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CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 1-2 - JANUARY/ AUGUST 2011

NEWS FROM THE CMI

CONFERMENT OF THE TITLE OF DOCTOR OF INTERNATIONAL MARITIME LAW *HONORIS CAUSA* ON PATRICK J.S. GRIGGS

On 7 May 2011 the IMO International Maritime Law Institute has conferred on Patrick J.S. Griggs CBE the title of Doctor of International Law *Honoris Causa* with the following motivation:

Who has given life-long service to the harmonization, progressive development and codification of international maritime law.

Who has written various scholarly publications, including the path finding *Limitation of Liability for Maritime Claims*, of which he is still a joint author;

Who served as President of the Comité Maritime International for eight years, as Secretary/Treasurer of the British Maritime Law Association for ten years and through these and other international *fora* has been greatly influential in the international maritime community;

Who, in recognition of his services to the maritime industry, was appointed Commander of the Order of the British Empire in 2005;

Who has been instrumental to the work of the Institute through his active contribution to the IMLI Governing Board and the IMLI Academic Committee of which he has been a member for many years;

Who has since 1994 given much time and effort towards the Institute, annually delivering lectures on various topics relating to port State control, shipping disasters, liability and compensation conventions adopted by the IMO, and limitation of liability for maritime claims;

And who has acted as a supervisor in the Institute's Doctor of Philosophy (Ph.D.) programme, thus contributing to the continued development of the Institute as a centre of academic excellence for the teaching of international maritime law.

MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD BY E-MAIL CONFERENCE DURING THE WEEK COMMENCING 4 APRIL 2011 CHAIRED BY THE PRESIDENT FROM HIS OFFICE IN OSLO

Participating:

President:	Karl-Johan GOMBRII
Vice Presidents:	Stuart HETHERINGTON
	Johanne GAUTHIER
Immediate Past President:	Jean-Serge ROHART
Councillors:	Giorgio BERLINGIERI
	Christopher DAVIS
	José Tomás GUZMAN
	Måns Jacobsson
	Sergej LEBEDEV
	Dihuang SONG
	Louis MBANEFO
	Andrew TAYLOR
Secretary General:	Nigel FRAWLEY
Administrator:	Wim FRANSEN
Treasurer:	Benoit GOEMANS

1. *Opening remarks of the President*

The President opened the meeting by explaining the procedure to be followed.
He then made the following remarks:

- The Buenos Aires Colloquium 24-27 October 2010 was a success and he thanked the President Alberto Cappagli, the Secretary General Jorge Radovich, the Treasurer Peter Browne and the rest of the Argentine MLA Organising Committee for all their hard work in achieving this;
- He also thanked Henry Li for his two terms on the Executive Council and his willingness to continue acting as liaison between the CMI and the Organising Committee of the China MLA regarding the 2012 Beijing Conference, along with Dihuang Song our new Executive Councillor;
- He expects membership applications from Poland, India and Honduras in time for the Oslo Assembly and he also referred to persons in Malaysia, Portugal, Indonesia, Egypt, the United Arab Emirates ("UAE") and the Ukraine who are interested in forming MLAs;
- The possibility of a CMI representative office in Singapore for Asia is compelling and he suggested that a representative from the Singapore MLA be involved as an observer at the Oslo Executive Council meeting;
- Tentative plans are underway for the next Executive Council meeting to be held in Oslo on Sunday 25 September 2011, a seminar organised by the Norwegian Shipowners Association at the premises of Det Norske Veritas on Monday 26 September and the Assembly on Tuesday 27 September 2011; and
- He asked that a decision be made on one budget out of three alternatives with differing subscriptions for 2012.

The President thereupon opened the meeting by asking for comments on his introductory remarks and the agenda items. The following comments and decisions were made:
Following discussion, there was continued support for opening a representative office in Singapore and general approval for inviting an observer from the Singapore MLA to the Oslo Executive Council meeting on a trial basis. Several suggestions were made to improve the effectiveness of increasing an Asian presence in the workings of the CMI. The

President will continue his discussions with the Singapore MLA and is hoping to present an agreement regarding a representative office on a trial basis for submission to the next Executive Council meeting and Assembly.
The tentative plans for the Oslo meetings in September 2011 were approved with thanks to the President and the Norwegian MLA.
There was unanimous support for continued discussions with Poland, India, Honduras, Malaysia, Portugal, Indonesia, Egypt, UAE and the Ukraine with a view to having them as member associations soon.

