



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



President's Message

Dear Members

The Board of MLAANZ has recently spent most of its time setting the programme for the Annual Conference. We have some excellent local speakers as well as some noteworthy overseas speakers, such as Professor Rob Merkin from the University of Exeter and Michael Chalos of K & L Gates, New York. Michael acted for the master of the Exxon Valdez. The programme is on the website, so please have a look at it. Early bird registration (which represents a saving of \$149) ends on 25 July 2014.

Neil Beadle and I both attended the CMI conference in Germany. Our reports from the conference are in the newsletter. Neil and I are both grateful to the Board agreeing to our request that our airfares and registration be paid by the association.

On 1 May 2014, I attended the New South Wales branch's half-day conference in Sydney. Many maritime law luminaries were present to hear some excellent presentations. Justice Rein of the Supreme Court of NSW gave a particularly informative and entertaining paper. Danella Wilmshurst has prepared a report which appears in this newsletter.

I was in Singapore couple of weeks ago, where I caught up with some of our MLAANZ members and friends, including Leong Kah Wah of Rajah & Tann (who will be presenting in Queenstown) and Chris Edwards. Chris, who has presented at a number of our conferences, has recently moved to Hill Dickinson, so I wish him all the best.

I have received a notice that the AMTAC annual address will be held on 4 September 2014 at the Federal Court in Sydney (and videocast to Federal Courts across Australia). This year, David Buyers, Chief Executive of the Australian Petroleum Production and Exploration Association will be presenting on "LNG — Driving Gas Globalisation: An Australian Perspective". Go to the AMTAC website for more details www.amtac.org.au.

Judge Tom Broadmore retires from the bench this year. His Honour is a long time member of MLAANZ, a former President and, in fact, our last New Zealand President. There will be a dinner for his Honour on 29 October 2014 in Auckland. The venue is to be confirmed.

Thank you for the kind words I received about the last newsletter. I look forward to catching up with as many of you as possible in Queenstown. Don't forget — no suits and no ties at this year's conference.

Kind regards

Matthew Harvey
President
MLAANZ
July 2014

PLEASE CONTINUE THROUGH DOCUMENT TO VIEW THREE CMI CONFERENCE REPORTS



Report from the CMI Conference

The CMI conference opened at the Atlantic Hotel in Hamburg on Monday, 16 June 2014. The opening speech was given by Dr Hubert Weis, Director General, Federal Ministry of Justice & Consumer Protection. He spoke about the city of Hamburg and the CMI in the development of private international maritime law.

The keynote speech was then given by Thomas Rehder, President of the European Community Shipowners' Association, a lobby group for European shipowners. His speech was entitled: "Shipping Industry Navigating through Troubled Waters — the Way Ahead?" He spoke about the need for industry to engage with regulators to produce practical solutions to the problems arising from international trade.

Following the opening, the conference then conducted two sessions in tandem: one dealing with several shipping law issues, the other for the negotiation, drafting and finalisation of the Beijing Draft Convention on the judicial sale of ships. Neil Beadle and I both participated in the second session. For an account of this session, see Neil's report in this newsletter.



The second day of the conference commenced with a joint session entitled: "Ships in Cold Water — Arctic Issues Examined". Professor Aldo Chircop, who heads the CMI international working group, presented a short review of the group's work and an overview of the United Nations Convention on the Law of the Sea (UNCLOS) with respect to the Arctic and Antarctica.

The group was established in 2011 at the instigation of Nigel Frawley, a well-known Canadian lawyer and a former Secretary — General of the CMI. The group identified a number of legal issues arising from shipping in polar regions and then considered how it could contribute to the public consideration of these issues. The group focussed its attention on the effect of the UNCLOS in the Arctic, civil liability in polar marine environments, load lines when navigating in polar waters, the International Maritime Organisation's draft Polar Code, and the Northern Sea Routes.

