

# COMITÉ MARITIME INTERNATIONAL

## MINUTES OF THE CMI ASSEMBLY HELD AT THE AUTOMOBILE CLUB DE FRANCE, IN PARIS ON APRIL 16, 2005 AT 0900

### ATTENDING:

President:	Jean-Serge Rohart
Vice-President:	Frank L. Wiswall, Jr.
Councillors:	José Maria Alcantara Johanne Gauthier JoséTomás Guzman Stuart Hetherington Henry Li Thomas Remé Gregory Timagenis
Secretary-General:	Nigel Frawley
Administrator:	Wim Fransen

### MEMBER ASSOCIATIONS:

The delegates registered for and those present at the Assembly are set out at Annex "A" to these Minutes. A quorum was declared and the meeting held to be properly constituted.

President Jean-Serge Rohart opened the meeting and welcomed all of the delegates present. He then introduced the Executive Councillors and said that Francesco Berlingieri, Patrick Griggs, Karl-Johan Gombrii and Benoit Goemans were very sorry that they were unable to be at the Assembly. The President advised the Assembly that Patrick Griggs had been honoured by Queen Elizabeth II recently at Buckingham Palace by bestowing upon him the C.B.E. (Commander of the British Empire) for his many contributions to international maritime law.

#### 1. **Adoption of Agenda**

The tabled agenda was adopted.

#### 2. **Memorials**

The President then paid tribute to our esteemed Past-President, Allan Philip, who died in September 2004. He was an eminent scholar and earned the title of Doctor Juris at the University of Copenhagen. He was a Professor and then Dean of the law school of that University and lectured at The Hague Academy of International Law. He was the senior partner of the law firm, Philip and Partners, of Copenhagen. He represented Denmark at many diplomatic conferences on maritime and private international law and has been an expert from Denmark in the committees of the European Union and the Council of Europe. He was elected President of the CMI in 1990 and served for eight years in an exemplary fashion. He will be greatly missed.

The Acting Secretary-General then paid tribute to the Honourable Mr. Justice Richard Cooper of the Federal Court of Australia. He was a great supporter of the Australian and New Zealand MLA and the CMI. He attended many conferences and participated fully in maritime matters. He also earned the respect of the Attorney General of Australia in recent years owing to his presiding over a lengthy and difficult hearing relating to aboriginal land rights in Australia.

The President then called for a moment of silence in tribute to these two fine gentlemen.

3. **Approval of the Minutes of the Assembly held in Vancouver on June 4, 2004**

The Minutes of the Vancouver Assembly were duly tabled and approved.

**Matters arising therefrom:**

There were no matters arising from the Minutes.

4. **Members**

(a) **Titulary Members:**

President Rohart moved for the admission of the following as Titulary Members of the CMI:

Argentina:

Diego Chami, Carlos Lesmi and Jorge Radovich.

The Netherlands:

Taco Van Der Valk.

So resolved.

(b) **Honorary Vice-President:**

President Rohart reported that the Executive Council had recommended the appointment of Frank L. Wiswall, Jr. as Honorary Vice-President in recognition of his many contributions to the CMI. So resolved.

(c) **Consultative Members:**

No nominations were received.

(d) **Associations of Maritime Law:**

No nominations were received.

**Nominating Committee Report:**

Bent Nielsen then advised the delegates that Frank Wiswall, Jr. had now completed two terms as a Vice-President and was not eligible for re-election. He thereupon nominated Stuart Hetherington (Australia) for a first term and Karl Johan Gombrii (Norway) for a second term as Vice-President. He then nominated Nigel Frawley (Canada) for a first term as Secretary-General. He nominated Benoit Goemans (Belgium) for a second term as Treasurer and Johanne Gauthier (Canada) for a second term as Executive Councillor. He noted that Thomas Remé had completed two terms as an Executive Councillor and was, therefore, no longer eligible for re-election. He then pointed out that Professor John Hare (South Africa) was obliged to resign for personal reasons but that his resignation would not be accepted until the Assembly at the Cape Town Colloquium. He thereupon nominated Christopher Davis (U.S.A.) and Sergej Lebedev (Russia) for first terms as Executive Councillors. He then called for nominations from the floor but there were none. Professor Kolodykin, Chairman of the Russian MLA, then spoke on the high qualities of Mr. Lebedev and pointed out that he was presently Deputy Chairman and Vice-President of the Russian MLA. Mr. Nielsen then moved for adoption of the Nominating Committee's report. The motion was seconded and carried unanimously.

