

IMLI NEWS



THE MAGAZINE OF THE IMO INTERNATIONAL MARITIME LAW INSTITUTE-MALTA. NO. 6 1997



KEY NOTE ADDRESS DELIVERED AT THE IMLI GRADUATION CEREMONY 1995/1996 BY THE RT HON NEIL KINNOCK, EUROPEAN COMMISSIONER FOR TRANSPORT AND TRANSEUROPEAN NETWORKS



It is a pleasure and an honour to be at this graduation ceremony, particularly here in this setting. Today is obviously special for those of you who are graduating and I offer you my warm congratulations. It is a significant day too for the maritime community because the skills which you have acquired here will help to reinforce the quality of shipping services throughout the world.

Of course, all of us know and support the valuable work of the International Maritime Organisation in raising safety standards by establishing new and revised rules. You will not need me to say, however, that the professional task of ensuring that those rules are implemented and applied is vital and I wish you well in pursuing that mission.

The European Commission is proud to be associated with the development and the enforcement of IMO standards and we continue to follow our stated policy that safety and pollution rules should be pursued primarily through the IMO so as to ensure the widest possible coverage for such rules and standards in a global industry.

As far as implementation is concerned we believe that the role of the European Commission is fundamental to making IMO's work effective by ensuring compliance through European Community law not only for ships and ports of the fifteen Member States but also for vessels of all flags operating to and from EC ports.

We therefore work alongside our fifteen Member States in the development of IMO policy and, in addition to participating in IMO meetings, we have - since the beginning of this year - located an official permanently in London with the specific tasks of liaising between the IMO and the Commission and ensuring an accurate and rapid flow of information between our two organisations.

In addition to this policy input, the Community budget has provided over 1.5 million ECU of financial assistance in recent years to assist

a number of important IMO activities including this International Maritime Law Institute, the World Maritime University in Malmo and the International Maritime Academy in Trieste. We have also, of course, helped specific technical assistance projects in less developed countries on issues such as port state control, training and certification, and search and rescue, and further support of this kind is currently being discussed with particular attention to the training of flag administrators.

Global improvement of the quality of shipping services worldwide is, naturally a central aim of the European Community's maritime policy. The reasons are clear: substandard operators are a threat to lives and to the environment and they also engage in unfair competition. At a time when the competitive pressure in the shipping industry are as fierce as they have been, such unfair and potentially dangerous practices should not and must not be tolerated.

Those competitive pressures are, of course, a matter of general concern in the European Community and that was a major cause of our decision to produce a policy discussion paper on a New Maritime Strategy in order to set out future policy directions for Community shipping policy.

Some of the considerations in that paper have relevance for what the graduates of this Institute do and will do and I thought that it would be worthwhile making reference to our thinking on this occasion.

Shipping in the European Community, as elsewhere, clearly faces opportunities as well as challenges. World seaborne trade continues to grow while congestion and pollution in land-based transport are encouraging shippers to look again to the sea to move their goods. Customers are demanding high quality shipping services adapted to their global markets. And increasing integration in Europe and the recent and prospective enlargements of the European Union have turned



NEIL KINNOCK CONGRATULATING IMLI GRADUATES ON THEIR ACADEMIC SUCCESS.

the spotlight again on the importance of our sea links.

But alongside these undoubted opportunities, we have to recognise that our industry faces the daunting task, one of maintaining its international competitiveness. Although some individual fleets are faring much better than others, the fact remains that the European Community's flagged fleet overall is dwindling with continued flagging out, our seafarers are not being replaced with a new generation, and our fleets are ageing faster than those of our competitors.

While the countries of the EU account for about a quarter of world GDP, their share of the world fleet is about a tenth. And although the days in which the size of a nation's fleet was an indicator of its importance on the world stage are ended, it is clear that the size of a fleet is still not without relevance.

It is against this background that I have presented my strategy paper. Its purpose is to

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VALEDICTORY ADDRESS DELIVERED AT THE IMLI GRADUATION CEREMONY 1995/1996 BY IMLI GRADUATE S.T. ALEAMOTU'A (TONGA)



It is said that it became the gravity of the legal profession for practitioners and students of law to speak EFFECTUALLY, PLAINLY and most important of all to speak SHORTLY. For as Lord Chief Justice Coke of England wrote in the early 1600s:

"TRUTH takes small delight in varnish of words nor garnish of flowers."

