

CMI Update

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Rotterdam Rules

2008 was a significant year for CMI. In the first place it saw the completion by UNCITRAL of the work which CMI commenced in the late 1980s and continued in the 1990s in seeking to find a solution to the problem brought about by the lack of acceptance which had been demonstrated for the Hamburg Rules. The principal role of the CMI concluded in 2001 when the draft Instrument which had been prepared during the period by the CMI International Working Group and International Sub-Committee was delivered to UNCITRAL. However, it was not the end of CMI's role. During the period that UNCITRAL has been working on concluding the Instrument, the International Working Group of CMI has continued in existence and has monitored all the UNCITRAL meetings. Stuart Beare, the former senior partner of Richards Butler, has mainly carried that burden. Leading figures within CMI have played significant roles as part of the delegations to UNCITRAL of their countries. Francesco Berlingieri and Michael Sturley being two prime examples in that regard. CMI has convened ad hoc meetings for delegates at various times to consider issues that have arisen during the course of the UNCITRAL deliberations.

The Instrument, which is to be known as the Rotterdam Rules, is to be the subject of a signing ceremony in Rotterdam on 23 September 2009. It will be open for signature by all States in Rotterdam on that date and thereafter at the headquarters of the United Nations in New York. Subsequent ratification by 20 States is necessary for it to enter into force.

There is to be Colloquium on the Rotterdam Rules organised by the Dutch Maritime Law Association under the auspices of CMI and UNCITRAL on Monday, 21 September 2009. CMI will be having its annual Assembly meeting on Wednesday, 23 September 2009 in Rotterdam and there is to be an Executive Council Meeting on 22 September 2009. I will be attending those events.

A question for the CMI Executive Council is the future role which CMI may have in relation to the Rotterdam Rules. As many of you know, the principal *raison d'être* of the CMI is to seek to bring uniformity to maritime law. Arguably therefore, CMI (and its constituent members such as the

MLAANZ) should do all they can to promote the Rotterdam Rules in order to bring international uniformity to cargo liability regimes around the world. There may be provisions in the Rules which MLAANZ members are uncomfortable with. It needs to be borne in mind that any convention results from compromise being made by the delegates, in this case, at UNCITRAL.

It is my suggestion that the MLAANZ form a sub-committee to consider whether it is in the interests of Australia and New Zealand to give effect to the Rotterdam Rules and provide advice to the Australian Governments and New Zealand in that regard.

Places of Refuge

The second major event for CMI in 2008 was the completion of the work on Places of Refuge. I am attaching to this paper the draft Instrument and report which was provided to the IMO earlier this year after the work on the draft Instrument was concluded in October at the CMI conference in Athens. It reflects the divergent views of some of the principal stakeholders in this area.

We have seen a classic example in Australia in recent times of the frustration which governments experience when they find that the law of the country, and more particularly international conventions that they have signed up to, disadvantage them. The example I am referring to is the furore over the *Pacific Adventurer*. For those unfamiliar with the debate that has been taking place the oil spill clean up costs from the accident which occurred on 11 March 2009 off the Queensland Coast has been estimated as being in the region of \$31M to \$34M but the limitation regime under the *Limitation of Liability for Maritime Claims Act 1989* permitted the owners to limit their liability to \$14.5M. It is somewhat ironic that the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, which Australia was a principal sponsor for, came into force on 21 November 2008 and had been notified by Australia on 16 March 2009 and came into force in Australia on 16 June 2009. As at 31 March 2009, 38 States had ratified the convention. (There is a very good paper by Mans Jacobsson "Bunkers Convention in Force" in the 2009 15 JIML 21 to 36). Surprisingly, unlike the HNS Convention and the Civil Liability Conventions, there is no special regime for limitation of liability under the Bunker Convention. Accordingly the 1976 Convention on Limitation of Liability for Maritime Claims as amended by the Protocol adopted in 1996, applies to the Bunker Convention. As Mans Jacobsson points out in his article "Claims

under the Bunkers Convention will, if the right to limitation is governed by the LLMC, have to compete in the limitation amount with other types of claim".

I mention the *Pacific Adventurer* as it was apparent throughout the work we did on Places of Refuge that port authorities had a somewhat schizophrenic view about the topic. On the one hand they wanted greater certainty but on the other they wanted to be fully protected from any adverse consequence of their actions, even if it meant that limitation regimes that their States had signed up to should not apply to them.

Delegates met at the Astir Palace Hotel, Vouliagmeni, Athens, Greece on Monday and Tuesday, 13 and 14 October 2008 to debate the draft Instrument which can be found on pages 128 to 136 of CMI Yearbook 2007-2008 Athens 1.

The discussion commenced with short presentations made by me, (as the Chairman of the International Working Group). I explained how the draft Instrument had come into being and introduced the other panel speakers: Liz Burrell, the former President of the United States Maritime Law Association who brought delegates up to date with developments in the United States and referred to the United States Coastguard Places of Refuge Policy document dated 17 July 2007 and the United States National Response Team Guidelines for Places of Refuge decision making which are also to be found in CMI Yearbook 2007-2008 Athens 1 at pages 142 to 183; Eric Van Hooydonk, a member of the International Working Group, who discussed recent developments in the European Union; Frans van Zoelen, the Chair of the Legal Committee of the International Association of Ports and Harbours; Andrew Bardot, representing the International Group of P&I Clubs; Archie Bishop from the International Salvage Union; Fritz Stabinger representing the International Union of Marine Insurers; and Richard Shaw, the rapporteur to the International Working Group, who identified some of the pertinent provisions in the draft Instrument.

The meetings which then took place during the rest of the first and second days of the conference engendered considerable debate. In relation to the preamble, the Belgium delegation raised the issue that the third paragraph might imply a criticism of the IMO and therefore the words "sufficiently clear framework" were replaced by the words "comprehensive framework". It was suggested that the definition of "ship" should not contain the exception referred to in the draft

Instrument. There was general agreement that there was no necessity to limit the definition of "ship" to "sea going vessels" and thus the words "sea going" were deleted. There was also some discussion as to whether the text was intended to cover inland waterways or be restricted to territorial waters at sea. There was some support for extending the instrument to inland waters.

The definition of "competent authority" was thought to be confusing and should specifically refer to the State, that is the party to the treaty, if this document is to become a convention, and then to refer to the other organisations or persons who have the power to permit or refuse entry of a ship to a place of refuge.

There was general agreement that there was no necessity to define "limitation sum".

