

THE MARITIME LAW ASSOCIATION OF SOUTH AFRICA

Affiliated to the Association of Law Societies of SA
Member of the Comite Maritime International



From the office of the Secretary

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MINUTES OF THE ANNUAL GENERAL MEETING OF THE MARITIME LAW ASSOCIATION OF THE REPUBLIC OF SOUTH AFRICA HELD AT PUMULA BEACH HOTEL, KWA-ZULU NATAL ON SUNDAY 7 JUNE 2009 COMMENCING AT 09H30

1. **Welcome**

The President welcomed all present to the Annual General Meeting.

2. **Present / Apologies**

Present

Anisa Govender
Henri Fouché
Mike Posemann
Emma du Plooy
Philip Shaw
Anneke Viljoen
Aneta Pillay
Glenn Thatcher
Mark van Velden
Gavin Fitzmaurice
Patrick Holloway
Langa Dlamini
Andrew Clark
Portia Ndlovu
Colin Johnsen
Michelle Linderman
Colin Flockhart
Malcolm Hartwell

Brian Watt
Ian Maclean
Patrick Vrancken
Benard Bobison-upoku
Shane Dwyer
William King
Ken McIntosh
Graham Lopes
Roy Martin
Janine Lee
Mike Wragge
Andrew Robinson
James Mackenzie
Greg Harpur
Leon Govender
David Gordon
Carl Briesch
Peter Edwards

Apologies

Mark Nettleton
Marie-Elize Luyt
Peter Balfour
Jean Francois Peters
Alexander Robertson
Tony Norton
Tony Edwards
Lennard Rambusch
Arthur James
Marius Diemont
Johan Swart
Derek Reed
Jeremy Prain
Gys Hofmeyr
Gardner van Niekerk
Helen Antoniou
Alistair Hay
Michael Fitzgerald
Bentley Cook

Andrew Prior
Bedver Irving
Michael Marks Cohen
Adv GD van Schalkwyk
Dusty Donnelly
Pré Prinsloo
Krish Reddy
Tim McClure
Andre Bowley
Lerato Maboea
Edmund Greiner
Douglas Shaw
Angus Stewart
Kate Pitman
Richard Hoal
Steve Mullins
Alistair Downing
Quintus van der Merwe

3. **To confirm with or without modification the Minutes of the Annual General Meeting of the Maritime Law Association of the Republic of South Africa held at Allesverloren on Sunday, 22 June 2008 at 09h30.**

The minutes were confirmed without modification, proposed by Gavin Fitzmaurice and seconded by David Gordon.

4. **The consideration of any matters arising from the minutes**

There were no matters arising from the minutes.

5. **Subcommittee Reports :**

Admiralty Practice and Admiralty Jurisdiction Regulation Act

A copy of the report by Andrew Robinson is annexed hereto marked "A".

Andrew Robinson reported that the subcommittee has attended to amendments of the AJRA and that a draft will shortly be made available for distribution and voting upon at a special meeting. Andrew Robinson extended his thanks to Mike Wragge, Gys Hofmeyr and James Mackenzie for their contributions.

In regard to the Admiralty Rules, a copy of the report by Peter Edwards is annexed hereto marked "B".

The Admiralty Rules subcommittee consisting of Peter Edwards, Anisa Govender and Andrew Robinson met on 21 April 2009. Various issues were discussed, amongst them being the service of release warrants and the sub committee was contemplating an amendment of the rules allowing for the release warrant to be served on the attorney of the vessel owner or an agent or representative. The

purpose was to avoid the situation where the arresting attorney had to serve the warrant on a vessel at anchorage necessitating the use of a helicopter or launch.

A discussion ensued and it was raised from the floor that there might be a problem with caveats against release, although this was countered by the Registrar being the safeguard in that regard.

It was also mentioned from the floor that in certain cases, the Master refuses to sail without a release warrant being served. Emma du Plooy requested that release warrants be faxed to her at the National Ports Authority and that she would pass it on to Port Control.

The requirements for commencing an action were also discussed, in particular whether it was necessary for the summons and warrant to be issued together. It became administratively onerous to issue several sets of summonses and warrants in the event of protective writs for a long list of associated vessels. Shane Dwyer also mentioned that there might be problems if there has been a change of ownership and that has implications for the signature of the certificate.

The issue of the Sheriff invoicing the arresting attorney for preservation costs was also discussed. Peter Edwards and Patrick Holloway met with the Sheriff of Cape Town and it came to light that there was a set of guidelines, last updated in 2000, which included taking documents off an arrested vessel including the seaman's books. Shane Dwyer said that he had a list provided by the Sheriff listing documents taken off a vessel and which presumably flowed from the guidelines. A copy of the list is annexed marked "C" and a memorandum prepared by Peter Edwards flowing from the meeting with the Sheriff of Cape Town is annexed marked "D".

There was also an issue with the Sheriff of Cape Town allowing persons on board an arrested vessel without a court order to inspect documents. This issue has been addressed.

In regard to a procedure for limitation of liability, the CMI intends drafting a set of procedures.

Marine Insurance

A copy of the report by Andrew Robinson is annexed hereto marked "E".

Ownership, Registration & Mortgage, including small vessels

There was nothing to report on this issue.

Carriage of Goods / Road and Rail

A copy of the report by Andrew Clark is annexed hereto marked "F".

The most relevant issue is the Rotterdam Rules. Andrew Clark reported that the Rules extend the time bar to two years and includes units of limitation in line with the Hamburg Rules. Michelle Linderman advised that there is substantial support for the Rotterdam Rules and that they are expected to be launched in September 2009.

