

CMI BETWEEN NEW YORK AND GENOA

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1. The 2016 saw the return of the CMI to New York for its 42nd International Conference which took place 3–6 May.

The Maritime Law Association of the United States, one of the oldest National Maritime Law Associations, formed in 1899 like the Italian MLA, was very proud to hold again a CMI event since the Conference of New York in 1965.

The attendance was extraordinary: some 1000 delegates from many NMLAs members of the CMI, who were provided with unique insight and benefit as the Conference was held in conjunction with the annual meeting of the MLAUS, with joint Committee Sessions CMI / MLAUS.

2. The IMO, through its Director of Legal Affairs, Adm. Frederick Kenney and his Team, gave full support to the Conference whilst the IMO Secretary-General Kitack Lim delivered the opening address.

3. The Working Sessions began on 4 May with a keynote addressed by Adm. Steven Poulin, Chief Counsel for the US Coast Guard. He then handed over to Capt. Nick Sloane for a fascinating account of the salvage and wreck removal of the “Costa Concordia”, followed by panel discussion attended also by Italian MLA Officer Pietro Palandri.

Quite a number of Sessions followed, largely cantered around new topics recently embraced by the CMI.

4. The session on *Legal Issues of Unmanned and Autonomous Ships* looked at the challenges presented by ships operating without crew.

Inter alia it was pointed out that STCW would no longer have any relevance on unmanned ships. Among the various question marks there is that of accommodating the unmanned ship within the structures of SOLAS and the Collision Prevention Regulations.

Obviously, Liability Insurers and Classification Societies will also have many things to think about unmanned ships.

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5. A Session on *Cybersecurity in Shipping* followed, with insights into port and on board cybersecurity, examining how cyber crime is having an impact on the shipping industry.

A graphic description was given of the hacking of the I.T. systems of a container terminal in Antwerp and it was outlined how vulnerable the shipping industry is to cyber attacks, with the need to consider developments of defence to the hacking.

6. The issue of *Pandemic Response at Sea* was debated with the contribution of IMO and the Session considered the humanitarian issues arising from the waves of refugees coming across the Mediterranean and the Aegean Seas.

The legal rights and liabilities arising from search and rescue operations were discussed, together with private law aspects where commercial vessels deviate from the voyages in the course of a rescue operation. Valeria Eboli, a member of the Italian MLA, described the functions of EUNAV FOR MED operation codenamed “Sophia”.

7. The Session on *Ship Finance and Security Practices* reviewed the activities by the relating International Working Group to consider the general question of ship finance and the response which the CMI might make to the UNIDROIT Cape Town Convention on International Interests in Mobile Equipment 2003.

The Convention creates standards for registration of contracts of sale, security interests (liens), leases and conditional sale contracts. It also deals with legal remedies for default in financing agreements.

The Convention may be extended to cover other classes of assets and it was considered by UNIDROIT whether the shipping industry might be interested in having the scope of the Convention extended to ships.

However, the CMI reported to UNIDROIT that the existing system of liens in the world of ship finance seems adequate to protect the rights of mortgagees either by national laws and the 1926 and 1993 Maritime Liens and Mortgages Conventions.

The IWG of the CMI was set up to consider the general question of ship finance security and what final response should be made to this initiative of UNIDROIT.

In New York, this area was explored in detail and speakers included CMI Senior Vice President and Italian MLA President Giorgio Berlingieri who provided delegates with an analysis of the reasons why in his view the 1926 and 1993 MLM Conventions were not more widely ratified.

8. Within the Conference a Symposium was organized to deal with current issues facing *Polar Shipping Operations* as a consequence of the opening of the Arctic and Antarctic regions to exploration and exploitation.

The recently adopted Polar Code and its gaps and challenges were considered.

The IWG of the CMI considered whether there is need for a special liability regime for Polar Regions with possible amendments to the International Conventions and to the Collision Regulations. The IWG also took the issue whether the North Atlantic Winter Seasonal Zone 1 Load Lines should be extended to Arctic waters.