There was considerable discussion as to whether or not the definition of "objective assessment" needed to be amended. The MLAANZ had suggested adding the words "and has regard to all the circumstances of the ship, her cargo, and the risks and hazards to which they may be exposed". Other delegations did not think that clarified the matter. It was however, considered that the word "objective" could better form part of the description of what "assessment" means, rather than referring to "an objective assessment".

Accordingly the definition was changed to read "'assessment' means an objective analysis...". The word "analysis" being used in the context of "analysis factors" which are required to be taken into account in the IMO Guidelines. Archie Bishop queried whether additional words identifying who is required to make the assessment such as "appropriately experienced persons appointed by the competent authority" should be added. Once again it was felt that the IMO Guidelines and the requirement that States should establish a Maritime Assistance Service makes such a provision unnecessary. As the German delegation pointed out, clause 3.10 of the IMO Guidelines describes the requirements of an inspection team designated by the coastal state who board the ship as being "composed of persons with expertise appropriate to the situation".

It was noted that the definition of "ship owner" was not identical to that in the Wreck Removal Convention and as a result it was amended accordingly.

In relation to Article 3 and the legal obligation to grant access there was considerable debate as to the circumstances in which a competent authority may be entitled to refuse access. The

Belgium delegation queried whether a coastal state could not be entitled to claim salvage remuneration for granting access to its territory. Some delegations considered that the absence of an insurance certificate or letter of guarantee should justify refusal to admit a vessel. As a result of that debate it was decided to incorporate various options into the text. Pursuant to the first option it is provided that the mere absence of an insurance certificate, letter of guarantee or other financial security would not entitle a competent authority to deny access to a Place of Refuge. The second option provided that the absence of such security whilst not relieving the competent authority from the obligation to carry out the assessment could, if it is coupled with a determination that the condition of the ship is such that it and/or its cargo is likely to pose a greater risk if permission to enter a Place of Refuge is granted than if such request is refused, justify such refusal. The third option enables a competent authority to refuse access if the ship owner fails to provide an insurance certificate, letter of guarantee or other financial security.

In relation to Article 5 it was pointed out by the Danish association that the drafting left much to be desired and there seemed to be no justification for having two conditions in sub-paragraph (a) and one in sub-paragraph (b). The UK delegation also queried whether the reference to "shipowner" was intended to include cargo. The drafting committee decided to include the word "cargo owner" in the list of persons who may suffer as a result of a refusal of entry to a place of refuge. As a result of this debate the drafting committee reproduced Article 5 so that it only contained the one paragraph. Archie Bishop queried whether some reference should not be included in order to make it clear that where the salvor's task had been made more difficult, the salvor should have a remedy.

In relation to Article 6 the Danish delegation suggested that the word "behaviour" should be changed.

In relation to Article 7 there was considerable discussion as to the subject of "guarantees". The IAPH expressed its fundamental objection to the inclusion of the limit of liability in this Article. The Danish delegation thought it should be made clear as to what types of liability were intended to be taken into account or covered by a letter of guarantee. In redrafting the drafting committee inserted the words "in respect of such reasonably anticipated liabilities that it has identified from its assessment". Andrew Bardot explained the history of the form of guarantee which was an

annexure to the draft Instrument as having been negotiated with the Singapore Port Authority. He also pointed out the bank guarantees can be prohibitively expensive and that in itself could effectively prevent a ship from entering a place of refuge if it was a prerequisite of the State. He also suggested that the standard International Group form of guarantee, if offered, should be accepted and it should be limited to the appropriate limitation regime.

The representative of the International Chamber of Shipping queried whether it was appropriate to include an article such as Article 7. Some delegates supported the deletion of Article 7. Others thought the letter of guarantee should cover all forms of potential liability including wreck removal and dock damage. Eric van Hooydonk pointed out that paragraph 3.14 of the IMO Guidelines contains the following provision:

"As a general rule, if the place of refuge is a port, a security in favour of the port will be required to guarantee payment of all expenses which may be incurred in connection with its operations...".

Other delegations, such as Switzerland, supported the retention of a guarantee provision as being something which is necessary to prevent States from avoiding admissions by ships in distress by making excessive demands. The Swiss delegate pointed out that there is insufficient insurance to provide unlimited security. The Venezuelan delegation pointed out that in some jurisdictions authorities may only accept a guarantee from banks or insurance companies based in that State. It was also pointed out that a new law in Venezuela empowers the State to demand an unlimited guarantee. In light of the varied views of the delegations the drafting committee decided to adopt the same procedure in relation to Article 7 as it had in relation to Article 3, that is to incorporate three options to reflect the wide extent of the views expressed. Under the first option the State is permitted to request an insurance certificate, letter of guarantee or other financial security but not to exceed the applicable sum under the 1976 Limitation Convention (or any amendment thereto), or any other relevant international convention. The second option, in addition to permitting the State to request such certificate or security under option 1 to the extent of any applicable limitation convention, can also seek security in respect of those claims referred to in Article 2 paragraphs 1(d) or (e) of the Limitation Convention, such as wreck removal, which

are not subject to limitation in the jurisdiction concerned for such reasonable amount as it requires to compensate it in respect of such liabilities.

By the third option the amount of the security which a State could request is expressed without reference to any limitation regime.

In relation to Article 8 and plans to accommodate ships seeking assistance some delegates queried whether Article 8 needed to be retained, given the contents of the OPRC Convention; other States considered that it was a useful reminder and should be retained. Archie Bishop pointed out that there are many States which have no plans whatsoever and accordingly it would be useful to retain this clause.

There was a similar debate in relation to Article 9 and the "identification of competent authority". Archie Bishop again pointed out that this is a beneficial provision as in salvage operations it needs to be made clear from the earliest stages who is in charge from a coastal State's perspective. Denmark queried whether the Article should require publication of the details of the competent authority. The drafting committee adopted this suggestion and incorporated some wording from the Wreck Removal Convention in the concluding words of the amended Article. It was also suggested in debate that the word "identify" could be improved by use of the word "designate".

There was general agreement that the annexes were inappropriate in the context of an international convention and the drafting committee resolved to omit them.

At the Plenary Session, Denmark suggested that there was no consensus that the burden of proof should be placed on the coastal State and that it was important not to go too far. The Danish delegation believed that the Instrument in its present form would not be acceptable to many States.

The French delegation expressed its support for the Instrument and favoured option 1 in Article 3 and option 3 in Article 7. It did not oppose the other options.

The International Group of P&I Clubs expressed disappointment that the option to have open ended guarantees was retained in the Instrument. Belgium also supported the Instrument and

agreed with the comments made by the French delegation. It suggested that the Instrument introduced a qualified obligation on the State to accept a ship in case of dire necessity. Canada also expressed support for the Instrument and thought it would be useful for the IMO to have a work product which reflected the different views. Ireland also supported the draft Instrument.