Andrew Clark reported that the subcommittee was working on a draft Carriage of Goods by Road Act and that they have set a time limit of three months to complete and circulate a draft for comment

Salvage, Towage and Wreck and General Average

A copy of the report by Peter Edwards is annexed hereto marked "G".

Peter Edwards raised the issue of logs washed overboard and the problem that arises in terms of which legislation governs the hazard caused by the logs. Shane Dwyer mentioned that NEMA is not adequate and neither are DEAT or SAMSA fully responsible. It appeared to be an issue where negotiation was key but there was a need to have procedures in place so that the various agencies could work together.

Pollution

James Mackenzie and Patrick Holloway reported that the bill implementing the Fund convention was gazetted in April and required comment to be in by 22 May 2009. None of the EXCO members were aware that the bill was gazetted and hence the time period for comment had lapsed.

Patrick Holloway commented that the time periods for comment allowed by the DOT in regard to draft legislation was too short and he proposed that a time period be at least three months to allow the MLA Chapters to circulate and workshop the legislation, prior to submitting written comment to the DOT.

Brian Watt is to discuss the issue at the level of the Gauteng Committee.

James Mackenzie is to write to the DOT requesting further time to comment.

Ship Operators and Crewing

A copy of the report by Malcolm Hartwell is annexed hereto marked "H".

Safety at Sea and Navigation

A copy of the report by Malcolm Hartwell is annexed hereto marked "I".

Ports and Pilotage

A copy of the report by Malcolm Hartwell is annexed hereto marked "J".

Limitation

A copy of the report by Andrew Robinson is annexed hereto marked "K".

CMI

A copy of the report by Andrew Robinson annexed hereto marked "L".

IMO

Roy Martin reported and Brian Watt used his IMO access code to obtain a summary of relevant IMO issues for discussion. A copy of the IMO summary is annexed marked "M".

Website

A copy of the report by Peter Edwards is annexed hereto marked "N".

5.14 **Empowerment**

A copy of the report by Andrew Clark is annexed marked "O".

6 To consider the Association's annual levies

It was resolved that the annual membership subscription fee remain at R750.00.

Philip Shaw's proposal at last year's AGM that the accommodation costs of EXCO members be borne by the MLA was raised and it was resolved that the costs were prohibitive in view of the expenses of upgrading the website.

7 The consideration of the President's Report

Mr Andrew Robinson tabled a written report annexed hereto marked "P".

8 The consideration and adoption of the Treasurer's Report and the Association's Annual Levies

Mr Andrew Clark tabled a written report which is annexed marked "P".

9 To elect two members to the Executive Committee of the Association

Nominations were received in respect of Colin Shaw and Advocate Dusty Donnelly. Both nominees accepted the nominations and it was unnecessary to call for a vote.

The EXCO now consists of the following members:

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Secretary: Anisa Govender, Shepstone & Wylie, Scotswood, 35 Aliwal Street, Durban, 4001, PO Box 205, Durban, 4000, Phone: +27-31-302 0111, Fax: +27-31-304 2862, Mobile: +27-82-466-5012, E-mail: govendera@wylie.co.za

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Executive Committee:

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James Mackenzie, PO Box 15280, Vlaeberg, 8018, Phone: +27 21 438 8408, Cell: +21-82-460-4708, Email: jdmackenzie@telkomsa.net

Colin Shaw, 1st Floor Millweed House 169 . 175 Maydon Road, Maydon Wharf Durban 4001, Phone: + 27 31 274 2503, Fax: +27 86 510 8978, Cell: +21 82 374 1905, Email: colin.shaw@bidports.co.za

Ex Officio Chapter Chairpersons

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Gavin Fitzmaurice, Webber Wentzel, 15th Floor, Convention Tower, Heerengracht, Cape Town, 8001, Tel: +21 21 431 7000, Fax: +27 21 431 8000, Email: gavin.fitzmaurice@webberwentzel.com

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10 Report received of the Secretary on Membership

Mrs Anisa Govender tabled a written report which is annexed marked "R".

11 To receive the report of the Chairperson of the Durban Chapter

Mr Roy Martin tabled a written report which is annexed marked "S"

12 To receive the report of the Chairperson of the Cape Chapter

Report received from Gavin Fitzmaurice which is annexed marked "T".

13 To receive the report of the Chairperson of the Eastern Cape Chapter

Philip Shaw delivered a verbal report to the extent that he had been in touch with the remaining members of the Eastern Cape Chapter and that there had been a good response.

It was planned to call a Chapter AGM soon and to vote in a new committee.

14 To receive the report of the Johannesburg Chapter

Report received by Brian Watt which is annexed marked "U".

15 **General**

15.1 Gavin Fitzmaurice mentioned that the 2010 AGM will be held in Franschoek over the weekend of 4- 6 June 2010.

15.2 Court of Marine Enquiry Regulations: A copy of the report by Andrew Pike, who drafted the Regulations, is annexed marked "V".

Roy Martin requested that local master mariners be invited to Chapter workshops dealing with the regulations.

Andrew Robinson requested the Master Mariners to draft a note on the regulations.

15.3 It was resolved that a subcommittee would be constituted to work with various stakeholders to review the current international and domestic legislation with a view to drafting a revised definition of piracy for consideration by the membership and subsequent submission to government.

15.4 Sheriff . Durban: Malcolm Hartwell and Shane Dwyer raised issues with regard to arrested vessels being ordered out of the port and difficulties with making arrangements for the Sheriff to serve warrants of release. Copies of their emails detailing the issues are annexed marked "W". Emma du Plooy offered to facilitate a meeting with the Harbour Master of the Port of Durban in this regard.

The meeting was declared closed at 13:30pm.

PRESIDENT: DATE: 7 June 2009