

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

COMITE MARITIME INTERNATIONAL

NO. 3 - SEPTEMBER / DECEMBER 2008

## This Issue Contains:

### News from the CMI

- Minutes of the first Executive Council Meeting held at the Westin Athens Hotel, Vouliagmeni, Athens, Greece on October 12, 2008
- Minutes of the CMI Assembly held at the Astir Palace Hotel at Vouliagmeni, Athens, Greece on October 17, 2008
- Minutes of the second Executive Council Meeting held at the Westin Athens Hotel, Vouliagmeni, Athens, Greece on October 17, 2008

### News from Intergovernmental and International Organizations

#### News from IMO

- Report of the 94<sup>th</sup> Legal Committee Meeting, by Patrick Griggs and Richard Shaw

#### News from IOPC Funds

- Report on Attendance by CMI Observer Delegate at the IOPC Funds' Meetings, by Olivia Murray

## NEWS FROM THE CMI

### MINUTES OF THE FIRST EXECUTIVE COUNCIL MEETING HELD AT THE WESTIN ATHENS HOTEL, VOULIAGMENI, ATHENS, GREECE ON OCTOBER 12, 2008

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>	Christopher DAVIS Johanne GAUTHIER José TOMÁS GUZMAN Måns JACOBSSON Sergei LEBEDEV Henry LI Gregory TIMAGENIS
<i>Secretary-General:</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Treasurer:</i>	Benoit GOEMANS
<i>Publications Editor:</i>	Francesco BERLINGIERI

## 1. Minutes

(a) The minutes of the Executive Council meeting held at New York on April 30 and May 1, 2008 were discussed. Chris Davis moved for their approval, which was seconded by Johanne Gauthier and approved unanimously.

(b) There was no business arising from the minutes.

## 2. Finances

### *Report from the Treasurer*

After discussion, the decision was made to recommend to the Assembly that the Treasurer's report on the state of the CMI's finances be approved. The President congratulated the Treasurer for the steps taken to safeguard the CMI's finances in light of the current world financial crisis.

The decision was also made to recommend to the Assembly to increase the 5% discount for prompt payment of subscriptions to a 10% discount for the 2009 year.

## 3. Member Issues

(a) There was discussion about an application by an association in Estonia to join the CMI. Mr. Lebedev said that the Russian MLA had received a request from the applicants to support their membership. Mr. Gombrii said that it appeared as if the persons representing that association were not well known in the shipping community of Estonia. This is relevant as the CMI's policy is to insist on a broad membership of an MLA which would include not only Russian, as the present applicants appeared to be, but also Estonian speaking persons in the applicant association. The President asked Mr. Gombrii and Mr. Jacobsson to continue investigations with other known contacts in Estonia.

Mr. Gombrii said that he had earlier been in touch with those in Malaysia who are interested in forming an MLA but there had been no recent contact. The President asked him to continue investigating.

As to Morocco, Mr. Rohart said that he knows the President of a new group in that country, Comité Marocain de Droit Maritime. As the Executive Council had agreed in New York to waive the outstanding subscriptions of the "old" MLA for the "new" MLA, their application is now regarded as a formal one. The decision on whether to admit them as an MLA will be decided at the Assembly at the end of the week.

### *(b) Portugal MLA*

After a considerable delay in establishing

communications with that MLA, there appears to be a desire on their part to become more active within the CMI and to pay outstanding subscriptions. Mr. Alcantara is dealing with them on this and members of the Executive Council were encouraged by the President to discuss greater contacts with Portuguese delegates at the conference.

### *Poland MLA*

Mr. Gombrii says that he met a Polish lawyer, Mr. Pawel Mickiewicz at the New York meetings earlier this year who expressed a desire to re-activate an MLA. The President encouraged further efforts in this at the conference.

### *India MLA*

Mr. Gombrii said that he had met an Indian lawyer at the New York meetings and will pursue further enquiries in order to try and re-establish contact with key people in that country and re-activate their MLA.

### *Egypt MLA*

Mr. Frawley said that he had been in correspondence with Dr Nader Ibrahim of Alexandria who has applied for consultative status for the ASCML (Arab Society for Commercial and Maritime Law) which represents 22 Arab countries. It is usual for organizations in joining consultative status to be international associations but this large regional association deserves recognition and therefore the application found favour and it was accepted.

### *Temporary Members List*

*(Page 92, Yearbook – Athens I)*

Of the list, Norman Martinez of Honduras, currently a student at IMLI in Malta and a delegate at the Athens Conference, has shown interest in applying for formal MLA status. Mr. Griggs said that he would talk to him at the conference about this.

Kenya was an initiative of John Hare but nothing has been heard from that country in over 3 years and it was decided they should be removed from the list. Efforts are to be made to re-establish contact with those maritime lawyers in that country who, hopefully, still have an interest in becoming a full fledged MLA.

## 4. CMI Charitable Trust

Mr. Griggs reported on the negative impact on the financial position of the Trust owing to the current world financial crisis. As of October 9, 2008, the assets on hand (cash and stock) was valued at some GBP 347,000 Sterling. This is to be contrasted with the situation at May 2008 when the assets were valued at GBP 430,000 Sterling.

Mr. Griggs says that the Trust will continue its payments for the cost of publishing CMI Yearbooks and Newsletters, and its contributions to IMLI and the Athens Conference. Mr. Griggs will maintain close contact with the Chairman of the Trust.

## 5. Conferences

### (a) Athens Conference 2008

Mr. Timagenis reported that all arrangements for the conference were complete including the social programme and that 368 Delegates had registered, with 112 registered Accompanying Persons. He gave details of expenses and contemplated expenses and was satisfied that there would be a profit at the end of the day. He also reported that there were several delegates who were unable to make it to the conference, for one reason or another, and that the refund date had long since passed. The Executive Council decided to consider whether refunds were justified and deal with it at the Executive Council meeting at the end of the week or at a later week when the accounts were all in. Mr. Frawley reported that the substantive programme was complete with all speakers accounted for and most papers posted on the Conference website.

### (b) Symposium – 2009

Mr. Frawley introduced Mr. Gertjan van der Ziel to the meeting who ran through the arrangements for the Symposium to be held in Rotterdam from September 21 to 23, 2009 on the occasion of the Signing Ceremony of the UNCITRAL Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. There will be an Executive Council meeting, an Assembly and a one day Symposium. There will also be a port cruise with optional visit to Terminal Operators, and dinner. Eighty percent of the speakers for the Symposium have already been invited and accepted and they will speak solely on UNCITRAL Convention matters.

### (c) Colloquium – 2010

A letter from the President of the MLA of Chile dated October 7, 2008 was reviewed and discussed. The President will reply.

### (d) Symposium – 2011

There were no suggestions for this. Some Councillors considered that we should not have one as in recent years we have had the Vancouver Conference, the Cape Town Colloquium, the Dubrovnik Symposium and now the Athens Conference. At this point Mr. Frawley referred to an email sent by Mr. Igor Vio dated October 12, 2008 concerning the Dubrovnik Symposium in

2007 with suggestions for organizing future symposiums. Mr. Griggs said that he would reply to him.

Mr. Berlingieri said that his son Giorgio, the President of the Italian MLA, is interested in hosting a CMI event sometime.

### (e) Conference in China – 2012

Mr. Rohart referred to the correspondence between him and the President of the Chinese MLA. Mr. Li said that it is felt that Beijing is a better venue for the Conference as the high government officials are located there and would wish to be present at the opening ceremony and, perhaps, some of the panel presentations. One Councillor suggested that the Conference be split between Beijing and Shanghai but this was not met with much enthusiasm. However, there seemed to be support for a suggestion that there be an Optional Tour in Shanghai following the Conference in Beijing featuring a cruise of the Shanghai port and terminals.

## 6. Report of Steering Committee on CMI Reforms

The President said that he wished to defer all of the Steering Committee Report to the future and not discuss it at the Assembly because of the financial implications therein and the global financial crisis currently prevailing. Mr. Hetherington said that he agreed and would only report very briefly to the Assembly that work was being done in this area and that the Report, if necessary, would again be circulated after the Assembly.