It is indeed an honour for me to present the Valedictory Address on behalf of the graduands of the International Maritime Law Institute for the 1995/1996 academic year. A year which marks the turn of the final decade of the 20th century into the threshold of the new millennium.

I would like to share with you a few words on "THE ROLE OF THE MARITIME LAWYER IN THE NEW MILLENNIUM" as seen through the eyes of a student of the International Maritime Law Institute.

Words fail to express the elation and joy in our hearts at this very moment, except to borrow the inspired phrase from the "European Anthem" set to Beethoven's 9th:

"Love Divine all loves exelling JOY in Heaven to Earth come down..."

And what an honour it is for us the

graduands that Your Excellency, the President of the Republic of Malta has graced us with your presence here today and to join the Institute, once again, to mark the conclusion of yet another academic year. Your Excellency, I come from a South Pacific island nation, which Captain James Cook in the late 18th Century named "The Friendly Island" a name which has remained in Admiralty and other Nautical Charts ever since. Therefore, I feel somewhat qualified to vouch for the friendliness and hospitality we have enjoyed in our short time here in Malta and especially in the premises of the Institute, which have been provided by the Government of Malta, and which we have made our home.

It is with great pleasure that we welcome the presence of the Commissioner of Transport of the European Commission, Your Excellency, Mr. Neil Kinnock, the Patron of this year's Graduation Ceremony. At times we had feared that the demands of work and on your time would prevent you from being here with us today. You have done us a great honour, Sir, and for that we are most grateful.

We would also like to thank the Hon Ministers, the Representative of the IMO Secretary-General and all the distinguished guests, family



MR. ALEAMOTU'A RECEIVING A PRIZE FROM MR. M. GORANSSON, DIRECTOR, IMO LEGAL AFFAIRS AND EXTERNAL RELATIONS DIVISION.

and friends present, for giving us this moment of your time.

And finally, but by no means least, we thank those which have been most closely connected with us. The Rector and the Rector-Elect of the University of Malta, who have graciously allowed us access to the facilities of the University; to our own Governing Board and the Mem-

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provide the basis for a common debate, and clearly it is not based on the view that there is only one right way for an individual country to pursue its shipping policy. The European Community encompasses different shipping traditions and specialisms. This is a strength, not a weakness - and the objective developing an effective policy is to provide the framework to enable individual fleets to prosper and to compete on fair terms with their competitors both within the European Community and beyond. In the Commission, therefore, we are stressing the need for a closer integration of our EU policies on external relations, on competitiveness and on safety so that they complement each other in the search for safe and fair competition in all shipping markets. In external relations, we attach considerable importance to the multilateral approach to securing free access to markets and, accordingly, have been playing a major role in the negotiations at the World Trade Organisation.

We do not, however, exclude a bilateral approach in appropriate circumstances and, indeed, we will be making a proposal in the near future on the negotiation of an agreement with India. In addition, we will be publishing a separate and comprehensive paper on external relations in order to deal with this important area in greater depth than is possible in a broad strategy paper.

In this issue, our work could obviously have implications for the duties which you will perform in your own countries and the same is true in areas like our 50 million ECU R&D programmes in waterborne transport and other related activities and in our state aid policies which are to be the subject of new guidelines that are to be published in the next few months.

You will not be surprised to hear that one of our main concerns relates to the decline of the number of European seafarers. Our fear is that, with fewer of our young people going to sea, there will be an impact not only on the safe and efficient operation of our ships but also on the competitiveness of the many related industries and activities which require the skills of those who have been to sea. We are just about to receive the results of a study we commissioned on this important area and will consider them carefully with the industry and others. Since maritime transport is manifestly a global industry and the quality of officership and seafarers has significant effect everywhere, our efforts to encourage new interest in these professions among our young people is obviously not without relevance for the wider world.

