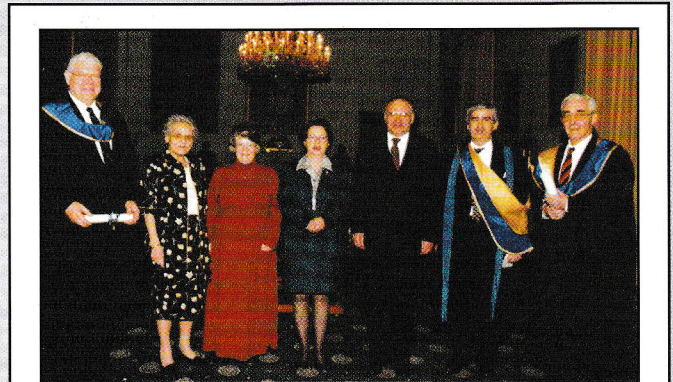


## CONFERMENT OF HONORARY PROFESSORSHIPS ON DR. WALTER MÜLLER AND DR. FRANK L. WISWALL

In recognition of their lifelong service to the rule of international maritime law and to the world maritime community in its efforts to establish global standards for safer shipping and cleaner seas and of their wholehearted commitment to the teaching of maritime law at IMLI, and under the patronage of His Excellency the President of the Republic of Malta, Dr. Ugo Mifsud Bonnici, IMLI conferred on March 30, 1999 the title of Honorary Professor of International Maritime Law on each of Dr. Walter Müller and Dr. Frank Wiswall, Jr.

The ceremony was held in the magnificent Tapestry Chamber of the Presidential Palace in Valletta, also known as the Council Chamber. From 1921 to 1976, this hall served for sittings by the Maltese Parliament. Embellishing this chamber is a set of ten Gobelin tapestries, known as Les Tentures des Indes (The Indian Hangings). These tapestries were donated by Grandmaster of the Order of Malta Ramon Perellos y Roccafull (1697-1720). The tapestries were woven from the original paintings of Frans Post and Albert Van den Eckhout under the supervision of Etienne Le Blonde, weaver of King Louis XIV of France. They are considered to be one of the rare complete Gobelin collections in Europe. Description courtesy of Mr. J. Ellul, Curator – Presidential Palace.



*From left to right, Dr. Frank L. Wiswall Jr., Mrs. Therese Müller, Mrs. Elizabeth Wiswall, Mrs. Gemma Mifsud Bonnici, H.E. the President of Malta, Dr. Ugo Mifsud Bonnici, Prof. D.J. Attard and Dr. Walter Müller.*

Distinguished friends and guests of the Institute together with IMLI course participants and staff were present at the ceremony to acclaim the laureates.



### SPEECH BY H.E. THE PRESIDENT OF MALTA DR. UGO MIFSUD BONNICI AT THE HONORIS CAUSA CEREMONY HELD ON MARCH 30, 1999



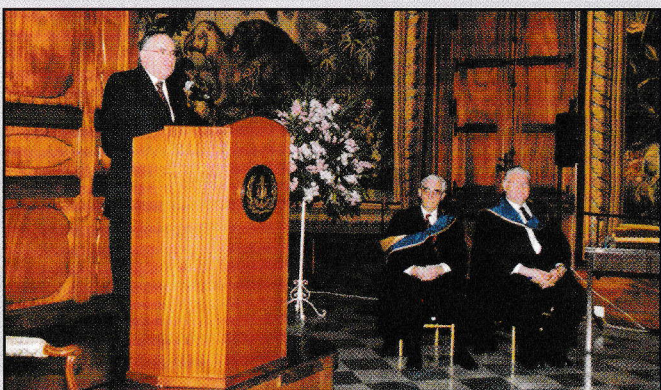
What of the future of Maritime Law in the next millennium? Indeed what lies in the years and centuries ahead for law as we know it, and what will become of the sea as a carrier of men and women as well as their produce?

As far as human eyes can look out towards the farthest horizons, we can surmise that mankind in all forms of organisation will always need laws and make them. Looking back toward what archeology, even before that recorded history, can reveal, laws are co-eval with civilisation. As far back as the third millennium before Christ we find, in the clay tablets and cuneiform writing of Mesopotamia, laws which are far from primitive in concept and formulation. Hammurabi is still with us after five millennia. We can be sure that we will still be carrying on with law-making into the sixth post-Hammurabi millennium.