9. There was then a Session on *Liability for Wrongful Arrest* which considered the works of the IWG of the CMI, chaired by Giorgio Berlingieri, regarding the possibility of achieving uniformity on the subject as the 1952 and 1999 Arrest Conventions do not assist much with regard to providing rules on the test for wrongful arrest and for the entitlement to damages. The presentation made by Giorgio Berlingieri dealt with a review of the replies to the Questionnaire circulated by the IWG among NMLAs and of the precedents by civil and common law Courts regarding liability for wrongful arrest, encouraging the prosecution of the works of the CMI towards the setting of provisions on the subject, to be incorporated in international instruments, even if of soft law.

10. Last but not least, it is to be mentioned that the main purpose of the New York Conference was to finalize the amendments to the *York - Antwerp Rules on General Average*.

In fact, the YAR 2004 have never been accepted by the shipping industry and were never incorporated in charter parties and other documents for the carriage of goods by sea.

Over the past years a CMI IWG, together with the relating International Subcommittee, worked hard to reconcile the interests of all sides of the shipping industry and amend the Vancouver 2004 version of the York Antwerp Rules.

The amendments were put to a Plenary Meetings of the CMI and then taken forward to the Assembly on 6 May where they were adopted unanimously by all 38 NMLAs represented at New York: Argentina – Australia & New Zealand – Belgium – Brazil – Canada – Chile – China – Denmark – Ecuador – Finland – France – Germany – Greece – India – Indonesia – Ireland – Italy – Japan – Korea – Malta – Mexico – Netherlands – Nigeria – Norway – Panama – Peru – Poland – Romania – Singapore – South Africa – Spain – Sweden – Switzerland – Turkey – Ukraine – UK – USA – Venezuela, as the York - Antwerp Rules 2016.

11. An enjoyable social program for Delegates and Accompanying Persons was arranged and treats of the week included the annual Nicholas J. Healy lecture at the New York University and a Gala Dinner which culminated in the passing of the CMI Colours by the President of the MLAUS to the President of the Italian MLA, to host the CMI in Genoa in September 2017.

In fact, the Assembly of the CMI at New York resolved to name Genoa as the venue for the 2017 CMI Assembly, primarily to honour CMI President ad Honorem Francesco Berlingieri.

12. In New York, the future of CMI was also discussed and it was considered that the CMI should need to achieve greater visibility especially to increase awareness of its accomplishments.

It was also suggested that more communication is required between the Exco and the NMLAs, that more soft law should be developed as well as the research of materials on international maritime law, particularly as a database of international conventions, their status and judicial decisions interpreting them.

13. In 2017 the CMI was therefore back again to Italy, after the Conferences of 1907 in Venice, of 1925 in Genoa, of 1951 in Naples, The Colloquium of 1986 in Venice and the 1992 Assembly which was held in Genoa.

This gave an opportunity for the CMI and all NMLAs to greet and honour Professor Francesco Berlingieri, President ad Honorem of the CMI, acclaimed as such by the CMI Assembly of 12 April 1998 in Bruxelles, after he served as President of the CMI for fifteen years.

14. The event took place 7–8 September 2017 in stunning historical buildings of Genoa such as the Old Stock Exchange Building and the Doge's Palace, whilst the elegant Bristol Palace Hotel was the venue for meetings of the CMI Executive Council and of the CMI Working Groups and International Sub-Committees which took place on 7 September.

By way of opening the President of the Italian MLA hosted the CMI Exco Members at a dinner at the Yacht Club Italiano on 6 September, and 32 NMLAs Presidents then joined him at a President's breakfast meeting on 8 September at the British Palace Hotel, with the Presidents considering the issue of the contacts between the CMI and the NMLAs.

After a welcome cocktail on 7 September for all Delegates and Accompanying Persons at the Aquarium, located in the old harbour area, a half day Seminar took place at the Doge's Palace, with distinguished speakers dealing

with topical issues of maritime law, who were proceeded by opening welcome addresses of the Presidents of the CMI and of the Italian MLA.