A resolution was put to the Plenary Session at the conclusion of the discussion. A vote was taken on the following Resolution:

"Resolution

CMI approves the text of the draft Instrument on Places of Refuge for submission to the IMO Legal Committee, noting that it contains options in two Articles for alternative provisions to be adopted in any text which that Committee may consider appropriate at some future occasion."

When the Instrument was put to the vote 16 delegations supported the Instrument and 10 voted against, with 2 abstentions.

On 26 January 2009 the draft instrument was submitted by Richard Shaw to IMO, in his capacity as CMI Observer Delegate, accompanied by a Report of the Chairman of the CMI International Working Group on Places of Refuge. That is attached to this paper.

Salvage

A new International Working Group has recently been formed to review the Salvage Convention 1989. I am chairing the International Working Group and its members include Archie Bishop, Christopher Davis (a member of the Executive Council), Mans Jacobsson (a member of the Executive Council), Jorge Radovich and Diego Chami, both of Argentina. A questionnaire, which is also attached to this paper, has recently been sent by the IWG to National Associations and we look forward to receipt of the MLAANZ's response as soon as possible.

Further work

Further working groups of the CMI are continuing the work which was started in Athens on the following topics:

- judicial sales of ships, and

- procedural rules in limitation conventions.

CMI has also has a continuing involvement in relation to the topics of Piracy and other crimes of violence on the high seas (which is to investigate the implementation of UNCLOS and SUA), Fair Treatment of Seafarers, Promotion of Quality Shipping and the Ship Recycling Convention. Consideration is currently being given as to whether any of the matters not covered by the Rotterdam Rules need to be the subject of further work by CMI (the "residuals" including ECommerce); the liability of Pilots and Admiralty Rules are also under discussion.

General matters

It is sad to report that since the last CMI assembly meeting in Athens, two of the legends of the USMLA, Nicholas Healy and Gordon Paulsen have passed away.

Karl Gombrii was elected President in succession to Jean-Serge Rohart at the Athens assembly. Shortly after the Athens assembly, he moved to Singapore to run the Nordisk office in Singapore. For the first time, the President of the CMI is therefore not based in Europe. I am hopeful that this will result in closer contact between CMI and some of the far eastern members of CMI, including Japan, China, the Koreans and the Philippines, in particular. (Sadly we were forced to cancel the membership of CMI of Indonesia as it had not only fallen behind in its subscriptions but had for many years failed to respond to correspondence and contact from the CMI to seek to resolve issues with them. We are, however, hopeful that a new association will be formed in Indonesia in the not too distant future).

CMI Steering Committee: Reform of CMI

At the Assembly meeting in Athens, I reported on the work done by the Steering Committee of the Executive Council which consisted of Nigel Frawley (the secretary general of CMI); Karl Gombrii, one of the, then, vice presidents of the CMI), and myself.

Some of the proposals which we made, and which have been accepted by the Federal Executive, are to be put to the Assembly meeting in Rotterdam. They include a resolution that in future no subscription be levied for Titulary membership. Whilst there were some who favoured retention of this charge on the Executive Council, the majority view, which has prevailed, is that Titulary membership should be an honorary award made by the CMI on the recommendation of National

Maritime Law Associations (**NMLAs**). Those of us who proposed and supported this reform were also of the view that it added an administrative burden to NMLAs in collecting the relevant subscriptions from the Titulary members (if they were not prepared to bear the charges themselves) and created difficulties where the Titulary members either lost interest in maritime law or ceased to be an effective member of the NMLA concerned.

At the same time as considering the position in relation to subscriptions for Titulary membership the Steering Committee also sought to amend the amounts of subscriptions being paid by NMLAs. As you would be aware, if you have attended Assembly meetings in recent years, there are a number of associations, particularly from Central and South America as well as Europe, who have fallen behind in paying their subscriptions. The Steering Committee considered that it was unrealistic to expect NMLAs, which have been practically dormant to pay substantial sums by way of subscriptions and with a view to seeking to revive those associations, the decision has been made to seek to reduce the rates of their subscriptions to a manageable level. In addition, in combination with the removal of Titulary membership fees, we have sought to reduce subscriptions across the board. That is perhaps an unfortunate description because some NMLAs including the MLAANZ, because of the strength of their associations and their continually significant role in international shipping, will have their subscriptions increased. (That applies also to countries such as China and South Korea. I hasten to say the increase in relation to the MLAANZ is relatively small.)

Apart from those financial aspects of the ongoing management of the CMI, there were also two other recommendations made by the Steering Committee which will hopefully have a significant impact on the CMI's continuing development. The first is a matter which has to be put before the Assembly and that is the reduction in the terms of office holders from four years to three years. This is part of the ongoing process which commenced some years ago, to achieve a greater turnover of membership of the Executive Council. Until the reforms of a few years ago, membership of the Executive Council was virtually considered a lifetime position. The maximum term that can now be served in any particular position on the Executive Council (assuming these recommendations are adopted by the Assembly) will be three years plus an additional three years.

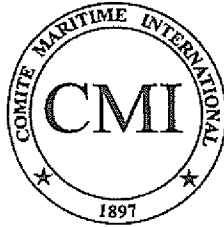
The second area of reform relates to the manner in which the CMI communicates with NMLAs and, in particular, the membership of individual NMLAs. We are looking to improve the CMI website both in relation to its content and seeking to achieve more timely updating of its content. To that end we have entered into an arrangement with the University of Southampton. I had hoped that very much more progress would have been made since the October Assembly meeting in Athens and that I could report considerable progress in this regard at the Rotterdam Assembly meeting. Unfortunately, that will not be taking place as the research assistant at Southampton who was put in charge of the project has recently left. His role is to be taken by a lecturer at the University and we are optimistic that the next 12 months will see considerable improvement in the management of the CMI website. We also wish to include on the CMI database the email addresses of all members of NMLAs. We are therefore asking all NMLAs to forward the details of their membership to the CMI so that newsletters and the like can be distributed automatically to all members of NMLAs. This will require both the CMI administration and NMLAs to communicate better with each other in keeping the database accurate. Great discipline will be needed on both sides in order to achieve this.

Conclusion

At the Assembly meeting in Rotterdam my first term of office as a Vice President comes to an end and I have put my name forward for re-election for a further term.

