

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 3 - SEPTEMBER / DECEMBER 2005

This Issue Contains:

News from the CMI

- Minutes of the Executive Council Meeting held by e-mail during the week of November 28, 2005
- Erratum

News from Intergovernmental and International Organizations

- News from IMO
 - Diplomatic Conference on the revision of the SUA Convention and Protocol
- News from IOPC Funds
 - IOPC Funds meetings – October 2005

NEWS FROM THE CMI

MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD BY E-MAIL DURING THE WEEK OF NOVEMBER 28, 2005, CHAired BY THE PRESIDENT FROM HIS OFFICES IN PARIS.

Participating:

<i>President:</i>	Jean-Serge ROHART
<i>Past President</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Stuart HETHERINGTON
<i>Councillors:</i>	Jose Maria ALCANTARA Chistopher DAVIS Johanne GAUTHIER José Tomás GUZMAN Sergeii LEBEDEV Henry H. LI (participated subsequent to the meeting) Gregory TIMAGENIS
<i>Publication Officer:</i>	Francesco BERLINGIERI
<i>Secretary-General:</i>	Nigel FRAWLEY
<i>Administrato:</i>	Wim FRANSEN
<i>Treasurer:</i>	Benoit GOEMANS

The President opened the meeting by welcoming those councillors who would be participating in the e-mail conference. He said that although nothing can replace the immediacy of a physical meeting where the members of the Executive Council can openly discuss all the topics, an e-mail conference had its main benefit of substantially reducing costs of attendance. He reiterated the procedure to be followed which was that the e-mail reports on the agenda items (which were submitted to the President, Secretary-General and Secretariat by November 25th and circulated in a format with the reports underneath the particular agenda items on November 28th) were to be commented upon by November 29th. The Secretariat would then incorporate all comments into the first round of documents in a document entitled "Comments and Reports" and circulate it to all Councillors on November 30th. A new round of further comments would then be solicited by December 1st and the second Round circulated. The final document containing the initial reports, and the first and second comments, would then be consolidated in Antwerp on December 2nd and circulated again to all Councillors. Councillors were asked to keep their comments concise and to the point.

1. Minutes and matters arising

(a) The minutes of the Executive Council Meeting held in Paris on April 15, 2005 were approved.

(b) Matters arising

The President then gave a report on his activities since the last Executive Council Meeting and the Assembly held in Paris. He recounted that he had represented the CMI at the BIMCO Centenary ceremony and meetings in Copenhagen (May 21-24) and attended the Centenary conference of the Argentinean Maritime Law Association in Buenos Aires (June 7-10); he gave a lecture in Paris on the work of the CMI at a meeting of international loss adjusters organized by the French insurers' market (June 15); at the invitation of the Supreme Court of the Peoples Republic of China and by the Chinese Maritime Law Association, he spoke about the work of the CMI at their International Congress on the Law of the World in Shanghai (September 7-9); he was invited by the Chinese Maritime Law

Association to attend its sixth international conference on maritime law in Xiamen but was obliged to decline the invitation. The conference was held at the end of October and José Maria Alcantara and Henry Li gave reports on the work of the CMI; the President then said that he had been appointed to the board of governors of the World Maritime University and that he planned to visit them to give a lecture in June 2007.

2. Finances

The Treasurer, Benoit Goemans, then gave an interim report on the finances of the CMI. He stated that the bank accounts as of 31 October 2005 were as follows:

Accounts	Balance in Euros
Genoa Current	5,544.72
Antwerp Current	5,826.00
Antwerp Deposit	476,946.18
<hr/>	
Total	488,316.90

He then produced a liquidity plan which showed that the CMI has enough liquidities for the next 32 months as from October 2005, i.e., up to June 2008. He said that the May 2005 liquidities were sufficient for another 21 months and that the increase of 21 to 32 months does not reflect any improvement. He said that May is the month with the lowest liquidities of the year because that is just before the subscriptions from members are about to be cashed.

He went on to say that compared to the situation in the autumn in other years, there is an improvement:

November 2002: 8 months

October 2003: 11 months

December 2004: 28 months

The Treasurer then said that the available liquidities raised a question of a proper and conservative investment of the funds. He said that on November 24th and 25th, 2005 he had made inquiries with the best rate on deposit accounts with four Belgian banks. He found that J. van Breda & Co. had the best interest rates of all. He reminded the Executive Council that the CMI had, for 108 years, done all of its banking at the Fortis Bank.