2. *Finances*

a) Audited accounts for 2010

Following discussion, the accounts as presented by the Treasurer and approved by the external auditor and the CMI Audit Committee, were agreed and are to be submitted to the next Assembly together with a recommendation that Messrs De Mol, Meuldermans & Partners BVBA be nominated by the Assembly as external auditors for CMI for 2011.
The Treasurer was commended for his extensive and valuable work. There was discussion about the declining value of the Euro and the risk to CMI accounts of currency fluctuations. The Treasurer was asked to look into this further and submit a proposed course of action to the Executive Council meeting at Oslo.

b) Audit Committee

The report of the CMI Audit Committee was agreed with a vote of thanks to the chair, Liz Burrell of the MLAUS, for her excellent efforts and those of the Audit Committee. The level of CMI's future financial reserves remains under consideration.
The report with the following recommendations was approved (see also item 2 a) above):

i) The CMI accounts for 2010 be approved for submission to and adoption by the 2011 Assembly in Oslo, along with the auditor's report; and
ii) Messrs De Mol, Meuldermans & Partners BVBA be nominated by the Assembly as external auditors for CMI for 2011;

c) Revised budget for 2011 and budget for 2012

The proposed revised budget for 2011 was adopted. There was considerable discussion on the level of subscriptions for 2012. It was agreed that the subscription holiday for 2011 would not be continued for 2012. Rather, there was support for an extraordinary reduction in 2012 by about 49 % (for timely payments) of the subscription levels adopted by the Rotterdam Assembly in 2009. This will result in a budgeted deficit of about EUR 111,000 in 2012 and a corresponding reduction of the financial reserves. A budget for 2012 reflecting that was adopted
It was resolved further to consider subscription groupings at the Oslo Executive Council meeting.

d) Charitable Trust

The Charitable Trust review was noted with appreciation and thanks to Patrick Griggs for its preparation. A number of observations were made for the consideration of the trustees which will be passed on to Mr Griggs.

3. *CMI Conference in Beijing October 2012*

The Secretary General tabled a report on the current situation of planning and organisation and this was approved. He said that he had recently heard from the China MLA Organising Committee that they agreed in principle with the idea of a Shanghai add-on to the Beijing Conference from 20 – 22 October 2012. That is to say, a separate CMI seminar in co-operation with the China MLA but not an extension of the Beijing Conference as such.
It was thought to be a good idea that, owing to potential language difficulties, Power Point presentations be given by all speakers, in addition to the simultaneous translation, where practicable.
The plans for the Beijing Conference will be further discussed at the Executive Council meeting on 25 September 2011 in Oslo.

4. *Continued consultation process*

The second questionnaire on member consultation was developed to assist the CMI in having a better understanding of its member associations, improve the dialogue between the CMI and NMLAs and ensure that the CMI's future work programme better reflects the wishes of its membership. 16 very helpful replies have been received to date. More replies would be welcomed and would assist in formulating policy and activity.
This matter will be discussed again at the Management Committee meeting in London 10 May 2011 and at the Oslo Executive Council meeting on 25 September 2011.

5. *Current work programme and the Beijing Conference*

The Secretary General thanked the Executive

Council members for their suggestions for the substantive programmes at Beijing and Shanghai. He will also consult with the President prior to sending a letter to all NMLAs for their suggestions for programme topics and speakers. He will also raise the matter with the Executive Council again before any final decisions are made.

6. *Report on the IIDM Conference in Panama 8–11 February 2011*

This conference was held in Panama City and featured speakers on maritime environmental law, port installations, marine insurance, jurisprudence and procedure and the Rotterdam Rules. Executive Councillors Måns Jacobsson and Chris Davis presented papers on the HNS Convention and the unification of maritime law. It is gratifying to note the growing cooperation between the CMI and the IIDM. The President asked Mr Jacobsson to join José Tomás Guzman and Chris Davis in considering how best to maintain and strengthen the relationship between CMI and IIDM.

7. *Report on the Abu Dhabi Conference 2–3 February 2011*

Jean-Serge Rohart tabled his report on this conference which featured the Rotterdam Rules and was thanked for his participating in talks relating to the establishment of an MLA in the UAE. The conference apparently was well attended and the panels on the Rotterdam Rules gave very interesting and useful presentations to the delegates.

8. *Report on publication of the Handbook on Maritime Conventions*

Lexis Nexis and Informa are no longer involved and will not be publishing a new edition. This project is now under active discussion as a joint venture with IMLI in Malta. The main roadblock is recovering the cost of production by selling printed books when CDs are created that can easily be copied. A possibility is to not produce CDs, but instead to place the contents on the CMI's website when downloading of the entire contents would be a more difficult process. Marketing the hard copy is another issue.

There was also discussion on whether the CMI should subsidise the first edition of approximately 500 copies, and every five years thereafter. The Executive Council resolved to discuss these issues by e-mail prior to the Oslo Executive Council meeting.

