

IMLI NEWS



THE MAGAZINE OF THE IMO INTERNATIONAL MARITIME LAW INSTITUTE-MALTA . No. 4 1995

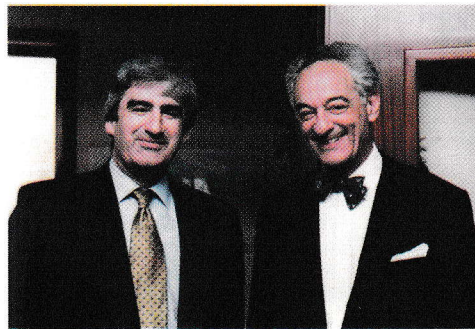
UNIFORMITY AND CHANGE IN INTERNATIONAL MARITIME LAW

Address by Professor Dr Allan Philip President of the Comité Maritime International at the 1994 /1995 Graduation Ceremony.

Thank you very much for inviting me to come here and speak to you on this festive occasion, where you reap the result of a year's hard and concentrated work. It is a particular pleasure for me to come back and bring you my congratulations to your graduation so soon after having been with you in a teaching capacity to tell you about the work of the Comité Maritime International and about some of the problems on the borderline between treaty law and one of my favourite subjects, the conflict of laws. Had I known that I should be here for this occasion, I might, however, have saved some of what I told you then for now. I told you then, and wish to remind you now, that the underlying aim and purpose of all the work done by the CMI is the unification of maritime law. We firmly believe that, in order best to serve shipping and world trade and thereby the prosperity of the peoples, the law regulating maritime trade and the maritime industry as a whole should be uniform all over the world. We know that that is an ideal, which we may never be able to achieve. First of all, there will always be interests that will draw in other directions than that on which a majority can agree. Secondly, what a majority can agree on may not always be the best, either objectively or from the point of view of everybody. That, however, should not necessarily prevent us from going along with the majority. The best is the enemy of the good, and if it is good it may be good enough. And thirdly, and that is the point on which I wish to dwell in these remarks, we live in a world of change. What was the best yesterday, may not be so under tomorrow's conditions. Uniformity may, therefore, be difficult to achieve, and to keep, when you have first achieved it. Therefore, like so many other ideals, it is something you continuously have to work and fight for. In my lecture on the work of the CMI I told you about the principal work done by the organisation over the past century. I wish to draw on that material to exemplify to you, what I mean with what I just said.

One particularly successful CMI Convention is the Hague Rules 1924 on Carriage of Goods by Sea. Eighty seven countries were parties to it at its culmination. In the sixties various criticisms arose and it was amended by the Visby Protocol. Had the Diplomatic Conference had legislative power, we would then have had 87 parties to the amended Hague/Visby Rules. But alas, that is not the way the international society works. The Hague Rules lost 10 parties and still has 77. The Hague Visby Rules now have 23 parties, and in the meantime we have got the Hamburg Rules with

22 parties. A similar development on a much smaller scale you may see with respect to the conventions on limitation of liability of shipowners of 1924, 1957 and 1976 respectively. In both respects it should be remembered that beside the Conventions a number of national laws exist in countries not parties to them. Other simi-



Prof. Dr. Jur. A. Philip, President of the Comité Maritime International with Prof D.J. Attard

lar examples exist. What conclusions should we draw from this? It might be tempting to draw the conclusion that when first we have achieved uniformity in a field, then we should no longer try to make any changes. That, I believe, would be to go too far. It is, of course, unfortunate that unlike the national societies, the international society has no independent legislative power, but has to rely on the national legislature to implement what it suggests. This has a very conserving effect on existing legislation. In the first place, it makes it diffi-

cult to achieve a great amount of uniformity, because it takes a long time before a considerable number of countries accept a convention. It took, for instance, 7 years for the Hague Rules 1924 to enter into force. And although most ratifications are from the thirties and most later ratifications are by newly independent countries,

Greece only ratified in 1993, almost 70 years later. But it also makes it difficult to make any changes. The Visby Protocol to the Hague Rules took 9 years to enter into force and then, within a small number of States. And Greece ratified the old Hague Rules without the protocol 16 years after the protocol came into force and 25 years after the protocol was made. Still, I do not think we should give up trying to revise conventions to make them fit to changed circumstances. But, we should, of course, show realism and caution.