It may be very unfashionable to express oneself in this way, but lawmaking is connatural with human nature. A French anthropologist has put forward the thesis that democracy is the only "natural" way of governing communities of men and women. Baechler argues that the various alternatives are aberrations contrary to natural law even though they have occurred and re-occurred so frequently in ancient and modern history. There is obviously a vital link between self-governance by agreeing upon rules and democracy. The rule of law is essential to a proper democracy. Arbitrary rule or anarchy are both anti-communitarian and anti-democratic.

It is therefore safe to predict that the more complex human organisation that will follow upon the present one, in which a number of nation states are hankering after a more satisfactory supranational arrangement to fit the needs of the global village, will still and necessarily require laws. Governance by consent will entail laws which are not limited by frontiers, as the consent to globalisation will involve agreeing to common rules. One should not be led into the error of thinking that the emphasis laid on less regulation will mean less law. The laws may abandon the particularisation and minutiae. The future praetor will be less involved *de minimis*. The laws will, one hopes, be better written, more intelligible and more concise. In straddling the national barriers, more elaboration of the process of consent will be in demand. However in the absence of clear agreed rules, we can rest assured that an international superstructure would break down.

Maritime law has of its very nature always tried to be international, even when the nation states in their early self-affirming youth were jealous of their sovereignty. The International Maritime Organisation has moved forward on the principle that conventions, laboriously drafted and patiently urged upon states for ratification and implementation, constituted building blocks and obligatory tassels in the mosaic of an all comprehensive system of International Law. The Merchant Shipping Codes of the various maritime nations can claim common ancestry, and the developments which occurred in certain regions of intense trade have in turn extended their influence on others when these were moving at a slower pace.



*From left to right, H.E. the President of Malta, Dr. Ugo Mifsud Bonnici, speaking at the Honoris Causa Ceremony, Dr. Walter Müller and Dr. Frank L. Wiswall Jr.*



## WELCOME ADDRESS BY PROFESSOR DAVID J. ATTARD AT THE HONORIS CAUSA CEREMONY HELD ON MARCH 30, 1999



I am privileged to introduce this Ceremony which constitutes an important and integral part of the commemoration of our Institute's tenth Anniversary. At the very outset I wish to express my deepest appreciation for the patronage of His Excellency the President of Malta Dr. Ugo Mifsud Bonnici who has been a most ardent supporter of our Institute ever since its inception, at the time he was Minister of Education. Over these ten eventful and fruitful years we have always found His Excellency to be a distinguished and influential advocate of our cause; indeed a true friend of IMLI. Today we are especially grateful to His Excellency for having graciously hosted this Ceremony in this magnificent and historic chamber.

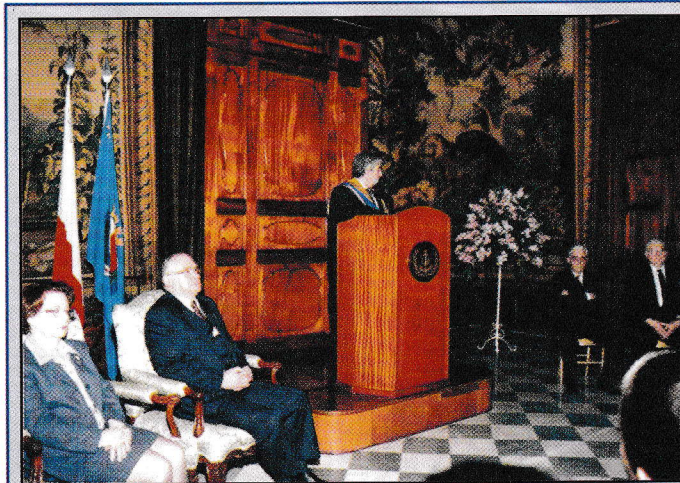
The raison d'être of today's Ceremony is the desire of the IMO International Maritime Law Institute to honour two eminent and worthy international maritime lawyers who have, throughout their respective professional and academic careers, contributed to the world maritime community's quest to establish global standards for safe navigation and a clean marine environment. Over the years both have been at the forefront of the International Maritime Organization's efforts to codify and progressively develop international maritime law.