9. *Report on the status of negotiations regarding outstanding subscriptions*

As of 21 March 2011, EUR 35,732.97 was outstanding from 25 member associations. For 2009, EUR 29,952.47 was outstanding from 18 member associations.
Chris Davis and José Tomás Guzman reported that they continue their dialogue with delinquent NMLAs and have been successful in negotiating several settlements. The President was very thankful for their efforts.
It was noted that the package of reforms approved by the Rotterdam Assembly in 2009 resulting in lower subscriptions as well as the 2011 subscription holiday, will further reduce the amount of outstanding subscriptions over the next few years.

10. *Timing of future CMI Conferences (subsequent to the Beijing Conference), colloquia and symposia*

The 2009 Rotterdam Assembly decided on a three year term for Executive Council members rather than a four year term. A proposal has now been made by one of the Executive Councillors that after the Beijing Conference, CMI conferences take place every three years as well as one colloquium, symposium or seminar held in between conferences. A variety of views were expressed and it was decided to discuss this further at the Executive Council meeting in Oslo on 25 September 2011.

11. *Closing Remarks by the President*

Mr Gombrii thanked the Executive Council members for their constructive interventions. He also expressed his gratitude to Nigel Frawley and Pascale Sterckx for their preparatory work, and support throughout the meeting. He then terminated the meeting.

NEWS FROM THE NATIONAL ASSOCIATIONS

NEWS FROM THE ITALIAN MARITIME LAW ASSOCIATION

Colloquium and Round Table on the 1952 and 1999 Arrest Conventions

A Colloquium on the 1952 and 1999 Arrest Conventions was held in Genoa on 27 June 2011. The Colloquium, during which five papers were given on topics related to both Conventions, was followed by a Round Table presided by Professor Francesco Berlingieri.

The Chairman suggested that the members of the Round Table should first express their views on the question whether within the European Union the Council or the individual member States would be competent to decide in respect of the ratification of or accession to the 1999 Convention and on the consequences arising out of the appropriate solution of that problem. There was a consensus of the members of the Round Table that in consideration of

a) the rules on jurisdiction on the merits in article 7 of the Convention, and

b) the EU having, pursuant to Regulation 44/2001, acquired exclusive competence in respect of matters concerning civil judicial cooperation, the exception concerning particular matters not being applicable anymore because it applies only to previous instruments,

Member States could not individually ratify or accede to the 1999 Convention, unless authorized by the Council, as has been the case for the Bunker Convention, in view of the lack of an express provision in that respect as will be the case for the Athens Convention as amended by the 2002 Protocol (article 19 of the consolidated text) and the Rotterdam Rules (article 93).

Another problem that was discussed was that of the consequence of the individual ratification of or accession to the 1999 Convention by some Member States, on the assumption that it might be authorized by the EU, in case of enforcement of a judgment issued in a State party to the 1999 Arrest Convention in a State of the Union that is not a party to such Convention. That debate occupied most of the time available to the Round Table and the other issues discussed are not of particular interest.

Over 190 persons attended the Colloquium and the subsequent Round Table.

NEWS FROM THE VENEZUELAN MARITIME LAW ASSOCIATION

Invitation to attend the Commemorative Forum of the 10th Anniversary of the promulgation of the Venezuelan Maritime Laws

The Political and Social Sciences Academy of Venezuela, The Graduate Studies Center of the Juridical and Political Sciences Faculty of Universidad Central de Venezuela and its specialization in Navigation and Foreign Trade Law, have joined efforts to carry out a Commemorative Forum of the 10th Anniversary of the promulgation of the Venezuelan Maritime Laws, and are extraordinarily honored in extending the most cordial invitation for you to assist to it, between October 13th and 15th of 2011, in the Capital City of Caracas.

We consider that these ten years in which the maritime legislation has been in force presents a valuable opportunity to gather all those man, women and both academic and professional institutions that develop an active role within this sector.

The academic program seeks to examine those Decrees with force of Law, promulgated and put to work in October of 2001, most of which were then transformed into Laws of the Bolivarian Republic of Venezuela and furthermore reviewing the Jurisprudence emanated from these laws, with the discussion of the most recent contribution of the United Nations to the International Carriage of goods which are the Rotterdam Rules.

The Graduate Studies Center of the Juridical and Political Sciences Faculty of Universidad Central de Venezuela and the Political and Social Sciences Academy of Venezuela, wish to count with your kind presence within the great number of professionals of the sector, who will meet in Caracas, with the object of sharing the most modern advances in the development of the specialized rules which will allow, thanks to the contribution of qualified experts both from Venezuela and other countries, to discuss, exchange and update their knowledge, as well as converse socially within a great atmosphere of human warmth.