**Tributes to Frank L. Wiswall, Jr. and Thomas Remé:**

The President then paid tribute to Frank Wiswall who has served the CMI faithfully on its Executive Council for a total of 16 years - eight years as an Executive Councillor and eight years as a Vice-President. He pointed out that his important contributions have been many and

that he was pleased to say that Mr. Wiswall had agreed to remain involved in several of the committees and working groups. Mr. Rohart also paid tribute to Mrs. Libby Wiswall who has been a loyal and faithful supporter of the CMI who attended all conferences, colloquia and meetings and often gave wise advice at social gatherings. He then presented Mr. Wiswall with a telescope in recognition of his service. The plaque on the box was inscribed: "To Frank L. Wiswall, Jr., from your friends at the CMI, April 16, 2005 Paris".

The President then paid tribute to Thomas Remé who has served the CMI effectively for eight years on the Executive Council. He extolled his virtues as a lawyer, poet and Executive Councillor and presented him with a chronometer as a gift. The plaque on the box was inscribed: "Thomas Remé, from your friends at the CMI, April 16, 2005 Paris".

**Finances:**

(a) Nigel Frawley then presented the accounts for the fiscal year-end December 31, 2004, the Treasurer's report and the report of the Chairman of the Audit Committee in the absence of Benoit Goemans and Senator David Angus. Mr. Frawley referred to the strong financial position that the CMI is in owing, in large part, to sound fiscal management and the donation from the Canadian Maritime Law Association arising from the surplus funds from the CMI Conference in Vancouver. He said that the Treasurer was mindful of the travel expenses that would be incurred in February 2006 for the Colloquium at Cape Town and would continue to adopt his usual conservative approach. Mr. Frawley then moved the adoption of the accounts. Mr. Peter Cullen, President of the Canadian Maritime Law Association, moved an amendment this being that on the income and expenditure account under the heading "Other Income", the word "conf. profit" be deleted and the words "conf. surplus" be inserted. This is to bring it into line with the Canadian Maritime Law Association's bookkeeping to accord with the Income Tax laws for non-profit organizations. He also moved that on the Financial Statements and Budgets page under "Other Income", that the words "Conference Profit" be deleted and the words "Conference Donation" be inserted in lieu thereof. Mr. Brian McGovern of the Irish MLA seconded the amended motion and it carried unanimously. Mr. Frawley then moved that the auditors, De Mol, Meuldermans & Partners BBBA, as represented by Kris Meuldermans, be appointed as external auditors of the CMI for the fiscal year 2005. Johanne Gauthier seconded the motion and it carried unanimously.

(b) **Unpaid Subscriptions:**

The President stated that Mauritania and Senegal were outstanding in their annual contributions and had not replied to letters seeking payment. In the result, and pursuant to the Constitution and practices of the CMI, the President moved that they be expelled. This was seconded by Wim Fransen and unanimously carried.

(c) **Revision of CMI Constitution/New Legal Status for CMI:**

Wim Fransen reported that the process was largely complete but that there were a few minor amendments still to be done which would then be put to the Assembly in Cape Town in February 2006 for consideration and vote.