As I have already indicated, maritime safety is a matter of central concern for the European Commission both because of essential humanitarian values and because it is an important component of competitiveness.

As several here will know, a study the OECD recently pointed out that the savings which arise from using ships at below internationally-accepted standards far outweigh the penalties risked by owners and operators if they are caught. This

means that, in the pursuit of possible short-term gain, the longer term health of the industry, the lives of seafarers and passengers, and the protection of the environment are being ignored. That is contemptible, not only because of the dreadful risks but also because it undermines the whole concept of the rule of law.

Of course, as you know only too well, the difficulties we face in maintaining high levels of maritime safety are not - in general - because of an absence of international rules. The problem, rather, is one of implementation and enforcement. Reputable owners will always want to ensure that their vessels and crews operate to and above international and other standards. But to deal with the less responsible owners, an effective combination of both flag state and port state enforcement is essential.

You will be aware that much has been achieved in the last decade or so in developing provision port state control both in Europe and further afield and it is relevant for me to say here that European Union legislation which enters into force in a few weeks' time will require the targetting of blacklisted flags as certain types of potentially dangerous ships. Under that law, ships with significant defects will be detained until these deficiencies are corrected.

We need now to ensure that the standard of inspection throughout Europe is uniformly high so that substandard operators cannot count on escaping detection by picking their port of call. It is clear, however, that the effective cooperation of port state control regimes in other regions of the world and close cooperation with these regimes is necessary to further tighten the net on the substandard operators. I urge that joint action in the interests of the shipping and coastal communities everywhere.

The primary role in enforcement must, of course, continue to be exercised by the flag state. The operation of a ship register carries with it important obligations yet too many flag states still haven't the will or the ability - or both - to fulfil these obligations. Those failures obviously weaken standards of safety worldwide as well as undercutting responsible registers. Because of that, we attach great importance to achieving binding international rules on the establishment and operation of flag state administrations and registers. I pay tribute to the efforts of the IMO in this matter and I have to say that it is a matter of regret to me that it was not possible to make greater progress at the meeting of the flag State implementation Committee in March. I hope that those countries which could not support advances then will reconsider their stance.

Apart from these discussions at the international level, the European Commission will continue to raise the issue of flag state implementation in bilateral discussions with third countries and, in particular, with those with which enlargement negotiations will begin either next year or the year after.

and probably died in? For what purpose were those cannons put - and which peoples did they protect or subjugate? There are the fine lines of a Phoenician craft with its oarsmen at the ready, a sailing vessel under full sail, a steam engine here, a motor vessel there. These are the marked reminders of change throughout the millennia. Reminders that still fire the maritime imagination.

For in our introduction to the history of maritime law with Dr. Mueller, who we are glad to say is present here today, we talked of Alexander and sometimes of Hercules, of Hermes and Lysander, Calypso and Ulysses, sailing in those Homeric seas. For as one eminent Canadian writer put it:

"We are going backward and forward at the same time. We always do. This may be one of the secrets of existence, of being. The more frantically we go back, the more daringly we move forward..."

The Maritime lawyer of the new millennium must be dimensional and should not be confined within the parameters of a purely specialist focus. The maritime lawyer must, in a sense, be "a jack of all trades and master of all", and how true is this need for developing countries.



NEIL KINNOCK WITH MEMBERS OF THE GOVERNING BOARD AND GRADUATES

A commitment to a high level of flag state control requires both a political will and technical capability. The skills which the Institute is imparting to its students both on the theory and application of existing law and on the drafting of future legislation will undoubtedly enhance the quality of the administrations in which you will work.

Clearly, however, the role of states - and your role as legal advisers to your countries of origin - does not end there. Drafting and adopting national legal instruments obviously has to be followed by effective and efficient implementation of these instruments. I know that lawyers often feel that the application of laws is not primarily their responsibility. But I am also sure that the professionalism which you people show convinces you that a country that subscribes to an international legal obligation and then does not comply with that obligation in practice, is just as wrong as a country that shies away from accepting an international obligation in the first place.