Both have been closely associated with our Institute ever since its establishment ten years ago. As regular teachers at our Institute they have played a major part in helping IMLI to fulfil its very precise brief of training lawyers in International Maritime Law. There are now 163 IMLI graduates in 79 States. During their visits they have shared with our students their profound legal wisdom and knowledge and their unparalleled experience in maritime law. I have no doubts that IMLI graduates have been enriched by their exposure to these formidable personalities. The Institute is certainly proud to be associated with Dr. Walter Mueller and Dr. Frank Wiswall.

Dr. Walter Mueller has been especially generous in the time and energy he has dedicated to our Institute. He has been instrumental in guiding the Institute in its efforts to focus on two fundamental aspects of the teaching and practice of international maritime law. In particular Dr. Mueller has fervently advocated the adoption of a comparative approach towards the teaching of maritime law at IMLI. There can be little doubt that by studying how different legal systems solve similar problems, a lawyer is taking the first effective step towards the goal of unification, which IMLI and IMO strive so hard to attain.

Dr. Walter Mueller has also keenly promoted and continues to support the teaching of the principles of maritime legislative drafting. This undoubtedly mirrors IMLI's unique role in encouraging the implementation of the standards laid down by some 40 IMO international maritime conventions through their incorporation in domestic legislation.

Apart from his achievements in the



Prof. D.J. Attard delivering his welcome address in the Tapestry Chamber of the Presidential Palace in Valletta, with, from left to right Mrs. Gemma Mifsud Bonnici, H.E. the President of Malta, Dr. Ugo Mifsud Bonnici, Dr. Walter Mueller and Dr. Frank L. Wiswall.

field of teaching, Dr. Walter Mueller has played an active role in the formulation and adoption of international treaties. He has over the years actively participated in the deliberations of the International Maritime Organization. He has been elected to preside over diplomatic conferences which have given birth to the world's major international maritime conventions of fundamental importance, including the 1969 International Convention on Civil Liability for Oil Pollution Damage, the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, the 1993 International Convention on Mortgages and Liens, and the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea. Dr. Mueller's exceptional grasp of international and comparative maritime law, his supreme diplomatic qualities and his deep understanding of the human character have certainly been instrumental in the successful conclusion of the conferences which he has chaired over the years.

His contribution to the development of international maritime law is widely recognized in his

country Switzerland, which despite being land-locked, gives great importance to the field of maritime law. I had the privilege to recently attend the celebrations commemorating his 80th birthday held in Switzerland. I was impressed with the great widespread respect that he enjoys in his country. Guests ranging from national political leaders to the farmers, who work his lands, all expressed their admiration for the man who had influenced their lives. In his speech to all present he described with great passion the pleasure he derives from teaching at IMLI. (...)

Distinguished guests, I now wish to address your attention to Dr. Frank Lawrence Wiswall who is an exemplary and leading light in the American maritime law fraternity. His dedication to the rule of international maritime law and to its teaching is admirable. His commitment is reflected in his long and fruitful connection with the Comite Maritime International which is the world body representing

maritime lawyers. Dr. Wiswall has been an eminent and active elected member of this prestigious organization ever since 1980, and in 1997 he was elected its Vice-President.

Between 1974 and 1979 Dr. Frank Wiswall was the Vice-Chairman of the Legal Committee of the International Maritime Organization. He was later appointed to act as Chairman of the same body between 1980 and 1984. Dr. Wiswall will certainly be remembered for the inspired direction which he exercised during the span of time he held these posts.

Dr. Frank Wiswall's connection with maritime law originates in the village of Castine on the coast of Maine, which is the place where he was brought up. The proximity to the ocean appears to have developed in him a keen interest in all that pertains to the maritime dimension of human existence. Indeed Dr. Wiswall's love for the sea even led him to become Harbourmaster and to gain his licence as Master of near-coastal vessels. This early practical experience sensitized him to the life-and-death reality of men and ships at sea, and his work in maritime law strongly evidences his pursuit to make navigation safer.

Dr. Wiswall has written a number of authoritative works, particularly in the field of Admiralty practice. He is Editor-in-Chief of Volumes 6-6F of the monumental work *Benedict on Admiralty*, which is a focal reference for students and practitioners of international maritime law.

