

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 1 - JANUARY/ APRIL 2006

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Ratification and denunciation of International Conventions

NEWS FROM THE CMI

MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD IN CAPE TOWN ON FEBRUARY 12, 2006

Attending:

<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 Christopher DAVIS Johanne GAUTHIER José Tomás GUZMAN John HARE Gregory TIMAGENIS
<i>Secretary-General:</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Treasurer:</i>	Benoit GOEMANS
<i>Substitute Assistant Administrator:</i>	Lesley CANNING

The President opened the meeting by stating that he had received regrets from Francesco Berlingieri, Henry Li and Sergei Lebedev who were unable to attend.

The President welcomed the Executive Council to Cape Town and thanked them for their attendance. He said that he was impressed by the organization for the Colloquium and thought that it would be a success. He then paid tribute to Francoise Collet who was the Assistant Secretary of the Maritime Law Association of France and had accepted to substitute for Pascale Sterckx as the CMI Assistant Administrator during the Colloquium. Very sadly, Francoise died recently in Paris. He thanked Lesley Canning for coming to Cape Town on short notice in place of Francoise and Pascale. The President then said that the Executive Council should meet again following the Assembly on Wednesday, February 15, 2006.

The President then turned to the Agenda.

1. Minutes

- (a) The Minutes of the Executive Council Meeting conducted by e-mail during the week of November 28, 2005 were then discussed. Nigel Frawley moved for their ratification and approval, it was seconded by José Maria Alcantara and the motion carried unanimously.
- (b) The President said that he was very satisfied with the first meeting of the Executive Council by e-mail. In particular, he found the Final Document, which followed the first and second Round very helpful. He then invited comments. There was general agreement, however, a question was raised as to whether it was permissible by the Constitution. The President drew attention to Article 19 which shows that it is.

2. Finances

- (a) Benoit Goemans said that his Treasurer's Report to the Audit Committee had been prepared in electronic format but he had not yet been able to print it off in Cape Town. He said that steps have been taken and that it should be available shortly. He said that the CMI treasury has sufficient cash to carry on for three years without any income. He pointed out that there had been a decrease of both income and expenditures during the fiscal year 2005. He said that the Audit Committee meeting had not yet been held but hoped to contact the Chairman, W. David Angus QC, shortly to discuss such a meeting. Johanne Gauthier then took issue with reflecting

certain outstanding subscriptions as Receivables from countries who it is known will not pay their subscription. He then turned to the budget which he said was also not yet printed off and that he had been very conservative in its preparation. He recommended that the annual subscription be kept the same for 2006 as it has been for 2005. It was agreed that this be put to the Assembly. At the end of the meeting, Mr. Goemans produced a typed version of his Report and Budget, and his written comments thereon which are attached hereto as Schedule "A".

(b) Unpaid Contributions and Potential Expulsions

Mr. Gombrii stated that as of February 10, 2006 an amount of about 225,000 Euros was outstanding from 33 member associations. About 40,000 Euros of that sum are not regarded as a problem at this time and should be paid relatively soon. In respect of the balance of the outstanding amounts, he said that the biggest defaulters are: Poland, 41,000 Euros, Panama, 26,000 Euros, Peru, 20,000 Euros, Indonesia, 10,000 Euros, Uruguay, 10,000 Euros and Malaysia, 8,000 Euros.

Mr. Gombrii said that he had pressed the Polish MLA on numerous occasions but never received a reply. The requirements of the Constitution in this respect have been satisfied and he therefore recommended that they be expelled. It was agreed that this should be put to the Assembly on this basis.

With respect to Panama, he said that he had received a response a short time ago to his invitation to try to find an amicable settlement. Chris Davis said that he will be going to Panama soon on business and undertook to discuss payment of whatever settlement amount is agreed upon by Mr. Gombrii.

Regarding Indonesia, Stuart Hetherington said that he would see if he could get a reply from them about the amount outstanding and achieve a settlement.

With respect to Malaysia, Patrick Griggs will write his contact at that MLA.

Regarding Peru, Mr. Guzman said that he had received no replies to his letters so he will now call the MLA and get the name of the appropriate person for Mr. Gombrii to write.

With respect to the Gulf MLA, he said that they have not been responding to his letters to settle. John Hare said that he would write his contact in Dubai to chase them up on this.

There was then a general discussion about how important it is that when a National MLA is expelled, the CMI should reserve the right to claim the amount owing. The Executive Council should

be aware of the applicable limitation periods before claiming.

Wim Fransen then reported on the result of his correspondence with a P&I Club representative in Karachi. He received advice that there is no Pakistan Maritime Law Association that is registered. It was agreed that the Executive Council should consider the expulsion of this MLA but their status should be explored further. Mr. Hare said that the regional representative should travel to meet with the MLAs in trouble to see if anything can be done to facilitate the problem. The President approved such a thought but hopes that Executive Councillors should visit MLAs on their travels on business rather than put a drain on the CMI's treasury.

The Executive Council considered that we should go deeper into the problem of unpaid contributions which likely arises from poorly run MLAs with not many lawyers as members. It appears that to some delinquents, letters from the President often matter little.

Mr. Guzman offered to contact the MLA's of Peru and Uruguay to see how they can comply with their outstanding contributions with the CMI. If it proved to be useful, he suggested he would travel to those countries.

The President then made a special vote of thanks to Mr. Gombrii and Mr. Guzman for all their efforts in these respects.

3. *Colloquium 2006*

Nigel Frawley reported that he had already met with James MacKenzie, Chairman of the Cape Town Organizing Committee, John Hare, and with Keith Burton and Kristen Tremeer of the PCO, African Agenda. He said that he had also inspected all of the locations in the Convention Centre and the Hotel for the various meetings and assembly and was satisfied that it would be a successful Colloquium.

4. *Work in progress*

(a) *Transport Law: UNCITRAL draft Instrument*
No report was given at the meeting.

(b) *Issues of Marine Insurance*

John Hare said that he would continue to monitor this.

