



COMITÉ MARITIME INTERNATIONAL

PRESIDENT

26 May 2016

Presidents of NMLAs

Dear President

New York Conference

It was good to see so many of you and your colleagues at the New York Conference which concluded earlier this month. I thought you might be interested to see the speech of the IMO Secretary - General Kitack Lim and Frank Wiswall's (former Vice President of the CMI) speech of thanks at the opening ceremony. As you will see the Secretary-General devoted a considerable part of his speech to the adoption and implementation of international Conventions. In that regard the Executive Council made some significant decisions in relation to the Standing Committee which we have on that topic and I will be writing to you at a later date in that regard.

As you will know if you were present at the Conference, the CMI approved the text for the new York Antwerp Rules 2016. You may have seen press releases put out by both BIMCO and IUMI confirming that they have their approval, and are therefore likely to find their way into bills of lading and charter party forms in the near future. A copy of the new Rules and the Guidelines which were approved at the Plenary and Assembly meetings in New York are to be found on the CMI website under Work in Progress/Review of the Rules on General Average/Final Documents.

Judicial Sales

The IMO Legal Committee, which is meeting on 9 June will be discussing this topic under "Any other business" on 9 June. I am **attaching** a further copy of my letter dated 11 May 2015. If you have not already responded to it, Henry Li and Jonathan Lux, who will be attending the IMO Legal Committee meeting on behalf of the CMI would welcome any further information which you can provide in relation to difficulties which have been experienced in your jurisdiction in relation to a recognition of a judicial sale. Please address your answers to me and I will forward them to Henry Li and Jonathan Lux.

This paragraph is only of relevance to MLAs that are subject to EU law. The question has been raised as to whether there is any conflict between the draft Instrument which the CMI has prepared on Judicial Sales and EU law. If this is raised within your jurisdiction the IWG considers that such a question is irrelevant at this stage. The only question for the IMO Legal Committee at

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the present time is as to whether it should take the draft Instrument on to its work programme. It may of course become relevant when the substance of the draft Instrument is being discussed.

Outstanding Questionnaires

If you have not already responded to the following questionnaires I would urge you to do so as soon as possible:

1. Pandemic Response;
2. Ship Financing Security Practices; and
3. Wrongful Arrests.

I am arranging for the "Pandemic Response" questionnaire to be placed on the CMI website with the documents under "Fair Treatment of Seafarers" as we have decided to place both this topic and "Migration at Sea" under the umbrella of that IWG. The Ship Financing Security Practices questionnaire and the Wrongful Arrest questionnaire (the latter of which has been responded to by a large number of associations already) are both located on the CMI website under Work in Progress for each of those respective IWGs.

I have been asked to add a further question to the Questionnaire on Ship Financing:

"Insurance

16. Does a mortgage registered in your jurisdiction extend by law to the vessel's insurance policies in the event of a casualty affecting the vessel."

In all cases could you please seek to respond to those questionnaires by the end of July? Please send your responses to either me, Anne Verlinde in Antwerp or the Chairs of the IWGs (or all of us).

Guidelines on CMI Investment Policy

I **attach** Guidelines on CMI Investment Policy which were prepared in late 2014 by Mans Jacobsson and Andrew Taylor for the Executive Council. They were noted and approved last year and I had intended putting them before the Assembly Meeting in New York, but it was overlooked. I do however bring them to your attention and confirm that they will continue to guide the Executive Council in its management of the CMI business.

Committee on the Future of the CMI

I would like to thank those of you who attended and contributed at the breakfast meeting in New York, which Bob Clyne hosted. Liz Burrell who chairs this Committee found your contributions most helpful and I look forward to receiving her report when the Committee concludes its work. If you have any further thoughts on this topic please direct them to Liz Burrell as soon as possible.

With kind regards,



Stuart Hetherington

**Comité Maritime International
42nd Annual Conference
New York, May 3 2016
Speech by Kitack Lim, Secretary-General
International Maritime Organization**

Ladies and gentlemen,

I am delighted to be here this evening at the opening of not just the forty-second CMI conference but also a historic joint meeting between the specialist committees of the CMI and the Maritime Law Association of the United States.

In particular, I would like to thank CMI President Stuart Hetherington and CMI Secretary-General John Hare who, along with Bob Clyne, President of the Maritime Law Association of the United States, are responsible for making this landmark event a reality.

I have to say it is somewhat daunting to be in a room packed with so many lawyers. I am going to have to be very careful with what I say.

So I thought I would break the ice by finding a good joke about lawyers, but Admiral Kenney here advised me there's no such thing as a good lawyer joke – because lawyers don't think they're funny and other people don't think they're jokes!

