

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 2 - MAY / AUGUST 2005

This Issue Contains:

News from the CMI

- Minutes of the Assembly held in Paris on April 16, 2005
- Acts of Piracy and Maritime Violence – Report and Questionnaire

Ratification and denunciation of International Conventions

NEWS FROM THE CMI

**MINUTES OF THE ASSEMBLY HELD AT THE AUTOMOBILE CLUB DE FRANCE,
IN PARIS ON APRIL 16, 2005 AT 09.00 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>Acting Secretary General:</i>	Nigel FRAWLEY
<i>Administrator</i>	Wim FRANSEN

Member associations:

The delegates registered for and those present at the Assembly are set out at Annex "A" to these Minutes. A quorum was declared and the meeting held to be properly constituted.

President Jean-Serge Rohart opened the meeting and welcomed all of the delegates present. He then introduced the Executive Councillors and

said that Francesco Berlingieri, Patrick Griggs, Karl-Johan Gombrii and Benoit Goemans were very sorry that they were unable to be at the Assembly. The President advised the Assembly that Patrick Griggs had been honoured by Queen Elizabeth II recently at Buckingham Palace by bestowing upon him the C.B.E. (Commander of the British Empire) for his many contributions to international maritime law.

1. Adoption of Agenda

The tabled agenda was adopted.

2. Memorials

The President then paid tribute to our esteemed Past-President, Allan Philip, who died in September 2004. He was an eminent scholar and earned the title of Doctor Juris at the University of Copenhagen. He was a Professor and then Dean of the law school of that University and lectured at The Hague Academy of International Law. He was the senior partner of the law firm, Philip and Partners, of Copenhagen. He represented Denmark at many diplomatic conferences on maritime and private international law and has been an expert from Denmark in the committees of the European Union and the Council of Europe. He was elected President of the CMI in 1990 and served for eight years in an exemplary fashion. He will be greatly missed.

The Acting Secretary-General then paid tribute to the Honourable Mr. Justice Richard Cooper of the Federal Court of Australia. He was a great supporter of the Australian and New Zealand MLA and the CMI. He attended many conferences and participated fully in maritime matters. He also earned the respect of the Attorney General of Australia in recent years owing to his presiding over a lengthy and difficult hearing relating to aboriginal land rights in Australia.

The President then called for a moment of silence in tribute to these two fine gentlemen.

3. Approval of the Minutes of the Assembly held in Vancouver on June 4, 2004

The Minutes of the Vancouver Assembly were duly tabled and approved.

Matters arising therefrom

There were no matters arising from the Minutes.

4. Members

(a) Titulary Members

President Rohart moved for the admission of the following as Titulary Members of the CMI:

Argentina: Diego Chamí, Carlos Lesmi and Jorge Radovich.

The Netherlands: Taco Van Der Valk.

So resolved.

(b) Honorary Vice-President

President Rohart reported that the Executive

Council had recommended the appointment of Frank L. Wiswall, Jr. as Honorary Vice-President in recognition of his many contributions to the CMI. So resolved.

(c) Consultative Members

No nominations were received.

(d) Associations of Maritime Law

No nominations were received.

Nominating Committee Report

Bent Nielsen then advised the delegates that Frank Wiswall, Jr. had now completed two terms as a Vice-President and was not eligible for re-election. He thereupon nominated Stuart Hetherington (Australia) for a first term and Karl Johan Gombrii (Norway) for a second term as Vice-President. He then nominated Nigel Frawley (Canada) for a first term as Secretary-General. He nominated Benoit Goemans (Belgium) for a second term as Treasurer and Johanne Gauthier (Canada) for a second term as Executive Councillor. He noted that Thomas Remé had completed two terms as an Executive Councillor and was, therefore, no longer eligible for re-election. He then pointed out that Professor John Hare (South Africa) was obliged to resign for personal reasons but that his resignation would not be accepted until the Assembly at the Cape Town Colloquium. He thereupon nominated Christopher Davis (U.S.A.) and Sergej Lebedev (Russia) for first terms as Executive Councillors. He then called for nominations from the floor but there were none. Professor Kolodkin, Chairman of the Russian MLA, then spoke on the high qualities of Mr. Lebedev and pointed out that he was presently Deputy Chairman and Vice-President of the Russian MLA. Mr. Nielsen then moved for adoption of the Nominating Committee's report. The motion was seconded and carried unanimously.