## 7. Constitution

It was decided to defer the necessary amendments to the Constitution arising from the Steering Committee Report until the finalization of the Report.

## 8. Publications

(a) Mr. Berlingieri reported that the cost of publication of 3 Newsletters, 1 Yearbook and maintaining the website in 2007 was 12,385.35 Euros, as distinct from 9,624.80 Euros for the 2006 year.

He then reported that a number of MLAs preferred receiving copies electronically on the CMI website and if more sign up for this it will reduce his hardcopy costs considerably.

Mr. Berlingieri then said that he had received no reported cases from any MLA in spite of a general request in the past. He suggested that a further Questionnaire be sent out to each MLA asking (i) whether they would prefer electronic Newsletters

and Yearbooks to hardcopies and (ii) whether someone could be appointed in each MLA to furnish the CMI website with important reported cases.

He said that the cost of the website was 720 Euros in 2006 and 540 Euros in 2007. He then reported that Frank Wiswall had advised him that Lexis-Nexis would publish a final issue of The Handbook of Maritime Conventions at a per copy cost of \$80 US for 2008. Mr. Berlingieri went on to say that if the publisher of the CMI Yearbook takes over publishing this Handbook, it would cost 5,700 Euros for 500 copies. He said that it was important that there be both English and French versions of the Handbook and that the French version could only be placed in a CD. He also said that an English and French version of 500 CDs would cost 500 Euros.

(b) Mr. Fransen said that there were no problems with the storage of CMI archives and that putting all back issues of the Yearbooks onto CD-ROMs would be finished in November.

#### 9. *Work in Progress*

(a) UNCITRAL Draft Convention on Carriage of Goods The President deferred this to the meeting of the Executive Council to be held following the Assembly at the end of the week.

#### (b) *Issues of Marine Insurance*

The President deferred this matter to the Executive Council meeting at the end of the week when the new President would be able to appoint members to a new International Working Group with a new chairman. Unfortunately, John Hare has been obliged to step down for family reasons. Mr. Jacobsson mentioned Professor Howard Bennett at Nottingham University as a possible member of the Working Group.

#### (c) *Protocol to the HNS Convention*

This was deferred to the next Executive Council meeting.

#### (d) *Fair Treatment of Seafarers*

Patrick Griggs said that a Document had been prepared by the International Working Group for filing with the IMO Secretariat but it was not accepted on the ground of late filing. He said that either he or Richard Shaw would make a verbal presentation of the Document at the meeting in London during the week of October 20, 2008 and that the Document would be filed for the next meeting.

#### (e) *Non-Technical Measures for the Promotion of Quality Shipping*

Deferred.

#### (f) *Judicial Sales of Ships*

Deferred.

#### (g) *Charterers' Right to Limit Liability*

Mr. Griggs said that Norman Martinez of Honduras is studying for a PhD on limitation of liability at IMLI, Malta. He will suggest to him that he widen his research to include all limitation issues, including a charterer's right to limit liability and not just to press for a new limitation convention.

#### (b) *Procedural Rules on the Limitation of Liability in Maritime Law*

Deferred.

#### (i) *Places of Refuge*

Deferred.

#### 10. *Young Member Issues and Essay Competition*

The President said that there were 53 Young Members registered for the Conference and that Frank Smeele of the Dutch MLA had organized a breakfast meeting for October 14<sup>th</sup> with speakers, and a dinner at a restaurant on October 16<sup>th</sup>.

Mr. Davis said that the host country for future conferences, colloquiums and symposiums should encourage Young Member activities.

The President said that the Young Member Essay prize has not been granted this year.

#### 11. *International Organizations*

(a) Mr. Griggs said that the new IMO procedures for getting access to their documentation was becoming increasingly difficult. He has had discussions with their person in charge of documentation and they agreed that the CMI Secretariat will look after the access "key" so that CMI Members can get the documents they require by asking Pascale Sterckx to open an account.

(b) The President reported that Frank Wiswall and Patrick Griggs were still giving lectures at IMLI, Malta and that other volunteers were always welcome by David Attard.

Mr. Rohart said that he visited the World Maritime University at Malmo to foster good relations, that Mr. Gombrii and Mr. Goemans had both given speeches there. He said that the World Maritime University was facing some financial problems but that the Government of Sweden had promised assistance for 2009.

The President said that Dieter Schwampe had requested Consultative membership for IUMI. The President will reply to him that they are already such a member.

(c) Mr. Guzman reported that he had offered CMI Speakers at the IIDM Conference in

Montevideo in November 2008 but that the organizers preferred that this be done at their next conference. Mr. Guzman said that he had already registered for the November event and would spread the word on the benefits of CMI membership and report on the deliberations.

#### *12. Next Meeting of Executive Council*

This was deferred so that the incoming President could consider how, when and where it should be held.

#### *13. Next Assembly*

This was deferred for the incoming President's consideration.

#### *14. Other Business*

The President reported that for the Vice Presidency at the Assembly, a Credentials Committee had been established with Richard Shaw as chairman, and Mr. Goemans and Mr. Fransen as members. It would be their task to prepare a list of those MLAs eligible to vote under the Constitution with the identity of the Head of each Delegation who would do the actual voting.

The President also said that the scrutineers for the vote by secret ballot would be Richard Shaw, Michael Bird (President of the Canadian MLA) and Francisco Carreira-Pitti (Representative of the Panamanian MLA).

Mr. Berlingieri and Mr. Griggs thanked Mr. Rohart on behalf of all members of the Executive Council for his many valuable contributions as President and wished him well in the future. Mr. Rohart thanked them for their kind remarks and wished his successor good luck.

Mr. Griggs then said that this would be his last meeting on the Executive Council following the appointment of a new President as Mr. Rohart would become the immediate Past President on the Executive Council. He thanked all members for their assistance throughout his many years of service. All members thanked Mr. Griggs for his outstanding contributions over the years and wished him well in the future.

Mr. Timagenis then said that as his second term as Executive Councillor would come to an end at the Assembly, he wanted to thank everybody for their assistance throughout and that he had enjoyed the experience. All Councillors then expressed their thanks to him for a job well done.

**MINUTES OF THE CMI ASSEMBLY HELD AT THE ASTIR PALACE HOTEL AT  
VOULIAGMENI, ATHENS, GREECE ON OCTOBER 17, 2008 AT 2:30 PM**

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>	José Maria ALCANTARA Christopher DAVIS Johanne GAUTHIER José TOMÁS GUZMAN Måns JACOBSSON Sergei LEBEDEV Henry LI Gregory TIMAGENIS
<i>Secretary-General:</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Treasurer:</i>	Benoit GOEMANS
<i>Publications Editor:</i>	Francesco BERLINGIERI

*Member Associations*

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*

Francesco Berlingieri paid tribute to Henri Francois Voet, who, from 1955 to 1997, acted as Treasurer and Secretary General Administrative of the CMI who passed away during the past year. The President then advised the Assembly that Enrique Moncloa Diaz Conseco of the Peruvian MLA and Dr. Hans-Christian Albrecht of the German MLA had also died during the previous year. He asked for a moment of silence as a tribute to these three distinguished gentlemen.

*3. Approval of minutes*

The Secretary-General referred to the minutes of the Assembly held in Dubrovnik on May 11, 2007 and there was unanimous approval of them and no business arising therefrom.

*4. Members*

*a) Titulary Members*

The Secretary-General advised the Assembly that the Australian and New Zealand MLA had nominated Madam Justice A. Philippides; that the

Japanese MLA had nominated Tomotaka Fujita; that the Spanish MLA had nominated José Luis Del Moral and that the MLA of the United States of America had nominated Patrick J. Bonner. The President then called for comments from the delegates present and all four nominees were duly declared to be elected as titulary members with congratulations for their contributions to the work of the CMI.

*b) Consultative Members*

The President advised the Assembly of the application of the Dutch inland waters organization, IVR, to be a consultative member and that it was currently under study.

*c) Regular Members*

The President then advised the Assembly that after years of inactivity, a new MLA of Morocco had been accepted as a CMI member.