The Executive Councillors then discussed the figures put forward by the Treasurer and decided that 250,000 Euros should be deposited on a six-months basis with the J. van Breda & Co. Bank, leaving the balance with the Fortis

Bank. The Treasurer said that he would report this to the Audit Committee which would decide whether or not to agree.

The Treasurer then said that in order to reduce the cost of postage stamps, he had looked for the best available stamping machine, which he had ordered and would be delivered and operational by the next sendings.

3. Next meeting of the Executive Council

Mr. Frawley then stated that the next meeting of the Executive Council will be held at 10:30 a.m. on Sunday, February 12, 2006 at the Convention Centre in Cape Town in a meeting room, the name or number of which will be announced closer to the date.

The President suggested that during the 2006 year, another Executive Council Meeting be held by way of e-mail, preferably toward the end of November. In 2007, he suggested meeting in the spring linked with the Assembly at a place to be decided and that the next meeting be held in the last week of November once again by way of e-mail conference. The matter was deferred to the Executive Council meeting in Cape Town.

4. Next meeting of Assembly

Mr. Frawley stated that the next meeting of the Assembly will be held at 3:15 p.m. on Wednesday, February 16, 2006 at the Cape Town Convention Centre in a room to be announced.

5. Member

(a) Starter Kit for New Members

Johanne Gauthier then circulated a draft letter which could be used for communicating information to a new association. It was recognized that the draft letter needs improvement and that the matter would then be reviewed at the next Executive Council meeting.

(b) Monitoring of National Associations

Gregory Timagenis said that he was in contact with Cypriot lawyers to see if they are interested in organizing a national maritime law association in Cyprus and joining the CMI.

(c) Status of Moroccan MLA, Candidacy of Tunisian MLA, Request of the Pakistan MLA

The President said that the Moroccan

association has been replaced by the “Comité Marocain de Droit Maritime” but that he had not yet received any clear undertaking from them regarding the new association fulfilling the old association’s financial commitments towards the CMI.

Mr. Gombrii moved that the Tunisian MLA be placed in Category G, presently 526.93 Euros per year and that they be made aware that this category is a transitional category and that a move to Category I, presently 1,602.37 Euros would be the normal development in due course. Motion carried.

As to the Pakistan MLA, it was decided that Wim Fransen would approach his contact at one of the English P&I Clubs in Karachi and ask that they comment on the Pakistan MLA and Mr. Zafar Ahmed.

(d) Provisional Members (Request of Taiwanese Judge)

Wim Fransen reported that he had been approached by Judge Chun Hung Chan of Taipei, Taiwan, who put a number of questions to him with a view to creating a maritime law association in Taiwan.

Henry Li reminded us of the political difficulties that continue to exist between China and Taiwan and said that the China MLA would not be happy to see a Taiwan MLA formed and admitted into membership of the CMI. However, because the China MLA is an NGO, it is open to membership by all Chinese, including both mainland Chinese and overseas Chinese. This means of course, that Taiwanese members of the China MLA would be able to join the China MLA delegation at all CMI activities, including Colloquia and Conferences. Mr. Li said he is of the view that Article 3 of the CMI Constitution bars membership of any kind being offered to Judge Chun Hung Chan or any of his colleagues. He also said it would be inappropriate in the circumstances for the CMI to offer Observer status to them. He suggested that the CMI should reply to the Judge that he should contact the China MLA directly for further information about membership in the China MLA.

The President said that he agreed with Henry Li’s comments, and then decided that the Judge would not be invited to be a member or an Observer. However, he said, there was nothing to stop the Judge from registering and attending the Cape Town Colloquium on condition that his presence there could not be deemed to be an admission of his being a member or Observer in the CMI.

6. Conference Programs

(a) Cape Town Colloquium – February 13-15, 2006

A progress report from the Principal Conference Organizer (“PCO”) of the Cape Town colloquium was tabled in which it was stated that organization was well underway with 131 confirmed delegates at the present time. Councillors were pleased to note the progress, particularly that the PCO expects at least 200 delegates in all which means that, in terms of the budget, everything is on track.