Revolutionary spirit and idealism is all very well and it may once in a great while be necessary to take strong measures and act forcefully and fast. But usually, in the law, evolution and subtlety are better and achieve more. Before deciding to embark upon a revision of successful international legislation we should seriously consider whether revision is absolutely necessary and whether it is to be expected that more than a handful of countries will ratify the new measure. Sometimes, a better solution is to go a different way. For small changes

WIDESPREAD SUPPORT FOR THE IMLI AT THE IMO

The IMO Flag State Implementation Sub-Committee in a recent unanimous decision recognised that IMLI played an "important role in IMO's efforts to enhance the implementation of the various IMO standards worldwide".

Indeed, the Sub-Committee recommended to the IMO Maritime Safety Committee that ways and means should be sought to ensure IMLI's long-term viability. Consequently, the IMO Council and the Technical Cooperation Committee have commissioned a review to consider alternative financial options to the current dependence of IMLI on voluntary contributions, in order to secure IMLI's future viability.



IMLI Governors at the March 1995 Meeting under the Chairmanship of the IMO Headquarters in London

it is in any event rarely worth while setting the big international apparatus in motion. Big changes may often be achieved in a different way. May I remind you of the situation which arose as a result of the Torrey Canyon incident. For a long time already it had been questioned whether the system of limitation of shipowners' liability was justified. Then came the Torrey Canyon. Governments could not live with the limitation conventions and their restrictions on liability in such a situation and a whole new system was created with the CLC and Fund Conventions, thereby achieving something which could never have been achieved by an ordinary revision of the Limitation Conventions. The CLC Convention now has about 85 member States. A similar situation has arisen in connection with the recent frequent passenger ferry disasters. The great

challenge now is the carriage of goods by sea. How shall we achieve reconciliation of the three regimes of the Hague Rules, Hague/Visby Rules and the Hamburg Rules, and all the various national intermediate or different systems? Various initiatives are under way. But the risk is, of course, that all we achieve is to add another system to the existing ones. Is the solution perhaps that special rules of carriage of goods by sea become superfluous in an age of containers and combined transport combined with the electronic transport documents? Or is it possible to devise a compromise of some sort, which may be acceptable to a large majority? Time will show, but the CMI will certainly be involved in finding a solution or assisting with advice. May I conclude in wishing that you will participate actively in trying to achieve and protect uniformity

in maritime law, but without losing sight of the need that uniformity should not be achieved at any price. You should not seek uniformity on the basis of the lowest common denominator. Quality is a requirement, which must be given important consideration. And change should not be an aim in itself. It will often compromise uniformity. If change is necessary, ways should be found, which make it possible to combine change with uniformity. I wish you much success in your future work, when you go back to your own countries, whether you go back to continue in your previous work or to start a new career. I am sure that the year you have spent in Malta at the International Maritime Law Institute will remain a wonderful memory and a lasting inspiration.

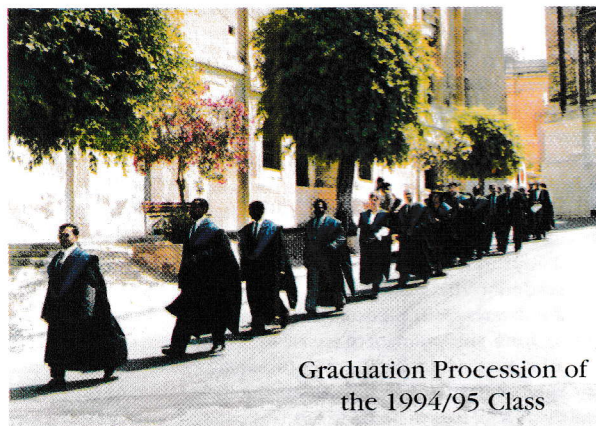
**EXTRACTS FROM THE ADDRESS BY MRS. MONICA N. MBANEFO
ON BEHALF OF MR. W.A. O'NEIL, SECRETARY GENERAL IMO TO THE 1995 GRADUATION CEREMONY**

