



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



CMI Colloquium Mexico City

The Comité Maritime International (CMI) Colloquium 2019 took place in Mexico City from September 30 to October 2, 2019, with over 200 delegates in attendance from 42 countries. Australia was represented at the Colloquium by Stuart Hetherington as executive committee member of CMI and Michelle Taylor as Australian vice-president of the Maritime Law Association of Australia and New Zealand (MLAANZ). The Colloquium was opened by the president of CMI, Christopher Davis, together with the president of the Mexican Maritime Law Association, Ignacio Melo.

Colloquium Sessional Programme

The three-day Colloquium sessional programme in Mexico consisted of a number of topics relevant to maritime lawyers internationally. A brief overview of each of these topics is outlined below.

The Offshore Energy Industry 40 Years Post IXTOC I

The speakers in this session represented Australia, the United States, Mexico and Brazil.

The Honourable Justice Stephen Rares presented a paper entitled: “Charting a New Course — Promoting the Development of an International Convention on Liability and Compensation Relating to Transboundary Damage from Offshore Oil and Gas Activities.”¹

The Future of Shipping Lawyers

Young maritime lawyers from Italy, France, Mexico and Ecuador discussed the impact of technological developments on future maritime law — for example artificial intelligence, smart contracts and blockchain technology.

Proposals for Future Unification of Maritime Law — Lex Maritima

Professor Eric van Hooydonk from the University of Antwerp spoke on CMI’s work — *Lex Maritima*. The primary purpose of CMI is the unification of international maritime law. The goal of *Lex Maritima* is to record those principles of maritime law which are universally recognised, but to date have not been reduced to writing. One of the benefits of a recorded *Lex Maritima* will be to ensure that differing interpretations of maritime law are minimised, particularly with respect to international conventions.

Women in Today’s Shipping World

The forum was co-moderated by Dr Ann Fenech, vice-president of CMI and Ms Liliana Monslave of IOPC Funds. This forum explored women as catalysts for positive change and discussed what influence women can bring to bear on the shipping industry.

Cybercrime and Insurance Coverage Issues

There were speakers in this session from Canada, the United States and Argentina, and the moderator was Joe Grasso, chair of the CMI Marine Insurance Standing Committee. Cyber risks from the perspectives of hull, cargo and P&I insurers were discussed.

¹ <https://www.fedcourt.gov.au/law-and-practice/national-practice-areas/admiralty/admiralty-papers/rares-j-20190930>

This session also noted the adopted resolution of the International Maritime Organization (IMO) Maritime Safety Committee (ie, Resolution MSC.428(98) — Maritime Cyber Risk Management in Safety Management Systems). This resolution encourages shipping companies to ensure that cyber risks are appropriately addressed in existing safety management systems (as defined in the ISM Code) by the end of 2020 (ie, no later than the first annual verification of the company's document of compliance after January 1, 2021).

Civil Liability, IOPC Fund and HNS Conventions — is it time for Latin American Governments to Ratify these Conventions?

Dr Rosalie Balkin, secretary-general of CMI, chaired this session and presentations were given by Jose Maura of IOPC Funds, Jan de Boer of IMO, David Baker of the International Group of P&I Clubs and Kiron Khosla of the International Chamber of Shipping. There were also invited speakers to discuss the lack of engagement by Central and South American Governments with respect to the Civil Liability and Fund Conventions.

Importantly, this session discussed the current status of the HNS Convention which is relevant to MLAANZ. Neither Australia nor New Zealand are signatories to the HNS Convention. To date, eight States have signed the HNS Convention, but only five States have ratified (South Africa, Canada, Denmark, Norway and Turkey). In order to enter into force, 12 countries are required to ratify, four of which must each have a merchant shipping fleet of no less than two million units of gross tonnage.

IMO secretary-general Mr Kitack Lim sent the following message to CMI delegates:

“The HNS Convention is the last piece in the puzzle needed to ensure that those who have suffered damage caused by hazardous and noxious substances (HNS) cargoes carried on board ships have access to a comprehensive and international liability and compensation regime.

“The number of ships carrying HNS cargoes is growing steadily with more than 200 million tonnes of chemicals traded annually by tankers, and we have to recognise that accidents can and do happen. I urge all States to follow the example set [by ratifying countries] and consider acceding to the HNS 2010 treaty as soon as possible, in order to bring it into force.”

