

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

NO. 3 - OCTOBER / DECEMBER 2013

News from the CMI:

- The Dublin Symposium 2013, by Nigel H. Frawley
- The 41st Conference of the CMI: Hamburg Conference 2014 and Seminar with German MLA (DVIS), by Stuart Hetherington
- Minutes of the Executive Council meeting held on 29 September 2013 at 9.30 a.m. at the Shelbourne Hotel, George Moore Suite, Dublin
- Minutes of the Assembly Meeting held on 1st October 2013 at 2.30 p.m. at the Shelbourne Hotel, Great Hall, Dublin
- Minutes of the Executive Council meeting held on 1st October 2013 at 17.00 at the Shelbourne Hotel, George Moore Suite, Dublin

News from Intergovernmental and International Organizations:

- News from IOPC Funds
- Report on the IOPC Funds meeting, October 21st-25th, by Polly Davies

NEWS FROM THE CMI

THE DUBLIN SYMPOSIUM 2013

At the Beijing Conference in October 2012, the CMI decided to celebrate the 50th Anniversary of the Irish Maritime Law Association (“IMLA”) in conjunction with a Symposium in Dublin, Republic of Ireland, September 29-October 1, 2013. The venue chosen was the famous Shelbourne Hotel, 27 St Stephen’s Green, Dublin and it proved to be an excellent choice. Plans were also made to hold ISC meetings on Judicial Sales of Ships and revisions to the York Antwerp Rules, 2004 beforehand.

These two meetings, held on September 28 and 29, were well attended (32 for Judicial Sales and 29 for York Antwerp Rules). Efforts to create a new Convention to overcome difficulties in the foreign recognition of Judicial Sales, and possible revisions to the York Antwerp Rules 2004 were significant and progress was made on both fronts. It is anticipated that the work on the Judicial Sales of Ships will culminate at a mini Conference and Seminar in Hamburg June 15-17 2014. The work on the York Antwerp Rules will continue at Hamburg and likely finish its

work at the New York Conference in May 2016.

The Symposium started with on-site registration during the afternoon of September 29, 2013. There were a total of 238 registered delegates, 8 complementary participants and 37 Accompanying Persons. An Opening Reception was held that evening with speeches by the CMI President, Stuart Hetherington, the President of the IMLA, Helen Noble, and Justice Brian McGovern of the High Court of Ireland. Apart from welcoming the delegates, tributes were made to Niall McGovern, Francesco Berlingieri and Bill Birch Reynardson. On Monday September 30 the Symposium was opened by Leo Varadkar, Minister of Transport for the Republic of Ireland, and the work of the Symposium began with excellent panel presentations chosen by the IMLA. They focused on Oil spillage (“*Erika*” and “*Prestige*”), Regulation of the liabilities caused by offshore exploration, Cruise and Ferry Industries, Passenger vessels (“*Costa Concordia*”) and Unfair treatment of seafarers. On Tuesday October 1, panels

arranged by the CMI were on Cross Border Insolvencies, Limitation of Liability in a bankruptcy context, difficulties in the National Implementations of Maritime Conventions, and Marine Insurance. Those unable to attend at Dublin would be well advised to visit the Symposium website www.cmi2013dublin.com to read the excellent papers that were presented. During the afternoon of October 1, the Assembly was held and, running concurrently with it, was a panel session of Young Lawyers giving papers on interesting and topical subjects.

A Gala dinner was held on September 30 at the Mansion House in Dublin, featuring Irish Dancers (with some lively CMI participation) and Musicians. A Closing Party was held the following evening at the Gravity Bar in the Guinness Storehouse featuring large pints of "Black Stuff" and Irish stew. A great time was had by all.

The CMI thanks the IMLA, its President, Helen Noble, her organising team and the PCO Niav Miller and her team at Conference Organisers Ltd. who all did a superb job.

NIGEL H. FRAWLEY*

THE 41ST CONFERENCE OF THE CMI: HAMBURG CONFERENCE 2014 AND SEMINAR WITH GERMAN MLA (DVIS)

Hamburg and Berlin (add-on) 14 to 19 June 2014

It is fitting that in 2014 the CMI will be holding its Conference in Germany. The last such occasion took place in April 1974 when the 30th Conference of the CMI took place in Hamburg.

The Atlantic Hotel was also the principal venue on that occasion. Photographs of that event show the President of the CMI, Albert Lilar, addressing the audience and, in the audience, a young (future President of the CMI) Allan Philip is clearly distinguishable, as well as Bill Birch-Reynardson and Niall McGovern, the last two of whom we recalled fondly at the Dublin Symposium last year.

It may be of interest that topics discussed in 1974 included the Limitation Convention 1957, Revision of the Hague Rules, Revision of the York Antwerp Rules 1950, and shipbuilding contracts.

It is therefore a great pleasure, 40 years after that last event, for the CMI to return to Hamburg for a Conference. It is acknowledged that this is a condensed version of the more recent CMI Conferences as it will not take place over five days and there is only one topic that will be debated at length in the traditional CMI fashion, namely Judicial Sales. The event is a CMI Conference because it is hoped that in the Plenary session and at the following Assembly Meeting a draft instrument on Judicial Sales, which could not be finalised in Beijing, will be concluded for forwarding to an appropriate international body.

If you have not previously attended a CMI Conference (as opposed to a Symposium or

Colloquium) you will learn much about the conduct of international diplomatic conferences by seeing the CMI produce a text which could potentially become an international convention.

The weekend prior to the Conference (the 14th and 15th June) will be utilised for International Sub-Committee meetings for both Judicial Sales and the General Review of the Rules on General Average.

For those not interested in participating in the Judicial Sales debate, there will be contemporaneous seminar sessions arranged with the DVIS on a variety of current issues in maritime law taking place on the Monday and Tuesday.

The topics which will be discussed have been grouped under the themes *Ships in Hot Water* and *Ships in Cold Water*. Under the former, papers will look at subjects such as ship finance, restructuring, cross border insolvency, piracy and wrongful arrest. Under the latter, papers will discuss Arctic issues.

In addition to the academic program, there will of course be the usual social functions at interesting venues, such as the Anglo-German Club, the Maritime Museum and Town Hall, and also a visit to the International Tribunal for the Law of the Sea.

For many delegates who have not previously had an opportunity to visit Berlin the "add-on" may well be a highlight of this meeting.

I look forward to seeing you at the Hamburg Conference and Seminar 2014.

The website for registration and programme details is www.cmi2014hamburg.org.

STUART HETHERINGTON**

* Secretary General.

** President.

**MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD ON
29 SEPTEMBER 2013 AT 9.30 A.M. AT THE SHELBOURNE HOTEL,
GEORGE MOORE SUITE, DUBLIN**

Participating:

<i>President:</i>	STUART HETHERINGTON
<i>Vice-Presidents:</i>	JOHANNE GAUTHIER GIORGIO BERLINGIERI
<i>Councillors:</i>	CHRISTOPHER DAVIS MÅNS JACOBSSON DIHUANG SONG LOUIS MBANEFO JORGE RADOVICH ANDREW TAYLOR TOMOTAKA FUJITA
<i>Secretary-General:</i>	NIGEL FRAWLEY
<i>Administrator:</i>	WIM FRANSEN
<i>Treasurer</i>	BENOIT GOEMANS
<i>Past President</i>	KARL GOMBRII

1. Apologies: Sergej Lebedev

The President noted that Sergej Lebedev was retiring from the Executive Council and thanked him for his contribution over the last six years. The President also noted that Johanne Gauthier and Wim Fransen were attending their last Executive Council Meetings and thanked them both for their substantial contribution to the CMI. The Executive Council noted their appreciation with a round of applause.

2. Approval of Minutes of Executive Council meeting held by email during week commencing 27 May 2013.

These Minutes were approved.

Matters arising from Minutes

There were no matters arising, other than matters to be dealt with in this Agenda.

3. (a) Financial report for submission to the Assembly

The Treasurer's financial report was tabled and was approved for submission to the Assembly Meeting. It identified net revenues of EUR 116,248, expenditures of EUR 278,401 and reserves of EUR 613,518.

(b) Budget for 2014

The proposed budget provided for a modest shortfall and an early bird discount of 2.5%. There was considerable discussion as to whether the budget should seek to break even or even make a profit but it was ultimately concluded that a modest shortfall would be acceptable. This was also discussed, in the light of the views expressed that the early bird discount should be greater than 2.5%. It was agreed

that the early bird discount to be proposed to the Assembly should be 5% based on the 2009 Rotterdam schedule of subscriptions.

(c) Audit Committee Report

There was considerable discussion concerning this report and in particular the comments made by the external auditor to the Chairman of the Audit Committee concerning the accounting for the Beijing Meeting and the absence of some of the documentation of expenses not being available to the external auditor. The concerns were related to process. They could have been obtained and produced had they been requested. It was noted that it has not been suggested that any expenses had not been incurred. The Treasurer and Secretary-General both commented at length on these matters. The Treasurer, in particular, advised that he had spoken to the external auditor and the auditor had not made any criticism in relation to the expenses of the Beijing Conference nor had he sought any further invoices in support of the expenses for the Beijing Conference. The Secretary-General referred to the fact that he had travelled from Shanghai back to Beijing at the conclusion of the Conference and been through all the accounts with the Conference organisers and was satisfied that everything was accounted for. It was also noted that the Conference had run at a loss, but the loss had been made good by the big five shipping companies in China, for which the CMI was extremely grateful. There was agreement that to preclude any such criticisms in the future Conference organisers would be asked to produce a set of accounts with supporting documentation within a short period of time of the end of each Conference, Symposium or Colloquium, for submission to the Treasurer. There was considerable discussion

concerning this report and in particular the comments made by the external auditor to the Chairman of the Audit Committee concerning the accounting for the Beijing Meeting and the absence of some of the documentation of expenses not being available to the external auditor. The concerns were related to process. They could have been obtained and produced had they been requested. It was noted that it has not been suggested that any expenses had not been incurred. The Treasurer and Secretary-General both commented at length on these matters. The Treasurer, in particular, advised that he had spoken to the external auditor and he had not made any criticism in relation to the expenses of the Beijing Conference nor had he sought any further invoices in support of the expenses for the Beijing Conference. The Secretary-General referred to the fact that he had travelled from Shanghai back to Beijing at the conclusion of the Conference and been through all the accounts with the Conference organisers and was satisfied that everything was accounted for. It was also noted that the Conference had run at a loss, but the loss had been made good by the big five shipping companies in China, for which the CMI was extremely grateful. There was agreement that to preclude any such criticisms in the future Conference organisers would be asked to produce a set of accounts with supporting documentation at the end of each Conference, Symposium or Colloquium for submission to the Treasurer.