(b) Athens Conference 2008

Gregory Timagenis reported that preparations are well in progress with contracts having been signed with the hotel and the PCO. The first announcement card and the website are going to be circulated and launched immediately after the Colloquium at Cape Town. The outline of the program consists of an opening ceremony during the evening of Sunday, October 12, 2008; morning and afternoon working sessions on the Monday and Tuesday; a day cruise or excursion on the Wednesday; morning and afternoon sessions on the Thursday and a Plenary session on the Friday morning and the Assembly in the afternoon. The gala dinner will be held on the Friday evening, October 17, 2008. The President noted that it will be necessary to look into further preparations at the Executive Council meeting in Cape Town in order to support the Greek Maritime Law Association.

(c) Colloquium 2010; Conference 2012

José Tomás Guzman will look further into whether a colloquium is feasible in Chile in 2010. Henry Li will look into the possibility of a conference in China or Hong Kong in 2012.

7. CMI Charitable Trust

Patrick Griggs reported that the trustees have transferred responsibility for managing the trust funds from Thomas R. Miller to Smith & Williamson Investment Management of the City of London. The registered office of the Trust is now care of Ince & Co., International House, 1 St. Katherine's Way, London, England E1. Charles Goldie has been appointed by the trustees to act as Treasurer/Secretary to the Trust. His e-mail address is charlesgoldie@nascr.net. Karl Johan Gombrii has been appointed as a trustee to replace Allan Philip. The new fund managers have been instructed to invest in such a way as will produce

about £15,000 per annum without risking capital. Approximately £7,000 is earmarked for work on the CMI website and publications, and goes to Francesco Berlingieri's law firm, which remains responsible for this important aspect of our activities. The trustees have just agreed to increase the funding to cover the travel expenses of CMI visiting lecturers to IMLI in Malta from £3,500 to £5,000. As of 31 March 2005, the funds in the trust stood at £384,500.

8. Publications

(a) Yearbooks, Newsletters & Website

Francesco Berlingieri suggested that the Cape Town colloquium papers be included in Part II-The Work of the CMI of the next Yearbook. He hopes that the Yearbook will be published and posted on the CMI website in the spring of 2006.

Newsletter No. 3 of 2005 should be published and posted on the website next January. At the present time, he has the reports of Richard Shaw on the meeting of the IOPC Funds of October 20, 2005 and the Diplomatic Conference for the revision of the SUA Convention and its Protocol which will also be included in the newsletter.

(b) CMI Archives

There was no report.

(c) Handbook on Maritime Conventions: French Version

Jean-Serge Rohart reported that there are only four or five texts still to be translated into French and this will likely be done before the Cape Town Colloquium.

(d) Distribution and Sales of Travaux Préparatoires

Mr. Berlingieri said that this year there had been a sale at the CMI Secretariat of eight copies.

9. Work in progress

(a) Transport Law

It was noted that the session of the UNCITRAL Working Group is presently in progress. A written report from the CMI Observer, Stuart Beare, is expected.

(b) Marine Insurance

There was no report.

(c) Criminal Acts Committed on Foreign Flagships; Piracy; Maritime Security

Frank Wiswall's written report in the form of an

e-mail dated November 14, 2005 to IMO and other addressees, including the CMI was tabled. Basically, the joint international working group on acts of piracy and maritime violence is scheduled to meet in London on Thursday, December 1, 2005. He referred to the responses to the questionnaire that they had received which was directed only at the status of the model national law. He went on to say that his working group has yet to consider whether the more recent issues of the position of Port States vis-à-vis violent crime on board foreign flag vessels and the provisions of the recently concluded 2005 Protocol to the 1988 SUA Convention suggest a need for revision of the scope of the model national law so as to enhance its usefulness.

(d) Implementation and Interpretation of International Conventions

Gregory Timagenis suggested that a questionnaire be started on the Arrest Convention in relation to a) its implementation by member states and b) its interpretation by respected local Courts. He observed that it will be a useful tool for all lawyers and judges and that there is sufficient time to have a CMI product ready for the Athens conference. The President decided to defer the suggestion to the Executive Council meeting at Cape Town owing to the controversy between the 1952 and 1999 Arrest Convention relating to this subject.