I take this opportunity of thanking the MLAANZ for its continuing support of me in my position on the CMI Executive Council and for its continuing support of CMI. I am hopeful that the reforms to which I have referred (and others which I have not dealt with in this paper) recommended by the Steering Committee will assist in making the CMI more responsive to NMLAs and provide NMLAs with a real sense of the worth of the CMI.

August 2009



COMITE MARITIME INTERNATIONAL, AISBL

PRESIDENT

Singapore, 9th July 2009

Presidents of All National Associations

Dear President,

Salvage Convention 1989

I enclose a Questionnaire which has been prepared by the newly constituted International Working Group to consider the Salvage Convention 1989.

Stuart Hetherington has kindly agreed to act as Chairman of the CMI IWG on this subject and the IWG consists of Executive Councillors: Chris Davis and Mans Jacobbson, as well as Archie Bishop, Jorge Radovich and Diego Chami.

Please submit your responses to the Questionnaire as soon as possible to enable the work of the IWG to progress. It is hoped that this topic will be on the agenda for the Colloquium to be held in Argentina in 2010.

Yours sincerely,

Karl-Johan Gombrii

**COMITE MARITIME INTERNATIONAL
SALVAGE CONVENTION
QUESTIONNAIRE TO MEMBER ASSOCIATIONS**

The CMI Executive Council has set up an International Working Group (IWG) to consider whether any changes need to be made to the Salvage Convention 1989.

The questionnaire which follows has been developed with a view to collecting your views on areas which have been identified by the International Salvage Union as possibly needing reform.

We would be grateful if you would provide your responses to this questionnaire as soon as possible.

1. **Article 1 in the Salvage Convention 1989 contains the following definition:**

"For the purpose of this Convention:

- (d) *Damage to the environment being substantial physical damage to human health or to marine life or resources **in coastal or inland waters or areas adjacent thereto**, caused by pollution, contamination, fire, explosion or similar major incidents."* (Emphasis added)

Comments

1.1 **The International Convention on Civil Liability for Oil Pollution Damage, 1992**, defines "Pollution damage" in Article 1 paragraph 6 as meaning:

- (a) *loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, **wherever such escape or discharge may occur**, provided that compensation for impairment of the environment other than loss of profits from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken."* (Emphasis added)

Article II of that Convention also provides:

"This Convention shall apply exclusively:

- (a) *to pollution damage caused:*
- (i) *in the territory, including the territorial sea, of a Contracting State, and*
- (ii) *in the **exclusive economic zone** of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending nor more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;*
- (b) *to preventive measures, **wherever taken**, to prevent or minimise such damage."* (emphasis added)

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 defines damage in Article I paragraph 6 as meaning:

- "(b) *loss of or damage to property **outside the ship** carrying the hazardous and noxious substances caused by those substances;*
- (c) ***loss or damage by contamination of the environment** caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;" (emphasis added)*

Article III of that Convention provides as follows:

"This Convention shall apply exclusively:

- (a) *to any damage caused **in the territory, including the territorial sea** of a State Party;*
- (b) *to damage by contamination of the environment caused in the **exclusive economic zone** of a State Party, established in accordance with international law, or, if a State Party has not established such a zone **in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;***
- (c) *to damage, other than damage by contamination of the environment, **caused outside the territory, including the territorial sea**, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and*
- (d) *to preventive measures, **wherever taken**" (Emphasis added)*

The International Convention on Civil Liability for Bunker Oil Pollution Damage (2001) provides as follows:

Article I paragraph 9 defines "Pollution damage" as meaning:

- "(a) *loss or damage **caused outside the ship** by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;" (Emphasis added)*

Article II provides as follows:

"This Convention shall apply exclusively:

- (a) *to pollution damage caused:*
 - (i) ***in the territory, including the territorial sea**, of a State Party, and*

(ii) ***in the Exclusive Economic Zone of a State Party, established in accordance with international law, or, if a State Party has not established such a Zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the base lines from which the breadth of its territorial sea is measured***

(b) *to preventive measures, wherever taken, to prevent or minimise such damage.*" (Emphasis added)

It will be seen that the International Conventions that deal with the liability for causing pollution are not as restrictive in the geographical scope of the Convention as the definition contained in the Salvage Convention in Article 1(d) quoted above. It will be seen that the words emphasised in that definition leave considerable scope for debate as to what is intended by those limiting words, particularly when the liability conventions seem to envisage preventive measures being taken anywhere, including on the high seas and the pollution damage itself can taken place anywhere within the exclusive economic zone.

Question:

- 1.2 Do you consider that the words emphasised above in the definition contained in Article 1(d) of the Salvage Convention ("in coastal or inland waters or areas adjacent thereto") should be deleted?
- 1.3 Alternatively do you think words such as those used in the other Conventions which have been quoted above (eg "where ever such may occur"/"exclusive economic zone"/"territorial sea") should replace those words in Article 1(d) of the Salvage Convention?
- 1.4 Have there been any reported cases in your jurisdiction in which the word "substantial" (which is contained in Article 1(d) of the Salvage Convention), as used in that definition, have been interpreted?
 - 1.4.1 If so, could you provide a copy of the decision?
 - 1.4.2 If there have been no such cases in your jurisdiction do you think it likely that the word "substantial" could create difficulties of interpretation?
 - 1.4.3 If so, do you consider that there is any other word or group of words that could better identify what is intended by the definition?
- 1.5 Do you think that where an incident occurs that could give rise to dangers to navigation (for example a loss of containers at sea) would be covered by the definition in Article 1(d) (ie do you think it would be held in your jurisdiction to come within the meaning of the words "or similar major incidents")?
 - 1.5.1 If you think there is a risk that such incidents may not be covered by the definition in Article 1(d), do you think that the definition should be widened?
 - 1.5.2 If so, can you suggest any wording that you think might be appropriate?

2. Article 5 in the Salvage Convention 1989 provides as follows:

"Salvage operations controlled by public authorities

1. *This convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.*

2. *Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.*
3. *The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated."*

Question:

- 2.1 Can public authorities pursue claims for salvage in your jurisdiction?
- 2.2 If they cannot, do you think it would improve their position if Article 5 paragraph 3 was deleted or amended?
3. **Article 11 in the Salvage Convention 1989 provides as follows:**

"Co-Operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general."