Tributes to Frank L. Wiswall, Jr. and Thomas Remé

The President then paid tribute to Frank Wiswall who has served the CMI faithfully on its Executive Council for a total of 16 years – eight years as an Executive Councillor and eight years as a Vice-President. He pointed out that his important contributions have been many and that he was pleased to say that Mr. Wiswall had agreed to remain involved in several of the committees and working groups. Mr. Rohart also paid tribute to

Mrs. Libby Wiswall who has been a loyal and faithful supporter of the CMI who attended all conferences, colloquia and meetings and often gave wise advice at social gatherings. He then presented Mr. Wiswall with a telescope in recognition of his service. The plaque on the box was inscribed: "To Frank L. Wiswall, Jr., from your friends at the CMI, April 16, 2005 Paris". The President then paid tribute to Thomas Remé who has served the CMI effectively for eight years on the Executive Council. He extolled his virtues as a lawyer, poet and Executive Councillor and presented him with a chronometer as a gift. The plaque on the box was inscribed: "Thomas Remé, from your friends at the CMI, April 16, 2005 Paris".

Finances

(a) Nigel Frawley then presented the accounts for the fiscal year-end December 31, 2004, the Treasurer's report and the report of the Chairman of the Audit Committee in the absence of Benoit Goemans and Senator David Angus. Mr. Frawley referred to the strong financial position that the CMI is in owing, in large part, to sound fiscal management and the donation from the Canadian Maritime Law Association arising from the surplus funds from the CMI Conference in Vancouver. He said that the Treasurer was mindful of the travel expenses that would be incurred in February 2006 for the Colloquium at Cape Town and would continue to adopt his usual conservative approach. Mr. Frawley then moved the adoption of the accounts. Mr. Peter Cullen, President of the Canadian Maritime Law Association, moved an amendment this being that on the income and expenditure account under the heading "Other Income", the word "conf. profit" be deleted and the words "conf. surplus" be inserted. This is to bring it into line with the Canadian Maritime Law Association's book-keeping to accord with the Income Tax laws for non-profit organizations. He also moved that on the Financial Statements and Budgets page under "Other Income", that the words "Conference Profit" be deleted and the words "Conference Donation" be inserted in lieu thereof. Mr. Brian McGovern of the Irish MLA seconded the amended motion and it carried unanimously. Mr. Frawley then moved that the auditors, De Mol, Meuldermans & Partners BBBA, as represented by Kris Meuldermans, be appointed as external auditors of the CMI for the fiscal year 2005. Johanne Gauthier seconded the motion and it carried unanimously.

(b) Unpaid Subscriptions

The President stated that Mauritania and Senegal were outstanding in their annual contributions and had not replied to letters seeking payment. In the result, and pursuant to the Constitution and practices of the CMI, the President moved that they be expelled. This was seconded by Wim Fransen and unanimously carried.

(c) Revision of CMI Constitution/New Legal Status for CMI

Wim Fransen reported that the process was largely complete but that there were a few minor amendments still to be done which would then be put to the Assembly in Cape Town in February 2006 for consideration and vote.

Cape Town Colloquium

The President then invited James MacKenzie of the law firm Wylie & Shepstone, Cape Town, who is the Chairman of the organizing committee for the colloquium, to address the Assembly. Mr. MacKenzie reported that he was working closely with the CMI in an effort to keep the registration fee and other costs down and he encouraged people to attend what promises to be a most exciting colloquium. He described Cape Town as a very welcoming tourist destination and that there were all manner of different things to see and do in and from that location. The President then said that the title of the colloquium would be "Safety and Liberty at Sea" and that the featured presentations would be (i) Places of Refuge, led by Stuart Hetherington. He described how as this topic proceeds, questions may arise as to whether a new Convention is required or simply guidelines or some other instrument; (ii) Fair Treatment of Seafarers following a Marine Accident. This would be led by Edgar Gold and he encouraged replies to the Questionnaire on this topic. The President then described the other subjects that might be given, including Wreck Removal, UNCITRAL Issues of Transport Law, Maritime Violence, Sistership Arrest and Marine Insurance.

Assembly 2006

This will be held during the afternoon on Wednesday, February 15, 2006 at the Cape Town Convention Centre.