Most of Professor Chircop's presentation dealt with the division of seabeds and the creation of maritime zones in the Arctic under the UNCLOS. He also spoke about climate projections to the effect that by 2030, the North-east Passage (to the north of Canada) is estimated to be open to shipping for some 9 weeks per year and the North-west Passage (to the North of Russia) for some 5 weeks per year.

Professor Tore Henriksen spoke about the IMO's draft Polar Code. He discussed the adequacy of the existing rules and standards. He then considered the provisions of the Polar Code, with particular emphasis on its application, legal status, and its processes to minimise environmental and shipping risks in polar regions.

Alexander Skaridov presented on the North-eastern Sea Route. The route is within Russia's EEZ. He discussed Russia's development strategy of the North-eastern Sea Route and some of the environmental and shipping risks that need to be addressed by the strategy.

Professor Chircop gave a brief presentation on load lines in polar waters. Interestingly, it turns out that load lines for ships in temperate and tropical waters may not be appropriate for polar regions. This may well affect the stability of ships in polar regions, which could adversely affect the environment, shipping and trade passing through those regions. Finally, Lars Rosenberg-Overby spoke about civil liability in polar marine environments.

The conference then divided into two sessions along the same lines as the preceding day. Neil and I devoted our time to judicial sales.

Matthew Harvey
July 2014



Report from the CMI Conference

The International Tribunal for the Law of the Sea

In the morning of Wednesday, 18 June 2014, a session of the CMI conference was held at the International Tribunal for the Law of the Sea, which is located in Hamburg.

Both Australia and New Zealand signed the United Nations Convention on the International Law of the Sea (UNCLOS) on 10 December 1982 and subsequently ratified it in 1994 and 1996, respectively. The UNCLOS sets out rules regarding the exercise of rights in and physical extent of different maritime zones, the protection of the marine environment, fisheries, and marine scientific research.



Annex VI of the UNCLOS sets out the jurisdiction and general structure of the International Tribunal for the Law of the Sea. Under Article 21, the Tribunal has jurisdiction over disputes concerning the interpretation or application of the UNCLOS and over all matters specifically provided for in any other agreement which confers jurisdiction on it.

The building in which the Tribunal sits was designed by German architects following an international competition. It is a handsome modern building, overlooking the Elbe River.

The CMI delegates were fortunate to have the President of the Tribunal, Shunji Yanai of Japan, and the Registrar, Philippe Gautier of Belgium, to speak about the work of the Tribunal.

Since it began in 1996, the Tribunal has made orders in 22 cases. These cases can be broadly categorised as: applications for interim injunctions (referred to as “provisional measures”); applications for the prompt release of ships; disputes involving maritime boundaries; disputes as to the effects of State activities on the environment and fisheries. Interestingly, the Tribunal is empowered to give and has in fact given advisory opinions.

Applications for provisional measures arise in two types of situations: to preserve the parties’ rights or to prevent harm where the parties are either awaiting a judgment as to their dispute or while an arbitral tribunal is being constituted.

The Tribunal comprises 21 judges. They hear cases all together from time to time. The judges are elected by regional groupings of nations. Each judge is elected for a nine-year term. An election of one third of the judges is held every three years.

The President spoke about a dispute between Bangladesh and Myanmar concerning the delimitation of the maritime boundary of those two states in the Bay of Bengal. He pointed out that dispute had existed between the two states for 36 years but that, from the moment of the proceeding being commenced, the Tribunal gave its determination in two years two months, thus finishing the dispute.

The Registrar spoke about dispute a between St Vincent and the Grenadines and Guinea in which an application was made to the Tribunal to release the MV “Saiga”, a ship flagged in St Vincent and the Grenadines. Originally, Guinea arrested the ship while off its coast for bunkering fishing vessels. The Tribunal ordered that the ship be released. The governments of St Vincent and the Grenadines and

of Guinea decided to submit their dispute to the Tribunal. The dispute concerned questions about the jurisdiction of coastal states in their exclusive economic zone, freedom of navigation, enforcement of customs laws, bunkering of vessels and “the right of hot dispute”. The Tribunal gave judgment in favour of St Vincent and the Grenadines, ordering that Guinea pay compensation of some US\$2 million.