(e) Procedural Rules in Limitation Conventions

Mr. Berlingieri said that he is going to send a reminder to all associations to submit their responses to the questionnaire by the extended deadline date of November 30th.

(f) Implementation of the Salvage Convention 1989

Mr. Berlingieri reported that he had now received a good number of responses to his questionnaire and has updated both the synopsis and the complete text of the responses arranged under each question as of September 16, 2005. He hopes that he will get responses from Belgium, Ireland and Sweden in the near future.

(g) Places of Refuge

Stuart Hetherington reported that since our last meeting, the IMO legal committee had decided to place its work on this topic "on hold". In spite of this, Mr. Hetherington has prepared a draft Instrument for discussion at the Cape Town Colloquium in view of the decision taken

at the last Executive Council meeting. He circulated a copy of that Instrument. He then said that at the Cape Town Colloquium the speakers on this topic will be himself, Quintus van der Merwe from South Africa, Eric van Hooydonk from the Netherlands, Dr. Rosalie Balkin of the IMO and Richard Shaw of the BMLA.

(h) Revision of CLC/Fund Convention

The President referred to our Observer at the IOPC Assembly, Richard Shaw, who has submitted a report on the October Fund meeting at which it was decided not to seek to amend the oil pollution regime. In making this decision, delegates were mindful of the importance of the STOPIA and TOPIA schemes in which the International Group of P&I Clubs is currently working, which are designed to make available more money to fund pollution claims on a voluntary basis.

Mr. Frawley moved that a formal vote of thanks be made to our three Observers at the IMO and UNCITRAL. The motion was unanimously adopted.

(i) Bareboat Chartered Vessels

José Maria Alcantara said that a final version of the report he had drafted and dated September 2005 has been submitted to the IMO legal committee. Allocation of the matter in their agenda for the 2006 meeting is yet to be confirmed. He went on to say that the comments made by the US MLA were duly considered and a reply sent to their President.

(j) Arrest Convention

Mr. Berlingieri reported that the 1999 Arrest convention has, so far, seven member states (Algeria, Bulgaria, Estonia, Latvia, Liberia, Spain and the Syrian Arab Republic). He remarked that it would be a good thing if the CMI national associations would exert some pressure on their governments to ratify the Convention.

(k) General Average and York Antwerp Rules, 2004

The President reported that since the Rules were adopted in Vancouver they have been published in a booklet by the CMI, in English and French. In its special circular of last February, the Documentary Council of BIMCO recommended to its members not to make reference to the York Antwerp Rules 2004 in their future charter-parties, because it considers these rules are less favourable to ship owners

than the York-Antwerp Rules 1994. The President said that when he was at BIMCO Centenary he expressed the CMI's concern about this position and he invited them to reconsider it.

(l) Wreck Removal

Patrick Griggs said that he would be giving a full report on the progress of the Wreck Removal Convention at the Colloquium in Cape Town. He reported that work continues at an IMO Legal Committee Correspondence Group to refine the text of the draft which will be on the agenda of the legal committee meeting in April and October next year. They hope to have a Diplomatic Conference on the Convention in 2007. This conference may take place in Kenya due to the fact that the IMO headquarters in London will be closed for renovations.

(m) Fair Treatment of Seafarers

The President referred to the last report received from Edgar Gold, chairman of the CMI Working Group, on this subject. This report attempts to address some of the practical issues that underlie the complex international and national legal and administrative systems. He referred in particular to finding an appropriate definition of "maritime accident". Mr. Gold reported responses had been received to their Questionnaire from 23 States. He said that they indicate that a majority of states have the legislative power to detain seafarers who have been involved in maritime accidents in order that administrative and criminal investigations can proceed. However, such states also indicate that detention would always be for a reasonable period. The responses indicate that seafarers held as material witnesses must be treated properly and that no discrimination between nationals and foreigners is permitted. The responses also indicate that the problem is not really criminal law itself but its administration that has appeared to lead to unfair treatment of seafarers. Apparently this is especially so in cases where there is evidence that such seafarers had no direct responsibility for the maritime accidents.