*5. Finances*

*a)* The Treasurer gave his report on the CMI's finances for the 2007 fiscal year and referred, in particular, to the global financial crisis and the need to spread the CMI's cash on hand amongst several Belgian banks, rather than almost exclusively with the Fortis Bank, to reduce the risk of loss. He also referred to the 101,000 Euros surplus for the year. There was unanimous approval of his report, which is attached hereto as Annex B. The President expressed his gratitude for the Treasurer's work throughout the year.

The chairman of the audit committee, Liz Burrell of the MLA of the United States, then gave her report, which is attached hereto as Annex C. This

was approved and the President praised her efforts in this respect.

*b) Budget*

The Treasurer then reported on the budget for the forthcoming year which was unanimously approved.

*c) Subscriptions*

The Treasurer then said that owing to the current global financial crisis, the Executive Council had decided to recommend an increase from the current 5% reduction of annual subscriptions to 10% for those MMLAs that paid their invoices for the forthcoming year within the time set for payment. The Assembly approved this recommendation.

*d) Unpaid Subscriptions*

The chairman of the committee on collection of outstanding annual subscriptions, Karl-Johan Gombrii, reported on this subject and referred to the several countries that were in arrears and his dialogue with them. He advised that the Executive Council had sent a Notice of Expulsion to the Indonesian MLA and now moved for its expulsion as they had not replied constructively to any of his or Mr. Hetherington's letters asking for a dialogue on the subject since 2003. Mr. Alcantara intervened to encourage further attempts for a meaningful dialogue and expressed his personal view that expulsions should be avoided as much as possible. He said further that it was not right that an MLA be expelled purely for monetary reasons and he offered himself to sort out the situation. He said that he had support from Ecuador on the issue. Mr. Gombrii agreed with his statement that expulsion should be avoided to the extent possible but pointed out that five years without a constructive response did not create a meaningful basis for further attempts at solving the impasse amicably. He also mentioned that there was every hope that one day a new MLA for that country would be formed and contribute to the work of the CMI. As there were no further interventions, the motion for the expulsion of that MLA, was seconded by the Treasurer and unanimously approved.

Mr. Gombrii reported that there was little contact with Portugal as well but that after the New York Executive Council meeting in May 2007, Mr. Alcantara had opened up discussions with some Portuguese maritime lawyers and that he was optimistic that the Portugal MLA would reactivate and once again be a valued contributor to the work of the CMI.

Mr. Gombrii then spoke about the various South American countries that were in arrears with their annual subscriptions and hoped that the efforts of Mr. Guzman and Mr. Davis to reach an

accommodation with those countries would bear fruit. He spoke about the many valuable contributions of the South American countries to the CMI work. He said that Mr. Guzman planned to attend the Conference of the Instituto Iberoamericano de Derecho Maritimo in Montevideo in November 2008 to keep NMLAs from that region informed of the CMI's current work.

*e) Charitable Trust*

Patrick Griggs reported that owing to the global financial crisis and the stock markets' overall decline, the net value of the Trust's securities and cash on hand had fallen from £ 430,000 sterling in May 2008 to £ 347,000 sterling as of October 9, 2008. He reminded delegates that the Trust contributed to expenses of speakers for IMLI and WMU, and to the website and certain publications.

*6. Publications*

*a)* Mr. Berlingieri reported that the cost of publication of 3 Newsletters, 1 Yearbook and maintaining the website in fiscal year 2007 was 12,385.35 Euros, as distinct from 9,624.80 Euros for the 2006 year.

He then reported that a number of MLAs preferred receiving copies electronically on the CMI website and, if more sign up for this, it will reduce his hardcopy costs considerably.

Mr. Berlingieri then said that he had received no reported cases from any MLA in spite of a general request in the past. He suggested that a further Questionnaire be sent out to each MLA asking (i) whether they would prefer electronic Newsletters and Yearbooks to hardcopies and (ii) whether someone could be appointed in each MLA to furnish the CMI website with important reported cases.

He said that the cost of the website was 720 Euros in 2006 and 540 Euros in 2007.

He then reported that Frank Wiswall had advised him that Lexis-Nexis would publish a final issue of The Handbook of Maritime Conventions at a per copy cost of \$80 US for 2008. Mr. Berlingieri went on to say that if the publisher of the CMI Yearbook takes over publishing this Handbook, it would cost 5,700 Euros for 500 copies. He said that it was important that there be both English and French versions of the Handbook. For the French version he suggested it be put on a CD only. He also said that an English version of 500 CDs would cost 500 Euros.

*b)* Mr. Fransen said that there were no problems with the storage of CMI archives and that putting all back issues of the Yearbooks onto CD-ROMs would be finished in November.

## 7. *Work in progress*

### a) *Fair Treatment of Seafarers*

The Secretary-General reported that Patrick Griggs would be making a short report to the IMO legal committee the following week on the three cases of unfair treatment of seafarers of which NMLAs had made the CMI aware. He said that a formal report would be submitted at the Spring 2009 IMO Legal Committee meeting.

### b) *General Average Interest Rate Committee*

Bent Nielsen reported that owing to current financial market conditions, it was impossible for the committee to recommend an interest rate which should be applied to expenditure, sacrifices and allowances, in General Average under the York-Antwerp rules, 2004, specifically Rule XXI. Therefore, the committee had decided to defer their deliberations to the month of January 2009 when financial conditions might have stabilized. In keeping with the wish of the Assembly that the President should on its behalf endorse the recommendation of the committee if agreeable, he has done so.

### c) *Report on Recent Meetings of the IMO and IOPC Funds*

Richard Shaw reported on the meeting of the IOPC Funds in March and June, 2008. His written reports are available on the website. Of particular interest is the preparation of a draft Protocol to the HNS Convention which is designed to enhance the chances of ratification of that Convention. The CMI is presently being represented at the meetings of the IOPC Funds in London which started October 13, 2008.

### d) *Procedural Rules on the Limitation of Liability in Maritime Law*

Gregory Timagenis reported that the Guidelines in respect of Procedural Rules Relating to Limitation of Liability in Maritime Law were adopted by the 39<sup>th</sup> CMI Conference at its plenary session held in Athens on 17 October 2008. However, the work of the International Sub-Committee on Limitation of Liability in Maritime Law was going to continue pursuant to the Resolution on this subject adopted at the Plenary session of the Conference. He said it was an honour and that he was very proud to have been the chairman of such a dedicated I-SC of the CMI.

### e) *Places of Refuge*

Stuart Hetherington reported that he was pleased that the work of the Places of Refuge Working Group was completed, having regard to the voting on their instrument at the Plenary session. He said that once the document had been brought into final form, it would be posted on the

Conference website and published in the Yearbook – Athens II. He then encouraged MLAs to distribute it amongst their membership. He thanked the members of the Working Group for their hard work throughout the process.

The Resolution put to delegates at the Plenary Session, which passed by a majority vote, stated as follows: “CMI approves the text of the Draft Instrument on Places of Refuge for submission to the IMO Legal Committee, noting that it contains options in two Articles for alternative provisions to be adopted in any text which that Committee may consider appropriate at some future occasion”.

### f) *Future Work*

The Secretary-General called upon delegates to provide him with the subjects that they would like studied. He said that the new President would likely follow up on this request.

## 8. *Young Member Issues and Essay Competition*

The President said that no prize would be awarded to the best essay this year. He said further that he was pleased with the initiative of young members to have a breakfast meeting on the Tuesday morning of the conference with speakers on a variety of issues, and an evening out on the Thursday of the conference. He said that he hoped there would be similar initiatives in the years to come at various conferences, colloquia and symposia.

## 9. *Symposium and Assembly 2009*

Mr. Gertjan van der Ziel reported on arrangements currently being planned for the Signing Ceremony in Rotterdam of the UNCITRAL Convention on Contracts for the Carriage of Goods from September 21-23, 2009 which would include a CMI Symposium, Executive Council meeting and Assembly. He said that the meetings and Signing Ceremony would be held in the SS Rotterdam.

The Symposium will have a number of distinguished speakers dealing with the UNCITRAL Convention and that a moderate fee of about 250 Euros would include the Tuesday leisure day which was planned to be a dinner cruise of Rotterdam harbour and Terminal operators. He said that the signing ceremony would likely be on Wednesday, September 23, 2009.