(c) *Piracy, Maritime Violence*

Patrick Griggs said that we should refocus the CMI efforts back to criminal acts on foreign flag vessels. He said that the model law on piracy has been shown to be ineffective and that no one of consequence is taking any interest in the subject so he does not think that the CMI should devote

more resources to revising it. The President said that it is difficult to stop our work on this subject when other organizations like IMO, Interpol, BIMCO, ICS, International Group of P&I Clubs, International Maritime Bureau and the International Transport Workers Federation are involved and working with the CMI. After discussion, Mr. Griggs said that he would prepare a draft letter to Frank Wiswall who chairs the CMI Committee for the President's consideration, to concentrate his efforts on the original referral and restrict his work. Mr. Alcantara then suggested that we keep a standing committee on SUA and Mr. Hare thought the Working Group on piracy might be downgraded to a standing committee where expenses are kept to a minimum.

(d) *Implementation and Interpretation of International Conventions, including Procedural Rules in Limitation Conventions*

Mr. Timagenis gave a brief summary of what he would be saying at the Colloquium. Basically, he has received 17 replies to the questionnaire and they have been summarized by Mr. Berlingieri. He thinks that the Executive Council should start drafting guidelines and circulate them to the national MLAs. He said that this subject should be the main topic on the agenda at Athens. He thought that work on this subject should concentrate on the limitation rules in the LLMC, CLC and HNS Conventions.

(e) *Places of Refuge*

Stuart Hetherington said that his draft instrument had been prepared since the Paris meetings and that he would be explaining it at the Colloquium. He said that the Dutch MLA is very negative to the idea of the CMI continuing its work on places of refuge. He said that the ISU is very supportive, and that some delegates in the IMO also like the CMI continuing its work. However, he said, the majority at IMO say that other conventions deal with the problem (notwithstanding there are gaps) but that other conventions, which will be forthcoming, (HNS, Bunkers & Wreck Removal Conventions) might together cover those gaps. Mr. Griggs said that it will likely take another Erica-type disaster for States and some NGO's to focus on the issue and the CMI's draft instrument may then become popular. It was generally considered that the document should still be referred to as an instrument although in a convention-type form and that the CMI should continue its work.

(f) *Revision of CLC/Fund Conventions*

Patrick Griggs said that there was no consensus for a revision and that the P&I Clubs had resolved certain difficulties by creating STOPIA/TOPIA. In any event, a review is a continuing process. All

present considered that the Executive Council should not contribute to the debate on requirements for revision.

(g) Bareboat Chartered Vessels

Mr. Alcantara said that he would make a report on this subject at the Assembly but that there was nothing new to report to the Executive Council at this time.

(h) General Average

The President said that he had received a handsome booklet of the Vancouver Rules and that several hundred had been circulated to insurance brokers and average adjusters. At the request of the Executive Council, the President said that he would arrange that all Councillors and Officers receive a copy. Mr. Griggs then reported that his ad hoc committee on setting applicable interest rates under the York Antwerp rules 2004 had met and agreed to recommend to the Assembly that the rate for the period January 1, 2007 to December 31, 2008 be 5.5% per annum.

Colloquium Panel on Fair Treatment of Seafarers, and beyond

The meeting then adjourned for luncheon and on its resumption Edgar Gold, by invitation, attended the meeting to report on what his panel on the subject of Fair Treatment of Seafarers following a Marine Accident would be discussing at the Colloquium and to recommend that their work be continued. This would involve participation at a meeting of the International Shipping Federation, International Federation of Trade Unions, National Federation of Ships Masters, ICS, ILO and INO from March 13 to 17, 2006 in London and the likelihood of another meeting again in late 2006. Mr. Gold said that he had received replies from 50% of the MLAs that had received the questionnaire. All responses had revealed that States have the power to detain masters and crew members and provision that this power not be abused. He referred to human rights legislations and other safeguards. He said that the use of criminal sanctions is increasing and that it is a difficult subject. He asked the Executive Council to consider whether they should remain as an international working group or as an international subcommittee. He recommends that his working group continue to assist in the development of guidelines. Dr. Gold went on to say that the main problem is how States administer their laws. He said further that he would not be able to attend the meeting in March but that David Hebden could. The President then said that as the matter would be discussed at the Assembly and the Colloquium and another Executive Council meeting at Cape Town, he would let the decision be known to Dr.

Gold by the end of the Assembly, as to whether or not his working group should continue. Mr. Gold thereupon left the meeting.

(i) Wreck Removal

Mr. Griggs said that there was still time for minor amendments at the IMO on this subject but that a diplomatic conference will be convened in the relatively near future.

Presentation on the Conference at Athens in 2008

John Markianos of the Greek MLA then attended the meeting by invitation to report on preparations for the Athens Conference in 2008. He said that the Organizing Committee had met about 25 times and that a PCO had been selected (Triaena Tours and Congress and Amphitriion SA). They were working on a budget of 291,000 Euros and a registration fee of 850 Euros with a cheaper fee for younger delegates, i.e., 35 and under. He said that they have finally selected upon a hotel for the conference – Astir Palace at Vouliagmeni which is about a one-hour drive to Athens and Piraeus. He said that the weather should be good in mid October and that it would still be at the off-season rates. Hotel rooms would be from 187 to 222 Euros which does not include breakfast. They have planned for two large meeting rooms for the Conference – one for 450 persons and the other for 150 persons. Mr. Markianos said that they plan registration, an opening ceremony and reception on the Sunday afternoon and evening; an all-day excursion is being arranged for the Wednesday which could be a cruise to the islands, Delphi and historical sites. They are presently drafting the first announcement. They have already printed a poster to be sent to MLAs. The President then thanked Mr. Markianos and his Organizing Committee for all of their work to date. Mr. Markianos then left the meeting.