We expect you there!

Enrique Lagrange
President of the Political
and Social Sciences Academy
of Venezuela

Raúl Arrieta Cuevas
Director of the Graduate Studies Center
of the Juridical and Political Sciences
Faculty of Universidad Central de Venezuela

Luis Cova Arria
Coordinator of the
Specialization in Navigation
and Foreign Trade Law

THE ENTRY INTO FORCE OF THE ARREST CONVENTION 1999

Following the accession by Albania on 14 March 2011 the Convention will enter into on 14 September 2011. It is worth mentioning that Spain, when acceding to the Convention, had reserved the right to exclude the application of the Convention in respect of ships not flying the flag of a State Party. However by Royal Decree-Law No.12/2011 of 26 August 2011 a provision was added to the *Ley de Enjuiciamiento Civil* pursuant to which the rules of the Arrest Convention 1999 shall apply also to ships flying the flag of non-Contracting States[1].

This law gives the opportunity to consider the question whether the formula used in article 10(1) of the Arrest Convention, which was reproduced almost verbatim in the declaration made by Spain when acceding to the Convention, entails the actual exclusion of the application of the Convention in respect of ships not flying the flag of States Parties or consists merely of the reservation to exercise that right at a later time. Although the formula used in article 10(1), which is that used in a great many other conventions, is not very clear, the definition of "reservation" in article 2(1)(d) of the Vienna Convention of 1969, pursuant to which "'reservation' means a unilateral statement... made by a State.. whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty…" is instead of the utmost clarity: "purports to exclude" ("vise à exclure" in the French text) means in fact "have the meaning" or "intend": therefore does exclude and not reserve the right to exclude at an unspecified later date[2]. Otherwise the requirement that the reservation, as stated in the definition as well as in article 10(1) of the Arrest Convention, must be made "at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter", would be meaningless.

FRANCESCO BERLINGIERI

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[1] The full text of that provision is quoted below:

Disposición final vigésima sexta. *Embargo preventivo de buques.*

1. La medida cautelar de embargo preventivo de buques se regulará por lo dispuesto en el Convenio Internacional sobre el embargo preventivo de buques, hecho en Ginebra el 12 de marzo de 1999, por lo dispuesto en esta disposición y, supletoriamente, por lo establecido en esta ley.

Lo dispuesto en el Convenio Internacional sobre el embargo preventivo de buques, hecho en Ginebra el 12 de marzo de 1999 y en esta disposición se aplicará también a los buques que enarbolen pabellón de un Estado que no sea parte en dicho Convenio.

2. Para decretar el embargo preventivo de un buque bastará que se alegue el crédito reclamado y la causa que lo motive. El tribunal exigirá en todo caso fianza en cantidad suficiente para responder de los daños, perjuicios y costas que puedan ocasionarse.

3. Hecho el embargo, la oposición sólo podrá fundarse en el incumplimiento de los requisitos previstos en el Convenio Internacional sobre el embargo preventivo de buques. *(Omissis)*

[2] That was also the interpretation given by the French Cour de Cassation (Ch.com.) in *Agent Judiciaire du Tresor* v. *Tunisian Sea Transport Company,* judgment of 11 July 2006, (2006) DMF 884, with a case note by Prof. Pierre Bonassies.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

REPORT OF THE LEGAL COMMITTEE HELD IN LONDON, 4-8 APRIL 2011

The Spring meeting of the Legal Committee of the International Maritime Organization (IMO) took place at the IMO Building between 4th and 8th April 2011, presided over by its new Chairman Mr Kofi Mbiah of Ghana. The principal topic debated was Piracy, but other matters discussed were the increase of the LLMC limitation funds, the implementation of the HNS Convention as amended by the 2010 Protocol, Fair treatment of Seafarers, and pollution from offshore drilling activities.

Piracy

Despite the measures put in place by the International Community, many of them initiated by the IMO, pirates continue to attack merchant shipping, not only off Somalia but also in many locations around the world. Both the Secretary General Mr Efthimios Mitropoulos and the Director of the Maritime Safety Division, Mr Sakimizu gave a review of the measures, both legal and practical which have been put in place, and will be put in place in the future.

The implementation of the Djibouti Code of Conduct, which now has 17 signatory states, is showing tangible results. The four working groups, details of which were given in our report on the November 2010 meeting, are holding regular meetings, and in particular the chairman of Working Group 2 which deals with the legal measures for the prosecution of pirates, reported on a recent gathering in Copenhagen. While Somalisation of prosecution of pirates detained off the coast of

Somalia was a desirable objective, it was acknowledged that this is not realisable in the short term, and measures to prosecute pirates in other states must therefore be put in place.