A number of nations have donated maritime artefacts and model ships which are on display at the Tribunal. Unfortunately, the delegates were unable to see the principal hearing room, as it was being renovated.

Australia and New Zealand have both conducted matters in the Tribunal. The third and fourth cases before the Tribunal were proceedings brought by our nations against Japan as to its experimental fishing of Southern Bluefin Tuna. Provisional measures were sought and granted in order to protect fishing stocks and requiring the parties to settle their disputes by agreement.

Matthew Harvey
July 2014



Report from the CMI Conference

On Wednesday, 18 June 2014, after the visit to the ITLOS (see second report), the conference delegates travelled by train to Berlin, arriving in the afternoon. The following morning, the delegates assembled in a circular meeting room at the Reichstag.

The subject of this session was “Maintaining Maritime Laws — An Overview of Reforms”.

Dr Beate Czerwenka spoke about the adoption of a new maritime code in Germany in April 2013. The new code also deals with inland navigation, transport contracts and procedural law. German federal law applies a version of the Hague-Visby Rules to the carriage of goods by sea, while German state law applies a version of the Hague Rules. The Athens Convention applies to the carriage of passengers. An English translation of the German Maritime Code is currently being prepared.



Photograph supplied by Grit Tüngler

Professor Eric van Hooydonk of Belgium gave a presentation about the new Belgian Maritime Code. It replaces the 1879 code. The Belgians are keen to make Belgium as a more attractive place for maritime arbitration. The code applies the Hague-Visby Rules to the carriage of goods by sea and the Athens Convention to the carriage of passengers. The Code is, not surprisingly, in Flemish and in French. No mention was made of any English translation.

Brazil, we were told, has the seventh largest economy in the world. Camila Mendes Vianna Cardoso spoke about the new maritime law bill that will soon become law in Brazil. The new bill will replace the 1850 code, that currently applies. It will reflect international practice and will advance the interests of Brazil. The new bill establishes a one-year limitation for bringing cargo claims, thus clarifying previous uncertainty. Arrest of ships is possible in Brazil but it is difficult and costly, the new bill will make arrest simpler.

Modern Japanese maritime law finds its origins in a draft code prepared in 1890 by a German lawyer. Tomotaka Fujita informed the delegates that the Hague-Visby Rules currently apply in Japan. However, Japanese maritime law is currently undergoing a major revision. A number of study groups have been established to examine and report on various aspect of the law. The multimodal transport study group has proposed that there be a presumption that, where cargo is delivered in damaged condition, the damage occurred during the longest leg of transport. It is expected that the new Japanese maritime code will be completed in 2016.

Dr Jesús Casas Robla of Spain is a maritime lawyer and a professor of Roman Law. His presentation was peppered with Latin quotes and was delivered in his enthusiastic style. Spain's Code of Commerce was first adopted in 1885; however, in the 20th century, Spain also ratified many conventions regarding maritime law. This created numerous inconsistencies within the law. In order to deal with these problems, Spain will adopt a new maritime code in July or September this year. It is similar to the new German code. It applies the Hague-Visby Rules to the carriage of goods by sea. While Spain has ratified the Rotterdam Rules, it will not become law until the code is amended, following the Rules coming into force internationally.

Alexander von Ziegler of Switzerland spoke about the Rotterdam Rules. He said that currently, 25 nations, representing 25% of the world's trade, have signed the convention. However, only three nations have ratified the convention, namely Congo, Togo and Spain. Seventeen further nations are needed to ratify the convention. He said that Denmark, Norway and Holland have all expressed a keenness to ratify the convention. But, he admitted, it all comes down to what the United States decides to do. In his view, it is likely that the United States will ratify the convention but the timing is still in question.

This particularly international session was the last session of the conference. The next CMI conference will be held in 2016 in New York. In the meantime, a symposium will be held next year in Istanbul.

Matthew Harvey
July 2014