Publications

(a) CMI Archives

Mr. Frawley reported that an inventory of

publications was presently being taken by Francesco Berlingieri and Frank Wiswall and they would be put on a CD-ROM in due course. Mr. Brian McGovern of the Irish MLA said that he had visited the CMI website recently and noted that the reports from Vancouver were not on it. Mr. Frawley said that he would refer this to Mr. Berlingieri for action.

(b) CMI on the Internet

Mr. Frawley reminded those present that the CMI website is: www.comitemaritime.org and that efforts were underway to prevent unwanted links.

(c) Work in Progress

(a) Transport Law. – Nigel Frawley reported that Stuart Beare was presently in New York to attend the UNCITRAL meetings on the preparation of a draft instrument on Issues of Transport Law which was due to commence on April 18 and proceed until April 29, 2005. He said that the rapporteur was Michael Sturley who would be in New York as well.

(b) Marine Insurance. – Thomas Remé advised that John Hare's report at the CMI Conference in Vancouver would be put on the website. He said that there were new international initiatives in this field which his committee was following closely.

(c) Maritime Security. – Mr. Frawley reported that there had been a meeting in London recently on this topic, including representatives from the IMB, BIMCO, Interpol, the Clubs, IUMI, the International Chamber of Shipping and Frank Wiswall on behalf of the CMI. He said that strong feelings had been expressed to revisit the Model National Law on Acts of Piracy and Maritime Violence which had been prepared by Mr. Wiswall and representatives of other organizations, to bring it up to date with post 9/11 conditions. It was considered that the Model Law should cover terrorism, kidnapping for ransom from ships, SUA, piracy and any violent act. A report has been prepared by Mr. Wiswall for circulation to the IMO Legal Committee, the CMI Secretariat and the CMI Newsletter. The next meeting will be held in London in November 2005 immediately after the IMO meeting to amend SUA. He said that it was vital that the Model Law be completed by the end of 2006.

(d) Implementation and Interpretation of International Conventions. – Gregory Timagenis referred to the Guidelines on Implementation he was working on and urged that this be a work

topic for the Athens Convention in 2008. He said the work being done on implementation is a contribution to uniformity. He urged replies to the Questionnaire on the subject and suggested that the CMI avoid public international law and concentrate on private international law. He said that procedural rules, such as those contained in the Limitation Conventions, are for the States involved but that CMI guidelines would be helpful to courts and civil servants.

The President then said that the CMI should not only bring its expertise on legal affairs to the IMO but that it was important we continue with our own projects of assisting in unifying procedural rules of private international law in those subjects we think important, for example, Limitation of Liability, Salvage and HNS. Mr. Timagenis said that he would continue his work on Limitation of Liability guidelines for the CMI Conference in Athens in 2008.

(e) Salvage. – The President then reported that there were often problems with procedural rules under this topic and there is no reason why the CMI cannot prepare guidelines for the assistance of those concerned.

(f) Places of Refuge. – Stuart Hetherington said that at the Vancouver Conference, Places of Refuge was discussed and eight issues arose. These were embodied in a report which was submitted to the Legal Committee at the IMO. He said that there are two distinct views at IMO: some EU countries do not want a new Convention; and several other countries in the world do want a new Convention. This problem will be discussed at Cape Town. He then said that Patrick Griggs had met with Alfred Popp and Rosalie Balkin of the IMO and suggested that a short supplemental report on Places of Refuge be forwarded to IMO on preventive measures. This has been done and was presently under consideration of the IMO Legal Committee.

(g) Bareboat Charter Vessels. – José Maria Alcantara reported that the IMO had raised this subject for the CMI's consideration stressing safety and certificates of insurance. He said that under the Athens Protocol there was no problem for passengers as there is provision for certificates of financial security. He went on to say that the provision of such certificates by Bareboat Charterers directly, unlike Owners, will give rise to certain problems under other Pollution Liability Conventions because such obligation may be falling on the registered Owner only. The CMI has prepared a report for IMO, which has been

circulated among the National Maritime Law Associations.

(b) Revision of CLC/Fund Conventions. – The President reported that meetings of the governing bodies of the 1971, 1992, and Supplementary Funds took place in London between March 14-22, 2005. The CMI was in attendance as an observer delegation represented by Richard Shaw. The most significant event was the formal entry into force on March 3, 2005 of the Supplementary Fund. A resolution was made at one of the meetings to accord observer status at meetings of the Supplementary Fund to all non-governmental organizations which already have observer status to the 1992 Fund. Among those organizations was the CMI.