Moreover the greater practical problem is what to do with convicted pirates. Arrangements for transferring them to a state with suitable prison facilities, and the difficulty and cost of arranging secure transport to such a location, were significant.

The Secretary General emphasised the importance of orchestrating the many players involved.. Even within the UN family, in addition to the IMO the organs involved include the Security Council, the UN Office on Drugs and Crime (UNODC), the UN Division of Ocean Affairs and of the Law of the Sea (DOALOS), in addition to other intergovernmental and non-governmental organisations. He reported that on 4th April 29 ships and 631 seafarers were in the hands of pirates. He emphasised the importance of ensuring that measures are put in place before more ships are seized by pirates.

He concluded by making an impassioned plea for

i. more resources;
ii. ships passing the area to take precautions themselves in accordance with the published standards of Best Practice, and also to report to the traffic coordination and monitoring centres;
iii. recreational yachtsmen to avoid the areas of the Indian Ocean where the piracy risks were well known.

Mr Sakemizu stated that the Maritime Safety Committee has on the agenda of its forthcoming May meeting

i. Guidance on the employment of security officers on board ships;
ii. Best Practice for precautions against pirate attack;
iii. Collection of evidence after an attack;
iv. Monitoring management mechanisms.

Thomas Winkler, Chairman of Working Group 2 of the Djibouti Code gave delegates an informative review of the work of his group. He emphasised that they sought a common understanding on legally sound practical solutions rather than legal wordings, and had devised a "legal tool box" containing useful concepts including a check list and templates for legislation.

The working group accepted that there are no fundamental gaps in International Law, the only area of doubt being the possession of equipment for piratical purposes. It was hoped that a legal principle on this could be developed, derived from the old rule of International Law that possession of equipment used for the purpose of slave trading was regarded as sufficient to prosecute and convict.

The gathering and presentation of evidence was also a problem. Busy ship's officers and naval personnel were not always available or willing to travel voluntarily to the country where the pirates were being prosecuted, even where the trust fund covered the expense involved. However the most acute bottleneck remained post-trial transfer – was it a breach of a convicted pirate's human rights to imprison them is a state far from their family? If so then construction, manning and management of prisons in Somalia was the only alternative, and that posed many problems, legal and practical.

In the short term armed guards on ships (the so-called "Vessel Protection Detachments") may be the only viable solution, and these are under consideration by the working group. Important matters such as the role of the ship's Captain and the extent of flag state responsibility are being studied.

Several delegations spoke in support of the work being done by various agencies, and accepted that for the moment prosecution and imprisonment of captured pirates in a country other than Somalia was the only way forward, even if this was second best.

In summing up the discussion the Chairman said that it was recognised that there was a need for speedy action, that SUA was not an appropriate instrument for dealing with pirates, although some states had reported that they had made reference to it. The need was recognised to take firm action quickly, with cooperation and coordination via Working Group 2. A suggestion of a working group to develop guidelines had found some support, but at a later stage in the meeting, the Chairman reported that there was "not a great deal of appetite" for such a working group at this time.

Limitation of Liability for Maritime Claims

The revision of the figures in the 1976 and 1996 Limitation conventions was raised by the Delegation of Australia at the November 2010 session, and this was followed up at the March meeting. At the preceding meeting there were insufficient states in support to invoke the tacit acceptance procedure provided for in Article 8 of the 1996 Protocol to LLMC 1976, but at this meeting there was sufficient support to ensure that this topic will be placed on the Agenda for LEG99 in October 2011.

A number of delegations made general observations, all recognising that there had been some change in monetary values since 1996, some arguing for the maximum possible increase, while others argued for moderation and the correct application of Article 8 paragraph 4 of the 1996 Protocol[3].

Any increase in the applicable limits will be deemed to be accepted 18 months after it has been notified to Contracting States under paragraph 7 of Article 8, and by paragraph 8 will enter into force 18 months after its acceptance. That means that if an increase of the limitation funds is adopted at LEG99, it will not enter into force until October 2014.

The CMI put in a paper reviewing the history of the

66:33 ratio between the limitation fund available for personal injury claims and that available for property damage claimants. This dates from the 1957 Limitation Convention, although many states' limitation regimes, including that of the UK, have favoured death and injury claimants for many years before that. There appears to be good logic in maintaining this ratio in any proposed amendment. The CMI paper also considered whether increasing the personal injury limit under Art.6 of LLMC would mean that the Legal Committee would have also to consider increasing limits in respect of passenger claims under Art.7 LLMC and Art.7 of Athens 2002. The paper concluded that this would not be necessary and this was accepted by delegates without any discussion.