My appeal to you therefore is to seek to ensure that legislation is effectively applied. I know that such a commitment is not always easy to fulfil but I am certain that the people who graduate from this Institute have integrity and a sense of responsibility as well as your obvious abilities.

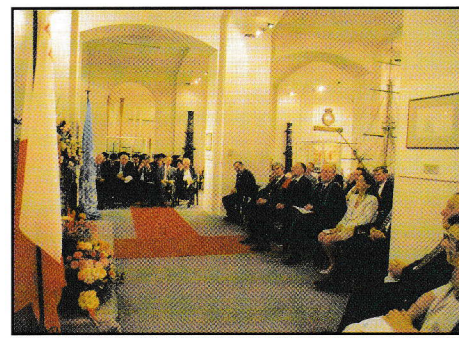
In closing, I again congratulate those of you who are graduating today. You have all made personal sacrifices in order to come here to study. Hopefully, the beautiful surroundings and the additional distinguished qualifications that you have earned give you some compensation. I must say, too, that I am particularly pleased to see that a substantial proportion of the graduates are women. I pay tribute to the IMO for its policy of requiring that half of the places at the Institute reserved for qualified women candidates and I simply hope that it is a positive and realistic strategy that will influence other international institutions.

I wish you all a safe journey home, a joyful reunion with your family and friends and great success and fulfilment in your future careers.

bers present here today; and to our IMLI family, for making it possible for us to fly so high on this most happiest of days.

The problem as we approach the new millennium in the field of maritime law is "change", but change is nothing new. The sea, as is the nature of most fluids will always find its equilibrium at the lowest level. It will always seek out and expose our human weaknesses - as much as we try to regulate and to prevent there will continue to be bulk loads disappearing without trace, the "Torrey Canyons", the "Sea Emperesses", "Estonias" and "Heralds of free Enterprise" of the future lie in wait for a careless act or an unguarded moment. Hence, the need for us to be so ever vigilant in the discharge of our duties.

I will not be so presumptuous as to give a discourse on the processes of change in maritime law, but I implore you to look around these chambers - to those ships of long ago. From where and whence did they sail? To which noble women were those urns lying there consigned before they lay in their watery graves? Your wonder at the naval officer to whom that uniform once belonged - in which no doubt he laughed, danced, sailed



Guests at the 1995/1996 Graduation Ceremony

In times of change, the constants for the maritime lawyer needs to be firmly anchored. So what are these constants? I will give it in one sentence: (this was the subject of our very first IMLI lecture at 3.00 p.m. on Monday the 2nd of October, 1995, given by Professor Attard), it is personal and professional INTEGRITY and ETHICS: The maintenance of the standards and traditions of our profession; the acquiring and the ap-

plication of knowledge and wisdom born of experience and the passing of the years; the maintenance of fundamental values; and the furtherance of the interest of the people of our respective States and Communities to whom we owe our livelihood.

The factors are summed up by the oft quoted words of Lord Brougham and the boast of the Emperor Augustus who found Rome of brick and left it of marble: for the lawyer to find the law a sealed book and to have left it a living letter; to find it the patrimony of the rich and to leave it the inheritance of the poor; to find law the two edged sword of craft and oppression and to leave it the staff of honesty and the shield of innocence.

Those are the few general words which we had wanted to share with you this morning on what we see is the role of the "maritime lawyer" in this march to the 21st Century.

But there is another onerous task for me to fulfil and to that I now turn.

Today, we leave the burdens of academic struggle behind us, as this is a day of celebration and of triumph. But in the heights of triumphant flight and being aware of the plight of Icarus who flew too close to the hot Mediterranean sun, we acknowledge those who have made it all possible; to our respective sponsors and Governments, the International Maritime Organisation, represented by Mr. Goransson here today, the European Union, the Commonwealth Secretariat, the Government of Malta, the Comité Maritime International and to all the organisations and individuals too many to cite, who have in some way assisted us, through the Institute. And so too we remember at this moment, those who have made immense sacrifices for us - our families, husbands, wives children and parents, who are not here with us today, but to whom we dedicate any modest achievements we have made.