## 10. *Elections*

The chairman of the nominating committee, Bent Nielsen, then presented his report of the nominating committee. He said that after due

deliberation, they had decided to nominate for election as follows: President: Karl-Johan Gombrii of Norway, Vice President: Johanne Gauthier of Canada, Executive Councillor: Louis Mbanefo of Nigeria, Executive Councillor: Andrew Taylor of the U.K. He referred to the support that Mr. Alcantara had received from several MLAs for the position of President.

The Secretary-General then asked the Assembly whether there was approval for Karl-Johan Gombrii as President. There was unanimous approval with a round of applause and he was duly elected.

The Secretary-General then referred to the fact that since the release of the Nominating Committee report, the MLA of Panama had nominated Mr. Alcantara as Vice President and that under the Constitution there would have to be a secret ballot. He then called upon Richard Shaw as chairman of the credentials committee to report. Mr. Shaw said that his committee, comprising himself, the Administrator and the Treasurer, had compiled a list of those MLAs eligible to vote under the Constitution, which had been circulated, and he then outlined the procedure for the voting. He said that the head of each eligible delegation, as named on the list, would come forward in alphabetical order and marks a ballot for one of the two candidates and put that ballot into a box. He said that the two scrutineers in this process would be Mr. Carreira-Pitti of the MLA of Panama and Michael Bird of the Canadian MLA.

The Secretary-General then called upon Mr. Carreira-Pitti to make his formal nomination of Mr. Alcantara as a Vice President of the CMI and listing his many accomplishments. This was done and following that, Mr. Alcantara was called forward to speak to the Assembly. This, Mr. Alcantara did giving reasons why, in his opinion, he should be elected as a Vice President.

The Secretary-General then said that Madam Justice Johanne Gauthier had decided not to speak to the Assembly on the ground that the report of the nominating committee spoke for itself. He then called upon Michael Bird of the Canadian MLA who spoke to her nomination and her many accomplishments.

The Secretary-General then called upon Mr. Shaw to conduct the voting process. This was done and, following the casting of all votes, Mr. Shaw and the two appointed scrutineers tallied the vote. While this was being conducted, the Secretary-General referred to the balance of the nominating committee report which was to nominate Louis Mbanefo and Andrew Taylor as Executive Councillors. He asked delegates whether this was

approved by the delegates. This was enthusiastically received and approved with a round of applause for those two gentlemen.

Mr. Shaw then reported to the President that the voting had been completed and that the result was 20 votes in favour of Johanne Gauthier, and 11 votes in favour of José Maria Alcantara. The President then announced that Ms. Gauthier had been duly elected as Vice President and this was met with a round of applause with congratulations to Ms Gauthier and best wishes to Mr Alcantara. At this point, Jean-Serge Rohart made a short speech as the retiring President in which he thanked the Executive Council, the delegates and all NMLAs for their assistance and cooperation during his term of office. He wished his successor well. He then said that he would be making a further speech of thanks at the gala dinner that evening.

Mr. Gombrii then took over as chairman of the meeting.

### *11. CMI Reforms*

Mr. Gombrii asked Stuart Hetherington to give the report of the steering committee on CMI reforms.

Mr. Hetherington referred to the fact that the report had been circulated to all NMLAs prior to the Assembly and briefly reviewed its recommendations. He said that there was insufficient time for voting on resolutions so this would be deferred. He then said, in particular, that there was a review underway of the amount of subscriptions for each NMLA but that this has been complicated recently by the global financial crisis. A report on all of this will be made at the Assembly in Rotterdam on September 23, 2009.

### *12. Other business*

Patrick Griggs then referred to the Constitution and said that he would no longer be on the Executive Council as Jean-Serge Rohart now enjoyed the position of immediate Past President. He said that he would continue to represent the CMI at meetings of the IMO Legal Committee for so long as the Executive Council wanted him to. He thanked Mr. Rohart for his valuable contributions to the CMI and thanked all of those present for their assistance and cooperation over the many years he had served on the Executive Council. This was met by a great round of applause and Mr. Gombrii thanked him for all of his service to the CMI.

The Secretary-General then asked Stuart Beare to come forward and thereupon thanked him for his more than 10 years of service to the CMI by chairing the CMI International Working Group

on Issues of Transport Law and working so hard on the UNCITRAL International Working Group and Expert's Group resulting in the draft Convention of carriage of goods. He then honoured him on behalf of the Executive Council by making him a member Honoris Causa of the CMI. This was followed by the presentation to him of a ship's clock in a polished wooden box with an engraved plaque stating "Stuart M. Beare – From Your Friends at the CMI." Mr. Beare

made a short speech of thanks and said how much of an honour it had been in representing the CMI for these many years and wished the CMI the very best of good luck in its future endeavours.

### *13. Termination*

The President thanked John Markianos and the Organizing Committee of the Greek MLA for arranging such a wonderful Conference and thereupon terminated the meeting.

## **MINUTES OF THE SECOND EXECUTIVE COUNCIL MEETING HELD AT THE WESTIN ATHENS HOTEL, VOULIAGMENI, ATHENS, GREECE ON OCTOBER 17, 2008 AT 6:00 PM**

### Attending:

*The new President, Karl-Johan Gombrii, took the chair.*

<i>President:</i>	Karl-Johan GOMBRII
<i>Past President:</i>	Jean-Serge ROHART
<i>Vice Presidents:</i>	Stuart HETHERINGTON Johanne GAUTHIER
<i>Councillors:</i>	José Maria ALCANTARA Christopher DAVIS José TOMÁS GUZMAN Måns JACOBSSON Sergei LEBEDEV Henry LI Louis MBANEFO Andrew TAYLOR
<i>Secretary-General:</i>	Nigel FRAWLEY
<i>Administrator:</i>	Wim FRANSEN
<i>Assistant Administrator:</i>	Pascale STERCKX
<i>Treasurer:</i>	Benoit GOEMANS
<i>Publications Editor:</i>	Francesco BERLINGIERI

### *15. Opening of Meeting*

Mr. Gombrii opened the meeting, welcoming in particular the new Councillors, Louis Mbanefo and Andrew Taylor. Mr. Alcantara took the floor and stated that, as he had lost his bid for the contested Vice-Presidency during the vote at the Assembly, he had decided to resign irrevocably as Executive Councillor, one year of his second term otherwise remaining.

Mr. Gombrii thanked Mr. Alcantara on behalf of the Executive Council, for all his valuable services to the CMI over the years and wished him well in the future. Mr. Alcantara then left the meeting.

### *16. Colloquium in Chile – 2010*

Mr. Guzman reported on his discussions with the Chilean delegation and was confident that an agreement can be reached on the financial issues. This was enthusiastically received by all Councillors. The President said he would reply to the recent letter of the President of the MLA of Chile in the near future.

### *17. Work in Progress*

#### *(a) UNCITRAL Draft Convention*

The Secretary-General said he would liaise with Stuart Beare, Kate Lannan and Gertjan Van der Ziel about future developments, including the passage of the draft through the General Assembly of the United Nations, the Signing Ceremony and efforts to promote the Convention. A decision was made to disband the WG and ISC on Transport and to establish a new ISC to monitor and promote the UNCITRAL Convention.

#### *(b) IWG on Marine Insurance*

The following names for a newly constituted IWG were discussed: Dieter Schwampe, Christian Hubner, Marc Hubrechts, Edward Cattell Jr., Sarah Derrington, Tom Remé, Sergei Lebedev and Rhidian Thomas. The President said he would decide on the composition and the chairman in the near future.

*(c) Protocol to HNS Convention*

Mans Jacobsson said he will continue to monitor developments and keep the ExCo informed. He said that he would approach Jorge Radovich about assisting him.

*(d) Non-Technical Measures to Promote Quality Shipping*

The future of CMI's effort in this matter was deferred until the President had an opportunity to discuss this with Nigel Carden. Mr. Jacobsson offered to be chairman of the WG with Richard Shaw as rapporteur.

*(e) Judicial Sales of Ships*

It was clear from interventions during Henry Li's presentation, such as China, South Africa and The Netherlands, that further work on this subject would be valuable. There was discussion about the composition of a WG for this and the names of Benoit Goemans, Frank Smeele, Louis Mbanefo and Andrew Robinson came up in the discussion, with Henry Li as chairman. The President deferred a decision on this.