**Cape Town Colloquium:**

The President then invited James MacKenzie of the law firm Wylie & Shepstone, Cape Town, who is the Chairman of the organizing committee for the colloquium, to address the Assembly. Mr. MacKenzie reported that he was working closely with the CMI in an effort to keep the registration fee and other costs down and he encouraged people to attend what promises to be

a most exciting colloquium. He described Cape Town as a very welcoming tourist destination and that there were all manner of different things to see and do in and from that location. The President then said that the title of the colloquium would be "Safety and Liberty at Sea" and that the featured presentations would be (i) Places of Refuge, led by Stuart Hetherington. He described how as this topic proceeds, questions may arise as to whether a new Convention is required or simply guidelines or some other instrument; (ii) Fair Treatment of Seafarers following a Marine Accident. This would be led by Edgar Gold and he encouraged replies to the Questionnaire on this topic. The President then described the other subjects that might be given, including Wreck Removal, UNCITRAL Issues of Transport Law, Maritime Violence, Sistership Arrest and Marine Insurance.

### **Assembly 2006**

This will be held during the afternoon on Wednesday, February 15, 2006 at the Cape Town Convention Centre.

### **Publications**

#### **(a) CMI Archives**

Mr. Frawley reported that an inventory of publications was presently being taken by Francesco Berlingieri and Frank Wiswall and they would be put on a CD-ROM in due course. Mr. Brian McGovern of the Irish MLA said that he had visited the CMI website recently and noted that the reports from Vancouver were not on it. Mr. Frawley said that he would refer this to Mr. Berlingieri for action.

#### **(b) CMI on the Internet**

Mr. Frawley reminded those present that the CMI website is: [www.comitemaritime.org](http://www.comitemaritime.org) and that efforts were underway to prevent unwanted links.

#### **(c) Work in Progress**

**(a) Transport Law** - Nigel Frawley reported that Stuart Beare was presently in New York to attend the UNCITRAL meetings on the preparation of a draft instrument on Issues of Transport Law which was due to commence on April 18 and proceed until April 29, 2005. He said that the rapporteur was Michael Sturley who would be in New York as well.

**(b) Marine Insurance** - Thomas Remé advised that John Hare's report at the CMI Conference in Vancouver would be put on the website. He said that there were new international initiatives in this field which his committee was following closely.

**(c) Maritime Security** - Mr. Frawley reported that there had been a meeting in London recently on this topic, including representatives from the IMB, BIMCO, Interpol, the Clubs, IUMI, the International Chamber of Shipping and Frank Wiswall on behalf of the CMI. He said that strong feelings had been expressed to revisit the Model National Law on Acts of Piracy and Maritime Violence which had been prepared by Mr. Wiswall and representatives of other organizations, to bring it up to date with post 9/11 conditions. It was considered that the Model Law should cover terrorism, kidnapping for ransom from ships, SUA, piracy and any violent act. A report has been prepared by Mr. Wiswall for circulation to the IMO Legal Committee, the CMI Secretariat and the CMI Newsletter. The next meeting will be held in London in November 2005 immediately after the IMO

meeting to amend SUA. He said that it was vital that the Model Law be completed by the end of 2006.

- (d) **Implementation and Interpretation of International Conventions** - Gregory Timagenis referred to the Guidelines on Implementation he was working on and urged that this be a work topic for the Athens Convention in 2008. He said the work being done on implementation is a contribution to uniformity. He urged replies to the Questionnaire on the subject and suggested that the CMI avoid public international law and concentrate on private international law. He said that procedural rules, such as those contained in the Limitation Conventions, are for the States involved but that CMI guidelines would be helpful to courts and civil servants.

The President then said that the CMI should not only bring its expertise on legal affairs to the IMO but that it was important we continue with our own projects of assisting in unifying procedural rules of private international law in those subjects we think important, for example, Limitation of Liability, Salvage and HNS. Mr. Timagenis said that he would continue his work on Limitation of Liability guidelines for the CMI Conference in Athens in 2008.