Comment

- 3.1 The International Working Group on Places of Refuge asked questions in its first questionnaire in relation to this provision. In order to assist the IWG on the Salvage Convention we repeat the first three questions that were posed in that questionnaire as follows:

Questions:

- 3.2 Has your country ratified the Salvage Convention 1989?
 - 3.2.1 If so, has it enacted any legislation or regulation to give effect to Article 11?
 - 3.2.2 If so, please supply a copy, if possible with a translation into English or French.
 - 3.2.3 Do you think this Article should be amended to refer to the IMO Guidelines on Places of Refuge (Resolution A.949(23)) Adopted in December 2003.
4. **Article 13 of the Salvage Convention 1989 establishes the "Criteria for Fixing the Reward". Paragraph 2 of Article 13 provides as follows:**

"Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence."

Comment

- 4.1 In recent years the salvage of container ships, which continue to grow in size, has given rise to problems in collecting security from cargo interests. Thousands of

interests are often involved and it can take months to collect security. Often it is not obtained at all. Further, even when security is provided, cargo often remains unrepresented and has to be given notice of a pending arbitration, an award, and an appeal of an award, causing considerable expense and delay. It has been suggested that the problem could be solved if, in container ship cases, ship owners were responsible for the provision of cargo security.

Question:

- 4.2 Has your jurisdiction made any provision, as provided for in Article 13 paragraph 2 for the payment of a reward by one of the interests referred to in the opening sentence of this paragraph?
- 4.3 Do you think it would be appropriate to specify in this Article that in containership cases the vessel only is responsible for the payment of claims (and therefore would be responsible for the provision of security) subject to a right of recourse against the other interests for their respective shares?

5. Article 14 in the Salvage Convention 1989 provides as follows:

"Special Compensation

1. *If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.*
2. *If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.*
3. *Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).*
4. *The total special compensation under this article shall be paid only if and to the extent that such compensation is granted than any reward recoverable by the salvor under article 13.*
5. *If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.*
6. *Nothing in this article shall affect any right of recourse on the part of the owner of the vessel."*

Comment

- 5.1 Over time this provision proved to be cumbersome, expensive to operate and uncertain in outcome. It also became counter-productive and discouraged rather than encouraged the salvage industry. As a result industry devised SCOPIC to replace article 14 contractually. SCOPIC has been successful and has

substantially cut down the amount of litigation following a salvage operation. It is, however, only relevant in about 20% of modern cases and is still only a safety net.

Question:

- 5.2 Do you consider that consideration should be given to amending article 14 in order to create an entitlement to an environmental award? (It is recognised that there are "political" issues involved as to who would pay for such an award but the IWG would be interested to know whether your MLA would be in favour of an investigation of this issue. It is also recognised that if you answer this question in the affirmative, consequential changes may need to be made to the definition of "damage to the environment" in article 1(d), to article 13, article 15 and article 20).

6. Article 16 of the Salvage Convention 1989 provides as follows:

"Salvage of persons

1. *No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject."*
2. *A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salvaging the vessel or other property or preventing or minimizing damage to the environment."*

Comment

- 6.1 Prior to the Convention life salvage claims would have been made direct against the owners of the property, but as a result of the Convention it would appear that such claims now have to be made against the salvor. This could create problems for the property salvor if it was not involved in the life salvage, which is often the case. The salvage claim which the salvor makes under Article 13 and any claim for special compensation under Article 14 would under normal circumstances be restricted to the work that has been carried out and the expense incurred and not include any effort by some third party over which the salvor had no control.

Question:

- 6.2 Do you consider that the wording of this Article should be amended to ensure that any life salvage claims against property are made directly against a property owner rather than the salvor?

7. Article 20 of the Salvage Convention 1989 provides as follows:

"Maritime lien

1. *Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.*
2. *The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided."*

Question:

7.1 If you are of the opinion that the suggestions made for reform of article 14 should be considered, do you also agree that article 20 should be amended to create a statutory lien against the ship for such a claim?

8. **Article 27 of the Salvage Convention 1989 provides as follows:**

"Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases."

Comment

8.1 The ISU is in favour of the publication of awards. The Lloyds Salvage Group has recently agreed to amend the LSSA clauses so that awards are published as a matter of course, unless any party to the arbitration objects. There is clearly a conflict between the expectation that arbitrations will be conducted in private.

Question:

8.2 Do you consider that article 27 should be amended to reflect the position achieved by the Lloyds Salvage Group?

9. **General - Question:**

9.1 Are there any other issues or problems that you are aware of in relation to the Salvage Convention 1989 which the IWG should consider for possible amendment?

9.2 How many salvage cases have been decided in your jurisdiction under the 1989 Salvage Convention?

June 2010

**PLACES OF REFUGE
SUBMITTED BY CMI**

SUMMARY

- Executive Summary:** The CMI has developed a draft instrument on Places of Refuge, which was approved at the Plenary session of the CMI Conference in Athens in October 2008. The approved text is annexed as Annex 1 to this document, which sets out the principal policy issues addressed by the draft. Annex 2 is a copy of a report on a survey conducted by the CMI's member National Maritime Law Associations on the current status of the ratification of the principal liability conventions
- Strategic direction:**
- High level action:**
- Planned output:** International Convention or other instrument
- Action to be taken:** Delegations are invited to note the contents of the Annex 1 in light of the comments in this paper and the contents of Annex 2
- Related documents:** LEG 90/8, LEG 90/15 (paragraphs 384-395), LEG 91/6, LEG 90/8, LEG 89/7, LEG 85/10/3

COMMENTS

At the 90th session of the Legal Committee in May 2005 CMI submitted a report: LEG/90/8. LEG90/15 reported, in paragraphs 384 to 395, on what took place at the 90th session in relation to the topic of "Places of Refuge". In paragraph 394 it was noted:

The Committee noted that the subject of places of refuge was a very important one and needed to be kept under review. The Committee agreed that at this point in time, there was no need to draft a convention dedicated to places of refuge. It noted that the more urgent priority would be to implement all the existing liability and compensation conventions. A more informed decision as to whether a convention was necessary might best be taken in the light of the experience acquired through their implementation.

The CMI submitted a further report to the 91st session of IMO Legal Committee in March 2006 (LEG 91/6). The purpose of that report was to inform the IMO Legal Committee that the CMI had

decided to complete the work upon which it had embarked and to produce a Draft Instrument dealing with the topic of Places of Refuge.

The Draft Instrument which was attached to LEG 91/6 was the subject of discussion at the CMI Colloquium held in Cape Town in February 2006, at a further Symposium held in Dubrovnik in May 2007 and at the recent CMI Conference held in Athens in October 2008.

At the Plenary Session of the Athens Conference the text of the Draft Instrument was approved by a majority of delegates and the following resolution was passed at the Conference:

CMI approves the text of the Draft Instrument on Places of Refuge for submission to the IMO Legal Committee, noting that it contains options in two Articles for alternative provisions to be adopted in any text which the IMO Legal Committee may consider appropriate at some future occasion.