*(f) Places of Refuge and Procedural Rules in Limitation of Liability*

Stuart Hetherington referred to the voting at the Plenary Session and said he would place the instrument on Places of Refuge in final form on the Conference website in the near future. The President said that a decision would then be made on its being submitted to the appropriate authorities. The President then said that Gregory Timagenis would also be putting his instrument on Procedural Rules on the Conference website.

*18. Round Table on Piracy*

The Secretary-General reported that Andrew Bardot of the International Group of P&I Clubs had told him that a Round Table on Piracy had been established in London and that CMI participation would be welcome. The President asked Louis Mbanefo and Andrew Taylor to represent the CMI in this very important endeavour.

*19. Future Work*

There was a general discussion in the limited time available to a) a possible Protocol to the Salvage Convention concerning environmental salvage, b) charterers right to limit liability, c) preparation of a Practical Manual on Bills of Lading, Letters of Guarantee and Indemnity, d) UNCITRAL Convention "residuals", and e) electronic data interchange above and beyond the provisions in the UNCITRAL Convention.

*20. Next Meeting of the Executive Council*

The President said that he would like this to be by way of e-mail conference in March, 2009 rather than wait until the Rotterdam Symposium in September, 2009. This was agreed.

*21. Next Assembly*

It was decided to hold it in Rotterdam on September 23, 2009.

*22. Other Business*

*(a)* Mr. Berlingieri said that Informa is interested in publishing and promoting The Handbook on Maritime Conventions in 2009 once our contract with LexisNexis expires. After discussion it was agreed that Mr. Berlingieri should facilitate this.

*(b)* Mr. Fransen and Mr. Goemans raised the subject of certain revisions that needed to be made to the Constitution. The President asked them to prepare a report identifying the required revisions. Mr. Goemans said he would seek to enlist the aid of Patrice Rembauville-Nicolle in this endeavour.

*(c)* The President then reviewed the List of Functions, IWGs and ISCs at pages 44 and 45 of the Yearbook – Athens I and received suggestions from the Councillors for new chairmen and committee members. He said he would consider these matters in the near future and make his recommendations for further consideration.

*23. Termination*

The President terminated the meeting at 7:00pm.

# NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

## NEWS FROM IMO

### IMO LEGAL COMMITTEE MEETING, 20-24 OCTOBER 2008

The 94<sup>th</sup> Meeting of the IMO Legal Committee took place between 20<sup>th</sup> and 24<sup>th</sup> October 2008 at the newly-refurbished IMO Building in London. Delegates were obviously happy to be back in their familiar surroundings, although the appearance of each speaker on huge screens came as a shock to some.

The principal task was the adoption of the text of a draft protocol to the 1996 Convention on Liability and Compensation for Damage in connection with the carriage of Hazardous and Noxious Substances (the “HNS Convention”), which has so far failed to attract the necessary number of ratifications for entry into force.<sup>1</sup>

There was also an important debate on the fair treatment of seafarers.

The draft protocol to the HNS Convention has been developed by a Focus Group on the initiative of the IOPC Fund, in particular led by Jerry Rysanek<sup>2</sup> and Alfred Popp of Canada, in an attempt to identify the reasons why states have been unable to ratify the HNS Convention and to develop solutions to them. The evolution of this protocol can be followed in the reports of the IOPC Fund meetings in October 2007, and March and June 2008.<sup>3</sup>

At the October 2008 meeting a developed text was presented to the IMO Legal Committee for the first time. An unusual feature of the previous discussions in the IOPC Fund was that HNS was not strictly the concern of the IOPC Fund, which deals with compensation of pollution by oil. However the similarity between the two conventions and the fact that the IOPC Fund Secretariat has already been tasked with preparations for administering the HNS Fund means that the delegates attending IOPC Fund meetings are well informed of the potential problems and are better able to develop practical solutions.

Some delegations to the Legal Committee seemed to be unaware of these facts, and strong protests were voiced that the draft protocol seemed to be being rushed through without proper

consideration. That was certainly not the intention of the sponsoring states<sup>4</sup>, but eventually it became necessary for all concerned to accept that, to allow time to meet these concerns, a diplomatic conference to adopt this protocol will not be held before 2010.

The four principal areas of concern are:

1. packaged HNS goods;
2. contributions to the LNG account;
3. non submission of contributing cargo reports;
4. definition of “hazardous and noxious substances”.

#### *Packaged HNS goods*

Article 1(5) of the HNS Convention contains a broad definition of HNS cargoes including solids, liquids and gases. The final paragraph covers solid HNS cargoes which are subject to the IMDG Code<sup>5</sup> when carried in packaged form. In practice this means containerised cargo.

The structure of the HNS Convention, based as it is on the CLC and Fund Conventions applying to oil pollution damage, establishes a two-tier compensation framework, with the shipowners (and their P and I Clubs) paying claims up to the limit of the first tier, and a fund contributed to by cargo interests paying claims in excess of that limit<sup>6</sup>. The operation of the fund requires member states to report all relevant cargoes imported into their territory above certain thresholds. The administrative burden of reporting HNS cargoes imported in containers in relatively small quantities (but which may cumulatively exceed the relevant threshold) is very considerable indeed, and detailed studies by the major importers of such cargoes have indicated that this is impracticable.

The focus group draft therefore proposed that packaged HNS cargoes should not be reported, and should not be included in the calculations of contributing cargo on the basis of which

<sup>1</sup> See article 46.

<sup>2</sup> Chairman of the IOPC Fund Assembly and Administrative Council.

<sup>3</sup> Appearing in the 1-2 issue at page 10.

<sup>4</sup> Including Australia, Belgium, Canada, Denmark, France, Germany, Japan, Malaysia, the Netherlands, Norway, Sweden, and the United Kingdom.

<sup>5</sup> International Maritime Dangerous Goods Code published by the IMO.

<sup>6</sup> Up to a maximum of 250 million SDR.

contributions to the HNS Fund will be levied. Victims of an HNS casualty, even where it is caused by packaged goods, will still be compensated. This is a revolutionary, but practical, proposal. To meet the concern that the receivers of bulk HNS cargoes may be obliged to make greater contributions to the HNS Fund to make up for the lack of contribution from packaged goods, it was agreed by the Shipowners' representatives and the International Group of P and I Clubs that the shipowners' contribution to the first tier will be increased. The exact amount of the increase will be fixed by the diplomatic conference to adopt the protocol.

### *LNG Cargoes*

The present state of the gas industry today was not foreseeable in 1996. The quantities of gas shipped by sea have increased dramatically in recent years, and the development of gas fields notably in Nigeria, Indonesia and Qatar has led to the building of a large number of new ships to carry both Liquefied Petroleum Gas ("LPG") and Liquefied Natural Gas ("LNG")<sup>7</sup>.

When the HNS Convention was adopted in 1996, the transport of LNG was almost entirely in the hands of governmental organisations and the major energy companies, due to the enormous capital costs required for the construction of the necessary gas liquefaction plants and the sophisticated ships to carry this product<sup>8</sup>. When the HNS Convention was under consideration at the 1996 diplomatic conference, the delegates were informed that it would be simpler for the contributions to the HNS fund to be made by the "title holder" to the cargo immediately prior to discharge, and an appropriate wording was adopted in article 19 (1)(b).

However further study has revealed that this arrangement could give rise to considerable difficulty, particularly when the title holder in question is resident in a state which is not a party to the convention. Moreover a number of gas producing countries, notably Algeria, protested that this imposed an unreasonable burden on them which was inconsistent with the overall structure of the IOPC and HNS conventions, which were based on funds contributed to by the receivers rather than the exporters of the cargoes in question.

The Focus Group encountered very considerable difficulty in finding a solution to this problem despite the good intentions of all concerned. The differences between the positions adopted by various states were of a political, economic and policy nature, and not just a matter of drafting. At the June 2008 meeting of the IOPC Funds it was agreed that the Malaysian delegation would coordinate an informal correspondence group during the summer to attempt to resolve the problem, and this led to the presentation to the Legal Committee of a paper<sup>9</sup> containing revised wording. This provided that the duty to report on receipts of LNG, and to make contributions to the HNS Fund, should lie with the physical receiver, but that the Convention (as amended by the protocol) should allow the parties to an LNG contract the flexibility to determine by agreement the person liable to make contributions to the LNG fund.