- (e) **Salvage** - The President then reported that there were often problems with procedural rules under this topic and there is no reason why the CMI cannot prepare guidelines for the assistance of those concerned.
- (f) **Places of Refuge** - Stuart Hetherington said that at the Vancouver Conference, Places of Refuge was discussed and eight issues arose. These were embodied in a report which was submitted to the Legal Committee at the IMO. He said that there are two distinct views at IMO: some EU countries do not want a new Convention; and several other countries in the world do want a new Convention. This problem will be discussed at Cape Town. He then said that Patrick Griggs had met with Alfred Popp and Rosalie Balkin of the IMO and suggested that a short supplemental report on Places of Refuge be forwarded to IMO on preventive measures. This has been done and was presently under consideration of the IMO Legal Committee.
- (g) **Bareboat Charter Vessels** - José Maria Alcantara reported that the IMO had raised this subject for the CMI's consideration stressing safety and certificates of insurance. He said that under the Athens Protocol there was no problem for passengers as there is provision for certificates of financial security. He went on to say that the provision of such certificates by Bareboat Charterers directly, unlike Owners, will give rise to certain problems under other Pollution Liability Conventions because such obligation may be falling on the registered Owner only. The CMI has prepared a report for IMO, which has been circulated among the National Maritime Law Associations.
- (h) **Revision of CLC/Fund Conventions** - The President reported that meetings of the governing bodies of the 1971, 1992, and Supplementary Funds took place in London between March 14-22, 2005. The CMI was in attendance as an observer delegation represented by Richard Shaw. The most significant event was the formal entry into force on March 3, 2005 of the Supplementary Fund. A

resolution was made at one of the meetings to accord observer status at meetings of the Supplementary Fund to all non-governmental organizations which already have observer status to the 1992 Fund. Among those organizations was the CMI.

He then referred to the Inter-sessional Working Group which has met regularly over the past five years and is responsible for the genesis of the Supplementary Fund. It was recognized that, having brought this new Fund into existence, there remained a widely-held view that the burden of the compensation regime fell unfairly on the oil cargo industry and that a significant increase in the shipowner's share was called for. The International Group of P & I Clubs have taken this matter under consideration and have already put into place a scheme called "STOPIA (Small Tanker Oil Pollution Indemnification Agreement)" to address this concern. It is hoped that this scheme will result in the IOPC Fund again becoming concerned only in major cases, except for those cases where the shipowner's liability insurance cover is inadequate or non-existent. Although the STOPIA scheme was welcomed by the delegates in the Working Group, an alternative scheme has now been created called "TOPIA" to make up any shortfall.

- (i) **General Average** - Bent Nielsen then reported on the York/Antwerp Rules 2004 which were finalized at the Vancouver Conference. He said that BIMCO has stated to its members they do not endorse them but that they prefer to rely on the 1994 York/Antwerp Rules. He said that there were a variety of thoughts and conclusions by insurers but their bargaining power was not great. He said that the future was not optimistic for the new Rules.

He then raised a point under the new Rule 21. This is that a rate of interest has to be fixed every year. He said that a Working Group comprising Patrick Griggs, Richard Shaw, a Danish banker and Bent Nielsen fixed such rate for the period January 1, 2005 - January 1, 2006 at 4 ½% p.a. He moved that this rate of interest be adopted, it was seconded by Mr. Timagenis and the motion carried unanimously.

The President then said that 200 cards/brochures describing the new Rules in the English language had already been distributed to IUMI and that 300 cards/brochures in English and French would be distributed to industry in the near future.

- (j) **Wreck Removal** - The President said that the IMO, with CMI help, has studied this draft Convention in the context of the Salvage Convention. He said that this would be the subject of a paper given at the Cape Town Colloquium.
- (k) **Classification Societies** - Mr. Frawley reported, in Frank Wiswall's absence, that there appears to be a general interest still existing among shipowners and Classification Societies that the CMI re-visit this work topic some time in the future, but not at present. Limitation of Liability is still a difficult area and it is felt that once a Court hands down a large Judgment against a Classification Society there will be an impetus for further work on this topic. The CMI will continue to monitor.