(j) Future Topics

The President said that he is anxious to receive suggestions from the Executive Council on this subject. He said one subject for consideration would be a look into litigation involving classification societies and the elusive formula for limitation of liability. This would involve examining the whole relationship between ship owners/charterers and classification societies. At the moment the international working group is on a “back burner” basis but one option would be to ask Frank Wiswall whether he has heard any international developments on this. The President thought that it might be time to have a new chairman from the Executive Council now that Frank Wiswall’s term has come to an end. The Executive Council should consider whether to wait to be invited to examine the issues by classification

societies before starting work or simply press on without invitation.

The President also referred to UNCITRAL's work on arbitration and conciliation at a meeting in New York City last January. The CMI was invited to send a representative but because it was such short notice the CMI was unable to do so. The Executive Council might wish to consider creating a group to follow up and participate in future meetings. It was generally agreed that we should not be proactive on this subject. Chris Davis suggested that he approach an attorney in New York who did attend the meetings to see if he could obtain an update on the current status of the draft instrument. However, it was considered that the CMI should, if it wishes, approach UNCITRAL directly.

Mr. Alcantara suggested "Shipping Terms" as a future topic. He considers that it is an evolving area.

Mr. Alcantara also suggested Volume Contracts in carriage of goods as a new topic. Stuart Beare has done a report on this subject recently.

Johanne Gauthier then suggested "Black Boxes" as a future topic. She said that they should be compulsory by 2008. In Canada the issue of the admissibility of evidence from Black Boxes is a big issue. We might wish to look at different countries and see what they are doing about this.

Mr. Gombrii thought that it might be useful to look into law and the brokerage industry e.g. chartering brokers, i.e. who can sue etc.

Patrick Griggs thought we might consider exploring pilotage issues and the vexing subject of limitation of liability.

The President said that we should continue this discussion when we resume the Executive Council meeting later on in the week.

5. *International Organizations*

(a) Patrick Griggs said that he and Richard Shaw were content to continue as CMI observers at meetings of the IMO. As far as he knows, Stuart Beare is content to continue his work as an observer at UNCITRAL.

(b) Wim Fransen said that he will continue to monitor EU shipping measures, in particular penal sanctions against seafarers. The President agreed but said it was important that the CMI not be seen to be taking sides. Mr. Fransen said that he would do a note on the present position. Johanne Gauthier suggested that the CMI make itself available as a resource but Mr. Griggs thought that they would not listen to the CMI while they are involved in this process. He went on to say that he does

not think that the CMI should get involved in regional matters and should stick to IMO and international solutions. The President agreed with this approach.

6. *"Housekeeping" amendments to new constitution*

Mr. Fransen and Mr. Goemans said that they would continue to look at these amendments. It was agreed that we could not vote on any of the suggested amendments by Frank Wiswall without further details and an explanation and proper notice given to all national MLAs.

7. *39th Conference – 2008 in Athens*

Mr. Timagenis said that there was nothing further to report from what Mr. Markianos had said earlier in the meeting.

8. *Colloquium 2010*

Mr. Guzman reported that the MLA of Chile was anxious to host this Colloquium. They suggest the dates of October 4-7, 2010. He has had two meetings with the Organizing Committee. He distributed the outline of a brochure with a proposal of subjects to cover, and other activities, for the delegates and accompanying persons. Mention was also made to pre and post Colloquium tours and rates at eight hotels in Santiago and Vina del Mar. The month of October is springtime in Chile and he said that the delegates would hopefully enjoy what they find after travelling such a distance.

Conference 2012

Mr. Frawley said that correspondence had been received from the Hong Kong MLA volunteering that city. However, the mood of the meeting seemed to be that it was time for Mainland China to be the host, if possible. Mr. Fransen thought that Shanghai would be a good venue. The President said that he would ask Henry Li to look into this and that we should take care that we do not conflict with all of their own conferences.

9. *CMI Charitable Trust*

Patrick Griggs reported that the funds in the Trust stood at £384,500 and that the new fund managers, Smith and Williamson Investment Management of London, have been instructed to invest in such a way as to produce £15,000 per annum without risking capital. Of this sum, £7,000 has been earmarked for work on the CMI website and publications and £5,000 is allocated for travel expenses of visiting lecturers to IMLI in Malta.

This leaves £3,000 which is available for items such as “freebies” for speakers and others attending the Colloquium and other international meetings.

10. Publications

The President wished it to be recorded that the Executive Council was unanimous in thanking Francesco Berlingieri for all of his efforts in this respect and regret his not being able to attend the Colloquium at Cape Town.

11. Young Members and CMI Prize Competition

Mr. Alcantara said that the prize in an essay writing competition would be available for the CMI Conference at Athens. He will start working on the topic(s) and announcement shortly. He said that he will prepare a flyer or a poster and send it out to universities that teach maritime law. He would like to have more attention on this subject from the Executive Council and a decision on funding. John Hare said that we should invite proposals on any topic relating to international shipping law. Mr. Alcantara said that he would report on this subject once he was ready to make a firm recommendation.

Patrick Griggs said that a young lawyers colloquium will be held in London May 12/13, 2006. It has been organized by the MLAs of Great Britain, Netherlands, France, Germany and Belgium. It was the view of all Executive Councillors that there should be CMI support of this initiative and that a sum of money be donated to assist in their financing. The decision taken was that Patrick Griggs will contact Andrew Taylor and ask for a copy of their agenda and that he and Jean-Serge should make every effort to attend the colloquium.

There was also discussion about including a session on young lawyers at the Athens Conference. This met with general approval.

Mr. Guzman said he felt that maybe the Executive Council could take advantage of young lawyers’ gatherings, and of our contacts with them, to explore the possibility of attracting them or some of them to the CMI, through the proper channels. He added that he believed that among these young lawyers there should be many professionals with sufficient knowledge and experience to become valuable members of the CMI.

There was a short exchange of opinions in this respect, in which some councillors said that the CMI was a group of experts and that required more experience, and others who felt that the subject should be looked into.

12. Revival of Planning Committee

The President said that this Committee should be in place and ready to do its work by the Assembly 2007.