I am very pleased to be with you on this very special occasion and also very honoured to address you on behalf of the Secretary-General of IMO, Mr William A. O'Neil. The Secretary General had hoped to be able to be with you at this ceremony today, and to share this moment with you. Unfortunately, another engagement made this impossible. Mr O'Neil has therefore asked me to convey to you his sincere congratulations on your graduation and his warm welcome to IMO Headquarters, not only later this week when you embark upon your field trip, but hopefully also in the context of your future work in your own countries. I have always felt a close affinity towards IMLI. This may come as a surprise to you as this is my first visit to Malta. However, I have been indirectly involved with IMLI even before I joined the IMO. My husband was one of the people who drew up the modules for this Institution and amongst its earliest visiting professors. Moreover, during my time as the Director of the Legal

Services, Ministry of Transport, Nigeria, I made the Government aware of the importance of IMLI and what it had to offer. In fact, one of the foundation students was one of my assistants in the Legal Unit. Since I took up my appointment in IMO, I have quite naturally been closely involved with this Institute and I have followed with great interest the work and achievements of this Institute. I have not, however, taken the floor here today to speak about myself. Nor will I at this moment in time focus on the achievements of the Institute. Except to say in this regard, that seen from IMO's perspective there is no doubt that the aims and objectives of the Institute, as set out in

the Statute of the Institute, "that it shall be an international centre for the training of specialists in maritime law and the development and dissemination of knowledge and expertise in international maritime law and the general law of the sea, with special reference to the international regulations and procedures for the safety and efficiency of shipping and the prevention of marine pollution from ships developed under the auspices of the International Maritime Organisation"; have been fulfilled and even the highest expectations have been surpassed. I am quite convinced that IMLI has given you

had a vision, a vision of how such an institute could fulfill an essential role in the technical cooperation programme of IMO and through the teaching of maritime law and maritime legislation enhance the implementation of IMO conventions and ultimately



Graduation Procession of the 1994/95 Class



Mrs. M.N. Mbanefo presenting the IMO Secretary General Prize for Best Dissertation to J. Alvarez Del Castillo Baeza from Mexico.

not only the formal competence in the form of a Masters degree, but also the necessary education for being able to enhance maritime legislation in general and to promote the acceptance and the implementation of IMO conventions in particular in your countries. Of course, this is not a goal in itself but a tool to create safer shipping and cleaner oceans. If our combined efforts could lead to this, then your personal achievements here at the Institute will also become a great achievement in the global work to fulfill these aims of IMO. Some years ago when the IMO commenced discussions with the Maltese Government on the establishment of this Institute they

lead to the fulfillment of the principal aims of the Organisation which is safer shipping and cleaner oceans. With you and others before you spreading the knowledge acquired at the Institute in your various countries and elsewhere, I think everyone will agree that this vision has now been realised. You all have an important role to fulfill; the degree you have acquired here at IMLI can be seen as confirmation of your specific qualifications to work together with IMO in the spirit of the IMO Convention towards the legislative improvement of the safety of navigation and the prevention of pollution of the seas. IMO puts its trust in your ability and your preparedness to be part of these efforts and Mr. O'Neil sends you his best wishes for the future. We cannot, however, overlook the fact that the success of the Institute and its graduates are not possible without the unfailing support of the Government of Malta and the dedication of the Director, the Senior Deputy Director and the academic and administrative staff, including the visiting professors who have been generous with their time and expertise. Without their dedication to

this cause, without their self-sacrifice and hard work, without their competence, and the generosity of the Maltese Government the success we are celebrating today would not have been accomplished. Only through their dedication can the Institute manage to live up to the high expectations attached to its establishment. Let me therefore join Mr O'Neil in expressing my warmest congratulations to all of you and my very best wishes for the future.

IMLI RECORD CORNER

LUCY ASUAGBOR, Graduate of 1992, has been appointed Chief Justice of the Court of Appeal in Cameroon.

GERALD ZACKIOS, Graduate of 1992, has been appointed Attorney General in Marshall Islands.

BELLA HILI, Graduate of 1994, has been appointed Deputy Director of the International Ocean Institute in Malta.

