

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

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This Issue Contains:

News from the CMI

- The CMI Athens Conference
- Minutes of the Executive Council Meeting held by e-mail during the week of November 19, 2007

NEWS FROM THE CMI

THE CMI ATHENS CONFERENCE

The 39th CMI Conference will take place at the Astir Palace Hotel in Vouliagmeni, near Athens from October 12-17, 2008. Eminent speakers from around the world will focus on some of the most important contemporary issues of maritime law. An exciting social programme has been arranged by the Greek Maritime Law Association, including a cruise to several Greek islands. Further details may be obtained by visiting the Conference website: www.cmi2008athens.gr

MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD BY E-MAIL DURING THE WEEK OF NOVEMBER 19, 2007, CHAIRED BY THE PRESIDENT FROM HIS OFFICE IN PARIS AND FROM THE CMI HEADQUARTERS IN ANTWERP ON THE LAST DAY OF THE MEETING.

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>	José Maria ALCANTARA Christopher DAVIS Johanne GAUTHIER José Tomas GUZMAN (did not participate) Mans JACOBSSON Sergei LEBEDEV Henry LI Gregory TIMAGENIS
<i>Publication Officer:</i>	Francesco BERLINGIERI
<i>Secretary-General:</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Treasurer:</i>	Benoit GOEMANS

Introduction by the President

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 then explained 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 12, 2007 and circulated in a format titled "First Round Document" with the reports underneath the particular agenda items on November 20th) were to be commented upon and the Secretariat would then incorporate all comments into the Second Round Document and circulate it to all Executive Councillors on November 21st.

A new round of further comments would then be solicited by November 22nd, and the Third Round would consolidate all comments on November 23rd, including the President's summing up, in Antwerp and circulated immediately thereafter. All Executive Councillors were asked to keep their comments concise and to the point.

1. Minutes

(a) The minutes of the Executive Council meeting held at Dubrovnik, Croatia on May 10, 2007 were approved. A short version was published in CMI Newsletter No. 2-2007.

(b) The President gave his report on his activities as President since the Assembly at Dubrovnik on May 11, 2007 and, in particular, his participation in September at the First Seoul Maritime Forum organised by the Korean Ministry of Maritime Affairs as well as his participation to the celebration of the XXth Anniversary of the Instituto Iberoamericano de Derecho Maritimo (IIDM) which took place in Seville in November.

He also referred to an invitation by Anatoly Kolodkin, President of the Russian Maritime Law Association, to attend a meeting in Moscow in early July 2007 to speak on the CMI's work. Unfortunately, the President was unable to attend due to a scheduling conflict. He looks forward to doing so in the future.

2. Finances

(a) The report of the Treasurer was reviewed and Executive Councillors expressed their thanks to the Treasurer for his stewardship of the CMI finances. They also noted with approval the opening of a new bank account with J. Van Breda & Co., in addition to the one with the Fortis Bank. Executive Councillors also commented on the very high accumulated surplus and the steps needed to correct it to a more acceptable level. Mr. Alcantara asked the Executive Council to consider generosity over investing in activities of benefit to NMLAs and the Young Members CMI project providing financial incentives and grants to Young Members. No decision was taken on these points. The President congratulated the Treasurer for his report and directed the Select Committee looking into Reforms (meeting in London on December 3, 2007), to recommend a better use of the funds and a possible reduction of fees from NMLAs and titular members.

(b) Unpaid Contributions

Executive Councillors were provided with a list of unpaid subscriptions for 2007 and previous years, and delinquencies were noted.

(c) Titulary Member Fees

Mr. Gombrii raised the issue of whether NMLAs should be responsible to the CMI for titular member fees or whether the individual titular members should be. He outlined two proposals – the "constitutional approach" and the "practical approach". The Executive Council decided upon the latter in which the NMLAs are responsible to the CMI for titular member fees and if a titular member is in default for two years he or she should be disenrolled.

3. Member issues

The President said he received a visit by Professor Kolodkin on behalf of the Russian MLA in January 2007 in which he complained about the present system of calculation of subscriptions. The President undertook to raise the matter with the Executive Council at its meeting in Dubrovnik. It will be recalled that the decision at that time was to leave untouched the level of subscriptions of all NMLAs pending a report from the Select Committee which would examine this and other issues.

4. *CMI Charitable Trust*

Patrick Griggs reported that the Trust's portfolio stood at £428,466 on November 15, 2007 which was a 1.2% decline since the last valuation on June 29, 2007. The investment manager considers the result satisfactory in a time of turbulent markets.