- (l) **Fair Treatment of Seafarers following a Marine Accident** - The President reported on the harsh criminal sanctions against seafarers following a casualty or pollution event. He cited many examples of Masters being incarcerated and crews held for interviewing by the authorities for long periods of time which posed great difficulties for themselves and their families, as well as for Shipowners/charterers who want to keep their ships moving. He said that a Questionnaire had been distributed by Edgar Gold's committee with a March 30, 2005 deadline. Many replies have been received. He said that Mr. Gold's committee would review the reluctance of shipowners' insurers to indemnify Masters and crew and assist local police and other authorities. It is vital that a distinction be made between a maritime crime and an inadvertent act leading to a catastrophic result.

**VARIOUS:**

(a) **Young Members and CMI Prize Competition**

José Maria Alcantara reported on this project which promotes a prize for an essay prepared by members of National MLA's who are under 35 years on the subject of Fair Treatment of Seafarers following a Marine Accident. He said that the prize for the winning entry would be a free air ticket to the Cape Town Colloquium. He said that a letter on this would be going out to all National MLA's in the near future.

At this point, the President said that he encouraged more young members and participation within the CMI.

Mr. Timagenis said that he hoped a few hours would be spent on this subject at the Athens Conference in 2008. He said that it is important that we tell young members of the CMI's history, work and importance.

(b) **New MLA's**

The President said that there were no new MLA's. He asked for ideas on how to encourage new members. He said that Johanne Gauthier had prepared a Starter Kit for prospective and new associations and this would be posted on the website. He said, further, that we should enhance our reputation as experts in maritime law. He is disappointed by those in arrears in their annual contributions and sought advice on how to deal with this.

(c) **CMI 39<sup>th</sup> International Conference, Athens 2008**

Gregory Timagenis then reported that the month of October was the most appropriate month for a conference to be held in Athens to get cheaper prices in hotels and air fares while the weather is still good. The exact dates are Monday, October 13, 2008 to Friday, October 17, 2008 although the opening ceremony will take place in the evening of Sunday, October 12, 2008. Although the hotel prices are much higher at present, the Organizing Committee has negotiated prices around 200 Euros per day for 2008. The program will include working sessions on the Monday, Tuesday, Thursday and Friday, in the morning and the CMI Assembly in the afternoon. On the Wednesday an excursion or probably a day cruise will be organized and there will be social events in the evening. He said that by the Cape Town Colloquium there would be a draft programme in place. The registration fee was estimated to be on average 800 Euros, but it will escalate depending on the time of registration from 750 Euros to 850 Euros and to 950 Euros.

### **FUTURE TOPICS**

The President then said he would appreciate hearing from any member who had ideas for future topics.

Andrew Taylor of the British MLA agreed with Mr. Timagenis that Young Members be on the Athens programme. He said that the BMLA is making a big effort to attract young members and it is important that we make the CMI/MLA's more attractive. Mr. Timagenis agreed and said that they could set up separate rooms for young and old delegates at the Athens Convention on topics. Mr. Alcantara said that we should not be too paternalistic on this. Young members have done a lot of research and are quite experienced in our work. The Belgian delegate said that we should consider lowering the registration fee for young members and Mr. Timagenis said that he would look into this. Liz Burrell of the USMLA said that they had conducted a study of young members over the past 2 1/2 years. She said that the bottom line is that money is the major problem for young members. For example, registration fees and membership fees, time away from the office, plus continuing legal education criteria, militate against young member participation. Mr. Oduba of the Nigerian delegation said that they are studying the British system of points towards continuing legal education and that age should be measured by years of practice, not simply being "under 35".

The President summed up by saying that this is a worthy topic for consideration by the Executive Council.

### **TERMINATION**

Professor Kolodykin stated that he wanted it known that Russia had recently paid its 2004 dues and would not be long in paying their 2005 dues.

Thomas Rue, President of the USMLA, congratulated Jean-Serge Rohart for his handling of his first Assembly and looked forward to the new era under his leadership. He thanked the President for all of the arrangements for the Assembly and looked forward to the French MLA's reception following.

The President then terminated the meeting at 12:25 hrs.