On a more serious note, let me begin by reflecting for a moment on the association between IMO and CMI. There is no doubt that both organizations have been strengthened by a history of cooperation that is both long and deep.

No one would dispute that IMO is now a well-established institution. Indeed, as we approach the sixtieth anniversary of becoming operational, some might even call us venerable. Yet, as historians among you will know, CMI pre-dates IMO as an international body concerned with maritime law by some considerable time, having been formed in the latter part of the nineteenth century.

The close relationship between the CMI and IMO can be traced back to the **Torrey Canyon** disaster of 1967, when the oil tanker of that name

ran aground in the English Channel. The maritime world realised that no one quite knew how to deal with the legal issues that arose from the oil spill, clean up and subsequent demand for compensation that the incident provoked.

The CMI established an international committee to study the liability problem arising out of the incident. And, at the same time, IMCO (as IMO was then called) established its Legal Committee. Everybody concerned could see the sense in these two working together, and thus many years of fruitful cooperation began.

The direct outcome of that initial cooperation was the International Convention on Civil Liability for Oil Pollution Damage, which was adopted in 1969 at a Diplomatic Conference chaired by CMI's then-President.

Since then, the CMI has been instrumental in the development of several more conventions that have been adopted by IMO. The Convention on Carriage of Passengers and their Luggage by Sea was adopted in Athens in 1974. The Convention on Limitation of Liability for Maritime Claims (or LLMC) was adopted in London in 1976. A new Salvage Convention was adopted 1989, triggered by another shipwreck and pollution incident off the coast of France, the **Amoco Cadiz**.

And the list goes on. The CMI has continued to work with IMO on several other important issues, including the LLMC 1996 Protocol, the 2002 Athens Convention, the Bunkers Convention and the Wreck Removal Convention. Last year, the CMI presented the draft of an international convention on the foreign judicial sale of ships to the IMO's Legal Committee, which will consider this in detail when it meets next month. I hope this this will be another successful collaboration between our two organizations.

Over the years, the CMI has provided in-depth research papers on many key issues, such as places of refuge for vessels in distress, fair treatment of seafarers, and guidelines for national legislation on piracy and serious maritime crime.

Many of these topics will be the subject of discussion this week; but I am encouraged to note that, as ever, the CMI is very much a forward-looking organization. Fascinating and topical issues such as polar shipping and Arctic development, cybercrime in shipping, offshore liability, legal matters surrounding use of unmanned craft, the varying legal

descriptions of "Ships"; liability for wrongful arrest and legal issues arising from refugee migration at sea form the basis of your agenda. These are the real issues of today and tomorrow, and I look forward with great interest to hearing the outcomes of the various discussions.

I want to turn now to a topic that is close to my heart and which I believe all of us involved in developing the international regulatory framework for shipping need to adopt as a high priority. And that is implementation.

In a nutshell, developing and adopting conventions is an empty exercise unless the requirements of those conventions are properly and effectively implemented.

Over the years, with the help of organizations such as the CMI and many others, IMO has developed and adopted more than 50 new international conventions. Collectively, they have done a huge amount to reduce accidents or environmental damage; mitigate the negative effects of accidents when they do occur and ensure that adequate compensation is available for the victims of such accidents.

The adoption of an IMO convention can feel like the end of a process. A conference is held, the text is agreed, and there are handshakes all round. But adoption of a convention should not be the end. If anything, it should be just the end of the beginning, because an IMO convention is only worth anything if it is effectively and universally implemented.

All those hundreds, even thousands of hours spent refining the text, all that technical expertise that has been poured into it, all those studies and all that research count for nothing unless the end result has a tangible impact. For that to happen, ratification, widespread entry into force and effective implementation are all needed. And these are every bit as important as the development and adoption of the convention itself.

In practice, implementation involves a number of different actors including shipping companies, classification societies and even seafarers. But, ultimately, the legal responsibility lies with IMO's Member Governments.

According to international law, once treaties are adopted they generally need to be incorporated into national law in order to become binding legal instruments. Most States use the time between signing a treaty and

depositing their instrument of ratification to draft and pass the necessary law through their domestic parliaments. This is generally time well spent because it means the states are able to implement their convention obligations as soon as the treaty enters into force for them.

However, occasionally, states may ratify a treaty without having put in place the various legislative, administrative and other practical measures needed for effective implementation.