MOUSTAPHER MARONG, Graduate of 1994, has become Minister of Justice in The Gambia

IMLI LAPEL BADGE

IMLI GRADUATES MAY OBTAIN AN IMLI LAPEL BADGE BY WRITING TO THE ADMINISTRATIVE ASSISTANT AND ENCLOSING A BANK DRAFT FOR THE AMOUNT OF STG. £8.70

MED-CAMPUS PROGRAMME

On the 10th June 1995, Graduate students and Government officials from Cyprus, Egypt, Malta, Tunisia and Turkey started attending a course on "Legal Maritime Cooperation and the Mediterranean Environment" at IMLI. This course is co-organised by the Universities of Barcelona, Malta, Rome and Tunis. It is being held under the auspices of MED-CAMPUS Programme, which is financed by the European Union.



Prof. of D.J. Attard delivering a paper on "The International Regime relating to the Arrest of Seagoing Ships: Some developments" at the ISSA '94 Convention

IMLI NEWS

Published by IMO International Maritime Institute.

Editor: Lorraine Napier.

All correspondence should be addressed to: IMLI News, IMO International Maritime Law Institute,

P.O. Box 31, Msida MSD 01, Malta.

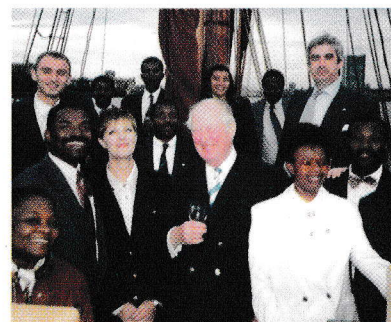
Tel: [356] 319343, 310816, Fax: [356] 343092.

The IMO International Maritime Law Institute was established under the auspices of the International Maritime Organization, a specialised agency of the United Nations

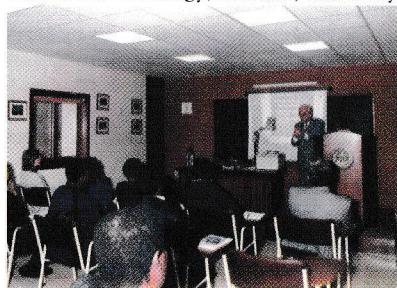
IMLI VISITING FELLOWS 1994-1995

DR K. AQUILINA (Malta, Lecturer, University of Malta) MR W. BIRCH REYNARDSON (U.K., British Maritime Law Association; Titulary Member, Comite Maritime International) MRA. BISHOP (U.K., Holman, Fenwick & Willan) DR W.A.G. BLONK (The Netherlands, Director, Maritime Safety Unit, Directorate-General for Transport, European Union) M. PH. BOISSON (France, Legal Advisor, Bureau Veritas) MS S. BROADLEY (U.K., International Oil Pollution Compensation Fund) DR. A. FENECH (Malta, Fenech & Fenech Associates) DR. T. FENECH (Malta, Fenech & Fenech Associates) THE HON MR JUSTICE J.A. FILLETTI (Malta) THE HON DR M. FRENDO (Malta, Minister for Transport, Communications & Technology; Lecturer, University

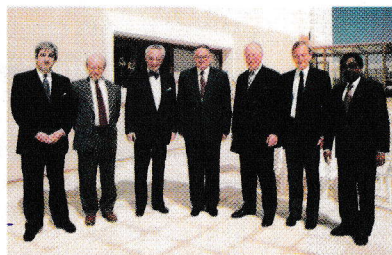
of Malta) DR M. GANADO (Malta, Prof J.M. Ganado & Associates) DR G. GAUCI (Malta, University of Wales, Cardiff) MR P. GRIGGS (U.K., Titulary member, Comite Maritime International, Senior Partner, Ince & Co) MR C. HORROCKS (U.K., Secretary General, International Shipping Federation) DR W. MUELLER (Switzerland, Hon. Vice-President Comite Maritime International, IMLI Governor) PROFESSOR A. PARDO (U.S.A., Former Ambassador of Malta to the United Nations) PROF. DR. JUR. A. PHILIP (Denmark, President, Comite Maritime International) MR. R. SHAW (U.K., Titulary Member, Comite Maritime International, Senior Partner, Shaw and Croft Solicitors) PROF. F.L. WISWALL (JR.) (U.S.A., Titulary Member, Comite Maritime International, IMLI Governor)



Mr. W. Birch Reynardson with the 1994-1995 Graduates during a boat trip on the River Thames organised by Thomas Miller P & I.