13. Next Meeting of Executive Council

The President said that he would like the next Executive Council meeting to be held by e-mail conference in the week 48 of 2006. There was then a general discussion about this and it was decided that the next Executive Council meeting following this plus an assembly should be organized for the spring of 2007. There followed a discussion about a venue for this. It was decided that Croatia would be an excellent venue and Patrick Griggs was asked to speak to the Croatian delegate at the colloquium, Mrs. Pospisil-Miler to see if that was feasible.

There was then discussion about the next Executive Council meeting being held by e-mail conference in or about November 2007.

14. Members

(a) All Executive Councillors have seen the written report of the nominating committee and there was nothing further to add.

(b) Starter kit for new members

Johanne Gauthier said that she had received several suggestions for improving her draft letter. Gregory Timagenis referred to his written comments by e-mail dated January 10, 2006 and encouraged Executive Councillors to review them and comment thereon.

(c) Monitoring of National Associations

Mr. Guzman recommended that Tunisia be granted provisional membership until Assembly 2007 in view of the requirements of the constitution.

15. Reflections on the CMI

In view of time constraints, the President said that this subject should be deferred to a luncheon meeting of the Executive Council to be held on Monday, February 13, 2006.

16. Tributes

(a) The President thanked John Hare for all of the work that he had done, in conjunction with the Organizing Committee and the PCO, to make the Colloquium an undoubted success that it was bound to be. Mr. Hare replied that he appreciated the two-year “leave of absence” so that he could deal with personal matters. He looked forward to his final year on the

Executive Council and volunteered to assist with the young lawyer initiative. The Executive Council then gave him a hearty round of applause.

- (b) *Alfred Popp QC – Membership Honoris Causa*
Nigel Frawley said that the President had asked him, on behalf of the Executive Council, to make a motion at the Assembly to be held on Wednesday, February 15, 2006, for the election to membership Honoris Causa for Alfred Popp QC upon his retirement as chairman of the legal committee of IMO and his many services to international maritime law and its unification.

17. *Other business*

1. The President reported that IMAO had written him to ask if the CMI nominees for their board of directors should be changed or remain the same. He reminded those present that the IMAO was created 30 years ago as a joint venture with the CMI. The President replied that the CMI nominees to the board of directors should remain the same with Bill Tetley QC as chairman.
2. The President then reported that our assistant administrator, Pascale Sterckx, was all alone in her office now that Benoit Goemans has left Kegel and Co. to start his own firm. This gives rise for the need of a decision as to which other office she should move. The President will look into this further with the assistance of Mr. Goemans and Mr. Fransen and report back to the Executive Council once a decision has been made.

19. *Termination*

There being no further business for the time being, the meeting adjourned at 4:00 p.m., to be resumed over luncheon on Monday, February 13, and again on Wednesday, February 15, 2006 following the Assembly.

Resumption of Executive Council Meeting at Cape Town at 12:45 p.m. on Monday, February 13, 2006

Johanne Gauthier led a discussion on how to make a number of smaller national MLAs feel more involved, be assisted with membership issues and teach them how they can contribute better to the work product of the CMI. John Hare said that he would locate the guidelines for monitoring national MLAs and recirculate them to see if there is any need to amend them. Several members of the Executive Council made helpful suggestions for improving the situation. There seemed to be a

consensus that the 1997 brochure be updated, distributed to all national MLAs and that the website be improved by setting out guidance and assistance to new national MLAs, in conjunction with the starter kit. It was left open as to who would do this. It was suggested that the President prepare his own newsletter to be distributed to all national MLAs two or three times a year to update them on what the Executive Council is doing; and that the President and Executive Council meet with delegates at assemblies, either formally or informally over dinner to offer guidance and answer questions.

The meeting terminated at 2:00 p.m. as the Colloquium was resuming at that time. The President said that there would be another meeting of the Executive Council commencing at 5:00 p.m. on Wednesday, February 15, 2006 to discuss and decide several matters, which had arisen.

Resumption of Executive Council Meeting at Cape Town at 5:00 p.m. on Wednesday, February 15, 2006

The President said that the Colloquium had been a great success and he paid tribute to the Secretary-General. Johanne Gauthier suggested that the President present a CMI tie to James Mackenzie and Andrew Pike at the closing dinner during his speech. The President welcomed the suggestion and said that he would do so.

Places of Refuge

There then followed a discussion about the future of this topic in view of its controversial nature as expressed by various delegates at the Colloquium. Stuart Hetherington recommended that the CMI continue its work. After discussion, it was decided that the International Working Group on Places of Refuge will keep the topic under review and explore the possibility of preparing materials for potential inclusion as a SOLAS annex. As part of its on-going work, the IWG will consider the work being done by the International Salvage Union on “environmental salvage.”

Fair Treatment of Seafarers in the event of a maritime accident

All Councillors agreed that this important work should continue. The President said that Edgar Gold will, at his own request, step down as chairman of the CMI working group but would keep himself in the background to give advice as necessary. David Hebden has agreed to be the CMI representative at the IMO/ILO meeting in London on March 13-17, 2006 and that he would report on what transpired.

Patrick Griggs then advised that he had been approached by the editor of the publication *Droit Maritime Francaise* "DMF" with a request for permission to publish the Colloquium papers in a special edition of the DMF. It was agreed that he should be informed that the CMI had no problem with this on the basis that we had no intention of publishing the Colloquium papers in French and that the offer of DMF to do so was an excellent way of getting the papers before the French speaking community.

Planning Committee

The President then said that the first meeting of this committee should be held on the occasion of the Executive Council meeting and assembly in Croatia in the spring of 2007. The committee's main work topic should be planning for the CMI conference in Athens. There will be other subjects still to be decided upon. Mr. Alcantara was of the view that the President should be the chairman and that he should start circulating the Executive Council for thoughts on what subjects could be discussed and planned for. It was agreed that the Secretary-General should be on the committee arising out of his position, that Chris Davis should be the North American representative; that Alfred Popp be approached to be a member for his international perspective; that Professor Hu should be on the committee subject to Henry Li's comments; that Mr. Guzman and Mr. Cappagli be considered as the South American representatives; that Andrew Taylor should represent the younger generation of lawyers; and that Mr. Fujita of Japan be considered to be on the committee.