The HNS Convention – consolidated text and overview

Readers will recall that this convention, adopted by a diplomatic conference in 1996, has not yet entered into force. A Protocol to the 1996 Convention, adopted in April 2010, seeks to address the causes of states' reluctance to ratify the 1996 HNS Convention. The Legal Division of IMO have prepared a consolidated text of the 1996 Convention as amended by the 2010 Protocol, and this was laid before the Legal Committee[4]. The Director of the Legal Division, Dr. Rosalie Balkin, emphasised that this was not an "official" text, but that it was hoped that it would assist states in preparing the necessary legislation to enable them to ratify the amended HNS Convention.

In addition an overview of the HNS Convention prepared by the Legal Division of IMO, amended to cover amendments incorporated by the 2010 Protocol, was laid before the meeting[5].

Fair Treatment of Seafarers

The debates under this heading covered two quite distinct scenarios; a. the difficulties imposed on seafarers who wished to go ashore in port; and b. apparently unreasonable detention of seafarers by shore authorities following a marine casualty. Both of these were making a career at sea less attractive for able young men and women.

The issue of shore leave was, the Legal Committee decided, more the responsibility of the Facilitation Subcommittee of IMO, although several delegates underscored the universal right of seafarers to go ashore in port for recreation as well as access to medical facilities.

As to post-casualty prosecutions, these were, the delegates agreed, justified only where the seafarers concerned were guilty of wilful negligence, which was rarely the case. The difficulty was that states jealously reserve the right to investigate maritime accidents in their waters, but the IMO/ILO Guidelines imposed some restraint on them. In the end the Legal Committee adopted a Resolution urging such restraint.

Pollution from Offshore Activities

The *Deepwater Horizon* accident in the Gulf of Mexico in 2010 has undoubtedly awakened interest in this subject, and an informal correspondence group was formed following the discussions at the November 2010 Legal Committee. The Delegation of Indonesia has led this work, following their initiatives arising from the damage caused in their waters by the oil spill from the platform *Montara* in the Timor Sea in 2009. This work continues and a useful summary of the relevant international instruments, prepared by the IMO Secretariat, was laid before the meeting[6].

The majority of delegations who took the floor spoke in favour of further work on this subject, although a small number expressed doubts as to whether there was a sufficient consensus to achieve a viable international convention. Those in favour of a convention sought support in the express terms of Article 214 of UNCLOS[7].

The CMI Working Group on Offshore Craft has been inactive since it presented its report to the IMO Legal Committee in 1998[8], but the CMI Delegate offered to place the fruits of the CMI's work on this subject at the disposal of the Working Group.

As recorded in our previous report, a decision of the IMO Council is required to put this topic on the work programme of the Legal Committee, until which time the discussions must remain "informal".

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[3] "When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendments on the cost of insurance."

[4] Document LEG98/4.

[5] Document LEG98/4/1.

[6] Document LEG98/13.

[7] States shall enforce their laws and regulations adopted in accordance with article 208 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction.

[8] Document LEG78/10.

Wreck Removal Convention – Bareboat chartered ships

A brief debate resolved what might have proved a troublesome anomaly in the implementation of this Convention. The Convention provides in Article 12 that the state of the ship's registry shall issue a certificate attesting to the existence of insurance to cover the owner's liabilities under the convention. However when a ship is bareboat chartered, the invariable practice is for the charterer to arrange the relevant insurances, and it is therefore eminently practical that the state of the charterer's flag (the "flag state") should issue the certificate of financial responsibility.

This has the potential to cause problems in some ports, and following consultation between a number of states, it was agreed that they would recommend the acceptance of a certificate issued by the flag state. A draft Resolution of the IMO Assembly was proposed and accepted by the Legal Committee. It will go forward to the next session of the IMO Assembly in the autumn of 2011.

At the present time the Wreck Removal Convention has only two ratifications, but requires ten for entry into force. Most member states of the European Union have the ratification of the Wreck Removal Convention on their legislative programme.

RICHARD SHAW*

NEWS FROM IOPC FUND

REPORT OF THE MEETING HELD AT MARRAKECH, MOROCCO, 28 MARCH-1st APRIL 2011

At the invitation of the Government of Morocco, the Spring 2011 meetings of the IOPC Fund Governing Bodies were held in Marrakech. Our Moroccan hosts provided excellent conference facilities at the Es Saadi Hotel complex, and a warm and friendly welcome, which was particularly appreciated by all delegates.

The Director

Delegates were pleased to see the Director, Mr Willem Oosterveen, present at the meetings showing that he has made good progress following the illness which struck him in September 2010, but it was agreed that the Acting Director, Mr Jose Maura, would continue in this role at least until the Autumn meetings in October 2011, when the position will be reviewed.