According to the Vienna Convention on the law of treaties, shortcomings in national law are no excuse for non-performance when it comes to international instruments. It is not within IMO's mandate to question whether a State wishing to ratify a convention is ready to implement it. Nevertheless, we do have a number of ways in which we can help our Member States in this respect.

For example, we give widespread publicity to newly adopted regulations and standards. We try to identify problems that States may be encountering and promote discussion and seek solutions in the relevant IMO committees. And, through our technical cooperation programme, we offer advice and practical assistance to help developing countries establish and operate the legal, administrative and human infrastructure they need to comply with the applicable regulations and standards.

But perhaps the most valuable tool we have in this respect is the Member State Audit Scheme. This began in 2003 as an ambitious programme aimed at improving the accountability of Member States with respect to their IMO treaty obligations.

Modelled partly on the ICAO Universal Safety Oversight Audit Programme, IMO's Audit Scheme is intended to provide Member States with an objective assessment of how effectively they administer and implement certain key IMO instruments relating to safety and the environment.

The issues addressed by the Scheme include enacting appropriate national legislation, the administration and enforcement of applicable national laws, the delegation of authority to recognized organizations and the related control and monitoring mechanisms of the survey and certification processes by Member States.

When it was launched, the Scheme was voluntary. Several States volunteered to be audited, with encouraging results. In fact, the

Scheme's potential as a tool for assessing States' performance in meeting their obligations as flag, coastal and port States under the relevant IMO conventions was considered so great that, as of the beginning of this year, participation in the scheme is now mandatory.

Nineteen Member States are scheduled to be audited in 2016 and 24 in 2017. Results of the audits will feed back into the technical cooperation programme for targeted capacity building as well as feeding back into the regulatory process.

There is clear and strong expectation that the Audit Scheme will confirm that there is, in many cases, a lack of effective national legislation for the implementation and enforcement of IMO conventions.

For me, this is a crucial subject; and it is my firm intention to make addressing this lack a major priority of my tenure as Secretary-General. And it is my sincere hope that the CMI, its members and all its affiliated national maritime law associations, will join me in this, and make it a clear objective for you, too.

If we succeed in tackling this, the benefits will be felt far beyond the world of shipping. A proper, effective national framework of shipping laws, together with the capability to enforce them, enable a country to participate fully in a broad range of maritime activities. And, for developing countries in particular, maritime activity can both provide a source of income in its own right and support growth and development across an entire national economy.

As our theme for World Maritime Day this year so rightly points out, shipping is indispensable to the world. It underpins world trade and supports the global sustainability agenda. By helping all countries to participate in it, effectively and on equal terms, we are helping to spread its benefits more evenly. And that, I believe, is a worthwhile objective that we can all share.

As you will know better than most, international shipping now has a comprehensive regulatory regime that covers just about every aspect of ship design, construction and operation, as well as related issues like liability and compensation, wreck removal and ship recycling.

This regulatory framework will inevitably need to be amended and upgraded, to keep pace with technological developments and with the changing expectations of our Member Governments and the populations

they serve. But, as IMO moves ahead, I envisage that the emphasis will increasingly be on capacity building and implementation.

This is something that can only be done by an active, engaging and outward-looking organization. Which is why I am keen to raise IMO's visibility, not just among those who already know us, but also among those who do not. I want to raise awareness among officials, ministers and decision-makers outside of our regular community. I want to increase IMO's visibility, both within shipping and externally. We need to communicate.

IMO is the single, global body for maritime policy and regulation. Over the past half-century, it has had a huge beneficial impact on shipping and this has been felt by all those who rely on the industry. Looking ahead, I would like to see the positive benefits of IMO's work spread even further.

All of the IMO family – and in this I include not just the Member States but also the associated non-governmental organizations like the CMI, and the Secretariat – contribute to the promotion of the rule of law in the field of maritime safety, security and environmental protection. And our implementation and technical cooperation programmes contribute to the spread of the rule of law around the globe. But much more needs to be done. And we can all make an active contribution, through continued support of IMO and its programmes, both in the committees and sub-committees, as well as in the field. I would encourage all of you to seek out ways to add your weight to these important efforts.

Ladies and gentlemen, in conclusion, let me stress that the CMI's contribution to IMO's work is greatly valued and much appreciated. You have helped us frame the rules and regulations that shape the shipping industry – an industry that is essential to sustainable development in the future.

You have a packed agenda ahead of you for the next three days. There is an old saying that a bad lawyer can stretch out a case for years but a good lawyer can make it last even longer. As I am clearly in the presence of many very good lawyers, I know your ambitious timetable will be a challenge for you!