(d) Charitable Trust

The report of the Charitable Trust was tabled and it was noted that the responsibility for payment of all printing and publishing costs, including secretarial had been restored to the CMI. It was also noted that the CMI has not had to seek support for the expenses of speakers at CMI Conferences, Symposiums and Colloquiums from the Charitable Trust for a number of years. It was also noted that the CMI had agreed to support the winner of the IMLI prize by waiving registration costs at the Symposium in Dublin. The report was noted, but further information was sought concerning the income and expenditure of the Charitable Trust. (This was subsequently provided together with the papers for the Assembly and the figures are noted in the Minutes of the Assembly meeting). The Treasurer is to enquire about capitalization of the Trust's excess income.

4. Collection of Financial Contributions

Christopher Davis reported that there seems no prospect of Costa Rica and Guatemala making good the arrears of their subscriptions and proposed that the Executive Council refer these members to the Assembly for the commencement of expulsion proceedings. It was agreed to propose to the Assembly that steps for expulsion should be taken in respect of those two NMLAs. In so far as Venezuela, Dominican Republic and Spain are concerned it was reported that arrangements are being made for payments to be made and both the Treasurer and Christopher Davis are

confident that those Associations will take steps to remedy their default. There are also continuing discussions taking place with Russia. It was also noted that no response had been received from the Moroccan or Tunisian MLAs to the President's letter advising them of their defaults and the motion for expulsion would be presented at the Assembly.

5. Chairman of the Nominating Committee

The President reported that Bent Nielsen had asked to be replaced as Chairman of the Nominating Committee. The President advised that pursuant to Article 15(a) of the Constitution the Chairman of the Nominating Committee is elected by the Executive Council. [Johanne Gauthier left the meeting]. The President proposed that the Executive Council appoint Johanne Gauthier as Chairperson of the Nominating Committee. This was unanimously approved by the Executive Council.

6. Executive Council elections at Assembly Meeting: Report of the Nominating Committee

The Secretary-General advised that he had notified the President a few weeks ago that he would like to retire from his position as Secretary-General as he had reached an age where he said it was time for a younger person to take over. The President reported that with the assistance of Karl Gombrii an approach had been made to John Hare to ascertain whether he would be prepared to take on the role of Secretary-General. John Hare had advised that he would accept the position if appointed to that role. The President advised that he would be inviting the Executive Council to consider making John Hare, pursuant to Article 18(g) of the Constitution, the interim Secretary-General, after the Assembly meeting, until the position was formalised at the next Assembly meeting in Hamburg.

7. Dublin Symposium

The Secretary-General advised that there were about 250 registrants for the Dublin Symposium, which was a good figure and all the arrangements appear to have been made satisfactorily. He commended the Irish MLA for the efficiency with which they had organised the meeting.

Future Meetings

(a) 2014 Conference in Germany

At the invitation of the President Dieter Schwampe, John Hare and Lawrence Teh joined the meeting for a PowerPoint presentation by Dieter Schwampe identifying a proposed location for the Conference, the Elysee Hotel, the proposed locations for the seminars, the availability of accommodation and also proposed locations for social functions and visits. The presentation was warmly received by the Executive Council and Dieter Schwampe was thanked for the efficiency with which the Conference is already being organised. Some work/lecture should be arranged for the Berlin add-on.

(b) 2015 Colloquium in Istanbul

The President reported that the Turkish MLA had offered to host a Colloquium in 2015 and would be making a proposal to that effect at the Assembly meeting. The Executive Council supported this proposal.

(c) The 2016 Conference in New York

The President tabled a report of correspondence entered into and discussions that had been taking place with the organising committee of the MLA US. The fees to be charged by the proposed conference organisers were extremely high and the MLA US organising committee had not expressed much confidence in many members of its association, who would be attending the Spring Meeting, registering for the CMI Conference. In these circumstances a meeting had been organised to take place on the morning of 1 October in Dublin with those members of the MLA US organising committee that were present, including Bob Parrish, the President of the MLA US and Bob Clyne, one of the Vice-Presidents of the MLA US and Vince Foley as well as former President Pat Bonner. These distinguished gentlemen had all expressed much enthusiasm for hosting the Conference in New York. A further report will be given to the Executive Council at its meeting immediately following the Assembly.

8. *CMI Membership*

(a) Expulsion

(i) & (ii) Morocco and Tunisia – the President reported that no response had been received to his correspondence to the Moroccan or Tunisian MLAs and accordingly the expulsion process would proceed in the Assembly on 1 October.

(b) Potential new members

The President tabled a report identifying potential new members of the CMI which included Poland and India (see below), but also Egypt, Malaysia, United Arab Emirates, Africa, including Cameroon, Senegal and East African countries, Taiwan, Thailand, Latvia, Honduras and Romania. Louis Mbanefo reported on the East African situation, to the effect that there has not been recent contact from those with whom he has communicated in relation to this project in the past. He also reported that there had been recent contact with Senegal and that this potential association is a work in progress.

Poland

The President tabled an application from the recently re-formed Polish Maritime Law Association to be admitted to membership with the CMI. The President reported that over the last couple of years Karl Gombrii and he had had ongoing discussions with Pawel Mickiewicz in relation to the formation of a new MLA. It did seem from the materials that had been provided that this was a genuinely new association and if the Executive Council was agreeable, Poland should be admitted as a new

member of the CMI. The Executive Council so agreed and the application would be dealt with at the Assembly Meeting. Pawel Mickiewicz is present in Dublin for the Symposium.

The application, if accepted by the Assembly, will be based on the lowest level of annual subscription for the first two years and will be reviewed by the Executive Council at the end of that time.

India

The President tabled a comprehensive document received from the new Maritime Law Association that had been formed in India and which is based in Mumbai. The formation of this Association has taken many years to come to fruition. Tom Birch Reynardson has taken on a significant role in assisting in that process. As will be seen from the application, the membership is spread throughout India, although centred in Mumbai, which is regarded generally as the most significant maritime legal community in the country. As has been reported to the Executive Council over the last couple of years another Maritime Law Association has been formed based in Cochin, which does not have a broadly based membership. The Executive Council agreed that the application by the Mumbai based association for membership of the CMI should be supported and placed before the Assembly. VJ Mathew who is on the board of the new association is present in Dublin for the Symposium.

The application, if accepted by the Assembly, will be based on the lowest level of annual subscription for the first two years and will be reviewed by the Executive Council at the end of that time.

The Executive Council also expressed concern that the name of the Indian MLA is virtually identical to the CMI and as a condition of membership it should be asked to change its name.

(c) Provisional membership

The President tabled a request from Dan Malika Gunasekera of Sri Lanka to be granted Provisional membership status to enable him to form an MLA in Sri Lanka. After due consideration the Executive Council agreed to propose Dan Malika Gunasekera for Provisional membership at the Assembly meeting. Dan Gunasekera is present in Dublin for the Symposium.

(d) Titulary membership

It was noted that some applications had been made quite recently and the President was asked to notify Presidents of MLAs to submit their nominations well before Assembly meetings. All applications which had been submitted were approved by the Executive Council for submission to the Assembly.

9. *International Working Groups*

(a) Recognition of Foreign Judicial Sales of Ships

it was noted that the International Sub-Committee meeting had been taking place the previous day and concurrently with the Executive Council meeting in Dublin and a report will be given to the Assembly meeting of developments.

(b) Review of the Rules on General Average

It was noted that an International Sub-Committee meeting had been taking place on the previous day and concurrently with the Executive Council meeting in Dublin. The President reported that Bent Nielsen had advised him on Saturday night that he was pleased with the way matters had progressed during that day and there seemed to be willingness to compromise on the contentious issues.

(c) Cross-border insolvency

Christopher Davis reported that there will be discussions on this topic during the course of the Symposium and a report provided to the Assembly.

(d) Arctic/Antarctic Legal Regimes

The Secretary-General reported on developments in relation to this topic and in particular that David Baker of the International Group of P&I Clubs will join this working group. It is likely that this could be a topic to be discussed in Germany next year with representatives from Scandinavia and an Italian naval architect, possibly, on the panel. It was also noted that Lars Rosenberg Overby of Denmark who has a special interest in the offshore industry in the Arctic had joined the IWG.

(e) Marine insurance

It was noted that this topic was also going to be discussed during the course of the Symposium and a report which had been prepared for the Assembly meeting was noted. It was advised that there was to be a new member of the IWG, Prof. Adv Pierangelo Celle of Italy to replace Jose Thomas Guzman who had indicated that he wished to step down from this working group.

(f) Offshore Activities – Pollution Liability and related issues

Jorge Radovich noted that this topic would be discussed at the Symposium and a report had been prepared for the Assembly by Patrick Griggs who had kindly agreed to chair this working group due to the serious illness of Richard Shaw. The President asked the Minutes to record the good wishes of the Executive Council and everyone connected with the CMI for Richard Shaw and his family at this difficult time. Further new members of this working group are Rosalie Balkin, Professor Rosaeg, Robert Dorey, Lorenzo Schiano Di Pepe of Italy and Clifton Hall of the US. Jorge Radovich confirmed that the IWG is trying to get the industry involved but this is proving difficult.