Pending claims

It was noted with satisfaction that there were no new incidents giving rise to possible claims against the Funds since the previous meetings in October 2010, and progress on the outstanding matters was reviewed. The documents on the website at *iopcfund.org* provide full details of each case reported to the meetings, and the Record of Decisions gives a full record of the debates. This report will therefore concentrate on the matters of general interest.

Plate Princess

This vessel reported a small spill of ballast water, in which some crude oil was mixed, while loading a cargo of crude oil at Puerto Miranda, Venezuela on 27th May 1997. An expert from ITOPF attended in Puerto Miranda 7th June 1997, 11 days later, and reported to the Secretariat that there were no signs of oil in the vicinity of the alleged incident, but that some oil had been reported drifting towards a small stand of mangroves approximately 1 kilometre away. No clean-up operations were said to have been carried out, and no fishery or other resources were said to have been contaminated.

Two local fishermen's trade unions commenced legal proceedings against the Owner and Master of the *Plate Princess* in June 1997, but no particulars of the claims were given and these proceedings were not notified to the 1971 Fund, nor was the Fund named as a Defendant.

However as a precaution the Secretariat opened a file and instructed a local Venezuelan lawyer. In October 1997 the Director was given authority to settle any claims arising out of what was considered to be a minor spill, which was not likely to exceed the ship owner's CLC limit.

However in October 2005, eight years later, the Fund received formal notification of the Venezuelan legal proceedings, in which damages for clean-up operations and pollution damage totalling over 30 million US dollars were claimed. The legal proceedings in Venezuela have made slow progress, with the Fund's lawyers maintaining throughout that the claims were time-barred. The Venezuelan Courts declined to accept these arguments, on the grounds that notice to the ship owner and its P and I insurers was sufficient notice to the Fund to interrupt the time bar in respect of claims against it.

* CMI Observer Delegate.

In October 2010 the Supreme Tribunal of Venezuela rendered a judgment, upholding the validity of all the claims, rejecting the arguments based on the time bar, and remitting the case to a lower court to review the quantum of damages. In January 2011 a panel of experts appointed by that Court reported that they considered the total damages due to the claimants was the equivalent of £111.6 million, approximately twice the limit of liability of the 1971 Fund. An appeal against the Experts' report is currently pending.

The Delegation of Venezuela put in two lengthy documents at the meeting and urged delegates to instruct the Director to make prompt payment of the compensation claims. However the delegates declined to do so, noting the provisions of Article X of the 1969 CLC Convention and Article 8 of the 1971 Fund Convention, which provide that any judgement of a Court of the place where the pollution occurred shall be recognised in any contracting state (and thus by the Fund) unless:

(a) the judgement was obtained by fraud; or
(b) the defendant was not given reasonable notice and a fair opportunity to present his case.

The general policy of the CLC and Fund conventions has always been to ensure, so far as possible, that the victims of oil pollution from a ship should receive compensation quickly. Most claims are settled amicably without the involvement of the local courts.

In this case, however, there appear to be serious doubts as to the genuineness of the alleged claims and of the documents put forward in support of them. Moreover the voluminous papers filed by the claimants with the Courts were not supplied to the Fund or their lawyers in time for a careful analysis to be made.

The Director noted inter alia that the compensation claims for loss of fishing resulting from this incident are equivalent to earnings for each individual fishing boat of £ 243,000 per year, an impossible figure for a boat of some 10 metres in length and manned by two fishermen. This suggests that this claim has completely lost touch with reality, particularly when the quantity of oil said to have been spilled was some 3.2 tonnes, mixed with ballast water.

This delicate situation had raised issues which many delegates viewed with grave concern. The provisions of the original conventions to grant jurisdiction for the assessment of pollution claims to the Courts where the pollution took place makes good sense, but rely on those courts carrying out assessments which are objective and in accordance with the principles of fairness and natural justice. Those principles must be applied, in accordance with the Articles of the original CLC and Fund Conventions cited above, not only by the Courts charged with assessing the claims, but also with any court in another state party called upon to enforce such a judgement.

British judges are never keen to pass judgment on the correctness of decisions of their brethren in other countries, but if they are called upon to enforce a final judgement such as that in this case, they are bound to consider why the draftsmen of the 1969 and 1971 Conventions included provisions such as Articles X and 8, and to give effect to them in appropriate cases.

Erika

This ship sank in December 1999 giving rise to extensive oil pollution of the coast of France. Claims totalling nearly 130 million Euros have been settled by the P and I Club and the IOPC Fund. A small number of claims are still before the French Courts, and particular difficulties have been encountered with the award of damages in the Criminal Proceedings in France. These have been discussed in previous reports.