(n) Future Topics and Reflections on the CMI

José Maria Alcantara then referred to the planning and functioning of the Executive Council and listed those planning matters which, in his view, should be resumed at a time directed by the President. He referred to adding value to international initiatives on security; the EU Directive imposing criminal sanctions for

ship-source pollution; the impact on criminalization of seafarers and the utilization of criminal law in pollution matters; the demands for reform of Class Societies from a number of quarters; standard safety rules for the construction of ships; a comprehensive policy over ship breaking, ship scrapping and demolition of ships; IMO's looking into the need for an international instrument to regulate the health, safety and environmental standards relating to recycling of ships and other marine structures, and how the SOLAS and MARPOL conventions will be affected; revision of the CLC and fund regimes; and whether forwarding agents, terminal operators, stevedores and other performers will be sufficiently regulated by the future UNCITRAL convention on transport law. Mr. Rohart then referred to Mr. Alcantara's e-mail to the President and all Executive Councillors entitled "Reflections" dated August 19, 2005. The President decided that these reflections should be discussed at Cape Town amongst the Executive Council during the Colloquium.

10. International Organizations

(a) IMO and Fund Meetings

Patrick Griggs said that he and Richard Shaw continue, either together or singly, to represent CMI at these meetings and to submit reports. He also referred to the fact that Mr. Shaw had also submitted to the Executive Council a full report on the SUA Protocols which were approved at the Diplomatic Conference in London in April 2005. That report was tabled.

(b) Possible Guidelines for CMI Observers

Patrick Griggs said that he and Richard Shaw have contributed to the study which the Secretary-General has undertaken designed to produce Guidelines for CMI Observers and believe that this is an important exercise. Nigel said that he is currently working on these Guidelines and hopes to have them completed fairly soon.

(c) IMLI and Other Academic Institutions

1. IMLI

Frank Wiswall submitted a written report that he remained on the Board of Governors and that he lectured in Malta in November. He will ask David Attard about other CMI lectures and will revert. He said that in the Spring he will teach other courses there.

2. *Pacific International Maritime Law Association*

Patrick Griggs advised that IMLI graduates had established the Pacific International Maritime Law Association (“PIMLA”) and suggested that we might offer them some kind of membership. Karl Johan Gombrii suggested that they be offered the status of Consultative members. This was enthusiastically agreed.

3. *Tulane University*

Chris Davis reported that the University and its law school required major cleaning and repairs following Hurricane Katrina but are now scheduled to reopen in January 2006.

4. *World Maritime University*

Nigel Frawley reported that he had written Professor Mukherjee at this university and

his reply was tabled. He referred to President Rohart having recently been appointed a member of the University’s Board of Governors and that they hoped to revive the CMI President’s annual lecture. The President said that he would consolidate contacts in 2006.

(d) *Monitoring of EU penal sanctions against seafarers*

Wim Fransen said that the EU had issued Directive 2005/35 on September 7, 2005 dealing with “pollution caused by vessels and the introduction of sanctions in case of violations”. This Directive has been criticized in marine circles because it imposes penal sanctions not only when pollution is caused with intent but, also in case of “gross negligence”.

Professor E. Van Hooydonk said that he will continue to keep Mr. Fransen informed of future developments.

ERRATUM

In the minutes of the meeting of the CMI Executive Council held at Paris on 15 April 2005, published in CMI News Letter No. 1-2005 at page 2 in paragraph 1-Work in Progress at (b)-Marine Insurance the 4th sentence should be amended to read:

Mr. Hetherington observed that in several countries, such as Germany, much of the marine insurance legislation is being transferred into the General Insurance Acts. Insofar as Australia is concerned, there are proposals before the Government to amend their Marine Insurance Act to assimilate much of their marine insurance law into the law of general insurance. Those proposals have not yet been implemented and Australia still has a Marine Insurance Act, 1909 which replicates the Marine Insurance Act of 1906 of the U.K. He suggested that John Hare be approached to see if he is prepared to give a paper on the subject at the Cape Town Colloquium.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

DIPLOMATIC CONFERENCE ON THE REVISION OF THE SUA CONVENTION AND PROTOCOL

A Diplomatic Conference was held in the IMO Building in London between 10th and 14th October 2005 to consider the adoption of draft protocols to amend the 1988 Rome Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Convention) and the related Protocol concerning such acts against Fixed Platforms on the Continental Shelf¹. Delegates from 72 States Parties to the 1988 SUA Convention and 68 States Parties to the 1988 Platform Protocol took part in the Conference. A further 23 states and 13 intergovernmental and non-governmental organisations, including the CMI, were represented by observer delegates.