The President, on behalf of the Executive Council, expressed thanks to Patrick Griggs and the managers of the Trust.

The Treasurer noted that he cannot follow the Trust's investment policies because of their different financial goals, but that he had come to the conclusion after consulting with Mr. Griggs, that the CMI could invest in interest bearing instruments, certain real estate certificates, and instruments with variable returns provided the capital is not affected.

5. *Conferences*

(a) *Final Report on Dubrovnik Symposium 2007*

The Secretary-General noted that he was unable to give a final report because his counterpart in the Croatian MLA had been unable to provide certain financial information owing to his busy schedule. He expects to receive this information in the near future and Mr. Frawley will give his final report to the Executive Council by e-mail at that time.

The Executive Council expressed its thanks to Mr. Frawley for his efforts in organizing the very successful Dubrovnik Symposium with the Secretary-General of the Croatian MLA, Mr. Igor Vio.

(b) *Athens Conference 2008*

Gregory Timagenis and Nigel Frawley reported on their preliminary planning and after obtaining valuable views from Executive Councillors, the President authorized them and the Conference Organizing Committee, chaired by Mr. Markianos, to press forward with their plans for material and financial details as well as choice of speakers, including industry speakers, keeping the Executive Council advised as plans are developed.

Mr. Timagenis suggested that local lawyers be able to participate at the two meetings on the UNCITRAL Draft Instrument at the special registration fee of 100 euros; he also suggested that all young lawyers be permitted to attend the conference at a reduced registration fee. The Executive Council approved these initiatives.

It was decided the main subjects of the 39th CMI Conference in Athens to be the UNCITRAL Convention on Carriage of Goods, Places of Refuge for Ships in Distress and Procedural Rules Relating to Limitation of Liability in Maritime Law. Other subjects are (a) Promotion of Quality Shipping by Non-Technical Measures; (b) Implementation of Maritime Conventions relating to Limitation of Liability; (c) Wreck Removal Convention-2007; (d) Ship Recycling; (e) Charterers Right to Limit Liability; and (f) International Recognition of Judicial Sales of Ships.

(c) *2010 Colloquium in Chile*

The Executive Councillors reviewed the written report of José Tomas Guzman and, in particular, the suggested venues of Santiago and Vina del Mar. The subject matter will be reviewed in more detail at the New York Executive Council meeting so that some decisions may be made.

(d) *2012 CMI Conference in China*

The Executive Councillors noted that the indications are that the President of the China MLA will be submitting a formal application to host the 2012 Conference in China in the reasonably near future.

(e) *Symposium 2011 – Draft Guidelines for Symposia*

As to a Symposium in 2011, several host countries were discussed but the subject is premature at this time to make any decisions.

As to the draft guidelines for Symposia, the President noted a few minor difficulties. The Secretary-General will be attending to those with his next draft.

6. *Constitution*

Benoit Goemans and Wim Fransen reported that the recent amendment to Article 2 of the Constitution (incorporating the changed address of the seat of the CMI) was processed with the appropriate Belgium authorities and published in the "Moniteur Belge". Mr. Frawley asked that consideration be given to Frank Wiswall's suggestions in 2005/2006 of preparing a definition of "good standing" in Article 6, dealing with expulsion of NMLAs in Article 3 (II), adding a new Article 13g) relating to the functions of the Administrator and adding a footnote to Article 20. Mr. Goemans replied that the Article 6 suggestion might increase the distance between the CMI and its members; that adding a footnote to Article 20 would create the necessity of cross

referencing of most, if not all, Articles in the Constitution. Wim Fransen commented that adding a new Article 13g) with respect to his functions providing “to communicate as necessary with the Belgian Ministry of Justice in order to maintain the legal status of the CMI” would run counter to the present established practice of Mr. Goemans being the only officer in recent years communicating with the authorities about the CMI and constitutional issues. No decision was taken on these points.

7. (a) *Yearbooks, Newsletters and CMI Website*

Francesco Berlingieri advised that Yearbook 2007-2008 will contain the travaux préparatoires of the Athens Conference and would likely be made available by the end of June 2008. He asked for documents for inclusion by the end of April.