He then referred to the Inter-sessional Working Group which has met regularly over the past five years and is responsible for the genesis of the Supplementary Fund. It was recognized that, having brought this new Fund into existence, there remained 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 shipowner's share was called for. The International Group of P & I Clubs have taken this matter under consideration and have already put into place a scheme called "STOPIA (Small Tanker Oil Pollution Indemnification Agreement)" to address this concern. It is hoped that this scheme will result in the IOPC Fund again becoming concerned only in major cases, except for those cases where the shipowner's liability insurance cover is inadequate or non-existent. Although the STOPIA scheme was welcomed by the delegates in the Working Group, an alternative scheme has now been created called "TOPIA" to make up any shortfall.

(i) General Average. – Bent Nielsen then reported on the York/Antwerp Rules 2004 which were finalized at the Vancouver Conference. He said that BIMCO has stated to its members they do not endorse them but that they prefer to rely on the 1994 York/Antwerp Rules. He said that there were a variety of thoughts and conclusions by insurers but their bargaining power was not great. He said that the future was not optimistic for the new Rules.

He then raised a point under the new Rule 21. This is that a rate of interest has to be fixed every year. He said that a Working Group comprising Patrick Griggs, Richard Shaw, a Danish banker and Bent Nielsen fixed such rate for the period January 1, 2005-January 1, 2006 at 4% p.a. He

moved that this rate of interest be adopted, it was seconded by Mr. Timagenis and the motion carried unanimously.

The President then said that 200 cards/brochures describing the new Rules in the English language had already been distributed to IUMI and that 300 cards/brochures in English and French would be distributed to industry in the near future.

(j) Wreck Removal. – The President said that the IMO, with CMI help, has studied this draft Convention in the context of the Salvage Convention. He said that this would be the subject of a paper given at the Cape Town Colloquium.

(k) Classification Societies. – Mr. Frawley reported, in Frank Wiswall's absence, that there appears to be a general interest still existing among shipowners and Classification Societies that the CMI re-visit this work topic some time in the future, but not at present. Limitation of Liability is still a difficult area and it is felt that once a Court hands down a large judgment against a Classification Society there will be an impetus for further work on this topic. The CMI will continue to monitor.

(l) Fair Treatment of Seafarers following a Marine Accident. – The President reported on the harsh criminal sanctions against seafarers following a casualty or pollution event. He cited many examples of Masters being incarcerated and crews held for interviewing by the authorities for long periods of time which posed great difficulties for themselves and their families, as well as for Shipowners/charterers who want to keep their ships moving. He said that a Questionnaire had been distributed by Edgar Gold's committee with a March 30, 2005 deadline. Many replies have been received. He said that Mr. Gold's committee would review the reluctance of shipowners' insurers to indemnify Masters and crew and assist local police and other authorities. It is vital that a distinction be made between a maritime crime and an inadvertent act leading to a catastrophic result.

Various

(a) Young Members and CMI Prize Competition

José Maria Alcantara reported on this project which promotes a prize for an essay prepared by members of National MLA's who are under 35 years on the subject of Fair Treatment of Seafarers following a Marine Accident. He said that the prize for the winning entry would be a free air

ticket to the Cape Town Colloquium. He said that a letter on this would be going out to all National MLA's in the near future.

At this point, the President said that he encouraged more young members and participation within the CMI.

Mr. Timagenis said that he hoped a few hours would be spent on this subject at the Athens Conference in 2008. He said that it is important that we tell young members of the CMI's history, work and importance.

(b) New MLA's

The President said that there were no new MLA's. He asked for ideas on how to encourage new members. He said that Johanne Gauthier had prepared a Starter Kit for prospective and new associations and this would be posted on the website. He said, further, that we should enhance our reputation as experts in maritime law. He is disappointed by those in arrears in their annual contributions and sought advice on how to deal with this.

(c) CMI 39th International Conference, Athens 2008

Gregory Timagenis then reported that the month of October was the most appropriate month for a conference to be held in Athens to get cheaper prices in hotels and air fares while the weather is still good. The exact dates are Monday, October 13, 2008 to Friday, October 17, 2008 although the opening ceremony will take place in the evening of Sunday, October 12, 2008. Although the hotel prices are much higher at present, the Organizing Committee has negotiated prices around 200 Euros per day for 2008. The program will include working sessions on the Monday, Tuesday, Thursday and Friday, in the morning and the CMI Assembly in the afternoon. On the Wednesday an excursion or probably a day cruise will be organized and there will be social events in the evening. He said that by the Cape Town Colloquium there would be a draft programme in place. The registration fee was estimated to be on average 800 Euros, but it will escalate depending on the time of registration from 750 Euros to 850 Euros and to 950 Euros.