(g) Rotterdam Rules

Tomotaka Fujita reported that there had been a further recent signing of the Rotterdam Rules but still only two ratifications. He referred to the UNCITRAL meeting in Vienna on proposed model laws concerning electronic transferrable records in December 2013 and that the work in that regard needed to be monitored to ensure there were no inconsistencies with the Rotterdam Rules. He and Alexander von Ziegler would liaise as to who should

attend on behalf of CMI/IWG. The President reported that recent communications from Michael Coffee at the US State Department had indicated that they were close to finalising the transmittal package and that thereafter it would be forwarded by the Secretary of State to the President for his approval and for forwarding to the Senate.

(b) Fair Treatment of Seafarers

Giorgio Berlingieri reported that Olivia Murray would be reporting on this topic at the Symposium and had prepared a report for the Assembly meeting. She sought approval to work together with Seafarers' Rights International (SRI), in order to send a questionnaire to governments and MLAs with an overall objective of promoting generally the subject of fair treatment of seafarers in the event of a maritime accident. The Executive Council agreed to this suggestion.

(i) Acts of Piracy and Maritime Violence

Andrew Taylor reported that whilst there seems to be a lessening of reported incidents in Somalia there is an increase in Western Africa.

10. Standing Committees

(a) Promoting Ratification of Maritime Conventions

Louis Mbanefo reported that this topic will be discussed during the Symposium and that some responses to the President's letter have been received from MLAs but more are needed. He referred to the questionnaire that Francesco Berlingieri had prepared some time ago on this topic and that the next phase of the work of this Working Group will endeavour to take that aspect of the project further; as he said: after ratification it is necessary to have Conventions implemented uniformly by States. NMLAs should be asked to respond to the President's letter and urged to liaise with their governments. Once more responses are received a consolidated report will need to be prepared.

(b) Jurisprudence on Maritime Conventions

The President tabled an email with a report of Taco van der Valk, which was noted and he congratulated Taco van der Valk on all the work he has been doing to promote the interests of young CMI and in particular the LinkedIn group which he has set up and which has 440 members. It was noted that the CMI had supported the attendance of the winner of the Ravenna Summer School at the Dublin Symposium by waiving registration costs and contributing Euro 750 towards the winner's hotel costs and travel. (The same contribution as was made for the IMLI prize - see under Charitable Trust 3(d) above).

(c) Young CMI

The President tabled an email with a report of Taco van der Valk, which was noted and he congratulated Taco van der Valk on all the work he has been doing to promote the interests of young CMI and in particular the LinkedIn group which he has set up and which has 440 members.

(d) Constitution Committee

Benoit Goemans reported that consideration is being given to restructuring or changing the format of the Constitution and work is being done in that regard. It is hoped that the report will be available prior to the first Executive Council meeting in 2014.

(e) York Antwerp Rules 2004 (rate of interest)

The report which is to be presented to the Assembly was tabled.

11. Future work of CMI

The Secretary-General tabled a report on the following topics:

(a) Review of UNCLOS deficiencies

The Secretary-General suggested that it may be useful for the Arctic/Antarctic IWG to have a look at Article 234 and pointed out that it would not be usual for the CMI to review a public law convention. Rosalie Balkin will be asked to advise who would be the appropriate UN agency to consult over this convention.

(b) Review of LLMC deficiencies

After discussion the President was requested to circulate Helen Noble's report in relation to the outstanding issues identified by the IWG and ISC chaired by Gregory Timagenis for further consideration by the Executive Council.

(c) Uniformity of Admiralty Rules of Procedure

This was a suggestion made by the President many years ago in light of the variety of rules of procedure in various national laws dealing with arrest, judicial sales and limitation of liability. There may be scope for work to be done in this area, particularly in relation to model rules which might be capable of adoption by those countries that do not have a refined set of rules in place at the present time. This might conveniently follow on from the Judicial Sales topic.

(d) Competition laws applicable to maritime law

There was no support for work to be done on this topic, as the EU has already investigated P&I Clubs and Liner Conferences.

(e) Choice of law rules as applicable to maritime issues

This subject was raised by Tomotaka Fujita when he pointed out that conventions often refer to national law without specifying how to identify the applicable law. Therefore it is important to know which laws govern such issues. He considers that it is worth considering to investigate the choice of law on maritime issues around the world, and, if necessary CMI can explore a harmonization on unification of choice of law rules. It was pointed out that this is essentially a matter of conflicts of laws and Professor Tetley has produced a substantial work on this topic. Tomotaka Fujita is to prepare a paper identifying the outcomes he would like to achieve.

(f) Modern ways of doing business

The Secretary-General pointed out that there are

several areas that could be reviewed. One of them could be the clauses in the Rotterdam Rules dealing with electronic way bills. Tomotaka Fujita's report on the Rotterdam Rules has advised that the UNCITRAL Working Group IV has commenced a study on e-commerce and they are investigating the desirability of a model law on the subject. The IWG is to monitor their progress. The suggestion was made that perhaps Johanne Gauthier could provide some insight into the e-commerce issues that could be pursued by the CMI.

(g) Collision regulations

The Secretary-General will ask ICS for details of any work already done on this topic. In Hyeon Kim of South Korea is to be asked to prepare a paper setting out his concerns and possible outcomes from such work in relation to fishing vessels. The Secretary-General queried whether consideration might be given to issues concerning navigating in ice covered waters in convoys, which, as he pointed out, increases the risk of collision in the polar regions. It was suggested that this topic should be brought within the Arctic/Antarctic IWG.

(b) Charterers' debts

This is a subject, as the Secretary-General has advised, that Kiran Khosla, the legal adviser to the ICS, has invited the CMI to consider as there is an increasing number of claims being made against shipowners for charterers' debts through the exercise of liens and arrests. There is a lack of uniformity worldwide in dealing with such claims and it is suggested that this could be remedied by a wider range of ratifications of the 1998 Maritime Liens & Mortgages Convention and the 1998 Arrest Convention. It seems that "floating jurisdiction clauses" are being used to overcome certain unpopular choice of law rules. The Secretary-General suggested that it might be a useful work project for the Executive Council to consider. It was decided to ask Kiran Khosla to prepare a paper identifying her concerns and the possible outcomes she has in mind. Andrew Taylor suggested that charterers' liens for unpaid freight be added to the work project if it proceeds.

(i) Crimes at sea

The Secretary-General pointed out that the IMO Legal Committee has recently put this subject on their work agenda. The IMO has recently published rules relating to the investigation of crimes at sea, presentation of evidence and other forensic techniques for ships at sea. The President reported that Kate Lewins who is present at the Symposium (a Professor of maritime law in Western Australia), has written extensively on this subject. It was suggested that Olivia Murray's IWG might be interested in pursuing this topic. The President will raise this with Olivia Murray and Kate Lewins.

(j) Role for CMI as a source for explanation concerning conventions

Dihuang Song will liaise with Louis Mbanefo whether CMI could develop explanatory documentation in respect of maritime conventions which could be of

assistance to developing countries with their maritime laws or implementing conventions into their domestic law. He would also investigate the work done by the IBA concerning rules of evidence in maritime law.

(k) Arrest of Passenger Ships

Dihuang Song raised this as a topic which could be investigated. It was suggested that he prepare a paper on the issues that have arisen and how they might be resolved, bearing in mind questions of wrongful arrest and counter security, which may not be uniform throughout the world. (There may be an overlap with Admiralty Rules Procedure (see item 12(c) above).

(l) Limitation Convention: Classification Societies

This is a topic that it might be expected that the new Consultative Member IACS might ask the CMI to investigate. A decision should be deferred until that occurs.

12. Regional Office

The President tabled correspondence received from Nicholas Sansom confirming the registration of the regional office in Singapore and advised that if Lawrence Teh is appointed Administrator the two roles are likely to merge and he will be responsible for seeking to develop the formation of maritime law associations in the region. Lawrence Teh, Benoit Goemans and the President will liaise on the secretarial needs of the CMI and engagement of secretarial assistance in Belgium and/or Singapore.

13. Publications and website (including LinkedIn)

Giorgio Berlingieri confirmed that the Yearbook and News Letter were available in Dublin and urged NMLAs to take extra copies back to their countries in order to save CMI considerable postage costs.

14. Liaison with IMO/ICS/ICC/IOPC Funds

The President reported that there has been substantial contact with the IMO and the ICS in relation to the promotion of maritime conventions as well as other matters, such as the celebration of the 100th meeting of the IMO Legal Committee. In relation to the ICC reference will be made to the topic of arbitration later in this meeting. In so far as the IOPC Funds are concerned, it was reported that no replacement has as yet been identified for Colin de la Rue as our contact with the IOPC Funds, although Polly Davies (Ince & Co) had attended the last meeting and produced a report for the CMI Newsletter. The view was expressed that it may be necessary for a more senior person to be appointed for that role and Andrew Taylor undertook to give consideration as to who should fill that position.

15. Future of CMI

The President reported that Liz Burrell had not provided any report as to whether her ad hoc committee had met and whether any progress had

been made in relation to this work. Johanne Gauthier volunteered to join this committee and will liaise with Liz Burrell.

16. IMO Prize

The President reported that ongoing investigations are still being made in relation to this.

17. D&O Insurance

The Treasurer tabled a copy of the policy wording recently obtained by the Treasurer from AIG dated 26 September 2013 which provides an aggregate limit of liability of Euro 1M at a cost of total annual premium of Euro 1,584.13. The President and Andrew Taylor will arrange for it to be reviewed.

18. Arbitration: CMI and ICC

The President tabled his report on this topic which annexed a request from the ICC to renew the mandate of CMI persons named as potential arbitrators to the joint venture between the ICC and the CMI which had commenced in 1978 and been the subject of a working party that had prepared a report in 1999, which had queried whether this venture should continue.

Patrick Griggs, Jean-Serge Rohart and Ron Salter (a former member of the Executive Council and one of the nominated potential arbitrators) have all agreed that this is a pointless exercise and the CMI should abandon it.