(b) *Storage of CMI Archives; Publications on CD ROM*

The Administrator reported that he had attended at Henri Voet Sr.’s residence following his death and, at the invitation of Henri Voet Jr., took away with him a complete set of books regarding all CMI conferences from the very beginning of the CMI until the present day and has stored them in the CMI Secretariat library. As there were several more boxes of such books, Mr. Fransen asked Pascale Sterckx to attend and draw up an inventory. Regrettably, there are no more complete sets. He suggested the CMI investigate the cost and perhaps reconstitute at least one more complete set. In the meantime, he suggested the Secretariat keep five copies of each book and destroy the balance unless Councillors found a need to keep them.

Mr. Fransen also suggested disposing of a surplus of Yearbooks currently kept in storage.

The President decided that missing books should be scanned and reconstituted to make up complete sets for a safer preservation and that once they have been scanned, the collections of Yearbooks kept at Antwerp could be sent to various interested universities and parties against a refund of costs. He asked Mr. Berlingieri to make an announcement on this in the next Yearbook.

8. *Work in progress*

(a) *UNCITRAL Draft Instrument on Carriage of Goods*

Stuart Beare’s two e-mails of November 3, 2007 on

the UNCITRAL Draft Instrument were reviewed. Executive Councillors expressed their gratitude to Mr. Beare for all his excellent work on this subject for many years which is finally coming to fruition. There was support for the suggestion of a resolution endorsing the draft convention at the Athens Conference. The President noted that he had confirmed Mr. Beare’s terms of reference until the end of the work on the draft Convention.

(b) *Issues of Marine Insurance*

Mr. Frawley reviewed extracts from John Hare’s e-mail of November 11, 2007 with respect to marine insurance, the appointment of a chairman, maintenance of the Standing Committee and appointments thereto. The Executive Council decided to ask Mr. Hare to remain as chairman of the Standing Committee and authorized him to implement his recommendations for members, rapporteurs and their mandate. The President asked Mr. Frawley to write Mr. Hare on this and also for the Standing Committee to be made aware of two issues in Russian jurisprudence raised by Sergei Lebedev i.e., i) the starting point calculating the two year period of limitation of action under marine insurance contracts; and ii) the right of the insurer to rely on the arbitration clause contained in a contract between the insured and the responsible third person.

(c) *Maritime Criminal Acts*

Christopher Davis reported on his attendance at the IMO Legal Committee Meeting in Panama October 22-26, 2007 and reported on the debate on what priority the draft guidelines should be given on their work agenda. He reported that the result was that until the work on the Fair Treatment guidelines was completed, the draft guidelines on Maritime Criminal Acts were to be shelved to avoid the potential of conflicts between the two. The Legal Committee left open the possibility of any delegate or NGO (including CMI) to request that the issue be reconsidered at a subsequent session of the Legal Committee upon a showing of “compelling need”. The Executive Council decided to shelve the draft guidelines on Maritime Criminal Acts until the IMO Legal Committee was in a position to take them up on their work agenda. A unanimous vote of thanks was made to Frank Wiswall for all his work on the subject over the years.

The President also expressed his gratitude to Chris Davis for attending at Panama as the CMI Observer and participating in the debate.

(d) Implementation and Interpretation of International Conventions

Mr. Berlingieri reported on the progress of work to date on this subject and recommended that the Working Group, consisting of himself, Panayotis Sotiropoulos and Richard Shaw be brought back to life, that certain Conventions be selected to conduct research thereon, and prepare and circulate a new Questionnaire to NMLAs.

He also thought that a progress report could be made at the Athens Conference.

Executive Councillors agreed with his recommendations and the President gave him full discretion to implement his suggestions as he sees fit.

(e) Procedural Rules Relating to Limitation Conventions in Maritime Law

Gregory Timagenis reported that, following the ISC meeting in Dubrovnik on May 4/5, 2007, a revised version of the draft guidelines was prepared and circulated to all NMLAs and members of the ISC for comment, and some were received. The ISC met again in Paris on September 13/14, 2007. The draft guidelines were further revised, and Introductory Notes and a Commentary were added. They will be circulated to NMLAs shortly.

Mr. Timagenis then sought consideration by the Executive Council of broadening the ISC's mandate so as to include the interpretation of certain conventions relating to limitation of liability and taking decisions thereon. The decision of the Executive Council, as expressed by the President, was to exclude any interpretation of conventions from the draft Guidelines which should deal with procedural matters only.