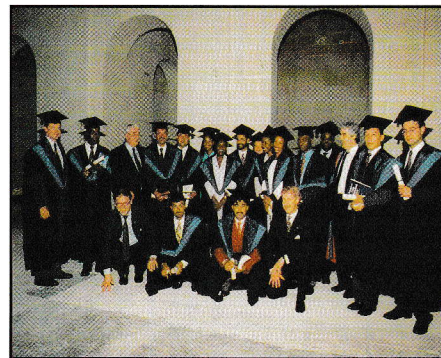
We would like to equate the development of the International Maritime Law Institute to a movie which slowly unfolds. The part of the reel we have seen, we have enjoyed, the part of the movie that is to come we look forward to with great anticipation and high expectations. The Institute through its graduates and friends is slowly but surely carving for itself a niche in the international scheme of things. To illustrate my point, and I ask to be forgiven if it sounds too personal, but please allow me to briefly relate to you how I came to hear of the Institute and how I find myself standing before you here today as a practical example of the developing IMLI NETWORK to which the Director has referred to in his opening remarks.

It was a November evening in 1993 in Port Louis the capital of the Republic of Mauritius in the Indian Ocean. It was at a reception that I found myself in this small group of people listening to the Mauritian Police Band Ensemble entertaining the guest. Two of the people in that group were Maltese. The band was good, but the singer was all right, so we struck up a conversation and it ended up as a discussion of the International Maritime Law Institute.

Little did I know that the person I was talking to then, was the prime mover behind the establishment of the Institute in Malta, Dr. Joseph Fenech, then Minister of Justice of Malta (who I am glad to see is present here today). The other Maltese person was none other than Malta's colourful Attorney General, Dr. Anthony Borg-Barthet. I remember thinking then that it sounded like a good place to be but in the usual scheme of things it remained a thought only. However, exactly a year later, in November of 1994, I found myself at the Australian Defence Force Academy, in Canberra, in a Conference on International Humanitarian law in the context of International Peacekeeping Forces. The military and diplomatic delegations came from all over the world. One of the young officers who presented a paper at that meeting on the practical aspects of international peace-keeping was from my neighbouring country of Fiji - his name was Captain Kiniviliame

DISSERTATION AND LEGISLATIVE DRAFTING PROJECTS 1996

SIOSAIA TUPOU ALEAMOTU'A (Tonga), A Review of Tonga's Maritime Jurisdictional Claims / *Marine Pollution (Prevention and control) Bill 1996* # HUSSIN H. AL FARSHOUTI (Saudi Arabia), Registration of Ships as it applies to Saudi Arabia / *An Act for Prevention and Regulation of Pollution from Ships* # ABDUL AZIZ-MOHAMED-ALI-AL SANOSY (Saudi Arabia), The Seaworthiness of a Vessel in Maritime Law / *Carriage of Passengers and Their Luggage by sea Act of 1996* # CARLOS GIOVANI ARIAS LAZARTE (Peru), The Maritime Jurisdictional Claims of Peru in the Light of the United Nations Convention on the Law of the Sea / *Law Relating to the Maritime Dominion of Peru* # ALIETTE CHARLES (U.S.A.), legal Regime Relating to Nuclear Marine Pollution / *Guiderland Merchant Shipping Act* # JOSE PEDRO DE LUZ (Cape Verde), Maritime Claims in Cape Verde / *Draft Legislation on Standards of training for Seafarers* # FRANCESCO DEPASQUALE (Malta), The Towage Contract in Malta / *A Draft Legislation incorporating the IMO Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 into the Maritime Navigation (Security) Act, 1996* # MUTHONI GATERE (Kenya), Preparedness, Response and Co-Operation in Maritime Pollution Casualties: The East African Perspective / *Legislation Incorporating the civil Liability Convention of 1969 and the fund Convention of 1971, as Part of the Merchant Shipping (Amendment) Act, 1996* # GIANFRANCO GAUCI (Malta), Time Chartering Documents: A Review of the most Typical Clauses / *The Merchant Shipping (Salvage) Act, 1996* # JOACHIM KINZONZOLO (Congo), Bills of Lading under Charterparties / *Decree on Coastal Maritime Transport between Congo and Member States of Central African Economic and Customs Union* # MD. ASHARAFUL ISLAM KHAN (Bangladesh), The Arrest of Ships and Admiralty Jurisdiction in Bangladesh / *The Bangladesh Port Authority Act* # PATRIKS MARKEVICS (Latvia), Comparative Analysis of the English and d Latvian Law Relating to Security in Ships / *An Act to Amend Chapter 22 of the Maritime Code* # MARIA MKANDAWIRE (Zambia), The Freedom of Navigation and its Limitations: A case Study of the USA Interdictory Programme Against Haitian Boats / *The Implementation of the UM Multimodal Transport Convention* # MARIA ANITA NGOWI (Tanzania), Cargo Sharing Under UNCTAD Code of Conduct for Liner Conferences: The Tanzanian Situation - 1995 / *An Act to Provide for the Implementation of the Convention on the Prevention on the Marine Pollution by Dumping of Wastes and Other Matters* # INARA PLANKOVA (Latvia), Commercial and Maritime Arbitration with Special Reference to Latvian Legislation / *The Carriage of Passengers and their Luggage by Sea Act to Supplement Chapter 23 of the Maritime Code of the Republic of Latvia* # AMINU MOHAMMED SANI (Nigeria), Charterparty Laytime Clause Analysis / *An Act to Regulate Registration and Owership of Ships in Nigeria* # SAMUEL VONGTAU (Nigeria), Some Salient Aspects of the Law of General Average - A critical Overview / *Nigerian Ports (Liability for Lost or Damaged Goods) Act 1996*.