The decision was made that the CMI should notify the ICC that it no longer wished to continue this arrangement and it should be disbanded. The President was authorised to notify Luc Grellet that he should convey this decision to the ICC but that he might also wish to form an ad hoc committee to investigate whether there is any role for the CMI to play in relation to arbitration, particularly bearing in mind the CMI's *raison d'être* of seeking to bring uniformity to maritime law. Possible members of the ad hoc committee, who were identified, included: Vincent de Orchis and Leo Kailos of the US MLA and Mario Riccomagno of Italy.

19. UNDRIT: Cape Town Convention

The President tabled correspondence which he had entered into with the President of UNIDROIT and the response he had received from the Secretary-General Jose A. Estrella-Faria. The President also referred to the fact that he had communicated with Luc Grellet in relation to the colleague of his at Reed Smith, who is counsel in the Paris office, Andrew Tetley, who has written on this subject. (During the course of the Symposium in Dublin, Kerim Atamer of the Turkish MLA had mentioned that he and Frank Nolan both have an interest in this topic). A decision as to whether to appoint an International Working group will be deferred until a further communication is received from UNIDROIT.

20. *Request for Sponsorship for translation of Travaux Préparatoires of Carriage of Goods by Inland Waterways Commission*

A request that had been received from Frank Smeele to assist in the finance of this project was discussed but rejected. The President is to notify Frank Smeele.

21. *Future Assembly and Executive Council Meetings*

It was noted that the next Assembly meeting in 2014 will be on 17 June 2014 in Hamburg and the Executive Council meeting will be held on Sunday, 15 June 2014.

22. *Other Business*

(a) *Relations with the European Union*

The President queried whether the appointment of a

member of the Executive Council (or some other person) to be the principal liaison person with the European Union should be revived. Wim Fransen pointed out that it had not been a success in the past and some had felt that it was unnecessary, but it may be worthy of fresh consideration. The President recalled that Jean-Serge Rohart was not generally in favour of it in the past and undertook to ascertain whether that was correct and to seek his views.

(b) The Executive Council members should review the list of members of the IWGs and ISCs in the latest Year Book and advise Giorgio Berlingieri and the President of any additions or deletions.

The meeting was concluded at 4.30pm.

**MINUTES OF THE ASSEMBLY MEETING HELD ON 1 OCTOBER 2013 AT 2.30 P.M.
AT THE SHELBOURNE HOTEL, GREAT HALL, DUBLIN**

1. *Report of the Credentials Committee*

Benoit Goemans reported on behalf of the Credentials Committee (himself and Christopher Davis) that all members present were able to vote at the meeting. (A list of attendees is attached to these minutes-Exhibit A).

2. *Memorials*

The Assembly kept some moments of silence in remembrance of:

Professor Anthony Antapassis, MLA of Greece

Panos Mavroyiannis of Greece

Vlassis Makris of Greece

George W Healy III, MLA of the USA

Michael Marks Cohen, MLA of the USA

George Chandler III, MLA of the USA

Jeremy J.O. Harwood, MLA of the USA

Pierre Latron MLA of France

Hucum Tulgar of MLA of Turkey

3. *Approval of the Minutes of the Assembly held in Beijing on 19 October 2012*

The Minutes of the Assembly held in Beijing on 19 October 2012 were adopted.

4. *Matters arising from the Minutes of the Assembly held in Beijing on 19 October 2012*

There were no matters arising, other than matters to be dealt with in the Agenda.

5. *Report of the President*

The President summarised the written report which had been circulated together with the Agenda, a copy of which is attached to these Minutes (Exhibit B).

6. *Finances*

(a) *Treasurer's report and presentation of accounts year ended 31 December 2012*

Benoit Goemans presented the accounts and noted that the budgeted income of EUR 116,248 had been received against expenditure of EUR 278,401. Reserves were at EUR 613,518 at the end of 2012.

(b) *Report of the Chair of the Audit Committee*

In the absence of Liz Burrell, Måns Jacobsson presented the report of the Audit Committee

In his presentation Måns Jacobsson referred to the fact that in its report the Audit Committee had mentioned that some of the documentation of the expenses for the Beijing meeting had not been available to the External Auditor. He emphasised that the Audit Committee did not in any way suggest that the expenses in question had not been incurred or that these expenses had not been incurred properly. He mentioned that it had been established that the documentation was in fact available in China and that the Secretary-General had, with the assistance of a translator, examined these documents in Shanghai and was satisfied that all expenses had been accounted for. Måns Jacobsson added that the Beijing Conference had unfortunately resulted in a deficit; this deficit had not been covered by the CMI but by five major Chinese shipping companies, for which the CMI was extremely grateful.

It was noted that in the light of the observations of the Audit Committee, the Executive Council had decided that organisers of future CMI events would be requested to produce a set of accounts with supporting documentation within a short period of time after the Conference, Symposium or Colloquium for submission to the Treasurer.

The Treasurer's report was approved and the Audit Committee report was noted by the Assembly.

(c) Budget for 2013

(d) Subscriptions for 2013

Benoit Goemans reported on the draft budget for 2014, as recommended by the Executive Council, which was adopted on the basis of a level of subscriptions as being set by the Assembly in 2009 together with a 5% early bird discount. The invoices are to be sent out early in the new year. The Treasurer apologised for the late sending out this year due to administrative difficulties in the Antwerp office.

Ecuador expressed some concern that the proposed budget would result in a negative result for the year. The Treasurer pointed out that in recent years the budget has been prepared to result in a substantial loss in order to reduce reserves, at the behest of the Assembly and that it is now intended to seek to revert to producing a balanced budget after next year, now that the reserves have been reduced substantially in accordance with the intentions of the Executive Council and Assembly.

The proposed budget and subscriptions were approved by the Assembly.

(e) Report on collection of outstanding subscriptions

Benoit Goemans reported on unpaid subscriptions and noted that for 2013 82% of payments had been made, but a further 6% was in the pipeline. In respect of past years, he referred to the fact that discussions had taken place with the Spanish and Venezuelan MLAs and steps are under way to improve their positions to enable payments to be made, some of which have already been made in respect of arrears. Further communications are to be entered into with the Dominican Republic in that respect. Unfortunately accommodation has not been able to be reached with Costa Rica or Guatemala (both of which have been inactive for a number of years) and the Executive Council sought the Assembly's approval to take steps to expel those members unless arrears are paid before the next Assembly meeting, where notices of expulsion will be put forward. It was also noted that correspondence is to be entered into with Russia in respect of its arrears. These steps were approved by the Assembly.

(f) Approval of the nomination of De Mol, Meuldermans and Partners BVBA as auditors for 2013 accounts

This was approved by the Assembly.

(g) CMI Charitable Trust

Tom Birch Reynardson gave a report in respect of the Charitable Trust and noted that investment income in 2013 was £15,971 and expenses for charitable activities, that is expenditure including travel and accommodation for CMI lecturers and publications and website administration, was £6,696.

This report was noted by the Assembly.

7. Members

(a) Titulary Members/Nominations

The following individuals were elected by acclamation of the Assembly as Titulary members:

- (i) John Hare (South Africa)
- (ii) Frazer Hunt (Australia & New Zealand)
- (iii) Olivia Murray (United Kingdom)
- (iv) Dr Igor Vio (Croatia)
- (v) Cécile Bellord (France)

(b) Expulsion of MLAs of (a) Morocco and (b) Tunisia

The Moroccan and Tunisian MLAs were expelled, there not having been any response to the President's correspondence to them advising them of their defaults in paying subscriptions and giving them notice of the expulsion motion.

(c) New MLAs

Applications to become a member of the CMI were made by Poland and India.

Poland – The President reported that over the last couple of years former President Karl Gombrii and he had been liaising with the new association and an application had now been received by the Executive Council for it to be admitted as a member of the CMI. The Executive Council was in favour of that application. *India* – The application of India had also been considered by the Executive Council. Tom Birch Reynardson and others had been assisting this new Indian Association to be formed and to comply with the requirements of the CMI for membership. The Executive Council was satisfied that its membership was representative of the country, although based in the premier maritime area of India, namely Mumbai. Accordingly, the Executive Council recommended acceptance of the applications of Poland and India and that proposal was accepted with acclamation by the Assembly. Pawel Mickiewicz (Poland) and VJ Mathew (India) were present at the meeting and warmly welcomed.

(d) Provisional member

Dan Malika Gunasekera (Sri Lanka)

Dan Malika Gunasekera had made an application to the Executive Council to be admitted as a provisional member to enable him to seek to form a maritime law association in Sri Lanka. The Executive Council proposed that he be granted provisional membership status and this was approved by the Assembly with acclamation.

(e) New consultative members

The International Association of Classification Societies Ltd and the International Maritime Law Institute (IMLI) in Malta had applied for consultative membership status. The President reported that it was somewhat of a surprise to many members of the CMI that neither of these organisations was already a Consultative member of the CMI and the Executive Council recommended their acceptance as such. The Assembly approved the conferring of Consultative member status on the International Association of Classification Societies Ltd and IMLI.

8. *Work in Progress*

(a) *Acts of Piracy and Maritime Violence*

Andrew Taylor, the Chairman of this Working Group tabled a written report and gave a verbal presentation noting that although Somali piracy had fallen in recent years there has been an increase in piracy and armed robbery in the Gulf of Guinea.

(b) *Fair Treatment of Seafarers*

In the absence of Olivia Murray who had been present at the Symposium but had had to return to London, Giorgio Berlingieri presented her written report which had been tabled. It was noted that the Executive Council had approved a joint project with Seafarers' Rights International (SRI) and the IWG, which involves drafting and sending a questionnaire to governments and MLAs with an overall objective of promoting generally the subject of fair treatment for seafarers in the event of a maritime accident.