The 1988 SUA Convention was adopted in the aftermath of the hi-jacking of the Italian liner “*Achille Lauro*” by Palestinian terrorists. This incident revealed the lack of consistent principles of International Law to confer jurisdiction on any state other than the flag state to punish those committing such acts on the High Seas, outside their territory and territorial sea. The main thrust of the 1988 Convention and its Protocol was therefore to address the taking over of a ship or platform by persons on board it outside the limits of the territorial sea of coastal states². The Convention defines offences committed in such circumstances, requires States Parties to adopt the necessary legislation to create such offences under their law, and to confer jurisdiction on their courts to prosecute the offenders despite the fact that the alleged offences were committed outside their territory (e.g. on the High Seas) if the alleged offence was committed against or on board a

ship flying its flag, or if the accused was found in the territory of the State Party concerned. Other provisions deal with the delivery of alleged offenders into the custody of a coastal state, and the detention and extradition of alleged offenders.³

Before the entry into force of this convention jurisdiction to prosecute such offences lay solely with the flag state, whose body of laws in most cases did not contain provisions to pursue such prosecutions. The comparable jurisdiction over piracy is limited to acts committed against a ship on the high seas by the crew or passengers of another ship⁴, and does not therefore apply to hi-jacking by persons who have boarded a ship as passengers or crew.

Development of the Protocols to the SUA Convention

Following the events of September 11, 2001 a number of initiatives were put in place by the UN⁵. In the maritime field the agency charged with such initiatives was of course the IMO, and the ISPS Code on port security⁶ was the first result. In the meantime a Working Group led by the delegation of the USA was tasked by the IMO Legal Committee to start work on a revision of the SUA Convention to bring it in line with the fight against terrorism. This working group based its work on adapting the SUA Convention to align it with the equivalent provisions of the three conventions adopted by the UN in this field, namely the International Convention for the Suppression of Terrorist Bombings 1997, the International Convention for the Suppression of the Financing of

¹ Set out in the CMI Handbook of Maritime Conventions 2004 Edn., documents 10-1 and 10-2.

² See Brown – The International Law of the Sea (1994) pp 304-309

³ The 1988 SUA Convention was closely modelled on the three conventions dealing with unlawful acts against aircraft, the 1963 Tokyo Convention on Offences and other acts Committed on Board Aircraft, the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, and the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

⁴ UN Convention on the Law of the Sea 1982, Art. 101

⁵ Security Council resolutions 1368 and 1373 of 2001 and 1540 of 2004, and General Assembly resolutions 59/46, 59/24 and 58/187

⁶ Chapter XI-2 of the SOLAS Convention, adopted Dec 2002, in force July 2004.

Terrorism 1999, and the International Convention for the Suppression of Acts of Nuclear Terrorism 2005.

The Working Group held a number of meetings, both at the meetings of the Legal Committee and intersessionally, and the text had been very thoroughly and carefully debated. The document submitted to the Diplomatic Conference was therefore the result of a number of carefully worked out compromises, and the final text of the Protocol as adopted by the Conference contained no significant amendments.

The key areas added to the SUA Convention and its Platform Protocol were the following:

- a. an extended list of offences (article 3bis, 3ter and 3quater of the new Convention) including acts in which a person unlawfully and intentionally, when the purpose of the act is to intimidate a population or to compel a government or international organization to do or abstain from any act, uses against or on a ship, or discharges from a ship any explosive, radioactive material or BCN (biological, chemical or nuclear) weapon; uses a ship in a manner that causes death or serious injury, or transports explosive, radioactive material knowing that it is intended to cause death or serious injury.
- b. An elaborate provision (article 8bis of the new Convention) permitting a limited right by coastal states to board on the high seas a ship flying the flag of a State Party, if it has reasonable grounds to suspect that a person on board that ship has been or is about to be involved in the commission of an offence set forth in the new articles 3, 3bis, 3ter, and 3quater.

The debates in the Diplomatic Conference revealed a diversity of views of some states⁷ concerning the transport of nuclear materials, some of which states argued through their

delegate that a reference to the Non-Proliferation Treaty (in article 3bis) was not appropriate. Considerable diplomacy was required of the Chairman of the Committee of the Whole, Mr Alfred Popp Q.C. of Canada, to achieve a broad consensus in favour of the whole package. At the Chairman's suggestion a paragraph⁸ was added to the Final Act of the Conference recognising the diversity of views on this delicate subject.