1996 Graduates

Keteca. His paper was, I recall, one of the most well-received in the Conference because it was the only account from an officer serving in theatre. In his introduction to the plenary, special note was made of the proud fact that he was a graduate from the International Maritime Law Institute in Malta, his own impressive military record, we had only learned from the meeting rapporteur, that he was not only an IMLI GRADUATE but also a graduate of the Royal Military Academy, Sandhurst, having served as an officer attached to the Royal Green Jackets and moreover having distinguished himself in two tours of duty as a platoon commander in the UN Peacekeeping Force in Lebanon. A fact which becomes more poignant when only a few weeks ago a Fijian-manned UN Post in the area was the scene of devastation and of tragic loss of life. That is the story of one IMLI graduate who is not mentioned in the list of achievers in today's graduation programme. I daresay that despite IMLI's young age there will be many other similar stories to tell on the caliber of IMLI's graduates.

I find it ironic and coincidental that just two years ago Kini was standing on this very podium delivering this very address. We, the graduands, have changed, for in the past year we have acquired a new found confidence from our knowledge of maritime law, which will place us in good stead for the important and immense tasks which lie ahead - the implementation and enforcement of IMO standards in national legislation. And speaking of confidence, Aesop, the gifted slave from these parts, whispers to us over the centuries:

"Remember that tortoise and that hare, Who had that famous race? The speedy hare wound

up no where and the slow but sure tortoise (hopefully our developing economies) took first place. For she had this thing called CONFIDENCE."

The Institute as a lighthouse in the maritime legal fraternity in these times of change and challenges will need all the support we, here today, can give. We ask you therefore adapting the words of the poet: *"Let those lower lights be burnin Continue to send those beams across the ocean waves, Some ship in distress, On oceans foul d and tempest toas d Some poor fainting...struggling... sea-farer, YOU may rescue, you may yet save..."*

In our united quest for safer ships and cleaner seas.