(c) *Recognition of Foreign Judicial Sales of Ships*

The Rapporteur of this IWG, Andrew Robinson, tabled a report and confirmed that an international sub-committee had met on Saturday and Sunday, 28 and 29 September 2013. The purpose of which was to consider the presentations made by NMLAs regarding the proposed draft international convention which had been prepared as a result of the Beijing Conference and circulated on 25 March 2013. He then identified the main issues that had arisen in their discussions in respect of each of the articles of the draft Convention and noted that the IWG will endeavour to prepare a final report before 29 October 2013, which is intended to include a final draft instrument, a suitable commentary on that document, as well as a historical review of the project. NMLAs will be encouraged to provide feedback from the ship owning and ship financing industries, liaise with relevant regional, national and local administrations in order to inform them of the progress of the draft instrument and respond with any further comments by 31 January 2014. Prior to the Hamburg Conference in June 2014 it is suggested that a day and a half be reserved to allow for further discussion and a clause by clause review of the final instrument and that a day of the Conference in Hamburg should suffice to finalise the draft instrument and to put it before a plenary session at the Hamburg Conference.

(d) *Marine insurance*

This topic had been under discussion at the Symposium and the Chairman of the IWG, Dieter Schwampe, referred to the discussions which had taken place and tabled a report which identified the claims made against the 1992 fund in the "Alfa 1" case in which the vessel concerned had obtained insurance with a non-IG insurance company on a fixed premium basis and subject to a limit of liability of Euro 2million which was below the CLC limit for the ship. Having hit a submerged object and sunk, claims for oil pollution damage amounting to Euro 13.3million were made. The insurer had issued certificates to the Central

Port Authority of Piraeus to the effect that its insurance was in force satisfying the requirements of the 1996 and 1992 CLC Conventions and the Greek authorities had accordingly issued a certificate pursuant to the annex to the 1992 CLC. In light of this real example of the system failing the Executive Council had approved the IWG seeking the views of the ICS and the International Group of P&I Clubs. The work of the IWG is ongoing.

(e) *Cross-border Insolvency*

In the absence of Christopher Davis who had had to return to New Orleans prior to the Assembly meeting, the Rapporteur, Sarah Derrington, gave a brief report. The written report was tabled and this, like marine insurance, had been the subject of discussion and presentations at the Symposium. Some 12 replies to the questionnaire had been received to date and further responses are sought.

(f) *Arctic/Antarctic Legal Regimes*

A written report was tabled by the Chairman of the IWG, Nigel Frawley, and he reported that most of the business of the IWG had been conducted by email and another physical meeting is planned at the Hamburg Conference in June 2014. The work plan of the IWG is to prepare an inventory of the legislative material the IMO/ICS and BIMCO are currently studying and which might have applicability in the polar regions, to undertake a review of private maritime law conventions for their applicability and non-applicability in the Arctic and southern oceans, to consider aspects of a pollution liability regime specifically for the polar regions and to continue the study of certain public and private maritime law conventions and regulations and their applicability and non-applicability in the polar regions.

(g) *Review of the Rules on General Average*

The Chairman of this working group, Bent Nielsen, reported that the International Sub-Committee Meeting had taken place on 28 and 29 September and considerable progress had been made in identifying contentious issues and seeking to achieve compromises on those contentious issues. The Chairman was hopeful that a further ISC meeting early next year will see further progress made in time for an ISC meeting to be held in Hamburg at the time of the Conference next year.

(h) *Rotterdam Rules*

The Chairman of this IWG, Tomotaka Fujita, tabled a report and referred to the fact that 24 States have signed the Rotterdam Rules and two States have currently ratified the Rules. He also referred to the fact that work is continuing by the UNCITRAL Working Group IV (e-commerce) and Vincent de Orchis had monitored that work in New York earlier this year. Both of them had noted that it is important to make sure that any draft provisions do not create any inconsistency with e-commerce provisions contained in the Rotterdam Rules and therefore the IWG will carefully watch progress at UNCITRAL Working Group IV.

The President reported that he had received an email

a few days previously from Michael Coffee in the US State Department who had advised “we continue to work with other agencies on our transmittal package. Our conversations have been quite productive and helpful. Hopefully, we are close on a package”. The President noted that once the package has been agreed with the other agencies within the US Government, it will be sent by the Secretary of State to the White House for the President’s approval and for the President to send it on to the Senate.

(i) Offshore activities - Pollution liability and related issues

The acting chairman of this working group, Patrick Griggs, tabled a report and advised the Assembly that a questionnaire had been forwarded to NMLAs and some responses had been received. He also noted that approaches had been made to a number of exploration companies with mixed success. Patrick Griggs noted that the industry fears, and would strongly resist, any attempt to create an international regime to regulate off-shore activities including issues of liability and compensation for pollution. The industry considers that regulation of off-shore reparations should be the sole responsibility of the governing agencies in each country who issue exploration and exportation licenses. Patrick Griggs suggested that the most useful thing that the CMI can do is to produce guidelines or draft regional or bilateral agreements which might assist those countries that do not have the necessary facilities to prepare such documentation.

The President noted that Richard Shaw’s health has not been good for some months and the entire CMI family sent their best wishes to him and his family at this difficult time. Patrick Griggs who will be visiting him soon will be conveying those wishes on behalf of the CMI.

9. Standing Committees

(a) Jurisprudence on Maritime Conventions

The President reported that Audile Plegat had been engaged for a period of six months to prepare summaries of cases dealing with international maritime conventions in order to extend the work which has been done voluntarily for many years by Francesco Berlingieri. The President stressed the importance of as many delegates as possible getting to meet Audile Plegat who was present at the Symposium and identify a researcher within their membership who can liaise with her and provide her with details of significant cases dealing with the identified Conventions. The President stressed that this is a significant project for the CMI and is costing a substantial sum of money and therefore the co-operation of NMLAs was imperative in assisting in this task.

(b) Promoting ratification of maritime conventions

Deucalion Rediadis tabled a written report and referred to the presentations that had been made at the Symposium on this topic. He referred to the letter

which the President of CMI had sent to NMLAs earlier this year and the responses which have so far been received. It was noted that in addition to seeking to have more conventions ratified and in particular those of special significance to NMLAs, including the Rotterdam Rules, the Wreck Removal Convention, the HNS Convention and the Athens Convention, the purpose of this exercise is to assist NMLAs to form closer relationships with government officials working in the transport sector.

(c) Young Members

Taco van der Valk, the Chairman of this Standing Committee, referred to the sessions taking place, concurrently with the Assembly, as well as the initiatives which are being taken in relation to LinkedIn. The President urged NMLAs to encourage their younger members in particular to engage with the LinkedIn group.

(d) Constitution Committee

Benoit Goemans reported that the Constitution Committee is considering what changes can be made to improve the Constitution and will seek to report in time for the Assembly meeting in Hamburg next year.

(e) York Antwerp Rules 2004 - Rate of Interest

Bent Nielsen, the Chairman of this Standing Committee, advised that having taken advice from the financial sector and on the basis of that advice has recommended setting the rate of interest at 2.75% under the York Antwerp Rules 2004, Rule XXI for the coming year. This was approved by the Assembly. The President thanked all Chairs and Rapporteurs of the International Working Groups and Standing Committees for their work throughout the year.

10. Publications (Yearbook and News Letter), Website and Handbook on Maritime Conventions

Giorgio Berlingieri gave his report and noted that a large number of Yearbooks had been made available to delegates at the Symposium and that the latest issue of the News Letter had also been published. He also noted that the Handbook on Maritime Conventions is still a work in progress and the texts of the Conventions which are to be included in the Handbook are awaited from Frank Wiswall. The website continues to be managed by Admission in Australia.

11. Conference and Colloquium:

(a) The Conference and Assembly Meeting (2014)

Dieter Schwampe gave a PowerPoint presentation of the hotels which are being considered for the meeting to take place from 15 to 17 June 2014, together with an optional add-on in Berlin. This presentation was well received by delegates.

(b) Colloquium (2015)

The President of the Turkish MLA, Kerim Atamer, proposed that a Colloquium be held in Istanbul in May or June 2015. This proposal was welcomed and accepted by the Assembly.

(c) Conference (2016) New York

Bob Clyne of the US MLA reported that work is underway in preparation for this Conference. As yet, a Conference organiser and venue have not been appointed or booked but proposals have been made and discussions have taken place with the Secretary-General and President of the CMI with a view to advancing the arrangements in the near future.

12. CMI Regional office in Singapore

The President reported that this office had been incorporated in Singapore and with the likely appointment of Lawrence Teh as Administrator for CMI, the work which had been envisaged for this office will largely be undertaken by him, that is encouraging formation of MLAs in the region, in countries such as Malaysia, Thailand, Laos, Vietnam and Cambodia.

13. CMI - The Future

The President reported, in the absence of Liz Burrell, that she had agreed to chair an ad hoc committee to consider whether or not there were ways in which the CMI could improve its operations. She had formed an ad hoc committee, at the request of the President, arising from the suggestion made by the President of the US MLA at the Beijing Conference when “the future of the CMI” had been discussed.

14. Elections

(a) The Chairman of the Nominating Committee, Bent Nielsen, advised that as a result of its deliberations the Nominating Committee recommended that Christopher Davis be appointed as a new Vice-President, that Lawrence Teh, Benoit Goemans and Nigel Frawley be appointed Administrator, Treasurer and Secretary-General respectively and that the two vacant positions of Executive Councillors be filled by Alexander Von Ziegler and Dieter Schwampe. In addition, the Nominating Committee recommended the re-election of Dihuang Song as Executive Councillor. Making his remarks the Chairman of the Nominating Committee regretted that the CMI Executive Council will no longer have a female member as a result of the retirement of Johanne Gauthier. He expressed the hope that that would not deter others from seeking nomination in future.

The President noted that Nigel Frawley had recently advised that he did not wish to be re-elected as Secretary-General on account of his advancing age and therefore foreshadowed that at the Executive Council meeting immediately following the Assembly meeting, an interim Secretary-General would be appointed by the Executive Council, pursuant to the Constitution and that person was likely to be John Hare, who is well known to members of the CMI, having previously served on the Executive Council for many years and chaired the IWG on marine insurance.

There being no other nominations the above persons

were elected to the positions identified by acclamation.