Attached to this report as Annex 1 is the Draft Instrument as approved at the CMI Conference in Athens in 2008.

The objectives which the CMI set out to achieve in producing the Instrument were largely in accordance with those that were identified in LEG 91/6, ie:

- to emphasise the position under customary International law of a presumption of a right of access to a place of refuge for a vessel in distress
- to make the presumption rebuttable by the coastal State if it can show that it was reasonable to refuse access (Article 3).
- to give immunity from suit to a State which grants access to a place of refuge to a vessel in distress (Article 4).
- to give more force to the IMO Guidelines (Article 8), which CMI recognises as playing a significant role in assisting to define the ambit of "reasonableness", when considering the behaviour of both ship owners (and their masters) and States (and port authorities).
- to clarify the position regarding the issue of letters of guarantee to secure claims of a port or coastal State, which grants access to a ship in distress (Article 7).
- to require coastal States to designate places of refuge in advance, although not necessarily to publicise them (Article 8).

Concurrently with the preparation of the attached Instrument, the International Working Group sought information from National Maritime Law Associations in late 2006 as to the status of particular conventions and the attitudes, so far as they could be ascertained, of their governments in relation to the likely ratification of those conventions. The conventions concerned were the International Convention on Civil Liability for Oil Pollution Damage (CLC 1992); International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Funds 1992; Protocol of 2003 to the 1992 Fund Convention (Supplementary Fund Protocol); the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS 1996) and the

International Convention on Civil Liability for Bunker Oil Pollution Damage 2001. The feedback which the CMI obtained from National Maritime Law Associations has been summarised in a report which the CMI sent to the CMI Executive Council Meeting in November 2006 and a copy of that report together with its annexures is also attached to this Report as Annex 2.

The CMI commends the Instrument to the IMO Legal Committee and remains of the view that there is still a long way to go before existing liability conventions have worldwide acceptance, that even if all the liability conventions (which now include the Wreck Removal Convention 2007) achieve wide international acceptance there is no international convention which expressly requires States, (or those charged with the responsibility of making decisions concerning requests for admission to a place of refuge), to act reasonably in carrying out assessments of the condition of vessels which are in need of assistance and seek that assistance. Whilst the guidelines annexed to IMO Resolution A949(23) make it clear that maritime authorities should, for each place of refuge, make an objective analysis of the advantages and disadvantages of allowing a ship to proceed to a place of refuge in waters under their jurisdiction, there is no compulsion on them to carry out such an assessment. The CMI fears that a repeat of the events which took place in 2001 and 2002, in relation to the vessels "Castor" and "Prestige", may take place again in the future.

CMI is also conscious of legislation being contemplated within the European Union and believes that the IMO is a more appropriate body to be introducing legislation which requires States to act responsibly in these situations.

Stuart Hetherington
Vice President CMI
Chairman CMI International Working Group on Places of Refuge

15 January 2009

ANNEXURE 1

DRAFT INSTRUMENT ON PLACES OF REFUGE TABLE OF CONTENTS

Preamble

1. Definitions
2. Object and purpose
3. Legal obligation to grant access to a place of refuge
4. Immunity from liability where access is granted reasonably
5. Liability to another State, a third party, the ship owner or salvor where refusal of access is unreasonable
6. Reasonable conduct
7. Guarantees
8. Plans to accommodate ships seeking assistance
9. Identification of competent authority

PREAMBLE

THE STATES PARTIES TO THE PRESENT INSTRUMENT

CONSIDERING that the availability of places of refuge to ships in need of assistance significantly contributes to the minimization of hazards to navigation, human life, ships, cargoes and the marine environment and to the efficiency of salvage operations,

RECOGNISING that the legal framework for the efficient management of situations involving ships in need of assistance and requiring a place of refuge should take into account the interests of all concerned parties,

CONSCIOUS of the fact that existing international conventions do not establish a comprehensive framework for legal liability arising out of circumstances in which a ship in need of assistance seeks a place of refuge and is refused, or is accepted, and damage ensues,

NOTING that the principle of customary international law that there is an absolute entitlement of a ship in need of assistance to a place of refuge has in recent times been questioned,

BEARING IN MIND the Guidelines on Places of Refuge for ships in need of assistance, adopted by IMO Resolution A949(23) and the IMO Guidelines on the control of ships in an emergency (adopted as IMO Circular MSC.1/Circ.1251),

MINDFUL OF THE NEED for an Instrument which seeks to establish a framework of legal obligations concerning the granting or refusing of access to a place of refuge to a ship in need of assistance,

INTENDING that this Instrument shall govern the actions of States, competent authorities, shipowners, salvors and others involved, where a ship seeks assistance; encourage adherence to international Conventions relating to the preservation of human life, property and the environment, and balance those interests in a fair and reasonable way; and shall be construed accordingly,

HAVE AGREED as follows:

1. Definitions

For the purposes of this Instrument:

- (a) "ship" means a vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms.
- (b) "ship in need of assistance" means a ship in circumstances that could give rise to loss of the ship or its cargo or to an environmental or navigational hazard.

- (c) "place of refuge" means a place where action can be taken in order to stabilise the condition of a ship in need of assistance, to minimize the hazards to navigation, or to protect human life, ships, cargoes or the environment.
- (d) "competent authority" means a State and any organisations or persons which have the power to permit or refuse entry of a ship in need of assistance to a place of refuge.
- (e) "assessment" means an objective analysis in relation to a ship in need of assistance requiring a place of refuge carried out in accordance with any applicable IMO guidelines or any other applicable regional agreements or standards.
- (f) "ship owner" includes the registered owner or any other organization or person such as the manager or the bareboat charterer who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.
- (g) "registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship; however, in the case of a ship owned by a State and operated by a company, which in that State is registered as the operator of the ship, "registered owner" shall mean such company.

2. Object and purpose

The object and purpose of this Instrument is to establish:

- (a) a legal framework for the efficient management of situations involving ships in need of assistance requiring a place of refuge and
- (b) the responsibilities and obligations concerning the granting or refusing of access to a place of refuge.

3. Legal obligation to grant access to a place of refuge

- (a) Except as provided in Article 3 (b) any competent authority shall permit access to a place of refuge by a ship in need of assistance when requested.

OPTION 1

- [(b) The competent authority may deny access to a place of refuge by a ship in need of assistance when requested, following an assessment which on reasonable grounds establishes that the condition of the ship is such that it and/or its cargo is likely to pose a greater risk if permission to enter a place of refuge is granted than if such a request is refused.
- (c) The competent authority shall not deny access to a place of refuge by a ship in need of assistance when requested on the grounds that the shipowner fails to provide an insurance certificate, letter of guarantee or other financial security.]