Dr. W. Blonk, Director for Maritime Transport and Ports of the European Commission, addressing the 1994-1995 Class

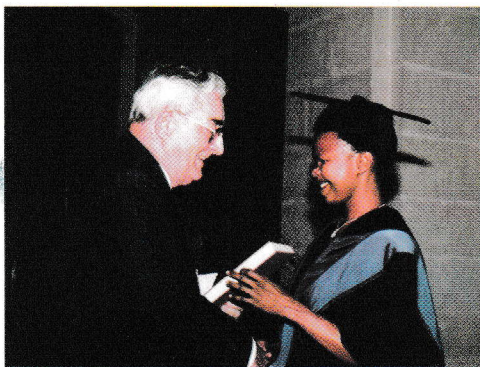


H.E. Dr. Ugo Mifsud Bonnici, President of the Republic of Malta, with the CMI Fellows, Prof. D.J. Attard and Prof. P.K. Mukherjee during a visit to the Institute



H.E. Mr. Graham Archer, the British High Commissioner, during a visit to the Institute, in the company of IMLI Graduates

1994-1995 GRADUATES



Dr. W. Mueller presenting the IMLI Prize for Best Maritime Legislation Drafting Project to Cynthia Herbert from Barbados



Prof. D.J Attard, Prof. Dr. Jur. A. Philip, The Hon. Dr. M. Frendo, Minister for Transport, Communications & Technology, and Prof. P.K. Mukherjee with the Graduates before the Graduation Dinner which was held at the Casino Maltese



The 1994-1995 Graduates in a festive mood on the day of the last exam



Prof. Dr. Jur. A. Philip presenting the IMLI Lapel Badge to Ademola Ajibola from Nigeria at the Graduation Dinner.

1994-1995 AWARDS

IMO Secretary General's Prize for Best Dissertation: Joaquin Alvarez Del Castillo Baeza [Mexico]
 Malta Maritime Prize for Best Performance in Law of the Sea: Moses Ndungu [Kenya]
 Malta Maritime Prize for Best Performance in Law of the Sea: Yaw Darko Asare [Ghana]
 IMLI Prize for Best Maritime Legislation Drafting Project: Cynthia Herbert [Barbados]