(b) The President proposed on the recommendation of the Executive Council that Jean-Serge Rohart be elected Member and President Honoris Causa and that Rosalie Balkin, Director of Legal Affairs and External Relations Division of the IMO, be elected Member Honoris Causa. Karl Gombrii spoke in favour of the election of Jean-Serge Rohart as Member and President Honoris Causa and referred to his long record of service with the CMI including as Executive Councillor and subsequently President of the CMI. He concluded that Jean-Serge Rohart had indeed been giving exceptional service to the CMI, as envisaged by the Constitution for somebody to be elected as Member Honoris Causa, and invited the Assembly so to elect him.

Patrick Griggs spoke in favour of the election of Rosalie Balkin as Honoris Causa and referred to the close co-operation which the CMI had received from Rosalie Balkin in her various roles over many years in working at the IMO. He referred to her leading the Australian delegation at the IMO in October 1987 and her election as Vice Chairman of the Legal Committee at its 68th Session in 1993 and appointment as Director Legal and External Relations Division in 1998.

The Assembly acclaimed both the election of Jean-Serge Rohart as President Honoris Causa and Rosalie Balkin as Member Honoris Causa. Both made gracious speeches of thanks to the CMI.

(c) Retirement of Bent Nielsen as Chair of the Nominating Committee

The President reported that the Executive Council, pursuant to the Constitution, had decided to invite Johanne Gauthier to be Chair of the Nominating Committee in succession to Bent Nielsen, who had advised that he wanted to retire from this role, and she has agreed to undertake that role.

15. Retirements

The President noted that the retirement of Nigel Frawley as Secretary-General marks the end of a period of about 10 years when Nigel Frawley had organised all meetings of the CMI and worked closely with Presidents Patrick Griggs, Jean-Serge Rohart, Karl Gombrii and himself. He said that if any of those Presidents had looked good to members of the CMI it was largely due to the hard work and organisational skills of Nigel Frawley. Karl Gombrii echoed those comments and referred to the number of occasions that he and Nigel Frawley had worked hard and harmoniously in arranging meetings during his Presidency and how much he valued the good humour and company of the Secretary-General. Jean-Serge Rohart also expressed his appreciation and gratitude to Nigel Frawley for his assistance during his Presidency. A presentation of a whisky decanter was made to Nigel Frawley in thanking him for all the hard work he had given to the CMI over an extremely lengthy period of time.

The President also recognised the significant contribution made by Bent Nielsen as Chair of the Nominating Committee. Whilst pointing out that that role was not particularly onerous it required a considerable degree of tact and good sense, which Bent Nielsen had exhibited for a number of years in performing that role. A presentation was made to Bent Nielsen in recognition of his service to the CMI, which will of course continue in his role as Chairman of the IWG reviewing the York Antwerp Rules. The Assembly acclaimed Bent Nielsen for his contribution to the CMI.

The President also thanked the retiring members of the Executive Council, Wim Fransen, Sergei Lebedev and in particular Johanne Gauthier who despite her onerous judicial duties had managed to make a

significant contribution to the Executive Council and the business of CMI. She was the first, and so far, only female member to serve on the Executive Council. Her wise advice and assistance will be missed on the Executive Council.

All retirees were acclaimed by the Assembly.

16. General

In conclusion the President thanked the Irish MLA and its organising committee for putting together such a successful meeting. In addition he thanked all presenters of papers and others who had contributed to the success of the meeting.

There being no other business the meeting closed at 4.35pm.

EXHIBIT A List of attendees

<i>Country</i>	<i>Name of Nominee</i>	<i>Country</i>	<i>Name of Nominee</i>
ARGENTINA	Esteban Vivanco Jorge Radovich	MEXICO	Ignacio Melo Ignacio Melo Jr.
AUSTRALIA & NEWZEALAND	Frazer Hunt Sarah Derrington Justice Steven Rares	NETHERLANDS	Taco Van Der Valk
BELGIUM	Karel Stes Benoit Goemans Wim Fransen	JAPAN	Tetsuro Nakamura Tomotaka Fujita
BRAZIL	Nelson Carolcan Silva Filho Rucemeh L. Gomes Pereira Pedro Calmon Filho	REPUBLIC OF KOREA	Byung Suk Chung Hyun Kim
CANADA	John O'Connor William Sharpe John Harquail	NIGERIA	Louis Mbanefo Rita Uruakapa
CHINA	Chen Mi Dihuang Song Qi Ji	NORWAY	Karl-Johan Gombrii Erik Rosaeg Andreas Meidell
CROATIA	Igor Vio	SINGAPORE	Lawrence Teh
DENMARK	Henrik Thai Jantzen	SLOVENIA	Mitja Grbec
ECUADOR	Jose Modesto Apolo	SOUTH AFRICA	Andrew Robinson John Hare
FINLAND	Henrik Ringbom	SPAIN	Rodolfo A. Gonzalez-Lebrero Eduardo Albors Tomas Fernandez-Quiros
FRANCE	Philippe Boisson Patrice Rembanville-Nicolle Luc Grellet	SWEDEN	Jorgen Almelov Måns Jacobsson Mikaela Tamm
GERMANY	Dieter Schwampe Tilo Wallrabenstein	SWITZERLAND	Alexander Von Ziegler Thomas Burckhardt
GREECE	Deucalion Rediadis Lia Athanassiou Yiannis Timagenis	TURKEY	Kerim Atamer Sevilay Kuru Emine Yazicioglu
IRELAND	Helen Noble	UNITED KINGDOM	Andrew Taylor Patrick Griggs CBE
ITALY	Giorgio Berlingieri	UNITED STATES	Bob Parrish Pat Bonner Bob Clyne
MALTA	Ann Fenech		

EXHIBIT B

President's Report to the CMI Assembly

A lot of hard work has taken place over the last 12 months and progress has been made on a number of fronts. Although significant structural changes took place as a result of the Steering Committee report of a few years ago, (when subscriptions were drastically reduced, including the abolition of subscriptions for titular members) the changes to which I am about to refer will not be felt so keenly in the hip pocket of National Maritime Law Associations, but they are, perhaps, equally significant to the development and future of the CMI.

Administrative arrangements

You may not be aware that the CMI has been without administrative assistance in Antwerp since early in the year. Pascale's replacement, Hilde, underwent surgery at the beginning of the year and her employment was terminated when it became apparent that she was unable to return to the office. Steps are continuing to find a part time replacement. This has placed added burdens on a number of the Executive team.

In April this year, I visited Antwerp and met with the resident Belgian members of the Executive Council, Wim Fransen (Administrator) Benoit Goemans (Treasurer), together with the Vice President, Giorgio Berlingieri and the Presidents of the Belgian, French and Swiss MLAs, with a view to seeking their support for changes to the administration of the CMI. With the retirement of Wim Fransen and the appointment, which I trust the Assembly will be making at this meeting, of an Administrator from outside Belgium, some changes needed to be made. As a result of my discussions in Antwerp in April and with the support of the Belgian MLA, the Executive Council decided at its virtual meeting in May to agree to the following proposals:

1. The registered office of the CMI be moved from the building where Wim Fransen's firm operates to a historic building known as Ernest Van Dijckkaai. (The building was originally constructed by a successful agent and shipbroker in 1896 as a town house on the River Scheldt; on the ground floor he operated his office as a shipowner, ship broker, shipping agent and importer of coal. It was later occupied as a Michelin star restaurant "La Rade"). It is presently owned by the Belgian Shipowners' Association. We held our meeting in Antwerp in its most beautifully restored meeting room which will be available for use by the CMI in the future. A reception was held in the ground floor premises of the Eugeen Van Mieghem museum that evening. It is a most suitable venue for an Association, like the CMI, which has been in existence for about the same length of time as the original building.

2. The building will also house the CMI Library, including Yearbooks, News Letters, Travaux Preparatoires etc. Once again, this will be a most

suitable place to house this valuable archive.

3. It has also been agreed to change the title of the Treasurer to "Treasurer (and Head Office Director)". An amendment to the Constitution will be brought forward next year at the Assembly, together with any other changes recommended by the Constitution committee which are supported by the Executive Council. It was also agreed by the Executive Council that the Treasurer would engage a personal assistant on a part time basis as well as a bookkeeper on a part time basis to assist him in that task.

The Management Committee

This ad hoc committee, consisting of the President, the two Vice-Presidents and the Secretary-General met in New York at the time of the US MLA Spring Meeting, and accomplished a considerable amount of work, including having a meeting with representatives of the organising committee of the US MLA for the 2016 CMI Conference.

Finances

As you can see from the financial reports for the 2012 calendar year we have by reason of the 2011 subscription holiday and the 50% discount applied last year (2012), together with the early bird discount of 10%, reduced our reserves to EUR 613,518. In my view this is close to where they should be, but I would like to hear the views of National Maritime Law Associations.

The budget which was prepared for the Assembly meeting in Beijing for the 2013 year was based on the level of subscriptions at the Rotterdam Assembly (23 September 2009), that is the same subscriptions as for 2010 less a 10% early bird discount, which would result in a loss in the 2013 year of EUR 28,101. We will aim to send out the invoices at the beginning of the year in future. I apologise that they were so late this year.

Work Projects of the CMI

You will hear reports at the Assembly meeting of the activities of the IWGs since Beijing. A considerable amount of work has gone on since that time. I would particularly like to thank the Chairmen and Rapporteurs who have worked so hard on our behalf. I would like to make a special reference to Bent Neilsen and Taco Van der Valk in relation to the Review of the Rules on General Average and the extensive questionnaire that they prepared. They will be working hard over the weekend in Dublin to analyse all the responses which have been received and I commend all those many Associations who have so far responded to that questionnaire (more than 20 responses as at 9 September 2013).

I would also like to express an enormous debt of gratitude for the hard work done by Henry Li and his

team on the Recognition of Foreign Judicial Sales of Ships topic. Henry had hoped to conclude this project in Beijing but sadly that was not to be the case. They too will have worked hard over the weekend in Dublin. The Executive Council decided that by reason of the Constitution of the CMI it was necessary to conclude the Judicial Sales work at a CMI Conference. It is for that reason that we have made special arrangements for next year's event in Germany to be called a Conference. (It should only take a day or so to conclude that topic and the format for the meeting will be similar to Dublin). The Judicial Sales topic will therefore be conducted in the usual manner of a CMI Conference. There will be a Plenary Session when it concludes. For those who are not interested in that particular topic there will be alternative seminar presentations taking place. The usual Assembly Meeting will also take place at that meeting.