So let me take up no more of your time, and conclude by wishing you every success in your deliberations during this meeting, and by

re-affirming how much I look forward to continuing the fruitful cooperation between our two organizations.

Thank you.

Words: 2,185

Time: 21 mins (approx.)

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES
JOINT CONFERENCE WITH THE
COMITÉ MARITIME INTERNATIONAL

The Secretary-General's mention just now of the 'frailties' of lawyers brings to mind an experience of mine as a very junior member of the Bar. Some 47 years ago my Senior Partner assigned me to make an unusual motion *ex-parte* to the United States Court of Appeals for the First Circuit, in Boston. I delivered the paperwork to the Clerk of the Court, but after puzzling over it he directed me – alone – into the Chambers of the Chief Judge. The Honorable Bailey Aldrich was known to be an unusually 'crusty Yankee' taking no nonsense from lawyers; I was extremely nervous, and it showed. After looking briefly at the motion papers, Judge Aldrich said "Relax, Counsel. In this Circuit, and in Federal Courts all over the country, we hold Admiralty lawyers to be the 'Mandarins' of the legal profession." Of course, we really have no 'Mandarins' in the profession of law; but remember Mr. Kim, that IF we did they would be *Admiralty lawyers!*

I should say that it has been my privilege to have been associated with IMO and served in some capacity under every Secretary-General since Sir Colin Goad over 40 years ago, and to have taught at the World Maritime University for 19 years and the International Maritime Law Institute for 25 years. You have shone light on the importance of the CMI's efforts in IMO's work, and indeed reminded us how all employed in any position in the maritime profession owe now to the existence of the IMO.

I must express regret at missing my friend Lord Phillips. Nicholas and I first participated some 45 years ago at the Board of Inquiry into a very bad collision between loaded tankers, with a heavy loss of life, that took place off the south coast of England. Recalling that collision brings me to a sidelight on our present undertaking.

The world's first international diplomatic conference on a maritime subject was convened in Washington, D.C., on October 16th of 1889 at the invitation of President Benjamin Harrison, and delegates of 28 nations attended. In reading the record of this "International Marine

Conference”, it is plain that the participants could choose to work on any of a broad menu of subjects, from rules of the road to salvage, vessel construction and equipment, qualifications of officers and seamen, official inquiries into shipwrecks and marine casualties, and to standardize what we now call ‘marine notices’. Their choice was to limit the work to producing the *International Regulations for Preventing Collisions at Sea*, adopted on December 31, 1889.

On November 23, 1889 a dinner was given in New York by the Admiralty Bar of this City for leaders of the principal delegations at the Washington Conference. The address on that occasion was given by Robert Dewey Benedict, Esq., the ‘Dean’ of the maritime lawyers in New York who ten years thereafter would become the first President of The Maritime Law Association of the United States; after serious and humorous reminiscences he said:

“One thing more, however, I must speak of – I think this International Marine Conference, now sitting, is not to be the only such conference. Rather do I look on it as the first of a long series of conferences, in which able jurists and practical men from different nations shall confer upon their various systems of law, with the view of giving to all that which is best in each. ... We are fortunate, my brethren of the Admiralty Bar, that we are privileged to do honor here to our distinguished guests, members of our own profession, who have come from foreign lands to attend this Conference, and are giving their time and labor in the hope of accomplishing something which shall increase harmony among the nations and safety on the Sea.”

There, Ladies and Gentlemen, you see the seeds of what in time has grown into both the Comité Maritime International and the International Maritime Organization. It is entirely fitting that we should 117 years later be again in New York to live out Mr. Benedict’s foresight, together with the Executive and Members of the CMI, the Executive and Members of the U.S. Maritime Law Association, and His Excellency the Secretary-General of IMO amongst us. In this light, it is fitting to extend an official welcome to our distinguished guests and to all who are attending the present Conference.

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F. L. Wiswall, Jr.



COMITE MARITIME INTERNATIONAL

11 May 2015

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Presidents of MLAs

"Compelling Need" for new Convention on Foreign Judicial Sales of Ships and their Recognition

As you will recall, the CMI draft International Convention on this subject was approved at the Plenary in Hamburg last June. In order to move forward the draft now needs to be adopted by an international organisation such as the IMO.

The Chair and Rapporteur of our International Working Group, Prof. Henry Hai Li and Jonathan Lux, were given the opportunity to present the draft Instrument to the IMO Legal Committee meeting on 15 April last. They report an enthusiastic reception and much support. However, there was a general feeling that for the IMO (or, indeed, any other international body) to take this on it is necessary to demonstrate a "compelling need" for this new Convention. Put another way, what are the "evils" which the Convention is designed to cure.