Young Lawyers Colloquium

It was agreed that the CMI should be a sponsor at this important event and that the President should be given discretion on a sum of money to be provided to assist in the financing.

Guidelines for Observers

Nigel Frawley said that he had prepared a draft of such guidelines with assistance from Francesco Berlingieri, Patrick Griggs, Karl Johan Gombrii, Stuart Beare and Richard Shaw. He invited comments on this document as soon as possible.

Executive Council Meeting and Assembly in Croatia

Patrick Griggs said that he had spoken with the Croatian delegate and the suggestion was made that perhaps the event could be held at the end of April/very early May 2007. Nigel Frawley said that he had also spoken to that delegate and she said she would e-mail him to make the formal offer and that after discussing the subject with the President, he would send her a reply with some of the initial thoughts and requirements of the CMI.

Pakistan MLA

Mr. Gombrii noted that the Pakistan MLA has not paid its dues for five years. A decision was then taken that Article 3 procedures should be started with a view to expulsion of that MLA.

Mr. Alcantara thanked the Executive Council and nominating committee for having been elected for a second term.

Termination

The meeting terminated at 6:15 p.m.

SCHEDULE "A" TO THE MINUTES OF THE EXECUTIVE COUNCIL MEETING

Report to the Executive Council by Benoit Goemans, Treasurer

Cape Town, 11 February 2006

Income and Expenditure

Income Reduction

The total income fell from 316,053 euros in 2004 to 242,568 euros in 2005.

The first cause of this decrease is a suggested amendment of our provision policy. So far, the policy has been to make provisions for unpaid subscriptions for an amount equal to arrears in excess of one year. The auditor has pointed out that this practice proved in the past to be too optimistic, thereby providing inaccurate reporting. The Treasurer discussed the matter with the auditor and a conclusion was reached that the appropriate policy would be to make provision for:

1. an amount equal to arrears older than one year (as before); and
2. for arrears less than one year if experience confirms that such debtor(s) has caused significant recovery problems and makes it likely that the CMI will not be able to cash the claim.

It is the Treasurer's recommendation to adopt this policy. In fact, it is a condition to the approval by the auditor.

The second cause for the fall of income is the absence of any conference surplus in 2005. There was no conference held in 2005, as opposed to 2004, when a significant conference surplus was achieved.

Expenses Reduction

The good news is that there was a reduction in expenses from 193,501 euros (2004) to 152,173 euros (2005).

1. Postage costs fell from 23,441 euros (2004) to

12,065 euros (2005), owing to fewer materials being mailed.

2. Travel expenses decreased from 50,489 euros in 2004 to 15,708 euros in 2005. This reduction has two causes. Firstly, the Executive Council meeting at Vancouver caused significantly higher travel costs compared to the following year's meeting at Paris. Secondly, in order to reduce travel costs, one of the two Executive Council meetings for 2006 was conducted by way of e-mail.

Result: Reduction of the Surplus

Taken together, the surplus fell from 122,552 euros to 90,396 euros. Should the earlier provision policy for unpaid subscription have been maintained, the surplus would have remained the same, but the latter amount is a more precise reflection of the reality.

A surplus of 90,396 euros still may appear to be high for a non-profit organization, however this range of surpluses is a recent phenomenon.

Balance Sheet

The most important aspect is that it may be safely concluded that there is sufficient cash in the bank to operate the CMI for three years without the introduction of any fresh cash. This result is reflective of the prudent and cautious approach to the handling and reporting of the CMI finances.

On the basis of the Budget submitted, no increase of the subscriptions is recommended.

The most important issue brought to the attention of the Executive Council is the Treasurer's suggestion not to adapt subscriptions to the erosion of money. To leave the subscriptions at the same nominal level means a reduction of approximately 2% in real terms.

MINUTES OF THE CMI ASSEMBLY HELD IN CAPE TOWN ON FEBRUARY 15, 2006

Attending:

<i>President:</i>	Jean-Serge ROHART
<i>Past President</i>	Patrick GRIGGS
<i>Vice-Presidents:</i>	Karl-Johan GOMBRII Stuart HETHERINGTON
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<i>Administrator:</i>	Wim FRANSEN
<i>Treasurer:</i>	Benoit GOEMANS

Member associations:

The delegates 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.

1. *Adoption of agenda*

The tabled agenda was adopted.

2. *Memorials*

The President then paid tribute to Claude Boquin, Pierre Bouloy and Madame Françoise Collet of the MLA of France; Arturo Ravina of the MLA of Argentina; and John Hargrave and Edouard Baudry of the Canadian MLA who had died since the previous Assembly.

3. *Approval of minutes*

The Secretary-General moved, seconded by Liz Burrell of the US MLA, that the minutes of the Assembly held in Paris on April 16, 2005 be approved. There was unanimous approval and no business arising therefrom.

4. *Members*

(a) *Titulary Members*

The Secretary-General advised that the

German MLA had nominated Dr. Klaus Ramming to be a titulary member. He then called upon the German MLA to speak to the matter. There were no German delegates present. The President called for comments on the nominee from the other delegates present and he then declared Dr. Ramming to be elected a titulary member.

(b) The Secretary-General advised the meeting that Frank Wiswall of the US MLA had been appointed an Honorary Vice-President at the last Assembly.

(c) The Secretary-General then advised the Assembly that the CMI Executive Council had invited the Pacific International Maritime Law Association to be a consultative member. No reply had been received to date. He said that this Association was composed of graduates of the IMLI from the Pacific region such as Fiji, Papua New Guinea, Samoa, Tonga, Vanuatu, Tuvalu, Solomon Islands, Marshall Islands and New Zealand.

(d) John Hare moved, seconded by William Moreira QC, that the MLAs of Tunisia and Kenya be accepted as national MLAs and the motion carried unanimously.