Future Topics

The President then said he would appreciate hearing from any member who had ideas for future topics.

Andrew Taylor of the British MLA agreed with Mr. Timagenis that Young Members be on the Athens programme. He said that the BMLA is making a big effort to attract young members and it is important that we make the CMI/MLA's more attractive. Mr. Timagenis agreed and said that they could set up separate rooms for young and old delegates at the Athens Convention on topics. Mr. Alcantara said that we should not be too paternalistic on this. Young members have done a lot of research and are quite experienced in our work. The Belgian delegate said that we should consider lowering the registration fee for young members and Mr. Timagenis said that he would look into this. Liz Burrell of the USMLA said that they had conducted a study of young members over the past 2 1/2 years. She said that the bottom line is that money is the major problem for young members. For example, registration fees and membership fees, time away from the office, plus continuing legal education criteria, militate against young member participation. Mr. Oduba of the Nigerian delegation said that they are studying the British system of points towards continuing legal education and that age should be measured by years of practice, not simply being "under 35".

The President summed up by saying that this is a worthy topic for consideration by the Executive Council.

Termination

Professor Kolodkin stated that he wanted it known that Russia had recently paid its 2004 dues and would not be long in paying their 2005 dues. Thomas Rue, President of the USMLA, congratulated Jean-Serge Rohart for his handling of his first Assembly and looked forward to the new era under his leadership. He thanked the President for all of the arrangements for the Assembly and looked forward to the French MLA's reception following.

The President then terminated the meeting at 12:25 hrs.

ANNEX "A"

Delegates at CMI 2005 AssemblyParis – 16th April 2005

NATIONAL ASSOCIATION	NAME OF DELEGATE
Australia & New Zealand	Stuart Hetherington, Ex. Co.
Belgium	Herman Lange Wim Fransen, Ex. Co. Pascale Sterckx, Ex. Co.
Canada	Peter Cullen Nigel Frawley, Ex. Co. Justice Johanne Gauthier, Ex. Co.
Chile	José T. Guzman Salcedo, Ex. Co.
China	Henry H. Li, Ex. Co.
Croatia	Igor Vio Amra Pende
Denmark	Bent Nielsen
Dominican Republic	Marie Linnette Garcia Campos
France	Françoise Odier Philippe Godin Patrick Simon Luc Grellet Patrice Rembauville-Nicolle Jean-Serge Rohart, President, Ex. Co.
Germany	Jan-Thiess Heitmann Thomas Remé, Ex. Co.
Greece	Gregory Timagenis, Ex. Co. Lily Timagenis
Ireland	Brian McGovern Paul Gill
Italy	Giorgio Berlingieri
Japan	Noboru Kobayashi
Netherlands	Vincent de Brauw
Nigeria	Olujimi Oduba
Russia	Anatoly Kolodkin
Slovenia	Patrick Vlacic Marko Pavliha
South Africa	James Mackenzie
Spain	José M. Alcantara, Ex. Co.
Sweden	Lars Boman
United Kingdom	Andrew Taylor Jonathan Lux
United States	Thomas S. Rue Lizabeth L. Burrell Christopher O. Davis Frank L. Wiswall, Jr., Ex. Co.

ACTS OF PIRACY AND MARITIME VIOLENCE

REPORT OF THE FIFTH SESSION OF THE JOINT INTERNATIONAL WORKING GROUP ON UNIFORMITY OF LAWS CONCERNING ACTS OF PIRACY AND MARITIME VIOLENCE. LONDON, 12 APRIL, 2005

1. At the invitation of the Comité Maritime International, the Group met for its Fifth Session on 12th April at Ince & Co., Knolly's House, 11 Byward Street, London. The meeting commenced at 9:45 a.m. and concluded at 11:50 a.m.