I have no hesitation in stating that Dr. Frank Wiswall has been a continued source of enlightened guidance and inspiration to IMLI students. He has been particularly precious in IMLI's development by imparting his tremendous knowledge and experience of the law of marine collisions. He has also proved instrumental in attracting other leading maritime lawyers to deliver lectures at the Institute, and in promoting IMLI abroad, particularly in the United States of America. (...)



Honoris Causa Ceremony Commemorative Photo with H.E. the President of Malta Dr. Ugo Mifsud Bonnici, Dr. Walter Mueller, Dr. Frank L. Wiswall Jr., Dr. John Rizzo Naudi, Chancellor of the University of Malta, Prof. D.J. Attard, Dr. Ivan Vella, Mr. Aref Fakhry and Class of 1998/1999.

## SPEECH DELIVERED BY H.E. THE PRESIDENT OF MALTA

*Continues from page 1*

All students of this branch of law have learnt that the law of averages derives finally from the Lex Rhodia de jactu which was definitely adopted in Rome but acknowledged to Rhodes. They will have heard about the mediaeval elaborations, the various laws of Whisby, the Consolati del Mare, the English Laws of Admiralty. They will have been informed of the continuing cross-reference to Maritime custom in different countries. One realises that there is much less of a differentiation in this field between the maritime legislation of the Anglo-Saxon common-law countries, and that of the continental countries deriving their law from the Code Napoleon. The drafting may be substantially dissimilar, but the matter is very much the same. May I comment, in passing, on the way the writers of conventions have tried

to bridge the considerable distance between the two drafting traditions. Though mostly the compromise is as acceptable as it was necessary, one can venture to hope that less subservience to illogical if traditional, ways of formulating legislation would not be amiss.

Of course the formulation of laws, though of the utmost importance, needs to be followed by proper implementation. In the present phase, enforcement has been left, I would say wisely, to individual states. At the moment, we cannot say that states in general, including the most advanced, are as yet prepared to sacrifice their claim to territorial jurisdiction in policing their own country. We cannot say that there has been enough strengthening of trust in international agencies. The suspicion that attaches to the bureaucracies that have been set up provides an excuse for resisting any intrusion. The IMO website mentions also the fact that these international organisations are often wasteful. IMO has scrupulously tried to be not only useful but also affordable. An international enforcement organisation will, necessarily, be much more costly. Indeed even a proper monitoring institution could, at the present time, be deemed too onerous a matter to sustain for many states. On the other hand, given that all states are becoming interdependent and seeing that the seas are such a vital ingredient of the world environment to be preserved and protected for the benefit of the whole of mankind, one cannot escape the inevitable tendency towards cross-boundary and cross-territorial water surveillance.

As much as it is difficult to properly maintain police corps, or indeed courts of justice, without striving to guarantee impartiality, ethical commitment, and a degree of competent dependability in the men and women operating therein, so it is likewise of paramount importance at this stage of the development of world governance that we should also look at the way of recruitment, the accountability, and the conduct-audit of supra-national entities charged with similar duties. If there continues to exist a perception of some bias or significant prejudice, this trend will find great obstacles in its path.

On the other hand we must and, it is safe to assume, we eventually will. We lawyers, we men of state, make use of the technology that is now available. Detection and transfer of information are now possible with means at hand which could not have been imaginable until a few years ago. Forensic science has, of course, been making steady and quick advances, but the processes of elaboration and counterchecks have remained somewhat ponderous. We lawyers value through experience the unchanging and unchangeable nature of reflexion. Sometimes we do not give as much importance to immediacy itself as a clear pointer to truth.

A few weeks ago, I was listening to a lecture by Professor Sir Alfred Cuschieri, a Maltese surgeon who has achieved fame in the practice and innovation of minimum access surgery, known in the popularised version as keyhole surgery. The technological applications which have made this revolutionary technique possible were brought about not only by the spirit of striving towards perfecting what was already far advanced, but also because some good surgeons and their assistants were technologically literate, a point Sir Alfred made quite forcefully.