5. *Finances*

(a) The Treasurer circulated his Report to the Audit Committee dated February 11, 2006, the Auditor's Report on the Financial Statements

for the fiscal year 2005 and the budget for the year ended December 31, 2005. His comments thereon are attached hereto as Annex "B".

- (b) The Treasurer then recommended that the level of subscriptions for 2006 remain the same as for 2005, which was met with general approval.
- (c) The Treasurer then moved, seconded by Stuart Hetherington, that the account, budget and subscriptions be approved. The motion carried unanimously.
- (d) *Unpaid Subscriptions*
Karl Johan Gombrii reported on subscriptions which were outstanding from several MLAs. He then moved for the expulsion of the Polish MLA in view of the fact that they were considerably in arrears and had not answered any of his letters asking for settlement. This was seconded by Benoît Goemans and the motion carried.

6. *Assembly 2007*

The President said that the next assembly will be held in Croatia, subject to confirmation by the Croatian MLA. He went on to say that further details would be forthcoming in the near future.

7. *Elections*

Bent Nielsen spoke to the written report of the nominating committee which had been circulated. He then moved that Wim Fransen be elected for a second term as administrator, and that Henry Li and José Maria Alcantara be elected for a second term as executive councillors. Thomas Rue, President of the US MLA, seconded the motion and it carried unanimously.

8. *Publications*

There was no report.

9. *Work in progress*

- (a-d) There were no reports on Transport Law, Marine Insurance, Procedural Rules in Limitation Conventions and Places of Refuge, owing to the fact that they had been dealt with during the Colloquium.
- (e) *Salvage Convention, 1989*
Richard Shaw referred to the Responses to the CMI Questionnaire on the Implementation of

the Salvage Convention 1989 and a synopsis of them prepared by Professor Berlingieri revealing slow progress in the number of countries giving it the force of law. He said that the Questionnaire arose from the fact that the IMO Secretariat had not received any information whatever, in particular on Rules, about the Salvage Convention from those Contracting States which have given the convention the force of law, and that this was an obvious concern for the CMI due to the potential for lack of uniformity of laws and rules. Progress reports on the Responses to the Questionnaire have been given by Richard Shaw to the IMO legal committee. Mr. Shaw also reported that the International Salvage Union has developed a paper on the concept of salvage remuneration for saving the environment from pollution damage. He further pointed out that there are clearly many practical difficulties, not the least being who will pay, and the CMI might well wish to monitor developments and make a constructive contribution to the debate.

(f) *Bareboat Chartered Vessels*

José Maria Alcantara reported that his Working Group had prepared a document for submission to the IMO legal committee relating to the provision of Financial Security by Bareboat Chartered Vessels, in particular into what would happen if the definition of "owner" was extended to bareboat charterers in a range of maritime liability conventions. He said that problems might arise with the HNS Convention, Wreck Removal Convention (draft), 1992 CLC Convention and the Bunker Convention. The CMI has recommended against amending the definition of "owner" to include bareboat charterers.

(g) *Revision of CLC/Fund Conventions; STOPIA & TOPIA*

No report was given as this had been spoken to at the Colloquium by Mans Jacobsson.

(h) *General Average*

Bent Nielsen circulated the report of the Working Group on the rate of interest for the York-Antwerp Rules 2004. He moved that the rate of interest be 5.5% for the period from January 1, 2007 to December 31, 2008. This was seconded by Johanne Gauthier and the motion was unanimously carried.

* Annex B is Schedule A to the Minutes of the Executive Council meeting held on February 12, 2006 (*supra*, page _____).

(i, j) As Wreck Removal and Fair Treatment of Seafarers had been dealt with at the Colloquium, no reports were given.

10. Various

(a) *Young Members and CMI Prize Competition*

Mr. Alcantara reported that a CMI prize competition would be advertised to all national MLAs in the near future with a prize to be awarded at the 2008 CMI Conference in Athens. Andrew Taylor of the BMLA advised the Assembly of a seminar for young members which has been organized by the BMLA to be held in London May 12/13, 2006. He said that a suitable Notice of this event would be sent to national MLAs. Mr. Timagenis then said that he would speak with the organizing committee of the CMI Conference to be held in 2008 in Athens about the possibility of allocating some time for young member issues.

(b) *Starter Kit*

There was no report.

(c) *CMI 39th International Conference, Athens 2008*

Mr. John Markianos, chairman of the organizing committee, reported that the Conference will be held during the period October 12-17, 2008, likely at the Astir Palace in Vouliagmeni near Athens. Initial planning suggests that the registration and opening reception would be held on Sunday, October 12th with the substantive program being held on October 13, 14, 16 and 17, 2008, and an all day excursion for delegates and accompanying persons on Wednesday, October 15, 2008. The website is presently being established. The chosen PCO is Triaena Tours

and Congress. Mr. Markianos' report was enthusiastically received.

11. *Other business*

Alfred Popp QC-membership *Honoris Causa*.

The Secretary-General then called upon Mr. Popp to come forward and after describing Mr. Popp's distinguished career, in particular as chairman of the IMO legal committee for the previous 13 years and chairman of the Whole at several Diplomatic Conferences, he moved that Mr. Popp be elected as a member *Honoris Causa*. This motion was seconded by Thomas Rue and the motion carried unanimously with a standing ovation.

Mr. Popp then spoke and thanked the CMI for the honour and said that he has always believed in the strong relationship which exists between the IMO and various intergovernmental bodies, in particular the CMI. He said that it was very important that the CMI continue its excellent preparatory work for the drafting of international conventions. He said that even though he was retiring he will keep in touch with international events and trends through his recent appointment as Secretary-Treasurer of the Canadian MLA.

12. *CMI Charitable Trust*

Patrick Griggs reported that the trust funds had been transferred to new managers, Williamson Financial Services of London. He said that some of the interest gained has been allocated to the website and publications, and that some had also been allocated for travel expenses of CMI lecturers to the IMLA.