To cover the possibility of non-payment by a title holder liable under such an agreement who is resident in a state not party to the HNS Convention and Protocol, the Fund will be able to invoice the receiver of the cargo in question for the appropriate contribution.

The delegates to the Legal Committee approved the proposed provisions, although some expressed difficulty in understanding the intricacies of the proposed arrangements. It seems that these had been worked out with the close cooperation of the gas exporting and importing industries as well as the governments concerned, and demonstrated how the IMO and the IOPC Fund can solve difficult technical and legal problems.

### *Non-submission of Contributing Cargo Reports*

The functioning of the HNS Fund and the IOPC Fund, requires the reporting by member states of the quantities of the relevant cargo imported by their ports and terminals during the preceding year, in order to apportion the burden of the financial contributions to the fund. The IOPC Fund has a proud record of collection of such contributions, which has enabled it to make prompt payments to the victims of major oil pollution incidents.

However it has encountered persistent problems with some member states in collecting the

<sup>7</sup> LPG is principally propane and LNG methane.

<sup>8</sup> LNG is transported at a temperature of minus 169 degrees C.

<sup>9</sup> LEG94/4/1 A further paper LEG94/4/2 was put in by the IOPC Fund suggesting minor improvements to the draft text.

statistical data of the tonnages of relevant cargoes imported by receivers in those states. In theory no apportionment of any distribution of funds to victims of pollution can be made until all member states have made their oil reports for the year in question. In practice the system has been made to work, partly because the quantities of unreported cargoes are relatively very small.<sup>10</sup>

Considerable concern has however been expressed at the failure of the IOPC Fund system to solve this problem<sup>11</sup>, and when the Supplementary Fund Protocol was adopted in 2003 a provision was included<sup>12</sup> which enables that Fund to withhold payment of compensation for pollution damage in a state party which has not complied with its reporting obligations.

The HNS Convention contains no such provision, but it is the view of many governments that a provision to this effect should be included in the Protocol. An eloquent demonstration of the need for such a provision is the fact, confirmed by the Director of Legal Affairs of the IMO<sup>13</sup>, that of the 13 states which have deposited instruments of ratification of the HNS Convention, only 2 have submitted data on the relevant quantities of contributing cargo as required by Article 43. Article 46 of the HNS Convention provides that the Convention will enter into force 18 months after the consent to be bound by at least 12 states, including four states each with at least 2 million units of gross tonnage, and deposited instruments of ratification accompanied by details of at least 40 million tonnes of contributing cargo to the general account. Without the relevant information it is simply impossible for the ratifying states, or the IMO, to establish whether or not the required tonnage level has been reached.

Despite the persuasion of these arguments, there was a marked reluctance by some delegations to accept the need for the proposed provision, which they perceived as being draconian in nature. The delegate of Cyprus in particular, suggested that the IMO secretariat would in such circumstances be “judge, jury, and executioner”. This polished perturbation sat strangely on the lips of a state which is a member of the 1992 CLC and Fund Conventions, and of the European

Union in which the terms of the Supplementary Fund Protocol have been extensively discussed. Such remarks represented the views of a very small minority however, and at the end of the debate on this topic the Chairman concluded that the Legal Committee had reached agreement on the need for some sanction to ensure that states complied with their obligation to report tonnages of contributing cargo. The proposed clauses in the draft protocol to give effect to this were approved. As a gesture to those states whose delegations claimed that they did not fully understand the proposal, a resolution was adopted urging that further technical cooperation and assistance in capacity-building should be offered to such states.

#### *Drafting matters*

Several drafting points in the proposed protocol were discussed. The most difficult concerned the wording of Article 1(5)(vii), which contains a reference to both Appendix B of the Code of Safe Practice for Solid Bulk Cargoes as amended and the IMDG Code. It was explained by several delegates who had been present at the 1996 Diplomatic Conference that the purpose of this paragraph was to ensure that certain bulk cargoes which can be hazardous in certain limited circumstances, notably coal, fishmeal and copper, should not be included in the definition of Hazardous and Noxious Substances to which the HNS Convention will apply.

The fact that the words “as amended” do not appear after the mention of the IMDG Code indicated, they said, that this was a reference to the 1996 edition of the IMDG Code, and not to any subsequently amended version. This led to a frantic search for a copy of the 1996 edition of this document, both by the IMO staff and also by several delegations. The meeting was informed that when the staff and papers of the IMO were moved out of the IMO Building in order that the refurbishment might take place, a good deal of old and “redundant” papers were destroyed. It seems that this may have included the 1996 IMDG Code. The UK Maritime Safety Agency has moved from

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<sup>10</sup> The oil industry is no longer dominated by the “Seven Sisters”, but is still a coherent body. No doubt the major contributing oil companies will be aware of any large imports of oil which a member state had failed to declare. This is less likely with HNS cargoes.

<sup>11</sup> See the papers submitted by the Audit Body to the October 2007 and March 2008 meetings.

<sup>12</sup> Article 15.

<sup>13</sup> The depositary of ratifications of the HNS Convention.

London to Southampton in the meantime and it seems that the same thing has happened.<sup>14</sup>

Much discussion on the margins of the meeting failed to produce a solution to this problem, and it was left to the IMO Secretariat to try to develop a drafting solution which achieves the objective of which there is no real doubt.

### *Concluding Debates*

As the meeting drew to its close on Thursday 23<sup>rd</sup> October there was still a buzz of uncertainty as to the future of the draft protocol. A majority of states favoured an early diplomatic conference in 2009 to adopt the protocol and hopefully to ensure early entry into force of the amended HNS Convention. However there was a significant, but vocal, minority who accepted the need for the Convention to enter into force but argued for more time to study the implications of the changes brought about by the protocol. Notable among these were Cyprus and China, whose delegate made the longest intervention in this writer's experience at the IMO.<sup>15</sup>

The debates in the IMO Legal Committee are usually good mannered and concentrate on genuine efforts to find solutions to the problem in hand. Sadly this was not always the case at this meeting, where positions based on politics rather than law became apparent. Finally Dr Balkin, Legal Affairs Director of the IMO, put forward a carefully worded compromise proposal, which was quickly approved by almost all present.

The principal points were:

1. All delegates recognise that the HNS Convention should enter into force as soon as possible.
2. Many delegations recognise that the only way for the 1996 HNS Convention to enter into force is by the adoption of a Protocol;
3. We have had an in-depth consideration of many provisions of the draft Protocol;
4. There was agreement on most, if not all, of the provisions of the Protocol;
5. Many delegations want to see a clean text and if possible a consolidated text;
6. It is the view of the Legal Committee that the Protocol should be adopted as soon as possible, and the Committee requests the

Council to schedule a Diplomatic Conference in 2010.

The Chairman concluded that there was not a sufficient consensus to advise the IMO Council to fix a Diplomatic Conference in 2009, but that if the Legal Committee meeting scheduled for April 2009 could approve the text of the protocol and hopefully of a consolidated text of the HNS Convention, it should be possible to fix a diplomatic conference for a date in 2010.

### *Fair Treatment of Seafarers*

Dr. Balkin introduced LEG 94/6 which was a Note from the Secretariat reminding delegates that Guidelines on the fair treatment of seafarers had been adopted at the 92<sup>nd</sup> session of the Committee in April 2006. The Guidelines had also been adopted by ILO in June 2006. Member Governments had been invited in to implement the Guidelines.

At the 93<sup>rd</sup> session of the Committee it had been agreed to reconvene IMO/ILO *ad hoc* Expert Working Group to monitor the implementation of the Guidelines. A Circular letter had been sent out to all Governments requesting information about any instances of mistreatment. 13 states had responded in the negative.

The delegation of India presented a detailed statement concerning the detention of the Master and Chief Officer of the Hebei Spirit in the Republic of Korea following an incident even though they had been held in no way responsible for the incident by a local court.