Participating were:

on behalf of the Comité Maritime International (CMI):

- Dr. Frank L. Wiswall, Jr., Vice-President *honoris causa*; Professor, IMO International Maritime Law Institute (IMLI); Past Chairman, IMO Legal Committee

on behalf of the Baltic and International Maritime Council (BIMCO):

- Thomas J. Timlen, International Affairs Liaison

on behalf of the International Chamber of Shipping (ICS):

- Linda Howlett, General Manager (Legal)

on behalf of the International Group of P & I Clubs (IGP & I):

- David Baker, Esq.

on behalf of the ICC International Maritime Bureau (ICC-IMB):

- Capt. Jayant Abhyankar, Deputy Director

on behalf of the International Transport Worker's Federation (ITF):

- John Bainbridge, Ass't Secretary, Seafarer's Department
- Miren A. Del Olmo, Ass't Secretary, Legal Department

on behalf of the International Union of Marine Insurance (IUMI):

- Nicholas Gooding, London Market Representative

2. Dr. Wiswall served as Chairman. Regrets for non-attendance were received from the International Maritime Organization (IMO) and the International Criminal Police Organization (INTERPOL). All of the organizations named have had an opportunity to review and comment upon this Report.

Agenda

3. The proposed Agenda for the Session was

explained by Dr. Wiswall as (a) a brief examination of the present text of the Model National Law, (b) a review of the proposed Questionnaire directed to the CMI's National Member Associations, and (c) a discussion of the work jointly done by CMI and the IMO Legal Committee on the subject of Criminal Offences committed on board Foreign-Flagged Ships and its relationship to the future work of the Group on Acts of Piracy and Maritime Violence. This Agenda was unanimously adopted.

Review of Developments since the Previous Session

4. Dr. Wiswall recalled that the Group had last met in October of 2000, and at that meeting it approved the final draft of the Model National Law as adopted by the 37th International Conference of the CMI in Singapore in February, 2001. The atrocities of 9/11 occurred just a few months after the Model National Law had been distributed to the National Member Associations of the CMI, and this may well have had an effect upon the relative urgency felt by all concerned in dealing with the problems of piracy and maritime violence on the one hand and terrorism on the other. In the interim the problems of piracy and maritime violence had only become greater, and to some degree a linkage between piracy and terrorism had begun to emerge.

The completion of work by IMO on revision of the SUA Convention (Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation) at a diplomatic conference in October of 2005 could offer the best opportunity in the near future to make a revision of the Model Law which assured compatibility with the SUA Convention as well as dealing with jurisdiction over and prosecution of criminal acts falling outside the scope of the Convention.

Initial Exchange of Views – Importance and Substance of the Model National Law

5. For the IMB, Capt. Abhyankar pointed out that the character of "piracy" has changed markedly since the adoption of UNCLOS in 1982. Violent crime at sea is increasingly an organized and well-funded criminal enterprise that frequently does not fit the definition of "piracy".

In his view the timing of a re-examination of the Model National Law could not be better, particularly as the diplomatic conference at IMO to revise the SUA Convention would shortly be considering collateral issues. He noted that the forcible kidnapping for ransom from ships at sea is now a rapidly growing activity; there had been three such cases in the first quarter of 2005. These incidents usually occurred in the vicinity of States having no effective governmental structure – let alone law enforcement capability. A way must be found to establish jurisdiction by other concerned States in such circumstances.

6. For IGP&I, Mr. Baker stressed the need to build an ‘enthusiasm’ for confronting the problems of piracy and maritime violence. The perceived low frequency of attacks at present and their geographic location remote from major population centres have probably hampered the effort. Better ‘promotion’ may be the key to action; there were representatives of governments at IMO meetings that had heard of the Model National Law but had never seen it. He agreed that the time had come to review the Model Law with a view to achieving more effective jurisdiction and prosecution in cases of maritime violence.

7. For IUMI, Mr. Gooding observed that among the members of his organization – who pay out on the property loss claims – the relatively low frequency of claims arising from acts of maritime violence has not raised a commercially-founded concern among underwriters. He agreed that a revised Model National Law would need better promotion.

8. For ICS, Mrs. Howlett agreed that a review of the Model National Law was very timely. A way must be found to effectively ‘advertise’ the Model Law, as its existence was little known outside the circle of organizations that had participated in its drafting.

9. For BIMCO, Mr. Timlen stated that his organization was pleased to see a review of the Model National Law come on the table at this time, as there was a real and growing need for an improved version to become widely adopted. The timing of its initial presentation in 2001 was good, but effective action was simply overtaken by events following 9/11 and the focus on producing the International Ship and Port Facility Security (ISPS) Code.