13. *Termination*

There being no further business, the President declared the meeting terminated and wished the Delegates a safe and pleasant journey home.

ANNEX “A”

DELEGATES AT CMI 2006 ASSEMBLY, CAPE TOWN – FEBRUARY 15, 2006

<u>NATIONAL ASSOCIATION</u>	<u>NAMES OF DELEGATES/TITULARY MEMBERS</u>
ARGENTINA	Alberto C. Cappagli
AUSTRALIA & NEW ZEALAND	Edgar Gold, Q.C. Stuart Hetherington
BELGIUM	Benoit Goemans Herman Lange Paul Verguts Marc A. Huybrechts
CANADA	Nigel H. Frawley Justice Johanne Gauthier A. William Moreira Alfred H.E. Popp, Q.C. Douglas G. Schmitt
CHILE	José T. Guzman Salcedo
CHINA	Hu Zheng Liang Jiang Hong
CROATIA	Marija Pospisil-Miler
DENMARK	Bent Nielsen
FRANCE	Isabelle Corbier Philippe Godin Antoine Vialard
GREECE	John Markianos-Daniolos Deucalion Rediadis
IRELAND	Brian McGovern
ITALY	Giorgio Berlingieri
JAPAN	Tomotaka Fujita
MEXICO	Ignacio L. Melo
NETHERLANDS	Taco van der Valk
NIGERIA	Emmanuel O. Idowu Funke Agbor Mfon Ekong Usoro
NORWAY	Karl-Johan Gombrii
REPUBLIC OF KOREA	Wamyong, Chung
SOUTH AFRICA	Andrew Robinson James Mackenzie Andrew Pike
SPAIN	José M. Alcantara Francisco Goni
SWEDEN	P-O Sköld
SWITZERLAND	C.F. Lueddgue
UNITED KINGDOM	Patrick Griggs Rhidian Thomas Andrew Taylor Richard Shaw
UNITED STATES	Christopher Davis Lizabeth L. Burrell Warren J. Marwedel Thomas S. Rue

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

IMO LEGAL COMMITTEE MEETING 24 – 28 April 2006

The Spring meeting of the IMO Legal Committee took place between Monday 24th and Friday 28th April 2006 at the IMO Building in London. In the chair was Professor Chai Lee-Sik of Korea.

Draft Wreck Removal Convention

The principal task on the agenda was the review of the Draft Wreck Removal Convention. This project has been under development for the last 10 years under the patient guidance of the Netherlands as “lead delegation”, but due to the more pressing needs of other matters, such as the Supplementary Fund for Oil Pollution Compensation and also the Protocols to the SUA (anti-terrorism) Conventions, this draft convention has been very slow in coming to fruition. At this meeting, however, the Legal Committee gave the draft text a thorough review, and decided that it was sufficiently well refined to fix a Diplomatic Conference for its adoption in May 2007.

Since at that time the IMO Building will be closed for refurbishment, the Diplomatic Conference will take place in Nairobi, Kenya at the invitation of the Kenyan Government.

The principal features of the Wreck Removal Convention are

1. the obligation on the owner or master of the ship which is, or is likely to become, a wreck to report the relevant details to the coastal state in whose Exclusive Economic Zone (EEZ) the wreck lies (the Affected State);
2. The explicit grant to the Affected State of a right to intervene to locate, mark, and eventually to remove a wreck in its EEZ;
3. an explicit obligation on the owner of a wreck to remove it, and a right of the Affected State to do so if the Owner does not do so within a reasonable deadline set by the Affected State, together with consent by the flag state of the wreck to such intervention;
4. strict legal liability on the owner of a wreck for the costs of locating marking and removal, subject to limited exceptions, similar to those in CLC;
5. the requirement of all ships over a specified length (not yet fixed) to carry a Certificate of Financial Responsibility in an amount not exceeding the ship’s limit of liability calculated

in accordance with the 1976 LLMC Convention as amended by the 1996 Protocol;

6. direct action against the ship’s insurer for wreck removal risks (in virtually all cases this will be the P and I Club).

The present draft of this convention does not contain a clause allowing states to extend its provisions to wrecks lying *within* its inland and territorial waters. A provision allowing states to make such an extension (the “opt-in clause”) was in the early drafts but was removed at the April 2005 meeting of the Legal Committee, doubtless encouraged by a widespread assumption by states that they could legislate accordingly in their territory without the need for a convention to authorise them to do so. That is theoretically correct, but of course such legislation would not give the states concerned the benefit of the standard form certificate of financial responsibility provided for in the draft convention, nor the right of direct action against the insurer. It was becoming clear during the April 2006 meeting that many states now appreciate the advantages of extending the provisions of the international regime to their inland waters and territorial sea, and the Netherlands delegation was encouraged to come forward at the October 2006 meeting of the Legal Committee with revised proposals to reinstate the “opt-in clause”. It is to be hoped that their efforts in this regard will be successful.

The interaction between the provisions of the proposed Wreck Removal Convention and those of other conventions such as UNCLOS (in particular article 221), the 1969 Intervention Convention, and the CLC, Fund and HNS Conventions has the potential to give rise to difficulties, and the CMI delegation has been working actively with the lead delegation to develop wording which will minimise these problems.

Another interesting area is that of Limitation of Liability. It has been accepted that the Certificate of Financial Responsibility must have a finite limit for the scheme to be workable, and the increased 1996 limits have been adopted as the basis for such certificates in article 13 of the draft. However many states have taken advantage of the provision on article 18 of the 1976 LLMC Convention (and its 1996 Protocol) to exclude wreck removal claims from the ambit of that Convention. Costs of wreck

removal operations which exceed the 1996 limit will therefore be theoretically recoverable in such states, but in reality the excess over the limit will be unsecured. If the ship is a valueless wreck and is owned by a one-ship company, the prospects of recovery of the balance will be remote. However it should be borne in mind that in such a situation the present position of a coastal state is even worse, and the proposed convention offers a substantial improvement.