In response the delegation of the Republic of Korea insisted that even though the Master and Chief Officer had been found free from fault this was only at first instance and an appeal had been lodged by the Prosecutor. In other words, the legal process was continuing with all reasonable dispatch and that in the meantime the two officers were not being detained and were being well treated. Several delegations expressed the hope that the two seafarers would shortly be released.

The delegation from Iran raised the worldwide problem associated with the refusal by many states to allow shore-leave for crewmen from visiting ships.

The delegation from the United Kingdom

<sup>14</sup> A copy of the 1997 edition of the IMDG Code has been located in the library of the University of Southampton, Institute of Maritime Law.

<sup>15</sup> The word "filibuster" was mentioned by another delegate, although it is uncertain whether this was translated by the interpreters.

expressed concern about the trend towards detention of seafarers following accidental pollution incidents.

David Hebden, Chairman of the CMI International Working Group on Fair Treatment drew the attention of delegates to the detention of seafarers following incidents involving the *Zim Mexico III* and the *Cosco Busan* in the USA, the *Hebei Spirit* in the Republic of Korea and the *Coral Sea* in Greece. The text of the CMI presentation was subsequently submitted to the Secretariat and appears as annex 9 to the Report on the 94<sup>th</sup> Legal Committee meeting.

The observer delegation of the International Chamber of Shipping, on behalf of themselves and several other observer delegations made a statement about the Hebei Spirit case and drew attention to the adverse effect this sort of case has on recruitment of seafarers. This statement was supported by the observer delegation of ITF and by IAMU (the International Association of Maritime Universities).

The observer delegation of IFSMA reported an incident involving a collision in the Suez Canal between a commercial vessel and an Egyptian naval vessel which had resulted in the detention of

members of the crew of the commercial vessel. The delegation of Egypt responded by reporting that the incident was under investigation by a local court.

A number of delegations supported the Secretary-General's statement in opening the meeting that there was an urgent need for the Guidelines to be implemented not only for the benefit of the seafarers involved but also to ensure that a future generation of seafarers may not be deterred from choosing the sea as a career. Concern was also expressed at the confusion which arises from the failure to distinguish between investigation of an incident to prevent its reoccurrence and a criminal investigation.

Discussion then took place as to whether the Joint ILO/IMO *ad hoc* Expert Working Group should reconvene. No agreement was reached but States were urged to apply the Guidelines and to report any incidents coming to their attention and the Secretariat was asked to consult interested organisations about the appropriate time to reconvene the Working Group. The Committee welcomed the offer of CMI to submit a written situation report at the 95<sup>th</sup> session.

PATRICK GRIGGS, RICHARD SHAW\*

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\* CMI Observer Delegates.

## NEWS FROM THE IOPC FUNDS

### REPORT ON ATTENDANCE BY CMI OBSERVER DELEGATE AT THE IOPC FUNDS' MEETINGS 13-17 OCTOBER 2008

#### *Summary*

Meetings of the Governing Bodies of the IOPC Funds took place at the IMO headquarters, in London between 13 and 17 October 2008. The meetings consisted of the 13th Session of the 1992 Fund Assembly, the 4th Session of the Supplementary Fund Assembly, the 23rd Session of the 1971 Fund Administrative Council and the 42nd Session of the 1992 Fund Executive Committee.

In addition to the administrative matters, the meetings covered the major claims and touched upon the Working Group regarding non-technical measures to promote quality shipping and the draft Protocol to the HNS Convention 1996. These items are commented upon in further detail below, as well as other aspects that may be of general interest.

#### 1. *Incidents involving the 1992 Fund - Executive Committee*

##### *Erika*

- No action was required but Jose Maura gave a summary of the latest proceedings for information only (see further document 42/4). Key points included the fact that 99.7% of the claims had been assessed (this figure was not 100% as some claims were being litigated and, for some claims, Claimants hadn't replied to the Fund's queries). There was a brief report on the recent Paris criminal court judgment which held Owners, Managers, class (RINA) and Total criminally liable. Jose Maura also noted that these parties were also found joint and severally liable as far as the civil proceedings were concerned and that the parties in question had appealed. It was mentioned that, during the March/June 2008 meetings, the Executive Committee was tasked with studying the judgment and the implications of a recourse action. The implications of a recourse action were deemed difficult to assess due to the ongoing appeals.
- On a related point, the Fund was pleased to note that the French court had agreed with the Fund in six court rulings since the last session in June 2008 and two particular examples were given:
  - In one case a fish wholesaler's claim was rejected due to lack of causation. The

Commercial Court agreed with the Fund on this point. The Claimant's appeal was rejected and the Fund noted that the Court of Appeal stated that the Fund manual's criteria should be considered a "reference" for the Court even though it is not binding upon the domestic Court.

- A second example related to a claim for the cancellation of a Millennium party which went as far as the highest Court in France, the Court of Cassation. The Claimant claimed that the party was cancelled due to the pollution from the *Erika* whereas the Fund rejected this. Whilst the first instance court agreed with the Claimant, the Court of Appeal overturned this and rejected the claim stating that it was not the *Erika* that had caused the cancellation of the party. Subsequently the Court de Cassation confirmed the judgment in the Fund's favour.
- There was also comment upon the *Commune de Mesquer v Total* proceedings where it had been argued that the cargo on board the *Erika* was 'waste' under European law. This had led to the ECJ being asked to consider the matter (points more fully explained at paragraph 7.1.2 of document 42.4). The Director had considered what effect these proceedings, and the ECJ's judgment, might have upon the 1992 Fund. In summary, the Director's view was that the Judgment had taken into account all the international commitments of EU member states (including the 92 CLC and Fund Conventions) and the judgment should not, therefore, affect the applicability of these Conventions.

##### *Slops Incident*

- The background to this incident can be found in the CMI report on the Fund Meetings (23-27 June 2008) as well as document 42.5. This concerns a former tanker converted into a waste oil reception facility which, whilst at anchor, suffered a fire and explosion. The key issue discussed was whether or not a recourse action should be taken against the Greek state. It will be recalled that previously there was not much appetite for such a recourse action. It was explained that legal advice had been sought from the 92 Fund's Greek lawyer who advised that a recourse action was feasible.

The delegations were still unenthusiastic about taking recourse action and the 6 delegations intervening on this point were all against such action (Greece, Denmark, Spain, Netherlands, Canada and Nigeria). A further question was then posed by the Director as to whether he should be instructed to revisit the Fund's policy as far as the definition of 'ship' is concerned. There were various interventions from delegations in relation to whether or not the Director should re-visit this issue and submit a report in due course. In summary, the balance of delegations were in favour of asking the Director to re-visit the issue of the Fund's policy on definition of ship and produce a paper in this regard. It was also decided there was no need for a working group on this issue and that the paper will be produced by next October 2009.

#### *Prestige*

- Ana Cuesta of the IOPC Fund presented this paper with the latest developments detailed in document 42/6. Claims totalling Euros 1018.8m (£812.3m) had been received by the Spanish office and claims totalling Euros 109.6m (£87.4m) received by the French office. The Portuguese Government's claims (£3.4m) were finally assessed and the Portuguese Government accepted the assessment. Assessment of French and Spanish claims is ongoing. The information was duly noted with no interventions.

#### *Al Jaziah 1 (Document No. 42/7)*

- The background to this incident can be found in document 71FUND/AC.23/11/1 (it involves both the 1971 and 1992 Funds). The question before the delegations was whether the Director should approach the shipowner to discuss settlement options. Although a favourable judgment had been handed down stating that the Owner should pay the Fund some £870,000 it transpired that the shipowner had extensive debts, no assets and would be unable to honour the judgment. It was recognised that there was, therefore, not much chance of recovering the loss and the Director's proposal to approach the Owner regarding settlement for a lower sum was adopted.

#### *Solar 1*

- This case involved a Philippines registered tanker which sank in 640m of water, south of the Philippines. The oil spilled had a significant impact upon fisheries, aquaculture

and tourism in the area and led to substantial financial hardship for some individuals. This incident was the first involving a vessel entered in the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 under which the shipowner/insurer have voluntarily agreed to increase the limitation amount applicable to the vessel under the 92 CLC to 20m SDR (£17.4m). It is not yet known, however, if the claims will exceed the limitation sum at present. The information was duly noted by the delegations.