**Dr. Walter Mueller and Dr. Frank L. Wiswall Jr.  
at the Honoris Causa Ceremony.**

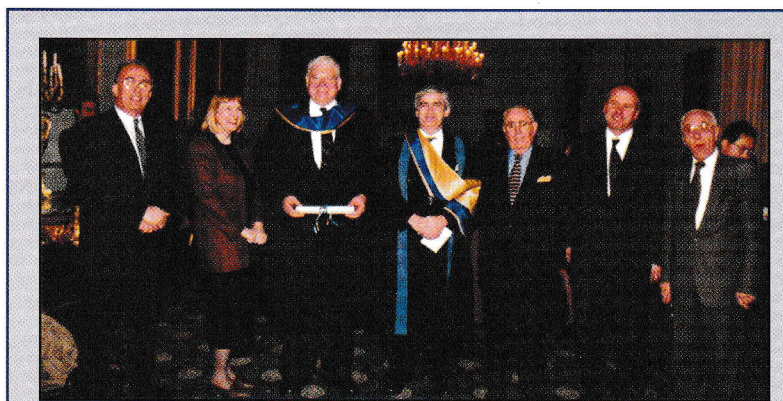
courtroom as we know it, will always be imperative. However, we must realise that in the new millennium there will be an irresistible impatience with the delays and timid indecision that we see in some of our national and international tribunals. The spearhead models that we now have, in the Hague and in Strasbourg, show indications that the frontiers can be, and to a certain encouraging degree, already are being lowered, so that the geographical jurisdictional obstacles are being tackled, but these remain mainly of the temporal limitations which have dampened the satisfaction of seeing justice being done, and the practical solution of controversies arrived at efficiently.

One might comment that what in the generality of cases takes so long to complete is the ascertainment iter, the presentation and discernment of the facts of a case. The deliberation must be thorough, and moral conviction in those who have to judge must take its subjective time-span. What is now unnecessarily primitive is the preliminary accumulation and transmission of the facts at issue, when the technology for discovery and verification has made so much progress.

The matter, of course, raised other problems. Access to information obtained by satellites, and so may other sources, raises problems of an ethical, legal and political nature. Questions of privacy, confidentiality, copyright, abuse and misuse of so much data have to be dealt with by conventions and internal laws of procedure have to be changed. The new millenium will, I surmise, begin, with a fruitful debate about rights, duties and methods. The technology will continue to develop and the challenges will increase, but the opportunities will be there to be adopted. Much has already available. It is in the realm of transfer from the world of knowledge to the world of actual implementation - albeit with all the necessary safeguards - that we are still not utilising the potentialities.

In maritime law, the time factor has always been deemed to be of the utmost importance. One remembers the concept of demurrage and the requirement of immediacy in the case of masters registering certain events by sea-protent. The costs of time wasted in the case of ships, now and perhaps more so in the next millennium will urge the expeditious resolution of all legal controversies in real time perhaps with greater urgency than in other fields of law.

In conclusion, before allowing for the smooth and gradual evolution of



*From left to right, H.E. the Chief Justice of Malta Dr. J. Said Pullicino, H.E. the U.S. Ambassador Ms. K. Proffitt, Dr. Frank L. Wiswall Jr., Prof. D.J. Attard, Hon. Minister for Tourism Dr. M. Refalo, Hon. Minister for Transport and Communications Mr. Censu Galea and Dr. Joe Fenech.*

Perhaps people in our area, in the academic discipline of legal studies, are not as technologically literate. A pernicious tradition divorced humanistic studies from science and technology, and we should redouble our efforts to straddle this very unnatural divide. We must realise what new horizons the present and future advances in technology will open up for the better functioning of all kinds of tribunals and courts of law. With the state of the technology methods available for the detection, counter-checking, recording and presentation of proof, the judicial process should become quicker, more dependable, arguably also less amenable to deception. This should not mean that tomorrow's lawyer should not be trained in the use of the traditional ways of the laws of evidence and cross-examination. Indeed in some cases a return to the very orthodox sieve of the

maritime law and practice, as has been the case in the last two millennia, we are confronted with the necessity of a quick - almost revolutionary - absorption of the technological acquis into this part of the legal domain. We are also confronted with the usual, but now more forceful, impulse towards internationalisation. In the first twenty years of the next century, a great change will have to be made to happen in the legal world. The changes in the scientific, and, to a certain extent, the economic world have already happened. This requires courage and intensification of thought and action, more technological literacy on the part of the legal drama personae; legislators, lawyers, judges, court administrators, diplomatists even.