Considerable further drafting work must be done between April and October to ensure that the draft Wreck Removal Convention is in a final form by the end of the October meeting. The CMI will be taking an active part in this work.

Revised Athens Convention on Passenger Liability

A protocol to the Athens Convention on the Carriage of Passengers and their Luggage by Sea was adopted at a diplomatic conference in London in 2002 but has not yet come into force despite pressure from within the European Commission for member states to ratify. The protocol requires the owners of passenger ships to carry evidence of insurance (or other security) to cover liabilities to passengers. In practice most owners will purchase such cover from P. & I. Clubs. The International Group, on behalf of its member Clubs has, throughout, expressed doubts about the capacity of the market to provide cover up to the levels required by the protocol. It has also pointed out that members of the Group do not cover the consequences of acts of terrorism, nor do they cover war risks. For this reason Clubs would only be able to issue certificates of insurance excluding war risks and terrorism claims. At the 91st Session of the Legal Committee Norway, in a series of submissions and working papers, proposed the adoption of a Resolution containing Guidelines for the Implementation of the 2002 protocol. Under these Guidelines states would be permitted, when ratifying the protocol, to do so subject to a reservation which would enable them to issue (and accept) insurance certificates which reflect "such exceptions and limitations as it finds that the insurance market conditions at the time of issue of the certificate necessitate". At a meeting in the margins the Norwegians unveiled a possible scheme (put together by the insurance brokers, Marsh) which would provide cover for the terrorism and war risks not currently available from the Clubs. No conclusion was reached during the week, but work will continue intersessionally to refine these proposals.

Fair Treatment of Seafarers

This is a topic which has been much discussed of late, notably at the CMI Colloquium in Cape Town

in February. A joint working group of the IMO and ILO had developed a set of Guidelines on Fair Treatment of Seafarers in the event of a Maritime Accident which were published following the session ending on 17th March 2006. With remarkable rapidity these guidelines were submitted to the Legal Committee, which had been given delegated authority by the IMO Assembly to adopt these guidelines, rather than delaying them to the next meeting of the Assembly.

The guidelines are commendably brief and to the point. They are divided into five sections addressed respectively to the port or coastal state, the flag state, the seafarer state, and to shipowners and seafarers. They are of course non-mandatory, but they represent a concise statement of best practice in the shipping industry, and will no doubt be taken seriously by any judge.

There was widespread support for the immediate adoption of the draft guidelines, but one or two delegations expressed reservations, notably the USA and UK, that for example the right to remain silent in the face of questioning by an investigating officer (paragraph 9.7) could prejudice the outcome of an inquiry following a casualty. This provoked a lively debate, but in the end there was an overwhelming majority in favour of adopting the Guidelines, on the clear understanding that they would be kept under review. They will now go before the ILO Governing Body in June, and if approval is given by that body the guidelines will become effective forthwith.

This is just as well, since there will be no meeting of the Legal Committee in April 2007, due to the diplomatic conference to adopt the Wreck Removal Convention, which would mean that if the Legal Committee had not adopted the text of the Guidelines at the April 2006 meeting, they could not have been adopted for another 18 months, which would have sent out an unfortunate signal to seafarers world-wide.

Assuming that the Guidelines are also approved by the ILO in June, the IMO/ILO Joint Working Group will, under revised terms of reference also approved by the Legal Committee, continue to monitor and evaluate the implementation of the Guidelines, and, if appropriate, make recommendations for their improvement.

Places of Refuge

A report by CMI on the discussions at the Cape Town Colloquium in February was presented to the Legal Committee and accepted with gratitude. Some delegations expressed the view that this topic should not remain on the Committee's work programme in the light of the decision taken at the April 2005 meeting to await the implementation of the HNS, Bunkers and Wreck Removal

Conventions which will provide compensation to coastal states for claims arising from marine casualties.

However the Committee finally decided to retain this subject in its long-term work programme, encouraged by interventions by Greece, Liberia and Singapore and the observer delegation of the International Association of Ports and Harbours. The International Salvage Union is also known strongly to support further work on this topic.

Meanwhile delegates noted that the European Union considers this to be a subject requiring positive action, and it is understood that this is on the agenda of a ministerial meeting scheduled for June 2006.

Crimes committed on Vessels on the High Seas

The CMI also presented a short paper reporting on work currently under way by a sub-committee chaired by Dr. Frank Wiswall. Port states have proved reluctant to disembark and detain seafarers accused of such crimes in the absence of a request from the flag state to do so. The jurisdiction issues are complex, and a report on these studies is expected in 2007.

Abandonment of Ships

The IMO Secretariat has produced a useful working paper (LEG91/11) at the request of the joint Working Group on Ship Scrapping set up by the IMO, ILO, and the Basel Convention. Concerns have been expressed by a number of developing countries relating to the abandonment of ships on land or in ports. This topic impacts on the working of the Basel Convention, which makes the dumping of ships at sea unlawful unless a thorough assessment of all options available has been carried out in accordance with internationally agreed Guidelines adopted under the Basel Convention. The draft Wreck Removal Convention will also have an effect in this field, but only when the wreck results from a marine casualty, defined in article 1.3.

Wrecks abandoned by their owners on land or in port are not covered by either instrument, but would normally be subject to provisions of local national law.

The Legal Committee has been asked for its comments on these issues, and the CMI has offered its assistance to the Legal Committee in this work.

RATIFICATION AND DENUNCIATION OF INTERNATIONAL CONVENTIONS

INSTRUMENTS OF ACCESSION TO THE FOLLOWING CONVENTION HAVE BEEN DEPOSITED WITH THE DEPOSITARY:*

- **United Nations Convention on the Carriage of Goods by Sea, 1978 – the “Hamburg Rules”**
Liberia: 16 September 2005
Paraguay: 19 July 2005
- **International Convention on Liability and Compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996 (HNS 1996)**
Cyprus: 10 January 2005

* The dates indicated are the dates of deposit of the instrument.