(e) Places of Refuge

Stuart Hetherington reported on the ISC meeting in London on May 22, 2007 which resulted in a further version of the draft instrument. Stuart Hetherington will be meeting in London with Eric van Hooydonk, Richard Shaw, Giorgio Berlingieri on December 7, 2007 with a view to continuing their work and sending the latest draft to NMLAs early in the new year to enable them to prepare for the Athens Conference. The draft instrument was reviewed by Executive Councillors and the President expressed gratitude for Mr. Hetherington's work.

(g) Fair Treatment of Seafarers in the Event of a Marine Accident

As provided above, Chris Davis attended at the IMO

Legal Committee meetings in Panama October 22-26, 2007 as the CMI Observer and was pleased to note that the IMO Secretary-General referred in his opening address to the long-standing and fruitful collaboration of the IMO with the CMI. Mr. Davis reported that the joint IMO/ILO ad hoc expert Working Group was asked to monitor the guidelines on Fair Treatment of Seafarers in the event of a Maritime Accident, consider concerns about their interpretation and application, and collect information regarding the implementation of the guidelines by IMO member states, thereby enabling the Legal Committee to gain experience with the guidelines and determine whether they are workable and effective before considering any revisions. There was also debate on the risk of self-incrimination and the need for seafarers to have access to legal advice before giving evidence at inquiries into accidents.

There was unanimous support for maintaining this topic on the work program of the Legal Committee with high priority. The President thanked Mr. Davis for his attendance at Panama and his excellent report.

(b) Ship Recycling

Mr. Frawley reported on progress of the MEPC's draft international convention for the safe and environmentally sound recycling of ships. The CMI Observers at working group meetings are Michael Stockwood and Christopher Breide of Ince & Co. who will meet with Mr. Frawley in London on December 4, 2007 to discuss upcoming work and their participation on a panel on this subject at Athens.

(i) Promotion of Quality Shipping

Mr. Gombrii tabled the Questionnaire on this subject which was sent to NMLAs and replies are currently awaited for analysis and report to the IOPCF at their meeting in Monaco March 10-14, 2008.

(j) Judicial Sales of Ships

It was decided to add this subject to the programme at Athens.

(g) Charterers Right to Limit Liability

Patrick Griggs reported that a Questionnaire had been sent to all NMLAs in January 2007 and 19 responses had been received to date. He will report on this subject at the Athens Conference.

9. *Young Member issues and Essay competition*

Mr. Alcantara reported that the notice for the 2008 essay competition was sent to all NMLAs on June 7, 2007 but no reaction has been received. He also advised that a notice on Continuing Legal Education had been drafted and sent to Mr. Markianos for inclusion in the brochure advertising the Athens Conference.

Mr. Alcantara asked that the Executive Council give Young Member issues a higher priority in its work agenda. The President expressed his thanks to Mr Alcantara for the approach made, in view of the Athens Conference, in facilitating the presence of Young Members.

10. *International Organizations*

(a) *Representation of CMI at Meetings of IMO and IOPC Funds*

The President asked Mr. Davis to prepare a suitable report on LEG 93 for publication in the next CMI Newsletter.

(b) *Cooperation with IMLI and WMU*

The President reported that the CMI's relationship with IMLI and WMU is excellent and that invitations for CMI lectures will continue to be made.

11. *Next Meeting of Executive Council*

The President said that this would be held during the afternoon of Wednesday, April 30, 2008 and the

morning of Thursday, May 1, 2008 at the offices of Curtis, Mallet-Prevost in New York City. Executive Councillors are delighted to have been invited to attend the US MLA Board of Directors luncheon at the New York Yacht Club on Thursday, May 1, 2008.

12. *Next Assembly*

The next CMI Assembly will be held at the Astir Palace in Vouliagmeni, Greece from 1430-1700 on Friday, October 17, 2008 at the conclusion of the Athens Conference.

13. *Other business*

The President reported on the general discussions he had had with the Secretary-General of the ICC's Chamber of Arbitration in Paris in the summer of 2007 with respect to the ICC and CMI resuming their relationship toward revising a set of arbitration rules for IMAO. Nothing further has transpired since that discussion.

14. *Termination and concluding remarks*

On behalf of the Executive Council, the President expressed gratitude to Pascale Sterckx, Wim Franssen and Benoit Goemans for making this "virtual" meeting a success. He then referred to the Select Committee meeting scheduled for December 3, 2007 in London and their anticipated report on reforms to the Executive Council for consideration and would expect input on this at the next Executive Council meeting in New York.