanship in order to revise the relevant articles in accordance with the decisions made in the formal sessions. The discussion at this session was long and detailed and the revised text is set out in the formal report (A/CN.9/576).

2. Jurisdiction.

Mr Christoffersen (Denmark) had prepared and circulated to the correspondence group a tabulation summarising the further comments he had received following the discussion in Vienna.

The Working Group discussed the topic on the basis of certain key issues which Mr Christoffersen suggested and the Secretariat has been asked to revise articles 72, 72bis (actions against maritime performing parties), 73 and 74. Article 75 (lis pendens) has been deleted. No decision was made about the enforceability of exclusive jurisdiction clauses either as between the original parties or as regards third parties, but the Secretariat has been asked to produce a revised text. No decision was made as to whether the Instrument should include provisions on recognition and enforcement. It is expected that an official working paper containing revised provisions will be produced by the Secretariat in good time before the next session.

3. Arbitration.

No further substantive discussion took place at this session partly because of shortness of time and partly because the Netherlands put forward a suggestion for a possible compromise as follows:

- a) Chapter 16 (arbitration) should be deleted,
- b) Chapter 15 (jurisdiction) should only apply to the liner trade with arbitration clauses in transport documents in the liner trade being unenforceable, but c) the parties would be free to agree on any jurisdiction, or on arbitration, after a dispute had arisen. The USA, which is particularly concerned that arbitration should not be used as a way to circumvent the jurisdiction provisions, thought that this basis

for compromise had promise, but felt that there may be some instances outside the liner trade to which chapter 15 should apply. It was agreed that it was not sensible to discuss this topic further until a formal proposal was on the table. It is envisaged that such a proposal will be developed in the correspondence group and then incorporated into a working paper for the next session.

4. *E-commerce.*

The revisions to the Draft Instrument recommended by the Experts' Group convened by the Secretariat in February are contained in WP 47 and this paper formed the basis for the discussion of this topic. The principal issues concerned the accommodation of registry systems in the Instrument (article 6 and footnote 31 to WP 47) and electronic signatures (article 35). The points raised were incorporated in a revised text, which was approved, and which is set out in the formal report of the session.

5. *Right of Control.*

There was no substantive discussion of this topic which was deferred until the next session. In the meantime it is expected that the Secretariat will prepare a formal working paper.

6. *Transfer of Rights.*

This topic has also been deferred. It was however agreed that article 61bis contained in para 12 of WP 47 (originally drafted by Allan Philip in Bordeaux) should be inserted in the Draft Instrument.

7. *Future Programme.*

The next, 16th session will be held in Vienna, subject to the Commission's approval, from 28 November to 9 December 2005 and it was agreed that the following topics would be discussed:

- Right of Control
- Transfer of Rights
- Jurisdiction and Arbitration
- Delivery of goods (articles 46-52), including period of responsibility (article 11(2))
- Shipper's obligations.

The 17th session will be held in New York from 3 to 13 April 2006 and the following topics will be discussed:

- Scope of Application and Freedom of Contract
- Rights of Suit and Time for Suit
- Limitation levels
- Transport Documents
- Pending Issues, including issues relating to maritime performing parties (article 15), network principle and national law (article 8), special limitation (article 18(2))

8. *Methods of Work.*

The Secretariat intends to update WP.32 in time for the next session by incorporating the revised provisions set out in WP.36 and 39 and the revised texts approved at the last two sessions in Vienna and New York.

STUART BEARE