## APPOINTMENT OF

### MR. AREF FAKHRY

#### AS SHIPPING LAW LECTURER

On March 15, 1991, IMLI appointed Mr. Aref Fakhry to the post of full-time shipping law lecturer. Mr. Fakhry holds a Bachelor of Laws and a Master of Laws from the University of Montreal in Canada and has acquired a Master of Marine Management from Dalhousie University in Halifax, Canada. He is a member of the Quebec Bar and the Canadian Maritime Law Association. After practicing shipping law with the international Canadian law firm Stikeman & Elliott, Mr. Fakhry worked for the Maritime Safety Unit at the European Commission in Brussels.

Mr. Fakhry is expected to help in the delivery of IMLI's academic curriculum along with existing resident and visiting faculty. He will also coordinate the development of the Institute's information technology.

## APPOINTMENT OF

### MR. NORMAN AUGUSTO MARTINEZ GUTIERREZ

#### AS JUNIOR ASSISTANT LECTURER

On May 17, 1999, IMLI appointed Mr. Norman A. Martinez to the post of full-time junior assistant lecturer in maritime law. Mr. Martinez graduated with distinction from IMLI in 1998 and was awarded the IMO Secretary-General's Prize for Best Dissertation. Mr. Martinez holds a law degree with a special orientation in international law from the Universidad Nacional Autonoma de Honduras.

Before joining IMLI, Mr. Martinez was serving as a legal adviser to the General Directorate of the Honduras Merchant Marine and was later appointed head of the Department of Training, Certification and Watchkeeping of Seafarers. Mr. Martinez was also an assistant lecturer in the Department of International Law of the Universidad Nacional Autonoma de Honduras.

## IMLI ALUMNI



Ms. Iria Barrancos Domingos (Panama, Class of 1989/1990) and Ms. Jessica Regina Coindet (Honduras, Class of 1996/1997) at the Seminar on Maritime Law and Ports held in Costa Rica in February, 1999.

Ms. Catherine Muthoni Gatere (Kenya, Class of 1995/1996) is the happy mother of a five-month old girl.

## IMLI NEWS

### PUBLISHED BY IMO

#### International Maritime Law Institute

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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.

## ADVANCE NOTICE OF SPECIAL SHORT COURSE ON EC MARITIME LAW

Building on the positive experience of the IMLI special course on International Maritime Law which was held from February 15 to 19, 1999, IMLI is pleased to announce that it will be holding a special intensive course on EC Maritime Law in the upcoming academic year 1999-2000. The course will be delivered by a selection of EC officials and IMLI lecturers. Topics covered will include European institutions, the European legal systems, the EC external policy, maritime safety, port policy and maritime competition. The course will be mainly addressed to members of the legal profession who have an interest in EC maritime law. A more detailed description of the course will be provided in the next issue of IMLI News. Prospective course participants are kindly encouraged to inform the Editor of their interest to take the course.

## DISSERTATIONS & DRAFTING PROJECTS – ACADEMIC YEAR 1998 - 1999

Ms. Laura BIEZBARDE (Latvia) - **Claims Secured by Maritime Liens** / The Carriage of Passengers and their Luggage by Sea Act to Supplement Chapter 23 of the Maritime Code of the Republic of Latvia

Mr. Christian CARDONA (Malta) - **Classification Societies: Liability and Competition** / The Protection of the Marine Environment Through Criminal Law (Act)

Ms. Bo CHEN (China) - **Maritime Arbitration in China** / Provisions on Bills of Lading and Analogous Shipping Documents to Supplement and Amend Chapter IV of the Maritime Code of the People's Republic of China

Ms. Suzana T. DE SILVA (Angola) - **Rights and Obligations Under the Bill of Lading: Overview of the Terms of Carriage of Goods by Sea** / The International Convention for the Prevention of Pollution from Ships 1973 and the Protocol of 1978 as a Schedule to a Project of Law of Angola

Mr. Stefano FILLETTI (Malta) - **Marine Cargo Claims Under Maltese Law, With Particular Reference to Shore Handling and Warehousing of Cargo for Import** / Suppression of Illicit Drugs Traffic by Sea Act

Ms. Rowena GRIMA (Malta) - **An Overview of Maltese Law on Mortgages** / The Incorporation of SOLAS and 1988 Load Line Protocol