In order to be able to meet this request and thereby move forward I would be grateful if you will revert to me with as much information as you can muster in answer to the following **question**:

Has there in your jurisdiction been litigation and/or administrative confusion resulting in delay and/or expense by reason of either:

- **Non- recognition in your jurisdiction of a judicial sale conducted elsewhere; or**
- **Non-recognition elsewhere of a judicial sale conducted in your jurisdiction?**

Examples (and they are only examples) of the sort of problems we are looking for include: –

- The purchaser may encounter difficulty in deleting the vessel acquired at judicial sale from her previous register and then registering the vessel in a register of his choice.
- The purchaser's title to the vessel may be challenged by the previous shipowner, resulting in the vessel being arrested.
- The purchaser may be called upon to defend historical claims which arose before the judicial sale, whether or not secured by a maritime lien or mortgage.

It would also be useful to know how many Judicial Sales have taken place in your jurisdiction over the last five years.

Would it be possible please for you to research the matter and provide your response report by 30 September 2015?

Yours faithfully

Stuart Hetherington



COMITE MARITIME INTERNATIONAL

Guidelines on CMI Investment Policy

1. The objective should be that the investments of CMI's assets should give a reasonable yield without compromising the safety of these assets. In the current situation in the world economy, it is not an easy task.
2. The amounts held by CMI are fairly limited. The cash reserve is at present around \$600 00, and it is likely that it will be kept at around that level in coming years. When the payments of subscriptions (totaling some \$200,000) are received from the National Maritime Law Associations in the first half of the calendar year, the amount held by CMI will increase by the amount received, but the total assets will decrease again as expenses for running the organization are paid during the year.
3. An important issue is the currency in which CMI's assets should be held. Many companies, including major P&I Clubs, match liabilities and assets. If, for instance, over several years on average 40 % of the compensation payments made by a given P&I Club have been effected in US dollars, the Club may decide to keep the corresponding proportion of its reserves in that currency.
4. For CMI, however, the situation is different. It is of course possible to establish with some degree of accuracy the currency or currencies in which the expenses for the administration of the Secretariat are incurred. Traditionally, since CMI's Headquarters, the Treasurer and the Administrator were located in Belgium, these expenses were mainly incurred in Belgian francs or, in recent years, in euros. Although the Administrator is now located in Singapore, it is believed that the major part of the normal running costs are still to be paid in euros.
5. Some major expenses, for instance those relating to Conferences, Symposiums and Colloquiums, may (unless held in a euro zone country) be paid in other currencies, as will the costs of hotel accommodation relating to meetings of the Executive Council in connection with such events. The location of these events varies from one year to another, and consequently also the currencies in which such costs are to be paid.

6. Holding its assets in various currencies would also expose CMI to the uncertainties of currency fluctuations. It could of course work both ways, resulting in either gains or losses. However, it is likely that major losses due to depreciation of a particular currency in which CMI held assets could give rise to criticism, whereas it is not obvious that gains due to appreciation of a currency would result in correspondingly favorable comments by National Maritime Law Associations. Furthermore, it is believed that if CMI's assets were to be held also in currencies other than euros, it would increase the Treasurer's work and, with due respect for the expertise of the Treasurer, would probably also necessitate the use of outside experts which would result in additional expenses.

7. Against this background, it is submitted that CMI's assets should also in the future be held in euros.

8. Another important issue is the terms for which CMI's investments should be made. In view of the relatively modest amounts involved and the importance of CMI always having sufficient liquid funds, it is suggested that the investments should not normally exceed one year and in any event not be made for more than two years.

9. Of paramount importance is the safety of the placement of CMI's assets. It would be reasonable to invest in government bonds issued by States in the euro zone, provided the State in question is highly graded by the major international rating agencies. CMI should also be allowed to make deposits with major banks or other financial institutions within the euro zone, provided again that they have high rating with such agencies.¹ Such deposits should if possible be protected by government guarantees. It is firmly believed that CMI should not invest in equities, or in corporate bonds or other unit trusts or similar products.

10. In order to reduce the risks of major losses, the investments of CMI's assets should be spread between several institutions.

11. It is suggested that the investment policy, once adopted by the Executive Council, should be set out in a formal document ("Guidelines") which should be reported to the CMI Assembly.

2014.11.06

Måns Jacobsson Andrew Taylor

¹ It could be required, for instance, that the bank or institution should have a short term credit rating of F1+, P1+ and A1+ with at least two of the three major rating agencies (Fitch, Moody and Standard & Poor).