10. For the ITF, Mr. Bainbridge and Ms. Del Olmo agreed that the Model National Law was not well enough known. The problem of piracy and maritime violence was simply not significant enough in financial terms to have become a priority for the industry as a whole. It seemed very unlikely that the SUA Convention could now be extended to cover ‘criminal acts’ (though it might have been in 1987/88), but a ‘linkage’ to the revised SUA might be what is needed to give momentum to enactment of a revised Model Law.

11. For the IMB, Capt. Abhyankar noted that although the number of incidents reported in the first three months of 2005 was lower than for the same period in recent years, this was very likely attributable to the great tsunami at the end of 2004, which had devastated the geographical area in which the frequency and relative proportion of attacks had been rapidly growing. Meanwhile, in the vicinity of Somalia, serious incidents of ship hijacking were on the increase. There was thus a clear and growing need for a revised version of the Model National Law.

Comments on the Form of the Model National Law

12. Dr. Wiswall stated that there had been some expression of the view that the Model Law would probably have been more successful if it had been cast as a draft statutory act rather than as a ‘list of provisions’ for consideration in framing national legislation – hence the query on this issue in the proposed Questionnaire to CMI Member National Associations. The preliminary comments of the Group on this aspect were invited.

It was the unanimous view of those present at this meeting of the Group that the present form of the Model Law should not be changed – variations in statutory drafting could make it more difficult to adopt the Model Law if it were presented as a draft statutory act. The Model Law should continue to set out a list of provisions and urge the adoption of as many of these as the constitution and laws of a particular State will permit.

Substance of the Questionnaire to CMI Member National Associations

13. The Group then commented on the draft Questionnaire, and a number of suggestions were made as to the preamble as well as the questions posed. These are reflected in the revised Questionnaire attached to this Report as Annex “A”.

Criminal Offences Committed on board Foreign-Flag Ships

14. Dr. Wiswall briefly explained the background of the joint consideration of this problem by both the IMO Legal Committee and the CMI, and referred to the Working Paper on the subject prepared for the Committee on Maritime Security of the CMI's Vancouver Conference in June 2004, which had earlier been circulated to the Group and is attached to this Report as Annex "B". Comment was invited on the question whether, if the problem were to be addressed by a model national law, it should be the subject of a separate model law, or whether it could practically and effectively be taken up in the revised Model National Law on Acts of Piracy and Maritime Violence.

15. For the IMB, Capt. Abhyankar stated that the revised Model National Law should encompass all violent maritime criminal offences, especially those falling outside the scope of the revised SUA Convention. It was also essential that the revised Model Law take account of incidents involving a State with no effective national government.

16. For IGP&I, Mr. Baker expressed the view that the Group should review and perhaps expand the definitions of *maritime violence* in Section I(3) of the Model National Law, so as to ensure that all violent maritime criminal offences were covered. There should be only one model law, not two.

17. For BIMCO, Mr. Timlen agreed with IMB that the revised Model National Law should deal squarely with kidnapping. On the other hand, it should not attempt to deal with petty or non-violent crime. There should be only one model law, and the revised Model Law should conform to the ISPS Code as well as to the revised SUA Convention, *e.g.*, by naming the Ship Security Officer under ISPS in Section V(1).

18. For the ITF, Mr. Bainbridge agreed that the revised Model National Law should not deal with petty or non-violent crime, and that there should be only one model law, covering all violent maritime offences. He suggested future

consideration whether the Model Law should not also cover (a) issues of 'due process' and (b) the extent of investigative authority able to be exercised by the receiving State (*i.e.*, the State acquiring jurisdiction over the incident and/or custody of a suspected offender).

Future Work of the Group

19. In the course of the discussion, a number of additional suggestions were made to which there appeared to be unanimous agreement. These were:

- (a) That the revised Model National Law should be 'tied' directly to:
 - (i) the revised SUA Convention;
 - (ii) the IMO Code for the Investigation of the Crime of Piracy and Armed Robbery Against Ships; and
 - (iii) IMO Circular MSC.622 (which is revised as needed).
- (b) That when the Group's work on revision is complete, the Model National Law be presented to:
 - (i) the next meeting of the IMO Legal Committee;
 - (ii) the next meeting of the IMO Maritime Safety Committee; and
 - (iii) the UN Informal Consultative Process on Law of the Sea (an informal meeting of the States Parties to UNCLOS, scheduled to meet in New York in the summer of 2006).
- (c) That when the revised Model National Law is presented to the foregoing meetings the organizations taking part in the work of the Group will undertake to participate in its introduction and afterward to actively publicize it and promote its broad adoption.