AJIBOLA ADEMOLA (Nigeria), 29 Roundhill Drive, Enfield En2 7RL, United Kingdom. Dissertation: The Sister Ship Arrest in Maritime Law; Drafting Project: The Nigerian Shipping (Limitation of Liability) Act, 1995. ALVAREZ DEL CASTILLO JOAQUIN (Mexico), Morelos 92 San Jeronimo Lidice, Mexico City 10200, Mexico. Dissertation: A Review of Mexican Legislation in the Light of the 1982 Convention on the Law of the Sea; Drafting Project: Regulations on the Limitation of Liability for Maritime Claims. ASARE YAW DARKO (Ghana), Ghana Ports and Harbours Authority, P.O. Box 150, Tema, Ghana. Dissertation: The Himalaya Clause and Third Party Liability under a Contract of Carriage of Goods by Sea in Ghana - an Appraisal; Drafting Project: Ghana Freeport Act, 1995. CARLTON-HANCILES FREDERICK (Sierra Leone), Law Officers' Department, Guma Building, Lamina Sankoh Street, Freetown, Sierra Leone. Dissertation: Rights of the Seafarer Against the Shipowner; Drafting Project: Pilotage Act, 1995. DARYANANI MINOO (India), 7F Embassy, 4 Shakespeare Sarani, Cal 700071, W. Bengal, India. Dissertation: Limitation of Liability in Oil Pollution Cases and the Concept of Sustainable Development; Drafting Project: The Indian Marine Insurance Loss and Indemnification Act, 1995. DAYARATNE K.D. GODE (Sri Lanka), Ministry of Ports and Shipping, 45, Leyden Bastian Road, Colombo 01, Sri Lanka. Dissertation: Shipowner's Liabilities and Duties Relating to Seafarers; Drafting Project: Seafarers disciplinary Offences Act. DOMINGOS OSSUMANE (Mozambique), Beira Corridor Authority, Rua Costa Serrao, 150, 1st Floor, PO Box 1320, Beira, Mozambique. Dissertation: Fundamental Breach and its Application to Deviation in the Law of Carriage of Goods by Sea; Drafting Project: A Proposed Law for the Carriage of Goods by Sea for the Republic of Mozambique. ERUCHALU CHIGOZIE (Nigeria), Civil Litigation Department, Federal Ministry of Justice, Marina, Lagos, Nigeria. Dissertation: Marine Oil Pollution - Liability, Clean-up and Compensation under Nigerian Law; Drafting Project: Legislation Incorporating the Civil Liability Convention of 1969 and the Fund Convention of 1971, as Part of the Marine Pollution Prevention (Amendment) Act, 1995. HERBERT CYNTHIA (Barbados), Attorney General's Chambers, Frank Walcott Building, St Michael, Barbados. Dissertation: The Duty of the State to Exercise Effectively Jurisdiction and Control over Ships Registered under its Flag; Drafting Project: Draft Legislation Respecting the Incorporation of Annex II of the Marpol Convention into the Marine Pollution Prevention Act 1994 of Barbados. MIFSUD MALCOLM (Malta), Rosslen, 75 G'Mangia Hill, Pieta, Malta. Dissertation: Impediment of Departure of Ships in the Light of the Proposed Amendments; Drafting Project: Liability of Operators of Transport Terminals Act. MOHAMAD ISSAM TAWFIK (Palestine), c/o Embassy of Palestine. Dissertation: The Historical and Legal Evolution of the Palestinian Maritime Activity Zones; Drafting Project: Oil Pollution Act (1995). MOHAMED IBRAHIM NASIR (Maldives), Attorney General's Office, Huravee Building, Male, Maldives. Dissertation: The Priority of the Mortgages under the Law Relating to Maritime Claims; Drafting Project: Safety of Passenger Ships and Passengers Act, 1995. NDUNGU MOSES (Kenya), Kenya Navy Headquarters, P.O. Box 85103, Mombasa, Kenya. Dissertation: The Interrelationship between Salvage and Towage in Maritime Law; Drafting Project: The Salvage (Warships and Government Ships) Act. NYIRENDA KENYATTA (Malawi), Ministry of Justice, Private Bag 333, Lilongwe 3, Malawi. Dissertation: Incorporation of Maritime Conventions into Malawi Municipal Law under the 1994 Constitution; Drafting Project: Inland Waters Shipping Act, 1995. PORTIMAO ABILIO DAVID (Mozambique), Av. Julius Nyerere No. 970-1 Dt., Maputo, Mozambique. Dissertation: A Case in Favour of the Adoption of the United Nations Convention on the Carriage of Goods by Sea, 1978 (the Hamburg Rules) in Mozambique; Drafting Project: Legislation Proposing an Open Ships Registration for Mozambique. RACINA LAILA (Latvia), Maritime Department, Ministry of Transport, 63 Kr. Valdemara Street, LV-1142, Riga, Latvia. Dissertation: The Emerging Law of Maritime Liens with Special Reference to Latvian Legislation; Drafting Project: Carriage of Goods by Sea Act. RADJABOV ILKIN (Azerbaijan), Caspian Shipping Company, 5 Rasoulzade Street, Baku, Azerbaijan. Dissertation: Delimitation of Maritime Boundaries in the Caspian Sea; Drafting Project: Legislation Incorporating the Convention Relating to the Arrest of Sea-Going Ships of 1952 and the Convention on Maritime Liens and Mortgages of 1993 as Part of the Merchant Shipping Code. SAKITIMA'ATA R. (Fiji), Attorney General's Chambers, Box 2213, Government Buildings, Suva, Fiji. Dissertation: Security Devices in Maritime Law; Drafting Project: The Seafarers Act, 1995. SCHEMBRI-ADAMI SANDRO (Malta), 15/17 Vincenti Buildings, Strait Street, Valletta, Malta. Dissertation: Safety of Navigation in the Maltese Territorial Sea; Drafting Project: The Seafarer's Welfare at Sea and Port Act, 1995. YUSUF BATURE BALA (Nigeria), Ministry of Transport, No.1 Joseph Street, Marina, Lagos, Nigeria. Dissertation: The Bill of Lading: Contractual; Drafting Project: Decree to Regulate Dumping at Sea.