The French oil company Total has now paid the losses suffered by the French Government and has agreed to "stand last in the queue" of claimants against the Fund. Confidential discussions have been taking place between all the major players with a view to a global settlement of this case, and in a closed session of the meeting a decision was taken with a view to the conclusion of such a settlement.

Prestige

Good progress has been made towards the settlement of the outstanding claims in this case. Perhaps the most interesting outstanding matter is the recourse action brought in the United States by the Spanish State against ABS, the classification society in which the *Prestige* was classed, alleging that ABS had been negligent and reckless in the inspection of the vessel and in granting classification to her. Summary judgment has been issued against the Spanish State in these proceedings, but appeals are still pending. The 1992 Fund wisely decided to refrain from any recourse action against ABS in France for the time being.

Solar 1

Most claims in this case have now been settled, and it appears probable that the total will not exceed the amount of the Ship Owner's limit under CLC, as augmented by the STOPIA Agreement. The Fund is continuing to handle the settlement of the outstanding claims but is receiving regular reimbursement of moneys paid out from the P and I Club concerned.

This is the first case in which the STOPIA Agreement has applied, thus re-balancing the proportion of claims borne by the Owner and Fund respectively. This augurs well for future settlement of such cases.

Volgoneft 139

This case arising from the sinking in November 2007 of a Russian tanker off Kersh in the strait between the Black Sea and the Sea of Azov, has posed a number of difficulties, notably because the Russian Court had declined to recognise the increase of the ship owner's 1992 CLC limitation fund in November 2003. It appears that the increase had not been incorporated into Russian Law at the date of the incident.

However discussions have taken place in the early part of 2011 between the Russian Authorities and the representatives of the 1992 Fund, and the Acting Director recommended that he be authorised to continue these discussions with a view to settling the case. In the meantime he was authorised to start making payments to the claimants, none of whom had received any compensation during the three years since the incident, provided that:

i. the insurer Ingostrakh paid the amount of the "old" limitation fund (3 million SDR);
ii. the "insurance gap" problem can be resolved; and
iii. the Russian Federation has submitted the oil reports for the years 2008, 2009 and 2010, which are currently outstanding.

This case has proved a good demonstration of the wisdom of inviting the representatives of the IOPC Fund and its advisors on the scene at the earliest possible stage of a pollution incident, so that agreement can be reached as to the reasonable costs of reinstatement and the quantum of the pollution damage claims, thus avoiding the cost and delays of protracted litigation such as has occurred in this case.

Hebei Spirit

The enormous number of claims (over 26,000) following this incident has stretched the resources of the IOPC Fund and its Secretariat, but steady progress has been made to assess them. The main point of substance debated was the possible increase in the level of payments to claimants whose claims have been assessed from 35% previously fixed by the Fund's governing bodies.

The Delegation of Korea urged the meeting to agree to the increase of the level of payments to 100% in view of a Special Law passed by the Korean Legislature which will ensure that once the Ship Owner's CLC Fund and the 92 Fund's liability have been exhausted, the Korean Government will pay all the outstanding claims at the level established by the Fund's assessors. This was agreed in principle by the meeting and the Director was authorised to conclude an agreement with the Korean Government to this effect, subject to the establishment by the Government of a Bank Guarantee to cover the Fund against overpayment.

There is still much work to be done, but this arrangement will enable the victims of this accident to receive full compensation for their proven losses in the reasonably near future, though not by the end of 2011 as the Korean delegation had urged.

The recourse action against Samsung, owners of the crane barge and tugs which were the principal cause of this incident, continues before the Maritime Court of Ningbo, China. However the Director reported that the Court of Appeal had held that Ningbo was a *forum non conveniens*, and that the case should be brought in Korea. The Fund is appealing against this decision.

Working Group on Pollution Incidents involving Multiple Claims

A meeting of this working group, under the chairmanship of Volker Schofisch of Germany, continued it's deliberations. The Working Group was set up in the light of the problems encountered in the *Hibei Spirit* case in handling a very large number of claims, and in making payments to victims on account of their losses. Several national delegations had put in papers summarising the procedures in their jurisdictions for dealing with such situations, and, notably in the case of Germany, by their insurers. Papers were also submitted by ITOPF, the International Group of P and I Clubs, and by CMI explaining how such claims are handled, and the typical problems which can arise in such cases. These papers are all available on the Fund's website at www.iopcfund.org.

Since every maritime casualty has its own particular features, it is difficult to lay down standard procedures for dealing with these problems, but it is hope that it may be possible to develop standard practices or guidelines which may reduce the delays in payment.

The work of this Working Group will be continued at the next meeting, scheduled for the week commencing 4th July 2011 in London. The Autumn session of the Funds' governing bodies will take place, also in London, during the week commencing 26th October 2011.

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