

**JOINT INTERNATIONAL WORKING GROUP
ON UNIFORMITY OF LAWS CONCERNING
ACTS OF PIRACY AND MARITIME VIOLENCE**

**DRAFT
REPORT OF THE SIXTH SESSION,
LONDON, 1 DECEMBER, 2005**

1. At the invitation of the Comité Maritime International, the Group met for its Sixth Session on Thursday 1st December at Ince & Co., International House, 1 St. Katharine's Way, London. The meeting commenced at 10:15 a.m. and concluded at 1:45 p.m.

Participating were:

on behalf of the Comité Maritime International (**CMI**) –

Dr. Frank L. Wiswall, Jr., Vice-President *honoris causa*;
Professor, IMO International Maritime Law Institute (IMLI);
Past Chairman, IMO Legal Committee

on behalf of the Baltic and International Maritime Council (**BIMCO**) –

Thomas J. Timlen, International Affairs Liaison

on behalf of the International Chamber of Shipping (**ICS**) –

John Stawpert, Trade & Operations Adviser

on behalf of the International Criminal Police Organization (**INTERPOL**) –

Jason Fensome, Intelligence Officer, National Criminal
Intelligence Service, UK

on behalf of the International Group of P & I Clubs (**IGP & I**) –

Andrew Bardot, Esq.

on behalf of the ICC International Maritime Bureau (**ICC-IMB**) –

Capt. Jayant Abhyankar, Deputy Director

on behalf of the International Transport Worker's Federation (**ITF**) –

Miren A. DeI Olmo, Assistant Secretary, Legal Department

2. Dr. Wiswall served as Chairman. Regrets for non-attendance were received from the International Maritime Organization (**IMO**) and the International Union of Marine Insurance (**IUMI**). **IMO** has been kept informed of the progress of this work. [All of the organizations named have had an opportunity to review and comment upon this Report.]

Agenda

3. The proposed Agenda for the Session was explained by Dr. Wiswall as (a) review of responses to the Questionnaire directed to CMI National Member Associations, (b) consideration of possible changes to the Model National Law, and (c) discussion of the work already done jointly by CMI and the IMO Legal Committee on the subject of Criminal Offences committed on board Foreign-Flagged Ships, proposed further work of the Group on Acts of Piracy and Maritime Violence, and its relationship to the future work of IMO. This Agenda was unanimously adopted.

Review of Developments since the Previous Session

4. The Questionnaire to CMI National Member Associations and a Table of Abbreviated Responses (see Annex A) had been circulated to the participating Organizations prior to the meeting. It was again noted that the level of attacks upon commercial vessels continued to rise. Of great significance was the adoption by an IMO Diplomatic Conference on 14th October 2005 of Protocols revising both the 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (“SUA Convention) and the 1988 Protocol extending the provisions of SUA to fixed platforms operating on the continental shelf. The 2005 Protocols very considerably broaden the scope of SUA in that they establish a new regime in international law to aid in inhibiting proliferation of weapons of mass destruction, specifically biological, chemical and nuclear (“BCN”) weapons, and to apply to all persons and interests involved in the unlawful acts which are the subject of SUA. On the other hand, the 2005 Protocols do not notably enlarge jurisdiction under SUA.

Exchange of Views – Possible areas of revision of the Model National Law

5. For the **CMI**, Dr. Wiswall regretted that more Member National Associations had not responded to the Questionnaire. He pointed out, however, that there were consistent elements in the responses thus far received: **(a)** the crime of piracy appeared generally to be the primary concern of existing national laws; **(b)** not many (if any) actual cases of piracy had been recently prosecuted under existing national laws; and **(c)** the cases cited deal mainly with port State prosecution of homicides, and extradition does not appear to be a common consideration.
6. For **BIMCO**, Mr. Timlen advocated a stronger highlighting of the applicability of the Model National Law to acts of terrorism. Since the 9/11 atrocities the perceived applicability of the MNL to acts of piracy had perhaps overshadowed recognition of its applicability to other crimes of violence, including terrorist acts.
7. For the **IMB**, Capt. Abhyankar advised that proposals to adopt all or part of the MNL might better be made to government ministries responsible for maritime affairs and/or maritime security rather than ministries of justice; the former ministries could well attach greater importance to such proposals whereas the latter might class them with general proposals for law revision. He suggested that IMO should be requested to make specific mention of the MNL in any future revision of MSC Circulars 622 (*Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships*) and 623 (*Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships*).
8. For **NCIS/INTERPOL**, Mr. Fensome noted that NUMAST (the U.K. ship officers union) had made extensive comments upon the problems raised by the Law Commission re the Maritime and Aviation Security Acts; it might be useful to seek their observations concerning revision of the MNL. He also supported the observation that the emphasis upon piracy in the MNL tended to overshadow its broader applicability, and suggested that the order of presentation of provisions in the MNL might be rearranged so as to give greater emphasis to its applicability to all violent maritime criminal acts.
9. For the **ITF**, Ms. Del Olmo agreed that the MNL should highlight its broad applicability to criminal acts and reduce emphasis upon the crime of piracy.