At the end of the Diplomatic Conference the text of the new Protocol to the 1988 SUA Convention and a new protocol to the 1988 Fixed Platform Protocol were duly adopted. It is symptomatic of the widespread concern at the dangers of ship-borne terrorism that the Final Clauses of the 2005 SUA Protocol require only 12 ratifications for entry into force, and that the protocol will enter into force only 90 days after the 12th ratification. In the Fixed Platform Protocol, the equivalent figures are 3 states and 90 days. It appears likely, therefore that we shall see these entry into force requirements satisfied in the relatively near future.

To assist states with the ratification process the Conference resolved⁹ to instruct the IMO Secretariat to prepare authentic consolidated texts of both the SUA Convention and the Platform Protocol. This welcome development reflects a growing practice internationally when an international convention is amended by a protocol. The most recent precedent for this is the 1974 Athens Convention on the Carriage of Passengers by Sea, as amended by the Protocol of 2002.

The Secretariat informed the Conference that this work will take a little time, since definitive texts must be prepared in all six official languages of the United Nations, and the new protocols will only be open for signature from the 14th February 2006.

RICHARD SHAW*

⁷ Particularly those which are not parties to the Treaty on the Non Proliferation of Nuclear Weapons such as Brazil, India, Iran and Pakistan.

⁸ Paragraph 19.

⁹ Paragraph 21 of the Final Act of the Conference and Article 15 of the 2005 SUA Protocol.

* Senior Research Fellow – University of Southampton Institute of Maritime Law. CMI Observer Delegate to the Diplomatic Conference.

NEWS FROM THE IOPC FUNDS

IOPC FUNDS MEETINGS – OCTOBER 2005

The meetings which took place at the IMO Building between 17th and 21st October 2005 had a number of unusual features. Apart from the regular review of current cases and the reporting on financial matters, there were two exceptional questions to be decided.

The first was the election of a new Director to succeed Mans Jacobsson, who has been in overall charge of the IOPC Funds and their Secretariat since 1985. Formerly a judge of the Court of Appeal in Sweden, he has displayed exceptional diplomacy, as well as legal and linguistic skills, as he has seen the international compensation system expand from 30 states in 1985 to 96 States in 2005. The maximum amount available for settlement of pollution claims has increased in that period from 45 million SDR (US\$65.25 million) to 750 million SDR (US\$1,087.5 million)¹. All this is administered by a Secretariat in London of only 27 people. He will be a hard act to follow.

This year there were two candidates for the job, both well qualified. They were Jose Maura of Spain and Willem Oosterveen of the Netherlands. Mr Maura is Head of the Claims Department of the Funds Secretariat, for which he has worked for the last 9 years. Mr. Oosterveen is Senior Legal Advisor to the Netherlands Ministry of Justice, and is a part-time judge of the Netherlands Court of Appeal. He has for some years been Chairman of the Executive Committee and Assembly of the IOPC Fund.

The first vote revealed a substantial majority in favour of Mr. Oosterveen, but not the two thirds required for a conclusive result. At this point Mr Maura withdrew his candidature, and at the second vote Mr. Oosterveen was duly elected. He will formally take over as Director on 1st November 2006, but he will join the Secretariat at the beginning of September 2006 in order to ensure a smooth transition, and Mans Jacobsson will stay on until the end of 2006 for the same reason.

The second unusual item was the debate on the future of the Working Group appointed to review the working of the international oil pollution compensation regime as a whole. After many meetings spread over the last 5 years

under the wise and patient chairmanship of Alfred Popp Q.C. of Canada, a detailed report was presented at the October 2005 meeting to the Assembly of the 1992 Fund (document A.10/7).

This identified a number of subjects whose improvement would make the system work better, but concluded that, due to an approximately equal division of views of the membership of the Working Group for and against a new Convention to reform the system, the Group was not in a position to make a firm recommendation whether or not to embark on the preparation of such a new Convention. The matter was referred to the October meeting of the Fund Assembly for final decision.