15. Session 1 titled *The significance of the Torrey Canyon – 50 years on* dealt with the “Torrey Canyon” incident.

Fifty years have passed since her grounding on March 1967 between Land’s End and the Isles of Scilly, which resulted in the escape of large quantities of crude oil, causing massive oil pollution in the South West of England as well as in Brittany in France.

The incident showed that there were many legal issues in relation to oil spills that needed to be solved and an outline was given of the actions taken by the IMO and the CMI, which resulted in the adoption of the 1969 Civil Liability Convention and the 1971 Fund Convention.

The developments of the CLC/Fund regime over the years were also considered, in particular the revision that resulted in the adoption of the 1992 Civil Liability and Fund Conventions and the review of their adequacy.

The analysis did not lead to any amendments of the 1992 Conventions but resulted in the adoption of the 2003 Supplementary Fund Protocol.

16. Session 2 titled *O.W. Bunker: National solutions to global collapse* dealt with the collapsing in a dramatic fashion on 7 November 2014 of the Danish company O.W. Bunker & Trading A/S amid allegations of fraud and improper trading.

The abrupt disappearance of this important intermediary in the business of bunker supply caused immediate financial problems for bunker suppliers and ship operators all over the world, leading to litigation in many different countries. The presentation made a comparative analysis of the ways of allocation of the substantial losses between two innocent parties, the bunkers supplier and the ship operator.

17. Subsequent Session 3, titled *Ship Finance and Security Practices* updated what had been considered in New York on the works of the IWG.

The Session reported on the progress registered in the collation of information from various jurisdictions and on the actual ship finance security practices worldwide.

The Cape Town Convention was discussed again and its possible reference to shipping.

18. *Offshore* was covered in Session 4 of the Seminar.

Mention was made of recent developments in the area of offshore installations and liability arising therefrom.

Reference was also made to existing legal instruments having a global as well as a regional scope of application, with attention devoted to the position under European Union law and to the role of Directive 2013/30/EU “on safety of offshore oil and gas operations”.

19. Session 5 considered *Cross border Insolvency issues*, with review of the latest EU developments in the matter of insolvency law.

An analysis was made of the treatment of rights in rem, outlining that the solutions chosen by EU with article 5 of Regulation (EC) in 1346/2000, which has not been rectified by article 8 of Regulation (EU) 848/2015, appears dissatisfactory.

The session dealt also with the impact of Hanjin Shipping bankruptcy over container transportation worldwide.

A survey was made of jurisdictions where creditors issued proceedings in rem or where Hanjin sought recognition of the South Korean judgment declaring its bankruptcy, with review of the provisions of UNCITRAL Model Law on Cross Border Insolvency.

20. Finally, in Session 6 an update was made of legal issues arising from *Refugee migration, rescue and loss at sea*.

The nature of the migration flow varies, including economic migrants as well as persons in need of international protection, usually seeking for the status of refugees, with migrants’ journeys being organized by human trafficking networks.

As Italy is directly involved in handling such phenomenon and is currently leading an EU military operation finalized at disrupting the migrant smuggling and human trafficking, it was considered to address again on this topic after New York to give an overview of the activities conducted in the Mediterranean in relation to the ongoing migration flow and the related issues.

21. After a networking lunch, the works continued in the afternoon of 8 September with a young CMI and young Italian MLA Seminar, which was opened by the winner of the CMI Young Person’s Essay Prize. The lecture dealt with the Argentina’s claim to an outer Continental Shelf, with legal analysis of the rights of coastal States to claim and outer continental shelf.

22. The Seminar then went on with speakers dealing with the *Ballast Water Management Convention*, just entered into force that very day.

The issue of technical requirements was addressed, which owners of ships should comply with to perform the necessary water ballast treatment.