OPTION 2

- [(b) Notwithstanding Article 3 (a) a competent authority may, on reasonable grounds, deny access to a place of refuge by a ship in need of assistance when requested, following an assessment and having regard to the following factors:
- (i) the issue of whether the condition of the ship is such that it and/or its cargo is likely to pose a greater risk if permission to enter a place of refuge is granted than if such a request is refused, and
- (ii) the existence or availability of an insurance certificate, letter of guarantee or other financial security but the absence of an insurance certificate, letter of guarantee or other financial security, as referred to in Article 7, shall not relieve the competent authority from the obligation to carry out the assessment, and is not itself sufficient reason for a competent authority to refuse to grant access to a place of refuge by a ship in distress, and the requesting of such certificate, or letter of guarantee or other financial security shall not lead to a delay in accommodating a ship in need of assistance.]

OPTION 3

- [(b) Notwithstanding Article 3 (a) the competent authority may deny access to a place of refuge by a ship in need of assistance when requested :
- (i) following an assessment which on reasonable grounds establishes that the condition of the ship is such that it and/or its cargo is likely to pose a greater risk if

permission to enter a place of refuge is granted than if such a request is refused or

(ii) on the grounds that the shipowner fails to provide an insurance certificate, or a letter of guarantee or other financial security in respect of such reasonably anticipated liabilities that it has identified in its assessment, but limited in accordance with Article 7.]

(d) If access is denied the competent authority shall use its best endeavours to identify a practical or lower risk alternative to granting access.

(e) The obligations imposed by this Article shall not prevent the competent authority from making any claim for salvage to which it may be entitled.

4. Immunity from liability where access is granted reasonably

Subject to the terms of this Instrument, if a competent authority reasonably grants access to a place of refuge to a ship in need of assistance and loss or damage is caused to the ship, its cargo or other third parties or their property, the competent authority shall have no liability arising from its decision to grant access.

5. Liability to another State, a third party, the ship owner or salvor where refusal of access is unreasonable

If a competent authority refuses to grant access to a place of refuge to a ship in need of assistance and another State, the ship owner, the salvor, the cargo owner or any other party prove that it or they suffered loss or damage (including, in so far as the salvor is concerned, but not limited to, the salvors inability to complete the salvage operations) by reason of such refusal such competent authority shall be liable to compensate the other State, ship owner, salvor, cargo owner, or any other party, for the loss or damage occasioned to it or them, unless such competent authority is able to establish that it acted reasonably in refusing access pursuant to Article 3(b).

6. Reasonable conduct

For the purposes of ascertaining under Articles 3, 4 and 5 of this Instrument whether a State or competent authority has acted reasonably courts shall take into account all the circumstances which were known (or ought to have been known) to the competent authority at the relevant time, having regard, inter alia, to the assessment by the competent authority.

7. Guarantees

OPTION 1

[(a) When agreeing to grant access to a place of refuge to a ship in need of assistance, the competent authority may request the ship owner to provide evidence of an insurance certificate, or a letter of guarantee by a member of the International Group of P&I Clubs, or other financial security from a recognised insurer, bank or financial institution in a reasonable amount in respect of such reasonably anticipated liabilities that it has identified from its assessment. Subject to the following paragraph of this Article, such letter of guarantee or other financial security shall not be required to exceed an amount calculated in accordance with the most recent version of Article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976 or the corresponding provision on limitation for claims other than passenger, loss of life or personal injury claims of any other international convention replacing the previously mentioned convention, in force on the date when the insurance certificate, or letter of guarantee or other financial security is first requested, whether or not the State in question is a party to that convention.

(b) Nothing in this Article shall prevent a competent authority from requiring the shipowner to provide a certificate or letter of guarantee under any other applicable International Convention other than this Instrument.]

OPTION 2

[(a) When agreeing to grant access to a place of refuge to a ship in need of assistance, the competent authority may request the ship owner to provide evidence of an insurance certificate, or a letter of guarantee by a member of the International Group of P&I Clubs, or other financial security from a recognised insurer, bank or financial institution in a reasonable amount in respect of such reasonably anticipated liabilities that it has identified from its assessment. Subject to paragraph (c) of this Article, such letter of guarantee or other financial security shall not be required to exceed an amount calculated in accordance with the most recent version of Article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976 or the corresponding provision on limitation for claims other than passenger, loss of life or personal injury claims of any other international convention replacing the previously mentioned convention, in force on the date when the insurance certificate, or letter of guarantee or other financial security is first requested, whether or not the State in question is a party to that convention.

(b) In cases where claims described in Article 2 paragraphs 1 (d) or (e) of the Convention on Limitation of Liability for Maritime Claims are not subject to limitation the reasonable amount shall be calculated in accordance with Article 7 (a), with the addition of such amount as is likely in total to compensate the competent authority in respect of such liabilities.

(c) Nothing in this Article shall prevent a competent authority from requiring the shipowner to provide a certificate or letter of guarantee under any other applicable International Convention other than this Instrument.]

OPTION 3

[(a) When agreeing to grant access to a place of refuge to a ship in need of assistance, the competent authority may request the ship owner to provide evidence of an insurance certificate, or a letter of guarantee by a member of the International Group of P&I Clubs, or other financial security from a recognised insurer, bank or financial institution in a reasonable amount in respect of such reasonably anticipated liabilities that it has identified from its assessment.

(b) Nothing in this Article shall prevent a competent authority from requiring the shipowner to provide a certificate or letter of guarantee under any applicable International Convention other than this Instrument.]

8. Plans to accommodate ships in need of assistance

States shall draw up plans to accommodate ships in need of assistance in appropriate places under their jurisdiction around their coasts and such plans shall contain the necessary arrangements and procedures to take into account operational and environmental constraints to ensure that ships in need of assistance may immediately go to a place of refuge, subject to authorisation by the competent authority, granted in accordance with Article 3. Such plans shall also contain arrangements for the provision of adequate means and facilities for assistance, salvage and pollution response.

9. Identification of competent authority

States shall designate the competent authority to whom a request from a ship in need of assistance for admission to a place of refuge appropriate to the size and condition of the ship in question should be made, and use all practicable means, including the good offices of States and organisations, to inform mariners of the identity and contact details of such competent authority.