IMLI NEWS

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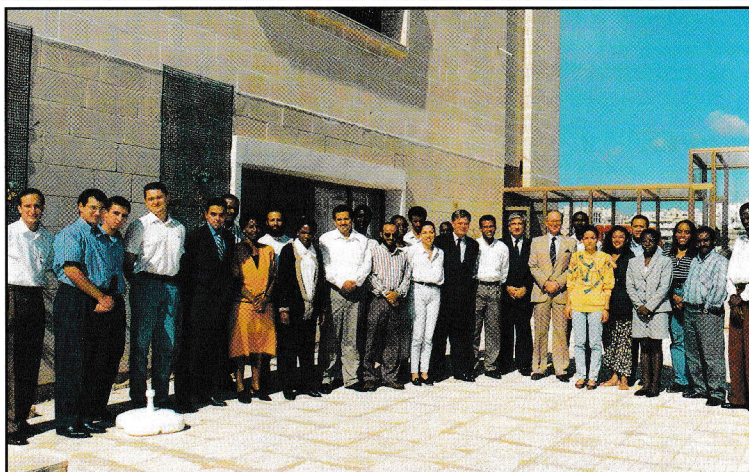
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The IMO International Maritime Law Institute was established under the auspices of the International Maritime Organisation, a specialised agency of the United Nations.



Students attending the 1996/1997 Course, together with H.E. Mr. Graham Archer, U.K. High Commissioner; Mr. J. W. Hickman, IMLI Governor; Professor D.J. Attard, Director; and Mr. S. Kelley (U.K.), Lecturer in Shipping Law.

IMLI STUDENTS - Academic Year 1996 - 1997

Ms E. Costa (ANGOLA); Mr. M. Quinta (ANGOLA); Mr. J.F. Moliere (HAITI); Ms. J.R. Coindet (HONDURAS); Ms. K.A. McKoy (JAMAICA); Mr. U. Labutis (LITHUANIA); Mr. A. Hamza (MALDIVES); Mr. R. Aquilina (MALTA); Mr. S. Muscat (MALTA); Mr. I. Vella (MALTA); Mr. G. Tshatumbu (NAMIBIA); Ms. M.B. Obi (NIGERIA); Ms. A.M. Tafida (NIGERIA); Mr. M.S.J. Al-Garni (SAUDI ARABIA); Mr. H.G.I. Al-Besher (SAUDI ARABIA); Mr. A.M.A. Al-Qahtani (SAUDI ARABIA); Mr. Y.A.R. Al-Zahrani (SAUDI ARABIA); Mr. M.K.O. Al-Burghash (SAUDI ARABIA); Mr. F.I.S. Kallon (SIERRA LEONE); Ms. Z.A. Horne (ST. VINCENT); Mr. S.E.A.M. Elrobatabi (SUDAN); Ms. I.D. Mkwawa (TANZANIA); Mr. L.K. Mboge (THE GAMBIA); Ms. N. Sboui (TUNISIA); Mr. F.L.S.R. Tufuga (WESTERN SAMOA).

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J.D. Mkwawa, Z.A. Horne, M.B. Obi, A.M. Tafida, E. Costa, N. Sboui, J.R. Coindet, K.A. Mckoy



U. Labutis, A.M.A. Al Qahtani, L.H. Mboge, H.G.I. Al-Besher, J. Moliere, S.E.A.M. Elrobatabi, A. Hamza, F.L.S.R. Tufuga, M.S.F. Al-Garni, M.K.O. Al-Burghash, Y.A.R. Al-Zahrani.

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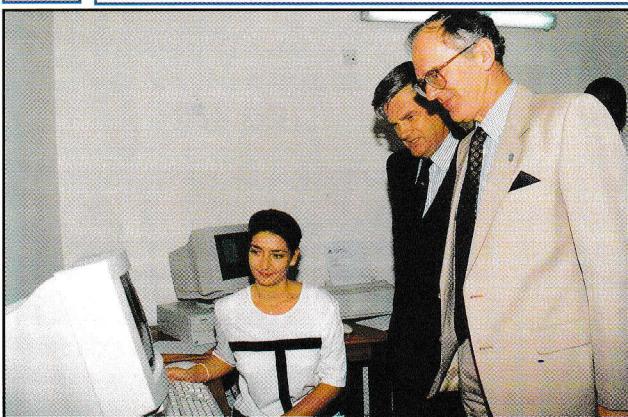
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Mr. J.W. Hickman, Corporate Secretary and Legal Director, Lloyd's Register, together with the British High Commissioner, H.E. Mr. Graham Archer, and Ms. O. Camilleri, Editor IMLI News, at the inauguration of the IMLI Computer Room which received computers donated by Lloyd's Register.