The debate on this issue at the October meeting on this subject was an exceptionally good one, with interventions of a very high standard. The group of states favouring a limited revision of the existing conventions, which included many members of the EU, together with Australia, Canada and Japan, represented major financial contributors to the IOPC Fund. Those preferring to leave things as they are were largely the major flag states such as Panama, Liberia, Greece and Bahamas, together with some unexpected bedfellows such as Spain and Malaysia, which argued that the proposed reforms did not go far enough, and Norway which argued that the limited reforms proposed by the Working Group did not justify the prolonged and difficult process of putting a new convention in place and persuading states to transfer membership from the old to the new fund.

However, underlying the debate was a more serious question, namely the extent to which the system of contributions to the compensation system required, in today's jargon, "rebalancing". It was argued that the advent of the Supplementary Fund, which is, like the 1992 Fund, financed entirely by those who receive oil transported by sea (whether by sea transport or cabotage), had tipped the balance which had previously prevailed between ship and cargo contributors, and that the ship-owning community should find a way to increase their share.

¹ Equivalents calculated at current (Oct 05) rate of approx \$1.45 = 1 SDR.

This produced a response from the International Group of P and I Clubs in the form of an agreement called STOPIA (Small Tankers Oil Pollution Indemnification Agreement). This Agreement, which is already in force, provides that 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 tons 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, although strictly speaking the Fund will still be obliged under its governing conventions to settle claims down to the level of the original CLC limit. The Fund and the Clubs have close working arrangements for handling claims, and they will no doubt develop a way to deal with these smaller claims, hopefully without unnecessary duplication of effort. The Fund will always be involved in those cases where the ship owner's liability insurance cover is inadequate or non-existent.

The STOPIA scheme was put forward at the April meeting and welcomed by the delegates, but it was clear that more was expected, and in response to this the International Group put forward the possibility of an alternative scheme, confusingly called "TOPIA" (Tanker Oil Pollution Indemnification Agreement) although it is quite different from STOPIA. Under this agreement the Clubs would effectively reinsure 50% of all claims against the Supplementary Fund. At the Spring meeting the delegate of the International Group emphasised that the two schemes were alternatives, and that the combination of the two, seen by some delegates as a real solution to the rebalancing problem, was simply not available.

Against this background it came as a surprise to many delegates to the October meeting when the International Group of P and I Clubs produced a paper on the day before the meeting began offering a combination of both schemes (document 92FUND/A.10/7/3/1). The delegate of the Group apologised for the late appearance of this paper and for the lack of translations into French and Spanish. While most delegates to

the meetings of the funds speak good English, many of them made the point that they were unable to obtain instructions from their capitals in the time available. This was not unreasonable, since in most governments important decisions of policy require extensive review and consultation before they are made.

The IOPC Funds have demonstrated remarkable agility in reacting to unexpected circumstances, particularly in the form of major maritime casualties, no two of which are the same. However at bottom it is an assembly of government representatives and can only decide major policy issues at the speed of its slowest member. The shipping industry should not be surprised. The speed of a convoy is that of its slowest ship.

At the end of the debate, the result was effectively a no-score draw. There was, as the Chairman of the Assembly (Jerry Rysanek of Canada) sagely pointed out, no clear consensus in favour of even the limited revisions advocated by the proposers. As the delegate of Norway stated, there is in reality no such thing as a limited revision. Once the revising process has started it will be very difficult to exclude proposals put forward by states advancing their pet concerns. On the other hand the STOPIA and TOPIA schemes, now that they are on the table, are unlikely to be rejected out of hand by governments, since they offer a prompt solution to the rebalancing issue. The same may be said for major oil companies, whose contributions to the claims arising in major cases such as "ERIKA" and "PRESTIGE" run into many millions. Would their shareholders be happy to learn that a proposal whereby the ship-owners and their P and I Clubs would bear half of such contributions had been rejected in favour of a solution which will take many years to put in place?

However, just as there is no such thing as limited revision, it is also true that no international convention is cast in stone, and the process of review will inevitably go on in the long term. A successful international scheme such as the IOPC Funds must constantly review the extent to which it is responding to the needs of the victims of pollution, but the time and energy of such reviews must not diminish the good work it is doing.

RICHARD SHAW*

* Senior Research Fellow – University of Southampton Institute of Maritime Law. CMI Observer Delegate to the Diplomatic Conference.