Mr. Dimitry HOLODNIKOFF (Russia) - **Special Compensation Under Article 14 of the International Convention on Salvage, 1989 and Admissibility of Claims for Salvage Operations Under the International Oil Pollution Compensation Regimes** / Federal Act of the Russian Federation on the Establishment of a Russian International Ship Register

Mr. Md. Zakir HOSSAIN (Bangladesh) - **Arrest of Ship and the Mareva Injunction: Two Valuable Weapons for the World Maritime Claimants** / The Admiralty Court Act 1999

Mr. Rigoberto KAMBOVO (Angola) - **Maritime Claims in Angola** / Law of the Prevention and Control of Oil Pollution from Vessels, 1999

Mr. Igor KRAVCHUK (Lithuania) - **Law of Marine Insurance: A Comparative Analysis of the UNCTAD Model Clauses and Institute Clauses Relating to Marine Cargo Insurance** / Lithuania Act Establishing Sventoji Sea Port

Ms. Ene LILLIPUU (Estonia) - **Maritime Hypothec and Liens Under Estonian Law** / An Act to Amend and Supplement the Law of Property Relating to Vessels Act

Ms. Juliet D. MAIR (Jamaica) - **The Challenges of Ship-Borne Waste Under MARPOL 73/78: The Jamaican Perspective** / The Prevention of Marine Pollution (from Ships) Act 1999

Ms. J.R. MORALES ESPINOZA (Nicaragua) - **The International Regime of Multimodal Transport: Certain Recommendations for Nicaragua** / A Law on Carriage of Goods by Water

Ms. Ignatia MTHULI (South Africa) - **Liability and Compensation for the Damage Caused by Transboundary Movement of Hazardous Wastes: Implications for South Africa** / Liability and Compensation for Damage in Connection with Carriage of Hazardous and Noxious Substances Act, 1999

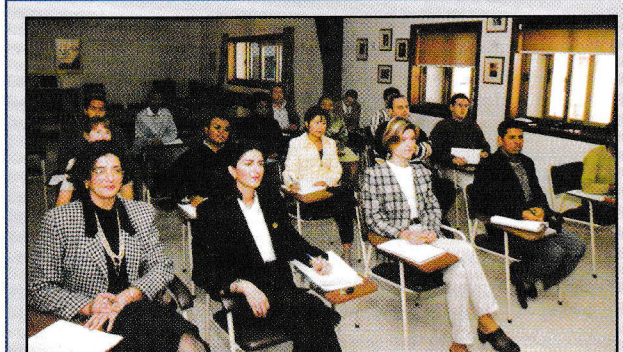
Mrs. J. PADOVANI GRIMA (Malta) - **Maltese Admiralty Jurisdiction - Time for Change** / Carriage of Passengers and their Luggage by Sea Act 1999

Mr. Abdulla SAEED (Maldives) - **Protection of the Marine Environment in International Law with Special Reference to the Maldives** / Legislation Incorporating the Civil Liability Convention of 1969 as Amended by the 1992 Protocol Thereto; and the Fund Convention of 1971, as Amended by the 1992 Protocol Thereto

Mr. Osorio SALES LUCAS (Mozambique) - **A Mozambican Perspective on Port State Control** / Liability of Port Terminal Operators Act 1999

Mr. Nikoloz TSIKLARI (Georgia) - **Legal Regulation for the Prevention of Pollution of the Marine Environment in the Black Sea** / The Law of Georgia on Compensation for Damage caused by Pollution of the Sea by Ships

Mr. Cho WEON YOO (New Zealand) - **International Ship Registration in Korea and Shipowner's Choice of Flag** / Limitation of Liability for Maritime Claims in Korea



Class of 1998/1999

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This unique course is most suitable for law graduates, particularly those working in the maritime field such as with a relevant Government department, shipping company, port authority or other organisation concerned with shipping and maritime affairs. Law graduates who wish to pursue their careers in the field of international maritime law will also benefit immensely from this course. Admission to the course is open to a limited number of students in any academic year, thereby ensuring personal intensive guidance and supervision.

Applications are now invited for the eleventh course which is scheduled to commence on September 13, 1999. Partial scholarships may be available. A processing fee of US \$ 15 is required. For further information contact:

IMLI, Director

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