#### *Shosei Maru*

- The background to this incident can be found in document 42/9. The incident concerns a collision between the Japanese tanker *Shosei Maru* with the Korean cargo vessel *Trust Busan*. About 60 tonnes of heavy fuel oil and bunker diesel oil escaped into the sea from the *Shosei Maru*. The limitation amount applicable to SM under the 92 CLC is some £3.8m and the vessel was not entered into the STOPIA 2006. A settlement had been agreed between JPIA and the Fund, the Fund paying the difference between the compensation paid by JPIA and the limitation amount. The Director will update the Fund on this matter as developments occur. The information was noted and there were no interventions.

#### *Volgoneft 139*

- A summary of the incident can be found in document 42/10. The incident concerns the Russian registered tanker *Volgoneft 139* which broke in two in the straight of Kerch spilling some 2000 tonnes of fuel oil. The P&I Insurance was well below the minimum limits under the 92 CLC which led to an 'insurance gap' of SDR 1.5 million (£1.3 million). The insurer is arguing that the spill resulted from a natural phenomenon of an exceptional, inevitable and irresistible character and that the shipowner and his insurer are therefore not liable for the pollution damage. If this is successful, the 92 Fund would be liable to pay compensation to victims of the spill from the outset. Claims so far exceed the total amount of compensation available under the 92 CLC and Fund Conventions. Investigations by the Fund continue: in particular the Fund's experts are examining the evidence available on the cause of the spill. The preliminary conclusion is that the storm in question was not 'exceptional' but 'irresistible' in respect of the vessel because the conditions associated with the storm were in excess of the vessel's

design criteria. However, the incident was not 'inevitable' in that the vessel should not have been exposed to the storm in the way she was as a result of failures by individuals concerned for the vessel and the system in general.

#### *Hebei Spirit*

- Detailed information can be found in document 42/11. It was noted by the Fund that the claims assessment was an ongoing process that is taking some time. Delegations were asked whether the level of payments on the *Hebei Spirit* should be limited, as at present, to 35% and this was agreed by delegations present.

#### *Incident in Argentina*

- This was so-called because the origin of the spill was still not confirmed. The incident concerned an oil spill in Caleta Córdoba, Chubut Province, Argentina in December 2007. The Court of First Instance has found the *Presidente Illia* liable for the spill. The limitation amount is £20m and the West of England is the P&I insurer. The shipowner and West of England maintain that the vessel in question was not the cause of the pollution. There are few claims made so far and the secretariat of the Fund is separately investigating cause and following the Court of First Instance Proceedings closely. The quantum, at the moment, is within the shipowner's limit and the Fund will report at the next Executive Committee meeting as to the latest position.
- The Argentine delegation intervened saying that the ship is currently detained at the moment. The magnitude/source of the spill is not yet known, however, it is understood that the spill probably did not come from a land based source and, if it did not emanate from the *Presidente Illia* then it is likely to have come from another ship.

#### *No. 7 Kwang Min*

- Further information can be found in document 42/13. No comment was made on this case and the information was simply noted.

## 2. *Claims involving the 1971 Fund*

### *Summary*

- Various cases were discussed including the *Al Jaziah I* (see above), the *Vistabella*, the *Aegean Sea*, the *Iliad*, the *Kriti Sea*, the *Nissos Amorgos*, the *Plate Princess* (a new action for compensation has been made and time bar

will be argued); the *Katja* (closed), the *Evoikos*, the *Pontoon 300* (closed), and the *Alambra*.

- The Algerian delegation expressed frustration with the ongoing cases stating that surely all cases should be time-barred as the 71 Fund is being wound up. The Director clarified that the 1971 Fund Convention obliges the Fund to continue dealing with outstanding incidents, although it won't take on any new incidents. The Director is keen to deal with these incidents as soon as possible but, unfortunately, the national proceedings in various jurisdictions means that timing is somewhat out of his hands.

### 3. *Director's Report (A.13/1 and A.13/3) – Points of interest*

- *Supplementary Fund*: there are no incidents as yet
- *Non submission of oil reports*: an ongoing problem although this has improved in recent years.
- *Claims management*: A new web based Claim Management System (WCMS) which, it is hoped, is to be efficient and transparent. It will store and produce data in a concise and transparent manner. This is only in place for the *Hebei Spirit* at present.
- *Current Financial Crisis*: There was mention of the current financial crisis and the Director admitted that one cannot predict what is going to happen. Assets are being kept as safe as possible but the Fund is not immune from the effects and nobody has a crystal ball. The fact that the Fund is not immune from the current financial crisis was something that was reiterated throughout the week by the Director. It was made clear, however, that everything within their power was being done to ensure that assets were as safe as possible.

### 4. *1992 Fund Assembly – Other items of note*

#### *Report on contributions*

- See further document A.13/12. There was a lengthy debate in relation to the contributions from receivers and the UK, in particular, questioned the Russian Federation as to why there were long outstanding contributions. The French delegation wanted to know what procedures there were in place for recovering contributions. Canada was also concerned by the arrears in contributions and was not sure how this should be solved and noted that the amounts were not insignificant. The Director explained the procedure for recovery of

contributions but pointed out that it is sometimes inappropriate to take immediate legal action. He also noted that if oil reports are received late this can also have an impact and highlighted that one must distinguish between the responsibilities of the Member State and those of the contributors.

#### 5. *Submission of Oil Reports*

- See further, document A.13/13/1. There was also a lengthy discussion on this issue and it was finally agreed that the following 1992 Fund Assembly policy should be adopted: *“where a Member State is in arrears with its oil reports, any claim submitted by the Administration or relevant public authority of that State would be assessed for admissibility and approval for payment. However, any approved payment would be deferred until the reporting deficiency was rectified.”*
- There were some concerns as to the legal validity of this policy but it was decided to be passed by the Assembly. Some delegations (for example UK and Australia) emphasised the fact that a similar policy should be adopted regarding lack of contributions.

#### 6. *Talk entitled “The P&I Club/IOPC Fund/ITOPF partnership in the handling of claims arising under the CLC/IOPC Fund regimes: an IG and ITOPF perspective”.*

- This talk was given by the IG and ITOPF (Colin Williams and Jonathan Hare representing the IG and Richard Johnson representing ITOPF). All involved speakers gave an outline of the role that the particular organisation played and an overview of incident handling from a practical perspective and the interaction between the various organisations.

#### 7. *Fourth Intersessional Working Group: Non-technical measures to promote quality shipping for carriage of oil by sea*

- This item was introduced by Mrs Birgit Sølling Olsen (Denmark) the Chairman of the

Working Group (see further Document 13/21). She noted that the Working Group had now exhausted its mandate. She stated that the Working Group had no further recommendations to make since the last report, either in respect of expanding the mandate of the Working Group or with respect to the timeframe of the Working Group. Mrs Sølling Olsen expressed the view that the key success to derive from the Working Group was the fact that awareness had been raised, amongst Member States, in respect of quality shipping and this is was the “most essential result”. She said that, although the Working Group mandate had now terminated, the issue of quality shipping was “here to stay.” It is now up to Member States to take up this challenge. She did not go into any detail in relation to the CMI study which the writer understands is on the agenda for the CMI Conference in October 2008.

#### 8. *HNS Convention*

- See further document 13/22/1 and 13/22. Mr Alfred Popp QC, chairman of the HNS Focus Group stated that nothing had changed since the last verbal report at October 2007, except for the fact that there is now a written report which is contained in document A/13/22. However, he did point out that the legal committee will discuss the draft HNS Protocol at the IMO during the week commencing 20 October 2008. The Fund introduced document 13/22/1 (the Director’s paper on this issue). It was noted, in particular, that there had been further ratifications of the HNS Convention 1996 by the following states: the Syrian Arab Republic, Sierra Leone, Hungary and Liberia. The Director had finalised the text of the draft Protocol and this will be discussed the following week at the IMO.

Further details of the interventions and decisions adopted can be found on the Record of Decisions to be published on the IOPC Fund website in due course.

OLIVIA MURRAY