CMI Assembly

The Colloquium closed with a meeting of the CMI Assembly. The CMI International Working Groups (IWGs) listed below each gave individual reports.

a) Acts of Piracy and Maritime Violence

This IWG reports at each Assembly on the prevalence of piracy and the jurisdictions or geographical areas in which it is taking place.

b) Fair Treatment of Seafarers (including Pandemic Response and Migration at Sea)

The IMO has requested that CMI bring to the attention of maritime law associations (MLAs), the responsibilities that member countries of the World Health Organisation (WHO) have to seafarers (as well as passengers) of ships when there is a world pandemic such as swine flu, ebola etc.

A questionnaire was prepared by Stuart Hetherington during his CMI presidency. This questionnaire has been sent to MLAs enquiring as to whether national laws give effect to the requirements of the WHO Convention.

c) Recognition of Foreign Judicial Sale of Ships

The importance of this work is that without a reliable international basis for the recognition of the judicial sale of vessels, buyers cannot be certain of obtaining clean title. This results in lower sale prices and impacts recoverability for banks/financiers. The Recognition of Foreign Judicial Sale of Ships Working Group has prepared a draft convention, which has been approved by CMI and

accepted by the United Nations Commission on International Trade Law (UNCITRAL) for further work. It has been allocated to UNCITRAL Working Group VI to be developed into an international instrument. The ongoing assistance of MLAs will be required to respond to questionnaires received from UNCITRAL Working Group VI in order to see this project through to its completion.

d) Cross-Border Insolvency

This IWG is being dissolved as it is not considered feasible to find a uniform way which would find international acceptance to amend the UNCITRAL Model Law on this topic, given the plethora of different procedural practices that States operate in this area.

e) Polar Shipping

This is one of the most active IWGs with sub-groups looking at different areas of international maritime law to see how relevant they are to polar shipping and what areas need reconsideration in light of the different navigational and operational requirements that ships experience in polar regions.

f) Offshore Activities

This IWG is closed and CMI is considering how best to further its work given the lack of enthusiasm from international regulators at this time.

g) Ship Finance Security Practices

This IWG completed its work last year. It essentially considered whether there was any need or desire for the shipping world to be brought under the aegis of the Cape Town Convention. It was determined that there was no such need for ships to be brought within its ambit. The Group has now been reconstituted to consider whether containers could or should be considered as a possible area for inclusion by way of Protocol to this Convention. A questionnaire is in the course of being sent out to MLAs.

h) Liability for Wrongful Arrest

A questionnaire will soon be circulated amongst MLAs to gain insight into how each jurisdiction deals with damages for wrongful arrest (for example, in our jurisdiction pursuant to section 34 of the Admiralty Act 1988(Cth)).

i) Ship Nomenclature

This IWG was created to research the differences in national legislation of the use of words such as “ship” and “vessel”. A questionnaire has been sent to MLAs to assist with this work.

j) Classification Societies

This IWG has been seeking to obtain support from shipowners (without success) to investigate whether other organisations such as classification societies should be brought within the class of beneficiaries to the Limitation Convention.

k) Unmanned Ships

This IWG is the largest within CMI with 24 members, including Professor Nick Gaskell of the University of Queensland. An examination is being conducted to consider the possibility of developing an overarching convention which might cover all conventions and provide a framework for the regulation and operation of unmanned ships within the current international regime.

Reports were also given by the Marine Insurance and Rotterdam Rules Standing Committees. Two marine insurance projects are continuing — namely, the impact of sanctions on insurance cover and a comparative review of direct rights of action against insurers (to assist in the drafting of future liability conventions). The current status of the Rotterdam Rules is that 25 states have signed the Convention,

but only four have ratified. The Netherlands has begun implementation through its local laws but they are not yet in force.

The relevance of the Rotterdam Rules is that it deals with electronic bills of lading whereas carriage of goods by sea liability regimes such as the Hague Rules and the Hamburg Rules do not. Ocean carriers and some governments are interested in “blockchain” technology and the potential digital transformation of international trade. There is a potential for “blockchain bills of lading” to be regarded as electronic transport records under the Rotterdam Rules. CMI is considering how to best progress the work of the Rotterdam Rules.

Future CMI

The next CMI Conference will be held in Tokyo from October 20-24, 2020. Any member of MLAANZ is welcome to attend the conference to observe or contribute to the important work of CMI.

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