I referred earlier to my visit to Antwerp in April this year. At the same time I visited, together with Benoit Goemans, Wim Fransen, Karel Stes and Alexander Von Ziegler, the office of Françoise de Kerchove, the Ambassador-Director of the Cabinet of Foreign Affairs, Foreign Trade and European affairs, within the office of the Deputy Prime Minister, Minister of Foreign Affairs, Foreign Trade and European Affairs of the Kingdom of Belgium. He indicated at that meeting that the Belgian Government would be prepared to host a diplomatic conference on a topic such as Judicial Sales, if the usual organs of the United Nations were unwilling to do so. (That would be dependent on there being no change in the government by the time such an occasion arose).

I should also make special reference to the IWG on Offshore Activities which Richard Shaw was chairing. Unfortunately due to his serious health issues we have had to call back to service Patrick Griggs CBE, our former President. I would like to thank Patrick for stepping into the breach and ensuring that a questionnaire was sent out quite recently. Richard is very much in our thoughts and we wish him well.

Other IWGs have also been active, including Marine Insurance under Dieter Schwampe, who has produced a most comprehensive report on the responses thus far to the Questionnaire.

I also want to pay tribute to Louis Mbanefo and Deucalion Rediadis who have been driving, in conjunction with the International Chamber of Shipping, the Promotion of Ratification of Maritime Conventions Standing Committee. Some Associations, clearly with Holland in the forefront, have produced extremely useful reports of their activities and consultations with their governments. All NMLAs can learn from that experience and take part in galvanising their country to give greater priority to the ratification of conventions in the maritime law area than they have done hitherto.

Whilst on the subject of the Dutch MLA I would also like to thank and congratulate its President Taco Van der Valk for the magnificent work he has been doing in managing the CMI's introduction to the world of

LinkedIn. I would urge all NMLAs to become involved, and especially urge you to encourage your younger members to participate in the group that Taco has set up. Similarly I am proud of the support we have given to young lawyers, both at IMLI and from the Ravenna Summer School, who we have assisted to come to Dublin to make presentations to us. (I am sure the late Michael Marks Cohen would enthusiastically applaud the CMI's efforts in that regard. It was Michael, at the Buenos Aires Colloquium, who encouraged the CMI and the CMI Charitable Trust to spend more money on education). I should also express our thanks to a number of individuals who have represented the CMI over the last 12 months at various functions.

- Deucalion Rediadis attended a workshop on the HNS Convention at the IMO in London;
- Vince De Orchis attended an UNCITRAL meeting in New York on its proposed Model Laws on Electronic Documents;
- Karl Gombrii attended BIMCO's 100th Meeting Session in Paris;
- Karl Gombrii monitored the work by BIMCO on the Voy Rules on our behalf;
- Sergei Lebedev has attended a Counter Terrorism workshop in Moscow;
- Tom Birch Reynardson attended the inaugural meeting of the Indian MLA in India.

In addition Patrick Griggs and Måns Jacobsson both attended and spoke at the 100th Session of the IMO Legal Committee, and both had nice things to say about the CMI and its involvement with the IMO Legal Committee over the years;

Jurisprudence Database

I am delighted to say that we have engaged Ms Audile Plegat to undertake the task, over the next six months, of enlarging our database of maritime cases on particular conventions. We negotiated a contract with her through the office of Reed Smith, (Luc Grellet and his colleagues) and we are very grateful to Luc for all his and their assistance. Please nominate someone in your jurisdiction that she could be in contact with to perform this task or please send her any cases (or summaries with English translations) in your jurisdiction which deal with the Conventions as listed. She will be attending the meeting in Dublin. I hope you will introduce yourselves to her in Dublin.

Consultative Members

I am delighted that we will be introducing two new Consultative members to the CMI family at this Assembly. It is a wonder to many of us that neither IMLI nor IACS have been accorded that status previously. Our relationship with IMLI goes back many years and is very active. Many members of the CMI lecture there regularly and we meet their travel costs to go to Malta to do so. We have also had a long association with IACS and I am very pleased with this development.

Singapore Regional Office

In another development in the course of the last twelve months, the Singapore authorities registered the representative office of the CMI in Singapore on 25 April 2013. That registration is valid for one year. As you know, this office has been set up for a three year period, with a primary focus of looking to encourage the formation of Maritime Law Associations in that region, with a particular emphasis on countries such as Malaysia, Thailand, India, Cambodia, Vietnam and Laos.

Publications and Website

The Berlingieri family continues to produce our most important publications the Yearbook and News Letter. We all owe a huge debt of gratitude to Francesco and Giorgio and their staff for continuing to produce these invaluable publications. The absence of administrative assistance in Antwerp has made the task of updating the contact details of NMLAs particularly difficult but we will strive to improve this in the next year, and keeping the information fresh on the website.

The Future of CMI

As a result of the session held at the Beijing Conference at which the "Future of CMI" was discussed, I requested Liz Burrell of the US MLA to head up a sub-committee, outside the Executive Council, to consider this topic. It may be recalled that at that session in Beijing the President of the US MLA proposed such an initiative, that is to conduct "a detailed examination of the role of the CMI". Liz Burrell has gathered together a group to assist her in that task consisting of Diego Chami, Ioannis Markianos-Danivlos, Karel Stes, Ying Ying Zou and Stephen Knudtzon. I look forward to receiving their suggestions and report in the forthcoming year.

D&O Insurance

We have been talking for quite a long time about obtaining D&O insurance to protect the directors and officers of the CMI. I am hopeful that this will have been put in place by the Assembly meeting in Dublin and I am grateful for the work done by Benoit Goemans in that respect.

Communication with NMLAs

We now have contact details for mailing direct to members of NMLAs from the website for the

following NMLAs: Argentina, Australia and New Zealand, Belgium, Brazil, Bulgaria, Canada, Denmark, Dominican Republic, Germany, Italy, Norway, Panama, Switzerland, Turkey and USA. I would ask the rest of you to assist by sending us the email addresses for all your members - or at least one point of contact for automatic mailing to them. If you need assistance setting up your systems so that they expand to all members with an email address after a manual control for spam please contact Erik Rosaeg of the Norwegian MLA (eric.rosag@jus.nio.no).

Retirements

I would like to take this opportunity to express my thanks to those who are stepping down from official positions within the CMI. I hope they will continue to have a long association with the CMI. Johanne Gauthier was the first female member (and thus far the only one) on the Executive Council. She joined the Executive Council, at the same time as I did, in 2001. Notwithstanding her duties as a judicial officer in Canada she has participated since she has been Vice-President on the informal management committee that has met once a year and has provided invaluable assistance to both Karl Gombrii and me in that role. I shall be seeking the approval of the Executive Council to appoint her to take up Bent Nielsen's role as Chairman of the Nominating Committee.

Wim Fransen became Administrator in the same year, 2001. He has therefore been the public face, in Antwerp, of the CMI and the Secretariat has operated under his supervision in a nearby office since that time. We are grateful to him for his loyal service over those twelve years.

Sergej Lebedev's terms of office on the Executive Council are coming to an end in Dublin and we thank him for his contributions over the last six years.

As I have mentioned, Bent Nielsen is stepping down from chairing the Nominating Committee. He has chaired the Nominating Committee since 2004 and all of us who have been appointed to the CMI Executive since that time (or had our terms renewed) are particularly grateful to him. Whilst it is not an onerous role it requires delicacy and tact to perform and Bent has those qualities in abundance. His wise counsel, over many years, is something for which we should all be grateful. Bent is also one of the indefatigable CMI lecturers at IMLI. Happily, he will continue to chair the IWG on the Review of the York Antwerp Rules.

STUART HETHERINGTON*

* President of CMI, 13 September 2013.

**MINUTES OF THE EXECUTIVE COUNCIL MEETING HELD ON 1st OCTOBER 2013
AT 17.00 AT THE SHELBOURNE HOTEL, GEORGE MOORE SUITE, DUBLIN**

Participating:

<i>President:</i>	STUART HETHERINGTON
<i>Past President:</i>	KARL-JOHAN GOMBRII
<i>Vice-President:</i>	GIORGIO BERLINGIERI
<i>Secretary-General:</i>	NIGEL FRAWLEY (by invitation) JOHN HARE
<i>Administrator:</i>	LAWRENCE TEH
<i>Treasurer/(Head Office Director):</i>	BENOIT GOEMANS
<i>Councillors:</i>	TOMOTAKA FUJITA MÅNS JACOBSSON LOUIS MBANEFO JORGE RADOVICH ANDREW TAYLOR DIHUANG SONG DIETER SCHWAMPE ALEXANDER VON ZIEGLER
<i>Absent, with apology:</i>	CHRISTOPHER DAVIS

1. The President congratulated and welcomed the new members to the Executive Council: Lawrence Teh, Dieter Schwampe and Alexander von Ziegler, and although he was unavoidably absent, Christopher Davis on his election as Vice-President.

2. Appointment of Secretary-General

The Executive Council noted the resignation of Nigel Frawley as Secretary-General of the CMI with effect from the Assembly meeting;

Resolved:

(a) That Mr Frawley's resignation be accepted (with regret and with acclamation for a job extraordinarily well done);

(b) That it is accordingly necessary in terms of Article 18 (g) of the Constitution to appoint an interim Secretary-General pending the completion of proper process for the election of a Secretary-General by the next Assembly;

(c) Further that John Hare be appointed interim Secretary-General with effect from the closing of the last Dublin meeting of the Executive Council, for a term to run to the closing of the next Assembly to be held in Hamburg in or about June 2014.

3. Appointment to Nominating Committee

Alexander von Ziegler's election to the Executive Council requires him to be replaced on the Nominating Committee.