ANNEXURE 2

REPORT

EXECUTIVE COUNCIL MEETING NOVEMBER 2006

Places of Refuge

Since the last Assembly and Executive Council Meetings a questionnaire, a copy of which is attached, has been sent to National Associations. At the date of this report responses have been received from the following National Associations:-

Australia, New Zealand, Netherlands, Argentina, Italy, Japan, Belgium, Brazil, Nigeria, United States, Finland, Croatia, Germany, Denmark, Slovenia and Canada.

Attached is a summary of the responses to the first question.

In relation to what is anticipated by the above countries, the following responses have been received:-

In respect of **Argentina** no decisions have been made to ratify the HNS or Bunker Conventions or the Fund Protocol 2003.

Brazil is likely to ratify CLC and Fund Protocol 1992 in the near future. It will not be ratifying the Supplementary Fund Protocol 2003 and is not inclined at the present time to ratify FINS or Bunker Conventions.

In respect of **Belgium** no decisions have been made to ratify the HNS or Bunker Conventions.

In respect of **Australia** it expects to ratify both the Fund Protocol 2003 and the Bunker Convention in the course of next year. No decision has been made in respect of the HNS Convention.

Canada is considering ratification of each of the HNS, Bunkers and Supplementary Fund Protocol.

Croatia expects to ratify the HNS Convention in 2007.

Denmark and **Finland** both expect to ratify the HNS and Bunker Conventions in the near future.

Italy expects to ratify the Supplementary Fund and Bunker Convention soon but has not made any decision in relation to the HNS Convention.

Germany expects to ratify the HNS Convention in the near future.

No decisions have been made by the **Japanese** Government concerning the HNS or Bunker Conventions.

The **Netherlands** expects to ratify the HNS Convention in the next couple of years.

New Zealand is likely to introduce legislation to give effect to HNS and Bunkers Convention in 2007 or 2008.

Nigeria is unlikely to ratify the Supplementary Fund Protocol of 2003 or the HNS Convention and the **United States** is unlikely to be ratifying any of the Conventions.

The only other development in this area has been an initiative by the Bahamas flag and the Maritime Safety Committee of the IMO to produce by next year "generic guidance clarifying the chain of command". A recent letter to the editor of Lloyd's List by K. Sehimizu, the Director of the MSC confirmed that "at its 81st Session in May 2006 it considered a proposal to develop guidelines covering the responsibilities of all parties in a maritime emergency, which would not create a change of command but implemented by member States as part of their emergency action plans, would clarify what the chain should be".

He continued in his letter by saying:

"The Committee, having recognised the importance of the issue, decided to include it in the work programs of the NAV and COMSAR sub-committee's. During the 52nd Session of the sub-committee on safety and navigation in July 2006 there was considerable support for the development of these guidelines and sub-committee was also of the opinion that the ISU should be involved, since the proposed guidelines would include a section on guidelines for salvors. It is expected that this work would be completed during 2007 and any input from the ISU that will assist in achieving the objectives would be welcomed".

I have been contacted by Mike Lacey the Secretary – General of the I.S.U. (thanks to Patrick Griggs having been in touch with him) who has enquired whether CMI would be interested in becoming involved in this project. I have responded affirmatively.

STUART HETHERINGTON
20 November 2006

Dear President,

Places of Refitae: Third Questionnaire

As you may know the International Working Group on Places of Refuge has prepared a draft instrument on this topic and will be continuing, in the lead up to the conference in Greece in 2008, to refine the document for discussion at that conference. The International Working Group is conscious that there is some opposition, both amongst National Associations and some stakeholders (such as the International Group of P&I Clubs) to such an instrument. One reason which has been expressed for that opposition is understood to be that it is thought that discussions surrounding such an instrument might detract from the implementation of the principal liability Conventions in this area (CLC, Fund, FINS & Bunkers).

To assist the International Working Group I would be grateful if you would respond to the following questionnaire by 30 September 2006. The CMI Year Book does, of course, contain information on accession/ratification in relation to the first 6 Conventions or Protocols listed below (A-F) and your task will be somewhat easier if you consult the Year Book, at least in so far as those instruments are concerned.

1. Please advise whether your country has ratified or acceded to any of the following Conventions or Protocols:-
 - (A) International Convention on Civil Liability for Oil Pollution Damage (CLC 1969);
 - (B) CLC Protocol 1976;
 - (C) CLC Protocol 1992;
 - (D) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund 1971);
 - (E) Fund Protocol 1976;
 - (F) Fund Protocol 1992;
 - (G) Protocol of 2003 to the 1992 Fund Convention (Supplementary Fund Protocol);
 - (H) International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS 1996);
 - (I) International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.
2. If your country has not ratified or acceded to any of the above Conventions or Protocols, could you please ascertain from an appropriate government official whether any decision to ratify/accede to or not to ratify/accede to any such Convention or Protocol has been made by your government.
3. If your country has made a decision not to ratify/accede to any such Convention or Protocol please ascertain the reason(s) for that decision.
4. If your government has made a decision in favour of ratifying or acceding to any such Convention or Protocol, but has not implemented that decision, could you please ascertain when such ratification or accession is likely to take place.

Yours sincerely,

Stuart Hetherington, Chairman, International Working Group

COUNTRY	CLC 1969	CLC PROTOCOL 1976	CLC PROTOCOL 1992	FUND 1971	FUND PROTOCOL 1976	FUND PROTOCOL 1992	FUND PROTOCOL 2003	HNS 1996	BUNKER 2001
ARGENTINA	✓	✓	✓	✓	✓	✓	X	X	X
AUSTRALIA	✓	✓	✓	✓	✓	✓	X	X	X
BELGIUM	✓	✓	✓	✓	✓	✓	✓	X	X
BRAZIL	✓	X	X	X	X	X	X	X	X
CANADA	✓	✓	✓	✓	✓	✓	X	X	X
CROATIA	✓	✓	✓	X	X	✓	✓	X	✓
DENMARK	✓	✓	✓	✓	✓	✓	✓	X	X
FINLAND	✓	✓	✓	✓	✓	✓	✓	X	X
GERMANY	✓	✓	✓	✓	✓	✓	✓	X	✓
ITALY	✓	✓	✓	✓	✓	✓	X	X	X
JAPAN	✓	✓	✓	✓	✓	✓	✓	X	X
NETHERLANDS	✓	✓	✓	✓	✓	✓	✓	X	X
NEW ZEALAND	✓	X	✓	✓	X	✓	X	X	X
NIGERIA	✓	✓	✓	✓	✓	✓	X	X	✓
SLOVENIA	✓	✓	✓	✓	✓	✓	✓	✓	✓
USA	X	X	X	X	X	X	X	X	X