20. It was agreed that the Group should meet next in November, 2005 at a date after the work product of the diplomatic conference on revision of the SUA Convention will become available to the participating organizations.

Respectfully submitted,

DR. FRANK L. WISWALL, JR.,
Chairman of the Group

QUESTIONNAIRE ON IMPLEMENTATION
OF THE MODEL NATIONAL LAW ON ACTS OF PIRACY AND MARITIME VIOLENCE
MAY, 2005

The Joint International Working Group on Uniformity of Law Concerning Acts of Piracy and Maritime Violence was established in 1998 and produced a Model National Law (attached)* which was adopted by the Assembly of the CMI in Singapore in February, 2001. Following upon the attacks of 9/11 maritime security has become a matter of urgent concern to the international community, and amendments to the 1988 (“SUA”) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its 1988 Protocol concerning Fixed Platforms on the Continental Shelf will be considered in October 2005 by a diplomatic conference under the auspices of the International Maritime Organization. The proposed amendments to the SUA Convention will greatly extend the scope of the regime.

At the same time, the IMO Legal Committee in co-operation with the CMI has been considering the problem of jurisdiction and effective prosecution of perpetrators of criminal offences committed on board foreign-flag ships (*i.e.*, ships not entitled to fly the flag of a State or States confronted by the necessity to deal with such offences). For background, the working paper presented to the CMI’s 38th International Conference in Vancouver in June 2004 is attached.* Of some relevance to this problem is also the increasing frequency of hostage-taking in connection with acts of piracy and maritime violence.

These developments raise the question whether the Model National Law should be amended or re-formulated to attract wider implementation and to resolve issues of jurisdiction and prosecution of a broader range of criminal offences committed on board foreign-flag ships, some of which offences may have implications for maritime security.

At a meeting in London on 12 April 2005, the Joint International Working Group, with participating representatives present from the CMI, the Baltic and International Maritime Council (BIMCO), the International Chamber of Shipping (ICS), the International Criminal Police Organization (INTERPOL), the International

Group of P&I Clubs (IGP&I), the ICC International Maritime Bureau (IMB), the International Transport Workers Federation (ITF), and the International Union of Marine Insurance (IUMI), gave preliminary consideration to amendment and re-formulation of the Model National Law. To assist in further examination of the issues, the Group has requested that the National Member Associations of the CMI be circulated with the following questionnaire.

1. Has the government of your country given consideration to the Model National Law?
2. If so, has your country enacted or otherwise implemented all or any part of the Model National Law? If so, please supply the text of the relevant legislation or regulation in English or French.
3. If the answer to either (1) or (2) above is negative, what do you believe are the reasons for your government’s lack of interest in or failure to implement the Model National Law?
4. If negative, and the reason is that your country already had national legislation in place applicable to acts of piracy and/or maritime violence, how many cases have arisen and been dealt with in recent years under such legislation?
5. Has your country ratified or acceded to (a) the United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”), and/or (b) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (“SUA”)? If the answer to either (a) or (b) is affirmative, has your country implemented the convention(s) by enactment of national legislation?
6. Do you believe that the Model National Law would be more acceptable to your government if re-formulated as draft legislation rather than as, at present, a statement of principles for embodiment in national legislation?

* Attachment omitted.

7. Reviewing the Model National Law, what changes in or additions to it would you recommend?

Member Associations are requested to give the questionnaire expedited consideration and to deliver their responses, if possible by E-Mail or E-mail attachment, to the Headquarters of the CMI in Antwerp not later than Friday 30th September 2005.

Your co-operation in this relatively new and vitally important area of the Comité's work is greatly appreciated.

Yours sincerely,

DR. FRANK L. WISWALL, Jr.,
Vice-President honoris causa
Chairman of the
Joint International Working Group

RATIFICATION AND DENUNCIATION OF INTERNATIONAL CONVENTIONS

INSTRUMENTS OF RATIFICATION OF AND ACCESSION TO THE FOLLOWING CONVENTIONS
HAVE BEEN DEPOSITED WITH THE DEPOSITARY:

– **United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules)**

Paraguay: 19 July 2005 (accession)