The President suggested that Gregory Timagenis would be a good candidate to be considered for nomination by the Executive Council, and sought any other suggestions.

Resolved that Gregory Timagenis be invited to serve on the Nominating Committee.

4. Standing Committee on General Average Interest Rates

It was noted with much regret that Richard Shaw is gravely ill and a replacement for this Standing Committee needs to be identified. Patrick Griggs has indicated that he also would like to be replaced.

Resolved that Andrew Taylor and Dieter Schwampe would enquire as to suitable replacements and report to the President as soon as possible.

5. Future Events update

Hamburg (Mini) Conference, June 2014

Dieter Schwampe's presentation to the Executive Council and the Assembly was approved for moving forward under Messrs Hetherington, Hare and Teh, working with Dieter Schwampe and his organising committee. It was noted that preparation time is limited.

The issue of overlapping the Young CMI presentations with the Assembly or Plenary will be taken into account in the finalisation of the programme.

John Hare suggested that Martin Davies be invited to present a paper on bankruptcy and limitation. This was noted for future action.

US MLA/CMI Conference, New York 2-6 May 2016

The President reported to the Executive Council upon the morning meeting (on 1 October) with the US MLA organising committee. Great enthusiasm was expressed by the US MLA for the Conference, the first formal CMI US MLA event for 50 years.

6. Marine Insurance IWG

No further mandate required.

There being no other business, the meeting adjourned at 18h45.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IOPC FUND

MEETINGS OF GOVERNING BODIES 21st-25th OCTOBER 2013

The autumn 2013 meetings of the IOPC Funds governing bodies took place at the IMO Building on Albert Embankment during the week of 21st-25th October 2013.

Prior to the opening of the sessions, the Chairman of the 1992 Fund Assembly paid tribute to Richard Shaw. Richard had represented the observer delegation of the CMI at the Fund meetings since 1996 and had collaborated on an important study for the 1992 Fund on the issue of interim payments. The Chairman said that Richard would be greatly missed and, on behalf of all the delegates, expressed his sincere condolences to Mr Shaw's family.

The full Record of Decisions of the meetings, together with all of the documents submitted by the Secretariat and the delegates and reports of working groups are available now on the Funds' website. This article will focus on those issues of particular interest which were discussed during the week and those which caused the most debate, including a new incident involving the *Nesa R3*, an update on the 71 Fund case *Nissos Amorgos* and the 92 Fund case *Prestige*, the winding up of the 1971 Fund, the introduction of guidelines for claimants in the tourism sector and, finally, the issue of refunding VAT which caused considerable debate.

Nesa R3

The Fund has been notified of several new incidents since the last meetings. While not a large spill, perhaps the most interesting of these, due to the nature of the cargo and the location, is the *Nesa R3* incident.

The *Nesa R3* was carrying 840 tonnes of bitumen from Bandar Abbas, Iran to Mina Sultan Qabous in Oman. She was awaiting the arrival of a pilot, 1.4 nautical miles off the discharge port, when the master signalled that the ship was in distress and requested urgent assistance from the port. A loud bang was reportedly heard following which the ship started to list. The list could not be righted and the order to abandon ship was given. Less than twenty minutes passed between the distress signal and the sinking. Only nine of the ten crew members could be rescued: tragically the master lost his life after re-entering his accommodation to retrieve ship's documents.

During the incident, cargo and diesel bunkers (the exact amount of which is yet to be determined - as at 1 July 2013, some 250 tonnes of bitumen had been recovered) were spilled and spread by wind and currents along some 40 kilometres of the Omani coast. The cargo, grade 60/70 bitumen, had been loaded at a temperature of 122°C for ease of handling and pumping. Immediately after the spill the bitumen spread quickly but due to the rapid drop in

temperature quickly became very viscous and formed thick patches which were moved along the coastline by the current and the wind. Due to the density of the bitumen (ranging from 1.01 – 1.06 g/ml; sea water is 1.025 g/ml) some of these patches were partially submerged making them harder to spot. Further, in shallower areas, the high daytime temperatures caused these submerged patches to remobilise and re-contaminate areas which had already been cleaned up. The vessel is now at a depth of 65m and the Omani authorities have commissioned a wreck survey which is expected to confirm, among other things, that the cargo remaining on board has solidified and is immobile.

The 92 Fund has been involved since the early stages (Oman is a party to CLC 92 and the 92 Fund Convention) and although the *Nesa R3* carried less than 2000 tonnes of persistent oil as cargo and as such was not required to maintain compulsory insurance under CLC 92, Owners had CLC insurance cover with the Indian Ocean Ship Owners Mutual P&I Club. It is not yet clear whether the vessel carried a blue card or CLC 92 certificate and the insurer has also indicated that the insurance policy would not apply in this case as the oil originated in Iran. Further, as at 15 September, no limitation fund had been established or any other guarantee given. So far only two claims have been presented, totalling £525,000, both from clean-up companies. It was decided at the meeting that the Fund should make payments of compensation in respect of such admissible losses arising out of this incident and to claim reimbursement from Owners.

Nissos Amorgos

The other debate of interest concerning a specific incident was that of the 71 Administrative Council over the *Nissos Amorgos*, a spill which took place in the Maracaibo Canal in Venezuela in 1997.

Since the last meetings when this case was discussed at some length, a decision has been reached by the Supreme Court of Venezuela in proceedings brought by the Public Prosecutor, which upholds the 2010 decision of the first instance court and condemning Owners and the Club to pay \$60 million. The court also upheld the decision that Owners had lost the right to limit and the guarantee put in place in 1997 was not in fact a limitation fund.

The Director asked the Assembly for their views as to whether the Fund has any obligation to make further payments to the Club, the Director being of the view that as the judgement did not name the Fund as a defendant, it was not under any legal obligation to reimburse the Club and, while the judgement was clearly wrong, the Fund could only "pay

compensation based on a legal obligation to do so.” The International Group of P and I Clubs intervened (the intervention is recorded in full in the Record of Decisions) and had also written to the Director in advance of the meetings and made this letter and various documents relating to the constitution of the limitation fund in 1997, available to all the delegations. The main thrust of the intervention was that, irrespective of the lack of merits of the claim (upon which both Club and Fund agree), execution of the Supreme Court judgement will result in the Gard Club having to pay at least twice the limitation sum. A substantial proportion of that amount is attributable not to the judgement of the Supreme Court but rather to the Club paying claims against the shipowner, the Club and the Fund which even the Fund considered were admissible and with its agreement.

The IG expressed concern that a decision not to pay would undermine the existing practice of the Clubs advancing money prior to the distribution of the limitation fund so that claimants get compensated as soon as possible.

A number of delegations, Denmark and Germany in particular, expressed concern and encouraged the continuation of discussions with the Club, this being a complicated issue and one which may affect the relationship with the Clubs in the future. However, the majority of delegations who spoke agreed with the Director that there was no legal obligation on the Fund and that no more payments should be made to the Gard Club. It will be interesting to observe how this issue develops.

Prestige

The various elements of the *Prestige* case, the proceedings in Spain and France, were briefly outlined during the meetings. As an update to how things stood in October, the Spanish criminal court has now handed down its judgement, on the 11th anniversary to the day of the incident in 2002, acquitting all the defendants of all charges (with the exception of the Master on one charge of disobedience).

Winding up of the 71 Fund

We have previously reported that the 71 Fund has for some time wished to wind itself up. Consequent to the decision regarding the *Nissos Amorgos* mentioned above, it was easier for the Assembly to come to a decision regarding this, as they have essentially removed the major hurdle to it doing so (recalling that Article 44 of the 71 Fund Convention makes it clear that the Fund cannot wind up before discharging all its obligations). The IG intervened along the same lines as in the *Nissos Amorgos* debate, it being the case that if the 71 Fund is wound up there will be no funds from which the Gard Club can be reimbursed in relation to the *Nissos Amorgos* case. Some delegations, particularly Denmark, also expressed some concern. However, the decision was taken that the 71 Fund

can now go ahead and wind itself up. It will aim to do this at the October meetings next year and in the meantime the Director is to look into the legal and procedural measures required for doing so. As the winding up of an international organisation is not a common occurrence, there is little precedent to follow in this regard. Dr Rosalie Balkin, the Director of Legal Affairs and External Relations Division of the IMO, commented that each international organisation attempting such a dissolution would face different issues peculiar to its own structure.

New claims manual for Tourism industry

A year ago, the secretariat was instructed to prepare a set of guidelines for those victims of pollution damage who operate in non-fisheries industries. This was to be compatible with the general Claims Manual but specifically aimed at the tourism industry. The Secretariat presented their draft text for the new manual: “Guidelines for presenting claims in the tourism sector”. This was largely praised but a number of delegates had suggestions for amendments. The guidelines are now to be published.

VAT

The unforeseen subject for the longest debate of the meetings was VAT. France had submitted a document recalling that in the *Prestige* incident, the 1992 Fund had deducted Euro 6.2 million from the French State’s claim in respect of VAT paid by the State for the supply of goods and services used in the operations: in the view of the 1992 Fund, the payment of VAT was not eligible for compensation, since the State would recover the amount of VAT in the form of tax revenues. France believes it should be compensated for such VAT.

A number of delegates supported France’s position but there was concern among some delegates that reimbursement of VAT would lead to unjust enrichment of States.

The 1992 Fund Administrative Council decided that, given its complexity, the issue of whether VAT paid by governments in the response to an oil pollution incident should be reimbursed to them by the IOPC Funds should be studied further, and instructed the Director to study the matter and report back to the October 2014 session.

Definition of “Ship”

The ongoing topic of interest at the Fund is the definition of “ship”. This was not discussed at the main meetings but delegates who wanted to participate in the debate were invited to attend a meeting on the following Monday. A large number of States did submit papers and it will be interesting to see what progress is made on this tricky topic. Finally, this year is the 35th anniversary of the IOPC Funds and the Director invited all delegations to attend a reception on the Tuesday evening. This was well attended and was a very enjoyable evening.

POLLY DAVIES *

* CMI Observer at IOPC Funds.