

CMI 2006 ABSTRACTS

Potpourri Topics

Wednesday, 15th February
09:00 – 11:15, 11:45 – 12:30

Status of Wreck Removal Convention

Précis by the Presenter
Patrick Griggs, CBE
Immediate Past President
Comité Maritime International

1. A brief history of the development of the draft Convention including the involvement of CMI in the early stages in conducting a survey of national laws in relation to wreck removal and submitting a series of papers to the Legal Committee of IMO.
 2. Review of the latest draft which is contained in a draft submission which has been prepared for the 91st session of the IMO Legal Committee (April 2006) by the Netherlands delegation (leader of the DWC Correspondence Group).
 3. Study of the main features of the DWC with particular emphasis on the issues which have proved contentious and remain so. Assessment of the prospects of resolving outstanding issues during the course of the next two Legal Committee sessions and prior to a projected Diplomatic Conference in 2007.
 - (a) Geographical scope of the instrument – designed to apply to wrecks outside territorial waters but with option (Art.3 (2)) to apply within territorial waters.
 - (b) Definition of "wreck."
 - (c) Definition of "Hazard" (which the wreck must represent before orders for Wreck removal can be made) and criteria for assessing whether a hazard exists.
 - (d) On whom does the responsibility for removal fall and what constitutes "removal"?
 - (e) Which state has the power to issue wreck removal orders?
 - (f) Issues which a state must take into account when deciding whether to make a wreck removal order.
 - (g) Relationship with other international maritime law conventions and in particular the possible conflict between a state and a salvor in possession.
 - (h) Obligation to report wrecks to national authorities and the information which must accompany the report.
 - (i) The obligation to locate and mark wrecks.
 - (j) Steps to be taken by states and shipowners where it has been determined that a wreck represents a hazard and a wreck removal order is made.
 - (k) Financial obligations imposed on states and shipowners.
 - (l) Compulsory insurance or evidence of financial security. Rights of direct action against the insurer or the provider of security and the defences available in respect of such direct claims.
 - (m) Time limits for recovering wreck removal costs.
 - (n) Entry into force requirements for the convention.
 4. Prospects for draft convention including likely national take-up.
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Issues of Marine Insurance

Précis by the Presenter
Professor John Hare
Faculty of Law, University of Cape Town
Partner, Shepstone and Wylie, Cape Town
Executive Councillor, CMI

The CMI has for the past five years researched and reported on various issues of marine insurance. The initiative was driven by a concern that the law and practice of marine insurance was following paths of national divergence, rather than of harmonisation.

The Marine Insurance Working Group, drawing on both academic and practical input, has submitted and published many reports to recent CMI conferences and colloquia, most recently in Vancouver in September 2004.

At Vancouver the report concluded that it would be a vain hope to seek any form of international consensus for an instrument dictating marine insurance law and principle. But as Chairperson of the Working Group, I very tentatively submitted a set of guidelines for reform of the law, relating to good faith, nondisclosure, alteration of risk and misrepresentation, as a discussion document. These draft guidelines are available on the CMI website.

The guidelines received a surprising level of support both at Vancouver and since - resulting in a request that the Working Group continue its research.

I will deal briefly with some of the comments received on the guidelines and then report on the status of marine insurance reform in various CMI member countries.

Any delegates interested in submitting reform progress in their own jurisdictions should please email me on shiplaw@iafrica.com.

Procedural Rules Relating to Limitation Conventions

Précis by the Presenter
Dr Gregory J Timagenis
CMI Executive Council
Senior Partner, Law Office Gr J Timagenis

The main purpose of CMI is to contribute to the unification of Maritime Law. In this context CMI decided to consider whether the procedural rules of national laws concerning the implementation of the main Conventions on the Limitation of Liability of the shipowners might be unified.

The Conventions under consideration are the International Convention on Limitation of Liability for Maritime Claims 1976/1996 (LLMC); the International Convention on Civil Liability for Oil Pollution Damage 1969/1992 (CLC); and the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (HNS).

Prior to considering this possibility, however, CMI circulated a questionnaire to the National Maritime Law Associations (NMLAs), which are members of CMI, in order to collect the necessary information on national laws.

During the Cape Town Colloquium, the results of this survey will be reported on the basis of the replies of the NMLAs and decisions will be taken on the further action.

The questionnaire includes questions as to whether the Limitation may be achieved without establishment of a fund; what is the procedure of establishing the fund; how the limitation

may be invoked; whether there is any time limit for invoking limitation or establishing the fund; what is the procedure after the establishment of the fund (who administers the fund; how and when the claims are filed; how the fund is distributed); how counterclaims may be raised; whether subrogation is admissible.

UNCITRAL Draft Convention on the Carriage of Goods

Précis by the Presenter

Stuart Beare

Chairman CMI International Working Group on Issues of Transport Law

CMI Observer at sessions of UNCITRAL Working Group III - Transport Law

CMI Draft Instrument on Transport Law

- background and history
- development of the project in CMI

Development of the project in UNCITRAL Working Group III

- purpose of the project (A/CN.9/510 para 22)
- first reading (ninth, tenth and eleventh sessions)
- A/CN.9/WG.III/WP.32
- second reading (twelfth to sixteenth sessions)
 - deletion of chapter 9 (freight)
- A/CN.9/WG.III/WP.56

Main topics covered on the second reading to date

- obligations and liability of the carrier (chapters 5 and 6)
 - seaworthiness throughout the voyage (article 16)
 - fault based liability (article 17.1)
 - burden of proof (article 17.2)
 - exceptions (article 17.3)
 - apportionment of liability (article 17.4)
 - delay (articles 23 and 24)
- obligations and liability of the shipper
 - information and instructions (article 30)
 - basis of liability (article 31)
 - dangerous goods (article 33)
- "wholly or partly by sea"
 - contract of carriage (article 1(a))
 - carriage preceding or subsequent to the carriage by sea (limited network) (article 27)
- performing parties
 - vicarious liability of the carrier (article 19)
 - maritime performing parties (article 20)
 - non-maritime performing parties
 - "Himalaya" protection (articles 2 and 20.4)
- electronic communication (chapter 2)
- jurisdiction (chapter 16)
 - volume contracts
 - choice of court agreements
- arbitration (chapter 17)
 - liner and non-liner trade

Outstanding issues

- right of control (chapter 11)
- transfer of rights (chapter 12)
- delivery to the consignee (chapter 10)
- scope of application
 - geographical scope (article 8)

- specific exclusions (article 9)
 - charterparties
 - volume contracts (article 1(b))
 - non-liner contracts (article 1(c))
 - third parties (article 10)
- contractual freedom (chapter 20)
 - special rules for volume contracts (article 95)
- limitation of liability (chapter 13)
 - calculation of limits (article 64.1)
 - non-localised damage (article 64.2)
- transport documents (chapter 9)
- rights of and time for suit (chapters 14 and 15)

Provisional future programme

- completion of the second reading -eighteenth session November 2006
- third reading
- circulation of final draft
- adoption by the Commission – June 2008
- approval by the UN General Assembly – autumn 2008

Ratification

- no reservations (article 99)
- denunciation of other conventions (Hague, Hague-Visby and Hamburg Rules) (article 102)
- entry into force (article 101)