It was also considered that, from a shipowners perspective the Convention brings many strategic matters, including financial, commercial and compliance issues. This requires shipowners to invest significant amounts of money in times of ongoing crises in the shipping industry.

It was noted that a variety of technologies are available for treating ballast water on ships. Depending on the size of the ship, her ballast water capacity and the type of treatment, it is estimated that the cost of implementation of the treatment system can range from \$ 500.000 to 5 million per ship.

23. A subsequent session of the young Seminar considered the issue of *Recognition and enforcement of foreign judgments and arbitration awards*.

The procedural tools in the United States to assist in the enforcement and recognition of awards were reviewed, including Rule B of the Supplemental Rules for Admiralty of Maritime Claims and Asset Forfeiture Actions.

An analysis of the position in Colombian law was then made and finally the recognition of EU decisions under Regulation (EU) 1215/2012 was considered, with focus on the recognition issues from an Italian perspective.

24. Concurrently with the young Seminar the 2017 CMI Assembly took place at the Old Stock Exchange Building which opened with the President of CMI advising of the passing away of distinguished members of the CMI family, including Professor Georgije Ivkovic and Professor Enzo Volli. The Assembly included a report of the President of the CMI on CMI Constitutional amendments which were approved, and the Treasurer and the Auditors Reports.

Reports were also made on the activities of the various CMI International Working Groups, including *Acts of Piracy and Maritime Violence*, *Fair Treatment of Seafarers*, *Recognition of Foreign Judicial Sales of Ships*, *Cross Border Insolvency*, *Polar Issues*, *Offshore Activities*, *Ship Finance Security Practices*, *Wrongful Arrest*, *Ship Nomenclature*, *Classification Societies*, *Cyber Crimes*, *Unmanned Ships*.

The Assembly elected Rosalie Balkin as new Secretary General in substitution of John Hare, confirmed Ann French as executive Councillor for a second term and elected Aurelio Fernandez – Concheso in substitution of Jorge Radovich as new Executive Councillor.

The Assembly also acclaimed Bent Nielsen as CMI member Honours Causa for his long service provided to the CMI and approved the applications of Malaysia, Cameroon and Tanzania for CMI membership, whilst Russia and the Dominican Republic were expelled for their long outstanding arrears of subscriptions and the request of Portugal to withdraw from CMI was accepted.

With regard to future meetings, the plans are that the 2018 Assembly takes place in London, hosted by the British MLA.

The proposed dates are the end of October or early November (1/2 November or 8/9 November) to coincide with the Southampton University's Donald O'May Lecture.

The Lecture will be followed by the annual British Maritime Law Association Dinner with the CMI Assembly to take place the next day.

The Agenda of the Assembly will include the election of the President of the CMI and the election of a Vice President.

It was then reported that Mexico presented a proposal for a CMI Colloquium and Assembly to take place in Mexico City or Cancun in 2019, with the Executive Council having approved Mexico City as potential venue.

The CMI President then advised that the President of the Japanese MLA proposed that the CMI 2020 Conference take place in Tokyo in late October of that year.

It was also reported that the Belgium MLA offered to host an event in 2022, being the 125th CMI Anniversary.

The Assembly then resolved for the 2018 Assembly to take place in London, the 2019 Colloquium in Mexico City, the 2020 Conference in Japan and the 2022 Assembly in Antwerp.

25. A Gala Dinner at Lo Zerbino Mansion followed after the Assembly, with some 270 Delegates and Accompanying persons attending.

Although being a small event the CMI event in Genoa was quite participated.

In fact it was attended by over 220 delegates from 35 NMLAs: Argentina, Belgium, Nigeria, Spain, Italy, Ecuador, Malta, Greece, Switzerland, Sweden, UK, Australia, Netherlands France, USA, Brazil, Panama, Canada, China, Japan, Venezuela, Colombia, Norway, Ireland, South Africa, Germany, India, Croatia, Denmark, Finland, Ukraine, Turkey, Singapore, Peru.