- 10.** Following discussion, there was general agreement that:
- (a) the title of the Model National Law should be revised to emphasize applicability to “Maritime Criminal Acts”;
 - (b) petty crimes, *e.g.* theft, should be excluded unless the perpetrator is armed;
 - (c) that acts covered by the MNL should be prosecuted and punished regardless of motivation – *i.e.*, no exclusion should be possible on grounds that the act was politically motivated; and
 - (d) the MNL should track the wording of the SUA Convention as amended by the 2005 Protocol to the extent possible without excluding applicability of the MNL to crimes that might not be covered by SUA.
- 11.** Upon reviewing the text of the Model National Law, it was agreed that:
- (a) the first definitions in Section I should be the present paragraphs 3 and 4, defining “maritime criminal acts”;
 - (b) paragraph 3 should form a new sub-Section in Section I (see Annex B, sub-Section (1) (i)).
 - (c) paragraphs 1 and 2 should consequently be renumbered 2 and 3;
 - (d) to organize or direct the commission of an offence should be added in renumbered paragraph 4;
 - (e) associations of persons whether or not having juridical personality should be added to paragraph 7(2);
 - (f) the order of paragraphs in Sections II and IV should be rearranged so as to correspond to the reordering in Section I;
 - (g) a new paragraph should be added to Section II giving a coastal State jurisdiction where a maritime criminal act committed on board a foreign flag vessel has disturbed the peace and tranquillity of that State;
 - (h) a new paragraph should be added to Section II providing that when a coastal State’s authorities effect the boarding of a foreign flag vessel to investigate and/or exercise jurisdiction in respect of a maritime criminal act, it shall do so in accordance with the Annex to the 2005 SUA Convention;

- (h) a new paragraph should be added to Section II providing that investigations and the handling of suspects should be undertaken in accordance with the IMO Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships (Res. A.922 (22));
- (i) it must be ensured that the “mastermind” of an organized maritime criminal act is subject to jurisdiction and prosecution;
- (j) a new paragraph should be added to Section IV providing that if damage or injury is caused by disproportionate use of force when a coastal State’s authorities effect the boarding of a foreign flag vessel to investigate and/or exercise jurisdiction in respect of a maritime criminal act, it shall be compensated in accordance with the Annex to the 2005 SUA Convention;
- (k) a new paragraph should be added to Section IV giving a preference for the payment of outstanding wages and costs of repatriation of any crewmember of a ship lost, delayed, detained or forfeited in connection with a maritime criminal act unless the wilful complicity of such crewmember in the maritime criminal act is proven;
- (l) the Ship Security Officer, Company Security Officer, flag State Administration and Rescue Co-ordination Centre should be added to those obliged to report in Section V (1);
- (m) all references to IMO instruments should be reviewed and updated and expanded as necessary; and
- (n) the Preamble should be rewritten to reflect the change in emphasis and to make reference to human rights in conjunction with penalties.

10. The Group reaffirmed its previous agreement that the revised Model National Law should be submitted to IMO for consideration, and decided that meanwhile the next Sessions of the Maritime Safety Committee and the Legal Committee should be informed of the work now being undertaken.

Respectfully submitted,

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Dr. Frank L. Wiswall, Jr.,
Chairman of the Group

Attachments: (A) Table of Responses to the Questionnaire directed to the CMI
National Member Associations of Maritime Law
(B) First Draft Revision of the Model National Law